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THE  
**HISTORY**  
 OF THE  
*Original and Progress*  
 OF  
**Ecclesiastical Revenues :**

WHEREIN  
 Is handled according to the Laws, both  
 Ancient and Modern, whatsoever con-  
 cerns matters Beneficial, the *Regale*,  
 Investitures, Nominations, and other  
 Rights attributed to Princes.

Written in *French* by a Learned Priest.  
 And now done into *English*.

L O N D O N,

Printed for *Henry Faithorne* and *John Kersey*, at the *Rose* in  
*St. Paul's Church-Yard*, and *Samuel Smith* at the *Princes*  
*Arms* in *St. Paul's Church-Yard*. 1685.

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TO THE  
R E A D E R.

**I**T may seem unnecessary to say more of this Treatise, than that it proceeds from the famous Pen of Father *Simon*; who hath herein far outgon all who have written on the same Subject, even the Learned Father *Paul*.

This Work plainly  
A 3 dif-



To the Reader.

discovers what good Use the Ecclesiastics have made of the Pious Inclinations of the Laity, to their own Advantage : which may justly reflect on the Church of Rome, that great School of Politics; but ought not in the least to prejudice the Honourable Esteem, and Liberal Endowments, which a sound Orthodox Church doth or ought to enjoy in a well-govern'd State.

A T A-

A  
T A B L E  
OF THE  
Matters contained  
In this  
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THE  
**HISTORY**  
 OF THE  
**Original and Progress**  
 OF  
*Ecclesiastical Revenues.*

**W**HAT is mentioned in the Acts of the Apostles, concerning the Primitive Christians, having all things among them in Common, is not to be understood, as if private persons had been obliged to sell their goods, that they might render them common to all believers. For, that we may not fall into the error of the Anabaptists, there is a great difference to be made betwixt a Custom that

The Original of the Community of goods among the Primitive Christians.

...to the Primitive Christians, p. 82. ...  
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 ...to the Primitive Christians, p. 82. ...

...



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that happened but accidentally in the Church of *Jerusalem*, and continued not there long, and a Divine Law, which can never be dispensed with. No other Law obliged Believers to it at that time, but the Law of Charity; and we are at present under the same obligation, seeing the goods which we possess, become in some manner common to our Brethren, when they fall into necessity and want. The Apostles were not ignorant of the Laws which *Moses* made in favour of the Poor, to prevent their being reduced to beggary. And in that sense we ought to explain the words of the *Psalmist*, (1) *I have not seen the Righteous forsaken, nor his seed begging Bread.* Where we are to observe that the *Jews* took to themselves the name of *Righteous*, to distinguish themselves from other Nations that worshipped Idols. The Books of *Moses* contain many Laws which oblige the Rich, on several occasions, to make their goods common to the Poor, and one of the chief is the Law that prohibits the exacting of Usury from their Brethren. And that Law is still in force among them, in the low condition to which

(1) ἐκ εἶδον  
δικαίον ἐγκα-  
ταλελει-  
μῶτον, καὶ τὸ  
σπέρμα αὐτῶ  
ζητεῖν ἄρτους.  
Psal. 37.25.

Ecclesiastical Revenues.

which they now are reduced, they being persuaded, that that charity towards their Brethren, is of divine right. We are not then to inquire into any other cause of that Community of goods which was in use, in the Infancy of Christianity, but the Laws of Charity, which are still the same, though the practice of them differ according to the diversity of occasions. For seeing the Primitive Believers lived in Society, & that there were a great many poor among them, those who had estates were obliged to sell them, to supply the necessities of their Brethren.

The Apostles conformed exactly to the Custom which was already established in the Synagogues. They made a gathering on the days of their Assemblies, in imitation of the *Jews*, and during the week every one laid up what he could, to be delivered to those who took the care of collecting their Alms. In the places where Christians met, there were (1) Boxes, as well as in the Synagogues, for receiving the Alms of private persons, and the money was distributed amongst the Poor, the Orphans, Widows, and Sick.

(1) *Tertul. in Apolog.*

*The History of*

Now this distribution was not made indifferently by every one that pleased: But as in the Synagogues, there were Officers entrusted with that care, so likewise the Apostles appointed Deacons, or Ministers, to whom they gave the same Commission, reserving to themselves, nevertheless, the chief direction and oversight thereof. In a word, if we consult the Jewish Writers, and the present practice of their Synagogues, as to what concerns their Charity, we shall find that the Apostles have exactly followed their Discipline in that particular. They still send their Alms to *Jerusalem*, and to other places in *Judea*, for the relief of the Poor that live in those parts: And besides the constant Charity that they give in the Towns where they live, to those that are in want, they assist Forreign *Jews*, who make application to them, in their necessity; and for Proof of this, it would suffice to shew a Certificate signed by their *Rabbies*, after the same manner, as Letters of Recommendation, were granted to Believers in the First Ages of the Church; which gave *Lucian* occasion to say, that to become

*Ecclesiastical Revenues.*

become rich in a short time, there needed no more but to pretend to be a Christian.

At that time the Ministers of the Church had no other Revenues, but what they gathered from the Charity of believers: For as to Tithes, First-fruits, and other Rights that belonged to the Levites and Priests, they were abolished with the Sacrifice. Our Saviour having instituted a new form of Ministry, appointed also a new way of providing for the necessities of the new Ministers. He received the Alms that were given him, and put them into the custody of a Steward, to be distributed according as need did require. *St. Paul*, who speaks often in his Epistles of the duty of Ministers towards the people, and of the people towards their Ministers, says no more, but conform to the words of our Saviour, that they who preach the Gospel, should also live by the Gospel, and that they who serve at the Altar, should participate of that which is offered upon the Altar; thereby alluding to the Offerings of the Old Testament. He never makes mention of Tithes, nor of those Dues

The first Revenues of the Church.

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that were given to the Priests, because he supposes that, that Priesthood being abolished, the rights that from thence accrued to the Priests, ought likewise to be abrogated. And therefore, the Primitive Christians, who sold their estates, for the relief of the Poor, and maintenance of their Ministers, thought it not sufficient to bestow the tenth part, but freely gave all that was necessary, knowing that the right of Tithes and First-fruits, were but only Ceremonies, and Customs of the Old Testament; of which they retained no more, but what concerned Morality. So that Charity was the Rule of what they were to give to the Ministers of the Gospel. And St. Paul who hath made several good Regulations, concerning the Administration of these Alms, calls the Portion that was given to the Priests and Widows, Honoraries. This

(1) Χήρας τιμα τὰς ὄψωνος χήρας, 1 Tim. 5. 3.

(2) Οἱ ἑλλῶς πρεσβύτεροι διπλῆς τιμῆς ἀξιοῦσθαι. 1 Tim. 5. 17.

he doth, when he recommends to Timothy, (1) to honour Widows that are Widows indeed: For Widows had particular Offices in the Church, as well as the Priests, whom the same St. Paul affirms (2) to be worthy of double honour, that is, of a double reward.

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ward. In effect the term of honour is used by Lawyers, to signify the recompense that is given to the Officers of Justice, to Advocates and Physicians; and I make no doubt but that St. Paul borrowed it from the Greeks or Hellenists, who sometimes make use of it. In this sense these words of Ecclesiasticus are to be understood, (2) Honour a Physician, that is to say, pay the Physician. Now seeing the Priest-hood was a Real Employment, and Divine Function, St. Paul had reason to give it the Title of honour, which properly belonged to the Magistrats of States.

(2) Τιμα ἱατρῶν ὡς τὰς χεῖρας τῶν αὐτῶν. Eccles. 38. 1.

The Church hath not only imitated the Synagogue in the way of distributing its Charity, but also, hath followed the Discipline observed amongst the Jews, in respect of their Ministers. The Synagogues were composed of a Ruler of the Synagogue, which the Hellenist Jews called Archi-Synagogus, Priests or Elders, and Deacons; and that was the cause, why the Apostles established in Christian Assemblies, those three sorts of Ministers under the names of Bishops, Priests and Deacons. The Bishop in these

The Original of the Ministers of the Church.

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these Assemblies, had the same honour as the Ruler of the Synagogue amongst the Jews, had in their Synagogues. The Superiority of the Rulers of the Synagogue, in respect of the Priests or Elders; consisted only in some Titles of honour, as being the Chief amongst their Brethren. And therefore they are all comprehended under the name of Priests or Elders in the Hundred and seventh Psalm, where we have these words: (1) *Let them also exalt him in the Congregation of the People, and praise him in the Assembly of the Elders;* which was the place of their Meetings. So we find in the New Testament, that the names of Priest and Bishop are indifferently taken the one for the other; and that Assembly or Council of the Elders, which was called *Presbyterium*, consisted of the Bishop, and the Priests or Elders. The Bishop, or President, as the Ancient Fathers speak, had indeed the chief Direction or Superintendency; from whence he was called Bishop; which word is also found in the *Greek* of the Septuagint or Hellenists, but he made up but one Body with the Elders

(1) ἵνα ἡδοξασθῶσιν αὐτὸν ἐν ἐκκλησίᾳ λαοῦ, καὶ ἐν καθεδρᾷ πρεσβυτέρων ἐν ἐκκλησίᾳ αὐτῶν.  
Psal. 107. 32.

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or Priests, who in Quality of Judges, had their Jurisdiction jointly with him. Hence we may infer that in the beginning of the Church, the management of affairs, and the Jurisdiction which is now called Episcopal, did not depend on the Bishop alone, no more than the distribution of the Offerings, but on the whole Senate or Assembly of the Priests; and this continued so long as there was but one Church in every City, one Altar, and one Consistory of Priests joined to their Bishop, because it was not easy then, for the Bishop to become Master of the whole Jurisdiction and Administration of the Revenues. But so soon as it was necessary to encrease the number of Churches, there was some cause to fear, lest those who governed the new Churches, might attribute to themselves the quality of Bishops, finding themselves at the head of a particular Church. And therefore the Bishops began to take to themselves authority over them, for which it was necessary to appoint, that there should be but one Bishop in every City, on whom the Elders or Priests should depend, who were to take

The Original of the great Authority of Bishops.



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take upon them the Government of the new erected Churches, which were called *Titles*. *St. Jerome* strongly maintains this opinion in his Commentaries on the Epistle of *St. Paul* to *Titus*, where he affirms that before this division, each Church was governed by the Common Council of the Priests; but that for avoiding all occasion of Schism, one of these Priests or Elders was chosen to be the Chief, and to take upon him the care of the whole Church. He pretends that the names of Priest and Bishop did not at all differ in the beginning, and that therefore *St. Paul* made use of them indifferently: Then he subjoyns, (1) That it is only Custom which hath made Bishops greater than Priests. And this may be confirmed by the authority of *St. Paul*, who writing to the Churches, under the name of Elders, comprehends both Bishop and Priests.

(1) *Episcopi noverint se, magis consuetudine, quam dispositionis dominice veritate, Presbyteris esse majores. Hieron. com. in Epist. ad Tit.*

It is to be observed, however, that the Church being encreased, hath borrowed many terms and points of Government from the Republicks of *Greece*, and that when there was a necessity of erecting Dioceses, it hath in

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in that followed the distinction of Provinces, according as they were established in the Empire. The Church which in its commencement allowed much to the people, grew afterwards more Aristocratical in its Government, when by experience it appeared, that the multitude of people served only to confound and perplex affairs; and then the Polity of Aristocratick Republicks came in vogue. Nay we find in the very Acts of the Apostles, two sorts of Assemblies, as well as in Republicks, The one is composed of the Chief amongst the Believers, and is called *Ecclesia*. The other admits all indifferently; and that the Republicks of *Asia* named *Agoraia*, which they have always distinguished from the Assembly that they named *Ecclesia*. And therefore the name of *Ecclesia* or Church hath still been given to Christian Congregations, and constantly retained by the *Greeks*, who made the first Ecclesiastical Laws, from whence it hath been derived to the *Latines*, who are indebted to the *Greeks* for all the Ecclesiastical Polity that was settled in the first Ages. In this sense we

Of the Government of the Church in its Commencement.

ought

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(1) Origen  
contra Celsum.

ought to interpret the words of (1) Origen concerning the Form of Church-Government, which he explains with relation to the Greek Republicks. The Athenians, for instance, called those Bishops, to whom they committed the care of the Towns that depended on their Commonwealth.

(2) Τῶν Ἐπισκοπῶν  
ἐκείνων εἰς τὴν  
Χρῆσιν τῶν αὐ-  
τοῦ πρώτων.  
Can. 33 Apost.

It was long before the Church owned any other name but that of Bishop, to distinguish him who had the principal Administration; nay, when it was even necessary to denote a Bishop, who had Jurisdiction over others, she called those Bishops, (2) the First Bishops of a Nation; or made use of some other expression, without inventing new words. We find nevertheless the name of Metropolitan in the Council of Nice; but the Greeks, whose Language is fruitful in new words, invented a great many, to express the different Offices of the Ecclesiastick State, which were not so soon brought into use in the Latine Church. The names of Archbishop, Primate and Patriarch, are but Titles of Honour and External Jurisdiction; whereas the quality of Bishop, and that also

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also of Elder or Priest, is a Character that marks the Ordination, which the Apostles borrowed from the Synagogue, that chose its Ministers by the Imposition of hands. In that manner Moses laid his hands on Joshua, and the other Elders, who were presently filled with the Holy Ghost: And if we will credit the Authority of the Rabbies, the power of Imposing of hands belonged not only to the chief of the Sanhedrim, but also to the other Elders; which seems likewise to be confirmed by St. Jerom, (1) who pretends that the Elders or Priests enjoyed that Right a long time in the Church of Alexandria, where the Priests, who in imitation of the Apostles, were twelve in number, chose one from among themselves to be their Bishop, on whom they all together laid their hands; as the Patriarch Eutychius observes in his Annals of the Church.

The Original of the Ordination of Bishops and Priests.

(1) Hier. in Epist. ad E. vagr.

Having now spoken of the Persons who had the care of the Revenues of the Church, and observed wherein those goods did consist, it will not be amiss to subjoyn that those Revenues were rather a kind of Subsidies employed

The nature of Church-Revenues in the beginning.



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ployed for the Relief of the Poor, than any real Rents. Nor was there need of any solemnity for consecrating them to the Church, seeing they were not fixed, and the Laws of the Empire permitted not Christians to possess publick Estates. After all, the Collections which we have mentioned, ceased not upon the death of the Apostles; for we read in one of the Apologies of St. *Justin Martyr*, (1) that in the Publick Assemblies Believers bestowed their Charity after the Communion, and that one of the Brethren kept the money, to be afterward distributed among those who were in want. That Custom was also in use in the time of (2) *Tertullian*, and the Church had no other Revenues, but such Alms or Contributions, until the time of *Constantine*, who permitted Churches to possess real Estates, and to be endowed with Lands and Inheritances. (3) *Pliny* the younger observes, that private persons were prohibited to give their Estates to any Colledge or Society, but that they ought to chuse certain and special Heirs, and not the Gods in general. It is true, the Laws made after-

(1) St. Just. Apol. 2.

(2) Tertul. Apo.

(3) Plin. Epist. lib. 5.

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afterwards a Restriction, that one might bequeath or give his goods to lawful and allowed Colledges or Societies, and that by special Priviledge the *Jewish Synagogues*, which were of the number of those Allowed Societies, were nevertheless excluded from that Priviledge: And because Christian Assemblies were always rejected under the Pagan Emperours, as unlawful Conventicles, it is certain the Church never enjoyed any Possessions, until the Fourth Century under the Empire of *Constantine*. All these Laws may be seen in the Body of the Civil Law, wherein they are inserted.

It was about that time then, that Churches began to be endowed, as well as the Pagan Temples, because Christian Congregations were no more then considered as Conventicles. The Emperour *Constantine*, granted them great Priviledges, and permitted People to bestow upon them Possessions of all kinds. He ordained also that they should inherit the Estates of the Martyrs, Confessors, and of those who had been banished, when the true Heirs did not appear. I speak not here of the Donation

The Original of immoveable Estates in the Church.

(1) Euseb. l. 2. de vita Const. cap. 36.

(2) Potentia quidem & divitiis major, sed virtutibus minor facta est. Hier. in vita S. Malch.

(3) Chrysost. homil. 86. in Matth.

(4) Possid. in vita Ang. cap. 24.

Donation which Constantine, according to some (1) Authors, made to the Church of Rome, because it is notoriously known that the deed is false, and that the Successors of Constantine possessed Lands that are mentioned therein. It may be affirmed that the Priviledges granted by Constantine to Churches, for injoying of Rents, have occasioned great disorders: Which made St. Jerome say (2) that the Church was indeed become more Powerful and Rich under Christian Princes, but that it was less Virtuou. St. Chrysoptom, (3) describes at length the sad State of Bishops and other Church men, since the Church enjoyed Lands and other fixed Revenues, because they forsook their employments, to sell their Corn and their Wine, and to look after their Glebes and Farms: Besides much of their time was spent in Law-suits. He wishes that he might see the Church in the State that it was in in the times of the Apostles, when it injoyed only the Charity and Oblation of Believers. St. Austin was also in the same Opinion, and (4) it is reported in his Life, that

that he often refused the Inheritances which were offered to his Church, thinking it fitter that they should be left to the lawful Heirs. And in the same Life we read, that St Austin would never purchase Houses nor Lands, nor any other Possessions for his Church: Wherein he shewed his wisdom and prudence; for nothing does more obstruct the Charity of Believers towards Churches, than when they see that they enjoy vast Estates, the Revenues whereof are nevertheless more uncertain, than the Alms that are given to a Church that hath not the repute of being Rich. And so it was also, that those, who knew St. Austins mind, sold their Lands, and gave him the money; which the more willingly they did, as being persuaded, that the good Bishop bestowed it on pious uses, & not in making new Purchases for the enriching of his Church.

Though, at that time, Bishops and Deacons had the care of the Revenues of the Church, yet notwithstanding even in the time of Constantine many abuses were committed in the management of them. And this made the Fathers of

Abuses in the Administration of Church-Revenues.

of the Council of *Gangres*, to make a Canon against the *Eustathians*, who divided among themselves the Revenues of the Church. It was decreed in that Council (1) that the Bishop alone, and those to whom he did commit the care of the Revenues of the Church, should receive and distribute what was bestowed on Churches. But it happened not long after (2) that the Bishops themselves abused their power: For most of them being Poor, and charged with Families, they reserved part of the Church Rents for their subsistence. And all that could be done, to put a stop to that corruption, was (3) to suffer them to give somewhat to their Relations, if they were Poor, but withal prohibiting them to sell the Estates that belonged to Churches. Nay, the Fathers were even obliged, not to leave the administration of the Revenues of the Church in the power of Bishops, Priests, and Deacons, without giving an account of them: For the Council of *Antioch* ordained, that the Bishops should give an account of the administration of those Revenues, in the Provincial Synod.

(1) Conc. Gangr. Can. 7. & 8.

(2) Conc. Antioch. Can. 25.

(3) Εἰ δὲ πονηροὶ εἴεν, ὅτι χρῆσθαι ὡς πνευματικῶν, ἀλλὰ μὴ ἀποφάσκειν τῶν ταύτων τῆς Ἐκκλησίας ἀπεμπληῖται. Can. Apost. 37.

And

And that the goods which properly belonged to Bishops, might not be confounded with those that appertained to their Churches, every Bishop upon his Election (1) gave a list of the Goods and Estate, that he possessed, which was separated from that of the Church, to be disposed by will or otherwise at his pleasure, according to the Provision of the Civil Law. But notwithstanding all this caution, the Bishops made themselves still Masters of the Revenues of the Church, and the Fathers were obliged to create Treasurers or Stewards to take the care of them, that so the Bishops might apply themselves entirely to the duties of their Office. These Stewards were likewise necessary for preserving the Revenue of the Church, which the Bishops and other Church men did not employ according to the Canons. But because they were appointed by the Bishops, they relapsed again into the same abuse, & the Poor had cause to complain of the same Bishops, who gave them but a very inconsiderable share of the Goods that were destined for their Use. Upon all these accounts

(1) Ἐὰν ὁ ἀρχιεπίσκοπος ἢ ἕτερος ἐπίσκοπος ἀποκριθῆναι, ἔχει ἰδίαν ἕκαστος ἐκκλησίαν, ἣν ἑαυτοῦ διακονεῖ. Can. Apost. 39.

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the



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the Fathers of the Council of Calcedon decreed, That for the future the Stewards should be chosen from among the Clergy, and that it should be no longer in the power of the Bishops themselves to administer the Revenues of the Church. That Office became so considerable in the Church of Constantinople, that the Emperours took from the Clergy the nomination of the Stewards, and appointed them themselves. And this lasted until the time of the Emperour Isaac Comnenus, who remitted that right to the disposition of the Patriarch.

The Custom of the Western Church differs from that of the East.

The power of Stewards was not so great in the Western Church, as in the Eastern; for seeing the Bishops and other Ecclesiasticks did not according to equity distribute the Church Revenues, and that besides the Churches were meanly endowed, there was a necessity of making a particular designation of the use, to which these Rents were to be employed: And that was adjusted in this manner; to wit, that the Bishop with consent of his Clergy, should divide the whole Revenues of his Church into four parts, of which the

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the First should be for himself; the Second given to the Church-men; the Third to the Poor; and the Fourth and last applied to the Fabrick of the Churches. (1) Gratian relates a letter of Pope Zosimus directed to an Arch-Deacon, where that distribution is mentioned, but without permitting the Rents of the Church to be dismembered, as some Church men pretended, who would have had Lands assigned them for their portion. St. Gregory answering some Questions that were put to him by Austin the English Bishop, confirms that Dividend, which had been already approved by several other Popes, and withal appoints that the Bishops portion, should not only be for himself, but for as many as were necessary for his Retinue, and for maintaining Hospitality. The Bishops wrangled with their Clergy about that ditribution, pretending that they had no right to the new Acquisitions of the Church; but the same Pope St. Gregory adjusted the matter in favour of the Clergy. The Priests pretended farther, that they ought to have two parts of the share that was

(1) Gratian caus. 12. quest. 2. cap. 23.

St. Greg. Pope.

A Dispute about the ditribution of the Revenues of the Church.

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assigned to the Clergy ; and that the other Churchmen ought to have but a third of the same. That matter was referred to the Bishop, who was to give to every one according to his merit and pains. Nevertheless St. Gregory, who in that followed a Law established in the Churches of the West, writing to Austin concerning the Discipline that he was to observe in England, tells him that it was more convenient to persist in the Community of Goods in the Church of England, than to introduce into it those kinds of dividends. And indeed it will appear in the sequel of this Discourse, that the dividing of Ecclesiastical Revenues, hath been the cause of most of the disorders that have happened in the Church ; and I dare boldly affirm, that the thing that hath preserved a greater purity of the Ancient Discipline in the Eastern Church, has been chiefly, that the Orientals never made any such partitions. None but the Western Church hath put the Estates of the Church into Titles and Livings, in the same manner as if private persons were the absolute masters of those Estates.

The

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The Barbarous Princes, who seized part of the Empire, brought great changes into the Church, and the Discipline of the Canons was onely preserved in the East. The Greeks, nevertheless, have sometimes remitted certain Ecclesiastical rights in favour of their Princes. But that is nothing if compared with what hath been done under the Barbarous Princes in the West.

A change of Discipline in the Church.

The Stewards of whom we have spoken, took upon them not only the care of the Revenues of the Church, by order of the Bishops, but also preserved them during the vacancy of the See, and distributed them among those to whom by right, and according to the Canons, they belonged. But because most part of the Church-men had Estates of their own, either by Inheritance or Purchases that they had made, there arose great difficulties upon their Death about the distinguishing of those Estates : Some there were that pretended, that those who lived on the Revenues of the Church, could not in conscience retain their own Inheritance. St. Jerom

The Office of the Stewards.

St. Jerom.

who was of that opinion, is positive, that the goods of the Church were designed for the Poor; which agreed very well with the Edict of *Constantine*, that prohibited the Rich to enter into any Office of the Church, though he did it upon Politick Reasons, and for the good of the State. Most of the other Fathers were also of *St. Jeroms* mind, and *St. Austin* admitted no Clerk into his Church, till first he had disposed of all his goods, either in favour of the Poor, or by Sale. He was for having all Clerks really Poor, in imitation of the Apostles, and for living altogether in common upon the Revenues of the Church. Nevertheless it is to be observed, that he did not require that of them but as a greater perfection, and that he never thought it absolutely necessary for entering into orders, and enjoying the allowance of the Church, that one must possess nothing at all. Otherwise he must have gone against the Ancient Canons, which leave Church-men at liberty to dispose of their own Estates as they please. It is true these Canons were made in the Eastern Church, where most of the Bishops

Whether Church-men can keep their own Estates.

St. Austin.

Bishops having been Married before their Election, had Wives and Children to provide for; and where Priests and Deacons might Marry if they pleased. And therefore it was not reasonable to take their Estates from them. Besides, it must be considered, that when these Canons were made, Churches were but Poor; Nay and some time after *Constantine*, no Churches but those of great Cities were Rich.

However, these Ancient Canons of the Eastern Church, were (1) renewed in the Church of the West, though they had not the same reasons for doing it. Church-men were only prohibited to bequeath by Will, the Goods which they had got in their Livings, because Believers did not give to Churches, only to enrich the Church-men. If it happened, nevertheless, that the Bishop died without making a Will, and had no heirs, then did the Church succeed to all his Estate. The Churches of *Spain*, who had got a *Latin* Translation of the Ancient *Greek* Canons, imitated the customs of that Church, which were likewise propagated in other Churches of the West.

(1) *Caus. 12. Quest. 3.*

We



Gratian.

We may here observe by the by, that Gratian is often mistaken ; and that there is no credit to be given to his Citations, but when they are found to agree with the Ancient Greek Canons Nor are the very Summaries which he gives of Canons always true, as when it is marked in general, over the Head of the Canon taken out of the Council of Tarragona, that the Estate of the Bishop dying without a Will, ought to return to the Church ; whereas it is barely said in the Council, that the Priests and Deacons shall make an Inventory of his Goods, and that according to the Greek Canons ; to the end that what was properly his own, might be set apart from that which belonged to his Church. But this is not a proper place to correct the faults which occur in the Collection of Gratian.

(1) Ammian.

(1) The Emperour Julian revoked most of the Priviledges granted to Churches by Constantine. (2) Nay, he took from them their Endowments, alledging for a Pretext, that the perfection of Christian Religion consisted in Poverty. But Valentinian after-ward

(2) Zozim.

ward recalled the Edicts of Julian ; though he did not confirm all the Grants that Constantine had made to the Church ; and the Emperours that came after him, were more sparing in their Liberality. But the Avarice of the Church-men made up what was wanting in the Bounty of the Emperours: For if we give credit to what St. Jerom reports of the Priests and Monks of his time, they spared no Trick nor Artifice whereby they might hook in the Estates of private Persons. I shall make no scruple here to produce some proofs of it, since Cardinal Baronius hath done the same before me; and then it will easily appear that the Anchoret of whom Sulpicius Severus speaks, had reason to say, (1) that nothing was more likely to ruine the Church, than great Riches. Seeing it would be difficult to translate the words of St. Jerom with the same force and elegance, as they are in the Original, I shall only extract some passages in Latine out of his Writings ; as first in one of his Letters to Eustochium, he thus describes what past at Rome among the Church-men.

Edicts of Emperours.

Excessive Avarice of Church-men.

St. Jerom.

(1) Ecclesiam auro non strui, sed potius destrui. Sulpitius Severus in Dialog.

(1) Clerici

(1) Hier. in  
Epist. ad Eu-  
roch.

(1) Clerici--osculantur capita matronarum, & extentâ manu, ut benedicere eos putes velle, si nescias, pretia accipiunt salutandi: --quidam in hoc omne studium vitamq; posuerunt, ut matronarum nomina, domos moresq; cognoscant; ex quibus unum, qui hujus artis est princeps, breviter describam. --cum sole festinus exurgit, salutandi ei ordo disponitur, viarum compendia requiruntur, & pene usque ad cubicula dormientium senex importunus ingreditur; si pulvillum viderit, si mantile elegans, si aliquid domesticæ suppellectilis, laudat, miratur, attrectat, & se his indigere conquerens, non tam impetrat quam extorquet. In another of his Letters, he describes more to the life, the low and sordid Offices, which the Priests and Monks of his time rendred to Old Men and Ladies who had no Children, that they might catch their Estates and Inheritances. *Audis*, says he, *in senes & anus absque liberis quorundam turpe servitium, ipsi apponunt matulam, obsident lectum, purulentiam stomachi, & phlegmata pulmonis manu propria suscipiunt, &c.* In the Epistles of this holy Doctor

Doctor, we may have a full and lively Representation of the Church-men of his time; and he cannot forbear to blame the vanity of Widows of Quality, who refusing to marry again, that they might not be subject to a Husband, liked very well to be courted by Church-men, that so they might bear the Rule. *Illæ interim*, says that Father, *quæ Sacerdotes suo viderint indigere præsidio, eriguntur in superbiam, & quia maritorum expertæ dominatum, viduitatis præferunt libertatem.* His Commentaries upon the Holy Scriptures are likewise full of the like complaints against the Avarice of Church-men, whom he upbraids with their desire of enriching their Relations with the Goods that belong to the Poor. I wave a great many other Reproaches that he makes to them, which got him the hatred of the Ecclesiasticks and Monks of his Age. And nevertheless he said nothing but what was true, and approved by all good men: So that when most part of the Priests and Monks censured him as a railing and violent man, (1) *Sulpitius Severus* undertook his defence,

(1) Sulp. in  
Dialog.

defence, and made the same complaints against the Church-men, whose unsupportable Vanity he condemns. These were not only then the grievances of St. Jerom, who in that cannot be accused of Passion, since that before him St.

(1) Hilary  
comm. in Psalm.

(2) Comedentes  
domos viduarum,  
& oratione longa  
& antes.  
Math. 23. 14.

Hilary (1) compared the same Church-men to the Scribes and hypocritical Pharisees, (2) who in appearance made long Prayers, and devoured Widows Houses: In a word, if men condemn St. Jerom of Passion, they must also condemn St. Gregory Nazianzen, St. Basil, St. Ambrose, and indeed the greatest Saints of that Age, who could not endure the Covetousness of the Church-men. But nothing justifies St. Jerom more, than that the Emperours Valentinian, Valens, and Gratian, were obliged to make a Law against those corruptions, which is to be found in these words in the Code of Theodosius.

Codex Theodos.

Laws of the  
Emperours  
against the  
Avarice of  
Church-men.

*Ecclesiastici, aut ex Ecclesiasticis; vel qui continentium se volunt nomine nuncupari, viduarum ac pupillarum domos non adeant; sed publicis exterminentur Judiciis, si posthac eos ad fines earum, vel propinqui putaverint defendendos. Censemus etiam, ut memorati nihil*

*nihil de ejus mulieris, cui se privatim sub pretextu religionis adjunxerint, liberalitate quacumque vel extremo Judicio possint adipisci, & omne in tantum inefficax sit, quod alicui horum ab his fuerit derelictum, ut nec per subjectam personam valeant aliquid, vel donatione, vel testamento percipere, &c.* That Law, which was directed to Pope Damasus, was read in the Church of Rome.

(1) St. Jerom does not accuse the Emperours of Injustice, for publishing a Law which seemed contrary to the Liberties of the Church; but he accuses the Avarice of Church-men, who having slighted the Law of God, have been forced to obey the Laws of Men; and he asserts, that therein the Priests and Monks are inferiour to the Priests of Idols, and to the Societies of the infamous, who are not debarred from receiving Inheritances. The disorders of Ecclesiasticks must at that time have been very great at Rome, that Christian Princes were obliged to make such rigorous Laws against them.

(1) St. Jerom  
in his Letter  
to Nepotian.

