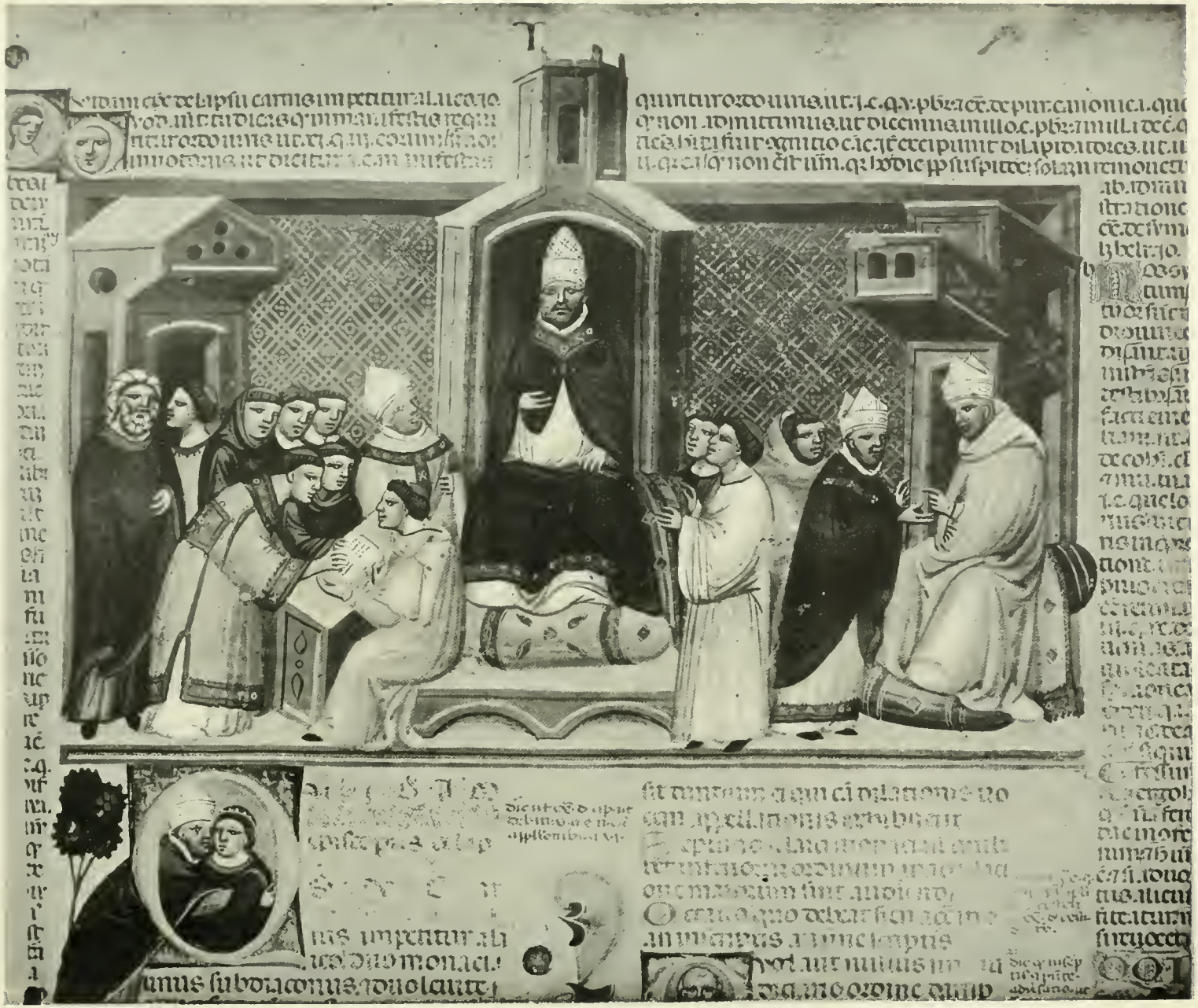
THE CANON LAW

A description of the Frontispiece will be found on page 167.

Both the Illustrations in this Book are taken from the famous MS. of Gratian in the Library of Madrid.



THE CANON LAW

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WITH A

PREFACE

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Table of Contents

PREFACE

It has come to be an accepted maxim in our day that history is a science, of which, as of other sciences, sound and satisfactory knowledge cannot be obtained from text-books alone; as the facts of physiology, so the sources of history, must be studied at first hand. That English history must be read in the Statute Book has grown to be a truism. The *Corpus Juris Canonici* is not only the statute book of medieval Church history; it is also a primary document for social history. "There can be very little doubt that the Canon Law was one of the great factors of European civilisation in the Middle Ages," so Lord Fraser wrote two generations ago; the modern man's difficulty would be to see where the "little doubt" comes in. I think, therefore, that Mr. Mylne does the State good service in imparting to "us others" a little of his own learning on this subject, and (in his Appendix) bringing before us the very form and colour of the tomes in which our ancestors studied it. And I am very sensible of the honour he has done me in inviting me to contribute a short preface to his book.

What I shall say refers chiefly to the history of Canon Law in my own country, Scotland.

With regard to the authority of Canon Law in England and Scotland, it is certain that in neither country was it administered in its entirety; it could hardly be so in any State not under the direct rule of the Pope. Another truism is that, in the main, the reason for this was the action of the State courts limiting the scope of the jurisdiction of the courts of the Church. In the controversy which has arisen as to the function of the National Church in this matter, our author has, I think, done well to point out how narrow the limits are within which difference of opinion is possible, when we find Professor F. W. Maitland admitting the existence of special customs having the force of law within the national area, and Bishop Stubbs writing in his *Constitutional History*, after specifying the sources of general and local Canon Law, "all these were regarded as binding on the faithful within their sphere of operation, and, except where they came into collision with the rights of the Crown, common law, or statute, they were recognised as authoritative in ecclesiastical procedure." For Scotland, Bishop Dowden, in his monumental work, speaking of provincial synods and legatine councils, writes thus: "The laws and constitutions enacted at such synods or councils are sometimes no more than promulgations of canons already recognised, but more often they are of the nature of working bye-laws, adapting general principles to the requirements of

the time and place." Set this alongside of the doctrine stated in our standard authorities, that the synodal statutes are the Canon Law of Scotland, and the contrast is startling. But as a deduction from modern decisions, the latter statement is accurate. One is reminded of Professor Maitland's dictum: "A lawyer must be orthodox, otherwise he is no lawyer; an orthodox history seems to me a contradiction in terms." But even had the local legislation been much more intrinsically important than it was, we should still have to recognise that when we think of Canon Law as a force making for civilisation, it is not of local regulations we are thinking, but of the *jus commune*, extra-national and endeavouring to be extra-mundane. It was not as *jus cleri* that it was so potent a force, but as *jus poli* (see p. 131 of this book). And its force was both greater and more beneficent in Scotland than in England. For in the south at an early date justice was centralised and the municipal law taught and studied as a system; north of the Tweed that was not so. The conditions there resembled more those which prevailed in Germany, and paved the way there for the "reception" of the civil law.

In England the influence of Canon Law upon common law is admitted to have been considerable in early times. Again, to quote Professor Maitland: "A class of professional canonists is older than a class of men professionally expert in English temporal law, and the secular courts adopted many suggestions from without." Moreover, for a long time the king's justices were

churchmen and canonists, and their influence has powerfully affected not only the principles but also the forms of common law procedure (Pollock and Maitland, *History of English Law*, i. 131 f.). But these statements are limited to the period before Edward I. In Scotland in those days there was no body of learned lawyers, and the justiciaries were, so far as can be inferred from the records, generally laymen. Since the days of Saint Margaret there has never been a time when the lesser kingdom has not been more or less powerfully influenced by the greater; but in no century before the nineteenth was that influence so completely predominant as in the thirteenth. At that period, then, the Canon Law influenced Scotland mainly as a result of its influence in England. But the want of a metropolitan made constant recourse to Rome on all occasions a necessity; and, as will appear further on, the weakness of our central power and of our legal profession made it impossible for them to vindicate for the king's courts the whole extent of the jurisdiction which the English king's courts successfully maintained against the claims of the courts Christian. Among the results of the wars of independence was the eclipse, though not the disappearance, of the influence of England; but Scotland was not yet provided either with a strong government nor with that tranquillity which is necessary to the growth of legal or any other learning. Hence there was more place for the canonist than ever; of conflicts with Rome, save over matters financial, no more is heard: "Scot-

land, though remote in place, had probably a closer connexion with Rome than any other country in Christendom, outside the 'Patrimony of St. Peter,' and was thrown into particularly intimate relations with the Holy See" (see *Medieval Church in Scotland*, p. 224). Of the causes which at last alienated Scotland from the Pope, it is, happily, unnecessary to say anything here. But it was the influence, once more predominant, of a now anti-papal England that made the final rupture possible.

This dependence of Scotland upon England is very conspicuous when we come to the special customs recognised in each country. In ritual, the "Sarum Use" is believed to have been universal in Scotland till partially superseded by the Aberdeen Breviary, itself only differing from its predecessor in matters of detail. The rule which prescribes two godfathers and one godmother at baptism for each boy, one godfather and two godmothers for each girl, was laid down as the legal maximum for the diocese of Exeter in 1287, and for that of Aberdeen at an unknown date in the thirteenth century; in the town of Aberdeen, as the Registers show, this practice continued for some years after the Reformation, and it is still the rule throughout the Anglican Church. The two customs specially mentioned and approved by Lyndwood (see *Canon Law in the Church of England*, p. 42) are that which makes parishioners responsible for the upkeep of the nave of their parish church, and that which assigns to the spiritual courts an exclusive jurisdiction in testamentary causes. Both of them obtained

in Scotland also. Another custom, by no means to be approved of by any churchman, was that which permitted the king to seize the moveable estates of deceased bishops. This was in existence in England in King Stephen's days, and was practised for long afterwards on the estates of such bishops as died intestate (*History of English Law*, i. 519); but by the time of Edward I. it seems to have gone out. That monarch refers to it as the custom of Scotland. In that belated country, though formally renounced by David II. in full parliament, it revived, and was not finally abolished till 1450. Another custom, that which gave to the king the advowson, *sede vacante*, of all livings in the bishop's gift was early and easily established in England, where advowsons were by law temporal property, and cognisable by the secular courts. In Scotland, where they were within the jurisdiction of the courts of Christianity, the question was not so simple. Not until the clergy had solemnly in two successive provincial councils declared that the king possessed the privilege, "by ancient and primitive use," was the point definitely yielded by the Curia.

The particular points at which the law of the Church had free scope in Scotland, while it was excluded in England by the action of the common law courts, are not numerous, and a few words may be said about each of them.

1. As already noticed, advowsons were by English law temporal property; by Scottish law they were *inter sacra*, and causes relating to them went before the

ecclesiastical courts. This, for England, was already settled when Glanvill wrote. In Scotland there was a prolonged contest. Under William the Lion a determined effort was made to introduce the English practice (*Medieval Church in Scotland*, p. 211). Alexander II. appears to have acquiesced in the claim of the Church. But after his death the guardians of his youthful successor not only changed the practice as to advowsons, but also endeavoured to bring church lands, which in Scotland were almost all held in "frankalmoign," under the burdens to which most of the English church lands were subject; they had claimed even tithes as within the temporal sphere, and had deprived churchmen of their *privilegium fori* in real and to a large extent also in personal actions. Innocent IV., pope and canonist, in 1251 issued a commission to three English bishops to deal severely with the offenders (*Statuta Ecclesiæ Scoticanæ*, ii. 242 ff.). The result is not recorded; but the Bull not obscurely hints that the leaders of the movement were churchmen, and a churchman resisting papal authority found his position logically untenable. The question of advowsons crops up again in 1273 (*Medieval Church in Scotland*, p. 212). But in our earliest law book, the *Regiam Majestatem*, a rough adaptation of Glanvill to Scottish practice, which appears to belong to the fourteenth century, where Glanvill wrote: "In curia domini regis habent ista tractari et terminari . . . placitum de advocationibus ecclesiarum;" we find this substituted: "Jus patronatus pertinet ad forum ecclesiasticum"

(see p. 50). And such references to the subject as occur in our early law reports show the civil court simply enforcing the decreets of the court Christian.

2. In England a child born before the marriage of its parents is illegitimate. In Scotland it is legitimated by the subsequent marriage. At what date was our municipal law assimilated to the Canon Law in this respect? For it is certain that our older law was the same as that of England, and that it was from the Canon Law that the present rule was adopted, though the rule of the Civil Law is the same. Glanvill, in stating the law of England, refers to the *canones et leges Romanas* as different. *Regiam Majestatem* repeats Glanvill's words without material alteration. Unless, therefore, the passage was left standing thus *per incuriam*, it follows that the change must have been made subsequent to the composition (if that is the right word) of the *Regiam Majestatem*. The earliest MS. now known which contains that treatise seems to have been written in the reign of Robert III.; but the book itself may well be a little earlier. Now, in 1371, King Robert II.'s eldest son by his first wife, Elizabeth More, was recognised by Parliament as heir to the throne. That son, and all the other sons of the first marriage, were born out of wedlock; on that point the testimony of the chronicler is clear; he is corroborated by the papal dispensation for the marriage; and Bower's comment is, "Quia secundum canones matrimonium sequens legitimat filios natos ante matrimonium." It is unneces-

sary to go into the delicate question how far the issue were in truth validly legitimated; enough that in Scotland the Act of Parliament was understood as a sentence in their favour to that effect, and a sentence given *secundum canones*. Parliament was and is a judicial as well as a legislative body, and the student of the records of those days does not find it easy to draw the line between those two branches of its activity. May we not regard this Act as the decision of our supreme court on the leading case in this branch of the law, and the precedent by which similar cases were to be decided in the future?

3. Of the encroachments on the spiritual sphere condemned by the Bull of 1251, above referred to, one is the issue of the king's writ to inhibit the use of ecclesiastical censure to enforce the observance of an oath. It was exactly by this use of the oath that in later times the courts Christian attracted to themselves a large part of the legal business of the country. The granter of a bond, or the parties to a contract, appeared before the diocesan official and swore to observe their engagements. Breach of the oath was punished, if persisted in, by excommunication, which involved outlawry and confiscation of goods. So convenient was this procedure found, that even after the Reformation the commissary courts, coming in place of the old Church courts, and using the process of "horning," which came in place of the old excommunication, had an advantage which they only lost by legislation putting

other courts of record on an equality with them in this respect. In England, also, excommunication involved serious temporal consequences; but I do not read that the process was used there as it was used in Scotland; the lay authorities were too strong and too vigilant to allow such practices to grow up.

Now, as to the financial relations of Scotland with Rome. The Curia was an expensive institution; all over Europe its exactions were a source of chronic discontent. Moreover, in the days of the Avignon popes, Petrarch went so far as to inveigh against it by the name of *l'avara Babilonia*. Scotland felt the pinch like other countries; Scotland was poor, and therefore by good right frugal. Our ancestors' complaints survive for us chiefly in the records of Parliament; Parliament's main concern was that money was being taken out of the country, and that in two ways—in law expenses and in payments for provisions to benefices. Under the first head it is not likely that the well-meant activity of the legislature produced much effect. Advice, influence, pressure, even coaxing, were freely employed; the home tribunals, where money could be spent at all events more patriotically, are earnestly recommended in preference to the Curia. But to prohibit appeals, or even to punish appellants, was not practicable; and only by such measures could the defeated party in an important "consistorial" case be prevented from trying his luck in a higher court, whose decisions, all deductions made, commanded, I fear, more confidence than

those of the most learned of Scottish archdeacons. In the case of papal provisions to benefices, the result was different. By the close of the great schism, which nearly coincides with the period at which our Parliamentary records begin to be approximately continuous, the popes had succeeded (the steps of the process are described in Stubbs' *Constitutional History*) in engrossing the right of providing to bishoprics all over western Christendom. In England the monastic chapters usually elected their own abbots or priors according to ancient rule. In Scotland, abbacies were filled like bishoprics by papal provision; the difference between the two countries in this respect appears plainly from comparison of the sections relating to English and Scottish monasteries respectively in Brady's *Episcopal Succession*. At a later date the bishops of St. Andrews and Glasgow obtained from Rome the privilege of confirming all elections to abbacies within their dioceses, papal provisions being declared unnecessary in their case; Parliament in 1493 passed an Act reciting these Bulls, and forbidding any person to renounce the benefit of them without the king's consent. But the same Parliament in another Act recites another Bull, by which the Pope promised to fill up no elective dignity without awaiting for eight months the receipt of the king's nomination; and already the practice, so feelingly deplored by Bishop Lesley, of conferring abbacies by court favour, was in full swing; the king was not likely, even for the sake of keeping money in Scotland,

to do anything to help the monastic chapters to recover their rights. And even when, as sometimes happened, the chapter was allowed to elect, the new abbot preferred papal to episcopal confirmation, just as he preferred, if possible, to be immediately subject to the Holy See rather than to the diocesan bishop. So we are not surprised to find that even in those two dioceses abbacies were filled by papal provision after as well as before 1493. The system at all events was fairly effectual in keeping foreigners out of Scottish benefices. Dr. Joseph Robertson and Bishop Dowden give instances of Italians holding churches in Scotland; but Scotland, poverty-stricken and turbulent, did not tempt the benefice-hunter as England did. In the first Scottish Parliament of which the original record exists, held by King John Baliol in 1293, the Bishop of Dunkeld was accused of having aided and abetted the Pope in conferring a prebend in Dunkeld Cathedral upon a certain Roman; to which the bishop pleaded not guilty. There is one case on record of an Italian bishop in a Scottish See—Prosper Cannilio of Genoa, Bishop of Caithness from 1478 to 1484—not a tempting piece of preferment, one would have thought, for a "familiar" of the powerful Cardinal who afterwards became Pope Julius II. A little later the deanery of Aberdeen fell to Henry Babington, "of the diocese of Chester," who came north in the train of Queen Margaret Tudor; the abbacy of Tongland to the Italian Damian, alchemist and aeronaut; and the abbacy of Glenluce to "Galter" Malynny, secre-

tary to the Regent John of Albany, presumably a Frenchman. All these appointments were obviously due to court favour. After Flodden a cardinal was provided to the abbacy of Inchaffray, and another cardinal, the Pope's own nephew, to the archbishopric of St. Andrews; but neither of these appointments took effect. Occasionally Roman influence proved strong enough to overcome even active and seemingly resolute opposition from king and Parliament, as in the case of George Brown, Bishop of Dunkeld. But generally the want of royal favour was a fatal bar to promotion. In 1540 the Pope wished to provide Robert Wauchope, afterwards Archbishop of Armagh, to the abbacy of Dryburgh, an appointment which a contemporary royal letter describes as "that vain provision"—the nominee had positively no qualifications except learning and piety; the king adjured the Pope "not to prefer learning to the profit and honour of the kingdom," and His Holiness gave way.

It would give a very inadequate notion of the activities of the Curia if no mention were made of provisions other than those to the "elective" benefices. The patronage of the clergy, monastic and secular, was exercised subject to a flood of papal provisions or *Gratiæ expectativæ*, giving away over the heads of the patrons, before or after vacancies occurred, sometimes one of their churches, sometimes whichever might first fall vacant. Sometimes the same benefice was bestowed in this way on two or three supplicants; the

Curia might have to decide between them, and now and then it calmly declared against both. In other cases the claimants came to an agreement and divided the spoil. It is not strange that the patrons cordially disliked this system, or that they exercised their wits to find grounds for disappointing those who came armed with such provisions; but direct disobedience to papal mandates was out of the question; the Pope was within his recognised rights. Sometimes a bishop compromised matters, and obtained a Bull reserving to himself the benefices which fell vacant in February, April, etc.; those falling vacant in January, March, etc., being left to the bearers of papal letters. On this system no Act of Parliament could have any effect; it was a matter between the Pope and the clergy. And it also was capable of being worked to the advantage of the Crown. Pope Julius II. granted to James IV. of Scotland faculty to exercise on his own account this papal power of nomination to thirty benefices; and the Register of the Privy Seal contains notes of several of the nominations made accordingly; some of them to special benefices, others to any benefice within the kingdom, vacant or next to fall vacant, which the grantee should please to accept. Such grants when made by the Pope were apparently taken to apply to livings in ecclesiastical patronage only; it would be interesting to know whether the king's nominations had a wider scope and covered livings in lay patronage also; this must be left to a more learned investigator.

Similar privileges were doubtless conceded to other monarchs; one can conceive that in the hands of a Tudor king they might be used to engross all ecclesiastical patronage, to whomsoever belonging, into the hands of the supreme authority. With lay patronage the Pope, in his own letters at anyrate, was not accustomed to interfere. Bishop Dowden states that he "does not remember" any instance of such interference. But by the established laws of the Church, there were cases in which the next presentation belonged to the Pope, whoever the patron might be; *e.g.* if the incumbent died at the Holy See, or within two days' journey thereof, if he vacated his benefice by accepting promotion from the Pope, if he resigned it into the hands of the Pope or of a papal delegate. In all such cases, where the Crown was patron, it would seem that by the Concordat the Pope abdicated his rights of interference on whatsoever ground; in the case where the patronage belonged to a subject, it is evident that Parliament and the law courts maintained the patron's rights very vigorously. But where the Lords of Council deal with this matter, we find that they are backing up the decision of a church court. That nominations were unpopular with the clergy as with others, and that the ecclesiastical judges would favour the lay patron where they could, may be taken for granted. But the law which they had to administer was in essentials the common law of the Church; there is, I think, no evidence that there was any recognised custom of Scotland

derogating from the common law in this matter. And the sturdiest nationalist ought not to forget that the extension of the papal prerogative was a measure devised by reformers to deal with very real evils. If, in Scotland at least, it largely failed of its object, we must own that among the reasons for this must be included the fact that it was worked largely in subservience to the secular authorities; the guardians of the *lex poli* gave or sold their influence to further the objects of the ministers of the *lex soli* (see p. 111).

J. M. T.

CHAPTER I

The Origin of the Canon Law

In the primitive Church there was a feeling widely prevalent that Christian people should not go to law with each other in the civil Courts presided over by unbelieving judges, and this not unnatural sentiment finds due expression in the actual text of Holy Writ, for in the sixth Chapter of the first Epistle to the Corinthians it is written: "Dare any of you, having a matter against another, go to law before the unjust, and not before the saints?"

Moreover, it is found that the precedent thus early established was not only maintained, but also developed, in the long history of the Christian Church in after ages. At first the brief Canons enacted by the first Councils were mainly based upon, and in some sort intended to be authorised interpretations of, the actual words of Holy Scripture as understood by the Bishops of the Church, and were not enacted

with any great regard to logical sequence and definite arrangement.

But by degrees the entire sphere of Ecclesiastical Law* became enlarged, and the absolute necessity was keenly felt of better arrangement and more logical treatment. Collections of Canons were made by men of learning and distinction, such as Burchart, Bishop of Worms, Ivo of Chartres, and Anselm of Lucca, and were referred to in disputed cases as of some sort of authority; and then at a later date a serious attempt was made to simplify and codify the Canon Law.

The famous Decretum of Gratian is entitled "Concordantia Discordantium Canonum: a Concordance of Discordant Canons." But for this purpose, as well as to satisfy the general requirements of a rational system of law intended for universal sway, it was requisite to have an efficient framework, wherein to place in due gradation the fundamental principles of law. Where could such a framework be better

* "If a man has stolen the goods of a temple, or palace, that man shall be killed, and he who has received the stolen thing from his hand shall be put to death."

Thus runs one of the oldest ecclesiastical laws known to the world, issued by Hammurabi, King of Babylon, who reigned B.C. 2285–2242. The remarkable monument, on which these early laws are inscribed, consists of a block of black diorite nearly eight feet high, found in pieces, but readily rejoined, the discovery and decipherment being completed as recently as 1902, largely by the energy of the French Government.

On the obverse is the curious representation of the Babylonian king receiving his laws from the sun-god, the judge of heaven and earth. Cf. tome iv. *Textes Elamites—Sémitiques—les Mémoires de la Délégation en Perse.* Paris, 1902.

found than in the famous Institutes of the Emperor Justinian, which contained the fundamental principles of the law of Rome in ancient days, and at the opening of this the twentieth century is found also to be the general basis of half the law prevalent in the civilised world. So thought the monk Gratian and his friends learned in the law. So thought those distinguished ecclesiastical statesmen, also learned in the law, who in those distant days surrounded the Papal throne and attended the Papal Court. So thought those powerful prelates, who, within the wide borders of the Holy Roman Empire and elsewhere, were gradually strengthening and consolidating their spiritual and temporal power in western Europe. Hence it is that the early MSS. of the Decretum all commence with Latin sentences closely parallel to the opening words of the Institutes of Justinian; and in a general way we can trace throughout the Decretum, especially in the earlier sections, a similar plan of arrangement to that found in Justinian's famous Book. Yet the Digest was mainly the basis of Mediæval Civil Law.

It may, however, be doubted whether the Decretum of Gratian was really able to fulfil its proud boast of being a thorough Concordance of discordant Canons: for the Canons were so many and oftentimes contradictory one with another, and dealt with such a great variety of subjects and embraced so large a sphere of human activity, that it were well nigh impossible to

compose an exhaustive treatise on this difficult and intricate branch of law.

Yet the Decretum went a very great way in the important direction of introducing some satisfactory order into the existing chaos, and providing students of Canon Law with an intelligible and fairly well arranged text-book worthy of careful and assiduous study.

Moreover, that study was both careful and assiduous. The gloss became more and more elaborate, and the written text of the glossators of high repute extended by degrees beyond the full length of the Decretum itself. In the numerous MSS. of the best period this extensive gloss runs all round the actual text of Gratian in somewhat smaller letters, sometimes, but not always, by the same hand. Furthermore, in the Middle Ages, when Canon Law was seriously studied, there arose another somewhat inferior body of Commentators who provided elaborate explanations of the real meaning not only of the text of Gratian, but also of the more famous glossators.*

Yet the Decretum of Gratian is but half the Corpus Juris Canonici. About a century after, a collection of Decretals was issued by lawful authority as a much needed supplement to the Decretum.† They coincide in date, for the most part, with that striking period of mediæval history when the Church was at the zenith

* All this was in conformity with what happened to the Corpus Juris Civilis and its glosses.

† The Popes followed the example of the Roman Emperors in issuing decreta and epistolæ.

of her power—a period when naturally the subjects and the area of ecclesiastical legislation would be expected to be more widely extended than in modern times. Thus it is that the Decretals crown and complete the Decretum.

Together they make up the bulk of that famous volume entitled Corpus Juris Canonici, and with the final completion of that volume the great period of ecclesiastical legislation comes to an end. Other canons there are of later enactment, but also of less authority. For the most part, future efforts are rather directed to the better elucidation of the received text of the Canon Law than to the issue of new laws by the ecclesiastical authority. There is, moreover, no doubt whatever but that the systematised form which the Canon Law finally assumed made the introduction of fresh Canons and Constitutions all the more difficult after the close of the fifteenth century.

Historical events also bore their fair share in the gradual development of the Canon Law, influencing not only its general character, but also the actual extent of its sphere. But of this influence we cannot now speak particularly.

By the side of the great body of the Canon Law as incorporated in the Corpus Juris Canonici, there also grew up in each particular country a recognised body of Church customs which obtained the authority of law by special local enactment or by long and un-

interrupted usage. Thus in our own land the Convocations of Canterbury and York have long possessed certain powers of legislation for the Church, just as the High Court of Parliament is the supreme legislative authority in the State.

Sometimes ancient local ecclesiastical customs became recognised in the received text of the Canon Law: sometimes they were modified or materially altered, or assimilated by special enactment of General Councils, as for instance was the case in regard to the law of tithe by the Lateran Council of A.D. 1180: sometimes they remained in force in their own locality; as, owing to special circumstances, only being appropriate to that particular country.

It is, however, obvious that with the universal rise of the principle of nationality at the beginning of the sixteenth century, and the general decay of the learned study of Canon Law with its imperial ideas, the local Canons of the Church inevitably obtained greater importance, and received more general attention.

In some countries of modern Europe a large modicum of the ancient Canon Law was incorporated into the civil or domestic law, then being arranged and partly codified; and it would be a curious inquiry to trace out the various examples in which the very words and principles of the old Canon Law reappear in the new civil guise. Such examples are probably more numerous than is generally suspected, and we

are all familiar with the frequent references in our Courts of Probate and Divorce for authoritative precedents to the old ecclesiastical Courts, in part swept away in 1858, in all such cases as do not seem to come within the actual scope of recent Acts of Parliament.

Moreover, there are noteworthy passages contained in the Decretum which infer that the mantle of the Emperor has fallen upon the Pope, that the position held by the occupant of the Imperial throne in the Justinian Code has been transferred to the Bishop of Rome resident in the Palace of the Lateran; and certainly the actual claims to jurisdiction and power put forth by the Papal Court in the days of Innocent III. maintain not only an equality between the heads of the ecclesiastical and civil jurisdiction, but even an innate superiority possessed by the former of these authorities. This arrogant claim reached its climax in the person of the Pope, who gave the Imperial crown to the Emperor Rudolph, encircled by the legend—

Petra dedit Petro, Petrus diadema Rudolfo.

But the general principle of the Canon Law was rather a laudable attempt to find a rational and reasonable basis whereon to regulate ecclesiastical affairs, and thus organise a strong and effective Church, much in the same way as the mighty Empire of Rome had been strengthened and consolidated by its marvellous legal system in the days of the Cæsars.

The prevalent idea in the Middle Ages was that the Church and State were two co-ordinate institutions, each with its own separate jurisdictions, independent of each other, and yet most closely connected. Not only did the development of the Canon Law further this common notion, but the perfecting of the feudal system worked in the same direction. Thus each kingdom possessed its Archbishop as well as its King. In like manner the Bishop possessed similar territorial jurisdiction to the feudal noble, and these together formed the upper House of Parliament. And in England, as each county had its Earl and Sheriff, so each county also had its Archdeacon. Each parish likewise possessed a Rector and Lord of the Manor. Briefly it may be said the feudal system was dove-tailed into the Church system regulated by the Canon Law; and then each exercised a considerable influence on the other. A very remarkable example of the carrying out of this idea may be found in the legal organisation of the Christian kingdom of Jerusalem established by the Crusaders. This feudal influence is in part responsible for the notion that corporate bodies were real entities possessing perpetual succession, etc., within whose definition were included rectors and vicars of parishes as corporations sole. And further, that such a body once created could not be destroyed except by the same or a superior authority to the original creator, and then only in due form of law.

An illustration of this general principle in civil

affairs may be found in the long permanence of the idea of the Empire, one and indivisible, commensurate with Christendom, directly traceable to the throne of Cæsar; resuscitated by the coronation of Charlemagne in the year 800.

The practical activity of the Canon Law reached the maximum under the pontificate of Innocent III. and his immediate successors. This powerful Pope's Acta occupy four hundred and sixty-seven closely printed quarto pages in the elaborate work of Augustus Polthast, published in 1874, and entitled "Re Gesta Pontificum Romanorum."

In fact it is difficult in these modern days to estimate fully the enormous importance of the Canon Law in the practical administration of Europe and the jurisdictional power of the Popes. To take a few Scottish examples: In 1207 Innocent III. decides on appeal a suit between the Prior of S. Andrews and the Bishop of Dunkeld as to the possession of the advowson of the church of Mighil. In 1216 the same Pope issues a Bull settling the lawsuit between the Prior of S. Andrews and the Vicar of Rossin.

In 1325 John XXII. exercises the same jurisdiction, for there still exists in the Advocates' Library in Edinburgh the "Commissio Joan XXII. data ad controversiam determinandum inter Thoman Episcopum Rossensem et Abbatem de Kynlos." Still more curious is a grant in 1386 of "annalia" for the repair of the Church of S. Andrews. Presumably

copies of these documents also exist in the Vatican Library. Furthermore, Pope Adrian grants a Bull of Indulgence to Robert in the year 1154. In 1170 the Abbey of Dunfermline obtains a Confirmation of the possession* of the Churches of Perth, S. Leonard, etc. In 1254 Innocent IV. grants a licence to William, Archdeacon of S. Andrews, to hold another benefice. There exists a Bull of Innocent III. in relation to Peter's Pence, making mention that by Harold, Earl of Caithness, a penny yearly from each inhabited house in his earldom be given to the Roman Church. There is a Bull of Pope Honorius, "De Concilio Provinciali Scoticani"; while John XXII. issues a Bull "mandans episcopis S. Andreæ et Glasg. ut coronient Robertum I."

Moreover,† a letter of Alexander VI. has been preserved—"dans potestatem episcopis Candide Case et Dumblanensi et Abbati de Neobatyll ad procedendum in erectione ecclesiæ collegiatæ de Seton, anno 1492." There are also the Charters of the Preceptory of S. Anthony; a Bull of Pius II.‡ "De instituendo Coadjutore W. episcopi Dumblanensis"; and a Bull of

* The Institution, by Radulphus, Bishop of Aberdeen, to the Vicarage of Burdin, on the presentation of the Prior of S. Andrews in 1238, exists in the Advocates' Library.

† In the Advocates' Library, Edinburgh, may be found a Norse case on Canon Law; the Judgment given between Ogmunder, Bishop of Skaldolt and Hannes Eggertsson.

‡ This was the Pope who, as Cardinal Ænæas Silvius Piccolomini, went on an embassy to the King of Scotland, and has left on record in Latin a very amusing account of his travels.

Leo x., "De indulgentiis concedendis visitantibus domum fratrum predicatorum in Scotia, anno 1518."

In Sir J. Balfour's curious collection of Papal deeds may be found the "Commissio ad querelam Prioris Sancti Andreæ audiendam contra David dictum cissorem burgensem de Berwick, anno 1292." In the Laing collection there are letters by Alex. Lyndesay, Canon of Aberdeen, setting forth the divorce of Lady Arabella Stuart and George Earl of Huntly. Moreover, a remarkable illustration of the monastic intercourse between England and Scotland may be found in the "Ordinatio de pensione 16 marcarum quæ antiquitatis solvebatur monasterio de Reddyng in Angliâ a prioratu de May et de Petgnivern solvenda monasterio S. Andreæ, anno 1318." In 1533 Henry Lauder receives permission "ut privatis altaribus et missis uteretur." From the various MSS. already cited, some rational opinion may be formed in regard to the actual influence of the Canon Law in Scotland during the Middle Ages; and, it will be seen, a great variety of questions come up for consideration and decision.

Patronage, annates, indulgences, licences to hold benefices "in commendam," Peter's Pence in Caithness, Scottish provincial councils, the Coronation of Robert I., the foundation of the Collegiate Church of Seton, the institution of suffragan Bishops, and monastic relations with England, are all brought under consideration, and submitted for decision to the ecclesiastical jurisdiction in due form of law.

The Reformation wrought tremendous changes in Scotland, and amongst later documents of the class above mentioned it will suffice to mention the dispensation for marriage between Patrick Hannay and Margaret Mure granted by Pope Clement VII., the legal process before the Papal Delegates respecting the Priory of Coldingham, and the official consultation in regard to the reception of the Nuncio of the Pope in 1567. All these documents may be found in the Advocates' Library.

During the Middle Ages the Canon Law exercised a wider influence in Scotland than in England, just as the Scottish Abbots occupied a more prominent position in regard to the Episcopate than the English Abbots did in relation to the Bishops of the Church of England.

A careful perusal of the Canon Law forces upon the mind this conclusion, that the great principle which underlies the whole canonical jurisprudence is the endeavour to construct a rational and practical system of ecclesiastical law, and to make provision for a certain fixed relationship between Church and State, which has perhaps come nearer than any other system to the great ideal of the Italian statesman, who desired to see "a free Church in a free State." It is clear also that the long history of the Middle Ages shows not unfrequent instances in which popes and kings, as well as others of high degree, have striven to wrest the forms of the Canon Law to their own personal advantage, whether in the sphere of politics or religion.

It may also be observed that some few at least of the difficulties which beset certain ecclesiastical questions in modern times may be traced to the modern fashion of totally ignoring the Canon Law.

We now give certain MS. illustrations from various unpublished documents.

By the great courtesy of the Dean and Chapter of Barcelona, who possess a vast quantity of early charters and legal documents in their archives, though there is no Cathedral library, it was my lot to see and examine with care the original charter of a grant of houses by S. Olegarius, Archbishop of Tarragona, in the year 1126. The text of this early charter, taken from the original MS., seems worth reproducing here as a practical illustration of the ecclesiastical law prevailing in Catalonia in the twelfth century, more especially as the early charters of Spain are well nigh unknown in England and Scotland.

GRANT BY CHARTER OF ARCHBISHOP S. OLEGARIUS TO THE CHAPTER OF BARCELONA, A.D. 1126.

Cunctis fidelibus pateat quod ego Ollegarius dei gratia tarrachonensis metropolis archiepiscopus dono deo et barchinonensi kanonice domos meas quas habeo infra menia civitatis barchinone, illas videlicet quas Raimundus arnalli pistor tenet et habitat per me. Iterum dono jamdicte kanonice furnam cum suis pertinentiis sicut dimisit michi berengarius bernardi in suo testamento post mortem uxoris sue. Hanc autem donationem quam facio propter deum et remedium anime mee eo pacto ut nullus possit inde aliquid subtrahere a jure prephate kanonice

et possessione neque per donum neque per aliquam alienationem : si quis in posterum disrumpere temptauerit, donec emendat se sub anatemate esse cognoscat.

Actum est hoc X. kalendas May. Anno incarnationis dominice CXXVI. post millesimo.

Ollegarius dei gratia tarrachonensis archiepiscopus.

S + Petri diachoni et sacri scrini.
S + Petri primicherii.
S + Rogerii leuita.
S + num Raimundi subdiachoni.
S + num mironi presbiteri.
S + num Martini petit.
S + num Petri ottonis.
S + num Martinis urucie.
S + num Petri Marcucii.
S + num Johannis arnalli.
S + num Petri bernardi clerici qui hoc scripsit die et anno quo supra.

At this date Raymond Arnold was tenant in occupation of the Archbishop's houses, which had been bequeathed to his Grace by Berenger, son of Bernard. One of the earliest charters at present in the possession of the Chapter of Barcelona contains a gift of ten pounds towards the repair of the Cathedral from the Emperor Charles, between the year 874 and 877, directed to Bishop Frodoyno.

The text of this early document runs as follows :—

In nomine sanctæ et indiuiduæ Trinitatis Karolus ejusdem dei omnipotentis miseracordia imperator augustus Omnibus barchinonensibus peculiaribus nostris Salutem.

Sciatis quoniam superno munere congrua prosperitate

valemus apud nos quoque ut et idipsum maneat valde desideramus. Plurimas autem uobis grates referimus eo quod in nostram fidelitatem semper omnimodis tenditis. Uenit denique judas hebreus fidelis noster ad nos et de uestra fidelitate multa nobis designauit. Unde uestræ fidelitati condignam remunerationem et decens præmium referri parati sumus De nostra igitur fidelitatis assiduitate nullo modo retardetis sed in ea prout melius scitis et potestis in omnibus tendentes permaneatis sicuti hactenus factum habetis. Valete et sciatis uos quia per fidelem meum juda dirigo ad frodoynum episcopum libras x. de argento ad suam ecclesiam reparare.

The Cartulary of Lundors concludes with some curious legal decisions. Earl David, brother of King William the Lion, founded this Abbey.

1. After the death of Earl David, his lands about Lundors passed to the Earl of Mar, who claimed feudal superiority, etc., over the Abbot as the representative of Earl David in the lordship of the land. The Abbot maintained he had no superior lord, except it be the king, and that his land was holden in free alms. Judgment in favour of the Abbot.

2. The Burgesses of Newburgh apply to the Abbot as their superior lord for the renewal of their ancient Charter, confirming their grants and privileges. This the Abbot grants, 24th May 1457.

3. The Abbot holds tithe of many Churches, in which he has appointed Vicars or Curates. Is he bound to attend the Bishop's visitation, or only the said Vicars or Curates? Decided he need not so attend, as he does not personally exercise the cure of souls in these Parishes.

4. David, King of Scots, revokes alienations made by former Abbots, as invalid in law, enrolling the revocations in Chancery.

5. On the Feast of the Conversion of S. Paul, 1281, the Abbot of Dunfermline, as representative or legate of the Apostolic See, gave judgment in the case of the Abbot of Lundors *v.* the Prioress of Elgoch in regard to certain mill rights. The Dean of Christianity of Aberdeen acted as commissary to the Abbot of Dunfermline.

6. The Archdeacon of Dunkeld binds Robert, brother of the Steward of Strathern, not to prevent the Abbot taking timber in the wood of Glenlithern in 1256.

The Cartulary of the Bishopric of Aberdeen contains the following agreement:—

CONVENTIO INTER PETRUM EPISCOPUM ET ALANUM HOSTIARIUM.

Hec est conventio facta inter venerabilem patrem episcopum Aberdonensem ex parte una et dominum Alanum hostiarium justiciarium Scotie ex altera.

Videlicet quod dictus dominus Alanus hostiarius dedit et concessit Deo et ecclesie beate Marie et Sancte Machorij de Aberdon et episcopo Petro ejusque successoribus viginti duos solidos sterlingorum legalium de terra sua de Schene ad duos terminos imperpetuam percipiendos medietatem videlicet ad Penthecosten et aliam medietatem ad festum Sancti Martini in yeme pro decimis de Onele quas sui antecessores Episcopi ex collatione illustris regis Dauid et regum successorem ejusdem actenus percipere debuerunt quas quidem decimas predictus Petrus episcopus prefato Alano hostiario et heredibus suis pro dictis xxij solidis annuatim soluendis imperpetuum dimisit et quiete clamauit. Ita tamen dicta terra de Schen pro prefata quantitate pecunie dictis terminis soluenda Episcopo Aberdonensi qui pro tempore fuerit in perpetuum remaneat obligata.

In cujus rei testimonium parti hujus scripture in

modum cirographi confecte penes dictum dominum Alanum remanenti sigillum dicti domini Episcopi una cum sigillo capituli ecclesiæ sue Aberdonensis est appositum. Alteri vero parti penes dominum Episcopum residenti sigillum prefati domini Alani est appensum.

His testibus domino Willelmo de Brechyne W. Byset. Colmero hostiario. Johanne de vallibus. Gregorio de maleuile. R. Flandrensi, magistro W. officiali Aberdonensi, domino Gilberto de Strivelyng et Hugo de Bennam Canonicis ecclesie Aberdonensis et aliis.

In a Rental of the Bishopric, temp. Alex. III., "De terris de Shyen dentur domino Episcopo Aberdonensi pro secundis decimis de Onele xxijs. ex conventione," etc.

These detailed points, largely illustrated from ancient Scottish MSS., might just as well be illustrated from the various canons that prevailed in the other parts of Europe. They show very clearly the minuteness of detail into which the Canon Law entered upon every question, and prove its mastery in all such intricacies of detail as well as in the enunciation of general principles.

Look at the matter whichever way you will, you will find, as you become better acquainted with the Canon Law, a very remarkable body of jurisprudence, well suited to the general circumstances of the age in which it arose; and you must needs admit—perhaps with unfeigned astonishment—its real and substantial merits as an effective system of ecclesiastical law.

The expression "Canon Law" is in reality used with some considerable variety of meaning. In the

widest sense the expression denotes all ecclesiastical law, including the Canons of those early Christian Councils, which can hardly be said to be law in the sense ascribed to the Decretum or the Decretals of Gregory IX.

In one sense the Corpus Juris Canonici is the Canon Law, but this meaning is generally felt to be too narrow; and some writers have used the phrase Roman Canon Law as equivalent to the Corpus Juris Canonici: yet this phrase ought properly to contain more than the Corpus, and especially those later Canons issued by the authority of the Holy See after the date of the completion of the Corpus, and now enforced by the Vatican.

Then again the ecclesiastical law of each particular nation is often spoken of as the Canon Law; yet as a rule such a body of law can only be a portion of the whole Canon Law, otherwise the Corpus Juris would be itself ignored, for that was not composed for any one particular nation, but for the whole of Christendom. Then again there are whole sections of the Canon Law which have become obsolete by the lapse of time, or the change in the manners and customs of the people. Thus the provisions found in the Corpus Juris concerning betrothals prior to marriage would certainly not be enforced in their fulness even in Roman Catholic countries.

It was also an acknowledged rule in England that particular bulls of the Pope had no legal force within

the realm until they had been "received," or, in other words, had been published in due form of law within the realm, and sometimes the King would punish those who went to Rome to obtain bulls which he deemed to be injurious to the country. Thus, on 9th November 1399, John Andrew, Canon of Christ Church, near Southampton, was arrested for going to Rome and getting Papal bulls contrary to the Statute of Provisors, and exhibiting the same publicly in this country. It was not uncommon in the Middle Ages to arrest a monk who sought to land on our shores with Papal bulls in his pocket unacceptable to the Crown and people of England, or to send him back to the Continent before he had set foot on English soil.

Between the late Bishop Stubbs, of Oxford, and the late Professor Maitland, of Cambridge, there was a famous dispute as to whether the Corpus Juris Canonici was recognised as part of the authoritative Canon Law of England. But the area of disputation is diminished when we remember that legal "reception" was needed to make a Canon of this kind binding in England, or, in other words, legal "publication" within the realm, after which the Canon became received law enforcible by the Courts of competent jurisdiction.

A large part of the Corpus Juris Canonici was received in England, and a certain portion even incorporated in Acts of Parliament. As I understand

this matter, after reading the authorities with great care and attention, the learned Bishop Stubbs regarded no part of the Corpus Juris Canonici as binding law in this realm, unless the legal reception thereof could be clearly proved.

On the other hand, Professor Maitland* was of opinion that the whole body of the Canon Law known as the Corpus Juris Canonici was binding in England, unless there was an English ecclesiastical custom recognised by the Courts which acted as a limitation in a particular case, or the non-reception of a particular Canon could be positively proved. Hence the difference of the teaching of these learned doctors is hardly as divergent as it appears to be from the common controversial statement that Professor Maitland was convinced the whole Corpus Juris Canonici was binding in England, while Bishop Stubbs disagreed with this view.

A similar sort of divergence may be noted amongst ancient authorities of high repute. Thus William Lyndwood in his famous Provinciale, containing the Constitutions of the Archbishops of Canterbury from Stephen Langton to Henry Chichely, as well as other ecclesiastical laws, certainly inclines to Professor Maitland's opinion, while certain famous judges in the sixteenth and seventeenth centuries make an opposite statement in their judicial capacity. The personal fame of these distinguished disputants has drawn special attention to this matter.

* Cf. *Canon Law in England*, by Professor Maitland, pp. 10 and 42.

This chapter may well be concluded with a quotation from a distinguished legal writer of the last century :

> The Canon like the Civil Law is not traceable to any code, but is founded upon the general moral rules to be collected throughout the New Testament. These were made the basis of certain administrative rules for Church Government, together with those enjoined partly orally and partly by the Epistles of the Apostles: the Bishops who succeeded them pursued the same practice ; until after Christianity had obtained a firmer footing, Councils and Synods were assembled, which passed legislative enactments respecting Church Government, etc.
>
> When the Emperors had been converted from paganism to the new religion, they promoted its progress by their Constitutions, which then became properly a part of the Canon Law, although enacted with other municipal laws.
>
> These were followed by the Decretal Epistles of the Popes, which, joined with the decrees of Councils, and embodied in Constitutions, together with maxims taken from the Civil Law, formed that entirety which we term the Canon Law. The Pope, as the Arch-archbishop of Christianity, enforced the observance of this code in all Christian countries, except among those who adhered to the Eastern Church.

CHAPTER II

Decretum Gratiani

The Decretum of Gratian is after all the most important document to be found in the whole region of Canon Law, apart from the Decretalia of Gregory IX.

In a certain sense all the earlier Canons lead up to it; and in a certain sense all the later Canons refer back to it. The unknown monk of S. Felix, in the ancient city of Bologna, won for himself immortal fame, when the Decretum came forth from that famous seat of learning in the middle of the twelfth century.

Yet in some respects the Decretalia of Gregory IX. forms a more complete legal system, and also requires careful consideration. Gratian reconciles discordant Canons that came down to him from past ages: Gregory arranges all the Canons on a logical plan and uniform system. So many as thirty-six Collections of Canon Law are known to have been brought into existence before the year 1150. The principal sources

from which Gratian derived his information in regard to earlier Canons may be stated as follows:—

1. Collectio Anselmo dedicata, A.D. 883–897.
2. Reginonis Abbatis Prumensis libri duo de synodalibus causis et disciplinis ecclesiasticis, A.D. 906.
3. Burchardi Wormatiensis Decretum, A.D. 1012–1023.
4. Anselmi Lucensis collectio Canonum, A.D. 1086. This collection was apparently held in high esteem by Gratian.
5. Deusdedit presbyteri Cardinalis tituli apostolorum in Eudoxia Collectio Canonum, papæ Victori III. dedicata, A.D. 1086–7.
6. Ivonis Carnotensis Decretum, A.D. 1117. This great work was also carefully studied by Gratian.
7. Ivonis Carnotensis Panormia.
8. Collectio trium Partium.
9. Collectio quæ Polycarpus vocatur Cardinalis presbyteri Gregorii tituli S. Grisogoni ad Didacum ecclesiæ S. Jacobi episcopum date annum 1118 confecta esse videtur.
10. Collectio Cæsaraugustana.

The Decretum was issued in its complete form by Gratian, a monk of the Benedictine Monastery of S. Felix, in the city of Bologna, in the year 1151, during the reign of Pope Eugenius III., or, as the best critics now think, between 1139 and 1142.

A curious confirmation of these facts may be found in an ancient MS. in the Vatican Library entitled "Pomærium Ecclesiæ Ravennatis," in which mention is thus made of Gratian: "Anno Christi millesimo centesimo quinquagesimo primo Gratianus Monachus de Classa? (probably Clusio, connected with Lars

Porsenna) civitate Tusciæ natus, Decretum composuit apud Bononiam in monasterio Sancti Felicis."

Ancient authority and the commonly received opinion of the learned in modern times unite in attributing this remarkable work to Gratian, the little known Bolognese monk. And it is certainly fitting that so great a legal book should be closely identified with the city and university of Bologna, the distinguished seat of the systematic teaching of law during a considerable part of the Middle Ages.

After the various sessions of the Council of Trent were over, in the reign of Pius v. in the year 1566, a commission of five Cardinals and twelve doctors, with the addition of certain distinguished persons so as to make the number up to thirty-five, made a careful examination of the received text of the Decretum, and, having inserted certain corrections, brought out the famous Roman edition of the Corpus Juris Canonici. Their fourteen heads of correction show theological bias as much as legal acumen. For by *that* date the great age of the study of Canon Law was over, and the Latin Church was split up into isolated fragments, each endeavouring to formulate a law of its own, especially in regard to heresy, yet ever unmindful of schism.

The remarkable opening sentences of Gratian seem worth quoting verbatim, for they are noteworthy in more ways than one:—

Distinctio Prima. Gratianus. Humanum genus

duobus regitur, naturali videlicet jure et moribus. Jus naturæ est, quod in lege et evangelio continetur, quo quisque jubetur alii facere, quod sibi vult fieri, et prohibetur alii inferre, quod sibi nolit fieri.

Unde Christus in evangelio: Omnia quæcumque vultis ut faciant vobis homines, et vos eadem facite illis. Hanc est enim lex et prophetæ. Hinc Ysidorus in V. libro Ethimologiarum ait. C.I. Divinæ leges natura, humanæ moribus constant. Omnes leges aut divinæ sunt, aut humanæ. Divinæ natura, humanæ moribus constant, ideoque hæ discrepant, quoniam aliæ aliis gentibus placent. Fas est lex divina: jus lex humana.*

And then there follows a series of definitions of the different kinds of laws, as lex, mos, consuetudo, jus naturale, jus civile, jus gentium, jus militare, jus publicum, and jus Quiritium.

The careful study of these opening sentences of Gratian recalls the familiar commencement of Justinian's Institutes and the Digest. There are, however, substantial differences in regard to the sphere of divine and natural law, and their respective sanctions. While the wording and arrangement corresponds to Justinian's great work, there is in certain respects a new spirit breathed into the old Roman forms, a new interest given to the ancient legal principles. Distinctio III. separates ecclesiastical and civil law, or constitutions, and declares that ecclesiastical constitutions are called Canons.

Porro canonum alii sunt decreta Pontificum, alii statuta Conciliorum. Conciliorum vero alia sunt universalia, alia provincialia.

* Cf. *Serv ad Georg.*, I. 269.

In this passage it is clearly laid down that the decrees of the Pope stand on the same footing and have the same authority as the statutes enacted by ecclesiastical councils, and it must always be remembered that though much of the Corpus Juris Canonici consists of the canons passed in early Church councils, yet this whole body of Law was expressly issued to the world by the authority of the Pope.

Moreover, although the Canon Law bestows extensive power on the Pope, yet it also preserves, while it defines, the powers of Bishops, the rights of the clergy, and the parochial inhabitants. When the system of papal dispensations began to override even the Canon Law itself, then first began the era of its decline.

Distinctio III. and IV. considers why laws are made, their quality, nature, and special characteristics.

On these points it is laid down that laws should be just and possible of fulfilment, that they should be according to nature and the customs of the country, suitable to the place and the age; needful, useful, free from obscurity, not made for private convenience, but for the common good.

And Gratian's own comment is :—

> Ideo autem in ipsa constitutione ista consideranda sunt, quia cum leges institutæ fuerint, non erit liberum judicare de ipsis, sed oportebit judicare secundum ipsas.

And then reference is made to S. Augustine's book on true religion. The promulgation is important:—

> Leges instituantur cum promulgantur, firmantur, cum moribus utentium approbantur.

Gratian says that the Latin for the Greek name Canon is *regula*, and gives a reason for the use of this term taken from Isidore, or rather two or three reasons; and then defines the word Canon as an ecclesiastical rule having the force of law made either by the authority of the Roman Pontiff or by a council.

And further, councils possessing this power are either general or provincial, and provincial councils may be held under the presidency of a legate of the Apostolic See, or of a Patriarch, a Primate, or a Metropolitan.

Gratian next states that there are also *leges privatæ* in the ecclesiastical sphere of law as well as the temporal, and that these laws are entitled *privilegia*.

> Nam privilegium inde dictum est, quod in privato feratur.

And then Gratian adds :—

> Officium legum precipere quod necesse est fieri, aut prohibere quod malum est fieri.

Then an example of an ecclesiastical law is given; and the example chosen is the decretal letter of Pope Thelesphorus, ordaining the Lenten fast, which decree is at a later date confirmed by a decree of Pope Gregory the Great addressed to S. Augustine, who

was the first Archbishop of Canterbury, and here entitled Episcopus Anglorum.

Distinctio v. commences with a statement by Gratian dealing with the relation of husband and wife and the baptism of their children.

Distinctio VI. commences with a general proposition by Gratian himself. And here the authority of Pope Gregory the Great, in a letter to S. Augustine of Canterbury, is cited.

In Distinctio VII. the law of the Twelve Tables is cited, and in Distinctio VIII. a further definition of natural law is propounded.

> Differt enim jus naturale a consuetudine et constitutione. Nam jure naturæ sunt omnia communia omnibus.

Then Acts iv. 32 is cited, and also Plato, and S. Augustine's Commentaries. In Anselm (xii. 62) and Ivo Decretum (iii. 194) and Ivo Pan. (ii. 63) the same arguments and positions may also be found.

By natural law all property is common, by enactment and by custom private ownership is maintained.

Distinctio IX. declares:—

> Quod autem constitutio naturali juri cedat multiplici auctoritate probatur.

Distinctio X. lays down:—

> Constitutiones vero principum ecclesiasticis constitutionibus non preminent, sed obsecuntur.

Distinctio XI. says: "Quod vero legibus consuetudo cedat." Under this section in sub-section (caput) xi. it is laid down: "Ab omnibus servari debet, quod Romana servat ecclesia," — and Pope Innocent to Bishop Decentius is quoted.

At this point, perhaps, the general design of the Decretum in one very important point at least may be said to be unfolded: for here we see plainly how, starting on general principles, all things are in the end brought into a logical scheme of subjection to the Roman Church. Her authority is universal, extending to the utmost limits of the known world.

There are altogether one hundred and one Distinctiones in the first portion of the Decretum of Gratian, and to attempt to give any particular account of each section would take much time and occupy too much space. The last two sections refer to Archbishops and Metropolitans, and the gift of the pall or pallium distinguishing these dignitaries from ordinary Bishops.

The brief account, however, which has been given of the opening sections of the Decretum will enable every one to form some practical idea of the scope and character of this most important and elaborate work.

The whole Decretum (without the Decretals) occupies nearly 1500 very closely printed pages in the small type quarto edition of Richter, published at Leipsic in 1879, with Friedberg's Annotations.

While the first part, entitled in the Latin text Pars, consists of one hundred and one Distinctiones, sub-

divided into Canones, treating of the sources of Canon Law, and ecclesiastical persons and the nature of their offices; the second part consists of thirty-six Causæ, or difficult cases for proper solution, subdivided into Quæstiones, or the several points raised by the case, and then under these Quæstiones are arranged in due order the various Canones relating to the case under consideration.

One of these Causæ, however, occupies a somewhat different position to the rest. For Causa xxxiii., Quæstio 3, headed "Tractatus de Pænitentia," is divided into seven Distinctiones, each containing several Canones. And in fact Causa xxxiii., Quæstio 3, might almost have formed a separate section of Gratian's great work.

The third part of the Decretum is entitled "De Consecratione," and provides a concise summary, under five Distinctiones, of the law relating to ritual and the sacraments of the Church.

What are known as Dicta Gratiani, consisting of notes appended by Gratian himself to many of the Canons, are held to be of great authority, as emanating from the honoured father of the Canon Law, but yet are not entitled to the same weight as the actual text of the Decretum; and the passages which are headed "Palæa," about fifty in number, considered to be additions made by Gratian's favourite pupil Paucapalæa, are held to be of equal authority and weight with the rest of the text.

Besides the old ecclesiastical law as handed down

from the earliest ages, Gratian had included in his great work the principal Papal decretals which had been issued to Christendom by the Roman See down to the year 1139.

But the eventful years in the varied history of the Church which immediately followed the publication of the Decretum, and more especially the remarkable activity and wide success of Pope Innocent III., and one or two other Pontiffs following him, led to a general widening of the sphere of the ecclesiastical jurisdiction, and a vast increase in the number of the pontifical constitutions. Innocent has been called "pater juris," and is reputed to have published 4000* decretal laws during his own Pontificate. In those days the Roman See was assuredly not inactive! Not content with the careful study of theology, the Roman Curia boasted many a renowned jurist, and there was scarcely any department of human intelligence which escaped its ken.

The numerous constitutions thus published by authority of the Holy See were described by mediæval lawyers as "decretales extra Decretum Gratiani vagantes," or more shortly as "decretales extravagantes."

Five of the known Collections of these Extravagants attained a very high reputation in the mediæval schools and courts of law; and of these Five the Breviarium Extravagantium of Bernard, Bishop of Pavia, in the

* He might well be compared with the Emperor Diocletian as a Constitution maker.

sunlit plains of Lombardy, called "Compilatio Prima," as being the oldest, forms a noteworthy model for all subsequent collections.

The order of its arrangement in five Books has been briefly summed up in the following quaint mediæval hexameter—

Judex, Judicium, Clerus, Connubia, Crimen.

Hence Bernard of Pavia stands in high repute amongst Canonists. Of these Five collections, only two, the third and fifth, actually received the formal sanction of the Pope.

The classical gloss on the Decretum, called "Glossa ordinaria," is the work of Johannes Teutonicus before the year 1215, and of Bartholomew of Brescia who flourished about 1235.

The entire Corpus Juris Canonici may be said to consist of six principal members :—

1. Decretum Gratiani.
2. Decretalia Gregorii IX.
3. Liber Sextus.
4. The Clementines.
5. Extravagantes Johannis XXII.
6. The Common Extravagants.

The glossators are very numerous. We just give a brief account of one or two for the purpose of illustration.

Pilius was a native of Bologna, and Professor of Law at Modena about 1187. He was employed by the Monks of Canterbury to plead their cause against the Archbishop

before Urban III., while Peter Blesensis was pleader on the other side. The Pope came to no definite decision, but is said to have leaned to Pilius' side.

Peter was born at Blois in France, and died Archdeacon of London; while John of Salisbury died Bishop of Chartres, showing the close intercourse between the two countries in the twelfth century.

Roffredus Epiphanii of Beneventum was one of the numerous writers on Canon Law in the thirteenth century. We know that he was alive in 1243 from his mention of the election of Innocent IV. in that year. His work on the Canon Law is methodical, being divided into twelve parts in the following way:—1. Elections; 2. Episcopal rights; 3. Marriage; 4. Tithes; 5. Patronage; 6. Spoliation; 7. Criminal matters; 8. Excommunications; 9. Judges; 10. Appeals; 11. Execution; 12. Pardon. Of these various parts only seven are now in existence.

Azo was also a famous Canonist. Most of these writers on the Canons also composed commentaries on Roman Law: but sometimes their commentaries are somewhat confused, and lacking in proper arrangement and due order.

CHAPTER III

Decretalia Gregorii IX.—Books I. II. III.

Decretalia Book I.

Though the general circumstances of issue were somewhat different, yet the same causes in the main, which brought about the compilation in Bologna of the Decretum Gratiani, induced Pope Gregory IX. to grant a commission to his learned chaplain Raymond of Pennaforte in the neighbourhood of Barcelona in the mountainous parts of Spain, and sometime Professor of Law in the University of Bologna, to make a collection of the numerous Canons issued since the time of Gratian, and to digest them into an intelligent and workable code. In this manner the famous Decretals of Gregory IX. came into existence. Raymond of Pennaforte did his work well, following with great care and diligence the arrangements which had obtained in the compilations in the five Books, which formed in reality a kind of unauthorised basis for

the Decretalia; and then proceeding to make subdivisions into *tituli*, which consisted of *capita* arranged in due order. Raymond was occupied for four years on this important work, and then Pope Gregory, on the final completion of Raymond's labours, promulgated his Decretals in the year 1234. The original name "Libri extra," etc., was abbreviated for convenience by the jurists into "X," and in this form commonly quoted.

Now, these laws are in the form of authoritative decisions pronounced by the Papal Courts in Rome in all the different cases submitted to the Pontiff from all parts of Christendom. It is obvious that many of these cases will be in the form of appeals from the special judicature of each particular country, and hence, sometimes, of international interest. We find various cases from England and Scotland,* and these have special interest for ourselves. Pope Gregory prefixed an interesting letter addressed to the University of Bologna. He also instructed Raymond to omit such facts and other matter as he considered irrelevant to the case under consideration, but, in modern editions of the Decretals,† these so-called *partes decisæ* have

* Cf. *Ecclesiæ Scoticanæ Statuta*, II. 232.

† Six of the principal glosses on the Decretalia are the work of the following authors:—

1. Vincentius Hispanus.
2. Goffredus Tranensis.
3. Sinibaldus Fliscus, afterwards Innocent IV.
4. Ægidius Fuscararius.
5. John Andreæ, and the famous—
6. Bernard of Parma, who flourished about the year 1266.

been generally restored, in order to make the point of law under discussion intelligible to the student of the twentieth century.

In one way many of the Decretals of Gregory form an authorised commentary on the Decretum of Gratian, explaining more perfectly and fully some principle of Canon Law which had been already accepted at an earlier date, and numerous decretal letters, addressed to the various archbishops and high ecclesiastical dignitaries throughout Christendom, will be found incorporated in Pope Gregory's collection.

Title I. of the first Book deals with the doctrine of the Trinity, following Title I. of Justinian's Code.

Title II. deals with the Constitution of the Church.

Section 3 gives the Vicar of Christ power to change the law.

Section 4 says everything forbidden by the law is sin.

Section 5 places the Decretals above private opinion.

Section 7 declares lay constitutions do not bind the Church or the goods of the Church.

Section 9 allows an increase in the number of Canons, even if that number has been confirmed by the Pope, provided the profits and rents of the capitular body justify such an increase.

Section 12 says Canons are not able without good reason to restrict or diminish the number of Canons or Prebends.

Section 13 says a constitution regards the future, not the past.

Title III. deals with Rescripts.

Section 2 declares that rescripts of the Holy See assume a clause of this kind "si preces veritate nituntur," as was also the practice of the Roman Emperors. Furthermore, if the rescript prohibit the hearing of the case, it may fairly be suspected of falsity.

Section 5 declares that obedience should follow the receipt of a Papal rescript, or good cause shown for non-compliance.

Section 6 announces that it is a privilege of the Cistercians that they cannot be summoned by the Pope, unless mentioned by name.