Now seeing Monks come within the compass of the complaints that St. Jerom and the other Fathers have made against

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The Original and Progress of Monks.

against Ecclesiasticks, it will be pertinent to speak a little of their Original and Progress, and to shew how they came to have a share in the Revenues and affairs of the Church. The Original of Monachism is commonly attributed to St. Paul the Hermite, and St. Anthony; in imitation of whom Egypt was entirely filled with Monks, whereof some were Solitary, and others lived in Community. That kind of Life afterward got footing in Syria, Pontus and the lesser Asia. Those of Egypt and Syria have still retained the name of St. Anthony their Founder: Whereas the others of the Province of Pontus and the lesser Asia, took the name of St. Basil, who brought from Egypt into those parts the Rule and Institution of St. Anthony. So that St. Basil and St. Anthony have filled the Levant with Monks, who at present bear their Names. St. Athanasius coming to Rome, and having there published the Life of St. Anthony, many also in Italy embraced that kind of Life, which from thence was propagated into the other Provinces.

We must, nevertheless, have a care, not

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not to confound the Clerks who lived in Community under the direction of their Bishops, with Monks. Eusebius, Bishop of Vercel, was the first in the West, who according to the Testimony of St. Ambrose, joined together two things which seemed contrary, to wit, the Monastick Rule to the manner of the living of Clerks. It is not to be imagined that these Clerks were true Monks, no more than those who embraced the same kind of life, under St. Martin and St. Austin. They borrowed only from the Monks, their way of living in common, being for that no less serviceable to the Church; whereas in the beginning, Monks lived out of Towns, were for most part Laicks; and so far from performing any publick Ministry in the Church, that their Profession wholly debarred them from it. All their Employment consisted in Prayer, and Labouring with their hands, and their study in reading the holy Scriptures. It is true, Bishops sometimes drew Monks out of their Monasteries, and associated them to their Clergy; but then they were no longer Monks, being reckoned in the number

Euseb. Vercel.

The Clergy that lived in Community differed from Monks.

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(1) Clerici pascunt oves, ego pascor. Hieron. Epist. ad Heliod.

(2) Sic vive, ut Clericus esse merearis: quod si populus vel Episcopus te in Clericum eligat, age que sunt Clerici. Hieron. in Epist. ad Russ. Monach.

Monks subject to Bishops.

number of Clerks. St. Jerom always distinguishes those two kinds of life, and speaking of himself as a Monk, he says, ( 1 ) Clerks are Shepherds, for my part, I am one of the Sheep ; And he always builds on this principle, that it is one thing to be a Monk, another thing to be a Clerk. Alia monachorum est causa, alia clericorum. He nevertheless acknowledges that Monks by their profession were not excluded from Ecclesiastical Employments ; on the contrary, that Monachism ought to serve them as a Noviciat in order thereunto, when Bishops shall Judge them worthy. ( 2 ) Live, says he, writing to Rusticus the Monk, in such a manner as you may deserve to be a Clerk ; and if the People or your Bishop, fix their eyes upon you for that end, do that which is incumbent on a Clerk.

The Monks at that time were Subject to Bishops, and ordinary Pastors, having not so much as distinct places in the Church from the rest of the People, because they were of the number of Laicks. But since there happened several heresies in the Eastern Church, and that many learned Monks bravely opposed

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opposed them, it was thought convenient to draw them from their great solitudes, and to settle them in the Suburbs of Cities, that they might be useful to the People. And St. Chrysostom thought it even fit to call them into Cities. Which was the cause that most of them, applying themselves to study, aspired to the Clergy, and with much precipitation got into holy Orders, whereof Pope Zosimus complains in one of his Epistles. But seeing they were useful to Bishops, not only in Spiritual, but Temporal affairs, they got into great Reputation ; and the same Bishops who were glad to have a numerous Clergy, and fit persons about them to carry on their designs, gave them considerable Offices, wherein they behaved themselves excellently well, as appeared in the affair of Nestorius. But having abused the authority that was put into their hands, and growing insupportable to all People, even to the Bishops themselves, because of their vanity and their meddling in all kinds of business without the permission of their Ordinaries, the Fathers of the Council of Calcedon thought

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Canons against the Monks.

thought fit to make Canons against Monks, for putting a stop to the disorders which they occasioned in the Church. Wherefore it was decreed in that Council, that for the future, Monks should be wholly under the Jurisdiction of Bishops, without whose permission they should meddle no more in any affairs whether Civil or Ecclesiastical; that they should not leave their Monasteries to ramble up and down, and to frequent Towns; that they should not build any Monastery or Chappel, without consent of the Bishop of the place; and that they should be secluded from Ecclesiastical Employments, unless called thereunto by their Bishops, when they should judge it necessary.

And thus was the Canon law Re-established in regard of the Monks, who had not continued long without shaking it off, and they were put into an absolute dependance on Bishops, who took care of Monasteries as well for the Spiritual as Temporal. As the Monks of that time were but part of the People, so they had no other temporal Revenue also, but what they gained by their labour, and a share

The first Revenues of Monks.

in

Ecclesiastical Revenues.

in the Alms, which the Bishop caused to be given unto them, if they were in want, in the same manner as to the other Poor. Besides that, the People gave them their Private Alms, that they might pray to God for them. Some of them, nevertheless, kept somewhat of their Patrimony; but St. Jerom blames them, as counterfeit Monks, who followed not the Rules of Evangelical poverty. As to the Spiritual, they came to the Parish Church with the rest of the People, and sometimes they were allowed to send for a Priest to administer the Sacraments unto them. At length they were permitted to have a Priest of their own number, on condition that he continued Monk, and only officiated in the Monastery. This gave them occasion of having Churches apart, and of making a kind of separate Body. After that it was impossible for Bishops to hinder them from performing all Ecclesiastical functions in their Monasteries; and since that time there have always been disputes betwixt the Bishops and the Monks, because the Monks on many occasions refused to submit to the orders of the Bishops, which they

St. Jerom.

The Original of the Churches of Monks.

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Monks in the  
West before  
St. Benet.

The differ-  
ence betwixt  
the Ancient  
and Modern  
Monks.

they pretended to be contrary to the Discipline of their Monasteries.

Though at that time most part of the Monks were in the East, yet for all that, there were a great many also in the West, before St. Benet planted a particular Order there. St. Jerom, St. Ambrose and St. Gregory make mention of Monks in Italy, amongst the Gauls and in several other parts of Europe. Besides, all the Authors who have written of the beginning of the Christian Religion in several Countries, speak of Monks that were there. There was this difference, nevertheless, betwixt the first Monks that were in Europe before St. Benet, and those that came after him, that the first were barely Monks, without being addicted to any particular Order. To be a Monk was sufficient, to make them received as such, in all Monasteries wheresoever they travelled. There was no talk then of particular Rules and Institutions But every Monk laboured to improve himself by the example of others, and to embrace what he thought most perfect in the Monastick life. So that, it may be said, that the Monks both of the East and West were all of one

one Order, having at that time no Mark of distinction amongst them. The ancient Rules that have been written by the Primitive Monks, ought rather to be lookt upon as different Commentaries upon the Monastick life, than different Rules; for the intention of those who embraced that kind of life, was not to distinguish themselves by particular Rules from the manner of living of other men, but to submit themselves by a more particular resignation to the Maxims of the Gospel, and to find out all possible ways how they might live up to the Counsels of our Saviour, who will have us to wean our hearts altogether from the World, that we may follow him alone who is above it.

I shall not here speak of the Institution of St. Benet, which is in the hands of every body; but shall only observe by the by, that the design of that Saint was not to make any innovations in the Monastick life, but to make a Collection of what he found most perfect in the Rules and Institutions of others. Matters are much altered since. All the several Orders of Monks make now a days so many

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petty different Republicks in the Church, and are so many little States who have all their several interests. But let us now return to our Subject concerning the Original and Progress of the Revenues of the Church.

Changes in Church and State.

No sooner were the Barbarous Kings become Masters of a part of the Roman Empire, but the Civil and Ecclesiastical Laws suffered great alterations. There was a necessity of complying with the humor and temper of these new Conquerours, who medled in the affairs of the Church. There was not now, as formerly, the same liberty in electing of Bishops. Princes thought of securing their States, by conferring Bishopricks only on such as they could rely upon. So that Ecclesiastical dignities began to be lookt upon, as mere Lay-Offices, at the disposal of Princes, with which they could Reward those that served them. And which was more pernicious to the Church, Princes and other great Lords began to make no more distinction betwixt goods consecrated to God, and goods Profane. The necessity of the times must be born with; and the

Ecclesiastical Revenues.

the great Wars that Princes were engaged in, was the cause that the best part of the Revenues of the Church, fell into the hands of Lay-men. They made Contracts of Alienation about them, as about other Possessions; and these Contracts past for lawful, when they were made in the usual forms. No body opposed it. The Bishops & Monks treated often with Laicks about those concerns, either by way of Exchange or Purchase. The ancient Cartularies or Registers of the Monks are full of such kinds of Contracts; wherein it appears that Children succeeded to their Fathers as well in Church livings, as in other Estates. The Counts or Judges decided the differences that arose amongst private persons about such Estates, in the same manner as about other Inheritances and Possessions.

The Revenues of the Church in the same condition, as temporal Estates.

It is true some scrupulous People made a Distinction betwixt Altars and Churches; comprehending under the name of Churches, Lands, and other Revenues for which men might contract; and assigning a Priest to the Altar, who was to have a Salary for saying Mass and performing other Ecclesiastical

A distinction betwixt Churches and Altars.

Ecclesiastical Functions. But some who were not so scrupulous made no such imaginary distinction. For in the ancient *Cartularies* there are to be found forms of deeds of alienation of Churches and Altars, with the Bells, Chalices, Crosses and other Ornaments of the Church. This was practised even in *Italy*, before the Popes entred into the cognisance of the goods of the Churches, which depended not on their Diocese. To these troublesome times we may attribute the total Ruine of private Church-men, who were obliged to take wages from those who possessed the Churches, And which is more unhappy, the greatest part of those Revenues are fallen into the possession of Cathedral Churches and Monasteries, to which they did not at all belong. The truth is there are forms of Contracts to be found in the same *Cartularies*, which make it appear that Monks have bought several Churches from Lay men; but part of these Churches had been usurped by the Laicks from the Church-men, to whom they ought to have been restored, and not sold to the Monks.

When

The Ruine  
of private  
Church-men.

When the administrations of Church Revenues were erected into Benefices, or perpetual Titles, the Church-Men who were hired by the Chapters of Cathedral Churches, by the Monks, and even by Laicks, became perpetual Vicars and Curats. But the best part of the Benefices remained still to the Canons and Monks, who took to themselves afterward the Quality of Primitive Curates. Besides, since private men were not able, Princes and other great men bought the Churches from those Church-Men, and gave them to the Monks, who entertained Secular Priests, to take the care of administering the Sacraments to the People; all the Revenue and Tithes in the mean time remaining to the Monasteries. Wherefore, it will not be amiss to explain in this place more particularly, the Original and Progress of the Revenues annexed to Monasteries, and at the same time to speak of their priviledges and exemptions. A great part of what we shall say of Monasteries, being also applicable to other Ecclesiasticks.

We have shown before, that Monks  
having

The Original of Lands and other Revenues belonging to Monasteries.

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having made profession of poverty, lived only by their labour, and the Alms they received as being poor. And since they were not employed in Ecclesiastical Functions, they could not apply to themselves these words of St. Paul, *They which wait at the Altar, are partakers with the Altar.* And therefore it seems they ought never to pretend to the enjoyment of Church Revenues, which according to Natural & Evangelical Law, belong to none but the Ministers of the Church. The contrary notwithstanding hath come to pass; For most part of Church-Men have been deprived of the Revenues that belonged to them, and the Monks endowed therewith. It hath been already observed that Monks applied themselves much to Prayer, and that that got them the Charity of many private persons. But since Bishops allowed them to have Oratories or Churches for their own use, this Charity was doubled and People began to leave their Parish Churches, and flock to their Chappels. Nay there were some Monks that made Fonts in their Monasteries, in the same manner as there are

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are in Baptismal Churches. The Bishops did, indeed, forbid them to administer any Sacraments, but to those of their Monastery, and denied them Baptismal Churches. But though they were at that time subject to them in all things, even in what concerned the Monastick Discipline, yet it was not in their Power to hinder the People from giving them Charity. There were, nevertheless, some Bishops who would have reduced them to the observance of the Ancient Canons, and not suffered them to have Priests among them: But Pope Gregory, who was favourable to the Monks, wrote in their behalf to one of his Suffragans, that he should permit them to Celebrate Mass in their Monastery; and that was chiefly the Original of private Masses, which have been very useful to the Monks, and bring at present some profit to most Religious Societies.

The Original of private Masses.

It is to be seen in Ancient Manuscript Missals, that in that which they call the Canon of the Mass, mention was made of the Alms which the Priests received: For whereas the Priest says only



(1) *Memento domine famulorum famularumque tuarum, & omnium circumstantium. Memento domine, famulorum famularumque tuarum quorum elemosinis sustentor. Can. Missal. MS.*

only these words, *Remember Lord thy Servants and Hand-maids, and all who are present*; He heretofore said, *Remember, Lord thy Servants and Hand-maids, who make me subsist by their Alms*. With many other words which are not at present, in the Canon of the Mass. As it hath always been the belief of the Church, that Prayers, and especially those of the Sacrifice, were very advantageous to the dead; so the Monks quickly found the benefit of having Priests among them, thereby to attract the Charity of the People, which turned to very good account to them. To them may likewise be Attributed the Original of Private Chapels, and the multiplication of Altars, for celebrating several Masses, at one and the same time: For, according to Ancient Custom, it was not lawful to say more than one Mass, at which all assisted, and it was even a thing unheard, that many should celebrate Mass the same day, upon the same Altar: Which Custom is still observed in the Eastern Church.

In the Formularies of *Maxculphus*, many Deeds of Cessions or Donations,

in

in favour of Monasteries are to be found. The most Common form was expressed in these Terms: *JN. the Son of N. give to such a Monastery (1) for the remedy of my Soul, such & such goods*. Children made the-like Donations to Churches, and especially to Monasteries, for the repose of the Soul of their Father or Mother. It was enough for most part, to put these Terms in general into the deed, (2) *For the remedy of my Soul, or of the Soul of my Father or Mother*, without particularising the Number of Masses, as it is practised at present. And by that means they might receive all the Foundations that presented, without being obliged to encrease the Number of Priests. It is true, there are other Forms of Pious Legations, which are larger, and wherein, besides these terms, *pro remedio animæ nostræ*, it is likewise added, *ut pius deus & dominus noster, Jesus Christus peccata nostra dimittere & minuere dignetur, & paradisi portas nos gaudentes introire jubeat; & ut in ultimo tremendo Judio non inter hædos ad sinistram, sed inter oves ad dextram aggregari mereamur consortio,*

(1) *Pro remedio animæ meæ.*

The form of Ancient Donations.

(2) *Pro mercede animæ meæ, vel genitoris & genitricis meæ.*

Ann. 1061.

&c.

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Ec. But in these Deeds there is only mention made of Prayers in General. There are nevertheless pretty Ancient Forms, wherein mention is made of particular obligations, wherewith the Founders or Benefactors charge the Monasteries: But these Deeds are very rare, and even sometimes supposititious. The Emperour *Louis II.* Son of *Lotharius*, in a Priviledge which he granted to the Abbey of *Casaur*, seated in the *Abruzzo*, of which he was the Founder, obliges the Monks to say daily three Masses for him, to sing the Hundred and twentieth *Psalm* in all the Offices and Hymns of Vespers and Matins; and that for the ransom or remedy of his Soul. This priviledge is Printed at the end of the sixth Tome of the Book Entituled, *Italia Sacra*; and though the Author hath taken it out of some *Cartularies*, yet there appear several Additions and Marks of Forgery, which I found by comparing it with an Ancient *Cartularie* of that Monastery, where the same Priviledge is written without all these Additions. It is true the Number of the Masses, and the other Obligations that are in Print

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Print, are likewise in the Manuscript, but seeing in that *Cartulary*, there are many other Priviledges of the same Emperour, in favour of the Monastery for the same thing, where these Conditions are not to be found, there is ground to doubt of the truth of that Priviledge; besides that in the first Deed of the Foundation, there is nothing of it mentioned. However it be, it is certain that those kinds of Grants contained nothing commonly, but Obligations for Prayers, and sometimes for Masses, and that but in general: Which hath much contributed to the augmenting of the Revenues of Monasteries, because the Monks could still receive new Foundations & Pious Legacies, without obliging themselves for all that to any new Obligations; and private Persons who were perswaded, that the Prayers of the Monks would be available to them, made no difficulty of giving their goods to Monasteries.

By this means the Monks have acquired great Estates in Lands, which because they would not labour themselves, they let out by a kind of Leases or Copy-holds, which they

Means of acquiring Estates among the Monks.

E called

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called *convenientia*. There was no notice taken at that time of the Canon Laws, which prohibit the Alienation, or Farming out of Church Lands, for a long term of years; they were then, as all other Goods and Estates, subject to the Civil Laws, and Customs of places. Bishops and Abbots sold and exchanged the Rents of their Churches, without consulting the Pope. The Lease, which they termed *convenientia* or agreement, was for a certain number of lives; so that the Lands were engaged for many years, on Condition of a yearly Revenue paid to the Abbey: And for greater security it was specified in the Deed,

(1) Ann. 570.  
Ad usum fru-  
endi per no-  
strum presti-  
tum, cultandi,  
& exfructuan-  
di, non ruden-  
di, nec donan-  
di, nec concam-  
biendi, &c.

(1) That so much Land was let by way of loan, to the third Generation, to be laboured and improved, and the profits thereof enjoyed, without permission to sell, exchange, or any ways engage the same.

This way of letting of Leases is still in use in England; and the Monks made use of it heretofore, as all other Church men, having the same liberty as they had to purchase, sell and exchange: Whereas in the beginning they made a scruple, of enjoying the property

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property of any Lands, only they sometimes laboured and manured Lands; that no body claimed a right to, for their own subsistence.

There is mention made in the treatise of matters Beneficiary attributed to *Father Paul*, of a form of a Contract called *Precaria*, which hath much enriched Monasteries. The Old *Cartularies*, are full of such kinds of Deeds, which consisted in a Donation made by private Persons, of their Estates to Churches, which they obtained back again from the same Churches, by Letters which they call'd *Precarias*, or *Preparatorias* to be possessed by a kind of Copyhold, or Lease for Lives; for most part granted a Lease for five, six, and even for seven Lives, on condition of paying a yearly Revenue to the Monastery. People bestowed their Lands more willingly upon the Church, when they perceived that they still reserved the profits of them for many years. And I have seen in ancient *Cartularies* forms of *Precarious* Contracts, wherein private Persons sold their Estates to a Monastery, and afterward obtained

An Explication of the Contract called *Precarius*.

(1) *Literas precarias usque in quintam generationem.*  
Under Louis 11 Son of Lotharing.

(1) Letters or Leases of them to the Fifth

Fifth Generation: So that after the Fifth Life, the Monasteries could dispose of the Lands, whereof they had the property, from the date of the Contract, the sellers enjoying only the Profits, upon Condition of paying yearly a certain sum of Money, and obliging themselves to cultivate (2) and improve the Lands, without any Power to sell, give, engage or exchange the same according to the tenour of the Contract or Deed. In those days there were many other Deeds of the like nature, which were authorized by the Civil Law, and Customs of Countries; and no distinction was made betwixt Secular and Church Lands. Monks were allowed to purchase and sell, in the same manner as Lay-men.

(1) Beneficiali ordine usu fruendi, cultandi, laborandi, meliorandi, non vendendi, nec donandi, nec concambiendi, &c.

Other means of Acquisition.

Those who embraced a Monastick Life, contributed much also to the enriching of Monasteries: For it commonly happened that they who made choice of that Profession, thought it not enough to give themselves to God, unless likewise they offered all they had; of which they made a Conveyance, according to the forms used in several Countries. The Tenour of that Deed

Deed, is to be found in the Ancient Cartulare of Casare in these terms: *I. N. Son of N. in such a year of the Emperour N. and of the Count N. offer and give, of my own free will and motion, this present day, my proper Person, and all the goods which I possess in such and such places, to such a Monastery, where I intend to live the rest of my days.* And for the greater solemnity of this offering, it was made in the Church, where the Person laying his hand upon the Altar, was, with all his Estate, offered to God. It is also to be observed, that the profession of a Monastick Life, hindred not the Monks from inheriting the goods of their Relations, which they might dispose of in favour of their Monastery. Besides, Widows, who having taken the Veil from the Hand of the Bishop, could not Marry again, gave part of their Estates to the Monastery or other Churches, of which a Deed past in the following Tenour: *I. N. Daughter of N. the Servant of God, who have taken the Veil of Religion, give to N. Abbot, or to such a Monastery, such and such goods for the remedy of my Soul, and of the Soul of my Husband.* E 3 Besides



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(1) De Clau-  
strensi fieri Ar-  
choritam.

Besides all these ways that have brought great wealth to Monasteries, it is to be observed, that the Constitutions of the Order of St. Benet, allowed a Monk to leave the Society of his Monastery, that he might live Solitary and an Anchorite, which was called, (1) of a cloystered Monk to become Anchorite. These Anchorites, who retired from the Monastery, with the permission of their Abbot, went and lived in some neighbouring place; and they were not so Solitary, but that they were visited by the People, that came to recommend themselves to their Prayers. They received large Alms, as being esteemed holier than the rest; and took all kinds of Donations, whether in Lands, or Moveables. When they were grown Rich in one place, they went to another, where they met with the same Charity from the People. The Estate which they had acquired belonged to them, and before their death they made it over to the Monastery, out of which they came. And that their Donation might be in form, an Act past upon it in these terms: (2) J. N. Priest and Monk

(2) Cartulary  
of Casaire.  
Ann. 1036.

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Monk of such a Monastery, out of which I came with Permission of the Abbot, that I might lead a more retired Life, gave to my Abbot N. for the repose of my Soul, all the goods which I possess, and which I have purchased with his Permission. The Deed of Donation contained a list of Goods, Lands and Churches, which these Anchorites left to their Monasteries, and at the same time they delivered up the Deeds of private Donations, which were kept among the other Records.

Besides all this, Monasteries made no difficulty to sell the Ornaments, and consecrated Vessels of their Churches. There is mention sometimes made in Ancient Cartularies, of Chalices and Silver Crosses given in payment for Lands bought from private Persons, when there was no necessity for it. But what is more surprizing, Monks bought indifferently from all sorts of men, and often enough from those who had abused their Authority in seizing the Goods of the Poor: Which gave encouragement to many great men, to usurp the Estates of their Neighbours, because they were sure to find Monks; to whom they could sell them, we find a very

considerable Instance of this in the *Cartulary* of the Abbey of *Mire* in *Suifferland*, which hath been Printed. The Monk who compiled the Acts of that Monastery, having reckoned up the Lands and Possessions which lawfully belonged to the Abbey, gives afterwards an account of goods (1) that had been acquired by unjust means. That good Monk says, that he was obliged to publish to the World, those unjust Acquisitions, that he might therewith acquaint his Brethren, and discharge his own Conscience: Then he mentions a Golden Chalice, enriched with Pretious Stones, and two Silver Crosses, with which and coined Silver, they bought some Lands which had been by a Person of Quality unjustly taken from Poor Country People: And in fine, having represented the injustice of such kind of Purchases, he subjoyns, that men should take heed, not to mind their Body with so much care, as to lose their Souls, by injoying unlawful and usurped goods. (2) Nevertheless after these reflexions, he spares not to reckon up the ill purchased Goods, as well as the rest. For it is very rare for Religious Communities

(1) *Quae cum iniustitia & rapina, aut violentia congregata, aut acquisita sunt.*

(2) *Dum unusquisque hoc solum attendere debet, ne ita corpus nutriat, ut animam perdat, cogitetque quid proficiat, si litro rapiat, & monachus committat.*

munities to make restitution; no man in particular thinking himself obliged to it. The Priviledges granted by Princes to Monasteries, hath also much contributed to the preservation, and encrease of their Revenues. Those Priviledges, which were called Charters of Freedom and Royal Commands (1) exempted Monasteries from ordinary Taxes; and Princes having once taken them into Protection, no man durst molest them. Nay when they had any suit with their Neighbours about controverted Lands, it happened very seldom that they lost the cause; because the Judges Commissionated by Princes, most commonly favoured the Monks, who were looked upon as men belonging to the same Princes, and whose Lands were in some sort reckoned of their Demain, especially when Princes were the Founders of the Monasteries. The Original of Investitures, which have caused so much trouble in the Church betwixt Princes & the Pope, proceeds from such Foundations, & in the beginning they signified no more, than the Letters whereby the Prince revested or invested a Church, to speak in the Language of those times.

Nay

(1) *Cartae libertatis & praecepta regalia.*

Nay the very deeds that private Men made contained the term *Invest*, which signified giving, and putting men in Possession of *Lands*. Now that this might be made more solemn, some ceremonies were added, which may be called *Fictiones juris*, *Fictions of Law*.

I have found in an Ancient form of Investiture made under the Emperour *Louis II*. That the Judges, and other Lords commissioned by the Prince, gave Investitures in his absence, of which an Instrument was left, specifying the year of the Emperours Reign, and the years of the Count or Judge of the places, which was signed by the other Judges, and Witnesses present at the Ceremony. The form was

(1) Cartulary of Casauve.

conceived in these terms, (1) *N. N. investierunt per demandationem Augusti, per colonnam de curte, &c. N. abbatem.* In other forms of Investitures we find *per annulum*. In effect, the custom was to make use sometimes of a staff, sometimes of a Ring, and most commonly of both together. When these Investitures were made by Princes, that staff was called the *Royal Staff*, in the same manner as their Priviledges were called

led (2) *Royal Charter*, *Royal Command*, *Royal Jussion*, *Royal Protection*; And at length it was called (1) *Royal Scepter*. The Investitures of Bishopricks were given *per sceptrum regale*, as it is mentioned in some Authors, & Ancient *Cartularies*.

(2) *Carta regalis, preceptum regale, Jussio regalis, defensio regalis.*  
(1) *Sceptrum regale*

Although *Charlemain* and his Successors referred the Election of Bishops to the Clergy and Monks, according to the ancient Canons, yet they were never made without the consent of Princes, who most commonly designed those who were to be chosen; and the Electors durst not do otherwise, because from them must be obtained the Investiture of *Lands*, Priviledges and Immunities. This was not only observed in *France* and *Germany*, but even in *Italy*. It is to be found in the Ancient *Cartulary*, of the Abby of *Casauve*, founded by the Emperour *Louis II*. That the Monks of it took always the Investiture from the Emperours and Kings, without ever having recourse to the Popes, until the Wars that happened betwixt the Popes and *German* Emperours. For then, as it is observed by the Monk who wrote the *Chronicle* joyned to that *Cartulary*, (1) (1) *Ann. 1073*

Investitures depending on Princes.

the



Cum non possent ad Imperatorem ire, quia iam discordia & dissidium inter Romanam Ecclesiam & Imperatorem Teuthonicorum paratur, ad presentiam Apostolicæ sedis accesserunt.

the Canons and Monks were obliged to apply themselves to the Popes, for obtaining priviledges, and permission to proceed to a New Election, in respect that the Wars hindered them from addressing themselves to the Emperours. That happened in *Italy* under the Pontificat of *Gregory VII.* who with so much vigour attacked the Investiture of Princes. And although the Monks of *Casauere* had already obtained from Pope *Leo IX.* A Priviledge like to those which they obtained from the Emperours, yet they complained that the Wars hindred them from having recourse to the same Emperours, as if they had only owned the Popes for the right of Investiture, because they were constrained to do so by the necessity of the times.

The same History informs us, that the Canons and Monks did not chuse their Bishops and Abbots, before they had acquainted the Emperours and Kings. And therefore in the Elections of Bishops and Abbots which were made by the whole Body of the Canons, and Monks, the consent of Princes was always mentioned, but not a word of the Pope, who at that time did not concern himself in these

The Elections depended not on the Pope, no not in *Italy.*

these Elections, no not in *Italy* as appears manifestly by the *Cartulary* of *Casauere*, & the *Manuscript Chronicle* annexed to it. This was still observed under the Emperour *Henry III.* For that *Chronicle* makes mention of a (1) Monk named *Dominick*, who was chosen by the whole Community, with consent of the same Emperour. The act of that Election is mentioned at length in the *Cartulary* with the Subscriptions of all the Monks who chose *Dominick*; and it is specified in the beginning of that Act, that they all with one voice, from the highest to the lowest, chose *Dominick* a Monk & Priest: then he adds, that that was done with the consent of *Elelin* Chancellour to the Emperour *Henry*. The same Monks in that *Chronicle* affirm besides, that they were obliged to have recourse to Pope *Urban II.* Because the *Normans* suffered them not to apply themselves to the Emperour. The Author of the *Chronicle* adds, that their Abbot *Grimualdus*, went to Pope *Urban*, to declare to him the sad condition to which the Wars had reduced the Abbey, and that since that time, it (2) began to be under the Protection of the

(1) *Dominicus electus in Abbatem, ab omni congregatione, consensu Imperatoris Henrici venerabilis Churradi filii. Ann. 1047.*

(2) *Sub protectione Romana Ecclesie, quam hactenus Abbatia sancti Clementis ignoraverat, quia ab Imperatoribus gubernabatur, meruit collocari.*



the Roman Church, having always been before under the protection of the Emperours.

(1) Grimualdus primus ab Urbano in Abbatem consecratus, baculum pastoralem in loco Sceptri regalis quod Antecessores sui et ipse ex dono Imperatoris in dextera portabant suscepit.

But it is more observable what he says in the same Chronicle (1) that the Abbot Grimualdus was the first that made use of the Pastoral Staff which he received from the Pope for the Investiture of the Abby, & that all the other Abbots his predecessors, had carried a Royal Scepter, which the Emperours gave them. And therefore the Monk who wrote the Cartulary of that Abbey represents on the one side Pope Urban, and on the other, the Abbot Grimuald, in whose hand the Pope puts a Crozier, whereas he had represented the rest with a Staff, and makes Pope Urban speak these Verses to the Abbot.

Caesaris ob sceptrum baculum tibi porrigo dextram,  
Quo bene sis fretus, plus Casare dat tibi Petrus.

(2) Abbatia que hactenus fuit Imperialis camera, modo datur pro pretio, sicut a mercatoribus venditur vilis ancillula. Ubi sunt fastus regales? ubi Sceptri magnificentia?

But the Monks soon learnt by experience, that the Popes Pastoral Staff did not defend them like the Royal Baton. And therefore the Author of that Chronicle (2) deplors the misery to which his Monastery was reduced at that time, and regrets the loss it sustained, in being

ing no longer protected by the Emperours.

I mention this, to shew how little power the Popes had before that time in the Elections of Bishops and Abbots, and that it was wholly in the hands of Princes. However the Monks got always these words put into the Immunities or Priviledges, that Princes granted them; That they should have liberty to chuse an Abbot of their Society according to the Institution of St. Benet. Yet after all, they durst not chuse any Abbot, but with consent of the same Princes, who named to them most commonly, those who were to be chosen, not observing even the order, which appointed the Abbot always to be taken of the house whereof he was to be Abbot. Liberty of Election remained only in inconsiderable Abbeys, and even there, in the beginning, the permission of the Bishop in whose Diocese it lay, was necessary. Before the Institution of St. Benet, the Monks were in all things Subject to the Bishops, and could do nothing without their consent. But the clause of that Institution concerning the Election of Abbots, which is to be made

The Elections were only free in name.