Section 11 says that bad Latin vitiates a Papal rescript.

Section 21 says that in monastic causes the Abbot may be summoned by rescript without mention of the convent.

Title IV. concerns Custom.

Section 3 declares no custom valid which allows the voice of the people to control ecclesiastical affairs, as Innocent III. informed the Bishop of Poitiers.

Section 4 says a custom is of no avail which allows a priest to perform any episcopal duties.

Section 5 declares any custom which interferes with the sentence of interdict to be invalid.

Section 7 declares any custom invalid which authorises the resignation of a dignity without licence of the superior.

Section 9 declares a chapter cannot make new

customs nor change old without the Bishop's consent.

Section 11 says a custom cannot derogate from the natural or divine law, whose transgression is sin; nor from positive law unless it be reasonable, and according to prescription.

Title v. is "De Postulatione Prælatorum."

Section 1 says "Impostulabilis est qui violat interdictum."

Section 6 says a bishop is not "eligendus, sed postulandus," to another dignity.

Title VI. deals with Elections.

Section 1 says that collegiate churches should elect their own head, who should not be appointed by collation or provision.

Section 2 forbids confirmation of an election made in deference to popular clamour.

Section 3 orders the confirmation of canonical elections.

Section 4 orders Archbishops to take an oath of fidelity and obedience before receiving the pall.

Section 6 declares anyone elected to the Roman See by two parts of the cardinals out of three parts is Pope. This decree of Alexander III. made and confirmed in a council at the Lateran is of great importance, for it governs the Conclave at the present day.

Section 7 declares a Bishop on his election must be a man of learning, of good character, fully thirty years of age, and born in lawful wedlock.

Section 9 says the Bishop Elect cannot confer benefices or otherwise administer the diocese before Confirmation.

Section 11 says a Metropolitan having been confirmed can consecrate suffragans, though he has not received the pall.

Section 14 says electors must be free at the time of election.

Section 17 says that if the elect have not sufficient knowledge, or perform acts of administration before confirmation, the election must be quashed.

Section 22 declares that he who is elected by the majority and wiser part of the chapter, if he be suitable, shall have his election confirmed; but if he be unworthy in regard to age, knowledge, or Orders, then the elect of the minority, if worthy, shall be confirmed.

Section 27 declares that if one who is not a monk is elected head of a monastic establishment the election is bad.

Section 29 says election by the minority of the chapter is void.

Section 31 says that by custom chapters can elect their own canons.

Section 34 says that a majority of the seven electors may elect the Emperor. The Pope may examine and approve, and crown the Emperor.

Section 38 says the Abbot elected must understand monastic rule.

Section 45 orders payment of the chapter's necessary expenses out of episcopal estate on the election of a bishop.

Section 54 says the Pope can give dispensation for a plurality of benefices.

Title VII. deals with Episcopal translations, which can be made by the Pope alone.

Title VIII. illustrates a tendency prevalent in Gregory's time. Here the use of the pall is very clearly defined, and the proper distinction drawn between the dignity of bishops and archbishops, while the extensive rights of the Roman See are maintained as being the only authority capable of granting the pallium to the prelates of Christendom.

Take by way of example the decretal letter of Pope Innocent III. to C. tit. S. Laurentii in Lucina presb. Cardinali, apostolicæ sedis Legato.

> Nisi specialis dilectio illa (Et infra [cf. c. 8 de off. leg. I. 30]). Sane, si postulatio venerabilis fratris nostri Troiani episcopi regni Siciliæ cancellarii ad Panormitanam ecclesiam fuisset per nos etiam approbata, non tamen deberet se archiepiscopum appellare prius quam a nobis pallium suscepisset, in quo pontificalis officii plenitudo cum archiepiscopalis nominis appellatione confertur. Tu ergo, sicut vir providus et discretus quod factum est sic studeas palliare, ut id in confusionem tuam, et sedis apostolicæ opprobrium non redundet, quoniam si oporteat, ut vel nos vel tu ex hoc negotio confundamur, eligimus potius te confundi, quam lædamus sedis apostolicæ dignitatem.

But a further point is decided in the letter of Pope Innocent III. to the Archbishop of S. James of Compostella.

As a general rule an Archbishop should only use the pall within his own province, unless indeed a special licence be obtained from the Holy See.

These minute regulations in reference to the use of the pall helped to consolidate the power and influence of the Papacy.

Title IX. is De Renunciatione, and opens with an interesting letter to the Bishop of London from Alexander III.

> Literas tuas nuper accepimus, devotione plenas et dolore non vacuas, quando quidem et tuam nobis insinuaverunt affectuosissimam caritatem, et tui archiepiscopalis officii, quod fideliter gessisse, et adhuc te gerere gaudemus, contrariam exigebant ecclesiæ utilitatibus cessionem. Nosti enim, sicut vir providus et prudens, quod tanta est diei malitia, et contra ecclesiam Dei tam gravis, tam diuturna persecutionis instantia, ut nequaquam ei cedat ad commodum, si tuam sedem contigerit subire defectum. Si tuam aut senectutem aut insufficientiam forte considerans, te tanquam emeritum postulas relaxari: scito, nos credere et pro certo tenere quod tutius sit hoc tempore, si commissa tibi ecclesia sub umbra tui nominis gubernetur, quam si alteri novæ incognitæque personæ gubernanda in tanto discrimine committatur, maxime quia in te vigor devotionis et fidei etiam corpore senescente non deficit, sed vergente deorsum conditione corporea fervor spiritus in sublimiora conscendit. Ne igitur hujus doloris aculeus vividam circa te nostri pectoris vulneret caritatem, monemus te igitur ut super hoc diebus istis nulla te facias importunitate molestum, quia incedens omnino probatur, prius solvere

militiæ cingulum, quam cedat victori adversitas præliorum.

Insta igitur sicut bonus miles Christi, et in tuæ sollicitudinis officio persevera; ne dum tuæ quietis desideria quæris, tu aliquid talenti tibi crediti detrimentum patiaris.

Illud quoque te oportet attendere, quod si pennas habeas, quibus in solitudinem volare satagis, ut quiescas: ligatæ sunt tamen nexibus præceptorum, quæ ita ut nosti, ex sacrorum canonum institutione te vinciunt, ut liberum non habeas absque nostra permissione volatum. Ceterum ne, frater, te intolerabiliter nos gravare causeris. qui melius tui potes tam animi debilitatem nosse, quam corporis: hoc tandem tibi, si judicio conscientiæ tuæ res id prorsus exigit, indulgemus, ut suscepta opportunitate, tam per te quam per principem terræ, vel etiam per literas tuas, et idoneos nuntios, si corporalem ibi vel non potueris, vel nolueris exhibere præsentiam, aliosque regni illius religiosos, et industrios de substituenda sis persona sollicitus, et talem invenire satagas successorem, qui non a fidei claritate degeneret, neque a tramite rectitudinis et honestatis aberret. De his quoque quæ tuis duxeris necessitatibus reservanda, cum eisdem personas tractare et deliberare te convenit: ut quum nobis hæc omnia tam tua quam illorem fuerint assertione comperta, ita provide ac secure possimus in facto procedere, quod neque nos, neque te ipsum oporteat hujus operis in posterum pænitere.

In this same title a number of other points are laid down in regard to the resignation of ecclesiastical preferment. A few of these points are given below:—

(*a*) Qui renunciavit beneficio suo, illud repetere non potest.

(*b*) Beneficiatus sine licentia prælati sui beneficio renunciare non potest.

(*c*) Qui sponte renunciavit electioni de se factæ, super ipsa ulterius audiri non debet.

(*d*) Renunciatio beneficii facta in manibus laici non tenet; renuncians tamen est beneficio spoliandus.

(*e*) Papa concedit licentiam cedendi episcopo, qui sine mortis periculo in ecclesia sua morari non potest.

(*f*) Qui petit cedendi licentiam, ex quo illam obtinuit, cedere compellitur.

(*g*) Non renunciat juri suo, qui gratiæ adversarii se submittit.

(*h*) Abbas exemptus sine licentiâ Papæ renunciare non potest.

The various decisions quoted above prove that resignation was not in reality a very easy matter under the Decretals of Gregory IX.

Title XI. names the appropriate time for Ordination, and the proper qualifications for the candidates are laid down. In the first place, it is held "Diebus dominicis vel sabbato Pentecostes sacri ordines ab alio, quam a Papa, conferri non debent." Moreover, customs of another kind must not be allowed to prevail. "Non valet consuetudo, quod extra statuta tempora sacri ordines conferantur." In reference to this point there is a decretal letter from Alexander III. to the Bishop of Hereford, which is interesting to quote on account of the connection with the realm of England, and the English Church.

Alexander III Episcopo Herfordensi (*i.e.* Hereford). Sane super eo, quod moris esse dixisti in ecclesiis quibusdam Scotiæ et Valliæ in dedicationibus ecclesiarum vel altarium extra jejunia quatuor temporum clericos ad

sacros ordines promovere, prudentiæ tuæ significamus, quod consuetudo illa, utpote institutioni ecclesiasticæ inimica, et detestabilis est et penitus improbanda, et nisi multitudo et antiqua consuetudo terræ esset (in causa) taliter ordinati non deberent permitti in susceptis ordinibus ministrare. Nam apud nos sic ordinati deponerentur, et ordinantes privarentur auctoritate ordinandi. [De eo autem, etc., cf. cap. seq.]

Furthermore, a monk must not be ordained contrary to the prohibition of his ecclesiastical superior. "Religiosus contra prohibitionem prælati sui ordinari non debet." For this point was laid down by Lucius III. Archiepiscopo Turonensi.

In fact, in this and the immediately following titles the laws relating to Holy Orders are very carefully laid down.

It will suffice to quote a decretal letter of Alexander III. to the Archbishop of Canterbury (Tit. XIV. sec. 2).

Ex ratione commissæ tibi dignitatis et consideratione legationis ad universas ecclesias tuæ legationis aciem sollicitudinis tuæ debes extendere, et quæ enormiter seu contra justitiam facta fuerint pastorali cura corrigere et emendare, quatenus de commissis ovibus coram patrefamilias plenam reddere valeas rationem, et tibi pro labore et sollicitudine tua merces copiosa cumulatur in cælis.

Accepimus, autem, quod Conventrensis episcopus, non attendens quid sacrorum canonum statuta decernant, nec modestiam pontificalem conservans, pueris, qui sunt infra decennium constituti, in archidiaconatu dilecti filii nostri R. archidiaconi Cistrensis ecclesias plures concessit, quæ non per clericos, sed per laicos dispensantur et disponuntur. Unde quoniam hoc ecclesiasticæ utilitati est inimicum et

rationi contrarium, et ideo non debet hoc aliquatenus tolerari, fraternitati tuæ per apostolica scripta præcipiendo mandamus, quatenus, si ita res se habet, prædictum episcopum super his viva increpatione corripias et castiges, et clericis idoneis administrationes et custodiam præscriptarum ecclesiarum, donec prædicti pueri ad congruam veniant ætatem, omni occasione et appellatione cessantibus laicis amotis committas, eidem episcopo arctius prohibens, ne de cetero ecclesias, nisi personis, quæ ætatem et scientiam habeant, regendas concedat. Quod si secus egerit, ei debitam pœnam infligens, institutionem et concessionem ipsius omnino viribus carere decernas.

Title XXIII. concerns the office of an Archdeacon, and here we find Alexander III. instructing the Bishop of Coventry and the Abbot of Chester concerning the Archdeacon of Chester's visitation:

Mandamus, quatenus prohibeatis R. Cestrensi archidiacono, ne clericos sive laicos, qui pro suis excessibus puniendi sunt, pœna pecuniaria mulctare, sive in examinatione ignis vel aquæ a quolibet viro vel muliere extorquere præsumat, aut pro annua et indebita exactione pecuniæ personas suspendere, vel ecclesias interdicere, neque ad ecclesias sui archidiaconatus visitandas nisi semel in anno accedat, nisi forte talis causa emerserit, propter quam ipsum oporteat præfatas ecclesias sæpius visitare.

Title XXVIII. defines the office of a Vicar, quoting from Alexander III. to the Bishop of Norwich, and the same Pope to the Bishop of Ely, and also to the Bishop of Winchester; while Innocent III. declares the Pope's Vicar has only jurisdiction *within* the city of Rome.

Title XXIX. deals at considerable length with the power and position of a Judge Delegate, for the Popes were constantly deciding judicial causes by the authority or instrumentality of legates, or other official representatives, and in like manner Archbishops and Bishops were prone to delegate their judicial authority. The first section gives us a decretal letter of Alexander III. to the Bishop of London (though some MSS. apparently read Bath or Exeter), concerning the powers of the Pope's representative.

> Quia quæsitum est a nobis ex parte tua, quid faciendum sit de potestatibus, quæ, quum præcipimus alicui justitiam exhiberi de his quos diligunt, aut tueri volunt, minis aut terroribus suis conquerentes silere compellunt, et sic mandatum nostrum eluditur, sic tibi respondemus, quod, sicut agentes et consentientes pari pæna scripturæ testimonio puniuntur, sic tam eos, qui trahuntur in causam, quam principales eorum fautores, si eos manifeste cognoveris justitiam impedire, districtione ecclesiastica poteris coercere.

In consequence of the practical importance of Papal delegations in the Middle Ages, and the general consequences of this principle, there are no fewer than forty-three sections or caputs dealing with this matter.

And these various rules naturally lead up to the subject of the next title, which deals with the office of Legate.

And from the consideration of the powers, duties, and privileges of a Papal Legate, and the difference between a Legate in general and a Legate "de latere,"

Gregory IX. passes on to the office of the Judge in Ordinary, which for most purposes is the Bishop.

Title XXXIII. is headed De Majoritate et Obedientia. Here section 14 states a well known and famous law. "Vacante episcopatu Capitulum confirmat et infirmat electiones." And the decretal letter of Gregory IX. himself is given "Priori fratrum Prædicatorum et archi diacono Rheginensi."

Section 16 lays down the general principle that if a church be raised to the rank and dignity of a Cathedral, the jurisdiction of the Archdeacon over that church is thereby extinguished.

Title XXXIV. is De Treuga et Pace; and opens with a decree of Alexander III. published in the Lateran Council.

Title XXXV. is De Pactis. There are letters decretal to the Archbishop of York, and the Bishops of Exeter and Worcester, amongst other prelates, laying down various rules, forbidding the payment of money to procure the resignation of a benefice, or the making of a contract promising the succession on the death of a particular priest, etc. etc.

Title XXXVI. is De Transactionibus (cf. Digest II. 14 and 15).

Section 2 lays down that a composition concerning tithe holds good when it has received the consent of the superior, or ordinary.

The third section contains a letter to the Bishop of "Dulmen," laying down that, if the chapter consent

to a transaction which the Bishop has made in the name of the Church, none other can dissent. This ecclesiastical law gave rise in after ages to much discussion and elaborate interpretation. Thus, an important gloss declares "abbas simpliciter ad agendum constitutus, sine licentia capituli transigere non potest."

In section 8 it is laid down that any transaction made by a prelate concerning the goods of the Church without the consent of the superior or ordinary will not be binding upon his successor.

In this case the decretal letter is addressed to the Abbot of Straphor and the Prior of Phe, two monastic establishments whose position appears to be uncertain.

Title XXXVII. is headed De Postulando.

Section 1 forbids ecclesiastical persons from pleading in secular courts, unless on their own behalf, on behalf of the Church or of poor people.

Title XXXVIII. concerned Proctors.

Section 7 gives a decretal letter of Innocent III. to the University of Paris.

Scholaribus Parisiensibus.

> Quia in causis quæ contra vos et vobis moventur, interdum vestra universitas ad agendum et respondendum commode interesse non potest, postulastis a nobis, ut procuratorem instituere super hoc vobis de nostra permissione liceret. Licet igitur de jure communi hoc facere valeatis, instituendi tamen procuratorem super his auctoritate præsentium vobis concedimus facultatem.

Section 10 declares that a proctor should enjoy full liberty, especially in matrimonial cases. The letter of Gregory IX. to Ubaldus of Pisa is then quoted. The next section contains a letter to the Archbishop of Canterbury.

Title XL. is headed De His, quæ vi metusve causa fiunt.

In section 4 Innocent III. addresses the Dean and Sub-Dean of Lincoln from the Lateran Palace on the nones of February in the year 1200.

> Qui per metum, qui cadere potuit in constatem virum, beneficio suo renunciare juravit, et renunciavit, illud repetere poterit.

Title XLI. concerns Restitutio in integrum.

The first section declares—

> Si in contractu venditionis vel locationis ecclesia fuit enormiter læsa, potest adversus talem contractum petere restitutionem in integrum: emptor tamen sive conductor non debet fraudari in pretio suo, vel in sumptibus per eum factis.

This principle of ecclesiastical law is laid down by Alexander III. Alphanensi Episcopo.

Title XLIII. deals with Arbitration, and opens with a decree or canon of the African Council, which is also found in Burchart and Ivo.

> Si autem ex communi placito episcoporum, inter quos causa versatur, arbitros elegerint, aut unus eligatur aut tres, ut si tres elegerint, aut omnium sequantur sententiam, aut duorum.

The object is to obtain a clear majority in every decision.

Section 3 contains a decretal letter of Alexander III. to the Bishop of Exeter, which lays down that "arbiter assumptus in patrimoniali causa clerici non potest adjudicare rem ecclesiæ possidendam, etiam ad vitam clerici." This is called a notable case.

Section 6 is addressed to the Bishop of St. Andrews and the Abbot of Arbroath, latinised Bechot.

Section 8 forbids laymen being arbiters in spiritual matters.

Decretalia, Book II.

Book II. of the Decretals contains 30 Titles. Title I. is De Judiciis.

Section 2 provides for the transaction of ecclesiastical business in the Consistory, or other similar Courts.

Section 3 provides that "causa juris patronatus spectat ad judicium ecclesiæ." The authority quoted is the decretal letter of Alexander III. to the King of England.

> Quanto te divina gratia. . . . Causa vero juris patronatus ita conjuncta est et connexa spiritualibus causis, quod non nisi ecclesiastico judicio valeat definiri, et apud ecclesiasticum judicem solummodo terminari.

Section 5 lays down that "Vasallus coram domino feudi conveniendus est, etiamsi dominus feudi sit ecclesiastica persona, dummodo ibi actor possit suam

justitiam consequi: alias loci ordinarius poterit adiri." This is called a notable case.

Section 8 says that clerics can only be summoned before the ecclesiastical Court.

Lucius III. Strigonensi Archiepiscopo is here quoted.

Section 12 makes the Pope alone judge in doubtful points relating to the privileges of the Holy See. As might be expected, this decretal was issued by Innocent III. to the Abbots of S. Sergius and S. George; and the words are "Quum enim super privilegiis sedis apostolicæ vertatur, nolumus de ipsis per alios judicari." In the next section the same Pope declares that the ecclesiastical judge may proceed against laymen who are sinners, especially in cases of perjury and breaking the peace. This principle is laid down in a long letter to the Bishops of France.

Section 20 declares that "lapsu triennii non obstante potest delegatus in causa sibi commissa procedere," and is addressed to Tancred, Canon of Bologna.

Title II. deals with the nature of competent Tribunals.

Section 1 quotes the Council of Calcedon, and declares clerics should be summoned before the Bishop.

Section 6 recognises the feudal jurisdictions, but places the Pope above them, if an ecclesiastic is concerned, and the feudal lord is negligent.

Section 9 says that clerical cases must be decided according to the laws, and not according to lay customs.

Section 16 makes laymen usurping ecclesiastical rights guilty of sacrilege, on the authority of a decretal letter of Gregory IX. to brother Palmerius, Canon of the Holy Trinity.

The next Titles explain more fully the ways of procedure.

Title IX. forbids Legal Proceedings on Sundays and festivals, and Title XIII. states the various methods of Restitution. Here section 7 contains a decretal letter of Alexander III. to the Archbishop of Canterbury.

> Spoliatus etiam a judice, juris ordine prætermisso, ante omnia restituatur.

The Pope reinstates R. in the Church of Werfort, and appoints the Bishop of Exeter his delegate to hear any matter in dispute between R. and the Archbishop of Canterbury. The name of the Church is very uncertain, the MSS. here varying very much. We find Wefort, Nefort, Dorefort, Dinodium, Deufort, Dureforti, Dimifort, Verfor, Durifort, and Dumolin.

Title XVI. is entitled "Ut Lite Pendente Nihil innovetur."

Section 1 gives a decretal letter of Alexander III. to the Archbishop of York about carrying his cross erect throughout England.

Section 2 lays down on the authority of Clement III.—

> Accusatus de adulterio ad separationem tori non debet lite pendente privari possessione conjugali.

Title XIX. is headed De Probationibus.

Title XX. concerns Witnesses. Section 28 requires the evidence of more than one witness.

Innocent III. Consulibus et Populo Beneventano.

> Canonica et civilia jura sequentes districtius inhibemus, ne unius judicis, quantæcumque fuerit auctoritatis, verbo credatur in causis, sive super testamentis, sive super quibuslibet aliis contractibus quæstio agitetur. Nec scriptum eorum, nisi testium adminiculo fulciatur, eam obtineat firmitatem, quin ei possint et debeant duorum vel trium testium bonorum testimonia prævalere, salva in omnibus sedis apostolicæ auctoritate.

This letter is dated the 4th of the Ides of June 1198.

Title XXII. is De Fide Instrumentorum.

Title XXIII. De Præsumptionibus.

Section 11 states "per cohabitationem diutinam et famam de matrimonio et contractibus matrimonialibus ac alia adminicula probatur matrimonium." Alex. III. Genuensi Archiepiscopo.

Title XXV. is De Exceptionibus.

Title XXVI. De Præscriptionibus.

Section 6 states "una ecclesia in parochia alterius quadraginta annorum spatio decimas præscribit."

Section 13 requires 100 years' prescription against the Roman Church.

Title XXVII. is De Sententia et Re Judicata, and Title XXVIII. De Appellationibus.

Section 1 contains a letter of Alex. III. to the Bishop of Exeter and Dean of London concerning the collation to benefices.

Section 7 refers to papal appeals. Section 37 declares an interdict is not suspended by an appeal. Section 65 forbids a third appeal.

Decretalia, Book III.

Book III. of the Decretals deals with the Clergy.

Title II. forbids Marriage.

Title III. deals with the case of Clergy who are married and the treatment they should receive.

Section 3 provides—

> Si clericus in minoribus beneficiatus matrimonium contrahat, privatur beneficio, et quod dedit ecclesiæ sibi restituitur.

The authorities quoted by Pope Gregory not unfrequently belong to the earlier period when the enforced celibacy of the clergy was first imposed on the Roman Church, and many curious points arose as to the treatment of wives and concubines. Section 6 recognises the son of a Greek priest born in wedlock.

Title IV. deals with the residence of Prebends and Canons. The general rule laid down requires constant residence, but as most of these officials held more than one appointment they could not be in two places at one and the same time, and so it came to pass that a large number of legal exceptions to the rule of constant residence were allowed to prevail. Thus the rule of Pope Leo III., quoted in Section 2, would

certainly very much astonish a modern Cardinal of the Roman Church. We just give the heading "Deponitur Cardinalis, qui in suo titulo non residet."

It is then stated that a certain Cardinal priest Anastasius, by the title of S. Marcellus, was thus deposed in early times after five years' absence.

But all this seems to go back to the remote days when the Cardinals were really the active Rectors of the Churches in the city of Rome.

Canonical reasons for partial exemption from residence are given, and include such grounds as these:— Study in the theological faculty of the University, the business of the Church, and journeying with the Bishop.

Title v. deals with Prebends and other dignities. Section 1 declares the goods of the Church cannot pass by right of consanguinity, and the third that the goods of the Church are common property, as Pope Gregory wrote to the sub-deacon Anthemius.

Section 6 makes the first mention of provision—so famous a matter throughout the later Middle Ages.

And then there follows various rules as to the position of monks in regard to the parochial property of the Church.

And then the close connection between cathedral chapters and the Pope is shown, and the special privileges sometimes granted by the Holy See.

Section 7 declares that if a clerk has more than one benefice he may select which to retain, and which to

resign, and the authority quoted is a decision of Alexander III.

Section 8 forbids the division of Prebends and other ecclesiastical dignities, or any change in their character or condition.

This section seems more important than at first appears, because in the Middle Ages rectories were often divided and turned into rectories and vicarages with the consent of the Bishop and the Pope, frequently at the instance of an Abbey or Priory. As a matter of fact this course was taken in regard to about half of the parishes in England, and the laws then made now govern those parishes.

Section 10 forbids monks to try to diminish the payments due to rectors or vicars, or to make a division of parochial endowments. Alexander III. wrote in strong terms on this subject to the canons and monks in the diocese of York.

Section 16 provides that if a Bishop ordains any one without a title, he must provide all necessaries till a title is obtained.

And this rule also binds the Bishop's successor, and is based upon a decretal letter of Innocent III. to the Bishop of Zamora.

Section 21 is curious—

> Si duo electi ad aliquam dignitatem compromittant in judices, poterit judex alterum confirmare, et alteri pro bono pacis de proventibus provisionem facere. Ista est pulcherrima dispositio, et in toto corpore juris non habes consimilem.

Section 24 permits investiture, or induction to a benefice by deputy.

"Investiare" seems to include both induction by the Archdeacon, and institution by the Bishop.

Section 25 gives the curious case of the cellarer who claimed a Prebend also claimed by another ecclesiastic.

Section 28 lays down six months as the time at which the first benefice is vacated on acceptance of a second, but the Pope has a power of dispensation.

Section 30 forbids the grant of pensions out of Rectories. Both Bishops and patrons appear from time to time to have endeavoured to make grants of pensions in this way.

Section 32 makes a distinction between the rents attached to a benefice, and any daily allowances attached to the same. The first may be received, but not the second, by a priest out of residence for the purpose of theological study.

The case of the Archdeacon of York or of Evreux is quoted, according to the MS. reading "Eboracensi" or "Ebroicensi." The papal authority is that of Honorius III., Abbati Sanctæ Genovefæ.

Title VI. concerns Sick Clergy, and authorises a coadjutor for rectors suffering from leprosy.

Title VII. deals with Institution: forbidding the institution of laymen, and confining this power to Bishops.

Section 7 provides that whoever possesses the

power of collation to dignities cannot institute himself —a very necessary provision in mediæval times.

Title VIII. forbids Institution to a benefice not vacant, and a promise to institute before vacancy is null and void. When the right of patronage becomes vested in a Bishop by lapse, he must exercise that right within six months of the date of the lapse. This rule is based on a Canon of the Lateran Council.

In section 16 the Countess of Flanders incurs the papal displeasure for making illicit promises concerning benefices which were not vacant.

Title IX. declares nothing can be done during the vacancy of a Bishopric, and a judgment against the Church at that time does not hold good.

Title X. provides that no Ecclesiastical Property can be alienated without the consent of the Chapter. In a Collegiate Church the chapter or the majority thereof makes a presentation to a vacant benefice in their own gift.

The heading of section 7 is interesting—

> Tenet donatio, quam de solius diocesani consensu facit laicus ecclesiæ de decimis, quas ab alia ecclesia habet in feudum ab antiquo, ie ante Lateranense concilium.

Here is an illustration of the fact that the Lateran Council of 1180 for all practical purposes finally fixed the law of tithe.

Innocent III. lays down that cathedral chapters have a right to be summoned to provincial councils.

Title XI. concerns the Powers of the Majority in cathedral and collegiate chapters.

Title XII. forbids the Conferring of Benefices subject to a diminution of value and rights of property.

Title XIII. forbids the alienation of the property of the Church: but a rector may manumit slaves on his estate, and they become "sub patrocinio ecclesiæ."

Land may be granted "in emphyteusis" to a tenant who will prepare the same for cultivation by clearing away useless woods. Such a case occurred in the Bishopric of Worcester.

A Canon cannot let in perpetuity a farm belonging to the Church. A certain Canon of Exeter had wished to do this, but was prevented by Cælestine III.

Section 11 provides for the Restitution of alienated Church property.

Title XIV. concerns Precaria.

Title XV. deals with Commodatum.

Title XVI. deals with Depositum and XVII. with Emptio et Venditio. There is a wholesome provision that a person who uses fraudulent weights and measures must do penance for 30 days on bread and water.

If a seller is deceived beyond half the fair and just price, he may bring an action for the restitution of the thing sold or a just price.

Title XVIII. concerns Locatum et Conductum.

Title XIX. is De Rerum Permutatione.

A prince may acquire Church property by exchange,

but he must give property of equal or greater value. All exchanges are invalid, if not made in due form of law, and can be revoked by the next successor in title. Benefices may also be exchanged, but nothing temporal for anything spiritual.

Title XX. deals with Feus, and Innocent III. gives the Archbishop of Milan three cases, "in quibus, non obstante juramento de non infeudando, potest episcopus antiquam feudum ad ecclesiam reversum novo vassallo concedere. H. d. est casus notabilis, interpretans juramentum de alienando."

Title XXI. concerns Pledges, and only allows Church goods to be pledged from necessity, or for a reasonable cause.

Gregory III. informs the Bishop of Exeter that a free man may not be put in pledge. If a rector pledge the property of the Church, his heir must redeem and restore the property to the Church.

Title XXII. is De Fidejussoribus.

Title XXIII. is De Solutionibus.

If a prelate charges a Church with external debts he is suspended from the administration of both spiritual and temporal affairs, and the Church is not bound by any obligation. Gregory IX. issued a decretal letter in 1232 to this effect, addressed to all the Bishops of Christendom.

Title XXIV. is De Donationibus. A gift by a prelate is invalid, if made without consulting the Chapter, and to the injury of the Church.

It is provided by section 9 that "Donatio quinquagesimæ vel centesimæ, quam facit episcopus cum gravi ecclesiæ suæ detrimento, potest legitime revocari; nec etiam potest ultra quinquagesimam vel centesimam conferre, etiam cessante læsione ecclesiæ, sine auctoritate superioris." The papal authority quoted is Innocent III. to the Bishop of S. Andrew.

Title XXVI. deals with the very important question of Wills. A Bishop may make a will of "res patrimoniales," but not of "res ecclesiæ." Yet an Abbess has no power of making a will. The execution of a will falls upon the Bishop after the lapse of one year from the day of monition. A legacy is payable, though left by word only, but a legacy involving the goods of the Church is not payable.

Title XXVII. Intestate Succession.

Section 1 permits an ecclesiastic to bequeath his goods to whom he will; but if he make no will, and has no relations by consanguinity, then the Church succeeds. If an ecclesiastic, once a slave, die intestate, his goods (*i.e.* peculium) are divided into four parts, one to the bishop, one to the Church, one to the poor, and one to his parents; and if there be no parents alive, then the bishop distributes this last fourth part for the use and benefit of the Church.

Title XXVIII. Burial.

Section 1 declares that on the death of an intestate he must be buried in the sepulchre of his ancestors, or where he selects as his place of burial, but the

parish Church shall have the canonical portion of that which he shall have left for his burial to the Church.

Section 4 says that if a man in his mortal sickness offer himself and his goods to a monastery, the parish Church yet has the canonical portion.

Section 7 authorises a married woman to select her own place of burial.

Section 9 says the amount due to the parish Church is regulated by custom.

Section 11 declares that anyone dying "casualiter" cannot be deprived of his right of burial.

Section 13 forbids the sale of burial grounds.

Section 14 authorises burial in the churchyard of the excommunicated, absolved at the hour of death by his parish priest, the heirs having to make satisfaction, as Gregory IX. directed.

Title XXIX. Parishes.

Section 2 provides that parochial incumbents should not be admitted to mass in other than their own parishes on Sundays and Holy Days.

Title XXX. Tithe, First Fruits and Oblations.

Section 4 declares monks bound to pay prædial tithe on farms newly brought into cultivation, out of which tithe had formerly been paid: as Hadrian IV. informed Thomas, Archbishop of Canterbury.

Section 7 declares the tenth part of the fruits actually collected must be paid without deducting expenses.

Section 8 says that a dispensation from paying tithe does not include hired lands.

Section 10 says Cistercians, Templars, and Hospitallers need not pay tithe on lands of their own, cultivated by their own hands, or at their own expense.

Section 13 declares tithe of "novale" due to the Church of the parish in which it arises.

Section 15 declares tithe cannot be granted to a layman by hereditary right as a certain Abbot seemed to think, whose error Alexander III. clearly pointed out.

Section 16 orders Jews to pay prædial tithes.

Section 17 forbids grants of tithe or oblations to laymen, and prelates making such grants must be punished.

Section 19 forbids a layman to transfer tithe to another layman.

Section 21 declares that all kinds of farm produce pay tithe.

Section 25 declares an imperial grant cannot remit the payment of tithe.

Section 27 says that a dispensation as to tithe granted to an ecclesiastical person includes "novalia."

Section 29 declares that he who owns tithe in another parish (than his own) cannot thereby claim "novalia" if they arise, as Innocent III. decided at the Lateran Palace in the year 1210, saying that Cistercian monks could not claim tithe of "novale," which by common law belonged to the parish Church.

Section 33 makes tithe a first charge.

Section 34 says that all estates acquired by Cistercian Abbots after the General Council will remain liable to tithe exactly as was the case before they passed into

monastic hands. This also applies to Templars and Hospitallers.

Title XXXI. concerns the Monastic Life.

Section 1 declares a monk must take his vows willingly, and be of suitable age.

Section 2 says that the parents cannot claim a youth (impubes) after he has spent one year in a monastery.

Section 3 says that a secular priest, accustomed to use the monastic habit, must become a monk or give up the habit.

Section 5 says a monk may not in a bold spirit pass to another monastery, or possess separate estate.

Section 7 says that a Cistercian monk, going into another monastery (presumably *not* Cistercian ?) must be sent back to the monastery whence he came, as Alexander III. informed the Archbishops and prelates of France.

Section 8 declares a profession (of monastic vows) made before the fourteenth year is not binding.

Section 9 declares that anyone who receives the habit of a professed monk must become a monk, but he who receives the habit of the novitiate may afterwards return into the world.

Section 12 says that a daughter under 12 years old placed in a monastery by her parents, cannot return to the world, if she willingly take the veil after reaching the age of 12.

Section 15 says a lunatic is not bound by the monastic vow.

Section 16 forbids profession during the time of probation, yet if made, and the party is received, it holds good.

This is called a very notable decision, and is contained in a decretal letter of Innocent III. to the Archbishop of Pisa.

Section 17 declares that one who has been professed, even if he never live in the cloister, is yet bound by his monastic *rule* of life.

Section 21 allows those who have returned to the world, not having made profession within the year of probation, to be admitted to Holy Orders, and be preferred to benefices.

Section 24 says that fugitive monks are sought for "annuatim" and compelled to return to their monastery.

Title XXXII. is De Conversione Conjugatorum.

Section 1 declares that if a husband make profession with his wife's permission, and the wife does not take a vow of continency, and enter the religious life, the Bishop will restore the husband to the wife.

Section 3 says that a husband making profession without his wife's consent, and having therefore been restored to her, is not on her death of necessity compelled to enter a monastery. He should not, however, marry again.

Then there follow a number of further enactments framed to prevent husbands entering monasteries to get rid of their wives or *vice versa*.

Section 17 says a wife can demand back a husband who has made profession of religion, nothwithstanding leave to do so had been obtained from her by fear.

Title XXXIII. is De Conversione Infidelium, and contains only two short sections.

Title XXXIV. is De Voto.

Section 1 declares that "vota" may be redeemed by giving alms for a just cause, application being made to the superior ecclesiastical authority.

Section 2 declares the Pope can commute "votum ultramarinum"—especially if made by the young.

Section 6 says the Church can compel the heir to make good "vota ultramarina."

Title XXXV. De Statu Monachorum ut Canonicorum Regularium.

Section 1 forbids the Bishop to molest a monastery, except for purposes of correction.

Section 3 warns Cistercians to keep strictly to the original rule of their order.

A canon regular may be a parish priest, but he should have one of his order with him, if possible.

Section 6 deals with the monastic habit, resignation of private property, monastic silence, food, and performance of offices duly appointed by the Abbot.

Section 7 declares monastic provincial councils should as a rule be held every third year. This is the first of twelve rules laid down concerning monastic establishments, and the holding of monastic chapters.

Section 8 deals with the correction of monks, abbots,

and the powers of visitors, as well as the position of secular priests holding monastic benefices.

Title XXXVI. De Religiosis Domibus, ut Episcopo sint subjectæ.

Section 4 declares that a place once used for a hospital or almshouse by episcopal authority is "religiosus," and can never again pass back to worldly uses; as Urban III. informed the Bishop of Rimini.

Section 5 contains a decretal letter of Innocent III. to the Patriarch of Constantinople concerning Greek monasteries which were being turned into chapters of secular canons. The Pope will only approve of such a change if there is a total lack of suitable monks.

Section 7 says that a Bishop suing for possession of a church "quoad temporalia et spiritualia" will obtain the spiritualities for himself, unless the church be exempt, but he must prove his right to the temporalities.

Section 8 says a monastery is subject to the Bishop in whose diocese it is situated, unless it is proved to be excepted.

A famous case in England is the position of Westminster Abbey, which is exempt from the jurisdiction of the Bishop of London, although situated in the metropolis of England.

Section 9 requires every new order of monks to obtain the direct sanction of the Bishop of Rome.

Title XXXVII. is De Capellis Monachorum.

Section 2 says that if a church (not a cathedral)

claim rights in another church, they must be proved by præscription, or in some other legal way.

Section 3 forbids single monks to occupy priories. The apostolic rescript, and the decrees of the Lateran Council coincide on this point, as Honorius III. informed the Bishop of Venice.

Title XXXVIII. concerns Patronage.

Section 3 lays down the rule that if patrons disagree then the person to be presented who has the support of the majority is to be preferred, if a suitable man. If the patrons do not present in due time then the Bishop appoints.

Section 4 forbids lay institution under pain of excommunication.

Section 5 declares that if a lay patron successively presents two persons, and the second receives episcopal institution, that institution is valid.

Section 7 says an advowson passes with the transfer of other temporal property unless it be specifically excepted.

Section 11 says monasteries cannot retain churches granted them by laymen without the formal consent of the Bishop, except by præscription, or subsequent episcopal consent.

Section 14 forbids anyone to take possession of a church without the patron's consent.

Section 17 forbids a patron to confer the tithe of a church or any other spiritual property upon a religious house without episcopal or papal authority.

Section 18 declares that the presentee of a bishop in another diocese should be admitted, if suitable.

This point is of practical importance, as bishops have sometimes sought to claim all episcopal patronage within their own dioceses.

Section 19 declares that anyone instituted after due presentation ought not to be removed.

Section 20 declares that a second grant of a church made by authority of the Bishop and the patron is good, notwithstanding a prior grant by the patron alone, as Alexander III. informed the Archbishop of York.

Section 22 authorises the Bishop to appoint a rector if the question of the patronage is not settled within six months.

Section 23 declares that a patron cannot by his own authority alienate his patronage unless this privilege were reserved at the time of foundation by the diocesan.

Section 25 declares that any one building a church with the consent of the Bishop thereby acquires the right of patronage.

Section 26 says a patron cannot present himself, as Innocent III. declared in 1198.

Section 28 allows a legate de latere "to reserve the right of collation to a church of which another church is patron, though that church be not vacant, and to make a grant thereof, when it is vacant." This decretal was issued by Innocent III. A.D. 1206, and,

as might be expected in the days of that Pope, tended largely to increase the power of the Holy See.

Section 29 says that if a lay patron present two persons successively, the institution of the second by the Bishop holds good; yet if the Bishop acted maliciously he may be compelled to find a proper benefice for the first.

Title XXXIX. De Censibus, Exactionibus et Procuratoribus.

Section 3 declares the bishop is unable to impose a fresh charge on a monastery.

Section 5 says the claimant of a charge must clearly explain its reason.

Section 6 limits the number of horses a bishop should require during his visitation.

Section 7 forbids the impost of new charges on churches, or the increase of old charges.

Section 8 declares a prelate or rector cannot create a new charge on his church, especially (to be valid) after his own death.

Section 10 declares that he who imposes fresh tribute* without the consent of the prince, should be deprived of communion.

Section 15 forbids ecclesiastical patrons to impose fresh charges on their churches, or increase the old.

Section 17 makes all churches, except those which

* The word "pedagia" here used is found in a Charter of William, Duke of Acquitaine, in 1087, and in many later mediæval documents.

are exempt, bound to provide procurations for the Legates and Nuncios of the Apostolic See.

Section 19 says churches are bound to make answers to the Bishop concerning procurations and a fourth part of the tithes.

Section 20 provides for payment of charges in the ancient money, according to which they were first created, unless there be a custom by præscription to the contrary, as Innocent III. informed the Bishop of Spoleto.

Section 23 says prelates receive procurations when they hold visitations in person.

Section 25 says that he who visits a province in the right of the metropolitan or the legate, can pass sentence on those who refuse to pay procurations in that province.

Section 27 declares a private oratory not liable to procurations on a visitation.

Title XL. deals with Consecration.

Section 2 authorises the consecration of churches, even on days that are not festivals, under the authority of a decretal letter of Innocent III., given at Rome A.D. 1205.

Section 4 gives Innocent III.'s directions to the Archbishop of S. James of Compostella as to how a church must be "reconciled," after being polluted by homicide, by the use of consecrated water with wine and ashes.

Section 8 declares that he who desires a church to be consecrated must first endow it.

Section 9 declares that a church which has been polluted cannot be "reconciled" by an ordinary priest.

Title XLI. deals with the Celebration of Divine Service.

Section 3 declares it is enough for a priest to celebrate once a day.

Section 6 says that any words in the Canon of the Mass not actually found in the Gospels are believed to have been received by the Apostles from Christ, and handed down to their successors. In this section it is also stated that "in sacramento altaris aqua cum vino transubstantiatur in sanguinem."

Section 8 declares the right opinion to be that Christ is very God and very man. The words of Holy Scripture are here quoted at length in regard to this mystery, with special reference to the soldier who pierced Christ's side on the Cross.

Section 9 orders all bishops and priests with care and devotion to celebrate the daily and nightly offices of the Church.

Section 11 orders two masses to be celebrated daily in collegiate churches for the college.

Section 12 says that on the Thursday before Easter the Bishop ought to celebrate in his own cathedral church, hallow the oil, etc.

Section 13 orders more wine than water to be placed ready for use at the celebration.

Title XLII. concerns Baptism.

Section 1 declares the formula necessary, "Ego te baptizo in nomine Patris, et Filii, et Spiritus sancti."

Section 2 provides a form for use in doubtful cases.

Section 3 declares baptism remits original sin.

Section 5 says there is no baptism without water and the proper formula.

Section 6 forbids Greeks to re-baptize those who have been baptized in the Latin Church.

Title XLIII. declares Baptism necessary before Ordination to the Priesthood.

Title XLVI. regulates the Observance of days of fasting. A vigil coming on Sunday must be observed on Saturday; and flesh may be eaten on Christmas Day and the following days on account of the excellence of that great Festival, as Honorius III. informed the Bishop of Prague in A.D. 1216.

Title XLVII. provides for the Churching of Women.

Title XLVIII. deals with the Building and Repair of Churches.

Section 1 says those who have benefices should contribute to the repair of the fabric of the church.

Section 3 declares that on account of distance a new church may be built in an old parish, and a portion of the parish assigned to the new church, as Alexander III. wrote to the Archbishop of York.

Section 4 compels rectors to repair their churches.

Section 5 explains how a secular church may be provided with a monastic chapter, due regard being

had to the life interest of the clergy already attached to that church. After the consent of the Bishop has been obtained, then application may be made to the Apostolic See for a charter, etc.

Title XLIX. concerns the Immunity of Churches and their Property.

Section 1 forbids a lay judge to give judgment in regard to ecclesiastical establishments.

Section 2 provides that in times of great necessity all men may help defend the city.

Section 3 forbids rustics, bound to cultivate the lands of the Church, from departing from their labour. Apparently a system of serfdom prevailed in certain parts of Europe at this time.

Section 4 forbids laics to impose taxes on ecclesiastics, or to usurp their jurisdiction. If after due warning they do not cease so doing, they are excommunicated together with their abettors, yet the bishop has power "cum clero eis in necessitate præbere subsidia."

Section 5 forbids the Church to hear cases involving blood.

Section 6 maintains the right of sanctuary in holy places. The accused must not be forcibly driven therefrom under any pretext whatever, yet a slave is returned to his master. On this matter Innocent III. wrote a decretal letter to the King of Scotland from the Palace of the Lateran in the year 1200.

Section 8 forbids Bishops to exact more than is due

by the name of "procurations," or under any other name. If they do so, they ought to make restitution.

Section 9 declares that a Church in which the divine offices have been celebrated enjoys the right of immunity, even if that Church has not been consecrated.

Title L. forbids Ecclesiastics to embark on secular business.

Section 1 mentions fourteen different kinds of business, which were expressly forbidden by the Council of Maguntum; according to the precept of the Apostle, "Nemo, militans Deo, implicat se negotiis sæcularibus."

Section 2 forbids clerics to be proctors for laymen.

Section 3 orders monks to be excommunicated who spend more than two months at a time hearing lectures on law or medicine without returning to the cloister; but the Pope may grant dispensations, "ex misericordia sedis apostolicæ."

Section 6 forbids clergy and monks to make business profits.

Section 8 forbids clerics to hold the office of "tabellionatus," or the writers or copyists of legal documents, as Innocent III. decreed A.D. 1211.

This fiftieth Title concludes the Third Book of the Decretals of Gregory IX.

CHAPTER IV

Decretalia Gregorii IX.—Books IV. V.

Decretalia Book IV.

Book IV. of the Decretalia deals with Marriage, and other kindred matters; and is of special importance in view of its practical influence on the modern law of Europe.

Here is the opening statement:—

> Matrimonium solo consensu contrahitur, nec invalidatur, si consuetudo patriæ non servetur.

These words correspond with the rules and regulations of the Roman Law in the days of the Empire rather than with the final decrees of the Church. Here the old Roman influence is clearly seen in the actual form of the Canon.

But Vicarius, the famous Professor of Law at Oxford, who came from the University of Bologna, taught that "traditio" was of the essence of marriage, and the later Canons regarded the presence of the priest and his benediction as an essential part

of the ceremony. In fact marriage became an ecclesiastical function, and was regarded as a sacrament of the Church.* This view was upheld by the famous Council of Trent. The law of England also requires the celebration of marriage by the clergy after banns or by licence.

The first law case quoted may be interesting to give in detail.

Ex Concilio Triburiensi.

> De Francia nobilis quidam homo nobilem mulierem de Saxonia lege Saxonam duxit in uxorem, tenuitque eam multis annis, et ex ea filios procreavit. Verum quia non eisdem utuntur legibus Saxones et Francigenæ, causatus est, quod eam non sua, id est Francorum lege desponsaverat, vel acceperat, vel dotaverat, dimissaque illa aliam superduxit.
>
> Diffinivit super hoc sancta synodus, ut ille transgressor evangelicæ legis subjiciatur pœnitentiæ, et a secunda conjuge separetur, et ad priorem redire cogatur.

So the poor nobleman of France was unable to have his desire satisfied, and found it impossible to marry a second wife.

Section 2 deals with Sponsalia, and the sections immediately following. The intricate rules, however, connected with sponsors in relation to marriage are for the most part obsolete, and have long been so. The godfathers and godmothers were brought into spiritual relationship with the godchild, and in this way a special

* Four great Canonists have occupied the Papal throne—Alexander III. Innocent III., Gregory IX. and Innocent IV.

impediment to lawful matrimony might be, and often was, created. The various results, which arose in consequence of this spiritual relationship, became the appropriate subject of spiritual censure, and also of an elaborate system of spiritual dispensations issued by the Holy See. Much the same may also be said of the rules relating to betrothals. Here, as in other ways, the Canon Law goes behind the simple consent of the parties required by the old Roman Law.

Section 23 allows deaf and dumb, but section 24 forbids madmen to enter into matrimony.

Section 25 requires consent to be in suitable words, lawful, and easily understood.

Section 26 is of importance.

> Si alter contrahentium utitur verbis dubiis, animo decipiendi mulierem, et eam postmodum cognoscit carnaliter, judicatur pro matrimonio in foro judiciali, secus in pænitentiali.

Title II. deals with De Desponsatione Impuberum.

Section 3 names 14 years as the age of puberty.

Section 9 provides that minors suitable for marriage are bound by a contract of marriage, unless force be pleaded, but by section 10 a contract before puberty does not effect a marriage.

Title III. concerns Clandestina Desponsatio.

Title IV. is De Sponsa Duorum.

Section 4 provides that the appellant in a matrimonial suit can have an interdict forbidding a marriage while the suit is pending.

Title v. deals with the position and status of persons wishing to marry.

Section 5 declares that a contract of marriage made under a proper condition need not be consummated until the fulfilment of the condition.

Title vi. considers the Marriage of the Clergy. Deacons and sub-deacons cannot marry.

Section 3 provides that—

> Votum solenne impedit et dirimit matrimonium post contractum: votum simplex tantum impedit contrahendum, sed non dirimit post contractum.

This proposition is laid down in a decretal letter of Alexander iii. to the Bishop of Worcester.

Title vii., section 1, declares that if anyone marries a second wife, the first being alive, but not known to be so, he cannot on his own petition, when the first dies, be separated from the second wife.

Section 4 provides that if a man knowingly marries a second wife, the first being alive, and even judicially separated, he shall be separated from the second wife, notwithstanding the death of the first wife.

Title ix. deals with the Marriage of Slaves.

Section 2 provides a marriage between a freeman and a slave may be annulled, if the freeman was unaware of the slavery. If it be customary that the offspring follow the status of the father, the child of a free man and a slave girl is free.

Title xi. concerns Spiritual Relationship, and Titles

XIII. and XIV. concern other kinds of Relationship, especially in so far as they may be a bar to marriage.

Title XIV., section 1, provides that—

> Separatur matrimonium contractum inter affines primi generis et quarti gradus.

Section 3 declares on the authority of Pope Cælestine III.—

> Si dispensatur cum aliquo, ut possit contrahere in certo gradu alias prohibito, requiritur, quod uterque contrahentium toto gradu distet a stipite, præsertim si hoc habet consuetudo.

Section 4 lays down that infidels married within the prohibited degrees are not separated after baptism. To this effect Innocent III. wrote, "Archiepiscopo et capitulo Tirensibus."

Title XV., section 2, declares impotent Persons incapable of marrying. Moreover on this or kindred grounds a marriage may be dissolved.

Title XVI. enjoins Penance on all those who marry in spite of the interdict of the Church, and those who are deemed relatives, and have contracted to marry against the Judge's precept, should be separated until their case has received due cognisance.

Title XVII. deals with Legitimacy.

The first section lays down the important principle (which has borne remarkable fruit in both English and Scottish history) that a child borne before wedlock may

be made legitimate by the subsequent marriage of the parents, even to the extent of becoming the heir.

Section 2 lays down that children born before a sentence of judicial separation are legitimate.

Both these sections are based on decretal letters of Pope Alexander III. We give the first, owing to its importance:

> Conquestus est nobis H. lator præsentium quod, quum quandam mulierem Neptem R. in uxorem acceperit, præfatus R. patruus mulieris ipsam exheredare conatur eo, quod ante desponsationem matris suæ nata fuerit, licet postea, prout dicitur, pater mulieris præfatæ matrem ipsius acceperit in uxorem. Ideoque fraternitati vestræ per apostolica scripta præcipiendo mandamus, quatenus, si est ita nullius contradictione vel appellatione obstante, eam legitimam esse judicetis, prædicto R. ex nostra et vestra parte inhibentes, ne sæpe dictæ mulieri et heredibus suis hac occasione super heredidate paterna molestiam inferat vel gravamen. Si autem contra hoc venire præsumpserit eum sublato appellationis remedio severitate ecclesiastica percellatis.

This famous canon was incorporated into the law of Scotland, but never at any time prevailed in England, and when the Bishops proposed its introduction in 1236, the Barons at Merton made the famous pronouncement:—"Nolumus leges Angliæ mutari." So our own law still remains as it was in regard to this matter before the days of Pope Alexander III.

Section 3 provides that if the parentage of the

child is denied, this statement holds good, unless proof to the contrary is forthcoming.

Section 5 deals with jurisdiction, and is entitled a "very notable" portion of the text.

> Quæstio nativitatis, opposita petenti hereditatem coram judice sæculari, est ad ecclesiasticum judicem transmittenda.

Section 6 provides that "spurii" are not legitimated by subsequent marriage.

Section 7 contains a letter of Alexander III. to the Bishops of London and Worcester to the effect that the Church does not hear civil actions, but always inquires into the lawfulness of marriage.

Section 9 provides that children of a clandestine marriage approved by the Church are legitimate.

Section 10 contains a decretal letter of Cælestine III. to the Archbishop of York denying legitimacy or right of heirship to "nati ex matrimonio contracto contra publicæ honestatis justitiam."

Section 11 provides that proof of an impediment (in the canonical sense) is not of itself enough to make the offspring illegitimate, if the marriage was contracted "in facia ecclesiæ."

Section 13 declares that the Pope can issue letters of legitimation within the States of the Church, as Innocent III. informed that noble gentleman, G—— of Monte Pessulo.

Title XVIII. deals with Witnesses, who must appear in person, and be worthy of credit.

Title XIX. concerns Divorce.

Section 3 provides that a man cannot put away his wife without a judicial decree of the Church.

Section 5 declares the wife's adultery to be a good ground of separation.

Section 7 declares the marriage bond is not dissolved by a lapse into heresy. Yet certain regulations are necessary for this particular case. If the parties should separate owing to the lapse of one, on that one's restoration they must unite again.

Section 8 provides that heathen already married within the prohibited degrees must not be sparated on their conversion to the faith. If there be many wives, a Christian must keep to the first.

Section 9 enacts—

> Non licet relictam fratris in uxorem accipere, et de facto ducta separanda est, nisi aliter ecclesia dispensit.

This canon has a certain interest in regard to modern controversies, forbidding marriage with a deceased brother's wife. It is also noteworthy that nothing is anywhere said which involves divorce in the modern sense, namely, a separation with permission to marry a second time.

Title XX. deals with Dowry, and gifts jointly to man and wife.

By section 2, on a dissolution of marriage, the husband must restore the dowry and divide the goods.

Section 4 deprives an adulteress of her right of dowry.

Section 5 contains a long decretal of Innocent III. to the Archbishop of S. James of Compostella, and all the Bishops of the kingdom of Leon in Spain, concerning gifts made on account of marriage, and involving the rights of the royal families of Leon and Castile, which was given at the Lateran Palace on the eighth of the Kalends of June in the year 1199.

We give one of the concluding sentences—

> Quia vero castra quædam, quæ rex Legionensis dictæ filiæ regis Castellæ in dotem tradidisse proponitur ita, ut, si eam aliqua occasione relinqueret, ipsa cederent in jus ejus, impedimentum præstare videntur hujusmodi copulæ dissolvendæ, quum castra ipsa non tam ob turpem, quam ob nullam potius causam sint data, utpote, quum inter eos matrimonium non existat, et ideo nec dos, nec donatio propter nuptias, ne ad commodum ei cedat quod debet in pænam ejus potius retorqueri, castra ipsa restitui volumus et ad id puellam ipsam per excommunicationis sententiam coarctari, etc. etc.

Section 7 enacts—

> Vir, agens pro dote, non omnino excluditur ex eo, quod vergat ad inopiam, nec præcise cogitur satisdare ultra facultatem propriam, sed dos sibi assignatur sub cautione, quam præstare potest. Et si per illam cautionem non esset sufficienter provisum consumptioni dotis, deponetur dos apud mercatorem, ut de honesto lucro vir sustineat onera matrimonii.

Some such arrangement as is here indicated appears to have been common in mediæval times, and was suited to the particular circumstances of those days.

Book V. Decretalia Gregorii IX.

This last Book of the Decretals deals mainly with crimes and procedure.

Title 1. concerns Accusers, Inquisitors, and Denouncers.

Section 6 forbids a second prosecution for the same crime, for the Council of Maguntum declared by a Canon—

> De his criminibus, de quibus absolutus est accusatus, non potest accusatio replicari.

Section 9 allows the judge to proceed in the case of a notorious crime without any individual undertaking the prosecution, and curiously enough the authority here quoted is the Commentary of S. Augustine on the story of Cain and Abel in the opening chapters of the Book of Genesis.

> Evidentia patrati sceleris non indiget clamore accusatoris.

Section 10 declares laymen cannot bring accusations against the clergy, as has been laid down by Alexander III.

Section 11 allows a monk to prosecute an abbot, the monk's expenses being paid by the abbey.

Section 25 recommends metropolitans to summon provincial councils, and bishops to summon synods, for the correction of excesses and reformation of morals.

Section 27 provides that if a prelate be accused of

dilapidating ecclesiastical property a commission of inquiry must be held, and during the progress of the business no alienation can be permitted.

Title II., section 1, orders a sub-deacon calumniating a deacon to be publicly whipped and deprived of his office.

Title III. deals with Simony, and is very lengthy, consisting of 46 sections.

Section 4 provides that a priest charged with simony may not perform divine service while the charge has not been dealt with by the ecclesiastical authority.

Section 6 orders the deposition of simoniacal clergy, as Pope Lucius directed.

Section 8 attempts a difficult matter, a definition of simony. Here are the words—

> Simoniacum est pretium recipere pro ingressu religionis, pro prioratibus vel capellis concedendis, et pro prælatis instituendis, pro concedenda sepultura, pro chrismate, pro oleo sancto, pro benedictionibus nubentium, vel aliis sacramentis: Nec valet consuetudo in contrarium.

This definition is based on an edict of Alexander III.

In the above statement matters of really very different importance seem all placed in the same category. The general result is, however, perfectly clear.

Section 10 says that the procuration is the only lawful payment on the consecration of Churches.

Section 14 includes the concealment of a sinner and the reconcilement of the impenitent under the head of simony; and section 15 includes the purchase of a church.

Section 19 declares that an abbot and convent receiving money by agreement for the reception of a monk are suspended; that money must be restored, and the monk transferred to another monastery.

Section 20 declares it simony for one about to be ordained to give anything by agreement to his patron.

Section 24 forbids payment for the absolution of the excommunicated.

Section 27 declares an election bad and tainted with simony if for the purpose of the election money has been promised to the electors, even if the person elected was not aware of it.

Section 31 allows an abbot, against witnesses who have made a deposition against him of simony "in judicio inquisitionis," to make use of the exception that these witnesses are enemies and conspirators.

Section 35 says that no one ought to receive the monastic habit from him who is believed to be simoniacal.

Section 36 forbids payment for the chrism or ecclesiastical investiture, as Innocent III. wrote to the Archbishop of Canterbury.

Section 38 provides that payment for a vicarage or any other spiritual or ecclesiastical office is simony.

Section 41 declares bishops must take nothing for institution, professing monks, or burials; anything exacted must be restored twofold.

Section 42 says the sacraments are freely given.

Section 43 gives the form in which abbots of the Cistercian order must undertake to obey the bishops.

> Ego frater abbas Cisterciensis ordinis subjectionem et reverentiam et obedientiam a sanctis Patribus constitutam secundum regulam sancti Benedicti, tibi, domine episcope, tuisque successoribus canonice substituendis, et sanctæ sedis apostolicæ salvo ordine meo perpetuo me exhibiturum promitto.

Title IV. forbids Prelates to make an annual charge on Churches.

Title V., section 1, provides that the licence to teach should be freely granted.

Section 4 provides that every dean and chapter should elect one master, to whom one prebend should be assigned, who should teach grammar, and metropolitan churches should have one theologian as well. This canon is based on an edict of Innocent III., and became of general force throughout western Christendom. Thus each English cathedral has now its choir school and headmaster, and in many cases the grammar schools of cathedral towns arose in this way.

Title VI. concerns Jews, Saracens, and their slaves.

Section 2 forbids a Jew to put a Christian into slavery; section 3 allows the retention of old synagogues, but not new.

Section 8 forbids Christians to be household servants to Jews.

Section 9 forbids baptism of Jews unwillingly.

Section 12 excommunicates all those who carry on trade with the Saracens in time of war.

Section 15 orders Jews and Saracens in Christian lands to be distinguished by a particular dress, and on no account to walk abroad on the day consecrated to the memory of the Passion of our Lord.

Section 16 forbids Jews to hold any office of administration over Christian people, for Innocent III. in a General Council of the Church, declared—

> Quum sit nimis absurdum, ut blasphemus Christi in Christianos vim potestatis exerceat, quod super hoc Toletanum concilium provide statuit, nos propter transgressorum audaciam in hoc generali concilio innovamus, prohibentes ne Judæi publicis officiis præferantur.

Title VII. deals with Heretics.

Section 9 declares the heretic who thinks or teaches wrongly concerning the sacraments of the Church is excommunicated, and on conviction, unless he corrects himself and abjures his error, if an ecclesiastic is degraded and handed over to the secular court, by which, as a layman, he can be punished.

Section 12 forbids lay preaching, secret conventicles, and rebuking priests. This last matter appertains to the Bishops, as Innocent III. clearly laid down at the Lateran, A.D. 1199.

By section 13 the goods of convicted heretics are forfeited, and, if beneficed clergy, go to the Church.

Title VIII. declares Ordination by schismatics of no avail.

Title IX. concerns Apostates. An ecclesiastic, giving up his habit and tonsure, and committing enormities, loses the privileges of the Canons.

Title X. condemns a Woman who kills her child to perpetual detention in the penitentiary of a monastery.

Title XII. deals with Homicide.

Section 3 declares you may kill a thief in the night without blame, but not in the daytime. A judge in imposing penance must carefully consider all the circumstances which tend to augmentation or diminution of the crime.

There is a curious provision in section 19 that a monk, who follows the profession of a doctor, on the occurrence of a death, is placed outside his rule, but a dispensation may be granted.

Section 24 declares that if an ecclesiastic while fighting against the enemies of the Catholic faith strike any man so that he die, and his conscience troubles him, he should refrain from ministering at the altar.

Title XVI. concerns Adultery.

Title XVII. deals with Violators and Burners of Churches. If such persons make due satisfaction, and do penance, then they are admitted to Christian burial. Any one who has set fire to a church, but is penitent at death and has been absolved, may have Christian burial, and his heirs can make satisfaction.

Title XVIII. deals with Thieves.

Thieves and robbers should be denied the sacraments. A theft from necessity is sin, but not very grievous, and the penance should be light.

Title XIX. concerns Usury.

Usury is thus defined, "lucrifacere fructus rei pignoratæ."

Section 3 excludes notorious usurers from the communion of the altar, Christian burial, and offering the oblation.

Section 5 compels solvent usurers to restore their usury under the penal decrees of the Lateran Council.

Section 7 declares that a usurer, after fair warning, not having desisted from his usury, if he be an ecclesiastic, is deposed from his benefice, if a layman, is excommunicated.

Section 12 declares Jews compelled to restore their usury by secular princes.

Section 15 declares that if through fear of the great and powerful, no one will appear as accuser against notorious usurers, then the Bishop may enforce the penalties prescribed by the Lateran Council.

Section 18 compels Jews to restore usury extorted from Christians. They are also liable to pay tithes and oblations.

Title XX. concerns False Witness, which injures God, the judge, and the party to the suit, and consists not only of lying, but also of concealing the truth. A sentence obtained by false documents ought not to be executed; and an ecclesiastic who forges the seal of a

prince is deposed. Letters of the Apostolic See must be delivered by the official of the Pope, or his deputy, or by the hands of the Pope himself, as Innocent III. laid down in the first year of his pontificate, 1198. There are nine ways of issuing false papal documents, the first of which consists in affixing a false "bulla," and the second in affixing a true "bulla" to a false document. In papal documents a bishop is never called "son," and the use of this expression is a mark of falsehood. All such falsifiers and their abettors are excommunicated, and if ecclesiastics are degraded and handed over to the secular court to be punished.

Title XXI. forbids the study of Astrology, and casting lots on future events.

Title XXII. forbids Collusion, which in the case of a benefice acts as deprivation.

Title XXIV. forbids Hunting.

Title XXVI. forbids Evil Speaking, especially of the Pope, which merits condign punishment. The blasphemer of God or the blessed Virgin must also be punished.

Title XXVII. declares that an Ecclesiastic celebrating after deposition is excommunicated. Likewise anyone celebrating after excommunication is deprived of his benefice. If anyone celebrate after having notice of excommunication by report alone, he should be deposed, though a dispensation is obtainable for pity's sake. A collation of a benefice is not deemed made to one who is excommunicated; but a collation holds good made

to one who was formerly excommunicated, but at the date of the collation has received absolution.