Original of the Exemptions of Monasteries.

made by the Monks of the Community, served them for a Pretext, by degrees to exempt themselves from the Jurisdiction of Bishops. It is true that Monks who depended on Bishops, even for the observation of their Institution, could not chuse a new Abbot, before they had obtained the permission of their Bishops. But as they represented their Rule, they were not hindered to follow it; and so they obtained from the Bishops power to chuse their Abbots according to the tenour of their Constitutions. There was no need afterwards to have recourse to Bishops for a new Election, for they themselves left to the Abbot and Monks all that concerned their Rule, and they began to make a difference betwixt the Jurisdiction of the Bishops, and the Monastick discipline. The Monks went even a little farther, and obtained from their Bishops exemptions from episcopal Jurisdiction. And so soon as the Popes had in the Dioceses of other Bishops, got the power which they have at present, the Authority of Bishops was greatly diminished. For the Popes granted to Monks, most commonly for Money,

as

as many exemptions as they pleased. We must, however, take notice, that the Primitive Exemptions of Monks are not so large, as those of later times, and that the more the Authority of Popes has been advanced, the Privileges of Monks have increased proportionably. After all, these Exemptions have been very advantageous to Monasteries, and very uneasy to Churchmen that depended on them. For, seeing the Abbots had all power in Spirituals as well as in Temporals, the debates which they had with Churchmen were always decided in favour of the Monastery.

Besides, the Abbots most commonly compounded with those to whom they gave the administration of Churches, and cut off part of their Stipend for the use of the Monastery. And for the better succeeding in this, they pretended that their Monastery had the right of a Baptismal Church, and by consequent the Tithes and other Church Dues belonged to it. If the Priests objected that they had always received the Tithes, and that therefore their Church ought to be accounted Baptismal; then

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A difference betwixt the Monks and Curats about Tithes.

the Monks defended themselves other ways, affirming that the Priests only enjoyed the Tithes, by the charitable benevolence of their Abbots, & that by right they belonged to the Monastery. Thus the Monks of the Abbey of *Mire* heretofore pretended, that the Tithes of the Churches which depended on their Monastery, belonged to them. I shall here relate the terms inserted in the Acts of the Foundation of that Abbey that every one may Judge of the right that Monasteries have often usurped over Churches that depended on them, without any title. (1) *De decimis vero, quas clerici antea hic à nostris agris accipiebant, credendum est antecessoribus nostris hoc potius pro charitate, vel ad solatium victus, quam pro justitia & subditiōe sanxisse; & in potestate abbatis est, utrum velit alii dare, aut sibi met habere, admonitque sunt à modo omnes qui secesserint huc ad habitandum, ne unquam consentiant ut clericus curam ab Episcopo, sed Abbate accipiat, quod istud monasterium est mater Ecclesiæ.* To which may be added, that the Abbots gave frequently enough the Government of Churches to some of their Monks, who discharged the Office

(1) The Act of the Foundation of the Abbey of *Mire*.

Office of Curate, instead of secular Priests; and then it was easy to attribute to the Monastery, the Tithes which belonged to the Curates. There was, indeed, sometimes debates betwixt the Bishops and Monks; but the Bishops were easily gained by money, to suffer them to appoint Vicars or Curates in the Churches, which they pretended did depend on their Monasteries.

That we may better understand the Custom of that time, it is to be observed, that *Gregory VII.* and other succeeding Popes, made several Constitutions to oblige Laicks to restore to the Church the Tithes and other Ecclesiastical Revenues, which they possessed; but most of these Restitutions were only made to Cathedral Churches and Monasteries, though the goods belonged to private Churches. Now seeing the Church at that time was distinguished from the Altar, Monasteries retained the Churches, that is to say, the Lands, Tithes and other Revenues: But because the right of providing these Altars, belonged to the Bishops, it behoved the Monks to obtain from them; that which was called, (1) the Redemption of Altars. *Godofroi*

A distinction betwixt the Church and the Altar.

(1) *Altarium redemptio*



of Vendome, and other Authors of the same Age, make mention of that right. Besides, the Council of Clairmont ordained, That the Altars which had been given to Chapters or Monasteries by the Vicars, whom they called Parsons, should return to the Power of the Bishop, unless the Bishops had confirmed in writing the Donation made to the Chapters and Monasteries. To obtain this confirmation from the Bishop, a certain sum of money was required. And this abuse caused another; for private men would also have Churches, of which they received the Profits in imitation of the Canons and Monks, and had the cure supplied by Vicars. There was no necessity that they who were provided with such Altars should be Priests, seeing they substituted Vicars in their places. John of Salisbury condemns that abuse (1) and cannot endure that those that did not wait at the Altar should partake with the Altar, applying to themselves the Revenues of Churches, without rendering any service to the same Churches. Ives Bishop of Chartres complains likewise of that corruption, in a Letter to Pope Urban II. wherein he lays open the bad Custom

(1) Nolumus Sacerdotio onerari, aut servare altario qui de altario vivunt, sed personatus quosdam introduxerunt, quorum jure ad alium onera, ad alium referuntur emolumenta.

Custom that was in France, in respect of such Personages which had been authorised by the Bishops his Predecessors: Qui altari non serviunt, says he, de altari vivunt, à quo sacrilegio cum eos absterere velim, monendo, increpando, excommunicando, altaria à me redimere volunt sub nomine personæ, sicut a predecessoribus meis ex prava consuetudine redemerunt.

Pope Urban, indeed, condemned that abuse in a Council held at Clairmont, to hinder the Simony that Bishops committed in selling Altars: but it seems that they who had bought them from the Bishops, gained by their Simony; for it was decreed in that Council, that such as had for the space of thirty years enjoyed these Altars, should not be molested for the future, and that the Bishops should exact no more from them, but the due, which they called redemptio altarium. Pope Pascal Successor to Urban, confirmed the same Decree in one of his Epistles, to Ives Bishop of Chartres, and Ranulphus Bishop of Xantes, wherein he speaks to them in these terms: Ipsi Arvernensi concilio adfuistis, in quo presidente Prædecessore



## The History of

*decessore nostro bonæ memoriæ Papæ Urbano, consentientibus Galliarum Episcopis, decretum est ut altaria quæ ab annis triginta sub vicariorum redemptione Monasteria possedisse noscuntur, quietè deinceps & sine molestiâ qualibet Monasteriis ipsis firma permaneant.*

In this manner did Monasteries and Chapters, who were also comprehended in the Decree of the Council of *Clairmont*, retain to perpetuity several Altars which did not all belong to them; and they were at the same time exempted from paying to the Bishops the usual dues, that were paid after the death of the Vicars; for obtaining liberty to put other Vicars in their places. It had been, me thinks, more convenient and agreeable to the Ancient Canons, to have left the power of providing for Altars to the Bishops. And to prove that that right belonged to them, when Laicks were forced to restore to the Church the Tithes and other Church Revenues which they possessed, it was decreed in the Council of *Melfi* under Pope *Urban II.* That no Laick should have Liberty to give to Monasteries or Chapters, Tithes Churches, or other  
Ecclesiastical

## Ecclesiastical Revenues.

*Ecclesiastical Rights, without the consent of the Bishop of the place, or the permission of the Pope.* But it happened that the Bishops abused their Power, and permitted Chapters and Monasteries to receive these Rights from Laicks, on Condition of a certain sum of money to be paid to the Bishops, for granting Liberty of establishing Priests or Vicars who might take upon them the Spiritual care of Churches. These decrees of the Popes that were backed with Excommunications, frightened many Laicks, who instead of restoring the Church Revenues to private Churches, to which they belonged, restored them to Chapters and Monasteries, with the permission of the Bishops. The Lay-men liked it much better to restore the Tithes, and other Ecclesiastical Revenues, to Chapters and Monasteries, from whom they got money, than to private Churches, which had none to give. And therefore Councils decreed that these Restitutions should not be made without consent of the Bishops, thereby to prevent all compacts or agreements betwixt Laicks and Ecclesiastical Communities. There were,  
F 4 nevertheless,

nevertheless, a great many Laicks, who were not startled at the Excommunications of *Gregory VII.* and other succeeding Popes, but notwithstanding them kept still the Tithes and other Ecclesiastical Revenues. They did more, for they instituted Priests to take care of Souls, without expecting the Institution of the Bishops. And that was the cause why the Council of *Lateran* under *Alexander III.* decreed (1) That Clerks or Priests that should take upon them the Government of Churches, from the hands of Laicks without the Authority of the Bishop of the place, should be excommunicated; and that if they persisted, they should be deposed from their Ministry. Nevertheless the Popes suffered Lay-men still to enjoy the Tithes of Churches whereof they were in possession. But they granted Chapters and Monasteries Priviledges to get them out of their hands, even when the Bishops would not consent to it. These kinds of Priviledges which were easily obtained from the Court of *Rome*, brought in great Revenues to Chapters and Monasteries, who put Secular Priests into the Government of Churches,

(1) *Con. Lateran. III. cap. 14.*

Churches, allowing them such moderate Stipends, that the Popes were obliged to condemn that Avarice of the Canons and Monks, who denied Priests even a necessary subsistence.

The vast Rents that Monasteries enjoyed gave umbrage to the Bishops, Canons, and to Princes themselves, to whom it was represented, that most part of these Revenues ought rather to belong to secular Priests who served the cures than to Monks, who by their Profession were excluded from all Ecclesiastical Functions. But seeing the Monks had taken advantage of the ignorance of Secular Priests, and that the government of most Churches was committed to them, it was a difficult task to turn them out, and to re-establish Secular Priests in Churches. And therefore there happened great contests betwixt the Canons and Monks, especially in *England*, where the Monks had deprived the Canons of their Canonships, and even obliged Secular Priests to turn Monks, if they intended to enjoy their Benefices. The Bishops did what lay in their power to remove the Monks from Church Dignities. But on the other

other hand the Monks had their recourse to the Popes, who were already become Masters of a great part of the Jurisdiction of Bishops; and Princes who were perswaded that Monasteries were grown too Rich, favoured the Bishops against the Monks and Popes. All the Arch-Bishops of *Canterbury* had been Monks, from the time of *Austin*, whom Pope *Gregory* sent into *England*, until the Reign of *Henry* 1. But when under that Prince, they came to the Election of an Arch-Bishop, (1) all the Bishops of *England* declared publickly, that they would have no Monk for their Primate, and that amongst the Clergy there were as virtuous men, and as fit for the Government of a Church, as any in the Monasteries: So by degrees they began to take the Government of Churches out of the hands of Monks, though they were protected by the Popes. Yet they still made a distinction betwixt Regular Canons and Monks, which continues to this day; for we find but a few Monks that take the Charge of Parish-Churches, and perform other Ecclesiastical Functions out of their Monasteries.

Whereas

Hist. Sim.  
Danil. 1123.

Whereas regular Canons in all places discharge those Offices, without being obliged, as Monks are, to put Secular Priests into their Cures.

There remain at present but few Cathedral Churches in the hands of Monks, though heretofore it was a very common thing to see no other Canons in Churches, but Monks, who at the same time took care both of Churches and Monasteries; which was altogether opposite to the Canons, & even to the Institution of the Monastick life. (1) *St. Gregory* indeed, allows Monks to enter into holy Orders, and to officiate in that capacity, when it shall please their Bishop to enjoin them: But then they could no longer continue in their Monasteries, being become real Clerks. Nevertheless the Monks did the contrary, and remaining still in their Monasteries, took upon them the care of Churches. We ever find in the History of *England*, that the Office of Archdeacon of a Cathedral Church was annexed to the place of Prior of a Monastery. The desire they had of enriching their Houses, was the true cause why they continued in their Communities though by right they were separated from

Ecclesiastical  
Employ-  
ments incon-  
sistent with  
Monks.

(1) *Quisquis  
autem ex Mo-  
nasterio ad Ec-  
clesiasticum or-  
dinem pervene-  
rit, ulterius il-  
lic nec aliquam  
potestatem, nec  
licentiam ha-  
beat manendi.*

Greg. Papa,



from them, because of the Ecclesiastical Employments in which they were engaged; and so far from laying aside their Monkish customs, when they were associated to the Clergy, they introduced into their Churches the Practices and Ceremonies of their Monasteries; and that was the thing that made way for the Re-establishment of Secular Priests, in Cathedral Churches and other Benefices. But nevertheless, part of the Revenues that belonged to Private Churches remained still in the possession of Monasteries.

Besides, Princes and Bishops could not endure that Monks should possess Ecclesiastical Dignities, after that the Popes were grown so powerful that they disposed at their pleasure of the most part of Benefices. For the Monks always espoused the Interests of the Popes against Princes and Bishops, under pretext of defending the liberty of the Church; and seeing Princes refused to submit to the Pope, with whom they had continual quarrels, they resolved to give no Ecclesiastical Promotions, but to those who were devoted to their Service. The English History gives us

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a pretty Instance of this, in the Reign of Richard I. That Prince having assembled the Bishops of his Kingdom, could not forbear with Tears to tell them, that he was an unfortunate wretch, and no King. (1) He complained that the Revenues of his Kingdom were crumbled into infinite parcels, of which the least part came to his share, and (2) that they were possessed by Black Monks, White Monks, & Canons of different Orders. Then he upbraided the Secular Priests with their Vices, and scandalous & debauched lives that were notoriously known to all the World. *Eleemosynas Populi*, said that Prince speaking of Secular Priests, *distrabunt, & expendant in pravos usus, dum magis cogitant de suarum pannis meretricum, quam de suarum vestimentis vel libris Ecclesiarum — tolerabile malum videretur, si singuli suas mulierculas observarent, & saltem thorum non invaderent alienum.*

These corruptions were not peculiar to England alone, but were spread over all the Churches of Europe, where Priests who were prohibited to Marry according to the Canons of the Western Church

Princes ruine the Monks.

(1) *Se miserum esse, non regem.* Chron. Ger. vassii.

(2) *Hæc enim & illa possident albi Monachi & nigri, & ordinis diversi Canonici.*





Churches, at that time when they had the power over them. It is certain Princes would never have granted such large Revenues to Churches, if they had thought that they should have fallen into the hands of the Popes. For, to what end was it to give to Churches whole Towns, and great Demains, with secular Jurisdiction; when the same was not to be in their disposal for the future? The German Historians attribute chiefly to the Emperours *Otho's* the enriching the Bishops and Monasteries of Germany with so great Revenues (1) *Otho primus omnibus pene Cathedralibus Ecclesiis in Italia, Gallia, Germania, Burgundia et Lotharingia constitutis, multas civitates, castra, oppida, villas, & multa alia dominia temporalia, & Jurisdictiones donavit, atque illis omnibus Ecclesiis propria insignia perpetuo deputavit. Archiepiscopos quoque & episcopos ducibus, comitatibus & baronibus communit, quibus nobiles & potentes vasallos subjecit, ut semper essent ad resistendum & manu forti in aganis Hæreticis, &c.* That does not altogether agree with the reflexions that Father (2) Paul hath made in his History, where he pretends that the

(1) Theodor. de Hiem. priv. & Jur. Imper.

(2) P. Paolo Trattato delle Mat. Benef.

the Bishops of Germany, during the Wars that were betwixt the Emperours and Popes, had usurped the Lands which at present they enjoy with the Titles of Peers, Marquesses and Counts. Though that may indeed be true of some, yet it cannot be generally affirmed of all; for the Records of those Churches evince the contrary. Nevertheless the titles which they produce ought to be well examined, because many of them are false. Seeing Bishops and Abbots were at that time employed in the greatest affairs of State, it was easy for them to obtain what they desired of Princes: Besides that, they being more capable of business than Laicks, the same Princes confided much in them. But these great Revenues wherewith Churches have been enriched, have only served to kindle War betwixt Popes and Princes, every one pretending to have a particular right over Ecclesiastical Revenues. And that divided the Authors of these times, some writing in favour of the rights pretended by Princes, and others in favour of the Popes. And it is no easy matter at present to reconcile together the rights of those two Powers. G No

The Authority of the Pope concerning Benefices.

No man can deny, but that the Pope is Bishop or Metropolitan of Rome, Patriarch of the West, and Head of the Church. I shall not now examine by what Right, Divine or Positive, these titles belong to him; for that is a Question of Divinity rather than History. It is moreover certain that the Pope hath not all these Qualities in vain, and that every one ought to enjoy some rights that are peculiar to him. It is not questioned but that in quality of Bishop of Rome, he may dispose of the Benefices within his Diocese. It remains then only to be inquired into, whether he can in quality of Patriarch of the West, and Head of the Church, by right provide for all the Benefices or Ecclesiastical Dignities of all Christendom. If we consult the matter of fact, it is of publick Notoriety, that the Church of Rome hath not had any Priviledge as to that, above other Churches. Every one took care of providing what Ministers they wanted without having recourse to Rome; and when difficulties arose, they were adjusted in Provincial Synods. No man ever wrote before the Establishment of the

the new Law, that the Bishop of Rome alone in quality of the Successor of St. Peter, had all Ecclesiastical Jurisdiction, and that other Bishops were only his Vicars, or Delegates. Popes, nevertheless, do at present pretend that their Authority in respect of Ecclesiastical Revenues is founded on Divine Right, and that because they had not for many ages enjoyed it, it ought not to be inferred that they had no Right to it. A Divine Right, say they, being essentially inherent in the Person of the Pope, can never prescribe: And it is a bad consequence to say, that Popes have no Right, because they have not for a long time enjoyed it, nor do at present enjoy it in its full extent. Men are sometimes obliged not to make use of their Right, or to remit part of it for Peace sake. Laws in their rigour are sometimes prejudicial to the repose of the Church, and in that case, mild ways, suitable to the times, are to be followed. And therefore (1) Pope Innocent III. affirms in one of his Epistles, that the Translations of Bishops and other changes of Sees belong by Right to the Church of Rome; that Popes

(1) Innoc. III. de translit. Episc. tit. 7. cap. 1.



*The History of*

enjoy that Priviledge in Quality of the Successours of *St. Peter*; and that in that Quality they are above all the Canon Law. So that according to his Logick, we ought not so much to consider what is decreed by the Canons, as what is Comanded by Popes, on whom the same Canons depend; because according to his Principle, all the Canon Law derives its force and Authority from the Primacy of *St. Peter*.

Pope *Innocent*, who laid down that Maxim in favour of his See, knew, for all that, that all the Ancient Canon Law is contrary to it, and that the Elections, Translations, Demissions or Resignations of Bishops, were made in Provincial Synods, and besides, that Princes have had a great share in all those matters, within their own Kingdoms. For instance the Practice of the Church of *France* under the first Race of their Kings, was very far different from that pretended Divine Right mentioned in the compilation of the Decretals: For we find that the Kings by themselves, called Councils for affairs of that nature, and that (1) in the greatest causes, such as the deposing of Bishops; they nam-

(1) *Gregor. Turon. lib. 5. cap. 26, 27.*

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*Ecclesiastical Revenues.*

ed for Judges what Bishops they pleased within their Kingdom. In a word, Kings and the Bishops of places handled in Councils, the affairs which the Popes now a days pretend to belong to them by Divine Right. It is true, under the Second Race of the *French Kings*, the Authority of the Popes was greater in *France*; But it was still limited by the Princes, without whose consent they could do nothing, even in the causes, which are called the greater, and whereof the decision seemed to be reserved to the Popes. As to matters of smaller importance, the Bishops had the absolute power over them, and the whole disposition of Benefices depended on them. The Popes had never dreamt of the right which is now established, if private men who disputed one with another about the validity of their Elections, had not had their recourse to the chief See for decision of their Controversies. We find still in the Eleventh Century, instances of the power of Provincial Councils, who received Resignations or Demissions made by Bishops, and admitted Translations from one See to another, without having recourse

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to the Pope for it. And there is nothing more novel than the provisions to Bishopricks in the manner they are made at present by the Popes Bulls, which confirm the Elections in those places where they are still in force, or the nominations of Princes who enjoy that Right. But since private Persons have given occasion to the establishment of the New Law, it hath not been difficult for Canonists to defend it.

To make it out, that the Pope is Master of all Benefices, they say that he is the Collatour of Collatours, and the Ordinary of Ordinaries, not only in the Western Church, whereof he is Patriarch, but also over the whole World, because he is the Patriarch of Patriarchs, and Chief of the Universal Church. They farther add, that the Church of *Rome* hath founded all other Churches; and by consequent, can dispose of them as Founder and Patron. It is certain that the Patriarchs of *Alexandria* and *Antioch* ordained the Bishops that were within the extent of their Patriarchship, and that the Pope did the same in regard of the Bishops who

who are in the Regions which were called *Suburbican*. On the other side the Canonists prove by the Testimonies of *St. Leo*, *St. Gregory* and of some other Fathers, that *St. Peter* founded the Churches of *Antioch*, *Alexandria* and *Rome*, which are the three chief Patriarchal Churches from which the others have sprung.

And this is the ground upon which the Canonists pretend that the Pope hath the disposal of all the Churches in the World. They are nevertheless obliged to confess that that Right was unknown to the Ancients, and that it is no where contained but in the Book of the Decretals. Nay I dare be bold to affirm that the Decretals contain but part of that new right whereof the Pope is at present in Possession, and that since the Collection of the Decretals, the Court of *Rome* hath made many discoveries in Beneficiary matters, of which I shall not speak in this place. It shall be enough for me to observe here, that nothing is esteemed at *Rome*, but the present Maxims; that the Decrees of *Gratian* are not valued there, because they contain for most part nothing but

Old Customs, which are out of Doors; and that the Books of Decretals are not received neither; but so far as they suit with the present times. The great Principle of the Court of Rome is, that the Pope is above the Laws, that it belongs to him alone to make Canons for the Government of the Church, and that it is in his power to change the Ancient, and to introduce New ones, according to the necessity of times, places and occasions. If it happen that Princes oppose the Execution of their Bulls, they easily take up the matter by *Concordats* or other means, without any prejudice at all to their pretensions; because as they say, there are two sorts of Laws, to wit, *jus strictum*, otherways the Law of rigour, which for most part cannot be put in Execution; and *jus remissum*, which is a Law somewhat favourable and remis, which may be also called the Law of Oeconomy and Prudence, which the Church hath often made use of, to comply with the humour of those with whom she hath had to do.

The Popes are always on that lock with Princes, and what they cannot obtain at one time, they hope to obtain on another

another occasion. On this Maxim are founded all the *Concordats*, and other Accommodations which they have made with several Princes. And therefore the Arguments which (1) Father Paul draws from the nature of *Concordats*, to prove that Popes have not by right an absolute Power over the Revenues of the Church, are not altogether conclusive; because Popes will pretend that these *Concordats*, are only made by Provision, and for a time, till they be able to exercise their right in its full extent. That hath been a very advantageous Maxim to the Court of Rome, which hath obtained at one time, what was impossible to be obtained at another. They indeed propose matters according to the rigour, and their pretensions; but they suffer Princes to moderate them according to the Customs received in their Kingdoms. And that is the reason why several of the Popes Bulls are not received in France, and that they are not registred, till first they be examined, to see whether they contain any thing contrary to the Liberties of the Gallican Church. Besides, they are not registred but with certain Clauses

(1) P. Paolo  
tratt. delle  
mat. benef.

The Custom  
of France in  
the reception  
of Bulls.

Clauses and Modifications, that they may be made agreeable to the Customs of the Countrey; whereas at *Rome* they are registred in their full extent, and without any restrictions. The *Spaniards* do the same also, but with less noise than the *French* do. They receive all the Popes Bulls with great respect, then they examine them in Council; and if they find that there is reason not to put them in Execution, they inform the Holy Father of it by a supplication, and so the Bulls remain without effect.

Of the Right of the *Regale*.

Though Popes have done all that lay in their power, to get the absolute disposal of the Revenues of all the Churches in the World, they could never as yet hinder Princes from taking to themselves certain Rights or Privileges, which they enjoy at present. These Rights differ according to the diversity of Countreys; but I shall only treat in this place of the Rights of the *Regale*, of which the Kings of *France* are in Possession. Many pretend that the Right of the *Regale* is as Ancient as the Crown of *France*: But that cannot be, if we consider that Right as it is established

blished at present. For it comprehends not only the Collation of Benefices which have no Cure of Souls, for which the King provides by his absolute power, during the vacancy of the Episcopal See; but besides that, the King hath the Administration and disposal of all the Revenues of the Bishoprick, until the See be filled. Now it is certain, that under the first Race of the *French* Kings, the Rents and Profits of Vacant Churches were managed by the Clergy and Arch-deacon, as appears by the Council of *Orleans*, held under King *Childebert*, and by the Council of *Paris*, held under King *Clotair II.* where it is decreed, (1) *That the goods of the Bishop deceased, shall be defended and preserved entire by the Arch-deacon and Clergy; and that they who shall dare to seize or usurp them, shall be Excommunicated.*

At that time the *Gallican* Church observed the Canons of the Council of *Calcedon* concerning the Stewards or Treasurers, who were to take the care of the Revenues of the Church after the death of the Bishop. In some Churches the Archdeacons supplied the place of Stewards.

(1) Councils of Orleans and Paris. Ab Archidiacono & clero in omnibus defenduntur & conserventur, quod si quis ausu temerario res ipsas ingressus fuerit, & de dominatione Ecclesie abstulerit, ut necator pauperum communione privetur.

Stewards. But in what manner soever that was performed, whether by Stewards, or Archdeacons, it is still true that Princes took no share in the Fruits of vacant Bishopricks, since one part of them were employed for the occasions of the Church, and the other preserved for the succeeding Bishop. It cannot then be affirmed, that in that respect the Right of the *Regale* hath been in use under the first Race of the Kings of France, unless one would confound this Right with that of Nomination to Bishopricks, which the Kings of the first Race enjoyed. But by the Word *Regale*, is meant now a days somewhat quite different from a bare Nomination: For the *Regale* at present attributes to the King, the Spiritual and Temporal Fruits of Vacant Bishopricks, until the time they be provided; which differs from the Ancient Rights of Nomination and Investiture.

Of the *Regale* under the second Race.

Furthermore, the same Right of the *Regale*, in the notion we take it here, was also unknown under the second Race of the French Kings, as appears by a Letter of *Hincmar* Archbishop of *Rheims*, written to *Charles the Bald*.  
For

For that Archbishop sets down the Canon of the Council of *Calcedon*, for a Rule during the Vacancy of the Episcopal See: *ut post mortem Episcopi redditus Ecclesie viduatae futuro Episcopo penes Oeconomum ejusdem Ecclesie integrae conservari jubeantur.* And in a (1) Synod held under the same Emperour, it was appointed according to what had been decreed in the Council of *Calcedon*, that after the Decease of the Bishop, the Rents should be preserved for his Successor by the Steward or Treasurer of the Church. It is true, *Charles the Bald* acted otherwise, after that *Ebbo* Archbishop of *Rheims* was deposed from his See: For during the Vacancy of the See, which continued several years, that Prince seized the Rents of the Church, and gave part of the Lands thereof in Fee. But that Instance does not overthrow the practice of those Times, seeing the King promised in the (2) Synod of *Beauvais* to *Hincmar*, and the other Bishops, that he would restore to the Church of *Rheims*, all the Lands that he had taken from it: Besides, that was a singular Act, and only done by the King, for a greater punishment to  
Arch-

(1) Ann. 876. Synod. Pontigon.

(2) Ann. 843.



Archbishop *Ebbo*, who had been deposed. Nor can the Right of the *Regale* be proved by the bad use that *Charles Martel* made of Church-Lands, which he gave in Fee to Laicks; for the Capitularies of *Charlemain* of *Louis*, and *Charles the Bald*, condemn that Dissipation of Church Revenues, and attribute it to the necessity of the Times, which in some manner obliged Princes to give Church-Lands to their Subjects, thereby to endear them to their Service.

The *Regale* under the third Race.

In fine, the same Right of the *Regale*, as we understand it, was not yet fixt in the beginning of the third Race, as appears by a Letter of *Gerbert* Archbishop of *Rheims*, wherein he recommends it to the Clergy and People, to whom he directs his Letter, to take care that the Estate of the Bishop deceased be preserved for the succeeding Bishop: *Sit vestra pervigil cura, ut secundum divinas & humanas leges, res defuncti Episcopi, tam mobiles quam immobiles, futuro reserventur Episcopo.*

The *Regale* different from the Investiture.

We must not, neither, confound the Right of Investiture, with the Right of the *Regale*, as some Authors have done.

done. For it is not to be found in History, nor in any Ancient Deed, that Emperours and Kings, who have had the Investitures of Bishopricks and Abbeys, have therefore enjoyed the Revenues of Churches, during the Vacancy of the See: but application was only made to them for proceeding to a new Election, which was not to be made without their consent; afterward they gave to Bishopricks and Monasteries, the Investiture of Lands or Fiefs which had been left to them; in the manner as we have before described.

Before the Popes disputed the Right of Investiture with Princes, and claimed the Power over Elections, the Investiture contained nothing of the Spiritual, but only Temporal Rights, in respect of Lands & Fees in which Bishopricks and Monasteries were invested, and the Bishops had full liberty to give the Consecration wherein the Spiritual consisted. If Popes had not had a design to take from Princes the Right which they had in Elections, they had never thought of reckoning the Investiture among Spiritual things. There is nothing

An Explication of the Investiture.

thing worse grounded, than that distinction of Investiture which is mentioned in the Agreement that was made betwixt Pope *Calixtus II.* and the Emperour *Henry IV.* The Pope grants to *Henry*, that all Elections of Bishops and Abbots, shall be made in his presence, thereby to prevent disorder; and that those who should be elected, should receive from the Emperour, the *Regales* or *Regalities* by the Scepter. *Henry* the Emperour at the same time obliges himself, not to give Investitures by the Ring and Staff or Baton, and allows the Liberty of Elections. But that distinction of Investitures given by the Pastoral Staff, and by the Scepter, as if the first had been a thing Spiritual, and the other meerly Temporal, has no ground in the World. Investitures were barely given by the Staff and Ring, whether that Staff was called, Royal or Pastoral. *Simony* consisted not in the form of Investiture, but in the Emperours taking of Money, from those to whom they gave it; and since that was always done before the Election, it might be said that the Election was *Simoniacal*. That abuse ought to have been

been corrected, and matters left as they were before.

In the mean while, it is very probable, that the Agreement made betwixt Pope *Calixtus* and *Henry* the Emperour, is the true Original of the *Regale*: For in these two Instruments there is mention made of the *Regale*: (1) *Electus autem Regalia per sceptrum à te recipiat*, as the Popes Declaration to the Emperour bears. That word *Regalia* comprehended the Sees which Princes had granted to Churches; afterward it was extended to all the Revenues that were possessed by the same Churches. Now according to the Laws of the *German* Emperours, it was the nature of Fees, that they who enjoyed them, became Vassals to the Emperours of whom they held them; and were obliged to take an Oath of Allegiance to them. Moreover, after the Death of the Vassal, the Emperour enjoyed his Revenues, until his Successor being invested in the same Fees, had sworn to him Fealty and Homage. That Law reached Churchmen, because their Churches possessed several Fees: And it is the present Custom of *France*, that the *Regale* be-

The *Regale* granted by the Pope.

(1) *Ann. 1122.*

A more particular Explication of the *Regale*.

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gins so soon as the Church is Vacant, and does not end, till the new Bishop hath sworn Allegiance to the King, and be admitted by Law. *Louis the Young* is the first King of *France* (1) who hath made mention of this Right of the *Regale*: For speaking of the Bishoprick of *Paris*, he uses these words: *Episcopatus & Regale in manus nostras venit.* There is mention also made of it (2) in the last Will and Testament of *Philip the August*, wherein that Prince saith: *Nos verò, tam canonicos quam monachos monemus, ut talem pastorem eligant, qui deo placeat & utilior sit regno. Regina autem & Archiepiscopus tamdiu Regalia in manu sua teneant, donec electus consecratus sit vel benedictus; & tunc Regalia sine contradictione ei reddantur.*

We find in the Histories of *England*, that the Right of the *Regale* was established in that Kingdom, at the same time it was in *France*, and that it occasioned many troubles there. It proceeded even to the Churches of *Ireland*; and it appears by a Letter of *Pope Innocent III.* directed to a Cardinal, Legate in that Countrey, that the Custom

Custom of the *Regale*, was in the Church of *Armagh*; and the Pope in his Letter makes use of the Word *Regalia*. Nay he speaks of that Right, as of a thing received and authorized by Custom: And to hinder Princes from enjoying too long the Revenues of Churches, he shortens the time of the Vacancy of the See, ordering the Metropolitan to remove from *Rome*, to enter into the Administration of their Churches, before they had obtained their confirmation: *Quia*, says that Pope, *si tanto tempore quo usque posset Electus, confirmationem cum pallio à sede Apostolica obtinere, Regalia non reciperet; Ecclesia quæ interim administratione careret, non modicum incurreret detrimentum.*

Many other Popes have also confirmed by Bulls, the same Right of the *Regale*, which the Kings of *France* enjoy. But the Emperour *Frederick II.* (1) made a Constitution against the *Regales*, as if they had been Contrary to the immunities of the Church, and (2) confirmed his first Constitution, by a Second which he addressed to *Pope Honorius III.* These Constitutions are mentioned by *Goldastus* in the following

H 2 words:



The History of

words: *Dimittimus & refutamus abusum, quem in occupandis decedentium Prælatorum, aut etiam Ecclesiarum vacantium, nostri consueverunt Antecessores committere.*

That Prince remits to the Pope and other Bishops, the Right which was called the *Regales*, as a Spiritual Right which belonged not to the Emperours.