Title XXXI. concerns the legal powers of bishops. They must not without reason alter or rearrange the existing jurisdiction over Churches. Where they have the right of collation, they must not retain or confer the benefice on themselves.

Section 13 provides that a priest is never compelled to reveal the name of the sinner, if the sin were confessed in penitence.

Section 14 declares that private individuals have not the power to establish a college of regular or secular canons, unless this power be duly granted.

Section 15 imposes the penalty of deposition on the ecclesiastic who denies that his bishop is his lord, or seeks ought from him before a secular judge.

Section 16 contains fifteen monastic gravamina, in a decretal letter of Gregory IX. to the Episcopate of the whole Church.

Section 17 contains twelve gravamina, relating to the friars preachers, etc., issued by Gregory IX.

Section 18 imposes the penalty of suspension on any one who does not observe an interdict.

Title XXXIII. concerns Privilege.

Section 2 provides that notwithstanding any privilege of forum, a layman who does evil to the Church may be punished by the Church.

Section 3 forbids monks to receive churches and tithes from the laity without the consent of the bishop.

Section 4 forbids the derogation of privileges on pain of deprivation of the privilege.

Section 6 declares that thirty years' prescription, but now forty years, is required to nullify an ecclesiastical privilege.

Section 8 declares that an exemption by episcopal jurisdiction is not good against a payment of money authorised by the Church of Rome.

Section 10 forbids the hanging of public bells in a private oratory.

Section 12 says that the contents of a lost document may be proved by witnesses who have read it, if they can depose to its tenour, and that it was good in itself.

Section 13 gives preference to old privileges over new.

Section 17 declares that an exemption granted to a monastery does not cover the chapelries attached to that monastery, as Innocent III. informed the monks of Evesham on the 15th of the Kalends of February 1206.

Section 18 declares that anyone received under Papal protection is not by this alone exempt.

Section 19 lays down a point of law which often arose in the thirteenth century. Monks who by Papal grant were able to convert their churches to their own use, must still receive possession of the said churches from the bishop of the place where they are situated.

Section 22 declares that a bishop remitting the payment of episcopal tithe from any church remits the

payment now and for ever. This is called a notable case, and was laid down by Innocent III. in 1213 in a decretal letter to the Bishop of London, legate of the Apostolic See.

Section 23 enumerates three privileges of the four patriarchal sees—the granting the pall, carrying the cross, and the right to hear appeals, subject to the Pope.

Section 31 mentions "novale," that curious mediæval Latin word meaning tithe on land freshly cultivated. A privilege in regard to tithe does not include "novale," unless mention is made thereof.

Title XXXIV. deals with Canonical Purgation.

Section 6 declares a bishop may compel his parish priests to purgation on an evil report, unless they should appeal in a lawful manner.

Section 7 declares compurgators must be honest men, of good reputation.

Section 8 declares that absolution made according to vulgar purgation does not hold good.

Title XXXV. is entitled concerning Vulgar Purgation, and forbids duelling.

Title XXXVI. concerns Injuries, for which compensation should be made, and penance done. If a secular authority banish an ecclesiastic, as the republic of Florence drove out the Bishop of Fiesole in the days of Honorius III., then the ecclesiastic judge must estimate the payment due from the aforesaid civil authority. Honorius put it at 1000 pieces of the usual money of Florence.

Title XXXVII. concerns Punishment.

Section 3 declares that bishops ought not to impose a fine out of cupidity, even if for the sake of correction.

Section 4 declares the defeated litigant must pay costs.

Section 6 declares that for a great crime an ecclesiastic must be deposed, and placed in a monastery to do penance.

Section 9 declares part payment good, so far as it goes, and the whole sum cannot be demanded after part payment, but only the balance remaining due, as Innocent III. informed the Bishop of Spoleto.

Section 10 declares that those who kill a bishop forfeit the feus they hold of the Church of that bishop, and their heirs can never be reinstated.

Section 12 declares that patrons exceeding their rights are liable to ecclesiastical censures.

Section 13 absolves vassals from their fidelity to a lord who is excommunicated.

Title XXXVIII. concerns Penance, which must not be excessive, but regulated according to circumstances, as Alexander III. informed the Archbishop of Milan. If the penance be feeding on bread and water, and the bread runs short, then other food may be used.

Section 10 authorises the abbess to pronounce the benediction over "moniales," that is nuns, who were thus entitled in the 4th century, but she cannot hear confessions or preach. By old ecclesiastical writers nuns were also sometimes called "sanctimoniales."

Section 11 grants the use of the sacrament of penance and the viaticum for the dying during the span of a general interdict.

Section 13 recommends medical men to urge their patients to confession for their soul's health.

Section 14 relates to briefs for alms.

Section 15 allows archbishops to grant indulgences within their own province according to the form prescribed by the General Council.

Section 16 allows bishops to appoint discreet confessors without the permission of superior authority.

Title XXXIX. deals with Excommunication, and is very lengthy, containing as many as 60 sections, for this was a powerful weapon in the hands of the mediæval Church.

Section 3 provides that if an ostiarius, *i.e.* one who held the lowest rank in the four minor orders, should strike a priest, he may be absolved by the bishop.

Section 4 declares that if a man strike a priest, being ignorant that he is a priest, then he is not liable to excommunication, but his ignorance must be proved on oath.

Section 15 declares that before absolution no communication must be held with the excommunicated.

Section 20 empowers legates "de latere" to absolve "pro injectione manuum in clericos."

Section 30 declares that the oath of the excommunicated to keep the commandments of the Church has not the force of absolution.

Section 40 allows an appeal from the bishop to the metropolitan: yet the metropolitan can remit the case back again, if he so desire.

Section 48 declares a prelate ought not to excommunicate but for a clear and reasonable cause after due warning.

Section 50 declares the Prior of the Hospital of (S. John of) Jerusalem may absolve the brethren of his own order, except for enormous excesses.

Section 52 allows an "absolutio ad cautelam," *i.e.* while the case is under consideration, if the sentence of excommunication itself be doubtful.

Section 53 authorises the excommunication of the officials of the districts where statutes are maintained contrary to the liberties of the Church.

Section 57 allows celebrations once a week in time of interdict.

Title XL. explains the meaning of Words.

In all great systems of law a number of terms or words come to be used in a special and peculiar sense only appropriate to the particular system with which they are connected.

And so in ecclesiastical law a certain number of words occur which have a special and peculiar meaning, not recognised in ordinary Latin as known and taught in the schools. Thus, for example, in the Latinity of the Church "officialis" means the judge of the Court of the Archdeacon or the Bishop, commonly, if episcopal, called the Consistory Court.

Section 5 says that "primogenitus" is properly used of the eldest son, even if he have no brothers or sisters.

Section 11 describes "pactum" according to the views of Isidore.

> Pactum dicitur inter partes ex pace conveniens scriptura, legibus ac moribus comprobata : et dictum pactum quasi ex pace factum.

Section 13 declares that the "oblatio" can never be possessed by secular persons.

Section 14 declares that a priest is the only person who is authorised to administer the sacrament of extreme unction, and the use of the word sacerdos in this section is worthy of special notice, for that word rarely occurs in the Decretalia.

Section 15 declares that "statuo et præcipio" are appropriate words to use in the formal pronouncement of a definitive sentence.

Section 17 says a general interdict includes the village and castle as well as the province.

Section 19 declares that an oath to obey the Bishop and the Church, means the Bishop and the Chapter, and not the whole body of the clergy, as Innocent III. informed the Chapter of Piacenza in the year 1203.

Section 20 announces that ecclesiastical censures include "excommunicatio, suspensio et interdictum."

Section 21 contains an interesting decision of Innocent III. relating to tithe ; given at Viterbo in the year 1207 :

> Quid per novale vocabulum intelligi debeat, a nobis tua fraternitas requisivit. Licet autem quidam dixerint, quod novale sit terra præcisa, quæ anno cessat, aliis asserentibus, quod ex silva, quæ arboribus exstirpatis ad cultum redigitur, fieri novale dicatur, quarum utraque interpretatio ex civilibus legibus colligitur: Nos igitur inquisitioni tuæ taliter respondemus, quod eam credimus prædecessorum nostrorum intentionem fuisse, quum piis locis indulgentiam de novalibus concesserunt, ut novale intellexerint agrum, de novo ad cultum redactum, de quo non exstat memoria, quod aliquando cultus fuisset. Sed nec de quolibet tali novali credimus eis indulgentiam fore concessam, nisi de illo duntaxat, cujus decimam religiosus potest conventus absque gravi detrimento parochialis ecclesiæ detinere, quum talis sit sæpe locus incultus, de quo parochialis ecclesia magnos percipit decimarum ratione proventus.

Section 22 announces that the term Mother Church means the Cathedral Church, not the Roman Church.

Section 25 declares the words of a privilege must be intelligible, and not ambiguous.

Section 28 says a papal indulgence to the accused is good for a year, particularly in the case of absence.

Section 29 declares that by the word "oblatio" is understood anything offered as a gift to the Church in whatever way the offering may be made,—at mass or otherwise.

Section 32 declares the word "benefice" includes a prebend, and in fact the "majora beneficia."

Section 33 declares the word "moderatio" implies a diminution, and not an increase. The example given is the reduction of the number of canons in a cathedral church.

Title XLI. concerns the rules of Law, in eleven sections. Doubtful matters should be interpreted in the more favourable way. To avoid scandal truth must not be concealed. Necessity may make what is forbidden allowable. Sacrilege is an offence against ecclesiastical property or persons. Ignorance does not excuse a prelate in regard to the offences of his "subditores."

Homage must not be done for spiritualities. Such a thing as this is "Indignum et a Romanæ ecclesiæ consuetudine alienum."

How much mediæval history seems summed up in these last few simple words.

CHAPTER V

The Canon Law of England

That portion of the Canon Law of England which may be considered as more exclusively English dates from very various periods of our history.

In the first place, there are the early Canons and Constitutions issued in the remote period anterior to the Norman Conquest. For example, the first Canon in reference to tithe was issued A.D. 785, at a Legatine Council held by two Italian Bishops under the direct authority of Pope Adrian I. Afterwards, about the year 970, the laws of King Edgar recognise the customary payment of tithe, and duly enforce the same. Hence the famous decree of the Lateran Council A.D. 1180 by no means first enforced the payment of tithe* in England, but rather had the effect of regu-

* There exists a letter of Pope Innocent III. to Walter, Archbishop of Canterbury, dated from the Palace of the Lateran A.D. 1200, in reference to the payment of tithe, on which Sir E. Coke lays much stress. The late Lord Chancellor Selborne, however, thought Sir E. Coke was inclined to make too much of this papal epistle.

lating the distribution thereof. And it is worthy of note that the law then laid down has continued in force to the present day. Before that date there was apparently no absolute uniformity in regard to the person to whom tithe was payable, but what the learned Selden entitles "arbitrary consecrations" of tithe was permissible. Good authority for this view may be found in well-known English writers on legal subjects.

For example, in Mr. Cruise's *Digest of the Law of Real Property* it is stated:—

> Before the Council of Lateran, which was held A.D. 1180, every person was at liberty to pay his tithes to whatever church or monastery he pleased; or he might pay them into the hands of the bishop, who distributed the revenues of his church among his diocesan clergy. But when dioceses were divided into parishes, the tithes of each parish were allotted to its own particular minister; first by common consent, or appointment of the lord of the manor; and afterwards by law.

The Council here referred to, according to Selden and the best authorities, was the third Lateran Council: and amongst its Acta are found the following:—

> So far has the boldness of laymen been carried, that they collate clerks to churches without institution from the bishops and remove them at their will; and, besides this, they commonly dispose as they please of the possessions and goods of churches.

Therefore the Council forbids landowners and lords of manors from making appropriations of tithe at their own will and pleasure, which Selden calls "arbitrary consecrations" of tithe. Henceforth tithe is due to the Parish Church.

Thus in the Chronicle of Battle Abbey (*circa* 1176) it is stated—

> As it was permitted (to the time of the foundation, *i.e.* the Norman Conquest) for everyone to pay his tithes where or to whomsoever he would, many of those who resided in the neighbourhood assigned theirs to the abbey in perpetuity; and these, being confirmed by episcopal authority, remain payable to the abbey until this day.

Lyndwood says much the same in the Provinciale.

In the reign of Henry IV. a peculiar light is thrown upon the character of the Papal Court by the unusual action of the British Parliament, in passing an enactment* strictly prohibiting the purchase of Papal Bulls by landowners for the effectual discharge of the payment of tithes, a curious forerunner of the recent Tithe Redemption Acts, and two years later another Act was passed annulling all appropriations† of vicarages and vicarial tithe. This Act apparently in no way interfered with the appropriation of rectories, a process which by this date must have taken place in nearly half the

* 2 Hen. IV. cap. 4. Cf. the case of the founder of New College, Oxford, obtaining a discharge of tithe on certain lands included in the site of the College.

† 4 Hen. IV. cap. 12.

parishes in England, but very properly absolutely forbad any attempt to further impoverish the already poor vicarages.*

The following entry in the Close Rolls of 15 Edward II., anno 1322, sheds a curious light on the relations of Church and State :—

February 9—To the Sheriff of London.

An order sent to supersede the arrest of John de Derset, Vicar of All Saints', Caterington, in the diocese of Winchester, by virtue of the king's order to justice him by his body until he should satisfy Holy Church, which order the king issued because W., Archbishop of Canterbury, certified the said John was excommunicated at the instance of Thomas Cosyn, parson of Chalghton, by the authority of the Court of Canterbury, and that he would not be justiced by ecclesiastical censure; as the archbishop has now signified that it appears by instruments exhibited and examined before him that the cause for which the said John was excommunicated is pending in the Court of Rome.

* M. de Lavergne, an eminent French writer, makes the following remarks on the effect of the French legislation in 1789 which led to the entire abolition of tithe throughout France :—The abolition of tithes has really been of much less importance than is sometimes supposed. The charge has been shifted, but not altogether destroyed, for the cost of public worship at this day to the taxpayers is nearly fifty million francs; and the promise made to the clergy (*curés*) in 1789 to provide them with minimum stipends of 1200 francs, or £48, per annum has not yet been fulfilled to all of them. The clergy (by the Revolution) have lost altogether twenty millions of revenue; but does anyone suppose that the taxpayers are gainers to the same amount? I should have no difficulty in pointing out in our budget not twenty but a hundred millions less usefully spent in the interest of the rural districts than was the produce of the old tithe. On the other hand, the rent paid for land has been increased generally by the amount of the tithe; and the cultivators properly so called, with the exception of those who farm their own land, have gained nothing.

At the same time a similar order was sent by the King to the Sheriff of Southampton.

On March 26 of this same year the King asks the Abbess of Fontevrault to admit Perotta de Beaumond as a nun in her Abbey; and the Abbot of Caen to admit Peter de Berowes as a monk in his house.

On April 9, 1322, the King inhibits the Archbishop of Canterbury from publishing or executing any process or sentence against Robert de Baldok, Archdeacon of Middlesex, by virtue of any mandate made to him concerning the prebend of Aylesbury, in the church of Lincoln, which the King had conferred upon the said Archdeacon, when the Bishopric was in the King's hands through voidance, in all its entirety, before it was divided, and especially in regard to the Church of Milton (of which Gaillard de Mota was incumbent), part of the said prebend, the King having proved his right in his own court as to this church being part and parcel of the prebend . . . the King now understanding that the said Gaillard has caused Robert to be cited to appear *outside* the realm, and procured grievous processes against him to be published and executed by the Archbishop.

The following entry in Close Rolls 16 Edward II., anno 1323, concerning Ireland seems characteristic, and illustrates ecclesiastical law :—

July 3—*To the Dean and Chapter of S. Patrick's.*

R., Bishop of Coventry and Lichfield, collector of the tenth for two years imposed on the clergy of Ireland by

> Pope John XXII. for the king's use, has intimated to the king that whereas he, by apostolic authority, sent to the Dean and Chapter his letters executory to exact and receive the tenth, the Dean and Chapter have replied that the prelates and clergy having understood his letters, alleged that they were not bound to obey his letters unless the original bull was shown to them, and that they had appealed frivolously to the Pope, in contempt of the apostolic order, to the king's astonishment, especially as the canon law does not admit such allegation and such excuse;—the king therefore, willing that the apostolic order should be executed, now transmits the original bull of the Pope to the Dean and Chapter, which is to be brought back after it has been inspected, and orders the Dean and Chapter to execute the matter with such diligence and care that their filial obedience may be evident to His Holiness the Pope.

On July 25 the King requests the Abbot of Waledon (Saffron Walden?) to admit into his house Hugh de Beaurepeir, who has long served the King, upon such maintenance for life as Huward now deceased had in their house at the request of Humphrey, Earl of Hereford, by whose death the advowson of that house came to the King.

On July 21, John de Depyng, clerk, obtains letters to the Bishop of Coventry and Lichfield to receive the pension due to one of the King's clerks by reason of the Bishop's new creation.

On August 12 a prohibition is issued to Master John Luterel, sometime Chancellor of the University of Oxford, from going beyond seas, or sending anything thither, respecting disputes which had arisen between

him and the masters and scholars of the University, until the King, having had information from both sides, shall order to be done what he shall see fit, for if the disputes be divulged in parts beyond the sea, scandal and danger may arise.

The History of Donatives in England and Wales is curious. A decretal letter of Pope Alexander III. to Archbishop Becket of Canterbury makes sad complaint of the "bad and irregular custom which has obtained prevalence for a long time past; that clerks influenced by blind covetousness accept churches and ecclesiastical benefices without consent of the Bishop of the diocese, or his official," or, as we may put it in other words, without episcopal institution. Yet though the Pope thus complains in the days of Becket of donatives, it would seem that some of the churches which thus escaped episcopal institution were monastic property under the special protection of great and powerful abbots, and that the few donatives existing during the last four centuries, and brought within the Canon Law as to institution by a very recent Act of Parliament, were nearly all in the gift of abbots or priors before the Reformation.

For the case of donatives must be distinguished from the case, comparatively very rare, in which there is an ecclesiastical rectory and vicarage in one and the same parish tenable by different persons. Here the advowson of the vicarage generally rests with the rector, though the advowson of the rectory may be

vested in any way duly recognised by the ecclesiastical law.

Such for instance was formerly the case with the parish of Great Dunmow. In early days the advowson of the rectory was vested in the Mortimers, Earls of March, and the vicar who had the cure of souls was appointed by the reverend rector whom the said Earls had selected. In the year 1479 the advowson of the rectory passed into the possession of the Collegiate Church of Stoke next Clare, and the advowson of the vicarage became alternate between these canons and the Bishop of London, who, on the dissolution of monastic and collegiate churches, became the sole patron.

At the Council of London held under Archbishop Anselm in the year 1107, King Henry I. finally gave up the entire practice of royal or any other manner of lay investiture, by delivery of the pastoral staff and ring which are symbols of spiritual power. On the other hand, the Archbishop consented that prelates and abbots should do homage to the king for their temporalities on their appointment. And the arrangement then made has been continued without any alteration to the present day. It is well known what deadly strife prevailed on the continent of Europe on this particular question from the days of Pope Gregory VII., better known as Pope Hildebrand, and the English solution seems wise and reasonable, though this point of law was of far greater importance in the eleventh and

twelfth centuries than can possibly be the case at the present time.

The Pope was sometimes wont to provide for the needs of churches before they became vacant.

The king did not always regard provision by the Pope in the same light; for it sometimes happened that the action of the Holy See fell in with the royal wishes and desires, and sometimes exactly the opposite occurred.

Thus, in the year 1401, John Prene was Dean of S. Patrick's, Dublin, and in high favour with the English Court. Yet he had not obtained his deanery from the Crown: for at that date the deanery was an elective office. Yet he had not been elected by the Chapter. He was one of the auditors of causes of the Palace of Pope Boniface, and in high favour with the Court of Rome. It was by virtue and force of papal provision that John Prene found himself in the Deanery of S. Patrick's. He explains his position to the king, who on March 9 grants his pardon, and confirms his estate in the deanery. Here it is evident that the practical result of the provision precisely coincided with the royal wishes; and when Pope and king agree, nobody troubles about the rights of the Chapter.

Sometimes the provision acted harshly. Here is a case where the king comes to the rescue. Thomas Merk, D.D., was Bishop of Carlisle, and on an evil day for himself the Pope thought fit to translate him to the Church of S., a strange place where there were no

clergy and no Christian people, apparently situated "in partibus infidelium." The result was that the good bishop found himself in great poverty, and sadly rued the day of his unhappy translation by papal provision. He applied to the king in his great straits, who on March 21, 1401, granted him licence to sue in the Court of Rome for benefices to the value of 100 marks yearly, but not to seek another bishopric. Why the Pope made this provision is not at all clear.

Ireland was apparently a country in which the Pope was fond of exercising his special privilege of making provisions. Thus on April 11, 1401, a mandate is issued to the Keeper of the Great Seal in Ireland for the restitution of the temporalities of the Bishopric of Ferns to Patrick Barret, whom the Pope has appointed bishop on the death of Thomas Den, the last bishop, and who has renounced everything prejudicial to the king in the bull of the said Pope, and done fealty. Here again the Pope and the king appear to be in perfect accord. Under such circumstances old Canons and Statutes of Provisors are of little import!

About the same time — in May 1401 — the king orders a revocation of a grant made in favour of the Abbot of Stretford Langthorn, that neither he nor his successors should be made collectors of the tenths, etc., granted by the Pope to the king, or to other purposes, because a grant of this kind was highly prejudicial both to the king and also to the prelates.

So it may be concluded that monastic collectors of

papal grants were very convenient both to the King and the Pope, while it is easy to understand that the bishops did not wish to have anything to do with such matters. A notable collector, at one time, was the Abbot of S. Mary, in the City of York.

In February of this same year a grant of Incorporation was made for the vicars choral or minor canons of Exeter, with power to elect a warden from one of their own number from time to time without any royal licence, as well as certain other privileges much sought after in those days by ecclesiastical corporations. This grant is interesting as illustrating the fact that in many of our cathedrals the minor canons became a corporate body distinct from the dean and chapter, with their own property and seal, though the modern tendency has been to sweep away and utterly destroy all such institutions.

Around the cathedral church, as it grew and developed in importance, and sometimes assumed secular jurisdiction as well as spiritual, there grew up a large body of customs, which came to have the force of law by long usage, or special enactment. These ecclesiastical customs differ in detail in each church; thus, some of our own cathedrals are governed by statutes made at the Reformation, as is the case with the Chapter of Chester: while others possess mediæval statutes. Yet in every cathedral church there is a close general resemblance in the whole system of administration; the chief officials bear the same names,

and take the same precedence, having special stalls in the choir in the same rank and order.

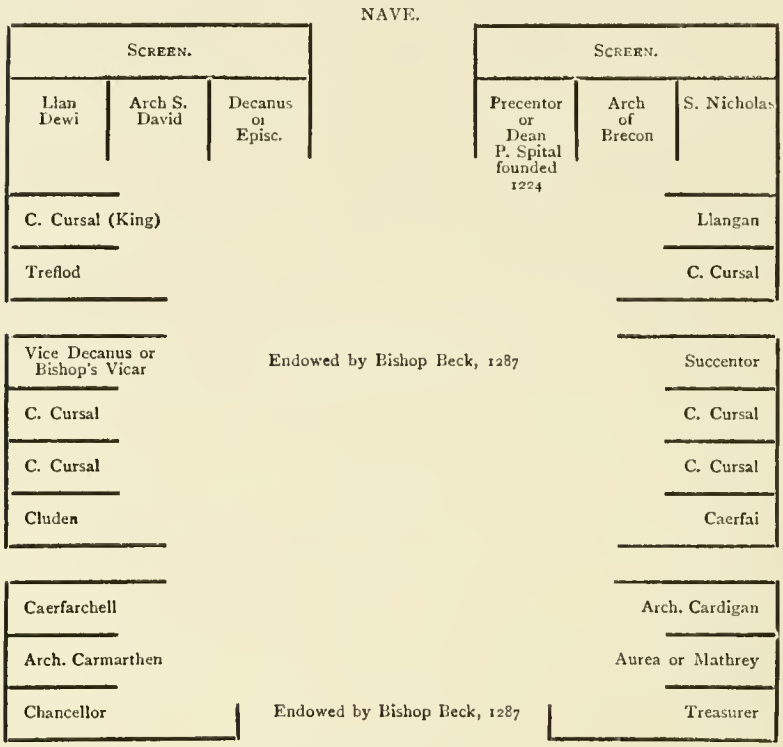
The Chapter of Durham is the greatest and most magnificent of English Chapters, as being the Chapter of a former Prince Bishop, and still retains certain special and peculiar privileges, as for instance the possession of the temporalities of the Bishopric during a vacancy. But the Chapter of S. David's, not being monastic, underwent no change at the Reformation, and thus retains its mediæval organisation as well as certain mediæval characteristics which are peculiarly its own.

By a careful study of the arrangement of the stalls in the choir, which in their present form was made in the sixteenth century on the mediæval basis, a great deal may be learnt as to the ecclesiastical law relating to cathedrals in mediæval times.

Now the principal officials occupy the chief stalls in the usual way, the Dean, Precentor, Chancellor and Treasurer, and then the Archdeacons and Prebends. These are cursal Prebends, and Prebends to which appropriate rectories are attached, and thus named after their respective Churches. These very naturally receive less in the apportionment of the common fund of the Chapter than the cursal Prebends or Canons, who are without cure of souls, and so can devote their time more completely to the services of the Cathedral, for cursal is said to be abbreviated from "sine cura salutis."

It is worthy of notice that the Dean received six Prebendal portions, and that the Bishop was himself

Dean from very early times, this large proportion being a substantial augmentation of the Bishopric. But it was contrary to mediæval usage and the ordinary rules



The 16th Century Arrangement of the Stalls of S. David's.

of the Canon Law for the Bishop to be a member of the Chapter, because he was Visitor. Hence the Precentor, still occupying his appropriate stall, became the head of the Chapter of S. David's, as the official next in rank

to the Dean, and occupied this position for many centuries. In the middle of the last century it was thought odd that no member of the Chapter was called Dean, and an Act of Parliament was procured, apparently in ignorance of the facts of the case, by which it was enacted that the Precentor might henceforth use* and assume the title of Dean of S. David's, and some three or four Deans have already held office in this way.

Besides this curious bit of ecclesiastical law relating to S. David's, we have the remarkable fact that the Sovereign is always admitted to the first Cursal Prebend.

The origin of this custom is lost in obscurity. It probably goes back to the days of the old Welsh princes, when the sacred shrine of S. David was held in the highest honour throughout Cambria, and was largely enriched by the offerings of the faithful. Students, however, will at once be reminded of the striking analogy in the chapter of S. John Lateran in Rome, where the Emperor after his Coronation by the Pope was always admitted a canon, and, being regarded as a "persona mixta" by the canonists, was not held to infringe the legal rule, which confined canonries to ecclesiastical persons, for the crowned king or emperor was deemed to hold a unique position, partly lay and partly ecclesiastical.

There is a third peculiar point about the ecclesiastical laws of S. David's. The Prebenda *Regis* is *not* the Prebend to which the king is admitted. This

* 3 & 4 Vict. cap. 113.

Prebend, better endowed than the rest, is held by the Principal of Jesus College, Oxford. Ecclesiastical lawyers and students of the constitutions of the Church have inquired why this should be so. Should not the king, if he hold any Prebend at all, hold the Prebenda Regis? However, any one examining the splendid ruins at S. David's, must be struck by the lovely remnants—for that is all—of S. Mary's College hard by the Cathedral. In the Middle Ages the head of this College held this Prebenda in the chapter of S. David's, which at the dissolution of the College fell to the Crown, and was given by Queen Elizabeth to Jesus College, and in this way came to be called Prebenda Regis. Thus this matter is explained.

The canons and constitutions issued by the archbishops, or enacted by the Convocations of Canterbury and York between the Norman Conquest and the Reformation, form part of the ecclesiastical law. Some of these are parallel to, and some subordinate to, the more general canons, and other authoritative documents issued during this period by the Court of Rome for the general use of Christendom.

Early in this period the ecclesiastical Courts successfully established their right to separate and exclusive jurisdiction, and there soon grew up a special system of judicial practice around these powerful institutions.

Their history in England is not exactly parallel to their history in the other countries of Latin Christendom: as their sphere of influence was very extensive, including

such matters as the probate of wills, and they were not shorn of their importance until the reign of her late Majesty Queen Victoria.

Yet in other countries which protested against the authority and usurpations of the Bishop of Rome, these Courts were either abolished altogether or shorn of all practical power, while in most countries which continued within the Roman obedience, some other method was adopted of dealing with ecclesiastical causes, owing to the altered relations which had arisen between Church and State.

In France, in Italy, in Spain, the Canon Law is not now recognised as part of the law of the land, though this was once the case. Though a portion of the Canon Law may have been incorporated in the ordinary civil law, there are now no ecclesiastical courts of competent jurisdiction in which the Canon Law is used in ordinary practice.

In regard to Italy, the case is somewhat peculiar, and the fact that the Pope had so long been civil as well as ecclesiastical sovereign in the central part of that country, made the reorganisation of legal affairs after the war of 1870 somewhat more complicated in the States of the Church than in the rest of the Italian peninsula.*

* In Italy there is growing up, if it may be thus stated, a secular Canon Law not administered by the Roman Church, but by the judges of the new kingdom. All laws relating to monastries are abolished, but the parochial clergy are fully recognised, and their rights and privileges naturally become an integral portion of the administration of the new kingdom. But for

Now the principal Provincial Constitutions of England may be enumerated as follows :—

1	The Constitutions of	Stephen Langton, Archbishop.
2	„	Richard Wethershed.
3	„	S. Edmund of Abingdon.
4	„	Boniface of Savoy.
5	„	John Peckham, at Reading.
6	„	Robert Winchelsey.
7	„	Walter Reynold.
8	„	Simon Mepham.
9	„	John Stratford.
10	„	Simon Islip.
11	„	Simon Langham.
12	„	Simon of Sudbury.
13	„	Thomas Arundel.
14	„	Henry Chicheley.

Moreover, the Provincial Constitutions of these fourteen distinguished Archbishops of Canterbury possessed the great advantage of the learned commentary of William Lyndwood, official of the Court of Canterbury, and afterwards Bishop of S. David's, and were also received by the Convocation of York in the year 1463; and are now known by the title of "Provinciale" in the catalogues of our libraries.

Other constitutions were doubtless issued by the archbishop, but these have obtained the widest recogni-

purposes of precedent, of guidance, and of direction, it is necessary to appeal to the old sources in making judicial decisions, and thus it is that the new system grows up side by side with the old, and if not recognised by the Roman Church has all the same the full force of law throughout the kingdom of Italy.

tion and regard, owing to the manner of issue, and the great legal reputation of William Lyndwood, their commentator. They were also confirmed by the northern and southern Convocations of England, and are therefore strictly English Canon Law.

The Legatine Constitutions of Otho, legate in England of Gregory IX., and of Othobon, legate of Clement IV., stand in much the same position, for they were made in national synods, binding on both provinces, presided over by these legates, and were illustrated by the learned commentary and gloss of John de Athon. Cardinal Othobon afterwards ascended the papal throne as Adrian V.

Then there are the Canons and Constitutions enacted after the period of the Reformation, which are applicable to the Church of England alone, and are ordinances of a particular church in Christendom, made when the theory of one universal Church had in practice been abandoned, and seemed unlikely to be revived. Much of the older Canon Law of necessity became inapplicable, yet was never formally abrogated in England, while certain sections of the Canon Law obtained a greater prominence than heretofore, especially the sections relating to the probate of wills and the nature of heresy.

The principal Canons enacted after the Reformation were the Canons of 1604, at the commencement of the reign of King James I.

The Canons of 1604.

These famous Constitutions* and Canons were agreed upon by the Convocation of Canterbury in synod assembled with the King's Majesty's licence, and afterwards published by His Majesty's authority under the Great Seal of England.

There are altogether 141 Canons and Constitutions, which deal with various subjects relating to the Church; and may be divided into the following heads:—

I. Canons 1 to 12 deal with the true nature and actual characteristics of the Church of England. Canon 9 censures schism.

II. Canons 13 to 30 deal with the due celebration of divine service, and the right administration of the sacraments. The 30th Canon gives a long explanation of the lawful use of the cross in holy baptism.

III. Canons 31 to 76 concern the Christian ministry.

Canon 36 contains the three articles to be subscribed by ministers; and Canon 40 an oath against simony.