(1) Lib. 8. de concord. cap. 18.

(1) *M. de Marca*, produces also many Authorities of Popes and Councils, to prove that the Revenues of Vacant Churches in the *Gallican* Church, did not belong to Princes, and that the Decrees of the Council of *Calcedon*, which appoint the Revenues to be kept for Successours, should be observed there as well as in other Churches. Most of these proofs are to be found in the Decrees of *Gratian* and thence it appears, that that abuse is very Ancient, and practised long before the *Regale* was established, and tolerated by Popes. Wherefore Councils prohibited Princes and other Laicks to invade the Goods and Revenues of Churchmen after their Death. That wicked Custom of seizing the Estates of Bishops, so soon as they were dead, was spread over the whole Church: For we read that it was no less in use in the East than

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than in the West. (1) The Emperour *Manuel Comnenus* prohibited his Magistrats, to seize for his Exchequer the immoveable goods of Vacant Churches. (1) *Ann. 1150.*

(2) *Raymond* Count of *Barcelona*, made the same Prohibition also to his Officers: And to prevent the Revenues of Vacant Churches from being dissipated, he himself took upon him the custody of them, by an Authentick Declaration, which he made by way of Priviledg to the Church of *Barcelona*; and that Priviledg is not only extended to all the Profits of the Bishoprick, even during the Life of the Bishops, but to all the other Churches of the Province of *Tarragona*. The same Priviledges were also granted to the Church of *Narbonne*: But notwithstanding that, Laicks still continued to seize the Estates of Bishops after their Death, and retained them under pretext of preserving them, and hindring dissipation. Nevertheless the Popes who vigorously opposed that usurpation of the Laicks, seem at the same time to have approved the Right of the *Regale* which the Kings of *France* enjoyed in Relation



(1) *Ann. 1238.* to several Bishopricks of their Kingdom. (1) Pope Gregory IX. in one of his Epistles directed to the Archbishop of *Narbonne*, and to the Bishops of *Magalone* and *Elne*, complains that the Stewards and Bailiffs of the King of *France*, in the Province of *Narbonne*, contrary to all right and reason, seized the Revenues of Bishops, during the Vacancy of the See: Then he adds, (2) that the Predecessors of the King had never done it under pretext of the *Regale*, or any other Right.

(2) *Quod nullo tempore predecessoribus ipsius regis, vel aliis, occasione Regalium, vel alia extitit attemptatum.*

A Restriction of the *Regale*.

(2) *Tantum prescriptum, quantum possessum.*

The Popes, as appears by the Letter of Gregory IX. condemned not the Right of the *Regale*, which the Kings of *France* had in several Churches of their Kingdom, as a matter of injustice and usurpation; and the History of the Life of *St. Louis* informs us, that *St. Louis* made no Scruple in imitation of his Predecessors, to make use of it in those places, where Custom had authorized the same, wherefore the Kings of *France* (2) have not extended that Right, but to Churches where it was already established. Heretofore the Parliaments decided all matters concerning the *Regale*, meerly by possession; and which

which is pretty surprizing, upon a difficulty that was started (1) in the Parliament of *Paris*, concerning the *Regale* of the Bishoprick of *Puy*, there was but one part of the *Regale* of that Church adjudged to the King, because after having examined the Reasons on both sides, it was found that the King had enjoyed but a part of the *Regale* during other Vacancies of that See. And because it was evident that the King had not enjoyed the Forts of the Town, and several Castles, it was decreed that the Church of *Puy* should not be molested in these and several other points, which the King did not claim by virtue of the *Regale*, because he was not in possession of them. When the Question is of Imposing a Servitude or Burden upon any whosoever, good Titles must be shewn, or long Possession prov'd: And therefore the King, who did not think that by the Right of the *Regale* he could take the Forts and Castles of that Town, (2) made a Declaration, whereby he reserves to himself the power of taking into his hands the aforesaid Forts and Castles by Right of Superiority, when the Interest of his Service required it.

(1) *Ann. 1258.*

(2) *Ann. 1259.*

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The Custom of the Parliaments.

(2) Ann. 1272.

The Parliaments observed the same Rule for deciding the matter of the *Regale* under King *Philip III.* the Son of *St. Louis* : for there is to be found in an Ancient Record of the Court of Parliament, (2) this Decree against the Pretensions of the Kings Officers to the Church of *Albi*, on occasion of the Right of the *Regale* ; *Reddita per dominum regem procuratoribus Capituli Albiensis Regalia Ecclesie Albiensis, quæ mortuo Episcopo Albiensi, Senescallus Carcassonensis ad manum domini regis ceperat, & saisnaverat sine causa, cum dominus Rex super hoc aliàs nunquam usus fuisset, prout ex aliorum & ipsius relatione fuit inventum.* At that time then the Right of the *Regale* was not determined and fixt, but Practice, and the received Custom was exactly followed ; insomuch that there were some Churches wholly exempted from the *Regale*, and others only subject to part of it. In the beginning, the *Regale* reached only Fees that held of Princes, and it was after extended to the Revenues that accrued from Tithes, and even the Collation of Benefices depending on Churches. The Churches that retained the

the Ancient Right of the *Regale*, were nor at all subject to that Right for the Revenues of Tithes, and Collation of Benefices ; and that was the reason why Parliaments adjudged only to the King in some Churches, the *Regale* for the Rents of Lands and other Temporal Possessions of the Churches, and left to the Bishops the Revenues arising from the Altars, Tithes, Offerings, and sometime the Collation of Benefices.

This Right of the *Regale* (1) was confirmed by the Council of *Lyons* at the Instance of King *Philip III.* in presence of his Ambassadors : But the Council only confirmed the Custom of the *Regale* in the places where it was already introduced, and prohibited the bringing of it into other places. (2) *M. de Marca*, who relates the Decree of that Council, observes that the term *Regalia* is there taken in a new sense, for the keeping and enjoying of all the Fruits and Revenues during the Vacancy of the See : And besides, he adds, that under the name of Fruits, the Collations of Benefices are comprehended, because of the Constitution of *Alexander*

(1) Ann. 1274. The Regale authorized by a general Council.

(2) Petr. de Marc. lib. 8. de concor. c. 24.

der III. which preceded that Council, wherein it is exprest, that the Collation of Benefices ought to be reckoned among the Fruits and Profits. But it seems to me that the Intention of Pope Gregory X. in that Council, was to hinder for the future, Lay-men of what Quality soever they were, from invading Church-Lands and Revenues, during the Vacancy of the See, under any pretext that might be alledged, either of the *Regale*, Custody or Protection; because, in effect, they who seized the Revenues of Churches after the Death of the Bishops, never wanted Reasons for it, alledging the pretext of Protection or Custody. The Council comprehends the Right of the *Regale*, which several Princes enjoyed, with the other Rights which many great men pretended for possessing the Revenues of Churches during the Vacancy of the See. But since the Maxims of the Canon Law are for most part taken from the Civil, Pope Gregory thought it fit (1) to leave those Rights to those who were already in possession of them, without examining the lawfulness or unlawfulness of the Titles; because it would

(1) *Tantum praescriptum, quantum possessum.*

would have been a difficult matter to have succeeded in it, by reason of the long Possession of many Princes, which gives a sufficient Title in the Civil Law.

As to the Collation of Benefices, I do not think that the Council intended to comprehend them under the name of Fruits and Revenues, as *M. de Marca* affirms. The truth is, it is a Maxim received and authorized by Custom since the Introduction of the New Law, that Collations are of the number of Fruits: (1) But the term Collation is then taken in a larger sense, to wit, for the Presentation or Nomination to Benefices; whereas the Kings of *France* by the Right of the *Regale*, enjoy a real Collation of Benefices, which the Canonists affirm to have something of the Spiritual. For the Kings of *France* present not barely to Benefices like other Patrons; but they confer in full Right by virtue of the *Regale*, in the same manner as Bishops do. Nay, the *Regale* gives more Right to the King of *France* in regard of the Spiritual, than Bishops have: For it is a Maxim of Canonists, that none but the Pope can receive Resignations *in favorem*; and the reason they

(1) *Collationes sunt in fructibus.*

The Right of Collation attributed to the Kings of *France* by the *Regale*.



they give is, because a Resignation made in favour of another, is a kind of Simony; and that the Pope alone, who is above Ecclesiastical Laws, can dispense with it: *Solus Papa*, say they, *purgat à Simonia*: But they should add, *Et Rex Francorum*; for the King of *France* receives the Resignations which are called *in favorem*.

There are a great many other Rights which the Kings of *France* enjoy by virtue of the *Regale*, and which are peculiar to that Right. The Lawyers and *French* Canonists have much ado to explain the Original of these Rights, which they suppose according to the common Rules of the Canon Law to be Spiritual Rights, and by consequent not to belong to Lay-persons, unless it be by a special Priviledge granted by Popes to the Kings of *France*: But since no such Priviledge can be made appear, and that on the other hand, the Kings of *France* pretend not to hold that Right by Priviledge of the Pope, the difficulty grows greater. Pope *Boniface VIII.* in the contest that he had with *Philip* the *Fair*, failed not to write to that Prince, that he accounted those Hereticks who pretended

*Benif. VIII.*

pretended that the Collation of Benefices, which he said was a Spiritual Right, could belong to Laicks. *Johannes Parisiensis*, who wrote at that time upon the same Subject, affirms that there is a difference to be made betwixt Princes and Subjects, in that these as being inferiour to others in Knowledge, and discerning of Persons proper for Benefices, could not but present; whereas Princes might confer, (1) as being endowed with a full and entire Knowledge. But that Reason does not conclude in the point in hand, where the Question is of the Spiritual, and not of the Temporal.

*Joan. Paris.*

(1) *Habent omnem peritiam in scrinio potestatis.*

That difficulty nevertheless may easily be resolved, if we suppose that the Right of Collation which belongs to Bishops, is not properly a Spiritual Right; and that therefore Laicks who have enjoyed it by a long Custom, cannot be excluded from it. It is to be observed then, that according to the Rules of the Ancient Canon Law, the Collation of a Benefice was wholly Spiritual, because then there was no other Collation, but only the Ordination, which cannot be given but by the Bishop.



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Bishop. But since Ordination hath been distinguished from the Ecclesiastical Function, many new terms have been invented; and among others, that of Collation or Institution, and the Right of Collating is attributed only to the Bishops; so that Lay-Patrons may name or present to Benefices, provided those whom they have presented, take Collation or Institution from the Bishops, which alone gives the power of performing Spiritual Functions. Nevertheless, we find in *France*, especially in *Normandy*, many Laicks, who in full Right confer Benefices, as well as the King. There are even Abbesses, as the Abbess of *Montivillers*, in the Country of *Caux*, who in full Right confer Cures, without any necessity of having recourse to the Ordinary for Collation or Institution. I know it will be answered to this, that Laicks, who enjoy that Right, are grounded on Priviledges granted them by the Pope. But however it be, it is certain, that if that Right were necessarily inherent in the Quality of Bishop, the Pope could not by a Priviledge grant it to Laicks, no more than he can grant the Right of Ordain-

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ing, wherein the Spiritual really consists. And therefore that Collation which succeeds Ordination, is not the same Spirituality with the Ordination; but it hath been only thought necessary to hinder Persons uncapable from possessing Benefices. The Right of conferring Benefices deprives not Bishops of the Right they have of Judging of the Capacity of those who have received Institution or Collation from Laicks: For besides that first Institution, which is called *Collative Institution*, there is another kind of Institution called *Institutio Autorisabilis*, which gives the Bishops power to examine the Capacity of those, on whom Laicks have conferred Benefices, that so they may authorize their Collation. There is no such great difficulty then, as is commonly imagined, to conceive the Right of conferring Benefices, which the Kings of *France* enjoy by virtue of the *Regale*. That which is called Spirituality in beneficial matters since the Introduction of the new Canon-Law, is far different from that which is truly Spiritual according to the Ancient Canons; and that's a thing not sufficiently minded by the Canonists.

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nists. Nevertheless the same John of Paris, whom we mentioned before, observes very well, that the right of conferring is not properly Spiritual, but that it is only annexed to the Spiritual. Let us now return to the History of the Regale, and see how it was established in France after the Decree of the Council of Lyons.

(1) Ann. 1302. The Regale under Philip the Fair.

(1) King Philip the Fair made an Edict for authorizing the Regale, after it had been confirmed by Pope Gregory in the Council of Lyons: But it extended only to Churches, where it had been introduced by Custom. These are the terms of his Edict; *Regalias quas nos & nostri prædecessores percipere assuevimus & habere in aliquibus Ecclesiis regni nostri.*

Under Philip of Valois.

That Prince conformed his Edict to the Decree of the Council, and would have the Rents of Churches preserved, and the ordinary Revenues only received in title of Fruits. (2) The Constitution of Philip of Valois restrains also the Regale to Custom, and to the Churches of the Realm, where that Right was established. Louis XI. (3) made a like Edict, and besides, prohibited his Officers, to molest Churches, where

(2) Ann. 1334.

Under Louis XII.

(3) Ann. 1499.

where there was no Right of Regale or Custody. And therefore M. de Marca after Ruzée, Pasquier, and several other French Lawyers, who have written about the Regale, observes that that Right is not in all the Churches of the Kingdom, and that in those where it is settled, it is not in all after the same manner. He nevertheless confesses, that many have pretended the Regale to be a pure Royal Right; and therefore that it ought to extend to all the Churches of the Kingdom; but that Pasquier, the Kings Advocate in the Chamber of Accounts, a knowing man in that matter, calls those men Court Flatterers.

It is certain, that notwithstanding all the Actions that have been brought upon that Subject in the Parliaments, the Kings of France have never taken to themselves the Regale but in certain Churches: And we have still (1) an Edict of Henry IV. wherein he declares, *That he pretends not to enjoy the Regale, but in the manner that he and his Predecessors have, without stretching it to the Prejudice of Churches that are exempted from it.* The late King of France (2) made also an Ordinance, whereby he declared,

(1) Ann. 1606. Under Henry IV.

(2) Ann. 1629.

Under *Louis XIII*

declared, that he would enjoy the Right of the *Regale*, as in times past: And seeing these Terms were *Ambiguous*, the Clergy made their Remonstrance that they might have the explication of them. Monsieur *de Marel* Keeper of the Seals, and the other of the Kings Commissioners who had framed that Ordinance, answered, *That the King declared that he would not enjoy the Regale, in those places where he had not enjoyed it for time past.* And thus ye have an abridgment of the History of the *Regale* in *France*. But at present there is no more regard had to all that, neither have I related it but as an Historian, and to serve for Instruction. The present King hath (1) not long since by a Declaration registred in the Parliaments, comprehended all the Churches of his Kingdom within the *Regale*, excepting four, which are exempted from it on an onerous Title. So that there is no more need of consulting the Chamber of Accounts, where the accounts of the *Regales* were taken, to know how matters went heretofore, and what Churches were subject to the *Regale*; for that Declaration prevents a great many

(1) *Ann. 1674.*The *Regale* at present in all the Churches of *France*.

many law suits. Without examining whether the *Regale* be a Crown right and by consequent unalienable, it cannot be denied but that the Sovereign who grants a Privilege, may revoke it, and therefore the King might rescind the Privileges and Exemptions from the Right of the *Regale*, which the Kings his Predecessors had granted to some Churches of the Kingdom. The Parliaments had already rescinded most part of these Privileges, of which some were ill grounded. I shall not here give a Catalogue of the Churches of the Kingdom, which pretend not to be Subject to the *Regale*, because it would be needless and unseasonable. Such as would be farther informed as to that, may consult the *French* Lawyers who have handled that Subject.

Nor shall I speak of the Rights, which other Princes have of providing to the Benefices of their Kingdoms: For besides that most part of these Rights belong to them in Quality of Patrons, or are founded on Privileges, and Concessions granted by Popes, and sometimes on Concordats, made betwixt them and the Court of *Rome*; these

Monarchy of Sicily.

are matters void of my design, which is to apply my self more particularly to the Rights, whereof *France* is in Possession, than to the Customs of other Kingdoms. Yet I cannot silently pass over the Right which the Kings of *Spain* enjoy in *Sicily*, and which is Commonly called the Monarchy of *Sicily*, because it is the greatest Spiritual Right, that Princes ever took to themselves. It even surpasses that which *Henry VIII.* Of *England* boldly took, when he separated from the Church of *Rome*. The King of *Spain* in Quality of King of *Sicily*, pretends to be Legate à latere, and born Legat of the Holy See; so that he and his Vice-roys in his absence, have the same power over the *Sicilians* as to the Spiritual, that a Legate à latere could have. And therefore they who execute that Jurisdiction in *Sicily*, for the King of *Spain*, have power to absolve, punish and excommunicate all sorts of Persons, whether Laicks or Ecclesiasticks, Monks, Priests, Abbots, Bishops, and even Cardinals themselves, that reside in the Kingdom. They acknowledge not the Popes Authority, being Sovereign Monarchs

Monarchs as to the Spiritual. They confess that the Pope hath heretofore given them that Priviledge; but at the same time they pretend that it is not in his Power to recal it: And so they acknowledge not the Pope for head, to whose Tribunal no Appeal can be made, because their King has no Superior as to the Spiritual. Moreover, that Right of Superiority is not considered as delegated, but as proper; and the King of *Sicily*, or they who hold that Jurisdiction in his place, and who are Lay-men, take the Title of *Beatissimo & Santissimo padre*, attributing to themselves in effect, in respect of *Sicily*, what the Pope takes to himself in regard of the whole Church; and they Preside in Provincial Councils.

It was a matter of astonishment, that in our Age, Queen *Elizabeth* took the Title of Head of the Church of *England*: But seeing in the Kingdom of *Sicily*, the Female Succeeds as well as in *England*, a Princess may take the Title of Head of the Church of *Sicily*, and of *Beatissimo & Santissimo Padre*. Nay it hath happened so already in the time of *Jean* of *Arragon* and *Castile*, the Mother



ther of Charles V. the Sicilians ground this Right of Supremacy in Spirituals, upon a Bull of Pope Urban II. granted to Roger and his Successours, wherein are these words: *Quæ per legatum acturi sumus per vestram industriam, legati vice cohiberi volumus.* Cardinal Baroni-  
 (1) *Tome II. Ann. 1097.*  
 nius who in his (1) Annals refutes that pretended Spiritual Monarchy, thinks that that Bull was granted by the *Anti-pope Anacletus*, and that it hath not been faithfully related. But it is far more probable that it is false, and that it hath been forged during that time, that Sicily had no Communication with the Church of Rome, from which it was separated, refusing to acknowledge the Holy See, either in Spirituals or Temporals. It was an easy matter at that time, for the Kings Officers, to foist in that Bull, and to put it in execution; for Sicily continued ninety years under an Interdict, from the year 1282. until the Second year of the Pontificat of Gregory II. who took off the Interdict. During that time, Martin King of Arragon, made great attempts upon the Ecclesiastick Jurisdiction, and ordained that Bishops themselves might

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not Excommunicate any without his Permission, or the Permission of his Vice-roy, but Sicily being in possession of that Spiritual Monarchy, the Kings of Spain, who take the Title of Catholic Kings, have rather encreased than diminished it. Charles V. caused an exact search to be made, to find out Titles to Justify this pretended Monarchy; but it was no where found save in the Book of the Pandects that was printed in the year 1526. and confirmed by Charles V. the seventh of December the same year. Afterward, in the year 1556. there was a Book published, called the *Monarchy*, wherein are contained the Rights of that Jurisdiction. And that this Book might be rendered the more Authentick, it was signed by all of the sacred Colledge, that is to say, the Council of the Kingdom. One Copy of it is preserved in the Royal Chancery of Sicily, and another Copy was sent to the King.

The Bull of Urban II. which is the Basis of the Sicilian Monarchy, is related at length by Fazelle in his (1) History of Sicily Printed at Palermo in the year 1558. But historians who wrote before him have made no mention of it; And it is

(1) Decad. 2. lib. 7. cap. 1.

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very probable, that *Fazelle* took it from *John Lucas Barberius* a *Sicilian*, who about the Year 1513. composed in favours of King *Ferdinand*, a Volume of all the Priviledges and Titles of the Kingdom of *Sicily*, which he called *caput Brevium*; and in that Volume he inserted the Bull of *Urban II.* As if the Original had been in the Chancery. It is not to be imagined how much the word *Monarchy* hath displeas'd the Court of *Rome*. (1) *Nomen hactenus inauditum, says Cardinal Baronius, tunc proclamatur infaustum, adscribitur chartis, & memoriae perpetuae consecratur, jam regis usum typis, & imperatorio promulgatum Edicto.* And he adds, that the Kings of *Spain* in quality of Kings of *Sicily*, take a Title that Tyrants and the greatest Enemies of the Church of *Rome* durst never claim. (2) *Quod nunquam à piis regibus, nec à Tyrannis ipsis Romanae Ecclesiae perduellibus, neque ipsis acerbissimis Romanae Ecclesiae persecutoribus Friderico filio atque nepotibus, ejusmodi Monarchiae nomen expugnatum ullatenus reperitur.* In fine the Cardinal pretends that to attribute to *Sicily* a Spiritual Monarchy, is to overthrow Divine Laws

(1) *Baron. Ann. 1097. p. 28.*

(2) *Ibid. n. 30.*

Laws, and that it is only to the Church of *Rome* to which our Saviour hath given that Title. But the Kings of *Spain* slight all the complaints of the Court of *Rome* as to that, and persist in the enjoyment of the Rights of their Spiritual Monarchy in *Sicily*, where they acknowledge no other Pope but the King, or such as he does commissionate in his place. So that it may be said, there are two Popes and two Sacred Colledges in the Church, to wit, the Pope of *Rome*, and the Pope of *Sicily*, to whom also may be added the Pope of *England*, for the King of *England* takes the Title also of Supream over the Churches within his Dominions.

Thus far we have shewn the Original and Progress of Ecclesiastical Revenues, how they have been administred, and in what manner they have come into the Possession of Chapters and Monasteries. We have, besides, spoken of the power of Bishops and Princes, and of the Pope also, over such Revenues. It would be now time to shew more particularly, by what ways Popes have made themselves almost absolute Masters of the goods of the Church, and to observe

The History of

serve the quarrels they have had with Princes upon that account. But since *Fra. Paolo* hath handled that in his History, and that it is sufficient to read the Decretals, to be informed in what manner their authority hath been by degrees established, I shall speak no more of that Subject. And it is for the same reason, that I have not said any thing neither of the Original of Tithes, because it hath been also well enough handled by *Fra. Paolo*. All men are sufficiently perswaded, that under the first Race of the Kings of *France*, that Nation had no recourse to *Rome* for regulating the affairs of the Church. Nay and under the Second Race, *Charlemain* who gave a great deal of authority to Popes, did not consult them about the Erection of the new Bishopricks and Arch-Bishopricks which he established. In *Italy* it self, many Ages after, the Princes and Bishops were absolute Masters of all that belonged to Churches. The Prince or Judges appointed by him, decided the differences that happened betwixt Bishops and Abbots, and amongst other Church-Men, concerning their Revenues and Priviledges: but seeing matters  
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The Popes Power in France.

Ecclesiastical Revenues.

now a days are settled in another manner, and that the Discipline of the Church is wholly altered, I thought it necessary, having observed the original and Progress of Church Revenues, to describe in a few words the present State of beneficial matters. It would be to no purpose to know the Customs of our Fore-Fathers, if we be ignorant of what is at present in use amongst ourselves. The former serve only for our instruction, but the latter will be useful for the conduct of our lives. I shall say nothing in this place of the Original of Benefices, in the manner that they are established at present; for it is very well known that they did not begin till about the Eleventh Century: And whereas in the Ancient Canons there is only mention made of Ordination and the Ministry, afterward there was no more talk but of the Portion or Benefice. Nevertheless, though the manners of expression, and a great part of the Ancient Discipline were wholly changed, yet in many things the Maxims of the Ancient Law were still observed. For Instance, heretofore Ordination differed not from  
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An Explication of the New Canon Law.

the Ministry or Benefice; and therefore when by the Introduction of the New Law, they were separated, that Maxim was still retained, That he who can Ordain, can also Confer a Benefice; and that he who cannot Ordain, cannot Confer a Benefice neither. But by degrees the Popes have by their Privileges and Exemptions derogated from the Common Law that was grounded on the Ancient Canons; and we see that Abbots exempted from the Jurisdiction of Ordinaries, confer in full right, Cures and other Benefices. Though the Establishment of Benefices be commonly referred to the end of the Tenth Century, or beginning of the Eleventh, yet some footsteps of them are to be seen long before. For about the year 500 under Pope *Symmachus*, to some Church-men Portions of Land were assigned, to be enjoyed by them for Life, as appears by the terms of (1) the Epistle of that Pope to *Cæsarius*, where he prohibits the alienation of Church-Lands, unless it be in favours of Clerks who might have merited, or of some Monasteries or Hospitals, and that only during the Life of those that should

(1) Tom. I.  
Concil. Gal.  
Ann. 513.

should enjoy them. *Possessiones, quas unusquisque Ecclesie proprio dedit aut reliquit arbitrio, alienari quibuslibet titulis atque contractibus, vel sub quocunque argumento non patimur; nisi forsitan Clericis honorem meritis, aut Monasteriis, religionis intuitu, aut certe peregrinis necessitas largiri suaserit; sic tamen ut hæc ipsa non perpetuo, sed temporaliter, donec vixerint perfruantur.* These words make it manifest enough, that even in that time there was some kind of Benefice, though the Portion of Revenues was not as yet made to Church-men in particular; but that was rare at that time, and only granted for extraordinary Causes.

Ib. q. 1. possessiones.

There are besides some footsteps of the Foundations of Benefices, and of the Right of Patronage in the Tenth Canon of (1) the First Council of *Orange*; but the Custom of that Time was far different from the present Practice. The Rules of the New Canon Law, which began chiefly under Pope *Nicholas I.* who lived about the middle of the Ninth Age, brought a great alteration in the Affairs of the Church. Pope *Gregory VII.* who lived pretty forward in the

(1) Ann. 445.



The Argu-  
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the Eleventh Age, extended the Rules of that New Law, beyond all that his Predecessors had done : And the Popes that came after him were so far from remitting any thing of these Novelties, that on the contrary, they augmented them ; so that the Law which hath been introduced into the Church since that time, deserves better to be called the Popes Law, than the Canon Law ; because in settling this New Law, there hath not been so much regard had to the Ancient Laws of the Church, as to the Profit of the Popes and Court of Rome. And this in process of time occasioned great disorders ; so that Princes were obliged to make Laws and Pragmaticks to hinder those Abuses ; though it hath not been in their power entirely to abolish them.

(1) Ann. 1150.

The Compilation which Gratian the Monk (1) made of the Canons of Councils, the Decretal Epistles of Popes, and of many sentences of the Fathers, of which he made up a Body of Canon Law, contributed much to the authorising of the New Law : For that Collection of Canons was publickly taught in Schools, and even made use of in de-

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cing Controversies. The Fathers and Councils were not studied in their Original, but only in the Decrees of Gratian ; and Men were not knowing enough at that time, to perceive that a great many of the Citations of Gratian were false, and that he followed not always the Rules of the Ancient Laws, having inserted into his Collection several supposititious Pieces. Besides that, he gave to the Popes Decretals the same Authority as to general Councils, and sometimes even perverted the words of the Ancient Canons, that he might accommodate them to the Law which was authorized by the Popes of his Time. But the Collection of the Decretal Epistles of Popes, which (1) was made by order of Gregory IX. occasioned a far greater Alteration in the Affairs of the Church : Nevertheless, they were in France publickly read in Schools, as well as the Collection of Gratian. These Decretals have been the cause of an infinite number of Law-Suits ; and though they were received in the Western Church, and publickly taught by the Professors of the Canon Law, yet there was a necessity of re-

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(1) Ann. 1230.

jecting them on several occasions, and having recourse to the Ancient Canons. At that time the Compilation of *Gratian* was called the Ancient Law, though it contained a great many Novelties: But being compared with the Book of Decretals, there was some reason for calling it so. The tedious and troublesome Debates which the Kings of *France* had with the Popes, was the cause that the *French* despised the Collection of the Decretals; nor are they at present much esteemed by them. They are of Opinion that that work was only compiled, for establishing the Interests of the Pope, and overturning the Ancient Law. And the Satyrs that were made against the Decretals run still in their minds, especially this Proverb which was heretofore so common.

*Depuis que le decret print ales  
Et Gend armes porterent malle,  
Moins allerent à cheval,  
Jamais le monde n'eut que mal.*

(tales,  
Since the Decrees were pieced with  
And Souldiers put on Coats of Males;  
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Since lazy Monks have mounted pad,  
The World's been plagu'd with all that's  
(bad.

But after all, as to what concerns the common practice, the Decretals are to be preferred before the Decrees, seeing most of the Rules of Law which now are in use, are taken out of the Book of Decretals, and not from the Collection of *Gratian*. Nor is the sixth Book of Decretals to be slighted, which is commonly called the Sext, though it was compiled (1) by the order of Pope *Boniface VIII.* an enemy of the *French*; because a great part of the Constitutions that are contained in that Collection have been taken out of the Decrees of the Council of *Lyons*; and are observed in *France*. Besides, the Decretals which carry the Title of *Clementine*, because that Collection is attributed to Pope *Clement V.* have been for most part taken out of the Council of *Vienne*, where the Ambassadors of *France* were present. The other Decretals that are contained in the Body of the Canon Law under the name of the *Extravagants* of *John XXII.* and the common *Extravagants*, seem not to

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have so great authority in *France*, as the former Decretals ; Neither do I think that all the new Bulls of which the Bullary is composed, are much esteemed there, because they have never been received in *France*.

Since the great clashings that happened betwixt *Boniface VIII.* And *Philip the Fair*, and betwixt *Julius II.* and *Louis XII.* The *French* have been much more cautious in admitting the Bulls of the Pope, than they were before. The differences likewise that happened in the Council of *Trent*, in respect of *France*, have been also the cause that the *French* suspect all that comes from *Rome*, and that they submit not easily to its Laws. And therefore the Popes Bulls are not received till first they be examined, and, if it be necessary, modified ; Nay and many times they are not actually received. In a word, there are but some of the Rules of the Chancery received in *France*. These are now the grounds on which the new Law is founded, and which hath been very much qualified in *France*, the knowledge whereof is necessary, that we may understand what measures are

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at present to be taken in Beneficial matters.

Though *France* hath submitted to the New Law, yet hath it still retain'd somewhat of the Ancient Canons : And when it hath found the new Laws to be contrary to the Interest of the State, it hath had recourse to the Ancient, and defended it self by the Canon Law. And therefore they have given the name of Priviledges or Liberties of the *Gallican* Church, to that which was no more but the Ancient Canon Law ; But which hath been called Priviledges or Liberties in respect of the New. For instance, when the *French* have been pressed by the Authority of the Decretals, they have had recourse to the Ancient Law contained in the Decrees of *Gratian* ; but since the Collection of *Gratian* authorises a great many false Decretals of the first Popes, which have introduced a New Law, the *French* Bishops have had recourse to a more Ancient Compilation of *Canons*, when the Authority of these Decretals hath been objected to them. Nevertheless, for all that *France* could do, the Popes Law hath at length prevailed, notwithstanding the Pragmaticks

The Original of the Liberties of *France*.

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ticks of the Kings, who endeavoured the re-establishment of the Ancient Canons.

The most Ancient Pragmatick of France is attributed (1) to St. Louis: But there is ground to doubt whether it be his or not, though it seems no man hath hitherto questioned it. The reason why it is thought to be of St. Louis, is because it bears the name of a King called Louis, and that the Date proves evidently that it can be of no other Louis, but Louis IX. Elias of Bourdeille Archbishop of Tours, who was afterwards made a Cardinal, hath mentioned all the Articles of that Pragmatick in a Writing that he composed in the the time of Louis XI. against the Pragmatick Sanction of France. It is true, he refutes the Pragmatick of St. Louis, as if it had been really the Act of that Prince: But he seems to have doubted of it, not daring absolutely to affirm that he was the Author of it, but only

(2) Adscribitur ei fecisse pragmaticam.

(2) that it was ascribed to him. The Contemporary Authors who have written his Life, speak not a word of it. The Popes who have so vigorously opposed whatever they thought contrary

to

to their Interests, did not at that time complain of that Pragmatick, though it wholly ruined their Interests. Is it possible that in the (1) Assembly of Bourges, where that famous Pragmatick past, no mention should have been made of the Pragmatick of St. Louis, if there had really been any such? Nothing could at that time have been of greater force to authorize that Assembly. There appears nothing more Ancient in favours of the Pragmatick of St. Louis, than the Remonstrances made by the Members of Parliament to King Louis XI. And there is a great deal of probability that it hath been foisted in about that time (2) because it was known that King Louis, being then but Dauphin, was of Intelligence with the Court of Rome, for abrogating the Pragmatick made at Bourges; and the Members of Parliament omitted nothing that could make for that Pragmatick. There are besides, terms somewhat extraordinary in the Pragmatick attributed to St. Louis. These words, *ad perpetuam rei memoriam*, are not of the stile of Ordinances. Nor do we find any where else, that St. Louis affected

(1) Ann. 1438.

(2) Ann. 1461.



The History of

that way of speaking that his Crown depended of God alone; neither was it at all proper for the affairs that then were in agitation. I could bring a great many other Reasons, to shew that there is ground to doubt of the Reality of that Pragmatick: But besides that that would lead me into a long and tedious digression, the Canon Law of France subsists not so much upon the Pragmatick ascribed to St. Louis, as upon that of Bourges, and the Concordat which hath derogated from several Articles thereof.

The Rules of the French Law.

To know then the substance of the Law of France in regard of Beneficial matters, we must not wholly rely on the Popes Decretals; but it is also necessary to know wherein the Pragmatick, Concordat, the Edicts of the Kings, and the Sentences of Supream Courts differ from the Law established in the Decretals. Besides, seeing the

(1) Ann. 1516.

Concordat or Treaty that past (1) betwixt Leo X. and Francis I. hath abolished several Articles of the Pragmatick, there is no more of the Pragmatick to be retained, but what hath not been rescinded or qualified by the Concordat; nor does

Ecclesiastical Revenues.

does the Concordat it self entirely subsist at present, because the Popes and Kings of France have by mutual consent derogated from it in many heads. Neither must we insist too much on Ordinances; for there are some of them, especially those that were made in the States assembled at Orleans, which have not been received into practice. In fine, the Jurisprudence of Decrees hath not always been the same, and does still vary daily; and which is observable, Courts do not agree among themselves in their decisions; not only Courts in different Provinces, where it is hard that Judgments can be the same, by reason of the different Customs on which they are grounded, rather than the Law; but even in Paris, where the Maxims of Parliament differ from those of the great Council, and many times the Council of State hath Prejudications which agree not with those that are followed in the Parliament, and in the great Council. It were to be desired, that there might be an uniformity in Judgments, which would not be difficult to be put in practice. These are the Principles of the French, which I have

trac'd with all possible Exactness. In the sequel of this Discourse, I shall treat of the Customs of France in respect of Beneficial matters.

The Canon Law.

According to the Rules of the Canon Law, every Bishop ought to provide for the Benefices of his Diocese. Heretofore none but the Bishops could give liberty to build Churches and Chappels in their Dioceses, and appoint Priests to govern them; and therefore all Churches depended on them: And as the Pope ordained none without the limits of his Diocese, so could he not give Ecclesiastick Employments, which now a days are called Benefices, but within the bounds of the same Diocese. That is expressly set down in the XVII. Canon of the first Council of Orleans, where it was decreed (1) that all Churches that should be built, should be in the power of the Bishop, according to the Rules of the Ancient Law. But the Bishops cannot now have the benefit of that Ancient Law, as being abolished by a new and particular right. There are at present Patrons both Ecclesiastick and Laick, who have a special right of presenting to the Churches which they have founded:

(1) Omnes Basilicae, quae per diversa loca constructae sunt, vel quotidianae constructur, placuit secundum Canonum regulam, ut in eius Episcopi, in cuius territorio sitae sunt, potestate consistant. Tom. I. Concil. Gall. Ann. 511.

And

And besides, the Pope in quality of Universal Bishop, hath taken to himself a full power over all the Churches in the World. And therefore Bishops can have no advantage of the Ancient Canon Law, but when the new and special Law hath no place; for then the Canon Law is again of force. This is necessary to be observed, if we would exactly know, to whom it doth belong to confer Benefices, which are to be presented according to the Rules of the Canon Law, that (2) gives the Bishop Power over all the Churches of his Diocese; or otherwise according to the Prescript of the new and particular Law: Inferiores non possunt Jurisdictionem Episcopalem vendicare, nisi de Jure Speciali. It is therefore pertinent to know what that special Right is, which Derogats from the Common and General Law. Let us begin with the Right of Popes.

Particular Law.

(1) Episcopus de jure communi fundatus est in libera administratione omnium Ecclesiarum suae Diocesis.

The Pope may concur with the Ordinaries, because he is the Ordinary of Ordinaries, and that his Jurisdiction extends over all the Churches in the World, for which Reason he may also prevent them. He pretends to a fulness

The Rights of Popes.

of

of Power, which he hath not renounced, by communicating the same to others; whence it follows, that without overthrowing the right of Ordinaries he may prevent them; and he that prevents first, has the advantage. I speak here, according to the Maxims of the New Law, without examining whether they be true or false, because that would be needless in regard of the practice which is the matter in hand. The Pope may then in full right confer Benefices by Prevention; but seeing Prevention is very prejudicial to the Collations of Ordinaries, it is qualified in several Heads.

Reversions  
abrogated.

I. Prevention hath no place at present but for Vacant Benefices, and the Pope cannot now dispose of Benefices before they be Vacant, as he did heretofore, reserving them to his own disposal. Mental Reservations and Expectatives or Reversions have been abolished by the Council of Trent. And therefore since that Council the Article of the Concordat, which authorized Mandats, or Mandamus's from the Popes, that were a kind of Reversions, is abrogated. it is to no purpose to enlarge upon the nature

nature and manner of executing these Mandats, since they are abolished. The same (1) Council of Trent hath abolished all other Expectatives or Reversions, comprehending therein the Grants or Indulgences made to the Chancellour of France, the Masters of Requests, Presidents, Councillors, and some other Officers of the Parliament of Paris: But in that the Authority of the Council is not admitted; On the contrary Pope Clement IX. Hath augmented the Privileges of the indulged. There is another kind of Reversion in being in France though the Council of Trent hath also abrogated it, to wit, the Priviledges granted to those who have studied a certain number of years in any Famous University of the Kingdom, who are called Graduats. That right of Graduats, which is founded on the Pragmatick and Concordat, is so owned in France, that some French Lawyers, nay even some Parliaments, pretend that the Prevention of the Pope cannot be prejudicial to Graduats; but the most received custom of France admits the Popes Prevention in prejudice of the Graduats and indulged.

(1) Sess. 24.  
Can. 19. &  
Sess. 25. Can. 9.

The Right of  
Graduats.

II. The



Bretagne is not subject to the Prevention.

II. The right of prevention is not in all parts of France, and it would even be wholly rejected there, if they received the Decrees of the Council of Trent. Bretagne, which is not comprehended within the Concordat, is not subject to the Prevention; but the Pope divides the Collation of Benefices with the Ordinaries. He confers them in full right during the Months of January, March, May, July, September, and November; The Ordinaries confer them during the other six Months. And when the See of Rome is vacant, the Benefices that fall in the Popes Months, cannot be provided by the Ordinaries, because in that case the right of Devolution hath no place; but the Collation is reserved to the future Pope. Before the Reign of Henry II. the Pope conferred Benefices during eight Months of the Year.

Lay-Patrons are not subject to Prevention.

III. The Popes Prevention cannot hurt Lay-Patrons, who always retain their right of Presentation, unless they themselves derogate from it; and then the Pope ought to specify it in his Rescript, adding these words, *Accedente Patroni Laici consensu*. And that upon better reason is observed in respect of Benefices,

Elective and Collative Benefices.

Benefices, which are in the nomination of the King, and such as are subject to the Regale.

IV. Some distinguish Benefices into purely Elective, Elective Collative, and purely Collative; and they pretend that the first which are purely Elective, are not subject to the Prevention of the Pope, because they stand in need of the Confirmation or Collation of the Superiour; that in regard of the others which are Collative, the Pope may bestow them, because of his right of Prevention: But the more common practice is, that the Popes Prevention takes place in all Benefices, except those, to which, as we have said, the King nominates, and to those that are subject to the Regale: And as to Elective Benefices, none but the Heads of Orders are exempted from the Prevention; for the Deanries of Cathedral and Collegiate Churches may at present be resigned *in favorem*, and conferred by the Pope. We must nevertheless, except the Deanries that are Elective upon the Title of Laick Foundation; for then the Rule is the same, as of Lay-Patrons, from whose rights the Pope never derogates. There are besides,



besides, certain Benefices wherein the Popes Prevention has no place, because they require certain conditions that are annexed to them: As for instance, the Theological Penitentiary, and other Benefices that are assigned to Musicians, or which demand certain Qualities, that are inseparable from them: Now seeing these Qualities are personal; the Pope cannot supply them by Prevention. Besides that, it is easie to hinder the Popes Prevention in Elective Benefices; for, to tye the Popes Hands, there needs no more, but to begin the Election.

Derogations from the Right of Prevention.

V. There are many things that hinder the Popes Prevention from taking effect.

I. If the Ordinary hath conferred the same Benefice before him, though the Collation be null and void, yet it hinders the effect of Prevention; so that in that case nothing produces somewhat; and it is held for an undoubted Maxim, that *Collatio Ordinarii, etiam nulla & invalida, impedit preventionem Papae.* We must, in the mean while, observe that the bare Presentation of the Patron is not sufficient to hinder the Prevention,

vention, because the Presentation alone gives not the Benefice; it is necessary that (1) it be notified to the Collator. Nevertheless, many are of opinion that the bare Presentation of the Patron is sufficient to hinder the Popes Prevention from taking effect; and they are grounded on this, that the Right of Prevention is odious, and therefore ought not to be favoured. On the other hand, it is acknowledged by all, that the Popes Prevention hath only place, *quando res sunt integra*, when matters are entire. Now, say they, it cannot be affirmed that matters continue still in an entire Condition, when the Patron hath given his Presentation, which acquires a Right to him that is presented; and it is certain that (2) the Pope cannot derogate from an acquired Right. Notwithstanding all these Reasons, and many more which are alledged in favours of Presentations, that are pretended ought to hinder the Popes Prevention, yet it is the Common Opinion at present, that the single Presentation of the Patron, does not hinder the effect of Prevention, unless it hath been intimated to the Ordinary Collator.

(1) *Ut saltem tangat aures Collatoris.*

(2) *Juri quaesito Papa non potest derogare.*

II. The

II. The Indulged and *Graduat*s hinder the Popes Prevention, when they have made their demand in form; for then *res non censentur integræ.*

III. The Pope himself hath derogated from his right of Prevention in favours of Cardinals, to whom he hath granted Priviledges or Immunities, that they shall not be prevented by him. There are likewise some Persons of Quality that obtain the same Priviledge from the Pope; and so they have the whole six Months for providing to their benefices, according to the Rules of the Canon Law, without any danger of being prevented.

IV. To the end the Popes Prevention may obtain its effect, there must be neither fraud nor surprise in it; wherefore the Rule of the Chancery *de verisimili notitia*, is received in *France*; and it is necessary, that betwixt the death of the Beneficiary and the Collation of the Pope, a sufficient time must intervene for carrying to *Rome* the news of the Vacancy of the Benefice if the contrary be proved the Prevention is Judged fraudulent and Anticipated, and by consequent null.

Besides

Besides the right of Prevention, the Pope hath also the right of Devolution in quality of Superiour; and in that case by common Law he may confer all Benefices after a certain time. The Ordinary hath six Months to provide for the Benefices that depend on him, and these six Months are reckoned from the day that he might have had knowledge of the Vacaney. If he provide not within these six Months, the right is devolved on the immediate Superiour; for instance from the Bishop to the Metropolitan, from the Metropolitan to the Primate, if the Primate enjoy that right, and from the Primate to the Pope, following in that the order of Jurisdiction. But the right of Devolution is of no great use to the Pope, because it is swallowed up in the right of Prevention; and besides Benefices must continue vacant for the space of a year or two, before that he could confer them by devolution, unless it be in respect of Collators who depend immediatly upon himself. If it happen nevertheless, that the ordinary Collator hath provided amiss, his right devolves instantly upon the immediate Superior, and the Ordinary hath no more right  
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of conferring the Benefice for that time. In that kind of devolution, application is commonly made to *Rome*, and the Pope becomes the ordinary Collator. We must however take notice, that there are certain cases wherein the Ordinaries may vary in their Collations, and that it is not always true, that when they have once conferred, they lose their right; for they may give the same Benefice to several Persons upon different considerations. For instance, if they have bestowed a benefice which fell in the Months assigned to *Graduats*, to one that is not *Graduat*, they may afterward give the same Benefice to a *Graduat* that demands it. Besides, if the Ordinary hath in full right conferred a Benefice that is in Patronage, he may again confer it of new upon the Presentation of the Patron. If he had also conferred a Benefice, and it be found afterward that it was not vacant, or that he to whom he had granted it would not accept the same, he would not therefore lose his right of providing to it a Second time. So that in all these cases devolution has no place; and therefore the negligence or excess of ordinary Collators cannot be

be supplied by the Pope, seeing they are not to be imputed to their negligence or excess. The Pope, on the contrary, can give one and the same Benefice to several Persons, because his power is not limited, as that of Ordinaries, and his right cannot be devolved, as not having any Superior. That right which Popes enjoy is the cause of an infinite number of Law-suits. All are welcome at *Rome* for their Money; and yet it is certain that one only can obtain the Benefice, though it hath been granted to many.

Furthermore, the Popes confer the Benefices of which the Incumbents or Titularies die in Court, that is, within ten Leagues of *Rome*. That right is a kind of Reservation, whereof Pope *Clement IV.* is the Author. The Constitution of that Reservation is mentioned in the *Sext* the Chapter *Licet*, in these words, *Collationem tamen Ecclesiarum, personatum, dignitatum & beneficiorum apud sedem apostolicam vacantium, specialius ceteris antiqua consuetudo Romanis pontificibus reservavit.* But seeing these words, *Ecclesiarum & dignitatum*, are general, the Author of the Gloss upon

Benefices vacant in Curia

the *Sext*, who was Secretary to Pope *Boniface VIII.* pretends that the Pope hath not comprehended under that constitution Bishopricks and Abbeyes, and yet the Concordat which serves us for a Rule, comprehends under the Benefices that are reserved to the Pope, upon account of Vacancy *in Curia*, both Bishopricks and Abbeyes. Master *Charles Du Moulin* hath been forced to say, that there hath been surpris in the Concordat. And in Effect the sense of the Constitution of Benefices vacant *in Curia* ought not to be extended, but explained according to the intention of the Popes *Clement IV.* and *Boniface VIII.* Who are the Authors of the same. And therefore there was reason to say that the Kings Commissioners were surpris'd and over reach'd, when they suffer'd that clause of the Concordat to pass: For it is certain, that the Benefices, which are provided by way of Election, were not within the compass of the Chapter *Licet*, nor of the Constitution *de beneficiis vacantibus in Curia.*

On the other side it is not doubted but that the nomination of the King hath

hath been surrogated in place of Elections, and by consequent ought to enjoy all their rights. So that the Benefices to which the King Nominates by Virtue of the *Concordat*, ought not to be reserved to the Pope when they are vacant *in curia.* And this the Officers of the King pretend at present in *France*, and the Parliament of *Paris* hath sufficiently explained it self on that Subject.

It would seem nevertheless, that the King acknowledges that Reservation of the Popes, especially when he gives his Grant to those who are not of the Kingdom, and who may chance to die at Court. He granteth them no Benefices, but on condition that they shall obtain from the Pope a Brief, *de non vacando in Curia;* and after that, whether they obtain that Brief or not, the Benefices to which they are provided cannot be reckoned to become vacant *in Curia.* Monsieur *Doujat* hath caused to be Printed the Brief *de non vacando in Curia.* Which Pope *Clement IX.* (1) granted to Cardinal *Mancini* for the Abbeyes that he possessed in *France.* Which is directed to the King in these

(1) Ann. 1667.



terms : *Nos, ne prædicto Cardinale sorte apud sedem Apostolicam decedente, majestas tua impediatur, quominus ad Monasteria hujusmodi, ratione dictorum Concordatorum, aut specialis Indulæ Apostolici nominare possit, opportune providere valentes, supplicationibus ejusdem majestatis tuæ nomine nobis super hoc humiliter præsertis inclinatis, eidem majestati tuæ, &c.* It is plain enough by the terms of that Brief, that the Pope pretends that all Benefices vacant in *Curia*, are reserved to him, even by the Articles of the Concordat, and that the King does likewise acknowledge that Reservation by virtue thereof. I have seen some other Briefs *de non vacando in Curia*, which are express in the same manner. The Duke of *New-bourg* hath obtained (1) one for the Abbey of *Fescan*, which is likewise directed to the King: Yet the Popes do but seldom grant them; and it were to be wished that they never did, yea and that it were never desired of them, that so a clause of the Concordat might not be authoriz'd, which without doubt is vicious, and which may be abrogated, without any prejudice to the substance of the Concordat it self.

(1) Ann. 1673.

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Other Rights of the Popes.

The New Law received in *France* gives the Pope many other Powers which they enjoyed not, when the Church was governed according to the Ancient Canons.

I. The Creation of New Bishopricks, and the Erection of Archbishopricks, belong to the Pope.

II. Bishops cannot be translated from one See to another, without taking New Bulls from the Pope: And if they enjoy Abbeyes or other Consistorial Benefices, they are also obliged to take new Bulls for all these Benefices, and by consequent to pay new Annats or First-fruits. But it is still to be supposed that the Pope cannot put this Power in execution without the Kings Permission: And even in the Bulls of Translation the consent of the King is mentioned.

III. The Pope by his Bulls confirms those whom the King hath named to Bishopricks, Abbeyes and other Consistorial Benefices.

IV. The King cannot enjoy his Right of Nomination to Bishopricks and Abbeyes which are not situated in the places mentioned in the Concordat,

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dat; but the Pope grants him Indults or Priviledges to nominate to those Benefices. Seeing *France* is now of greater extent, than it was when the Concordat of *Bologna*, was made betwixt Pope *Leo X.* and *Francis* the first of *France*, the Kings of *France* have been obliged to obtain from the Pope Indults, which are called *Indulta Regiæ Nominacionis*, of which many forms may be seen printed in the Collection of *Monsieur Doujat*. It is in the mean time in the Liberty of the Pope to grant them for ever, or only for a certain time.

V. It being a general Maxim received and approved of all, that Secular Benefices ought to be given to Seculars, and Regular Benefices to Regulars, the King cannot Emancipate Benefices from the Rule, to put them in *Commendum*, unless he have Permission from the Pope, because that is one of the Clauses of the Concordat: But the King and Pope, who have made the Concordat, dispense with it daily, it being in their Power so to do.

VI. The Pope, who pretends to an absolute Power over all Benefices, according

according to his pleasure Secularises Benefices, that are in Rule; and so he derogates from that great Maxim, *Secularia Secularibus, Regularia Regularibus*, in favours of those, who for that end send their money to *Rome*. The Monks notwithstanding, who are powerful at *Rome*, because of their Generals that commonly reside there, or of their Procurators that live in that Court for the affairs of their Societies, hinder as much as they can the Secularisation of Benefices, which they pretend does of Right belong to them.

VII. The King cannot Alienate the Church Lands of his Kingdom without the permission and consent of the Pope; nor can he raise the Tenths of the Clergy, which have in process of time, been converted into Ordinary Subsidies, without obtaining Power from the Pope. Heretofore Churchmen pretended that their goods were consecrated to God, and that so, they were not obliged to lay them out for maintaining of Wars, or for other publick necessities; it being enough that they contributed to them by their Prayers.

Alienations  
depend on  
the Pope.

Prayers. But the specious pretext of holy Wars cured them of that Scruple, and it was decreed in the Council of Lateran under Innocent III. That these Tenths should be taken from Ecclesiasticks, for the Expeditions of the Holy Land. After a Door was once opened to Tenths, the Popes and Kings together often raise them. But seeing Popes had got a Custom of raising Tenths in France for their own private concerns, it was decreed in the Council of Constance, that they should be no more raised, but with consent of the Prelates of the Kingdom; and thereby the Popes were excluded from the Liberty of raising them. However, those that were granted to Kings encreased much, and that which in the beginning was very extraordinary, hath since turned into a Custom. The necessity of maintaining long Wars in France for Religion, promoted very much the establishment of Tenths, which is at present a kind of Tax upon the Churchmen, collected by receivers, appointed for that purpose. We must, in the mean time, observe that Popes dispose not

Council Con-  
stantiense.

not at their pleasure of Church Revenues, as they pretend they have Power. They have not the Liberty to sell the Revenues of the Church, unless the King and Clergy consent to it, and the causes of Alienation be first examined: For the Bulls of Permission to alienate are not received in France, if they contain these Terms, *motu proprio, sine inquisitione, etiam invitis Clericis*. In a Word, for Alienation of Church Lands in France, the two Sovereign Powers, I mean, the Pope and King must concur.

VIII. All Concordats, Transactions or Pactions in any beneficial matter, ought to be confirmed in the Court of Rome, because there is a kind of Simony in them, private persons not being allowed to dispose of their Benefices under certain Reservations or Conditions; and that is the reason why application is made to the Pope for Pensions and Resignations *in favorem*. Ordinaries cannot appoint, nor confirm Pensions: Nor can they admit of any Resignations *in favorem* neither, unless in the case of Permutation; Nay and

Concordats depending on the Pope.

and in that case too private persons many times apply themselves to the Pope. There is another kind of Concordat, or Transaction, which Commendatory Abbots, and Monks, daily make betwixt themselves, for dividing their Revenues, without having recourse to *Rome*. But these Concordats are easily broken, and their Successors may derogate from them, because an Abbot hath no power to oblige and tie up the Will of his Successor. He may, indeed, make over his rights during his life; but he cannot dispose of that which belongs to another. And therefore, though these Concordats were even confirmed in the Court of *Rome*, and in the Parliaments, they may still be rescinded, if it be found that one of the Parties contracting hath received any notable prejudice: In that case he is allowed to seek relief, and by stronger reason his Successor ought, who is not obliged to stand to all that hath been done by his Predecessor. The Pope himself pretends not to prejudice by his Rescripts the acquired right of others; nor indeed is it in his power, though it should even be inserted in his Rescript, that

that there hath nothing been done without knowledge of the cause, because he may have been ill informed. Again, the Pope hath no power in *France* over the Temporal of Benefices, but only the Spiritual, for which recourse is had to him as to a Superiour, that he may authorize the Transactions which private persons have made amongst themselves, and purge them from Simony.

IX. None but the Pope can give Benefices in perpetual *Commendum*; and the *French* are the more obliged to acknowledge that power of the Popes, that there is no Kingdom in Christendom where so many Regular Benefices are Erected in *Commendum*, as in *France*. Now seeing *Commendums*, in the manner that they are at present established, more for the advantage of private persons, than benefit of the Church, are altogether contrary to the Canons; none but the Pope can confer in *Commendum*, because he only can dispense with the Canons, as well in respect of the incapacity of persons to whom *Commendums* are given, as of incompatibility of Benefices, in which the Commendataries are invested. And therefore Benefices in *Commendum*

*Commendums*  
depend on  
the Pope.



*Commendum* are in some manner reserved to the Pope, because they subsist upon a special Priviledge, which can be granted by none but him: And when the *Commendum* is void by the death of the Commendatary, it is not to be judged vacant by his death, but as it was vacant before the *Commendum*, which brings no alteration in matters. However, the Pope does still give the same Benefice in *Commendum* by a Priviledge that he continues on; so that it may be said, that the Priviledge or Dispensation hath wholly derogated from the Canon Law, which only subsists in name, and the Dispensation stands for Law as to the effect. In the mean time, though they who possess *Commendums* have not obtained them but by Priviledge or Dispensation, yet they still enjoy them, and have all the Titles, Profits and Honours, as if they were Titulars, inasmuch as by the Bulls of *Commendum* the Commendataries are subrogated into the rights of the Titulars, and the terms are always used, which import that the power of the Commendatary is the same with that of the Titular, to whom he is substituted: *Curam Monasterii*

The Rights of Commendatary Abbots.

*sterii ac regiman & administrationem tibi in spiritualibus & temporalibus plenarie committendo.* The Pope gives in some manner by his Bulls the Investiture both of the Spiritual and Temporal, and grants the Commendataries liberty to dispose according to their pleasure of the Profits of the Abbays, after they have satisfied the Charges which are always expressed in the same Bulls: *De residuis fructibus, redditibus & proventibus disponere & ordinare poterunt ac debuerunt.* And to make it appear that the Modern *Commendums* are different from the Ancient, which were established in favour of Churches, and not of Persons, the Popes add in their Bulls, that they give the Commendataries power to dispose of the Profits of their *Commendums* for their own use, that they may live more commodiously, nay and according to their Quality: *Ut statum tuum juxta gradum tuæ nobilitatis decentius tenere valeas, de alicujus subventionis auxilio providere volentes, &c.* This is not the place to examine whether the Popes can attribute to themselves so great an Authority, which seems to overthrow all the Discipline

Discipline of the Church. I only speak, at present, of what is in practice, and of the power that the Popes have in France, where the Bulls, whereof I have given some abstracts, are received and authorized by custom. And for that reason also, the Canonists say, that the Titles of Benefices are only of positive right, & that so, the Popes who have absolute power over that right, especially when it hath been voluntarily established by them, may dispense with it as they please, and in favours of whom they will. On this principle are grounded the Dispensations which are obtained from Popes, for possessing several Benefices, and that they daily derogate from the nature and quality of Benefices in favours of private persons. But after all we must still suppose the Maxime which we have already observed, that this great power of Popes cannot be executed in France, if the King consent not to it; and besides, that the Court of Rome, hath no power over the Possessory right of Benefices.

X. The Popes give not only Benefices in *commendam* to Clerks, dispensing

sing both with their Age, and other Qualities requisite; but they dispense also with the Clerkship of Children as yet in the Cradle, until they have attained the Age of taking the Tonsure. It is enough to declare, that the Child is designed for a Church-man: *Infantem qui, ut accepimus, in secundo vel tertio sue aetatis anno constitutus, & ad vitam Ecclesiasticam agendam destinatus existit.* But since no man can enjoy a Benefice, but he that is a Clerk; and that on the other hand, the Child is not as yet of Age, the Popes use these terms in their Bulls: *Eidem Infanti, cum primum Clericali caractere rite insignitus, & in aetate legitimâ constitutus, seu alias ex concessione & dispensatione Apostolica ad Monasteria obtinenda capax & habilis fuerit, per eum, quoad vixerit, tenenda, regenda & gubernanda, ita ut ex nunc, prout ex tunc, pro eo affecta & destinata sunt ac esse censeantur, &c.* Then the Pope, in the same Bull, names a Steward, who shall take care only of the Temporal, until the Child be grown up and shaven. *N. Administratorem Monasteriorum in temporalibus solum, donec prædictus Infans caractere Clericali in-*

M

signatus

*signitus fuerit, & Monasteria sibi per nos vel successorem nostrum Romanum Pontificem pro tempore existentem, commendari obtinuerit.* It appears by these last words, that the Child is not as yet properly established Abbot Commendatary by the Bulls, because he is not as yet a Clerk; but that the Abbey is only assured to him, and that in the mean while, he shall enjoy the Profits of the Benefice, as if he were actually invested in it, and that because the Pope by his Bulls gives him the right.

Of Unions.

XI. Though Ordinaries may unite smaller Benefices, yet it only belongs to the Pope to annex Benefices which are called Consistorial, nay and many times application is made to him for all sorts of Unions. That Power of the Pope, of uniting all sorts of Benefices, proceeds from the fulness of his Authority; whereas that of Ordinaries is limited. Nevertheless heretofore they enjoyed that Right. But we have already observed, that we speak only here of the New Law, in the manner that it is at present in force in *France*, without examining the ground of it, and if it be contrary to the Ancient Canons. It is

not

not, for all that, to be imagined, that the Pope is so much Master of Unions in *France*, that he can make them at his pleasure, and without lawful cause: For the Unions which are commonly called personal, and only made during the lives of some persons, are not admitted there, because such kinds of Unions are not for the Benefit of the United Churches. It is then necessary to make Unions lawful, that they be grounded on true causes, and not upon pretexts: Otherwise they are null conform to the Decree of the Council of *Constance*, which rescinds Unions made by the Pope (1) if they be not supported by good reasons. It is not sufficient, for all that, that the Pope in the Bull of Union make use of these words, *Et ex certa scientia nostra*: But he ought to direct to some Body upon the place a Rescript of Delegation *ad effectum unionis*. That information may be had of the usefulness of the Union. Besides, those who are concerned in the Union, and especially the Patrons of Benefices must be cited, who ought to be heard, because Union is a kind of Alienation for ever, which deprives the Pa-

(1) *Si non ex rationalibus causis & veris facte fuerint, licet Apostolicæ sedis auctoritas intervenierit. Sess. 43.*

M 2

tron

The Popes Power limited in France.

(1) Sess. 7. Can. 6.

(2) Nisi aliter a sede Apostolica declaratum fuerit.

tron of his Right. There are many other Formalities to be observed, for making Unions valid in France, where in reality the plenitude of the Popes Power is acknowledged; but still with reservation of the liberty of limiting it according to the Laws of the Kingdom. And upon that ground the Parliaments insist when they rescind Unions that want the Formalities, and declare them abusive. The Council of Trent (1) hath also declared, that Unions made within 40 years should be null, unless they had been made in presence of the Ordinaries, for just reasons, and those who were concerned cited. But by the addition of these words, (2) if the Holy See hath not declared otherwise, it renders the Pope absolute Master of Unions; which is not received in France, where no regard is had to the Prescription of forty years; for remedy may be had even after an hundred years against an Union that hath not been made in Form, if we believe the French Practitioners in Law. The Council of Trent however is not altogether repugnant to that Custom. It will have no respect to be had to the Prescription of forty years, if the Bulls of

of Union have been surreptitious or obreptitious: That is to say, if the Information that hath been given to the Pope, be not found to be true; and that is common to Apostolick Bulls and Rescripts, where that clause is always supposed, (1) if the Petition declare the truth.

(1) Si preces veritati nitantur.

XII. There is another kind of Union that belongs also to the Pope alone, to wit, the suppression of one Order for uniting it to another, or the Disunion of two that had been united. Yet that cannot be done without the consent of the King.