Canon 42 orders deans to reside ninety days at the least.

Canon 55 contains the bidding prayer so familiar in the University pulpit at Oxford and Cambridge. Canon 59 orders catechising on Sundays.

* In the case of Middleton *v.* Croft, 10 George II., Lord Hardwicke lays it down that these Canons are binding on the clergy, but not the laity, inasmuch as they never received the assent of Parliament, but only of the Crown and Convocation. Ayliffe in the *Parergon* takes the precisely opposite view, holding that the consent of the Crown was sufficient: though Ayliffe is a great enemy to ecclesiastical prerogative.

Canon 62 requires due publication of banns or a licence before the celebration of holy matrimony.

Canon 70 requires the proper maintenance of a parchment register book in each parish.

Canon 74 rebukes "the newfangleness of apparel in some factious persons," and enjoins the use of priests' cloaks on journeys, "without guards, welts, long buttons, or cuts." And further no ecclesiastical person shall wear any coif.

IV. Canons 77 to 79 relate to schoolmasters, and recommend curates for that position.

V. Canons 80 to 88 relate to the fabric and maintenance of churches; while Canon 88 commands a terrier of all glebe lands, etc., to be taken, and laid up in the bishop's registry.

Canons 89 to 91 relate to the lay officers of the Church, which are churchwardens, sidesmen, and parish clerks.

VI. Canons 92 to 138 concern the ecclesiastical courts, their judges and officers, and the lawyers practising in those courts. The Prerogative Court of Canterbury possessed general jurisdiction over the probate of wills, and the entire administration of the goods and chattels of persons dying intestate; and Canons 92 and 93 have reference to this very important subject: "Whoso hath not goods in divers dioceses to the value of £5 shall not be accounted to have "bona notabilia." In these words an important principle is laid down in regard to the personal property of deceased persons.

Moreover, the duties of apparitors and proctors are limited and defined, so that "causeless and unnecessary troubles, molestations, and expenses," may be in future avoided.

Canon 94 forbids the issue of original citations to any persons to appear in the Court of Arches, or the Court of Audience, except in the cases reserved by Statute 23 H. VIII. cap. 9, because these Courts hear appeals from the Consistory Courts.

Canons 99 to 108 relate to marriage and divorce, forbidding marriage within the table of prohibited degrees set forth by authority in the year 1563, nor under the age of twenty-one without the full consent of parents and guardians.

In the ordinary way marriages are celebrated after banns.

Marriage licences may only be issued by those having episcopal authority, or their deputies lawfully constituted, and then under proper conditions.

Sentence of divorce must be pronounced in open Court by the ecclesiastical judge, and must never be given on the sole confession of the parties.

Churchwardens and ministers may present to the Ordinaries parishioners guilty of serious offences for due punishment in the consistory or archidiaconal courts.

Presentments to be made once (or at most twice) in every year.

No ecclesiastical judge may suffer any processes of "quorum nomina" to be sent out of his Court, nor

may the same person be cited into several Courts for one crime, nor any Act sped but in open Court.

No Court of ecclesiastical jurisdiction can have more than one seal, and Courts of Peculiars and inferior Courts must exhibit the original copies of wills into the bishop's registry. The ecclesiastical judge must be over twenty-six years of age, learned in the law, and of the degree of Bachelor of Law, or Master of Arts at the least, and his Surrogate must be either a grave minister and graduate, a licensed preacher beneficed near the place where the Court is kept, or a Bachelor of Civil Law, or Master of Arts at the least. Proctors must not retain causes for two court-days without the counsel and advice of an advocate, and are prohibited the use of the oath "in animam domini sui."

The various abuses which have arisen in regard to registrars are reformed, and the table of fees ratified and approved by the most reverend Father in God John Archbishop of Canterbury in the year 1597 is to be placed in all the courts and registries and enforced. The great number of sumners or apparitors is restrained.

VII. Canons 139 to 141 concern the high authority of synods, and the first of these three Canons affirms that "the sacred Synod of this nation, in the name of Christ and by the King's authority assembled, is the true Church of England by representation."

Upon the whole, the Canons of 1604 are a very fair attempt, based upon a very careful adherence to

ecclesiastical precedent, to define in important respects the somewhat novel position of the Church on the accession of King James I.; notwithstanding that there are some references to the bitter controversies of those days which are now obsolete, as well as out of harmony with the tolerant spirit of the twentieth century.

CHAPTER VI

THE ECCLESIASTICAL COURTS

Amidst all the changes wrought during the stormy period of the Reformation, when so much that was old and venerable was ruthlessly swept away, the Ecclesiastical Courts retained their power and rights of jurisdiction unimpaired.

In the frequent ritual cases which arose half a century ago, both the Court of Appeal and the House of Lords from time to time confirmed the complete freedom of these Courts in spiritual causes, though this was not the direct object of these expensive and litigious suits.

This independent ecclesiastical jurisdiction gave rise to a body of English law of a peculiar kind, regulating the precise position of cases which seemed on the border line between the Courts of the Church and the State.

Matrimonial and testamentary causes were regarded

as belonging to the jurisdiction of the Church, but rights of presentation to a benefice and the advowson were in part under the cognizance of the King's Court, and numerous early cases may be found in both Courts in regard to this last matter. Moreover, if the question of the *limits* of jurisdiction arose, and the ecclesiastical judge seemed about to exceed those limits, whether by authority of the Pope or in some other way, then he could be stopped by a writ of prohibition issued by the King's Court to the parties to the suit, and the judge; and if there was found to be no excess of jurisdiction, then a message called "a consultation" was sent to the spiritual judge to that precise effect. The whole custom which prevailed is dealt with by Bracton, one of the judges of Henry III., in his fourth Book "De Exceptionibus." Attempts were made by Archbishop Boniface, in the reign of the same King Henry, to extend the ecclesiastical jurisdiction, but without much success, and the majority of the points then raised were afterwards regulated by the celebrated Statute of King Edward II., known as Articuli Cleri (9 Ed. II. stat. i. cap. 1–16).

On one question the legal constitution of the Church of England was unlike that of the Church on the continent of Europe, in that the Convocations of Canterbury and York have from the time of King Edward II. possessed certain powers of legislation and synodical action; and also voted for a considerable period subsidies or taxes to the Royal Exchequer.

The late Earl of Selborne, Lord High Chancellor of Great Britain, makes the following statement in regard to the legal meaning of the word Establishment, which seems worthy of careful consideration :—

> The Establishment of the Church by law consists essentially in the incorporation of the law of the Church into that of the realm, as a branch of the general law of the realm, though limited as to the causes to which and the persons to whom it applies; in the public recognition of its Courts and Judges, as having proper legal jurisdiction; and in the enforcement of the sentences of those Courts, when duly pronounced according to law, by the civil power. The "Establishment" grew up gradually and silently, out of the relations between moral and physical power natural in an early stage of society; not as the result of any definite act, compact, or conflict, but so that no one can now trace the exact steps of the process by which the voluntary recognition of moral and spiritual obligation passed into custom, and custom into law.
>
> Under the Anglo-Saxon kings the ecclesiastical and temporal judges sat together in one Court.

In the days of William the Conqueror the two jurisdictions began to sit separately in separate Courts; and they have done so ever since that period of our history. In the result, therefore, the Ecclesiastical Courts possess the power of enforcing their decisions just as well as the civil Courts; and in this respect their position is well-nigh unique. Yet in Scotland and Austria the ecclesiastical authority possesses extensive legal powers.

From the date of the Norman Conquest * to the time of Henry II. the procedure in the Ecclesiastical Court became systematised, and the power and influence of that Court became greater, and more generally recognised amongst the people, in accordance with a movement which was spreading throughout Europe in favour of the strengthening of ecclesiastical authority.

During the confusion of King Stephen's reign the power of the Church was ever on the increase, and the Canon Law was wielding a wider force. Thus the way was prepared for the bitter conflict between Becket and Henry II., and the Archbishop's martyrdom in his

* The origin of the temporalities of the Roman Church, an important matter which has played so large a part in Christian history, and in ecclesiastical law, is involved in some obscurity. But, after the western Empire came to an end with the conclusion of the reign of Romulus Augustulus, A.D. 476, the Bishop of Rome seemed naturally the most important personage in Italy, and soon began to exercise some of the ordinary attributes of sovereignty.

According to the Earl of Selborne, sometime Lord High Chancellor, and other well-known legal authorities, these Roman temporalities date from the year 755, when Pepin, the father of Charlemagne, made a grant of the Exarchate of Ravenna to Pope Stephen III.

Further gifts were made by Charlemagne himself, and by the Emperor Henry III. in the year 1053. The famous Countess Matilda in the year 1102 made over her vast possessions to the Holy See, and this liberal donation was the true basis on which the mediæval kingdom of the Bishop of Rome in reality rested—a kingdom which endured till 1870, or nearly 800 years. In the hands of a Pope like Gregory VII., better known as Hildebrand, the opportunity these temporalities created for grasping at fresh power was not likely to be let slip, and these temporalities became one powerful element in the building up of the vast influence and prerogatives of the Papacy in the Middle Ages. The Popes of the Renaissance, including the unscrupulous Alexander VI., who was elected in 1492, added various fresh principalities to the ancient dominions of the Church, but failed to realise the chimerical dream of a United Italy with the Pope as King.

Cathedral. In the result neither king nor prelate was absolutely victorious, but yet from these days the respective spheres of civil and ecclesiastical jurisdiction remained practically the same for some centuries.

Two classes of cases particularly belong to the ecclesiastical jurisdiction,—those in which the matter in dispute is of a spiritual kind, and those in which the persons concerned are specially subject in some way or other to the Church.

Under the first of these two headings we may appropriately place the whole law of ecclesiastical status, the ordination of clerks, the consecration of bishops, the celebration of divine service, the regulation and administration of ecclesiastical corporations. Yet in English law the advowson of a parish was temporal property, while the act of institution was purely ecclesiastical.

Another matter which appertained to the Courts Christian was the regulation of ecclesiastical dues, and this was generally acknowledged, but tithe was considered as having to some extent a dual character, as being a charge on real estate devoted to a religious purpose.

Furthermore, questions relating to marriage, divorce, and legitimacy were deemed to appertain to the ecclesiastical jurisdiction, yet the decretal relating to legitimation "per subsequens matrimonium" has never been received as law in England, the barons declaring in the year 1236 "Nolumus leges Angliæ mutari."

Testamentary cases also were included in the pro-

vince of the Church; and this arrangement controlled the devolution of all personal property, whether by will or intestacy, but not real estate, which in the Middle Ages passed direct to the heir, and could not generally be made the subject of a devise. Hence it is that the law of personal and real property is so different in this twentieth century.

There remained two matters more vague and uncertain, yet of great importance. The pledge of faith, or promises made under oath, were deemed to be the proper subject of spiritual censures; but in England they were not brought exclusively under the view of the ecclesiastical Court, unless both parties were clerks, or both parties desired thus to have the cause tried.

The other matter was the general correction of sinners, to set the evil doer some corporeal penance for his soul's health. This claim is extensive, but vague, and in practice was limited to those cases in which the King's Court had no power of inflicting punishment. Yet in the case of laying violent hands upon an ecclesiastic, the spiritual Court could inflict penance, and the lay Court imprisonment for the breach of the peace as well as damages for trespass.

It is clear, then, that the sphere of the jurisdiction of the Courts Christian was wide and extensive, and that the Canon Law tended to uphold that width and extension, not only in England, but throughout the whole of Western Europe. For some three centuries or more this arrangement was universally acknowledged.

The civil law was regarded as the "jus soli," the church law as the "jus poli." One was the law of earth, the other the law of heaven.

In the year 1342 Archbishop Stratford issued provincial constitutions condemning all those who on their deathbeds make gifts *inter vivos* for the purpose of defrauding the Church of mortuaries, the creditors of debts, or their wives and children of the portions that belong to them by custom and law. And at a later date Lyndwood, Official Principal of the Court of Canterbury, declares "these portions" are regulated by the custom of the place in which they arose, thus recognising a variety of law on this subject. And this brings up the consideration of the doctrine and principle of legitim, a point which was entirely within the ecclesiastical jurisdiction.

And it is curious to note that here there was at one time a distinct difference between the law administered in the province of Canterbury, and the law administered at York.

Legitim is a claim against the executor; and, where it exists, provides a portion for the wife and child, one-third for each if there is both wife and child, one-half of the movable goods if there is but one of them. Now this claim was admitted at York down to the year 1692, and some particulars of how it was administered may be read in the Book of Henry Swinburne, who was sometime Judge of the Prerogative Court of York. Yet, strange to say, this claim was not admitted at

Canterbury, unless some local custom of the peculiar or the diocese made that way. On the other hand, it may here be noted that the Canon Law in Scotland acknowledged the binding force of the principle of legitim.

Moreover, we find it stated on good authority that there was a custom in favour of legitim in the county of Berks.

In the period when the power of making a will of movable goods was first recognised under the authority and protection of the Church, the idea was prominent that out of such goods the deceased man should make some suitable provision for his soul's health, by giving gifts to pious uses, by founding a chantry chapel, or some other similar act, and even to the present day a certain religious character surrounds a will. It is not unusual to commence the document in the name of the Father, the Son, and Holy Ghost, and to bequeath the soul to the care of God. A notable instance may be found of quite recent occurrence in the opening sentence of Pope Leo XIII.'s will :—

> Before all things, we humbly pray the infinite goodness and mercy of God to pardon us the errors of our life, and graciously to receive our soul into the beatitude of eternity.

And it was fairly early in the history of will making that the ecclesiastical Courts extended the power of dealing in this way with a third or a half of the movable estate to the whole of the personal property.

It is, however, remarkable that while the king did not interfere with the Courts Christian, the Pope did so; for we find Alexander IV. bestowing upon the Cistercian Order in England the peculiar right to grant probate of the wills of their own tenants and farmers, thus exempting their manors from the jurisdiction of the "ordinary," or, in other words, the ecclesiastical judge. These "exemptions" were often carried very far in the Middle Ages, as against both bishop and king.

In fact, there were occasions in which the grasping character of the papal claims knew no bounds. For Innocent IV. would have liked to take possession of all the goods of intestate clerks. In the year 1246 three rich English archdeacons had died intestate, a condition which in those days was deemed worthy of great blame. Had not these distinguished clerics failed to leave anything to Holy Church? Therefore was it not perfectly reasonable that "the servant of all the servants of God," the occupant of the Holy See, should at once order the conversion of these archdeacons' goods to his own particular use and benefit. The great Canonist who then occupied the papal throne was clearly of this opinion. Apparently he would even have gone further, and not allowed even the appointment of an executor to defeat the papal claim. But this was not pressed; and the earlier claim was never admitted as settled and received law. Yet in the year 1284 we find Edward I. asking the Pope for a grant of the goods of intestate

clerks throughout his dominions, which was promptly refused by Martin IV.

In the following year, 1285, a statute is passed by which the "ordinary" is in future to be bound to pay the debts of an intestate in the same way as the executor.

And in the year 1357 another statute directs the ordinary to hand over this work to the "next and most lawful friends" of the deceased person, who are henceforth known as the administrators. The earliest known letters of administration still existing in the original form were issued by the Bishop of Durham in 1313 to Margaret, widow of Hannsard, knight, and two others.

Monastic property often became the subject of litigation, partly on account of the vast amount of real estate held by the abbots and priors; and on this matter Bracton lays it down:—

> If an abbot, prior, or other collegiate men demand land or an advowson or the like in the name of their Church on the seisin of their predecessors, they say "And whereof such an abbot was seised in his demesne," etc. They do not in their count trace a descent from abbot to abbot, or prior to prior, nor do they mention the abbots or priors intermediate, for in colleges and chapters the same body endures for ever, although all may die one after the other, and others may be placed in their stead; just as with flocks of sheep, the flock remains the same, though the sheep die; nor does one succeed to another by right of succession as when a right descends heritably, for the right always belongs to the Church, and the Church is permanent; and this one sees in charters, where the gift is made first and foremost to God and such a Church, and only in a secondary way to the monks and canons.

The power of the abbot or prior over the internal affairs of the institution over which he presided was very great, for he usually kept the seal, and by the seal the whole community was bound. It was only the principal establishments which possessed two seals, one for the abbot and another for the community. If, for instance, Brother Walter, Sacrist of S. Edmunds, takes possession of the seal which hangs by the holy bier, and seals a bond for forty marks to one Benedict, the Jew of Norwich, the bond itself being under seal is good; and the abbot can only shew his anger against Brother Walter by pronouncing upon him sentence of deposition from his office. The idea of a civil action in those days being brought against Brother Walter, or rather a criminal charge in a civil court, was not to be entertained; and, in any case, the seal was paramount, and could not be ignored. A corporate body was bound by its seal, and without it was not bound.

The Reformation naturally weakened the Courts Christian, though it did not abolish them; and for many years the probate of wills seems to have been their chief business.

Sir George Lee was a distinguished ecclesiastical judge in the middle of the eighteenth century, and heard a large number of cases, many of which concerned the probate of wills.

In Pytt *v.* Fendall he lays down that an excommunication must be published in the parish of the person

excommunicated, unless there be grave objection, and the clergy refuse, as occurred in an Irish case, and so publication at Westminster against a party living at Gloucester was irregular, and of no effect. Yet the judge may pronounce sentence of excommunication without calling in a presbyter for that purpose, according to the authority of Statute 37 H. VIII. cap. 17. But a schedule of the actual sentence of excommunication must be issued, and was indispensably necessary. A schedule was the proper way, though it might be done by interlocutory.

In the same year, 1753, Sir George Lee, sitting in the Arches Court of Canterbury, decided that the Rev. T. Castleman, Vicar of South Petherton, Somerset, could not claim a marriage fee from one of his own parishioners, who was married in the church of another parish. This case is cited as Patten *v.* Castleman.

Hillier *v.* Milligan is a curious case as to the powers of the Commissary of Buckinghamshire in the diocese of Lincoln.

> Conran *v.* Lowe, heard in 1754 in the Arches Court, raises the question as to the validity of a Fleet marriage, and decides the marriage is not sufficiently proved, reversing the decision of the Chancellor of London.

It would be easy to multiply cases of this kind, for they mainly occupied the Courts Christian in the eighteenth century.

In more recent times there have been important

suits, and important decisions on questions of ritual, which have been much canvassed. Where length of usage and custom generally received bears one way, and the written text of the ancient canon another, the judge has always a task of great difficulty. He has to reconcile, if reconciliation be possible, two different propositions which apparently seem to be altogether irreconcilable. But judges are very able men, and their powers very great.

It is not possible to go into these ritual cases in detail, but we may just give by way of example of this class of case the recent decision by the Dean of Arches on March 11, 1901, in regard to Pinner Church.

Chancellor Tristram had refused to grant a faculty to the Vicar of S. Anselm, Pinner, to erect a new screen in the Church, on the ground that certain ornamentation carved thereon, and more particularly a crucifix, tended to superstition, and was therefore illegal.

The Dean of Arches, Sir A. Charles, reversed the decision of the Chancellor of London. He held he was bound by the authority of Clifton *v.* Ridsdale, and Philpotts *v.* Boyd, that a crucifix was not in itself illegal if it formed part of an historic scene for the architectural adornment of the Church. Yet it was illegal if tending to superstition, as might be the case in churches where the stations of the Cross were found.

It was illegal if tending to superstition, as previous authorities had laid down, but there was nothing whatever of this character at S. Anselm's, Pinner — no

stations of the Cross—no excessive ritual. Sir A. Charles, therefore, felt entitled to exercise his power of discretion, and issued a faculty reversing the decision of the Chancellor of London.

From the various proceedings in this case it is apparent how much depends upon the discretion of the judge in a certain class of legal cases, for there is room for a variety of legal opinion as to the true interpretation of such phrases as "tending to superstition" and the like, just as much as is the case amongst theologians.

Narrowness of interpretation may often lead to curious and unlooked for results, and may have the effect of indirectly giving a new colour to the old law of the land.

Another recent case which aroused some interest, and gave occasion for the discussion of some curious points of law, is the King *v.* the Bishop of Chester, and Davies *ex parte* the Dean and Chapter.

The Reverend Timothy Davies, Head Master of the King's School, Chester (a school formerly closely connected with the chapter), claimed a right to a special seat in the choir, and to be a member of the cathedral body. Such a position was doubtless contemplated by the statutes of Chester Cathedral passed in the reign of Henry VIII., for the master and all the boys were enjoined to attend and take part in the cathedral services on all Sundays and holy days. But under the scheme framed in 1869, under the Endowed Schools

Act, all obligation on the part of the master and boys to attend the cathedral services in the manner and way above prescribed was done away, and the dean and chapter were of opinion that by that scheme the official right of the head master to a special seat in the choir was likewise abolished, more particularly as the chapter possessed the general right of regulating the position and use of all seats within the cathedral, and their old right of appointing the Head Master of the King's School had been abrogated by recent changes under the authority of Parliament. The bishop was of the contrary opinion. Therefore the chapter sought a prohibition in the King's Bench prohibiting the bishop from entertaining during his legal visitation of the chapter the petition of the said Reverend Timothy Davies, whereby he claimed he was entitled of right to occupy a seat in the choir of the Cathedral Church of Chester; and the ground of the chapter's application was that the decision of this point was beyond the legal jurisdiction and power vested in the bishop in his capacity of visitor of the cathedral chapter, for it was already decided by valid legal authority.

Mr. Justice Darling and Mr. Justice Channell were the judges of the Court of King's Bench who heard this case on March 21, 1901. The actual statutes or ecclesiastical law now in force in Chester Cathedral were carefully considered, especially in regard to the relation of the chapter and the school, and in particular Statute 32 :—

> To the end that prayers and services be duly and constantly performed in our church, and the praises of God be every day celebrated with singing and joyfulness, we appoint and ordain that the minor canons and conducts, with the deacon and subdeacon and master of the choristers, do perform divine service in the choir of our church according to the rites and ceremonies of other cathedral churches; but we do not oblige them to the performance of nightly services.

It was clear then by the cathedral statute that the master and his scholars were bound to attend in the choir on Sundays and holy days; but it was also clear that by the scheme which had been passed under the Endowed Schools Act the master and scholars were not so bound to attend, and in fact did not so attend. It was a common rule of law that the duties being abrogated the rights attached to those duties were also abrogated.

Their Lordships therefore held that the prohibition applied for by the dean and chapter would lie, and made order accordingly; and though they held that the bishop alone could pronounce judgment on the claim of Mr. Davies to be a member of the cathedral body, and to have of right a seat in the choir, yet they held the bishop bound by the cathedral statute and the scheme of the Endowed School Commissioners.

From the point of view of ecclesiastical law this decision is of remarkable interest, because in the result it upholds very distinctly, though on somewhat different grounds, the general principle of the later Canon Law

that the dean and chapter alone have control over the cathedral church in every question that can arise. The chapter alone possess seats, or stalls, as of right, and the bishop, who is visitor, possesses his episcopal throne. But the ordering of the services, the maintenance of the fabric, and all the various details connected with the administration of a great cathedral rest entirely with the dean and chapter.

So much controversy has arisen in regard to the election of bishops, that it may be of interest to recall the legal proceedings on the occasion of the election of the present Bishop of London. It will be seen that all the canonical forms and ceremonies were carefully complied with at S. Paul's.

> The Dean and Chapter being assembled in the Chapter House, the King's Letters Patent and Letter Recommendatory were produced by the Registrar, and read. The verger also produced the Citatory Mandate, with a certificate of its execution, and then proclaimed:—Oyez, Oyez! All and singular the Canons and Prebendaries of the Cathedral Church of S. Paul in London having a right, voice, or interest in the election of a Bishop of the See of London now vacant are hereby required to attend at this day, hour, and place, etc. etc.
>
> H. W. Lee, notary public, was then made actuary, and W. P. Moore and F. H. Lee were made witnesses of the election, and all absent Canons being pronounced contumacious, the Dean read and signed the monition warning non-electors to depart from the Chapter House, and declared the Canons and Prebendaries present to be a full Chapter. He then set forth the three canonical ways of election—(1) by acclamation, (2) by scrutiny, (3) by com-

promise. The election was resolved on by acclamation. The Dean then signed the schedule of election, and was empowered to publish and make known the same to the clergy and people, and by lawful proxy to the Bishop elect, to our Sovereign King Edward, and the Archbishop of Canterbury.

The following notice was then attached to the door of the Chapter House :—

To all and singular Christian people whom the underwritten may concern: Robert Gregory, clerk, D.D., Dean of S. Paul's, London, and the Chapter of the said Church, greeting in the Lord Everlasting. We do make it known to you universally by these presents that the See of London being vacant by death, etc. etc. We, the Dean and Chapter aforesaid, by virtue of the King's licence granted to us for the election of another Bishop and Pastor of the said Church, being assembled together in our Chapter house on the 25th day of March 1901, and making Chapter there, and observing the laws and statutes of this kingdom, and the ancient customs of the said Cathedral Church in this behalf to be observed, did unanimously elect the Right Reverend Father in God Dr. A. F. Winnington Ingram, Bishop of Stepney, to be Bishop and Pastor of the said Cathedral Church of S. Paul, London.

The various steps in the process of election have remained the same for many centuries, and bring to mind the ancient canons of the Church, and all the mediæval legal lore on the matter. Though the King's letter nominates the ecclesiastic who is to be elected, yet the election itself is vested in the chapter alone, and the new Bishop holds his See from the moment the election is completed, and not from the date of the King's letter. There has been no case in modern times

of the chapter not electing the clergyman recommended in the King's letter.

What would happen in such a case it is difficult to say. It is certainly within the power of the chapter so to do; but then they may suffer the penalty of præmunire. Generally, however, the chapter is unwilling to contemplate such a course of action, being well satisfied with the ecclesiastic recommended. The common idea that the action of the chapter is only a farce in regard to the making of a bishop is founded on a total misconception of the legal powers and legal rights of chapters. If a new bishopric is made, it certainly seems a pity that a chapter should not be formed at once, and everything thus brought into line with the ancient ecclesiastical law. For, after all, those institutions flourish best which develop along the lines of their existing constitutions, and so make all their arrangements decently and in order.

CHAPTER VII

Patronage

In all ages the question of patronage has been fraught with difficulty in the Christian Church. Various views have been, and still are, held by Christian people in absolute and diametrical conflict one with another, and these views are often advanced with an excess of earnestness and force.

There is the monarchical view, in which the bishop, or in some Protestant countries the sovereign prince, is deemed the proper and legitimate source of patronage; then, on the other hand, there is the democratic view, in which the inhabitants are deemed the best suited to select the clergyman of the parish; and though they doubtless possess excellent knowledge of local requirements, yet in the case of a contested election the parish will be divided into two hostile camps, and the defeated party will always remain a source of bitterness and contention for the future.

Another way of dealing with patronage was to vest it in the lord of the soil, the owner of the land, upon which the church itself was built. Looking back over past centuries, history points out how it was the lord of the soil who in general first erected the parish church, sometimes as a private chapel or place of worship for his own family, and continued to claim some right in the fabric he had built, when the ecclesiastical authority and the churchwardens were held in law to possess more extensive rights than the heir of the founder.

And this plan of various co-ordinate rights, so to say, in the church of the parish, recognised by the civil and the ecclesiastical law, has been found to work quite as well as any other in the legal history of Christian institutions.

While great variety was allowable, arising from local custom or otherwise, the general plan which prevailed placed the patronage in the hands of the landowner or his heir, the ownership of the fabric of the church in the rector or vicar, and for some purposes with the churchwardens, one of whom represented the incumbent and the other the inhabitants. As the incumbent alone, and also the incumbent and churchwardens, formed a corporate body, they were able to possess a good title to the church and site thereof, as against the hereditary heirs of the landowner or lord of the manor, a point of practical importance in early times—a point which is sometimes

nowadays a matter of practical difficulty in regard to Episcopal churches in Scotland, as may be seen in the recent proceedings in the Earl of Rosslyn's bankruptcy case.

And this ownership of the fabric by the vicar, and for some purposes by the vicar and churchwardens, became an established principle of ecclesiastical law, though the chancel always belonged to the rector alone, and the soil on which the rest of the church stood, together with the churchyard, to the vicar. And this ownership was of such a kind as to confer a parliamentary vote as a freeholder. But the advowson in most cases remained with the lord of the manor, or the lord of the soil, and in the case of manors was often deemed in early days to be inalienable from the ownership of the manor; but as time went on this became inconvenient, and the advowson became generally transferable as a separate piece of property. No doubt the abbots of the more powerful monasteries did all they could to advance this movement, as they frequently desired to become owners of patronage, but had no object in becoming lords of the soil.

In this way the English system of patronage has arisen, and upon the whole works remarkably well. In the case of private patronage, it is found in practice that the patron is inclined to take considerable interest in the prosperity of the Church, and to do far more to advance that prosperity than would be the case if he were not patron. Indeed, instances of the generous

liberality of patrons are very numerous. A remarkable recent example may be found in the case of the parish of Wraxall, where the emoluments of the rector have been very largely increased. There are, of course, some instances of unworthy patrons; but if the legal process by which patronage could be transferred was made more simple, such patrons would slowly but surely drop out of the way, and their places would be taken by more worthy successors. The law of simony is uncertain and vague, and needs better definition.

If the transfer of advowsons, under proper limitations and conditions, were facilitated and a substantial registration fee charged, part of which should go to the augmentation of the endowment, a great practical benefit would be conferred on the Church, and patrons would be encouraged to take more interest in the parishes with which they are connected.

Besides private patrons, there are a number of corporate bodies, ecclesiastical and civil, which possess the right of exercising patronage: such as the King, the Archbishop of Canterbury, the Lord Chancellor, the Archbishop of York, the Bishops, Deans and Chapters, the Corporation of London and some other civic bodies, the Colleges of Oxford and Cambridge, and Eton College. Of these bodies, the King is perhaps the most important, not only because he nominates to the most important posts in his own right, but also because he has much indirect preferment.

For, in the first place, there were the vacancies in

bishoprics, and some other high ecclesiastical offices, when the temporalities became for the time being vested in the Crown;* including the patronage of vacant churches. Then there were presentations on behalf of minors, heirs of feudal tenants *in capite*, which passed to the Crown. Then there was, during the great war with France, all the extensive patronage hitherto vested in the alien priories. We will illustrate this curious point from a variety of cases.

Examples of Presentations by the King not in his own right.

In the year 1378 the patronage of the Church of La More in the diocese of Lincoln is stated to be in the King's hands, since the Priory of Durhurst is an alien priory, and Nicholas Moryns, Vicar of the Church of the Holy Trinity, Gloucester, is presented thereto on exchange of benefices with Richard Harbergh.

In the previous year the King presented John de Bellerby to the Church of Southgosseforth in the diocese of Durham, which had come into his hands by reason of his custody of the land and heir of Robert Lyle, tenant in chief.

In the year 1379 the King presented Richard de Osset to the Church of Remston, in the diocese of York, by reason of the temporalities of the Priory of Lenton

* But not in the bishopric of Durham, where the chapter exercises this semi-regal privilege.

being in the King's hands on account of the French war.

In the year 1381 King Richard II. presented William Sempiere to the vicarage of Crymplesham in the diocese of Norwich, and also John Hervy, Chaplain, to the Church of Little Gelham in the diocese of London. The patronage of both these churches belonged to the Prior of Stoke, which being an alien priory was vested in the King on account of the war with France.

In this same year King Richard grants a licence in mortmain to William, Bishop of Winchester, to alienate the advowson of the Church of Abberbury, Oxon, from the bishopric of Winchester to the Warden and Scholars of New College. Since this date there has been no change in this patronage.

In the Patent Rolls of 1 Henry IV. we find the king granting his clerk, Simon Bache, the Prebend of Thame in Lincoln Cathedral; and there is a mandate in pursuance thereof to the Bishop of Lincoln, and to the Dean and Chapter.

The king also presents Richard Clifford to the Church of Seggesfeld in the diocese of Durham; Richard Kyngeston to Stokenham in the diocese of Exeter; and Thomas More to Patryngton in the diocese of York. The king also presented Maurice ap David to the Church of Walssh Bykenore in the diocese of Hereford; and John Ambell to Tryngge in the diocese of Lincoln; as well as Nicholas Bury to the Church of S. Magnus in the City of London.

John Welynton, Prior of Lanthony, gets two attorneys for his business in Ireland for three years, so that this priory apparently had Irish estates.