XIII. The Decision of Causes which are called the greater, for instance, the Deposition of Bishops, is reserved to the Pope, who, nevertheless, judges not of them at Rome, but appoints Judges in France; and he is not obliged to delegate a certain number of Bishops, as some have pretended, nor to chuse the Comprovincials of the Bishop who is accused. It is in his power to delegate in partibus such Commissioners as he pleases, provided they be of the Kingdom, and accepted by the King.

The judging of Bishops.

The Ancient Right of Metropolitanis of M 3 and



and Comprovincials is now out of doors; and Councils are no more called for that effect. The Pope then, does all now-a-days, by means of his Briefs, Bulls and Rescripts, which, nevertheless cannot be of force without the Kings Permission. And therefore it is, that the Deposing of Bishops in *France*, depends absolutely on the Pope and King. The Pope names Commissioners to be Judges of the Process, and the King accepts them. I know a great many oppose that in *France*; but it is in vain to object Law against matters of fact and examples, when the Question is about Discipline. I shall say nothing of Ancient Customs, because I treat only here of what is practised at present.

The Power  
of Legats in  
*France*

Having spoken of the Popes Power in *France*, in reference to beneficial matters, it will not be amiss to say somewhat of the Power of his Legats and *Nuncio's*. The Power of Legats which are called *à latere*, is very great, because they are, as it were, the Popes Ambassadors, and represent his Person at the Courts of Princes, to whom they are sent about Extraordinary Affairs. Their Instructions are at length specified in the

the Letters which the Pope gives them; but they are not put in Execution, until the King hath approved the Legation: And besides, the Kings Officers do not Register the aforesaid Letters of Legation, but with the Modifications and Restrictions that are added to them according to the pleasure of the King, and the Liberties and Customs of the Kingdom. The Legats then have almost the same power in all that concerns Benefices, as the Popes whom they represent have; and therefore they are very troublesome to the Ordinary Collators during the time of their Legation, which lasts as long as the King pleases. There are nevertheless, some things which they cannot perform without special Orders from the Pope, such as are the Translations of Bishops. Nor can they receive Resignations *in favorem*, unless that be expressly mentioned in their Instructions, and not limited or abrogated in the Restrictions that have been made of them; and therefore in that case the Bulls of their Legation, and the verification of them in Parliament, must be consulted. Mr. *Doujat* hath Printed some of them in his Collection,

lection, and amongst others that of Cardinal *Chigi*, which may inform us of their power in *France*, where they exercise both the one and other Jurisdiction, that is to say, both the voluntary & the contentious, but still in Quality of the Popes Delegates; & therefore their Jurisdiction ceases, if the Pope happen to die during their Legation. Besides these Legates *à latere* who are but rarely sent into *France*, there is another Legate *à latere* at *Avignon*, who exercises his Jurisdiction in the City of *Avignon* and County of *Venisse*, In the Provinces of *Vienne*, *Arles*, *Embrun*, *Aix*, and *Narbonne*. That Jurisdiction is commonly given to a Cardinal, who hath a Sub-Delegat or Vice-Legate who discharges all the duties of it.

The Power of Nuncio's in France.

As to the *Nuncio's* in *France*, they have no Jurisdiction; they are looked upon rather as the Popes Envoys for Civil matters, than as Church-men. Nevertheless there is a Custom introduced, which hath been many times, and on several occasions condemned, to wit, that the Popes *Nuncio* in *France*, receives attestations *de vita & moribus*, whereby he takes information

of the manners of those who are nominated by the King to Consistorial Benefices. But that is an abuse introduced by the very same persons that have been nominated by the King. For, fearing that their Bulls might not be expedited at *Rome*, they cause an attestation *de vita & moribus*, to be made before the *Nuncio's*; whereas that attestation ought to be given by the Bishop of the place where the persons named to Benefices reside. Afterward they might be recommended to the *Nuncio*, as the Popes Minister in *France*; which is sometimes practised even by the Kings order. But private persons have had their recourse to the *Nuncio* for their security, and that Custom is observed at present, notwithstanding all the Remonstrances that have been made to hinder that Jurisdiction of *Nuncio's* in *France*.

It remains now that we speak of the Cardinals of the Court of *Rome*, and of their Priviledges: But seeing these Priviledges respect their private persons, rather than the right of others, that article may be omitted; nor shall we touch at it but by the by. The name

Of Cardinals.

name of Cardinal did not in the beginning signify a particular dignity, as it does at present, but only denoted the difference of Churches and Employments: For Instance, the Canons of Cathedral Churches were for most part called Cardinals in *Italy*, to distinguish them from the Ecclesiasticks of other inferiour Churches. The same name was also given to Priests, Deacons, and even to Subdeacons, when there was occasion to distinguish them from the lower Clergy: But it was a Title much inferiour to the quality of a Bishop: And therefore when one was made a Bishop he retained no longer the Title of Cardinal. Matters are at present much altered; The dignity of Cardinal now a days, is the next to the Papacy, and they are in respect of the Pope, as Senatours, or Councillors, are in relation to him that presides in the Senate. Nevertheless since the Papacy is become Monarchical, the Pope takes their advice meerly for Ceremony, but acts according to his pleasure. He makes use still of these Terms, *De consilio fratrum*, but it is most commonly to secure his relations

tions after his death, especially in regard of the Revenues of the Apostolick Chamber, which the Popes dispose of too absolutely, the Cardinals not daring to oppose them. That which renders the Cardinals more considerable than all other Church-Men. is, that they chuse the Pope, and may themselves be chosen. They have stept into the rights of the Ancient *Roman* Clergy, to whom it belonged to chuse their Bishop, in the same manner as was observed in other Churches. Now, since the Jurisdiction of the Pope is much augmented by the New Canon Law, the Dignity of the Cardinals also who are his Councillors, is become greater, and that they may be honoured according to their dignity, they have many Priviledges granted them, which exempt them from the common Laws and Customs.

They have six whole Months for bestowing Benefices whereof they are the Collators, without any fear of being prevented by the Pope, who hath in their favours dispensed with his right of Prevention. Besides, the Pope who daily derogates from the Rule *de viginti*

*ginti diebus* to favour *Resignees*, does never derogate from it in prejudice of Cardinals in respect of Churches whereof they are the ordinary Collators; and that is a Priviledge singular to them. Neither are they subject to the Indults or Priviledges of the members of the Parliament of *Paris*: So that they are not obliged to bestow upon the *Indultees* or Priviledged the Benefices whereof they are the Collators, because they have a Grant from the Pope, which gives them power of disposing of their Benefices to whom, and in what manner they please. Nevertheless the Parliament of *Paris* hath sometimes pronounced Sentence contrary to those Priviledges of Cardinals, and hath favoured the *Indultees*, by virtue of the nomination of the King, who they thought ought to be preferred before the *Indultees* of Cardinals. In fine, the common Rule, which says that Secular Benefices should be given to Seculars, and Regular to Regulars, is of no force in respect of Cardinals who (1) in that quality can receive all kinds of Benefices.

(1) *Habent os apertum ad omnia Beneficia.*

To have explained the right of the Popes

Popes in *France* in respect of Beneficial matters, is not sufficient to discover fully wherein the ancient Canon Law is abrogated, which gave Bishops absolute power in the Collation of Benefices; we must besides that examine the right of other Collators, and Patrons whether Ecclesiastick or Laick; In a word, it is necessary to know the rights of all who are in present possession of providing to Benefices, in what manner soever it be. It would seem that none have more reason to challenge that Right, than the Chapters of Cathedral Churches; for as heretofore they made but one body with the Bishops, and were of their Council, so they had some share in the Jurisdiction. Wherefore, when the Revenues were separated, at the same time the Jurisdiction was divided, especially the gratuitous Jurisdiction, or the Right of providing to Benefices; and I take that to be the true reason why Chapters are at present the Collators of some Benefices separately from their Bishop. They have even made certain Laws among themselves, which are different according to the diversity of places. Every Canon presents

The Rights of Chapters



resents by turn to Benefices that become vacant in his week, or in the time that hath been allotted him in the Dividend which they have made among themselves. Besides that, dignified Canons can provide to Benefices that depend on their Dignities, whether in particular, or joyntly with other Dignitaries; wherein the Custom observed in every Chapter is followed. Care is to be taken though, that all sorts of Customs be not authorized; for it may be, that Canons have made Agreements among themselves, which are prejudicial to the Rights of private persons; and there are but few that mind that Bishops cannot call into question that Right of Chapters, since they have agreed on both sides by Transactions which were in their power to make. But that hath given occasion to a very great corruption, which hath established in the Church Benefices without any Employment: For the Canons are not only separated from their Bishops, but they have besides, every one taken his Revenue in particular, and minded the management of it. This is the cause that many Offices which were necessary whilst

The Original of Personages and Dignities without Employment.

whilst the Revenues were in common, are become useless; and instead of suppressing them, they are erected into Benefices, which are called Dignities, that is to say, *Sine-Cures* or Benefices without Office. I shall here give some Instances of them, that the Original of these Dignities or Benefices may be known, of which the Titulars for most part are uncertain whether or not they be obliged to reside on their Benefices. I reckon then amongst these Dignities, the Provostships of *St. Martin of Tours*, which are pretty numerous. These Provostships were heretofore possessed by the Canons of the Chapter, who were chosen to take the care of the Temporal of the Church: And seeing the Revenues of that Church were in several places, the care of them was committed to different persons, who had severally the management of the Rents of their distinct Quarters; and because of that, they were called *Præpositi*, whence the name of Provost is derived. But since the Canons took the care of their Rents every one in particular, these Offices are become useless; nevertheless they are still retained, and are now called Dignities

Dignities, or simple Benefices, whereof the Titulars cannot be obliged to Residence, as heretofore they were, because the obligation to reside proceeded not from the Office of Provost, but of the Canonship which they enjoyed with their Provostship, that was not then a Benefice, but meerly a Commission or Office. And in this manner also ought we to consider the dignity of Treasurer in several Cathedrals of the Kingdom, which in all likelihood, was but an Office that consisted in taking care of the Revenues of the Church, and is at present a Benefice without Office, which is called a dignity of honour, because it is only by Custom that it hath the name of dignity, there being none but the Titles of Arch-Priest and Arch-Deacon that are dignities of right, by reason of the Jurisdiction which they have retained.

It is the same with all other dignities or *Sine-cure* Parsonages, & therefore I shall insist no more on that Subject. I shall only observe, that several Persons do in some manner enjoy two Benefices, though they be not reckoned amongst those who possess plurality of Livings

livings. The Deans, for Instance, of Cathedral Churches, and the chief Dignitaries of Collegiat Churches, have double the Revenue of the other Canons, though they be no more in effect, but Canons as the rest are, and have nothing over them but a Prerogative of honour. But Custom, which hath made that and many such other practices familiar to us, is the cause why they are not reckoned in the number of those who have several Benefices; besides, they may alledge for their Justification, the words of St. Paul, who saith. *That the Elders who Rule* 1 Tim. 5.17 *well are counted worthy of double honour.* After all, if the Chapters challenged no more to themselves in Beneficial matters, but the rights whereof we have been speaking, Bishops would have no cause to complain of them: But there are some who have attempted upon the Jurisdiction of the same Bishops, and pretend to an Episcopal Jurisdiction, as well as they. You shall see Canons who have rather out of vanity, than necessity, a great Vicar, an Official and other necessary Officers, for exercising Episcopal Jurisdiction, as

if they had a Diocese to govern. Most part of Chapters, besides, pretend to be exempted from the Jurisdiction of their Bishops, and have a little Territory depending on them, in regard of which they exercise the functions of Episcopal Jurisdiction, and hold the place of inferior Ordinary Prelates, which are mentioned in the Decretals.

The Original of the Rights of Chapters.

To know upon what ground the Canons build that Episcopal Jurisdiction, which gives them power of conferring several Benefices, we are to observe that all the Rights and Priviledges of Chapters can only derive their Original from the Bishops whose Brethren the Canons call themselves. Before their Rents were separated they governed the Churches jointly with the Bishops: And so it is not to be thought strange, that after their separation they have retained part of the Jurisdiction that belongs to them by the Canon Law, if they be in possession of it. And there-

(1) Car. Monlin Reg. de Infer. resign.

fore (1) Mr. Charles du Moulin affirms that the Collation of Canonships and Prebends of Cathedral Churches belongs by common right to the Bishops and Chapters. It is true, that seems to establish

establish several Heads in one and the same Diocese, but seeing these Heads are subordinate to Bishops, Canonists do agree, that besides Bishops, inferior Prelates may be owned for Ordinaries, and they think that (1) under the name of Bishop inferior Prelats who are in possession of Episcopal Jurisdiction, are likewise to be comprehended. According to that maxim, Chapters may be Ordinary Prelats, *praelati seorsim ab Episcopo*; And the New Law is the more favourable to them, in what concerns the Collation of Benefices in full right, that Collation (2) belongs not at present to the Orders, but to the Jurisdiction. So that, reserving still to the Bishop all that concerns Orders, the Chapters may perform the other functions that respect Jurisdiction.

(1) *Nomine Episcopi, Inferiores fura Episcopalia habentes, in his que Jurisdictionem concernunt, comprehenduntur.*

(2) *Non est Ordinis, sed Jurisdictionis.*

It is true that according to the Ancient Canon Law, the Clerks of Cathedrals, who have since been called Canons depended on their Bishops, as well as the rest of the Church-men: But that hindered them not from being the Bishops Counsellors, who in the beginning did nothing considerable without the Counsel, nay even the consent of

(1) *Usurpat. e  
aliene Juris-  
dictionis.*

their Clergy. Bishops, nevertheless, at present question most part of their rights, and accuse the Canons (1) of usurpation. The Parliaments favour the Bishops, because they are perswaded that the Jurisdiction which is called Episcopal, belongs by the Canon Law to the Bishop alone, and that the Canons can have no ground but the Exemptions and Priviledges which they have obtained from Popes, or which they enjoy by virtue of transactions made with Bishops, who could not do prejudice to the rights of their Successours in what concerned Episcopal Jurisdiction, because it cannot be communicated to others than Bishops, and that in every Church there is but one Episcopal Chair, (2) the Seats of Canons being but Benches in the Quire for the performance of Divine Service. But in my Judgment, Chapters which are founded on the Canon Law, have not Justice enough done them in that particular; and the Seats of Canons or Ancient Clerks were not in the beginning bare Benches for singing in the Quire, but Chairs of Jurisdiction, since the Fathers give them the name of Senators,

comparing

(2) *Nulla est  
cathedra nisi  
Episcopalis.*

comparing the Assembly of a Bishop with his Clergy to a *Senate*. The transactions therefore, that they have made with their Bishops ought to be considered, as agreements which they had power to make, and not as mere condescensions of Bishops in favours of Chapters. Besides, the Exemptions that Chapters have obtained from Popes, ought to be preferred before all other Exemptions, because these Priviledges are very many times but a confirmation of their right. I know that the Council of *Trent* hath derogated from the transactions of Chapters with their Bishops, unless they have been confirmed by Popes, and that it hath also annulled their exemptions: But besides that the Council of *Trent* is not received in *France*, where Exemptions grounded on good Titles are still in force, it may be said that the Bishops in that Council have not done the Canons Justice, and that as to the Concorats and Agreements which they have made with Bishops concerning Jurisdiction, they had right and power to make them. And therefore it was not in the Bishops power to annul the



same, but only to ordain a review, that it might be examined whether any thing had been done in them contrary to the Canons, and whether they have not been Simoniacal.

The Rights of Chapters during the Vacancy of the See.

If the Rule of the Canon Law were exactly observed, it would be easie to regulate the Rights of Chapters during the Vacancy of the See; because the Jurisdiction being common to the Bishop and Chapter, it must needs be that the Chapter succeed to the whole Jurisdiction after the death of the Bishop, and that by consequent it present to all Benefices until the See be filled. But the contrary is practised; for the Benefices which the Bishop confers with his Chapter, are distinguished from the Benefices to which he presents alone. In regard of the first, as the Chapter bestows them joyntly with the Bishop, so does it retain the Right of conferring them alone, during the Vacancy of the See: But it disposes not of others, as it is expressly mentioned in the 31th Book of the Decretals (1) *Cum nusquam inveniatur cautum in Jure, quod capitulum, vacante sede, fungatur vice Episcopi in collationibus*

(1) Tit. 9. cap. 2.

*bus præbendarum*: That is to be understood of Collations that belong to the Bishop alone, and it is even extended to those where he would be obliged to take the Advice and Consent of his Chapter. The reason of that practice is, because the Right of conferring passes then to the next Superiour; and it cannot be said, that the Chapter is superiour, nor even equal to its Bishop, in the Benefices to which the Bishop presents alone. However, I think, if matters had been examined to the bottom, the Chapters might confer all Benefices, *sede vacante*, because then they would re-enter into their Ancient Right after the death of their Bishop. It hath not been minded, that that Decretal was made for the profit of the Pope, who happens often enough during the Vacancy of the See, to be immediate Superiour; and so in some sense he becomes Ordinary. There is in the Bullary a Constitution of *Pius V.* whereby he reserves to himself all the Benefices depending on Bishops *sede vacante*; but most of the Constitutions in the Bullary are not received in *France*. It is certain that Chapters are in place of the Bishops

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during the Vacancy of the See, for all Collations which are called necessary; and therefore they collate upon the Presentation of Patrons, and the Nomination of Graduates. *Vacant Cures*, though they be in the Collation of the Bishop alone, ought to be reckoned in the number of necessary Collations: But many are not of that Opinion as to this last Right, for the reasons which I mentioned before. It belongs to the Chapter also to confirm not only those who are presented by Patrons, but those also who are chosen. The reason which many able Canonists give for authorizing that Right of Chapters, is because there is difference to be made betwixt free, and necessary Collations; (1) the first are favours that absolutely depend on the Bishop; but in the others he has not the same power, seeing he cannot reject those who have been chosen, or presented, if they be found capable. It would be then necessary, according to that Maxim, to reserve all the Collations which are called free, to the Bishop who is to succeed; but that is not observed in *France*, where the King hath his Right of the *Regale*, and presents

(1) *Conferre est libera voluntatis; at institueri praesentiarum, aut confirmare Electum, est necessitatis.*

presents to all Benefices that have no Cure of Souls; until the See be legally filled; and for other Benefices they are provided to in the manner as I have just now mentioned.

We are now to explain the Rights of Patrons, which have also derogated much from the Ancient Right of Bishops, on whom all the Churches of their Dioceses depended absolutely, and without any restriction. They are called Patrons of a Church, who have founded, or endowed it; so that there may be several Patrons of one and the same Church, because of different Benefits, for which the Church is obliged to different persons, whether for having built it, or for having bestowed the Ground whereon it is founded, or for having allotted Lands or Possessions, for Maintenance of the Ministers that serve the Cure of the same. All these things acquire to the Benefactors a Right which is called the Right of Patronage; and though it doth not clearly appear by the Deed of the Foundation, that they have reserved to themselves that Right, yet still they have it, provided they have not renounced the same. The

The Rights of Patrons.

The Patrons enjoy several Honours and Priviledges by virtue of their Patronage; the chief is the Right of presenting to the Bishop, or other Ordinary Collator Clerks to be provided to the Benefices whereof they are the Patrons: And if they whom they present be capable, the Collator cannot refuse them; he is obliged to give to the Presentees Collation or Institution upon the Letters of Presentation: And if it happen that slighting the Patrons, they give the Benefices to others, the Provisions are null. Now, that Presentation which is the chief advantage of Patronage, hath been granted long before the Establishment of the New Law, and of Benefices, to those who founded Churches, and maintained Ministers: For Bishops Ordained for the same Churches, those who were recommended to them by the Founders, when they were capable of the Ministry to which they were called. That is expressly mentioned by *Justinian* in the Novel 126. chap. 18. where it is said; *Si quis Oratorii domum fabricaverit, & voluerit in ea Clericos ordinare aut ipse, aut ejus hæredes, si expensas ipsis Clericis*

*Novell. Justinian.*

*ricis ministrant, & dignos denominant, denominatos Ordinari. Si verò qui ab eis eliguntur, tanquam indignos prohibent sacre regulæ ordinari; tunc sanctissimus Episcopus quoscunque putaverit meliores ordinari procuret.* The Ancient Canons make mention also of that Right of Nomination granted to Patrons or Founders of Churches.

*Gratian*, who (1) alleges the Canon (1) 16. q. 7. of the first Council of *Orleans*, to prove " 10. that all the Churches of every Diocese are in the power of the Bishop (2) (2) 16. q. 7. makes in the same place several Re- " 32. strictions in favours of those who have founded Churches: And amongst others he asserts their Right of Nomination upon the Authority of a Council of *Toledo*. And therefore Bishops or other Ordinary Collators can never derogate from the Right of Patronage, though they look upon it as a kind of servitude annexed to Benefices, which, for all that, depend wholly on them, because of the Right of Collation or Institution which belongs to them. Yet that hinders not Patrons from considering it as an honourable Right: And though it be the Institution or Collation that properly

perly invests the Beneficiaries in their Benefices, *quia presentatio non est pars substantifica Institutionis, sed est tantum quaedam servitus beneficii*; yet it is always true that the Institution or Collation of Bishops, is not altogether in their own power in respect of Benefices that are in Patronage, because they are limited to give the Institution to those who are presented to them by the Patrons.

There are two sorts of Patrons, Laick, and Ecclesiastical; and though the right of Nomination to Benefices whereof they are the Patrons, be common to both, yet they differ in many things, and Lay Patrons have even some advantage over the Ecclesiastical.

The Privileges of Lay-Patrons.

I. The Pope nor his Legate can never derogate from the right of Lay-Patrons and they who favour the Court of Rome say only that the Pope might absolutely, if he would, do it, seeing he is Master of all Benefices, but that he never will. And therefore neither the Pope nor his Legate, can ever prevent Lay-Patrons, who have four Months entire for presenting to Benefices. 'Tis true Ecclesiastical Patrons have six Months,

Months, for providing to the Benefices of their Patronage; but that is useless to them in France, where the Prevention of the Pope takes place. In Normandy Lay Patrons have full six Months to present in, as well as Ecclesiasticks: But that Priviledge is founded on Custom, and not on Law, that only allows four Months to Lay Patrons, which being expired they lose their right of Presentation for that time, the same being devolved on the Ordinary, who bestows the Benefice on whom he pleases.

II. The King cannot derogate from the right of Lay-Patrons by his right of the *Regale*, because the *Regale* gives him no more right, than the Papacy gives the Pope. Now it is certain, the Pope, as we have observed, can do nothing in prejudice of Lay-Patrons: On the contrary, the King can derogate from the right of Ecclesiastical Patrons during the *Regale*, and confer the livings that depend on them, without any necessity of having their consent: And as the *Regale* gives the King right to receive Resignations *in favorem*, in the same manner as the Pope enjoys it, so upon



upon such Resignations, he can confer Benefices Vacant within the Regale.

III. The Lay Patron has liberty to alter. If he hath presented an unworthy person, he can name another; which is not granted to an Ecclesiastick, who cannot accumulate Presentation upon Presentation, as a Lay Patron can. The reason of that difference is chiefly, because the ignorance of a Lay Patron is to be excused, but not of an Ecclesiastick, who, in such a case, forfeits his right, for that time, after the first Presentation.

IV. The Ordinary cannot admit of Presentations without the consent of the Lay Patron: Whereas he may do it without the Ecclesiastical Patron, from whose Right he can derogate in case of Permutation, but not in pure & simple Demissions; for the Benefice being then vacant, the Ordinary cannot confer it, but upon the Presentation of the Patrons, whether they be Ecclesiasticks, or Laicks.

V. A Benefice in Lay-Patronage cannot be burdened with a Pension or Annuity and Mr. Charles Du Moulin is of the opinion, that the Popes Rescript cannot

cannot be put in execution, unless the Patron consent to it, or that clause be added, *Si tamen Patroni consensus accedat*. But seeing the Pope can Derogate from the right of Presentation of Ecclesiastical Patronss by conferring in full right Benefices that are in their nomination; he can upon stronger reason, Authorise by his Rescripts, Pensions setled upon the Benefices of their Patronage, without any necessity of having their consent.

After all, it will not be amiss to observe, that the distinction of Patrons Laick and Ecclesiastical, is not taken from the difference of persons; for a Church Man may be a Laick in respect of his Lands and Inheritance, to which the Patronage is annexed: But a Lay-Man cannot be an Ecclesiastical Patron, because Ecclesiastical Patronage is a right that belongs to a Person or Community, by reason of Benefices which they enjoy. In a word, Benefices are in Ecclesiastical Patronage, when they depend on a Church. I do not here examine, whether the Pope can dispense with a Laick for enjoying a Benefice, and still remaining Laick; in which

Whence cometh the distinction of Patronages.

which case it would be true, that a Lay Person might be an Ecclesiastical Patron. It is sufficient that we have examined matters according to the ordinary course of Law; and without any farther inquiry into the thing, it will be easy to distinguish these two Patronages, according to the Principles that we have laid down. We must, nevertheless, observe, That it many times happens Lay-Patronages, in process of time, to become Ecclesiastical; and that either by the terms of the Donation or by the Translation and Donation that Lay-Men make of their Lands and Lordships to Churches or Monasteries. In the Title of the Foundation of a Church, it is sometimes expressed that the Founders reserve to themselves the Right of Patronage, only for a certain time, and for a limited degree of Kindred; and then that failing, the Ordinary in full right confers the Benefices that were before in Lay-Patronage. Wherefore it is necessary that Bishops examine the Titles of foundations, which are sometimes qualified with restrictions in their favours. Besides, we find that Cathedral Churches and Monasteries

Monasteries enjoying a great many Lordships with Patronages annexed to them, these Patronages have changed their nature, being become Ecclesiastical by the Lords making of them over to Churches. We must nevertheless, except great Benefices, such as Bishopricks and Abbeys, which the Kings of France can never transfer to the Purchasers of Crown Lands. The King can only transfer the Patronage of smaller Benefices with the Inheritance; and then the Patronage from Royal becomes Ecclesiastical, if it be given or transferred to a Church.

There arise great difficulties in France about Lay-Patrons who make profession of the Reformed Religion. And seeing Protestants are not treated according to the Rigour of the Ecclesiastical Laws, which deprive Hereticks of their Estates, it would seem that since they are left in possession of their Lands and Lordships, they should also enjoy all the fruits and honorary Rights that are annexed to the same Lordships especially according to the Maxims of the New Law, which (1) places the Presentation to Benefices in the number of Fruits.

Of Huguenot Patronage.

(1) Collationes sunt in fructibus.

Fruits. No man doubts but that Patronage is a real Right annexed to Lands, and that by consequent it follows them as being a fruit of the same. It would seem, then, that no regard ought to be had to the Quality of the person; in as much as the Right of Patronage is not personal, but real; and besides, the Presentation is but a servitude of the Benefice, and not a Spiritual Title. Nor doth the Presentation properly give the Benefice. But institution must be had from the Ordinary upon the letters of Presentation; and in that the Spirituality does really consist. The Ordinary may refuse those who are presented by the Patrons, if they be not capable; and so it remains always in the liberty of Ordinaries not to supply Benefices that are in Huguenot Patronage but with fit and able men. The Patrons, then, if they would, cannot abuse their Right, and it is impossible, that the Church can thereby receive any prejudice, if the Ordinaries discharge their duty.

These and many more reasons that might be brought upon that Subject, were the cause that Lay-Patrons professing

professing the Reformed Religion obtained heretofore an Order of Council, whereby they were allowed to nominate fit persons, who in their place might present to the Benefices of their Patronage; but that is not now observed; for the Ordinaries, in full Right confer such Benefices, so long as the Patrons make profession of the Reformed Religion. And therefore it is fit we should observe, that the Right of Patronage, which is real and united to the Land, is not lost, but only dormant and in suspense; so that if the Patrons happen to be reconciled to the Church, they enjoy their Right of Patronage, in the same manner as if they had never professed the Reformed Religion. That Custom is backt with good reasons; and though the Right of Patronage be not properly Spiritual, it is, at least, mixt, and it is a common saying, that it is *quid Spirituale annexum Temporalis*. And that it cannot be Sold separately, but only with the Land or Inheritance to which it is annexed. It is true, Patronage is a real Right; yet that hinders not but that it is exercised by a person. Now it is ridiculous, that a man

who believeth not in the Church, should present to it a person for a Spiritual Right, and that that Right should be granted upon his Presentation. Grant that the Bishop is free to accept or reject him who is presented, and that he is the Judge of his capacity. That is not enough: For if the Canons prohibit the giving of a Benefice upon the recommendation of an Heretick, upon stronger reason, it ought not to be given upon his Presentation. The Bishop can only Judge of defects that are known to him, and it may be the Protestant Patron may present a very capable man, but who may have secret engagements with himself. It is not strange to see Churchmen who have followed their studies at the charge of Protestant Patrons, in hopes of procuring them Benefices of their Patronage, to the end they may comply with them, and do prejudice to the Rights of the Church. But these Artifices are so hidden, that few can come to the knowledge of them. And therefore Patrons who profess the Reformed Religion, have with reason been excluded from the Right of presenting to Benefices which depend on their Patronage

Patronage. It may be doubted, whether Bishops in defect of these Patrons, who are incapable of presenting to Benefices of their nomination, ought in full Right to confer the same Benefices. It would seem, that that did belong to them by Canon Law, because the Patronage which is a kind of servitude tolerated by the Church, ceasing, the Bishops enter again into their ancient Right. But on the other hand, seeing Lay Patrons enjoy not the right of Patronage, but because of their Lands and Inheritances, there is a great deal of appearance, that it belongs to the King who is their Sovereign Lord, to supply the defects of his Vassals, when they themselves cannot exercise a Right that is annexed to their Fiefs; In the same manner as the King in *Normandy* has the Right of Wards, and that by virtue of that Right he is Patron in the place of the *Minors*, who have Lands with right of Patronage, until they be of age. However, It is certain that the Bishops are at present in possession of that right, and that they are grounded upon a declaration of the King, which they pretend to be in their favours. There happened lately



a Process betwixt the King and the Arch-Bishop of *Rouen* concerning the Cure of *Oinville*, which is in Huguenot Patronage, and to which both the King and Arch-Bishop had presented; which shews plainly enough, that the King had a mind to recover his right, having referred that matter from his Council to be examined in the great Council. After all, the Patrons professing the Reformed Religion, have found a device to preserve their Right of Patronage; For by a counterfeit Contract they sell their Lands with Patronages to some Catholick of their Friends or Relations; And so they remain Masters, unless the Fraud of their Contracts be discovered. But let us now come to Ecclesiastical Patronages.

The Original  
of Ecclesiasti-  
cal Patrona-  
ges.

Ecclesiastical Patronages derive their Original from the I. Council of *Orange*, where Bishops that found Churches out of their Dioceses, are permitted to present capable Persons to them, who are afterward to be ordained by the Diocesan Bishops. That Right hath past insensibly to all other Founders: And at length, regular Communities have also presented to Benefices depending

depending on their Monasteries. In their favours the Rule hath been made, which bears that Secular Benefices shall be given to Seculars, and Regular to Regulars. By Law all Benefices ought to belong to Seculars, because none but Seculars are by right capable of Ecclesiastick Employments, and that the Religious have only got into them by Priviledge and Dispensation. But since they have been permitted to possess Lands, nay Fiefs and Lordships, they have had many Churches in their disposal, which they have governed themselves, or committed to Secular Priests. They commonly gave Parish-Churches to be governed by Secular Priests, allowing them but a very moderate Stipend; and had even the power to change them as they pleased. But at length they were forced to place Curates, or perpetual Vicars in their Churches, for preventing a vast number of Abuses; and partly from thence we have the Cures to which they present in Quality of Patrons. As to Priories and other Benefices to which they nominate, they were at first but Administrations, or Manual Benefices, which, for that reason,

The Original  
of Priories.

son, were called Obediences, because the Religious were employed in those Offices by the command of their Abbots or Superiours, whom they were obliged to obey; and they continued no longer in the Employments, than their Superiours pleased. They had the name of *Præpositi*, or *Obedientiarii*, and their Care extended more to the Temporal than the Spiritual. If Lands lay remote from the Monastery, some Religious were to be sent thither to take the care of them: And seeing Monks ought not to live alone, unless they were Hermites or Anchorites, they had Companions assigned them, of which one took the Title of *Præpositus*, and the places where they lived were called *Cellæ*, *Grangia*, *Obedientiæ*, to distinguish them from the Principal Monastery of which these Houses were but Dependances. This is the Original of Pories, and other lesser Benefices of Monasteries, which in the beginning were Manual and in Rule. Nay, it seems even contrary to the Institution of the Monastick life, that Monks should properly possess Benefices in Title, in the manner that they are Established by the  
New

New Law; for they are the absolute Masters of their Revenue, which is in some sense contrary to the Vow of Poverty that they have made. In process of time, many of these Pories have been conferred on Seculars, whether because of the scandalous Lives of the Religious that possessed them, or for other reasons; and by that means the Benefices are gone out of the Rule. Forty years possession is enough to change the nature of Benefices. In the mean time the Monks who perceive that these Benefices are by their Foundation regular, use all possible Endeavours to recover them again, and spare no means to get them out of the hands of the Seculars who possess them, being persuaded that they cannot commit Injustice nor Simony in regaining the Lands which they pretend belong to their Church. When Benefices are once in possession of Monks, it is hard for them to return again to Seculars, because, as we have observed before, after forty years possession they become regular. On the contrary, it happens often, that Benefices possessed by Seculars, fall under Rule, because Regular  
Communities

Communities compound with Seculars, by Pensions, Annuities, or other ways. We have then general Rules for distinguishing Benefices in Rule, from those that are not, to wit, forty years possession; and failing that Rule, all Benefices of their own nature, and by Canon Law, are Secular. Nothing but the Foundation can prove a Benefice to be in Rule; and then the Title of the Foundation derogates from the Ancient Canon Law.

The Right of Commendatory Abbots in the nomination to Benefices.

Though it be certain, that Religious, and Regular Communities present to many Benefices in Quality of Patrons, yet there is great difficulty, to know to whom that Right of Patronage belongs since the Establishment of perpetual *Commendums*: And there happen many suits upon that account betwixt the Commendatory Abbots and the Monks. Yet it is an easy matter to resolve all these difficulties, if we lay down some principles that cannot be questioned. We must not consider then the Modern *Commendums* as bare Consignations, but as real Titles, as all the Bulls of *Commendum* bear. If the *Commendums* were no more but bare Consignations, the

the Commendatories could not have, as is commonly said, *Jus in re*, but barely the keeping, or *Custodiam Commendæ*; and by consequent they could not dispose of Benefices, because such kinds of *Commendums* or Consignations are only for a certain time. It is not so with the *Commendums* now in question, because they are *ad vitam*, and retain nothing but the name of *Commendum*, being in effect, real Titles, which give to Comendatory Abbots all the Rights which Regular Abbots enjoyed, to whom they have succeeded. That Principle, which is unquestionable, being supposed, it is plain enough to whom the Right of Patronage belongs, whether to the Abbot alone, or to the Monks Jointly with him. There needs no more for that, but to consult the Right of the Regular Abbots of every Order. If the Constitutions and Custom of the Order attribute to the Abbot alone the honorary Rights, there is no doubt but the Abbot *Commendatory* ought to enjoy the same Rights. If, on the contrary, the Regular Abbot cannot enjoy these Rights but with consent of the Community, and that he be not the absolute

solute Master of them ; they must be divided betwixt him and his Community, in the same manner as temporal goods are : For then the Rule gives to the Monks the same power in respect of their Abbot, as the Canon Law gives to Canons in regard of their Bishop. We must, nevertheless, take notice, that it is not enough to establish the Right of Monks, that the Abbots have taken the counsel, or even the consent of the Community, when there has been occasion of nominating to Benefices, for many may have done that, without any obligation upon them from their Constitutions : But it must besides, be made out, that their Nominations would have been null without the consent of the Community. The reason of that Maxim is, because the Canon Law and Popes Bulls give all the honorary Rights to Abbots ; and so there is no derogating from them but for great reasons. It is certain, the first Monks were entirely subject to their Abbots in all that concerned their Functions and Employments. St. *Benet* hath also reserved to the Abbot that Superiority over the Religious : And when that  
Order

Order began to receive Lands, and that it was necessary to give the charge of them to some Monks in particular, the Abbot alone gave them their Commissions which were at first but Administrations, though since they are become Benefices. I make no doubt but the Popes Bulls, which are very favourable to Commendatory Abbots, are founded on that Ancient Right of Regular Abbots : But as to what concerns Temporal goods, the same Bulls of the Pope do not allow them to be alienated, because they belong to the whole Community, and not to the Abbot alone. And therefore when the question is of selling or alienating any Lands or Possessions belonging to the Abbey, the Abbot is not then absolute Master, but his Community must consent to it. For the same reason Commendatory Abbots are obliged to divide the goods and Revenues of the Abbeyes with the Monks or to give them Money to the value of their share or Portion: And though they are very willing to rest satisfied with a yearly pension, yet they have still the same Rights to the Lands and Inheritances.



ritances. It concerns them to have a care that they be not imbazeled in the hands of the Abbot, inasmuch as their Portion diminishing by the diminution of the Revenues of the Abbey, their Pension would be lessened at the same time. The Abbots themselves cannot hinder the Monks from taking cognizance of the Leases which they make of the Lands of their Abbey, and from having always an eye over their actions, because they have the same right that the Abbots have of enjoying the Revenues of the Monastery.

Agreements  
betwixt Ab-  
bots and  
Monks.

That common Right of the Abbots and Monks in regard of the Temporal Profits of Abbeys has given occasion to Agreements and Transactions that are made betwixt them for the partition of the same. In *France* the Revenue of the Abbey is divided into three parts, of which there is one for the Monks, one for the Charges, and a third for the Abbot. But the Abbots enjoy commonly two parts, because they oblige themselves to defray the charges; and if they neglect to do it, a third part of the Revenue may be sequestrated, until it be done. Upon that foot, it is

easy,

easy to decide the difficulties that might arise betwixt the Abbot and Monks about the division of the Revenues: There needs no more, but to give a third part to the Monks, and two thirds to the Abbot, who is obliged to the reparations of the Fabrick, payment of Tenths, and other Charges. As to the honorary Rights, they ought not to fall under a dividend, because by the Canon Law they all belong to the Abbot alone, who may make them over either in whole or in part to his Monks. But that gratuitous Concession does not prejudice the Rights of his Successours, because the Abbot can only dispose during his life, of the Rights that subsist in his person; and the Monks cannot enjoy them after the death of him that hath granted them, because that Concession is no more in force. It is not the same as to Agreements or Transactions, because all Transaction supposes the Right of two Parties who are agreed together; and so the agreement will always subsist in respect of the Religious, though the Abbot be dead, until it be broken off by his Successour. In *France*, Abbots may break the Agreements

ments

ments of their Predecessours, especially if they think themselves injured. We have many instances of that practice: And there seems to be reason for so doing, because Abbots may make secret Compacts with the Monks; and take the advantage of such, to the prejudice of their Successours: And therefore the Abbots have right to break the Agreements of their Predecessours. It is a harder matter to dissolve those Transactions when they have been confirmed at the Court of *Rome*, and in the Parliaments, with cognition of the cause; for then they become real, and by consequent oblige the Successours. In that case, the Abbots cannot rescind the Concordat or Agreement, till they have obtained a Rescript from the Pope, and letters from the Parliaments upon a Bill preferred.

Farthermore, we are to take notice that many times the partition of the honorary Rights is inserted in the Concordats with the division of the Revenues and especially the Presentations to Benefices, as if that could be divided betwixt the Abbot and Monks. It is a vicious clause in the Agreements, because

cause it is of the nature of a Concordat, that they who Transact have some Right to the thing for which they do Transact; otherwise it is not an Agreement, but a Concession. This Maxim, which is undeniable, being supposed, it is easy to resolve the difficulties that daily happen betwixt Bishops and Religious communities during the Vacancy of the Abbatial See. The Ordinaries provide to Benefices that are vacant at that time, and the Monks also on their side, present; which daily occasions great suits, and it seems that there is nothing as yet fixt and determined as to that. But according to the principle which we have laid down, there is no doubt but when the Religious Community presents to Benefices jointly with the Abbot, they ought still to present during the Vacancy, because one of the Presenters is enough in defect of the other. But when the Abbot alone nominates to Benefices, and he dies, the Ordinaries enter again into their Canonical Right, and confer in full power, because the Patronage or Right of presenting ceases by the death of the Patron.

That right of Ordinaries, or of Religious

To whom it belongs to present to Benefices during the Vacancy of the Abbatial See.

religious Communities, is not to be called Devolution : For Devolution hath no place, but when there is a neglect on the part of Patrons or Collators ; and then their Right is devolved upon the immediat Superiour. In the question we now examine, there is no neglect ; and they who say that on those occasions the Right is devolved upon the Ordinary, or upon the Chapter of the Monks, speak very improperly. It is far better said, that the Ordinary, or Chapter of the Monks provide then to Benefices by the Canon Law, and their own Right. In vain do the Monks object to Ordinaries, their Concordats, or the Rights of their Chapter, because, as we have already observed, the Chapter hath no power *sedē vacante*, but as to Benefices where they present jointly with the Abbot : And as to the Agreement or Concordat, there can be none but for what belongs in common to the Abbot and Monks. Now the Presentation to Benefices and other honorary Rights being only in the person of the Abbot, they cannot fall under a dividend, and by consequent no Transaction can be made about them. To this

this we may add, that Ordinaries have an acquired Right to all the Benefices of their Diocese, when there is no Patron; for then they confer in full Right; and so Abbots cannot give a Right which is not their own.

What we have said of Commendatary Abbots, ought also to be understood of Priors, who have Monks in their Pories ; for the Division of the Rents ought to be made in the same manner. It is worth the observing, that amongst the Religious there are two sorts of Priors, to wit Conventual Priors, and Claustral. The Claustral Priors govern the Abbey in absence of the Abbot, and during the Vacancy of the Abbatial See, as it happens to be so long as the *Commendum* lasts. Conventual Priors are the Heads of Houses dependant on Abbeyes, in regard, that, as we have said before, Monks were sent to take the charge of the Revenues of these Houses; and there was one amongst them whom all the rest obeyed, from whence at length, came the name of Prior. And it is from that that the simple Pories, as they are called now adays, because they are secularised, and Chappels, derive their

Of Priors among Monks.

their Original. Now seeing some of these Priors became considerable, they were elective in the same manner as Abbeyes were. And therefore they are in the Kings Gift, as well as the Abbeyes; and the Pope in providing to them observes this difference only, that he bestows Bishopricks and Abbeyes in full Consistory, and Priors in Chamber. I have said that Claustral Priors govern the Abbey during the time that it is in *Commendam*; which is to be understood of the Government in respect of Monastick discipline: For though *Commendatary* Abbots are substituted in the Rights of Regular Abbots, yet it hath not been thought fit to subject the Monks to them, in what concerns the Rule of their Institution. However, they take the power of putting in and turning out the Claustral Priors, according to the terms of their Bulls, which give them full authority over the Monks. But that power hath been qualified especially in respect of the Religious who live in Congregation, such as are in *France* the Benedictin Monks of the Congregation of *St. Maur*, who elect their Claustral Priors. At first, every Abbot

Abbot was Supream in his own Monastery, and Independant of any other. The Priors and other Claustral Officers depended solely on him: But the Reformations of *Cluni* and *Cisteaux* introduced some alteration into the ancient Government. The Monasteries that followed that Reformation presently submitted to the Abbots of *Cluni* and *Cisteaux*, who were like the Generals of all the other Abbots and Priors, and by that means they became dependant on them.

*Cluni* and *Cisteaux* have changed the Ancient Government of Monasteries.

Besides, the Heads of Monasteries, that they might be independant of the Bishops, were exempted from their Jurisdiction, which made a kind of New Hierarchy in the Church: For whereas before the Monks depended on their Abbot, for the Rule, and for all the rest, on the Bishops in whose Dioceses they lived, they made now a particular and distinct Body in the Church, which acknowledged no Bishop but the Pope for Superiour; and for Government of that Body they established a Form of little Councils, which they called General Chapters: The Pope having granted to the Heads of these Orders



great Priviledges, which have in many things derogated from the Jurisdiction of Ordinaries. This Reformation hath been found so useful to keep Monks in their Duty, that it hath not only been received amongst other Religious, who pretended an Exemption from holding such Chapters, but is also augmented, especially since the Council of Trent, which will have Monks live in Congregation. In this manner the Reformation which is called the Congregation of St. Maur, hath been established in France, under the Popes Gregory XV. and Urban VIII. who in their Bulls of Erection gave power to that new Congregation, to aggregate thereunto the Monasteries that would accept the Reformation. And this hath wonderfully redounded to their profit; for they possess at present all the good Abbeyes of the Kingdom. They depend not at all on the Bishops, but immediately on the Pope, and they are governed by a General who is chosen every three years according to the Rules of the Canon Law. Besides, they have Provincials, Assistants and Definitors, as the other Modern Religious have.

I mention

I mention this, that we may not measure the Rights of Commendatary Abbots according to the practice at present observed amongst the Monks, but according to the Custom that prevailed before these Reformations. The Popes, who make Commendatary Abbots, have in France taken some Rights from them, and given them to the Religious of the Congregation of St. Maur; for they give them not only liberty to chuse Claustral Priors independently of the Abbot, but have also united to the Conventual Mensæ the Claustral Offices, which the Abbots had Right to dispose of before the Reformation, as well as of all the Benefices of their Abbey. The power then of Commendatary Abbots over the Monks must be limited according to the Bulls of Popes that have been received in France; and we must know wherein they have derogated from the Bull of *Commendum*, which gives Commendataries all power both in Spirituals and Temporals. By Spirituals Commendatary Abbots would have meant the Presentation or Collation of Benefices, and the Jurisdiction in regard of the Monks. They pretend-

A Derogation from the Rights of Commendatary Abbots.

P 4

ed

Prosper Fagnani.

ed that the appointing of Claustral Priors depended on them, that the Right of visiting and correcting belonged to them; and in a word, that being substituted into the Rights of Regular Abbots, they ought to have the same Authority and Jurisdiction. But *Fagnani* relates a Bull of *Innocent X.* in favours of the Monks of *Cisteaux* against a Commendatary Abbot, who took to himself all the Rights that we have just now mentioned. By that Bull it is ordained, that Commendatary Abbots shall exercise no Jurisdiction over the Monks; that the Abbot of *Cisteaux*, and other Regular Abbots of that Order, shall visit every one his own District, or Commissionate Visitors; and that the Spiritual Jurisdiction over Monks shall not be administered by Commendatary Abbots. It meddles not with the Nomination or Collation of Benefices, because without doubt that belongs to the Commendatary Abbot, as it did before to the Regular, who in the beginning had a Sovereign Authority over the Monks; and they, on the contrary, had none over him, as appears by a Letter of Pope *Pelagius* related by *Gratian*,

*Gratian*, against the Monks, who under pretext that they had elected their Abbots, would needs turn them out, and chuse others in their place who might comply with their manner of living. (1) *Nullam potestatem de cetero, says Pope Pelagius, nullam licentiam Monachis relinquimus pro arbitrio suo aut Abbates expellere, aut sibi met alios ordinare, quia nulla autoritas remanebit Abbati, si Monachorum potestati ceperit subjacere, ut de cetero fideliter & studiosè universa quæ vel ad divini cultus reverentiam, vel ad utilitatem ejusdem Monasterii pertinerent, Abbatis sollicitudo, ad quem potestas tota pertinere convenit, debeat adimplere.* These words are chiefly to be observed. *Abbatis sollicitudo, ad quem potestas tota pertinere convenit.* And the Commendatary Abbots, who by Dispensations from Popes have succeeded to the Rights of Regular Abbots, have by common Law the same absolute power, and ought by consequent dispose of all the Benefices of the Abbey, without any opposition from the Monks, unless there be a contrary Custom that derogates from the Canon Law, which gives the whole power

(1) Gratian. 18. q. 2. C. nullam.

Of Regulars.

power to the Abbot, and not to the Monks.

I shall say nothing in this place of the other Religious, who are commonly called Regulars, because much of what we have observed may be easily applied to them. It is true in the Canon Law Monks and Regulars are pretty often distinguished, but they are also many times comprehended under the same Rules; and that which makes them different is not considerable as to the matter we treat of. The Canons themselves who are called Regular, and who take the Title of Regular Clerks, lead at present a life that resembles more that of Monks, than that of Clerks: For they live separately in their Monasteries, and are subject to their Abbots or Priors. They are no more in the Cathedral Churches under the direction of their Bishops, and so far from being employed by them in Ecclesiastical Functions, they depend entirely on their Regular Superiours, who dispose of their Persons and Employments. And therefore it ought not to be thought strange, that we reckon all Regulars in the number of Monks, because they differ not from them,

them, as the learnedest Canonists have observed (1) unless in certain Cases expressed in the Law, *exceptis casibus in Jure expressis*. This makes me think, that the Abbots or Priors of Canon Regulars ought by common Right, as well as Abbots amongst Monks, to have all the government both in Spirituals and Temporals, and that therefore it belongs to them to dispose of all the Benefices and Offices of their Communities: But they have followed the Reformation, that subjects them to Constitutions, wholly opposite to the ancient common Right of Abbots. We see that the Abbot of St. *Genevieve* in *Paris* is elective, and that every three years they make a new Election. In a word, they live in Congregation, and have general Chapters, for ordering the more important affairs of their Order: Which differs much from the Ancient Rights of Abbots. Nor is it to be imagined, that if the Abbey of St. *Genevieve* returned into *Commendum*, the Commendatary Abbots ought to be obliged to share their Jurisdiction with the Religious: But they ought to reassume the Ancient Right of Abbots, and only

(1) Hostien. Panorm.

Hostien. Panorm. l. 1. c. 12. §. 1. c. 12. §. 1.

only consider wherein the Popes have derogated from it in favours of the Religious who live in Congregation. But as it hath been already observed, there is nothing taken from Commendatary Abbots, but the Jurisdiction that concerned Monastick Discipline. Though I have often spoken of Commendatary Abbots, and of the Rights that belong to them, yet I thought it not proper to examine particularly, whether their Title be Canonical, because that would have carried me from my subject; it being sufficient that the New Law hath established it.

A comparison betwixt Commendatary Abbots and Regular.

It is true in the beginning, there was great crying out against *Commendums*; And there are still a great many that cannot approve of them: But if a History were made of Regular Abbots as there has been of Commendataries, we would find that there have been greater abuses in the Church under Regular Abbots, than there are at present under Commendatary. Commendatary Abbots have but the third part of the Revenues of their Abbeyes in their disposal: The second part is appointed for the maintenance of the Monks, and the third

third for the charges of the Monasteries. The Regular Abbots, on the contrary, had the disposal of all the Revenues of their Abbeyes; they starved their Monks, and squandered away the Rents of the Monasteries, by leading lives altogether inconsistent with their profession. The difference then betwixt Abbots Commendatary and Regular is, that the former enjoy but a third of the Abbey, and the whole was for the use of the others. It is true Regular Abbots had not Bulls assigning them the Revenues of their Abbeyes in *utilitatem personæ*; but notwithstanding they disposed of them as if they had been properly their own: Whereas the Bulls of Commendatary Abbots appoint the best part of the Revenue of Abbeyes for the use of the Poor, the Monks and Churches. I am perswaded that the Monks desire not that Regular Abbots should be restored with the same power they had before. If it were so, the Thirds which now they enjoy peaceably without any charges, would no longer be at their disposal, but in the power of the Abbot, who would govern them according to his humour. I assert nothing but



A Description of the Life of Regular Abbots.

but what hath been said before me by the most zealous Benedictine Monks, who have often complained of the Rigour wherewith their Abbots treated them, and of the profuse dissipation of the Revenues of their Abbeyes. That I may not be tedious, I shall only here report some words of the Abbot *Tritheimius* upon that subject, and refer the Reader to the works that he hath made for the Reformation of his Order, and especially of the Regular Abbots of his time.

It is well known that *John Tritheimius* was a Religious Benedictine, and one of the most famous Regular Abbots of his Order. He was at many General Chapters, and presided in some, in which some Harangues that he made are still extant, wherein he describes at length the disorders of his Brethren, who lived in a more secular way than Abbots Commendatary do at present.

(1) He upbraids them with want both of knowledge and piety, that they were wholly addicted to the World, and minded nothing but Riches & Pleasure. He lays before them the holiness and other virtues of their Forefathers, (2) and at

(1) *Tritth.*  
*Orat. 2. Ann.*  
1492.

(2) *Orat. 2.*  
*Ann. 1493.*

at the same time shews how much their Order was corrupted, after this manner bespeaking them in an assembly: *O vos Abbates idiotæ, & scientiæ salutaris inimici, qui diem obscænis amoribus consumitis, qui vinum in saturitate bibitis, qui terrenis lucris intenditis, qui ad tabulam stolidi luditis; quid respondebitis Deo & legislatori vestro benedicto?* That corruption was so universal, that he affirms that of Ten Thousand Monasteries, there were not a thousand that any way observed the Rule of their Institution; but that the Abbots were wholly plunged in debauchery, *voluptatibus carnis submersi*, and he applies these verses to them.

*Neglecto Superum cultu, spretoq; tonantis  
Imperio, Baccho, indulgent, Veneriq; ministrant,  
Sacra ferunt Auro, numinis Altaria Vendunt,  
Auro vine libant, Auro laquearia fulgent.  
Scorta tegunt gemmis, canibus convivia ponunt,  
Exuvias inopum culti ditesq; rapinis,  
Successu elati Superos Acherontaq; rident.*

This is the description that the Abbot *Tritheimius* makes of the Regular

(1) Qui nomi-  
ne reformati, re  
autem ipsa  
deformati sunt.

(2) Orat. 4.  
Ann. 1496.

gular Abbots of his time in a Harangue that he spoke in their presence; and in the same place he adds (1) that they who called themselves reformed were no better than the rest. The same Abbot in another Harangue describes at length (2) the rigourousness of Abbots towards their Monks, whom they obliged to fast, whilst they themselves feasted with those whom they invited to their Tables, and exempted themselves from the usual Fasts under pretext of Hospitality. He upbraids them that they were not true Abbots, seeing they were not in place of Fathers to their Monks, to whom they denied what was necessary: *Necessaria fratribus tuis alimenta subtrahis, vilia & insipida largiris; tu optimo vino stomachum tuum satias, fratribus quod deterius est subministras.* This being well considered, I don't think that the Monks who at present live under Commendatory Abbots, desire to be again governed by Regular, who have used them more like Slaves than Children. And it is not to be imagined that that abuse reigned only in the time of Abbot *Tritheimius*: But that learned Abbot was moved with the disorders whereof he

he was a witness, and not being able to suffer them, he wrote a letter which bears this Title, *Liber penitencus de ruina Monastici Ordinis.* Wherein he deplores the lamentable state to which the Order of St. *Benet* was reduced (1) he says freely, that the Church had no need of Monks: And seeing many Monks forsook their Profession to become Canons, he calls them Apostates, notwithstanding the Dispensations they had received from the Pope. Most part of these evils in Monasteries proceeded from the Elections, because (2) wicked Monks could not but chuse a wicked Abbot.

In fine so excessive was the vanity of Monks and Abbots at that time, that as the same Author informs us, Monks would not be called Monks. They abhorred so Sacred a name: *Sanctum nomen quasi stultitiam abominantur.* Nor would the Abbots be termed Abbots, they thought they were affronted, when that Title was given them. *Abbatis nostri nomen suum tanquam indignum judicantes, gratiosi domini vocantur; & si contigerit eos similiter appellari dominos Abbates, indignantur, & vocantem se aspernantur*

(1) *Trit. de ruina Monast. Ord. cap. 2. ut breviter dicam quid sentio, nec Monachis Ecclesie, nec Ecclesie Monachi digni sunt.*

(2) *Quales Monachi, talia Abbas Monachorum.*

*aspernantur & avertuntur tanquam magnam passi injuriam.* Besides, the Regular Abbots of that time fell into a passion when they were called, *My Lord Abbot*; And at present Church men of quality look upon that as a very honourable Title. But what is stranger, they had more men in their Retinue, than the wealthiest Bishops had; and it many times happened that a poor wretch who had been chosen Abbot, had the Train of an Arch Bishop: *Videres, contines Abbot Tritheimius, famulos eorum flectere genua, deponere capucia sua & se inclinare; non Abbates, sed Archiepiscopos putares. O vanitas insana! Filius pauperis sutoris Abbas factus, dominus gratiosus nominatur.* And that nothing might be wanting to the diversion of Regular Abbots, they went to baths with great equipage, and in good company, as the same Abbot upbraids them in one of his Harangues; (1) *Ad Thermas sumptuose properas, socios & socias vocas.* This was the condition of Monasteries and Regular Abbeys, when Commendatories were established: And I leave it to the Reader to make the comparison betwixt them. I pretend

(1) Tritheim.  
Orat. 4.

tend not, for all that, to Justify the *Commendum*, nor the vices of Commendatory Abbots. But it is my design only to shew that we must not always Judge of things, by the abuse that men make of them; and that if the History of the Abbot Regular were made publick, as it hath been intended, all men would be perswaded that Regular Abbots have been no better men than Commendatories; and that it would be, in fine, a very bad Reformation in the Church, to reduce Abbeys again under Rule; in the manner as they have been formerly. It might be said then *erit novissimus error peior priore.* To make a profitable reformation to the Church, it would be necessary to go back to the most Ancient Canon Law, which subjects Monks to the Jurisdiction of Bishops, and at the same time establishes an independance amongst the Houses, as it was in the beginning. Every Monastery should obey a Superiour or Abbot, and the Superiours or Abbots should obey the Bishops, who ought to visit them as well for the Spiritual as Temporal. That would be the means to hinder disorder

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disorder and the dissipation of Revenues, of which a great part is spent in needless Journeys, and in holding general Chapters. But it is to no purpose to enlarge any more on this matter, which requires a particular treatise.

Military Orders.

Besides the Monks and Regulars we have spoken of, there is another sort of Religious, who according to their Institution, bear the name of *St. John of Jerusalem*, from whom descend those that are called Knights of *Malta*. That Order is much different from other Religious, and their Benefices differ also from the nature of all other Benefices. They are rather the Administrations of Hospitals, than Benefices, and in effect, that Order began by an Hospital that was built at *Jerusalem*, for the reception of those who went to see the holy places. The founding of Hospitals for Lodging of Strangers, is Ancient enough and there was either in the Bishops House or elsewhere, places appointed for that end, that the sick might be taken care of, and other charitable works performed, for which part of the

the Revenue of every Church was allotted: Afterward in process of time they were distinguished from the common Revenue of Churches, and many private persons gave Lands and Inheritances to be erected into places of piety in imitation of Monasteries. They cannot be said properly to be Benefices, because the Rents of them are not designed for Church men, but for all men who are in misery and want. And therefore there are as many kinds of Hospitals as there are calamities. In the beginning the Bishop had the care of these Monasteries, because he ought to provide for the necessities of the Poor, and of all those who were in misery, as well as for the subsistence of Clerks. But the Religious of the Hospital of *St. John of Jerusalem* made a particular Body in the Church, which hath to this day its particular Constitutions. To speak properly there is but one Hospital in all the Order, and that Hospital is at present reputed to be in *Malta*. All other private Hospitals or Commanderies, are but members of that Hospital, on which they depend: And therefore their Revenue by Right,

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belongs



The Original of Commanderies.

belongs to the common Treasury of the Order.

I think Commanderies may be compared to the conventual Prieuries of Monks, which in the beginning were only administrations of the Revenues of certain places distant from the principal Monastery. As Monks were placed in these Houses to take care of the Rents, so also there hath been a necessity of sending Knights into those places where the Order had Lands. The name of *Commander* hath great resemblance with that of *Præpositus*, which was given to Monks who managed the Rents of these remote Houses. Besides, their administration was called *Obedientia*, because they depended wholly on the Abbot, who gave them that Commission. It is just so with the simple Commanders of *Malta*, who are rather Farmers of the Order than Beneficiaries. They have, nevertheless converted their Commissions or Farms into a kind of Benefices, paying a certain acknowledgment to the common Treasury of the Order; and that acknowledgement is called *Responsion*.

We must put a difference then, betwixt

twixt Hospitals which are by Foundation Secular, and Regular Hospitals that are possessed by Religious, such as are the Commanderies we speak of, which are appropriated to the Religious of the Order, and cannot be possessed by others. Nay it is necessary also, that those of the Order be qualified for peaceable enjoying of them, and their Benefices are not all of the same nature. We must therefore observe, that there are amongst them Knights, Chaplains, and serving Brothers, and that there are Commanderies, or Revenues assigned to these three different qualities. There are besides the great Officers, the first of whom is he that at present is called the great Master of the Order, and is the Head; who in the beginning was the Master of the Hospital: Under him are the great Officers of the Order, who are for most part Military Officers because of the employments to which they are appointed, such as the Admiral, *Mareschal* and others. I shall not speak here of the Bayliffs or Conventual Priors who are of the great Cross, nor of their other Officers, because the Institution of their Order and their

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their Laws are Printed. I shall only add that it is to be observed, that though that Order be composed of so many Nations, yet it is but one only Convent divided into several Tongues. Every Tongue contains several Provinces, and in every province there is a great Prior who from time to time holds Provincial Chapters. For obtaining a Commandery one must be of the Nation where the Commandery lies, have performed his Caravans, which consist in some years Services at *Malta*, and be of the quality requisite for the Commandery, being besides bound up by certain Statutes; But they are often dispensed with at the Recommendation of Princes, who have also made Concordats with the Knights of *Malta*, as well as with the Popes.

A Military Order where in one may marry.

There is another kind of Knights who also enjoy Church Lands, and nevertheless seem neither to be Religious nor Ecclesiasticks, because they are Married. They call themselves, however, Religious, and have their Laws as other Religious have. In *Spain* the Commanders of the Orders of *St. James*, of *Calatrava* and *Alcantara* are of that nature.

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There are in *France* also the Knights of *St. Lazarus* who may Marry. It is pretty difficult though, to tell upon what Title these Married Religious possess Ecclesiastical Revenues; unless it be said, that being by Profession Religious, they ought to be obliged to Chastity: But that the Pope who according to the Maxims of the New Law, is Master of the Canons, has dispensed with that Obligation, and that by an Apostolical Priviledge they may have Wives: Which is conform to the opinion of the ablest Divines, who think that the Pope may for lawful causes dispense with Monks as to their Vow of Chastity. The married Commanders of these Orders must then be reckoned amongst Regulars, and they may in conscience enjoy, under the Title of Regulars, Church Lands that are appropriated to their Order. This, at least, is the opinion (1) of one the most learned and strict Canonists of our age, who calls *Philip II.* King of *Spain*, the greatest Prelate in the Church next to the Pope, because he was the chief or great Master of the three Military Orders of *Spain*, and enjoyed a good part of the Tithes of

(1) Mart. Navar.

*Phil. II.* the richest Pre-  
late of the Church.

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of Churches within his Territories. In this quality of Prelate Regular, the King of *Spain* is the richest *Beneficiary* in his Kingdom: And seeing he is not only great Master of the Orders of *St. James, Calatrava* and *Alcantara*, but is also King of *Spain*, he can, as King, appropriate to his own use the Revenues of his Commanderies, at least as much as is necessary to make him live like a King. In the same manner as it is lawful, according to the Maxims of the New Law, for Cardinals, Sons of Kings, Nobles and men of Letters to possess several Benefices, that they may be able to live according to their quality.