The king, by reason of the French war, found himself in possession of the alien Priory of Andevere, Southampton, and presented Nicholas Gwyn, a Benedictine monk. He also presented John de Wissyngsete, king's clerk, to Bokyngton in the diocese of Exeter.

On October 21, 1400, there is a restitution to Thomas, Archbishop of Canterbury, of his temporalities, which had been taken by the late king under colour of a judgment in Parliament. In this same year a number of the alien priories were restored, and appointments made to them, as S. Mary Magdalen, Barnstaple, Lodres, Salisbury, and S. Michael's Mount, Cornwall. The Abbot of Séez in Normandy obtains licence to sell wood at his manor of Atheryngton notwithstanding the French war, because his abbey was founded by the king's progenitors. Under the circumstances this royal grant is remarkable. The king would on occasion grant licences for the execution of papal Bulls; for instance, on November 25, 1399, he made such a grant to William Langton, parson of Wellys by Walsyngham, to execute papal Bulls concerning a benefice in the Church of Chichester.

The following is an Irish presentation by the sovereign, viz. John Belynges to S. Patrick's, Trym, in the diocese of Meath.

A few more examples of the exercise of patronage may be given.

Thus, on January 20, 1400, the king grants to William Bramley the wardenship of the chapels of Octon and Swathorpe in the county of York, which are in the king's gift in consequence of the forfeiture of Ralph Lumley, knight.

On January 22 he presents William Mel, chaplain, to the Church of S. Peter, in Old Sarum, by Salisbury.

In the previous December he presented William Forester, an alien monk and chaplain, to the alien priory of Durhurst in the diocese of Worcester, void by the death of Drugo (or Hugo?) Grenyer, the last prior, and in the king's hands by reason of the war with France. He also presented Thomas Wilymot to the Church of Ernemouth in the Isle of Wight.

On February 6, 1400, there is a curious revocation of a presentation. For the Prior and Convent of Launceston say they had obtained an appropriation of the Church of Leskyrd *before* the date of the Statute of Mortmain, and therefore the king cannot appoint Simon Gaunstede, who on being summoned did not appear, and the claim of the prior was allowed, judgment being given against the said Simon by the Sheriff of Cornwall.

On the same day the king grants to his clerk, Richard Kyngeston, dean of the chapel within the royal household, the prebend which Richard Randes

lately had within the king's free chapel of Wyndesore, void by the death of the said R. Randes.

On February 7 there is a grant to John, Bishop of Leghlyng in Ireland, of the custody of the temporalities of the bishopric of Osserye, so long as they remain in the king's hands, by reason of his translation from Leghlyng to Osserye.

On February 17 John Coryngham, clerk of the closet, obtains a grant of the wardenship of the Hospital of S. Mary, Wyche, in the county of Worcester.

On February 21 Robert Trays is presented to the Church of Wadenho in the diocese of Lincoln. The next day Henry Dymmok is presented to Wodnesbery in the diocese of Coventry and Lichfield.

On February 20, 1401, John Crane is presented to the Vicarage of Polyng, Chichester; and Robert Kyng, on the nomination of the mayor, etc,, to the Hospital of S. Bartholomew, Rye.

In the Patent Rolls 2 Henry IV., anno 1401, on August 3, a grant is made to Robert Keten, Prebendary of Taghmon in the Cathedral of Ferns, Ireland, of licence to receive for four years all fruits of his prebend, as though he were resident, notwithstanding the ordinance that non-resident holders of benefices in Ireland shall pay two parts of the profits of their benefices in aid of the king's wars in that country.

On August 4 Thomas Burdet, the king's clerk, is presented to the Church of Aston Cauntlowe in the diocese of Worcester.

The following entry is noteworthy, dated August 31 :—Whereas the Pope lately made a provision to the king's clerk Nicholas Bubbewyth, one of the Masters in Chancery, in the Cathedral of York, and Richard II. granted licence for the execution of the provision, and after the coronation the archdeaconry of Richmond and the prebend of Bool fell vacant, and the proctors of the said Nicholas took possession of the same, and the king pardoned him ; the king grants licence to sue his right in the Court Christian, and continue possession.

On September 22 licence is granted to Angelo, Cardinal Priest of S. Laurence in Damaso, to take possession of the canonry and prebend of Blebury in the Cathedral of Salisbury, void by the consecration of Richard Clifford as Bishop, with which the Pope has provided him.

On the same day Thomas Barton, Vicar of Hyston, is presented to the Church of Harnhull in the diocese of Worcester, on an exchange of benefices with John Yong. The letters are addressed to the guardian of the spirituality of the bishopric, because the See is vacant.

There is a mandate to the escheator in the county of Somerset for the restitution of the temporalities of the bishopric of Bath and Wells to Henry Bowet, sometime Archdeacon of Lincoln, Doctor of Laws, whom the Pope has appointed Bishop on the translation of Richard, Bishop Elect, to the See of Worcester, and who has renounced everything prejudicial to the king in the Papal bull, whose fealty the king has taken.

There is a similar mandate to the escheator of Worcester in favour of the above-mentioned Richard.

In the thirteenth century the law of England regarded the advowson as being normally an appurtenance of some manor. Hence it follows that if you make a feoffment of the manor, the advowson is thereby conveyed without any further formal conveyance thereof. But when the advowson came to be separated from the manor by legal process, and thus became an advowson in gross, then that advowson must be conveyed by deed, much as real estate is conveyed.

Yet the advowson is incorporeal, not corporeal. It cannot be touched like a house or walked over like a field, and at first this difference seems to have puzzled and perplexed the learned administrators of our law.

There was a writ of right for the recovery of an advowson, similar, yet differing from the writ of right for the recovery of land.

There was also the writ, or rather the assize of darrein presentment, for the adequate protection of the possessor of an advowson. And the act of presentation was *itself* regarded as the *seisin* of the advowson. And so it comes to pass that the form of the question addressed to the recognitors of the assize runs in this way :—

> Who was the patron who in time of peace presented the last parson, who is now dead, to the Church of Middleton, which is vacant, and the advowson whereof Alan claims against William?

If, however, it can be shewn by way of an "exceptio," that Alan had granted the advowson to William, then in the days of Glanville William will have the next presentation, Alan's title having been proved good.

And seisin could be delivered, on speaking the proper words of grant, at the church door.

Furthermore, there is also the "Quare impedit."

Yet, if a clerk be wrongfully presented, and he obtains episcopal institution, then in the case now under consideration it appears that William will lose his right of presentation altogether, for he has not obtained seisin of the advowson.

By statute, however, passed in the year 1285, six months was allowed after the usurpation for the use of "Quare impedit," and this was the state of the law down to Queen Anne's time.

Both the common law and the statute law was very unwilling to appear in any way to interfere with the canonical act of *Institution*, as laid down by Innocent III. and succeeding Pontiffs, and incorporated in the general Canon Law of Europe.

But yet the actual number of cases in which Institution was obtained, so to say, by tort cannot have been very numerous, and as a general rule it appears that the patron was perfectly free to exercise those rights which were conferred upon him by the joint operation of the common and the Canon Law.

The effectual separation of an advowson from the

lordship of a manor was sometimes a matter of considerable difficulty—possibly of some uncertainty.

For example, the abbot and convent of Roche, on July 14, 1379, petition the king at Westminster, and obtain a ratification of their estate in the advowson of the church of Heytefeld in the county of York, which advowson had been granted to them by John de Warenne, Earl of Surrey, but the manor had been previously granted to King Edward II., on which account they feared an attempt at disturbance in their peaceable possession of the said advowson, unless they obtained a declaration that the advowson was an advowson in gross.

In this same year the king grants letters to John Brian, Prebendary of Lusk in Dublin Cathedral, staying in England, to nominate Thomas Bathe, clerk, and John More of Dublin, his attorneys for one year; and also ratifies the estate of William de Hoton in the treasurership of S. Patrick's Cathedral. In the same year the king appoints Richard de Foxton, king's clerk to the church of Herynggeswell in the diocese of Norwich, the Abbey of Bury being then vacant. He also appoints Ralph de Pynyngton to the Church of Stokes in the diocese of Norwich, on account of the alien Priory of Eye being in his hands.

The king also presented Richard Bolteford to the Chantry of the Altar of S. Giles, in the Hospital of S. Giles without Wylton, Sarum; and gave licence to the Prior and Convent of Pershore to elect an abbot in the room of Peter Bradeway, deceased.

In 1380 the king presents Thomas Boteler, chaplain, to the Church of Ravenston in the diocese of Lincoln, in his gift by reason of his custody of the land and heir of Henry de Beaumont, tenant in chief; and presents John Tornour to the vicarage of Holy Trinity, York, belonging to the alien Priory of Holy Trinity, York.

The exceedingly close union between Church and State * may be illustrated by the curious order made on May 7, 1339, to the Abbot of S. Mary in the city of York, to pay to Thomas Ughtred, keeper of the town of Perth, the 100 marks the king ordered the abbot to pay him for the munition of the town, etc.

It may be noted that the Abbot of S. Mary was the collector within the archbishopric of York of the triennial tenth granted by the clergy.

A curious case arose in relation to the Church of Wimbledon, known as the King *v.* Simon Islip, Archbishop of Canterbury.

On the ground that John Sandale was a pluralist, the church was supposed to be vacant, and the vacancy was said to have arisen while the temporalities of the archbishopric were in his Majesty's late father's hands. Could the king present? John of Gaunt pleaded the royal cause in the lay court, and the jury decided in the king's favour. However, the royal plea was afterwards withdrawn as feigned and untrue. So the ecclesiastical

* A similar order was made on August 16, 1321, to the Abbot of S. Mary, York, collector of the tenths, etc., to pay 100 marks to the king's clerk Robert de Barton, for certain works at the Castles of Carlisle and Cockermouth.

Court did not have to pronounce any definite decision.

To come to more modern times. The disputed cases on patronage are much less frequent after the Reformation, yet some very curious cases arose from time to time.

Take by way of example the legal opinions given in regard to the questions which arose in 1718 in regard to the advowson of the Rectory of Little Bardfield in Essex.

In that year Thomas Barnard died, and the manor and advowson attached descended by heirship to the Reverend Thomas Barnard, who as patron was forbidden by the Canon Law to present himself. He therefore suffered the patronage to lapse, and was then collated by the Bishop of London.

> But a legal investigation was instituted on the question whether the bishop could, if he had so desired, collate the patron before sufficient time had passed for the lapse to take place; for, if not, and the bishop should die, or be translated, the Crown or the archbishop might step in, and the patron as well as the bishop would lose the next presentation altogether. Dr. Andrews therefore maintained, looking to the patron's interest, that under all the circumstances of the case the bishop could collate; but Dr. Henchman declared that this could not be done until after the expiration of the six months prescribed by the canon; for otherwise the law of the Church would be broken; and this appears to be the better legal opinion, though possibly working with some harshness to the patron under special circumstances, such as those above mentioned.

It is, however, worthy of note that in this case the canon was strictly obeyed, and the *lapse suffered before* the collation.

Patronage is a wide subject, more particularly so when we attempt to look into the large amount of case law on this matter. In the cases, however, already quoted there is sufficient evidence by which some wise and national opinion can be formed as to the general question of advowsons, and what may be the best form of patronage.

In practice, popular election is not satisfactory, nor entire control by the bishop, who is so much occupied with other business. Upon the whole the *varied* system prevalent in England works well, and is worthy of support, being strictly based on the canons and ancient laws of the land.

The author of a system of patronage approved by all men would possess perfectly marvellous ability, and be worthy of high position in Church and State.

APPENDIX.

The Distribution of Ancient MSS. of the Canon Law, especially in regard to the Decretum and the Decretalia.

The Library of the Vatican is naturally the special place where the largest number of ancient MSS. of the Canon Law are to be found, and by the courtesy of the distinguished scholar Monsignor Ehrle,* D.C.L. Oxon, who at present holds the important post of Librarian of the "Biblioteca Apostolica," an inspection has been made of some of the more important of these MSS. For the most part they are well preserved, and now every care is taken that no damage shall accrue in any way whatever to the unique collection contained within the walls of the Vatican Palace. Once incorporated in this great Library, the MS. rests safe and secure. Before it reaches this magnificent haven it is liable to injury by sudden transfer of ownership, long journeys about the civilised world, mutilation by savants anxious to possess some particular page of its parchment. Thus, for instance, the fourth century MS. of the Gospels (B) is far better preserved than many later MSS. which are found elsewhere. But the Vatican is by no means the only receptacle

* Dr. Ehrle received the Hon. Degree of D.C.L. at Oxford on the same day as Cecil Rhodes.

for the ancient MSS. of the Canon Law. All over Europe some such MSS. are found in the best libraries. More especially is this the case in those countries which still owe obedience to the Roman Church; for amongst the northern nations MSS. of this class and character were largely destroyed during the exciting period of the Reformation of religion. This is the reason why the Bodleian possesses but few MSS. of the Canon Law. There is one large folio of Gratian, No. 290 (Old C. 2441), which commences in the usual way, "Humanum genus," and these words are included in the illuminated letter H on the first sheet of parchment, there being altogether 236 sheets. There appears to be no copy of Gregory's Decretals, but the Laudian MS. 527, beautifully bound, with the celebrated Archbishop's arms stamped thereon, contains a section entitled "Juris Canonici Particula," though the other six sections do not relate to Canon Law. The whole MS. comprises 287 sheets of parchment, and on sheet two is written "Liber Guil. Laud Archiêp. Cant. & Cancellar. Universit. Oxon. 1640": on the fly-leaf, "In hoc MS. continentur Miscellanea varia."

In the Advocates' Library in Edinburgh there is preserved a splendid thirteenth century MS. of the Decretum of Gratian, with the gloss of Bartholomew of Brescia; there is also one fine thirteenth century MS. of the five Books of the Decretals of Gregory IX., as well as a collection of Decretals—a folio on vellum of the fourteenth century, presented by Sir G. Mackenzie, Earl of Cromartie.

The Advocates' Library also possesses Apparatus Gencellini de Cassa, super Constitutionibus Clementinis, a folio of 64 leaves, and ejusdem super Constit. Sexti, and de Matrimoniis. This MS. has fine illuminated initial letters. There is also the Compertorium D. Bartoli, a paper folio belonging to the fourteenth or fifteenth century.

Details concerning the Distribution of the MSS. of the Canon Law in the Principal Libraries of Holland, Belgium, Italy, France, and Spain, which have been visited by the Author of this Book.

The Libraries of Holland.

The University of Leiden possesses an ancient Library, chiefly rich in classical MSS. But there is also the Codex Gronovianus of the fifteenth century relating to Canon Law and comprising the Liber Sext, with gloss.

There are also Regulæ Canonicorum sub Ludovico Pio, A.D. 816. This MS. is numbered 126, is written on 67 sheets of parchment, and belongs to the end of the tenth century.

Codex Vossianus Latinus (No. 66), on 86 sheets of parchment, is entitled Legum summa in Latinum translata ab magistro Ricardo Pisano.

The MS. numbered 636 consists of a Commentary on the first part of the Decretum of a late date.

The Royal Library at the Hague is the finest *modern* library in Holland, but is naturally not rich in ancient MSS. This is also the case in regard to ecclesiastical records,* with the other libraries of the land, owing to frequent wars and religious changes in former years.

The Libraries of Belgium.

The Royal Library at Brussels is by far the most important Library† in the kingdom. And the most interesting section of this library consists of the early collection of MSS. formed

*In the Archiepiscopal Museum of Utrecht there is a curious series of money coined by the Bishops, commencing with Bishop Bernalphus in 1027.

† At Antwerp there is a fourteenth century MS. Liber Miraculorum B. V. Mariæ with a Life of S. Hugh of Lincoln at the end. It came from the Chartreuse of Herinnes, in Hainault.

by Philip the Good, Duke of Burgundy, though the MSS. collections have also been enriched by many valuable modern purchases. Many of the miniatures and illuminated letters are very remarkable. This library possesses two fine MSS. of the Decretum of Gratian, and five MSS. of the Decretals. There is also an MS. of the Liber Sext, and of Execrabilis Johannes XXII. Constitutio.

No. 5668 is a fine MS. of the Decretum, of the same type as found elsewhere, with all the usual characteristic features. No. 7451 is also a fine copy of the Decretum, belonging to the fourteenth century, with the gloss of Bartholomew of Brescia, containing numerous fine illuminated letters. It formerly belonged to the monastery of Tourgot.

One of the five copies of the Decretals was bought at the sale of Sir T. Phillips at Cheltenham. This fine MS. contains 334 sheets with gloss, and belongs to the fourteenth century. It is No. 2530.

Another MS. of the Decretals with gloss also belongs to the fourteenth century, and is No. 266. No. 1857 is a similar copy to the last, but smaller and not so well written, and probably slightly later in date. No. 4710 is a well written MS. of the Decretals on 193 sheets of parchment, and came from the Church of S. Mary de Villers de ville in Brabant.

No. 19,692 is a fourteenth century copy of the Decretals which came from the Abbey of Orval in Luxemburg.

In the Royal Library there are also some other interesting MSS. of Canon Law. By way of example we may mention MS. No. 5564, the Liber Sext of Boniface VIII., in 133 sheets. Then there is an eleventh century MS. of Burchart of Worms, beautifully written in quite small letters on 78 sheets of parchment.

No. 2055 is a small MS. beautifully written, containing the Extravagants on 54 sheets of parchment, and dated the second year of the Pontificate of John XXII. There are no illuminated letters, and no commentary or gloss, and this MS. was once the property of the Chartreuse de Herinnes. No. 1440 is

the famous Execrabilis Johannes XXII. Constitutio, consisting of 272 sheets, written on paper, and bought at Sir T. Phillips' sale, and is entitled on the cover Concilia de Senis, scripta 1450. No. 1682 contains the Clementine Constitutions, on 98 sheets of paper, issued at the Council of Vienne.

No. 14,037 is another copy of the Extravagants dated 1438. No. 5471 contains the Tituli Clementini in 101 sections, written on 112 sheets of paper. There are two good illustrations. The first shows the Pope giving the Book of the Clementines to a Cardinal. The second shows the Cardinal handing on the Book to three eager and earnest students. The text begins on page 2, Johannes, episcopus, servus servorum dei, dilectis, etc., and there is a gloss.

There are also a good many commentaries on the Canon Law. We may mention the Panormia of Ivo, Bishop of Chartres, the works of Guido, and other distinguished Canonists. No. 10,138 is an interesting collection of miscellaneous Canons, in part of the tenth century. The wise example of this famous library is worthy of imitation in other countries of Europe, for some excellent accessions have been made to the MSS. department in recent years.

The Library of the University and City of Ghent also contains some good MSS. of the Canon Law. No. 286 is a thirteenth century folio copy of the Decretum on 386 sheets of parchment, with 35 fine illuminated capital letters, and the gloss of Bartholomew of Brescia, the friend of S. Dominic. On the first sheet is written at the foot :—Ex Musæo A. B. de Requeleyne. There is another example of the Decretum on 353 sheets, in small letters, with a fine ancient binding, belonging to the first half of the thirteenth century. The text commences on sheet 15, and is preceded by a kind of analytical table. It is followed by various extracts from papal bulls, and other similar documents. This MS. was at one time the property of Louis Van Cotthem, Provost of Tusschenbeke, an ancient ecclesiastical establishment near Lede in the old province of Alost ; and afterwards belonged to the convent of

Tronchiennes, before it reached its present destination in the library of Ghent. Five other MSS. relating to the Canon Law may also receive brief mention. This library contains the Summa Raymundi; the Summa Confessorum compilata a fratre Johanne Lectore, ordinis fratrum prædicarum; Libellus a magistro Guillelmo de Mandagoto archidiacono in Vasconia; Ranfredi Beneventani Libelli; and Instructio circa diversas materias, an ancient manual of Canon Law, which was used by the Bishop of Bruges. There are no copies of the Decretals.

Yet it is not amongst the northern nations, but in the sunlit lands south of the Alps and the Pyrennees that the finest examples of MSS. of the Canon Law are to be found. Italy, whence the Canon Law sprang, is richest in this respect, and the authorities always show the greatest courtesy in exhibiting their various treasures.

Perhaps, however, the notes on the Canon Law MSS. in Spain may be deemed the most valuable, because so little is known of the general resources of the Iberian peninsula.

In the various wars of past ages but scant respect was shewn to ancient libraries, which were pillaged and ransacked by foreign troops in the most ruthless way. Hence it is that some MSS. have altogether disappeared, while others have been much mutilated.

Moreover, a large number of the best libraries belong to Cathedral Chapters, and are not always open to the passing visitor. Yet there are stored away in out of the way parts of Spain many early documents of very great antiquarian interest, which will doubtless become better known to scholars in the coming years.

The great Library at Madrid in its present form is a modern institution, in the hands of able men, who are determined to make it a real credit to their country. And indeed there is every reason to look forward to an epoch of real progress not only for the library, but for all the interesting collections in Madrid, provided the country can maintain a settled Government as has been the case of recent years.

The distinguished chief of the manuscript department of the Library of Madrid most readily gives every facility for the examination of the rare treasures under his care. Through his courtesy and assistance it became possible to photograph two sheets * of the famous MS. of the Decretum of Gratian known as C. 4. The first of these reproductions represents the Pope enthroned, surrounded by archbishops, bishops, and monks, eager to read and study the Decretum. The artistic style and ecclesiastical costumes in this very beautiful miniature are well worthy of careful and detailed examination.

The archbishops are carefully distinguished by their palls, the priests and monks by their tonsures and habits, the Pope by his appropriate vestments ; while the embroidery below His Holiness' feet is both curious and fine, the central pattern falling into the form of a cross. Above all, the vividness of the expression of the faces is quite remarkable. Note the archbishop and bishop recounting the salient points as they are impressed on their minds, on the right hand side of the picture. Just behind stands a monk all attention. On the other side is a priest seated reading aloud from the text of the Decretum, which rests upon a bench, and explaining the difficult points of the text to a comrade, who is evidently deeply interested. Four monks are also listening to the exposition of the Canon Law with profound respect, while an archbishop hard by seems absorbed in contemplation of His Holiness. By the doorway stands a man who seems to disapprove all the proceedings. Has he a turban? Is he a Turk? The architectural design shown in this miniature is peculiar, and the throne is not very beautiful, and does not appear to be taken from a Roman model. Yet, taking the composition as a whole, this miniature is a wonderful effort of art, worthy to take high rank amongst mediæval illuminations which serve to illustrate valuable manuscripts.

The other illustration exhibits the Crucifixion. Here again the workmanship is remarkable, and the expression of

* These photographs were very successfully taken by Messrs. Hauser and Menet, photographers to the Royal Library.

the faces extraordinarily vivid and striking. Note the resignation, almost despairing, on the dying face of Christ, and the angels waiting in calm silence. How different is the case of the unrepentant thief, in the terrible death-struggle, vainly striving to get away from the devil, disguised as an imp, at the top of the cross! In the group below, upon the cold earth, there is a marked contrast between the impassive faces of the Roman soldiers and the sharp sorrow depicted on the countenances of the women who had known the Saviour during His earthly sojourn. At the foot of the cross S. John is kneeling in an attitude expressive of the profoundest grief, or possibly this sorrowing figure may be meant to represent the Virgin Mary, while the other women are looking towards the group of soldiers on the right hand side, who are casting lots for the coat that was woven throughout without seam. Just behind this group stands the centurion with his finger pointed to the cross of Christ, and the words on his lips, "Truly this was the Son of God." It is curious that the cross itself is made of a rough-hewn tree, not sawn or planed. Near the entrance gate on the left stands a bishop and a priest. They are interpreting the blood and water flowing from the Saviour's side. Altogether the artistic merit of this remarkable miniature is quite exceptional as well as new to the North of Europe.

MSS. relating to Canon Law in certain Spanish Libraries.

I. MADRID.
The Royal or National Library.

II. SEVILLE.
The Columbus Library of the Chapter of Seville.

III. TOLEDO.
The Chapter Library.

IV. LEON.
The Chapter Library.

V. SALAMANCA.

The University Library.

VI. OVIEDO.

The Chapter Library.

VII. BARCELONA.

University Library.

Library of the Archives of the Kings of Aragon.

The National Library of Spain contains four fine MSS. of Gratian.

MS. E. E. 3 is an early copy of Gratian, and contains one illumination of the letter H on the first sheet of the MS., with a picture of an ecclesiastic delivering the Decretum to a humble, devout recipient.

There is the ordinary gloss, occupying about half the page.

The MS. consists of 360 sheets of parchment. There are a few illuminated letters in the earlier part of the MS., but in the latter part these spaces are left blank. This MS. belongs to the fourteenth century.

MS. C. 390 is Distinctiones Gratiani, written on 98 folio sheets of parchment.

MS. C. 1. 87 is a magnificent large folio of Gratian in 406 sheets of parchment, issued under the authority of Gregory XIII. The text of Gratian begins on the latter part of sheet 17.

This MS. is bound in green and gold, and is very heavy.

MS. C. 4 is a magnificent folio in 323 sheets of parchment, containing Bartholomeus Brixensis on the Decretum of Gratian. On the second half of sheet 4 the text of Gratian commences in the usual form, with a very elaborate gloss. There is a very fine illumination at the head of the title-page. On one side the Pope is giving the Decretum to a kneeling monk, and on the other side the Emperor crowned, surrounded by bishops, is presenting a sword to a trusty knight.

The next sheet has a beautiful illumination of the Magi

offering their gifts to the infant Christ seated on the lap of the Virgin Mary, with the angels of heaven looking down from above.

The second book of the Decretum has for a heading a very beautiful illumination of the Pope enthroned with bishops and monks eager to read the Decretum.

On sheet 263 there is another very fine illumination, and throughout the MS. a large number of smaller illuminations of very great merit.

On sheet 298 there is a fine crucifixion.

MS. S. 272 is a small MS. of the Decretals on 444 sheets of parchment, followed by the Decretals of Boniface in a different hand. There is an elaborate gloss in very small handwriting.

MS. C. 5 is another copy of Gratian with very fine illuminations (but not equal to those in C. 4) in a very perfect and complete state. There are very fine half-page illuminations at the usual places, and smaller illuminations elsewhere. This MS. consists of 338 sheets of parchment.*

MS. C. 3 (MS. 1155) consists of 218 sheets of parchment, and contains the Decretals of Gregory IX. in five books, with an elaborate gloss in two or more handwritings. There is an index written in a much later hand, giving the headings of the various sections.

MS. R. 68 consists of extracts from the Decretals of Gregory IX., and apparently once belonged to the Church of Placencia.

MS. Dd. 47 contains the Bulls and Privileges relating to the Church of Toledo, with a Bull of Confirmation of the Primacy of Spain to Archbishop Rodrigo by Gregory IX.

MS. Dd. 41 consists of documents relating to the Foundation of the Church of Toledo, and to the Archbishops thereof.

MS. R. 111 consists of 160 sheets written in double columns, bound in an old binding with clasps, and gives a summary of cases from the Decretum.

* This copy is generally exhibited among the select MSS. in glass cases in the National Library of Spain.

There are various MS. of Gregory IX. besides the text of the Decretals :—

1. A Brief to the Spanish Bishops.
2. A Brief relating to the lawsuit between the Archbishops of Toledo and Santiago relating to the Church of Placentia.
3. A Brief delegating the Archbishop of Toledo and Bishop of Placentia to attend, etc., the election of a Bishop of Lisbon.
4. A Bull to Theobold I., King of Navarre, concerning the excommunication of the Emperor Frederick.
5. A Bull confirming the Legate's decision in a controversy about Episcopal Boundaries.
6. A Bull called *la misma*.
7. A Bull as to the Archbishopric of Toledo.
8. A Bull to the Cistercians.
9. A Bull to the Archbishop of Toledo in reference to King Ferdinand III.
10. Casus breves Decretorum, edited by Raymond de Salia.
11. Copy of a process at law between the Archbishops of Toledo and Tarragona in regard to the Church of Valencia.
12. Briefs to Archbishop Rodrigo.
13. A Bull confirming the Primacy of Toledo.

The Columbus Library of the Chapter of Seville possesses a copy of the Decretum Gratiani, printed at Rome in 1726.

This library also possesses a MS. of the Decretales P. Gregorii IX. This MS. consists of 380 sheets of parchment. Book III. begins on sheet 192. There are no large illuminated capital letters at the commencement of the books, but small illuminated letters to the paragraphs.

Garsia Marani, the scribe, completed the text, January 21, 1381, and wrote at Avenione, *i.e.* Avignon.

This MS. is marked ¯Є Φ 4. 3.

There is a blank sheet of parchment inserted between Books III. and IV.

The Library of the Chapter of Toledo is rich in early MSS. and contains few modern books.

There is a fine MS. of Burchart of Worms, entitled Concilia, with date 1023, in good preservation.

A Canon of the Cathedral very kindly allowed me to visit the manuscript room, though it was not possible to make a very long stay. The copy of the Decretum mentioned in the catalogue could not be found, but there is a copy of the Decretals with the apparatus of Innocent IV.

The Cathedral Chapter of Leon possess no MSS. of Gratian or the Decretals, but only printed copies, dated 1606 and 1624.

They do possess the sixth century palimpsest of the Lex Romana Visigothicorum, over which is written an ecclesiastical history, while part of the MS. is a seventh century Bible. There are 185 sheets. They possess a ninth century MS. of Concilia Ecclesiastica, as well as a Gothic Bible of the tenth century and a musical Gothic MS. of the eleventh century with curious illustrations. There are also a few other mediæval MS., but the whole library is small. There are also the wills of the kings in the twelfth century in 43 sheets.

The Library of the University of Salamanca contains:—

MS. 2. 1. 28, a "tabula" of the Decretals on 94 sheets of parchment. The last words are, "Explicat et finit tabula super decreta et super decretales."

MS. 1. 3. 6 is entitled Summa super decretum.

The first sheet is mutilated, and the first capital letter cut out, and the last sheets have disappeared. 132 sheets remain. The last word is "voluntate" in the existing MS.

The Library of Santa Cruz at Valladolid possesses a (1) fourteenth century MS. of Seneca in the dialect of Castille; (2) the Primus Liber Speculi doctrinis; (3) the Collectio Ordinis Militaris, an early printed book with illustrations of ancient Monastic Orders; and (4) a rare Dutch book on Butterflies.

The Library in the Institute of Gihon in Asturias possesses the Collections of Jovellanos, amongst which are:—

1. Horæ Virginis secundum usum Romanum A.D. 1492: a very beautiful MS.
2. Speculum vitæ, printed in Paris 1520.
3. A Book by the Bishop of Zamora, printed 1468.
4. Lactantius, printed in Venice 1484.

The Library of the University of Oviedo has:—

1. A fine Vulgate of the fourteenth century.
2. Periera's Book printed in 1554 at Medina del Campo, by Will. Millis.

Medina is now a small country village, with no printing press.

The Chapter Library has:—

1. Grant of Alfonso XII. A.D. 812.
2. Libro Gotico, twelfth century, with illustrations.
3. Libro Becerro on the Constitution of the Church, dated 1385.

The University of Barcelona * possesses:—

1. One MSS. of the Decretum of Gratian, very much damaged; a large folio with gloss: many of the capital painted letters are cut away, but some beautiful borders remain. There are 210 sheets still existing, and no cover.
2. A very early printed copy of the Decretals, with capital letters beautifully painted, and borders to title-page. The gloss is printed in smaller letters. The bronze edging of the original binding is preserved. This remarkable book was printed at Venice 1475, by Nicholas Jenson, Sixtus IV. being Pope, and Peter

* In the Archives of the Kings of Aragon, preserved in Barcelona in a special building dedicated to this purpose, there are said to be more than a million MSS., many bulls of the Popes, and a few MSS. of Canon Law.

Mocenico, Doge. There are 304 sheets of parchment on which the book is printed. It is a very beautiful production. On the title-page there is an illuminated portrait of the Pope, with a dove on his shoulder, the triple crown, and vestments, and the Book of the Decretals in his hand, bound in red leather. At the foot of the page is a shield, with a bell in the centre.

3. MS. of Decretalia without any cover, in a moderately fair state of preservation. The gloss, and the commentary on the gloss, in some places is not very legible. It consists of 256 sheets of parchment, and the five Books appear to be complete. There are no illuminated letters, but the first word of each book is painted in red and blue, in letters of uneven size. It belongs to the end of the thirteenth century.
4. Summa super rubricos of *Godfrey* of Trano, a medium-sized folio, well written in two columns, without commentary, but with occasional notes. It consists of 150 sheets, being incomplete at the end, and belongs to the beginning of the fourteenth century.