From all that hitherto hath been said, it is easy to Judge how much the Ecclesiastical Discipline hath changed in Beneficial matters, and how much the present practice differs from Ancient Customs. The Canon Law does, indeed give the entire disposal of Church Revenues to the Bishops within their several Dioceses; but the new and particular Law takes from them the greatest part of their power. Hospitals in the beginning depended on the Bishops, as all other goods and Lands  
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that were dedicated to works of Charity; they appointed men to take the care of them, and the administrators gave account of them. But by degrees they have lost that Right, and even private persons have possessed Hospitals in Title of Benefice. That Abuse hath been corrected by the Councils of *Vienne* and *Trent*, which revived the Ancient Canon Law: But they are not received in *France*, as to that point that the Administrators should give in their accounts before the Ordinaries. In effect, since the management of these Rents seems not to have any Spiritual relation, it has been thought more convenient to give the Administration of them to Laicks, who in some manner are in place of *Guardians*. Church-men are excluded from it, because they might abuse them, and apply them to their own use as Benefices belonging to themselves. Nor have the Nobility and publick Officers any share in that affair, because it might be feared that they would render themselves Masters of the Revenues assigned to Hospitals. And therefore they choose most commonly good and sufficient Citizens, and  
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the right of nominating them belongs to the Founders. The Edict of *Henry II.* gave the Oversight and Visitation of all the Hospitals of the Kingdom to the great Almoner of *France*: But *Francis I.* gave the same power to the Kings Judges of the places where the Hospitals lay. It is true the Ordinaries protest against that Edict, pretending that it is prejudicial to their Rights; But the Parliament of *Paris* took no notice of their opposition, farther then that it was decreed, that they might depute one or two on their part, to be present with the Kings Judges at the Visitation, but with this condition, that they could not in any thing contradict them. *Henry II.* made a Second Edict, which is wholly conform to that of *Francis I.* Since that time the Ordinaries have no power over the Revenues of Hospitals, only they and other Church-men are invited to be present at the making of the accounts. It is, nevertheless, to be observed that there are several Benefices which are real Titles, and yet called Hospitals, Gods Houses, and Alms Houses, and which in effect are not Hospitals, but

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so called for some particular reasons which would be too long to relate. Besides, Hospitals are sometimes given in Title of Benefices, when they are no more but Accessories to a more considerable Benefice.

Having spoken of the persons in whose favour the Maxims of the New Law have derogated from the Canons and Ancient right of Bishops, it remains now to speak of the things that derogate from the same Right, and we shall begin with the Resignations that are called in *favorem*. There are two sorts of Resignations. The first which is called a pure and simple Resignation is made in this manner: The Beneficiary does purely and simply resign his Benefice into the hands of the Ordinary; and then the Benefice is void. That Resignation, which may also be called Renunciation or Demission, is Canonical, and we have some instances of it in Antiquity; But Bishops did not easily admit of it: They made examination whether they who would lay aside Ecclesiastical Employments, had reasons that obliged them to that Demission; and if no lawful reason appeared, their

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from the  
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Resignations or Demissions were not received. The other Resignation which now-a-days is far better known than the former, is called Resignation *in favorem*; because he that resigns his Benefice, does it only on this condition, that it shall be given to him in whose favours he hath made the Demission: and that if it be given to another the Collation should be null. This kind of Resignation is so New, that there is no mention made of it in the Body of the Canon Law, in the Decretals, nor in the Sext. The New Canonists themselves do all agree that it is Simoniacal, because it includes a Paction or Condition, to wit, that the Resignation of the Benefice is not made but that the other may be invested who is named by the Resigner. And therefore there was a necessity of having recourse to the Pope to get a Dispensation for the Simony: And that is the reason why none but the Pope can receive those Resignations *in favorem*, because he is above the Canons and Positive Law. Bishops cannot admit of them, in regard their power is limited, and that they cannot purge the Simony which is incur-

The Novelty of Resignations *in favorem*.

incurred by a compact. After all, there is nothing that derogates more from the Right of Ordinaries and Patrons, than that Resignation *in favorem*, because they who possess Benefices, dispose of them in the same manner as of their Inheritances: And it surpriseth me to see it so common, that men of greatest integrity make no Scruple by that means to render their Benefices hereditary in their families, as if the Popes dispensation acquitted them always of Simony. Abbot *Tritemius* could not endure that the Monks of his time obtained such Dispensations from the Pope (1) *Nec mihi, said he, dispensationem Romani Pontificis objicias, quam nisi Deus approbet, te minime excusabit, Non omnia Deo placent, quæ per summum Pontificem in terra geruntur.* Many now a days, cry out against the *Commendum*, who nevertheless countenance by their example, the Simony of Resignations *in favorem*. We do not find that they resign their Benefices into the hands of Ordinaries, to be by them disposed of after a lawful and Canonical way. Men are so accustomed to this evil, that they don't think it is an evil, it is grown so common

(1) *Trit. de ruina Monast. Ord.*

mon. In the mean time, since these Resignations *in favorem* are Odious, and that they are prejudicial to the Rights of Ordinaries and Ecclesiastical Patrons, many Regulations have been made to limit them.

Regulations that derogate from Resignations.

In the first place, the Regulation which is called *de viginti diebus* has been renewed in respect of them; and this was made to hinder Benefices from becoming Hereditary. That Regulation is at present called, *de infirmis Resignantibus*. And it bears, that if a sick person who resigns his Benefice, die within twenty days, the Benefice is vacant by death, and therefore the Collation made upon such a Resignation is null, but that Regulation is at present useless, because the Popes daily derogate from it in prejudice of Ordinaries, None but Cardinals by virtue of their Priviledges, and some persons of quality, to whom the Pope grants the like indulgences, enjoy the benefit of the Regulation *de 20. diebus*, as well in respect of those that are in health, as of the sick. In the Second place, there is another Regulation which is called *de publicandis Resignationibus* which is in

in force in *France*, and hath been made to prevent Benefices from becoming Hereditary. By that Regulation the Resignee is obliged to publish his Resignation within the space of six Months; & if within that time he take not Possession of the Benefice, and the Resigner die, the Benefice is vacant *per obitum*. However the Right of the Resignee does not prescribe till after three years, whilst the Resigner is alive, and he hath all that time for taking possession of the Benefice that hath been resigned to him. In the third place, there are many conditions required to make a Resignation *in favorem* valid. Seeing they cannot be admitted but by the Pope, they cannot be made but by Proxy. And that the Procurator may be good, it ought to be made before an approved Notary, whether Apostolical or Royal, and signed by two Witnesses. It ought besides to be special, and for such a Benefice: And if it take not effect within a year, it is presumed to be revoked. The Resigner may also revoke his Resignation before it hath taken Effect, and that Revocation ought to be legally intimated to the Resignee, or to the Proxy. R There

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There are also some certain Cases, where in the Resigner may re-enter into his Benefice, by a way which is called *Regress*. It is not easy to determine when the Regress ought to take place; and therefore the Courts of Justice differ much amongst themselves in the Judgments they pronounce about that matter; and many times one and the same Parliament varies as to the matter of Regress. In that case Equity is more observed than the Rigour of Justice: For it is commonly thought the sick person hath made a tacit Compact with him to whom he hath resigned his Benefice, that his Resignation shall be null, in case he recover his health. Seeing that Compact looks very much like confidence, it is thought to produce a kind of natural obligation, and that the Resignee ought to be condemned as a perfidious person. Upon that principle the Parliament of *Normandy* insisted not long since, in deciding a difference that happened betwixt two Church-men concerning the Cure of holy Cross in *Rouen*. The Resigner Recovering his health would have entred again into his Benefice at the desire of his Parishioners

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ners who solicited him. On the other hand the Resignee had taken Possession of the Cure, by virtue of his Legal Collation from *Rome* upon the Resignation. Nevertheless the Resignee was maintained in his Possession, and it was Judged that Regress ought to take place in that case. Perhaps it would be more convenient to assign an Alimentary Annuity to him that hath resigned his Benefice, than so easily to admit Regress. At least they ought not to take place, when the Resigners reserve to themselves an Annuity. Besides, by countenancing Regress, Resignations *in favorem* are also countenanced, which are odious, & Simoniacal, because many would not resign their Benefices, if they did not hope to enter again by way of Regress. And therefore Regress ought not to be granted but very rarely, and for weighty reasons, for instance, because of Nonage; It being to be presumed that when a Beneficiary who is under age, resigns his Benefice without the consent of his Father or *Guardian*, he hath been perswaded to do it by some trick. So that Regress then takes place, and the Minor

is restored to his Benefice without any New Collation.

Of Exchange.

There is another kind of Resignation *in favorem*, which is called Permutation or Exchange, and is likewise prejudicial to the Right of Ordinaries, and more to that of Patrons: It is in the Ordinaries power, nevertheless to admit or reject them, that depending on him. He ought never to allow Exchanges unless for lawful and Canonical reasons: But so great is the corruption now a days in Beneficial matters, that nothing occurs oftener than instances of Exchanges without any cause; and Bishops grant them easily, when Benefices are in Patronage, and they confer them not in full Right. Permutation, then, is nothing else but the Exchange of one Benefice for another, made in the hands of the Superiour: And seeing it is supposed to be made for true reasons, and that by consequent there is no Simony in the case, it may be admitted by the Ordinary's, in as much as there is no need of a Dispensation. To the end an Exchange may be valid, the Exchangers must resign their Benefices in the hands of the Ordinary

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or Ordinaries, if they be of different Dioceses, and the Ordinary gives them New Collations, according to their demands, for he is bound, and cannot dispose of the Benefices, but in favours of the Exchangers. If he doth it the Collations are null, and each continues in his Benefice. Besides, they must mutually take Possession of the Benefices, otherwise nothing is done, and things remain as they were before. If one onely of the Exchangers had taken Possession, and the other die, the Benefice of him that dies is vacant *per obitum*, and the other keeps his Benefice, because the Exchange was not completed. This hath been appointed by the New Ordinances and the Declaration of insinuations, to prevent a disorder that was much in use. For it happened very often, that a Beneficiary being ready to die, exchanged his Benefice with another Beneficiary, and the latter took Possession of his Benefice with whom he had exchanged; whereby the Permutation was accomplished on his part, so that the Benefice belonged to him: Afterward the sick person dying without having taken Possession of the Benefice that was given him in

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Exchange,



Exchange, the survivor kept his former Benefice; and so he enjoyed two at the same time, by that fetch which Mr. *Charles du Moulin*, in his Commentary upon the Regulation *de publicandis*, calls *speciem furti*. Nevertheless the practice continued long after him in the Parliaments, and that was called *gaudere de bona fortuna*. But the New Ordinances have reformed that abuse, and there is no more now of *gaudeat de bona fortuna*.

Of Unions.

The frequent Unions of Benefices, which were made in the times of Schism and disorder, have also done great prejudice to Ordinary Collators, and to the Pope himself, because by that means many Titles have been suppressed. They have nevertheless been profitable to Bishops and Chapters, who have made use of these occasions for uniting to their Benefices, inferiour Livings & Cures: But these kinds of Unions are not now in use, unless it be sometimes in favour of Communities who enjoy by that means several Benefices: yet there is greater care taken of that at present, than there was in times past; and if it were not well lookt after, a great part of Benefices would fall into the hands of  
Regular

Regular and Secular Communities: Which would be very prejudicial to Collators and Patrons, and even to private Church-men, who can no longer pretend to Benefices which are united in that manner. I speak not here of necessary Unions, or at least, of such as are useful to the Church; for these Unions still subsist. If, for instance, a Priory or Chappel is so ruined, that it is impossible to restore it; what remains of the Revenue ought to be united to another Church: If the Prebends of a Chapter or Collegiat Church are too small, several of them must be joined together: If in a Town or Burrough there be too many Cures, and they but poor, it is convenient to suppress some of them, and give the Revenue to others. In the same manner a simple Benefice may be joined to a poor cure; & in a word, Monasteries where the Rule hath ceased, may be joined to a Bishoprick that hath not a competent Revenue: But in all these Unions the advantage of the Church is always to be regarded, and the Rights of Superiours maintained; otherwise they are abusive. And therefore Unions are not to be made but upon good and necessary information. The Bishop hath

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Right to make these Unions, unless it be when the Union is to be made to his own Church, because then he cannot be Judge in his own case. Moreover the Union of Bishopricks is reserved to the Pope.

Of the Indults or Priviledges of Members of Parliament.

Though Reversions have been abolished, yet there are in France Priviledges of the Members of Parliament, and the degrees of those who have studied a certain time in the Famous Universities of the Kingdom, which are a kind of Reversions, and by consequent are prejudicial to the Rights of Ordinary Collators, & of Ecclesiastical Patrons. I shall not speak here of the Original of these Priviledges. Only we may observe, that during the time of Schism, Popes granted those favours to Princes, to great men that were powerful in the Courts of Princes, and to such as might be a hinderance to them in their settlement in the Papacy. The Council of Trent hath abolished *Indults* as well as Apostolical *Mandats*. But since its decisions are not received in France, the Priviledges of the Members of Parliament have been still retained. To the end a Priviledge whereof we are speaking may have its effect, Letters must be procured from the King, commanding the Ord-

Ordinary Collator, to confer on him who hath the Priviledge the first vacant Benefice of his Collation. Besides, these Letters must be intimated before the vacancy of the Benefice: and then the hands of the Collator are tied. The *Indultee* or Priviledged person hath six Months to require the Benefice in, and the Collator can be charged but with one Priviledge during his life: or if it be a Community which dieth not, then it is regulated by the life of the King. The Collator, in the mean time, could formerly oblige the *Indultee* to accept the first vacant Benefice, provided it were worth 200 Francs, because the Priviledge is *de beneficio proxime vacaturo*. But he cannot at present be obliged to it, unless it be worth 600 Francs of yearly Rent. In the number of *Expectative Graces*, or Reversions, may also be reckoned the Kings nomination for his happy coming to the Crown, and his nomination for the Oath of Allegiance, which gives him Right to nominate to the New Bishop after the Conclusion of the *Regale*, one for the first vacant Prebend.

The complaints of the University of Paris

Of Degrees.

*Paris* against the Bishops, who commonly bestowed Benefices on their Domesticks and undeserving persons, were the cause that in the Council of *Basil*, it was decreed, That the third part of Benefices should be set apart for the Graduates of Famous Universities, and that if the Ordinaries gave them to others, their Collations should be null. The Pragmatick made in the assembly of *Bourges*, ratified that decree of the Council of *Basil*, but with this qualification, that the third destin'd for Graduates should be divided into three parts, and that two thirds of that third should be appropriated to those who had some notable employment in the University. And therefore it was ordered by the same Assembly, that the University should name those whom they would have preferred. And thence arises the distinction of simple Graduates, and Graduates named. The Concordat hath preserved that Right of Graduates: But because fraud might be committed in the third of Benefices which were given in course one after another, they had four Months of the year allotted to them, to wit, *January, April, July, and October,* and

and the Benefices that fall during these four Months are appropriated to them. *January* and *July* are called Months of Rigour, because the Collator or Patron is obliged to give the vacant Benefice to the Graduate named, who is the Ancientest, and hath most Right; whereas in the other two Months which are called Months of favour, he is free to give the vacant Benefices, to such enrolled Graduates as he pleases. To be a Graduate, it is enough that one hath studied two years Philosophy, three years Divinity, and taken the degree of Master of Arts. Yet this hinders not but that their Batchelour Graduates, Doctor Graduates, Graduates, in Divinity, the Canon Law and Medicine, to whom also there is a certain time assigned; and in case of competition the most qualified Graduate is preferred before the other, though it be sometimes pretty hard to know who ought to be preferred. That this Right may take effect, the Letters of Degree, Attestations of the time of Study and the Universities Letters of Nomination, must be signified to the Ecclesiastical Patron or Collator. And because  
Gentle-

Gentlemen have some Priviledge as to the time of Study, they ought likewise to produce the proofs of their quality. Of all these Instruments and Acts the Patron or Collator ought to keep a Copy. They are besides obliged every year in *Lent* to renew the Register of their names, which they may do in the Office of the Ecclesiastical Register. When a Benefice falls in the Months that are appropriated to them, they ought to demand it within six Months; and that being expired they are no longer admitted to make their Requisition. If the Pope prevent them before they have made their demand, he that hath been provided by the Pope obtains the Benefice; And there is no need that the Pope should even mention that the Benefice is destined to Graduats, because he is not tied to the Law that is in *France* in favours of Graduats. But the Ordinary ought to specify in his Collations the quality of the Graduat, which is the cause for which he gives the Benefice. Nevertheless he may still put questions to the Graduats, though heretofore they pretended to be exempted from examination. But the easiness of obtaining Degrees

degrees makes, that there are to be found many ignorant & vicious Graduats. And therefore the Collator, and even the Patron, have always right to refuse them, if they judge them incapable of the Benefices which they have demanded.

It is to be observed that all sorts of Benefices are not Subject to Graduats I. Consistorial Benefices and such as are in Lay-Patronage are exempted. II. The dignities of Cathedral Churches; but amongst these dignities the Penitentiary is not reckoned; and there is some difficulty also as to the Divinity Lecture, though there be Judgments as to that in favours of Graduats. III. The right of Graduats has no place but when the Benefices are vacant by death. IV. When the Graduate hath a Benefice of 400 Francs a year, or an Annuity of the same value, which stands him instead of a Benefice, he is thought provided, and cannot pretend to any Benefice in quality of a Graduate, unless he had not that Provision by virtue of his degrees; for in that case he may renounce his Benefice or Annuity, and have right as before, to demand the Benefices appropriated to Graduats. The reason



reason why a Graduat having a Benefice of 400 Francs is reckoned provided is, that in the Concordat 200 Florins are mentioned, which have been valued at, 400 Francs: But I think, at present they ought to be valued at 600. V. When the Benefice that falls in the the month of Graduats is under Rule, it cannot be demanded but by a Regular Graduat. Just so, the Regular cannot demand Secular Benefices. VI. In fine, if an *Indultee* or Priviledged person, and a Graduat, demand one and the same Benefice, the *Indultee* is preferred before the Graduat.

Of Exemptions.

The Exemptions which Popes have granted to several Churches, as well Regular as Secular, have also much derogated from the Canonical Right of Bishops, because Abbots and other Patrons confer in full Right the Benefices which are contained in their Exemptions; and they failing, the Right is devolved on the Pope, who is become their immediat Superiour. This is not a proper place to handle these exemptions to the full, nor to speak of their Original; besides, we have elsewhere said somewhat as to that Subject. I shall only mention

tion what relates to the Custom of France.

I. The Decree of the Council of Trent that derogats from Exemptions is not received there; But the Titles, on which the Exemptions are founded, are examined; and if the Titles be lawful, the Priviledges that are expressed are allowed.

II. Possession alone is not enough to authorise these Priviledges: Legal Titles must also be produced, in as much as many are in Possession of their Priviledges, because their Titles have not been sufficiently examined, which most commonly are false and it is not Just that Exemption, which is but a Priviledged Right, should prejudice the common Right of Bishops, unless it be well grounded, and granted for lawful causes: To this may be added, that (1) [falseness can never make a Prescription, and that a Possession grounded on a bad Title, is no true Possession. All possible rigour ought to be used then against the Right of Exemption or Priviledge, because it derogates from the Common Law; and nothing should be granted to the exempted, but what is expressly set down

(1) *Fraus nemini debet patrocinari.*

down in their Title of Exemption : And it is absolutely necessary that the Priviledges be mentioned in plain Terms, without any ambiguity.

III. The more ancient the Titles of Exemption are, of the less extent are the Priviledges of the Exemptions, as appears by Ancient Formularies, which hardly contain any thing else in respect of Monasteries, but the liberty of chusing the Abbot, and the free Disposition of all their Revenues ; as to the rest they were entirely Subject to the Bishops.

Exemptions, as we find them now a days, began only with the Reformations of *Cluni* and *Cîteaux*, who were exempted from the Jurisdiction of Bishops by the Title of their Foundation. Though that happened in a disorderly time, yet these Exemptions are not medled with in *France*, seeing they are owned by all men. But there is great cause to doubt of the most part of others, which are supposed to have been granted by Popes after the Foundation of Monasteries. There are but few of them that are true in their full extent, which is easily discovered when one sets seriously

seriously to work to examin the Titles. And in that manner *Peter de Blois* Arch Deacon of the Church of *Bath* in *England* affirms, that the Exemptions of Monasteries in his time were examined, of which the greatest part were forged by the Monks. The Bishop of *Salisbury* thought the Letters of Exemption of the Abbey of *Malmesbury* to be false, *quia in filo & Bulla videbantur vitiosæ, stilumque Romanæ curiæ minime redolebant*. Nevertheless the Abbot refusing to submit to his Bishop, fell into such a rage against him, that the same *Peter de Blois* complained of it in his letter (1) to Pope *Alexander*.

III. To whom, upon occasion of the Abbot of *Malmesbury*, he represents the abuses of Exemptions ; take it in his own words : *Viles sunt Abbates & miseri qui potestatem Episcoporum non exterminant, cum pro annua Auri uncia plenam à sede Romanâ possint assequi libertatem*. By this it is apparent enough, that Monasteries obtained for Money from the Court of *Rome*, as many Exemptions as they pleased, and that Simony was much practised by the Monks,

(1) Petr. Blas.  
Epist. 68.

Monks, especially the Regular Abbots, who by that means shook off Obedience to their Bishops, that they might more freely squander away the Revenues of their Monasteries, and have no Body to check them for their vices. (1)

(1) Petr. Blas. ibid.

*Detestantur Abbates, habere suorum excessuum correctorem, vagam impunitatis licentiam amplectuntur, claustralisque militiae jugum relaxant in omnem desiderii libertatem. Hinc est quod monasteriorum fere omnium facultates datae sunt in direptionem & praedam.*

These and many other reasons which I omit, are the cause that no great favour is shewn to the Exemptions of Monasteries in France, though they be not wholly rejected there: To which may be added, that many of these Exemptions, especially those of Chapters, have been obtained in the times of Schism; and it often happened, that the Chapter which opposed its Bishop, acknowledged one Pope, and the Bishop another. And that is to be taken notice of in the Titles of Exemptions, that what was done upon occasion of Schism may not be authorized.

Rules how to distinguish true Exemptions from false.

That true Titles may be the more easily

easily distinguished from such as have been foisted and counterfeited, we shall here set down several Rules, which are necessary to be known, if one would with any exactness make that distinction: And that will not only serve to discover the falsity of Priviledges and Exemptions, but also to Judge of other Titles.

I. One must have seen true Titles that are past all exception, according to which are to be examined those that are produced. The Characters are to be minded if it be an Original Piece; for it seldom happens, that they who counterfeit Titles, do exactly imitate these Characters, whether it be that they write too hastily, or that they are satisfied to do somewhat that comes near them, but which is not altogether like.

II. The difference of stile that occurs betwixt true pieces and counterfeit, is very useful for distinguishing the one from the other: for instance, one must know in what manner Princes in different times began their Letters, and how they finished them; for it is certain, the stile hath not been always the same.

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Besides, they have also expressed themselves in different manners in several times, as to the Body and Contents of their Letters.

III. The way of dating Letters hath much varied; and that is a thing that hath not been always minded by those who have counterfeited false Priviledges: They have for most part, followed the Custom of their times.

IV. Chronology and the Subscriptions of the Writing or Deed are to be minded, examining if they who have subscribed it lived all in that time, and if they could probably be all together in the place spoken of; or if the matters of fact reported suit with the Customs and Practice of those times.

V. One must not be ignorant of the time when certain ways of speaking began to be in use. For it is easily perceived that a Piece is New, when it contains New terms and expressions.

VI. It is necessary to be acquainted with History and especially what concerns the Rights of Popes, to know whether the Writing do not attribute  
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to the Pope who grants the Priviledged some Rights which he did not as yet enjoy: And that happens commonly in Ancient Priviledges, because they who have counterfeited them, have squared themselves according to their own times, and not the times of the Popes whose names they have borrowed

VII. One ought to know Chronology, History, the manner of beginning and dating of Writings, the diversity of Style and of Subscriptions, not only in respect of different Times, but also of different Places and Persons: For it is certain, that these things have varied according to the diversity of Places and Persons. Princes do not always agree in that with Popes and Bishops; and Princes differ also among themselves. For instance, the manner of beginning the year hath not been uniform in all places, nor in all times, Dates and Subscriptions are very different according to the diversity of Places and Persons. And that has made those who have been ignorant of those different Customs, fall into such gross faults, that  
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the falsity of the Deeds which they have counterfeited stares in ones face.

VIII. There is nothing more common than to see counterfeit Marks or Monograms. And therefore it is convenient to have true ones, to make a distinction of the real from the false; which is also to be observed in Seals, that have been often counterfeited. It must not, for all that, be concluded that a Deed is good, because nothing seems wanting to the Subscription, nor to the Seal: For there was nothing more easy heretofore than to remove the Seal from one Deed to another. Seeing the Seal was fastened to the Parchment, and that there was no Counter-Seal, the Seal was easily taken off without hurting the Impression, by heating the Parchment a little. It is true in after times that falsification was remedied by means of a Counter-Seal, and a little string that tied the Seal to the Parchment: But for all the care that could be taken it is impossible altogether to prevent falsification. There is nothing more easy than to keep the Subscription and Seal entire, and

with some Waters or Essences to wash out all the writing, and to suppose another Title in what manner one pleases. The reality then of the Subscription and Seal is not a sufficient proof; but it will be convenient also to consider, whether the Parchment has not received some alteration, or whether the Ink be not too new; or different from that wherewith the Subscription has been made.

IX. The counterfeiting of a Deed hath sometimes been found out by the newness of the Parchment, that had some Mark to make it known by. On the contrary, they who have affected to have Titles too Ancient, and have for that end written their Priviledges on the Barks of Trees, have rendered themselves ridiculous, because it is easy to be made out, that at that time when they are supposed to have been written, there was no use made of the rind of Trees, at least in *Europe*.

X. They also who have joined many dates together, thinking thereby to render their Titles more Authentick, marking the years of Princes and

Emperours with the Indictions and such other things as were contrary to the Custom of the places and times wherein they lived, thought to have imposed on others by an odd and unreasonable exactness.

Did I not fear to be too tedious, I would give instances for confirmation of all these Rules : But that deserves a separate work. I shall only add some Remarks concerning Cartularies, because I perceive men too credulously believe them, and mind not, that part of the Titles which are contained in Cartularies, are either false or corrupted.

Of what Authority are Cartularies.

Cartularies are the Rolls or Registers of Churches or Monasteries, wherein are recorded the Contracts of Buying, Selling, Exchange, Priviledges, Immunities, Exemptions and other Deeds and Charters. These Cartularies, are long posteriour to most part of the Acts contained in them, and they are only made for preservation of the Acts, and that Posterity may have recourse to them. But there are strong reasons to doubt of the fidelity of those who have compiled the Cartularies, because

cause a vast Number of false or corrupted Titles are to be found in them.

In the first place, seeing in the beginning the Custom of writing Titles, or Acts of Foundations, and Immunities or Priviledges, was not as yet introduced, the Compilers of Cartularies who saw that they enjoyed several Lands, and that they were in Possession of some Priviledges, without having any Titles for them, have not failed to make, and to insert them in their Cartularies. I believe it is for that reason, that the Titles which are in the Cartularies, attributed to the Kings of France of the first Race, are almost all false; and for the same reason also, we ought to mistrust the Primitive Exemptions, which are the more to be suspected, that they appear the more Ancient. The Law-suits that Bishops have had with the Abbots of Monasteries, have also much contributed to the Augmentation of false Titles : For to back their several causes, they spared no pains in falsifying of Deeds.

In the Second place, the Compilers

riters of *Cartularies* have not always inserted the acts as they were in the Original Writing : Which is easily proved by comparing the Originals with the Copies that are Registered in the *Cartularies*, or even by comparing Ancient *Cartularies*, with others more Modern ; for the latter they are, of the greater extent they are. We find, for instance, the Foundation of the Monastery of *Cassare*, otherwise called of *St. Clement*, in the (1) sixth Volume of the History of the Bishops of *Italy*, and in the Title of that Foundation, some Charters of Immunities, Priviledges, and Exemptions are mentioned. But these acts agree not for most part with other Copies that are inserted in a more Ancient *Cartulary* of the same Monastery. And, which is observable, in the Printed Copy, which without doubt hath been taken out of a later Manuscript, there is an enumeration of many Lands belonging to the Monastery of *Cassare*, as may be seen in the Priviledge which bears this Title (2) *Ludovici II. Imperatoris Augusti privilegium foundationis & dotationis Monasterii*

(1) *Ital. Sacr.*  
Tom. 6.

(2) *Ibid.*  
page 1308.

*sterii Sancti Clementis in Piscaria, Anno Domini. 875.* But in the Manuscript *Cartulary* which I have read, there is nothing to be found of that long list of Lands and Possessions ; They are only named in it in general, and not in particular. Besides, these words of the date which are in the Printed are not in the Manuscript *Cartulary, Anno Dominicæ Incarnationis. 875.* Because the Emperours at that time made no mention in their Letters of the year of our Lord. The same Catalogue of Lands and Possessions that is to be found in the Printed Priviledge of the Emperour *Louis*, is to be found also in another Priviledge granted by *Roger King of Sicily* to the same Monastery. But the Ancient Manuscript *Cartulary* contains nothing of that list : Whence it is to be inferred, that the Monks have made no scruple to Register in their *Cartularies*, Titles in a quite different way from what they were in their Originals. The same hath also happened to the Priviledges of Popes which are in the same *Cartulary* : For there are some things in the Printed

Printed Copies, that are not to be found in the Manuscript Acts, and amongst others the Priviledge attributed to Leo IX. is shorter in the Manuscript, than in Print, for the Printed Copy only ends with this clause;

(1) Ibid. page 1311.

(1) *Quoniam scriptum est, terminos patrum nostrorum nulla autoritate illicitæ temeritatis transgredi præsumi, & quia opportunitatis exigit ratio propter vos & transgressores Canonicae correctionis debere fræno constringi, illius insuper spiritali baculo perdat animum, cujus temporali gladio Malchus amisit auriculam: Qui autem observator extiterit, ditetur dono Apostolicæ benedictionis, &c.* There is not a word of all this in the same Priviledge, as it is inserted in the Manuscript Cartulary. Many other instances might be brought of the great liberty that the Compilers of Cartularies have taken in transcribing Originals, and even the Copies of their Titles; and by consequent they are not much to be credited.

A distinction betwixt false Titles, and falsified Titles.

It is easy to be Collected from what hath been said, that a Title is not altogether false, though there be falsities in it. Yet I think these kinds of Deeds ought

ought entirely to be rejected, for the least falsity that occurs in them, because falsaries should never be countenanced in any thing, and that the Exemptions whereof we speak are odious and against the Canon Law. It is then absolutely necessary, that they who pretend to be exempted should produce good Originals to prove their Exemptions, at least that these Falsities be not to be found in the Acts that have been approved by Princes or other Superiour Powers; and after all, they ought to be very carefully examined. That we may know the nature of Acts, it is to be observed, that Monasteries have sometimes got their Titles and Priviledges confirmed by Princes and other Superiours, upon Information that the Ancient Titles were so old and worn out, that it was hard to read them; and then others were substituted in place of the Ancient. These Renovations were not always very sincere: For the Old writings were sometimes forged, and besides they added things that suited not with the times of those who were pretended to have granted the Ancient Priviledges.



ledges. But since he who had power to grant Priviledges himself, confirmed them, they could not be accused of falsity, unless there was surprize in the case, and that lies had been alledged in the Petition ; because it is a general Maxim, that every Petition or Supplication ought to be grounded on truth. After all, these Priviledges which are said to be substituted in place of others more Ancient, are not easily to be admitted : For that would be to open a door to a great deal of Forgery ; And Besides, a Title cannot be substituted in place of another, by way of renewing and confirmation, unless the latter make mention of the former, and that it be expressly mentioned, that that last Priviledge hath only been given in confirmation of the Ancient. And thus you have in a few words the Principal Rules that are to be observed in the Examination of Titles, which Monasteries and other Churches that pretend to be Exempted or Priviledged, produce for Justifying their Exemptions and Immunities. Many instances

instances of false Titles might here be alledged which would render the Rules much more intelligible : But that matter is not to be handled to the bottom, without engaging into a great many inquiries that are wide of our Subject, and require a particular Treatise.

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