There are various other MSS. commentares, etc., on Gratian and Gregory IX., at Barcelona.

MSS. relating to Canon Law in some Italian Libraries.

I. ROME.
The Vatican.
The Royal or National Library.

II. BOLOGNA.
The Spanish College.
The City Library.
The University Library.

III. MILAN.
The Ambrosian Library.
The Brera or City Library.

IV. PARMA.
The Ducal or Town Library.

V. PAVIA.
University Library.

The Canon Law in the Biblioteca Apostolica, or the Vatican Library.

The third volume of the Inventory of Latin MSS. in the Vatican Library, in the first part or section, contains a list of the strictly Vatican Collection of MSS. relating to Canon Law. This list contains 138 MSS., numbered 1319 to 1457. The first relates to the Council of Ephesus, and the last to the work of Johannes Andreas Novella Decretalium. Of course such well-known names as Burchart of Worms (Vuormacien) Anselm, Hincmar of Rheims, and Gratian occur from time to time, as well as Isidore of Spain.

No. 1340 is the collection of the Canons of Isidore, and *inter alia* contains some letters stated to have passed between the Council of Carthage and Pope Innocent.

No. 1342 contains the Canons made by the Council of Calcedon.

No. 1368 contains the Decretum of Gratian, executed on 310 large sheets of parchment, with a somewhat elaborate frontispiece on the first sheet, representing a bishop or abbot discoursing on Canon Law to his pupils, some of whom are seated on the ground, and others on wooden benches. Below on the same page are various other figures.

The text commences "Humanum genus duobus regitur," and there is an elaborate gloss all round the border of each sheet. There are many abbreviations, as "phibet" for "prohibetur." Folio 217 has a fine miniature.

No. 1369 (slightly earlier in date than 1368). This is a magnificent folio, consists of 374 sheets, with the text well executed in the centre of each sheet of parchment, and the gloss running all round at each side, as well as below and

above. The gloss is as long or longer than the text itself, and not quite so clearly written.

Spaces are apparently left here and there for illuminated capital letters which have not been filled in.

The text commences "Humanum genus," etc., and on the first page the familiar questions are asked, What is jus naturale, jus civile, lex, etc. Here the questions are in red, and the answers in black.

This collection of MSS. of the Canon Law is only one section of the whole of the MSS. on this subject in the Vatican Library.

There is the Palatine Collection called Codicum MSS. Lat. Vatic. Palatinæ Bibliothecæ Index 1678, *sedente Innocentio* XI. *Laurentius Brancatus a Laurea, Librarian.*

The following MSS. may be noted:—

1. Decretals of Gregory IX.
2. Decretum Gratiani cum glossa.
3. Decretum Gratiani.

There are titles of five other MSS. on the Decretum or the Decretals.

There are also MSS. under the usual names of the chief Commentators.

The Vatican Library also contains the MSS. of Christina, Queen of Sweden, entitled Index Codicum MSS. Latinorum Reginæ Svecorum.*

The following MSS. are worthy of note:—

1. Gratiani Decretum cum glossa Cod. ex memb. in fol. c. s. 296.
2. In Gratiani Decretum Glossæ Cod. ex. memb. in fol. c. s. 64.

* The Library of Christina, Queen of Sweden, came to the Holy See after her death in Rome, far away from her native land.

3. Gratiani Decreti ordo, versibus Exametris.
4. Gregorii Cardinalis S. Chrysogoni Policarpi Canonum Collectio Libris octo.
5. Canonum Collectio, in duos Libros divisa, constans Capitulis cxxxii.

The Library of Cardinal Ottobon is in the Vatican, entitled Index Ottobonianæ Bibliothecæ.

No. 119, Gratiani Decretum cum Glossis is noteworthy.

This is a magnificent large folio in the Ottobon Collection of MSS., with an illustration on the first page of a professor of law teaching his pupils, and a bishop or mitred abbot kneeling in the foreground.

Similar pictures occur at the beginning of new Divisions of the Decretum. There appear to be various small variations from the received printed text of the Corpus Juris Canonici, but none of any real importance.

Another Vatican Collection is Urbinatæ Bibliothecæ Index MSS.

Decretum, sive Concordia discordantium Canonum, cum Glossis Codex pergam. antiq. in fol. numerato 161, pag. 1.

The Manuscript thus entitled is the finest in the Urbinatine Index or Catalogue of MS. in the Vatican Library.

Prima Pars Decreti, Distinctio L, C. 1 gives a quotation from Pope Gregory to Constantine, Bishop of Milan, about restoring the lapsed. Sometimes clericus, sometimes sacerdos is used. Secunda Pars Decreti Causa XXIII, Letter Q, contains a vigorous miniature of a heretic given over to destruction by apostolic mandate. Causa XXX. has a curious illustration of a child in the font, about to be baptized,—no very willing victim to this means of grace.

Pars III. has an illustration near the commencement of a bishop standing before the altar, with another bishop and

monks standing behind. Letter D has a portrait of a bishop within it.

The Royal or National Library of Rome.

The few MSS. have apparently largely come from monastic libraries after the war of 1870, more especially from the monasteries of—

Sessoriano.
S. Pantaleone.
M. Tarfensis.
S. Maria de Victore.
S. Gregorii.
S. Lorenzo in Lucina.
S. Andrea del Valle.

From the first-mentioned monastery there came the valuable sixth century MS. of S. Eucherio, Divina Scientia Lib. viii., and an MS. of Pliny, probably of the same century. There are also four MSS. of the seventh century, and one of the eleventh century.

MSS. preserved in the Libraries of the City of Bologna.

I. The Spanish College was founded by Cardinal Albornoz in 1366, a Spanish prelate sent to Italy by Innocent IV. This College was restored in 1565, and was intended to give noble Spaniards the opportunity of a liberal education in the University of Bologna.
II. The Municipal Library.
III. The University Library.

Library of the Spanish College in Bologna.

Codex Mag. Memb. No. 281.—Decretum Gratiani—a fine MS. of the fourteenth century with an elaborate gloss.

Codex Mag. Memb. No. 280.—Decretales Gregorii IX.—a

S. Raymundo compilatæ. Clementinæ cum notis et glos. A fourteenth century MS. It consists of 264 sheets of parchment.

Cod. Mag. Memb. No. 279.—Sextus Liber Decret. cum glos, et apparatus Johannis Andreæ. Bulla Clementis VI. on Papal Elections. Given at Avignon, 1352, with other Bulls. This fourteenth century MS. consists of 168 sheets of parchment.

Cod. Mag. Memb. No. 278.—Liber Sextus Decret. Auctoritate Boniface VIII. with gloss. A fourteenth century MS., consisting of 90 sheets of parchment, with illuminations to Gregory's Preface, and each of the five Books.

Codex Mag. Cart. No. 277.—Clementinæ Constitutiones. Dated 25th June 1460. It consists of 50 sheets of parchment very beautifully written, with an illumination of the Pope wearing the triple crown in the first letter.

Codex Memb. in folio No. 276.—Extravagantes Joannis XXII.

Codex Memb. folio No. 275.—Provinciale omnium Ecclesiarum. MSS. of thirteenth century. Incipit, Isti sunt Episcopi sub R. Pontifice qui non sunt in alterius Provincia constituti Hostiensis Portuensis, etc. Then comes a list of the Archiepiscopal Sees with their Suffragans, etc. etc. etc.

Codex Mag. Memb. No. 273.—Hieronymianum John. Andreæ. Dated 1346.

Codex Mag. Cart. No. 229.—Petrus Ancaranus super Clementinas. Dated 1334.

Codex Mag. Memb. Nos. 228 *and* 227.—Bartholomei Brixiensis Commentaries on Canon Law belonging to thirteenth century.

Cod. Mag. Memb. No. 226.—Guilielmi Durand (speculator dictus) Repertorium Juris.

Cod. Mag. Memb. No. 225.—Abbas Siculus sive Panormianus (Nicolas Tudiseus) super Decret.

Cod. Mag. Memb. No. 222.—Archidiaconus Guido de Baiisio super VII. Decret. Fifteenth century MS.

Cod. Mag. Memb. No. 220.—Innocent IV. Apparatus ad sing. cap. 5 Libror. Decretalium. Fifteenth century MS.

Cod. Mag. Memb. No. 219.—Bernardus Compostellanus super Decretal. MS. of thirteenth century.

Besides these above mentioned the Spanish College has some fifty other MSS. relating to Canon Law.

The Municipal Library of Bologna.

(Notes on twelve MS., relating chiefly to Canon Law, in this Library.)

1. Dominicus Venetus, Episcopus Turcellanus is MS. A. 2. 17, and is entitled De Potestate Papæ. This MS. belongs to the fifteenth century, having been written A.D. 1475, when Clement VI. was Pope. It consists of 260 sheets of paper.
2. Compendium Decretalium, and from sheet 168 Statuta Generalia is MS. A. 5. 11, and belongs to the sixteenth century. It is a very small MS., and commences with a Brief of Leo X., entitled Apostolicum.
3. Raymondi Summa de Pænitentia is MS. A. 2. 11, and belongs to the fifteenth century.
4. Passageri Rolandinus Bonon. de Testamentis is MS. A. 2. 13, and belongs to the fifteenth century. It consists of 48 sheets of paper, and deals with Wills, etc.
5. Legnani super II. Lib. Decretalium Comment. is MS. A. 2. 9, and belongs to the fourteenth century.
6. Regula de li Frati e Sorelle de pænitentia is MS. A. 5. 5.
7. Notitia Summor. Pontific. et Conciliorum is MS. B. 1. 17, of the sixteenth century.
8. Decisiones Sac. Congregat. Cardinalium Sacri Concilii Tridentini Interpretum is MS. B. 4. 1, and belongs to the seventeenth century.
9. Privilegia et Immunitates quæ a diversis Summ. Pontif. ordini sunt is the title of MS. B. 4. 8, and belongs to the fourteenth century.
10. Margarita, excerpta ex Decreto et Decretalibus is MS. B. 4. 21, and belongs to the fourteenth century. The

contents of this MS. are arranged alphabetically. It came from San Domenico, from whence, says the title-page, it is not to be taken under pain of excommunication, by order of Urban VIII. and Innocent XII.

11. Summa Pisanella is MS. B. 4. 10, and belongs to the fourteenth century.

There is also an MS. which consists of 322 sheets of paper, and the date 6 Oct. 1499 occurs on sheet 2. It relates to Canon Law. On sheet 140 Antonius de Butrio is mentioned, and also elsewhere. On sheet 146 there is a Rescript of Innocent VIII., dated 1497. On sheet 153 the heading occurs: Incipit Concordia Discordantium Canonum. On the last sheet: Questo Libro a Di fra Theodoro da Prato.

MSS. in the University Library of Bologna.

The University Library of Bologna contains various MSS. relating to Civil and Canon Law.

There are two MS. of Burchart:—Nos. 2239, 2599:

1. De Jure Canonico, No. 2239. The first of these MSS. is a large folio in good condition, consisting of 327 sheets of parchment, and came from the Library of the Monastery of S. Salvator in the city of Bologna. (In the ancient catalogue of that monastery it was numbered 461.) It begins "Burchardus solo nomine Wormaciensis episcopus Bruchoni fideli," etc. It is divided into 20 Books, of which the headings are given, and the introductory matter ends on sheet 3 with the words "Bene valeas, et in sacris orationibus tuis mei peccatoris memoriam deprecor ut habeas." Then follows the capitula of the first Book. The text proper commences on sheet 7 of the MS. with an ornamental letter. "In Novo Testamento post Christum dominum nostrum a petro sacerdotalis cepit

ordo quia primo pontificatus in ecclesia Christi datus est, dicente domino ad eum, tu es inquidem Petrus et super hanc petram edificabo ecclesiam meam," etc. Thus at the very threshold of the Book the main argument may be said to be clearly stated. On sheet 324 we have the date A.D. 1023. On sheet 326 we find the Nicene Creed.

2. The other MS. of Burchart is No. 2599, and is a small volume of 128 sheets of parchment bound in wooden boards, closely written, and not so clear and easy to read as No. 2239, nor so ancient. It also belonged to the Monastery of S. Salvator, and was No. 470 in the ancient catalogue. It is probably of the thirteenth century. The original clasps remain. As Book XII. begins on sheet 118, the M.S. is incomplete. Both these MSS. have the stamp "Bibliotheque Nationale R.F." They were taken to Paris, and sent back again after the wars of Napoleon.
3. MS. No. 2256 belongs to the fifteenth century, and is a folio consisting of 157 sheets of paper neatly written. It is entitled Antonius de Butrio, Opuscula Varia, Tractatus Juris Canonici.
4. Summa Pisanella: MS. No. 2262 is a folio of 225 sheets of parchment belonging to the fifteenth century. The first page contains the Prologue, with a portrait of the Pope in the letter Q. The second page has the portrait of an abbot in the letter A; but there is no portrait of an abbess at the section commencing Abbatissa. On sheet 221 commences the table of contents alphabetically arranged, and at the foot of sheet 224, "Pelegrinus Petri de Colonia scripsit."
5. Summa Pisanella: MS. No. 2264 is another copy of the same work, and forms a folio of 284 sheets of parchment, closely written. The first page contains a portrait of a monk in the letter Q. The MS. is bound in wooden boards, and probably belongs to the fifteenth

century. These two last MSS. belonged to S. Salvator, and were taken to Paris and returned.

6. Sententia Lata Gregorii XIII. contra Bar. Caranza, Arciep. Toletanum is MS. 2362, and is a small folio of 30 sheets of paper.
7. Johannes Salisberiensis Policraticus sive de nugis curialium is the title of MS. 2454, and consists of 264 small sheets of parchment clearly written, and in beautiful condition. It is divided into eight books, the last of which begins on sheet 197, and probably belongs to the thirteenth century.
8. Another copy of the same work consists of 160 sheets of parchment of medium size (small quarto) with which is also bound 40 sheets of paper, headed Tabula mei Johannis, etc. etc. This MS. appears to be rather later in date than No. 2454.
9. MS. 2585, belonging to the early part of the fourteenth century, consists of 200 small sheets of parchment beautifully written, and was given to the Monastic Library by John, Prior of S. Salvator, Jan. 23, 1599. 146 sheets contain works of Cicero. 54 sheets contain the work Francisci Barbari Veneti patricii et equestris ordinis De re uxoria. He treats of the duties and privileges of wives. This book is entered in the Catalogue of the University Library as relating to Canon Law.

The following four MSS. relate to the Civil Law:—

10. Orlandini sive Rolandini Passagerii Summa is MS. 2404, and consists of 82 sheets of parchment and 4 sheets of paper, making 86 in all. The author was a learned lawyer of Bologna in the latter part of the Middle Ages. This MS. belongs to the fifteenth century, and is a commentary on the Civil Law of Rome.
11. Ventura—Opuscula Legalia is the title of MS. 2484, and

consists of a variety of Tracts written on paper by Francesco Ventura, in explanation of certain difficult points of Law.

There are three principal divisions—

I. De Substitutione Vulgari.

II. De Substitutione Compendiosa.

III. De Generalibus circa Fideicommissa.

It is not early in date.

12. Institutiones Justiniani cum glossis is MS. 2226, a large folio on 58 sheets of parchment, belonging to the fourteenth century. The gloss is very elaborate.

13. MS. 2606 consists of two parts, the first consists of 47 sheets of paper containing a brief commentary on the Laws of Justinian, and the second consists of 25 sheets of paper with notes on Rhetoric. It is apparently late in date, and of little value.

Besides these manuscripts above mentioned, there are two early printed copies of the Decretalia which deserve particular mention. The first was printed at Paris in 1520 by James Ferrebone on 532 sheets of paper, with red capital letters, and elaborate gloss. This curious volume has a good frontispiece—Gregory IX. handing the Decretals to a student.

The second was printed in Venice in 1591, and has a curious frontispiece—Gregory XIII. in prayer before the crucifix. The pages are numbered in the usual way, and there is a table of contents at the commencement. At the beginning of the text there is a picture of a student receiving this book from the Pope, and also pictures of the trees of consanguinity and affinity, with fairly long explanations thereof. The five books of Gregory with gloss fill 1388 closely printed pages.

Milan.

The Ambrosian Library of Milan contains above twenty MSS. of early canons, one of these being the Apostolic Canons

in Syriac characters; one MS. of Burchart of Worms; and a few MSS. of the Decretum of Gratian, and the Decretalia.

1. MS. 73 Sup. entitled Gratianus seu Decretum Cod. Mem., consists of 116 sheets of parchment carefully written on both sides, without illuminations, and given to the Library in 1607 by Melchior Casanova. It is probably of the thirteenth century.
2. Decretum cum Glossis E. 44 Inf. is a fine MS. of Gratian on 322 sheets of parchment with illuminated capital letters, though the illustrated frontispiece and various letters are now cut away. The MS. begins in the usual way, "Humanum," etc., in a curious device, and belongs to the fourteenth century. Here and there we find illustrated capital letters in the gloss as well as the text. The MS. is bound between wooden boards coated with leather much decayed. In very small letters there are sometimes comments on the gloss itself.
3. MS. E. 144 Sup. is entitled Burcardi Wormaciensis Decretales Antiquorum Conciliorum, and was bought for the Ambrosian Library in 1601, and is of the eleventh century, consisting of twenty Books, not all written by the same hand, inscribed on both sides on 214 sheets of parchment. This MS. has been a good deal damaged by damp, especially the earlier sheets.

On sheet 2 the headings or capitula of Book I. begin, and deal first with the authority of the Apostolic See, Patriarchs, Archbishops, etc., and extend to sheet 32.

Book II. deals with the condition and status of the clergy.

Book III. deals with the consecration of churches, tithes, and oblations, in fact, as is stated on sheet 52, "Quid sit ecclesia."

Book IV. deals with baptism.

Book V. deals with "sacramento corporis et sanguinis

domini." We find in red letters on sheet 86, "Ut in sacrificio panis et vinum cum aqua mixtum offeratur."

Section 17 commands the laity to receive the sacrament thrice a year.

On sheet 88 there is a prayer for use at the Holy Communion, entitled "Oratio simplex eulogii."

> Domine Sancte et pater omnipotens benedicere digneris hunc panem tua sancta et spirituali benedictione ut sit omnibus salus . . . extra omnos morbos et universas inimicas insidias tutum per dominum nostrum Jesum Christum, filium tuum, panem vitæ, qui de cœlo descendit, et dat vitam et salutem mundo, et tecum vivit et regnat per omnia.

Book VI. deals with homicide, etc.

Book VII. deals with relationship and marriage, and on sheet 100 gives a table of relationship.

Book VIII. deals with the celibacy of priests and nuns, the tonsure, etc.

Book IX. considers the position of virgins and widows. Section 59 states, "Quod non conveniat Christianos cum hereticis nuptialia jura contrahere."

Book X. deals with exorcism and delusions of the devil. Section 45 explains the nature of devils.

Book XI. deals with excommunication.

Book XIII. deals with the sacred seasons of the year.

Book XIX. commences on sheet 170, and deals with penance under various capitula. The general plan is to give a list of offences, and then note against them the appropriate penance.

4. Capitularia antiqua seu excerpta Sacris Canonibus is the title of MS. A. 46 Inf. It formerly belonged to the Monastery of S. Dionysius of the Benedictine Order, and passed into the Ambrosian Library in 1603, when the following title was inserted on a separate sheet:—"Excerpta ex sacris Canonibus Capitularibus et Patribus. Codex antiqui characteris anno 700.

The MS. is apparently of the tenth century. The contents of the MS., which consists of 159 sheets of parchment, may thus be described :—

I. Capitula from S. Augustine's book Enchiridion.
II. Capitula from the writings of the Catholic fathers.
III. Capitula of Charlemagne, "the illustrious Emperor."
IV. Excerpts from the Laws of Theodosius.
V. First Book of Capitula.
VI. Second Book of Capitula.

On sheet 72 Pope Anacletus is quoted.

On sheet 80 there is a quotation from the 20th Capitula of the Decreta of Pope Lucius.

On sheet 86 commence the extracts from S. Augustine's Enchiridion, consisting of 133 sections.

On sheet 107 the excerpts from the writings of the Fathers begin.

On sheet 116 S. Paul is quoted :—Infelix ego homo quis me liberabit de corpore mortis hujus.

Sheets 131 to 151 contain extracts from the Capitularies of Charlemagne.

On sheet 143 Britain is divided into 5 provinces.

On sheet 144 Constantinopolitanus Episcopus habeat honoris primatum post Romanum Epm. propterea urbs ipsa sit junior Romæ.

On sheet 149, Ut nullus Presbyter missas celebret, nisi in sacratis ab episcopo locis.

Sheets 152 to 156 contain extracts from the Laws of Theodosius.

The second half of sheet 156 is entitled Incipit Discretio Childeberti Regis Francorum viri Illustri.

5. MS. A. 87 Inf. is entitled Isidori Mercatoris Decretalium Epistolarum Conciliorum Collectio, and consists of 222 sheets of parchment closely written. It commences with the "Preface of Saint Isidore," and the collection of Canons attributed to him.

Then comes a letter of Aurelius, Archbishop of Carthage, and the rescript of Pope Damasus addressed to the said Archbishop: —" Reverendissimo fratri et co-episcopo Aurelio Damasus."

Then follows the " ordo de celebrando concilio."

And then 78 of the Apostolic Canons, No. 44 to 50 being taken from Greek Councils, 51 to 60 from French, and 61 to 78 from Spanish Councils. Then follow 50 more Canons.

Then comes the letter of Clement to James, brother of the Lord.

On sheet 13 begins the general Epistle of Clement, Bishop of Rome.

On sheet 16 another Epistle of Clement commences, and on sheet 18 another; and on a later part of this sheet, " Epistola Anacleti Papæ de oppressione et laceratione Christianorum."

Then follows Anacletus on the ordination of bishops.

On sheet 23 we learn " quod ecclesia Romana est cardo et caput omnium ecclesiarum." The use of " cardo " is noteworthy.

On sheet 25 Decreta begin on the ordination of deacons; and letters attributed to the Popes are quoted.

On sheet 81 the Synod or Council of Nicæa is quoted, and on sheet 82 the Constitutions of the Emperor Constantine, followed by the Canons of Nicæa.

Sheet 87 gives Capitula of twenty Canons, followed by the Nicene Creed.

On sheet 89, " Incipit sinodus anchiritani."

On sheet 91, " Incipit concilii Neocesariensis." Other decreta of Councils follow—to that of Carthage.

Sheet 125 gives rescripts of Cyril, Bishop of Alexandria, to the African Council, and quotations from the Canons of Nicæa.

Sheet 127 gives a letter of the African Council to Pope Celestus, and the African Canons follow; and then the Canons of Arles and Valentia and other Councils of minor importance.

Sheets 152 to 206 give in thirteen sections the Canons of the Council of Toledo.

Then come Canones Bracarenses, Lucenses, and Spalenses.

6. Canones Conciliorum (Grece) Cod. M. 68 Sup. is an early collection of Canons in Greek cursive characters, consisting of 293 sheets, in some places much damaged and difficult to read.

On sheet 45 there is mention of the Emperor Leo—λέων βασιλεὺς.

7. Gratianus, seu Leges constitutæ et observatæ in correctione decreti Gratiani is MS. I. 230 Inf. H. 12.

This MS. consists of 3 sheets of paper, bound together with 17 other tracts, and is signed by various Doctors and seven Cardinals, who have drawn up 14 heads for the correction or further elucidation of the text of Gratian, Cardinal Alciatus taking the lead. The first heading insists on the importance of distinguishing between the words of Gratian and the quotations from the writings of the Fathers of the Church.

The sixth heading states that the more obscure passages in Gratian require further annotation, especially those which have seemed capable of an interpretation contrary to the Catholic faith.

The twelfth heading runs, "Quoties Gratianus ex auctoribus sacris sensum potius expressit, quam verba ipsa, si adhibita diligenti investigatione, et cum in perquirendo loco proprio alius non occurrat, annotetur in margine, Gratianum non verba expresisse."

The document belongs to the latter part of the sixteenth century. Tract XI, of 2 sheets, gives the statutes of Innocent III. and Honorius III. relating to the Church of Constantinople.

8. *Cod. Memb.* S. XIV. B. 43 Inf.—Gregorii IX. Decretales cum Glossis, scriptæ ab Alberto filio Bartholomei Gisii de Argellate, etc. Vide ad finem libri V., et in folio ultimo lib. I.

This Albert was a native of Bologna and attached to the Chapel of S. Christopher. Brief Decretals of Innocent IV. and

Gregory X. are appended, covering 15 sheets of parchment, with elaborate glosses.

This MS. consists of 284 sheets of parchment, making a large and weighty folio, and the gloss is very full and elaborate. The Decretals of Gregory IX. commence with a short preface above the first letter, in which there is an illumination of Gregory giving the Decretals to a monk or priest in the presence of two cardinals.

The first title begins, "Innocent III. in concilio generali. De summa Trinitate et fide catholica." Then follows an illumination of the Holy Ghost as a dove descending from heaven on the heads of the Bishops in Council.

The first book of the Decretals covers 72 sheets of parchment, and Albert is given as the name of the scribe at the bottom of the sheet.

The second book is headed with an illumination of the Pope consecrating a bishop, and commences with a quotation from an African Council, and extends to the end of sheet 136, on which a space is left immediately above the words "Explicit liber secundus."

Book III. commences with an illumination of a priest in the act of consecrating the host.

Sheet 158 quotes Innocent III. on De feudis.

Sheet 182 gives De religiosis domibus, ut episcopo possint subjectæ, followed on sheet 184 by De Capellis Monachorum.

Book IV. commences on sheet 200, and extends to the end of sheet 221, when the scribe writes at the foot, "Deo gratias. Amen." The first title has an appropriate illumination.

Book V. covers sheets 222 to 267, and commences with an illumination of the Pope announcing the law. At the end Albert gives thanks for the completion of the work.

The Decretals of Innocent IV. occupy 11½ sheets of parchment.

There is an illumination of Innocent IV. giving the Decretals to a cardinal and two other ecclesiastics.

Title 2 is De Electione, and there are titles on appeals, the

goods of the church, procurators, excommunication, and the meaning of words.

The Decretal of Gregory X.* occupies one side of one sheet of parchment, and after the usual salutation has one title, De summa Trinitate et fide Catholica. There is a long gloss.

9. MS. S. 33. Sup. consists of Canons, written by direction of Agilulphus, Abbot of S. Columba, 893-900, to whom Charles III. confirmed the grant of the county of Bobio.

S. Columbanus, the first Abbot, died in November 615, and is called "Fundator Bobiensis, prope Placentiam." This MS., therefore, belongs to the latter part of the ninth century, and is in beautiful condition, well preserved, and each letter clearly and distinctly formed. It became the property of the Ambrosian Library in 1606. It consists of 323 sheets of parchment. The contents may be thus summarised:—

1. Calendarium Metricum.
2. Ordo celebrandi Concilii.
3. Beatorum Apostolorum Constitutiones.
4. Niceni Concilii Canones XX.
5. Anegrani Canones XXIV.
6. Neocœsariensis Can. XIV.
7. Sardicensis Can. XXI.
8. Gangrensis Can. XX.
9. Antiocheni Can. XXV.
10. Laodiceni Can. LVIII.
11. Constantinopolitani Can. VI.
12. Concil. Ephes. VIII. Can. cum. XII. Cap. B. Cyrilli.
13. Chalcedonensis Canones XXVII.
14. Constantinopol. sub. Justiniano Can. XIV.
15. Conciliorum Diversorum in Africa, CXXXVIII.
16. Symbolum Concil. Chalcedonensis.
17. Cresconii ad Liberium Pontific. de Concordia Canonum.

* Gregory X. defines the Catholic faith in regard to the Procession of the Holy Ghost from the Father and the Son, "non duobus principiis, sed ex uno, non duabus inspiratoribus sed unica."

18. S. Hieronymi Epistola ad Damasum.
19. Rescriptum Damasi.
20. Dionysii Collectio Decretalium. In which are quoted Popes Sirius, Innocent, Zosimus, Boniface, Celestine, Leo, Gelasius, Anastasius, Simmachus, and Gregory the Great, with 10 capitula given to Augustine, first Bishop of the English; as well as Hilary, Simplicius, Boniface, Felix, Gregory, Eugenius, and Zachary.

10. MS. Extravagantes Cod. Chart., sæc. XV., is marked T. 83 Sup., and consists of 245 sheets of paper, with blank sheets at both ends.

It was bought for the Ambrosian Library in 1822.* On sheet 156 begins a tract on buying and selling by Henry of Hassia, D.D.

Sheet 200 begins the Prologue, and sheet 205 the tract of Henry de Oyta, on contracts.

Sheet 258 commences another tract on buying and selling.

In the numbering of the sheets in this MSS. the first 24 blank sheets are included.

11. MS. F. 105 is a fourteenth century MS., consisting of 106 sheets of parchment, bound in boards, containing a variety of tracts, most of which relate to Canon Law. No. 1 is a Calendar with the Festivals of the Saints. No. 2 gives Isidore on the divisions of Law.

This MS. also contains the Canons of Carthage, of Toledo, etc., and quotations from the Fathers.

Sheet 72 contains a curious map of the world.

The Brera Library of Milan contains Tabula sive Summarium in Decretum Gratiani.

This short MS. of the fourteenth century consists of 23 sheets of paper, bound together with various other short MSS., entitled Miscellania Varia. There are 37 sections, divisions, or causæ.

* The Ambrosian Library contains at least three MSS. relating to the Council of Trent.

Parma.

The University Library, partly founded by the Dukes of the House of Farnese, and housed in their old palace, contains a very beautiful MS. (No. 95) entitled Decretalia Johannis XXII., and consists of 68 sheets of parchment of large folio size. It is clearly written, in excellent condition, and belongs to the fifteenth century.

The first sheet has a very fine illumination of the Pope surrounded by cardinals and princes, with the motto, "Cedant arma togæ," and underneath a cardinal giving the decretals to two monks. The gloss is very elaborate, often covering more than half the page. There are decretal letters of various Popes, as Clement and Boniface, as well as John XXII.

The last two sheets contain Execrabilis without any gloss. Francesco Sforza is mentioned on sheet 66.

Explicit apparatus clarissimi doctoris dm̄i Jo. Andreæ super textu Clementis V. die V. Decembris 1463, quem scribi ego augustinus de Adalmariis pro dm̄o Eleutherio de Rusconibus juris utriusque scolare peritissimo et in civitate Papien Pii Papè II. et Illusm̄i Principis dm̄i Francisci Sforza Vicecomitis ducis Mediolani.

On the top of the first page is a cherub, beautifully painted, blowing a trumpet, standing under a canopy, surmounted by a flag. On the right hand side, where the gloss begins, a man's head appears in the first letter. The coat of arms may belong to the Bishopric of Reggio—a lion on a shield with four cross bands below.

There is also in the Library of Parma a commentary on the Decretals of Gregory IX., not very well written, not very old, and not all in the same handwriting. There are over 500 sheets altogether.

Pavia.

The University Library possesses a small fourteenth century copy of the Decretals, written on paper, on 389 sheets, with two columns on each page. The title is in red letters, and many of the capital letters are not filled in with colour.

Turin.

The MSS. in the University Library were very seriously damaged by fire in 1904.

France.

(MSS. relating to the Canon Law in certain French Libraries,* *i.e.* Paris, Rouen, Chartres, Amiens, and other smaller towns.)

The National Library of France—the largest library in the world—possesses various MSS. of the Canon Law.

There are twelve MSS. of Gratian, two of which have the gloss of Bartholomew of Brescia; and nineteen other MSS. of Abbreviations, Commentaries, etc.; while three more MSS. have been added since 1875, two of which have the apparatus of Bartholomew of Brescia.

There are also, in this library, ten MSS. of the Decretals of Gregory IX., and eight MSS. of Abbreviations and Commentaries, besides two MSS. of the Constitutions of Gregory IX.

Since 1875 there has also been added a MS. of the Decretals in the French language, and a MS. entitled Casus Summarii Decretalium, as well as six MSS. of Commentaries on the Decretals.

There are besides a large number of MSS. relating to the Canon Law; thus MSS. numbered 9628–9642 all relate to this subject, besides other MSS.

There are MSS. of Irish Canons, Canons dedicated to Anselm, Canons of the Visigoths, and of Isidore. There are four MSS. of Burchart—1 of Canons, 3 of Decreta.

The Library of Evreux has one thirteenth century MS. of Gratiam on 275 sheets, which came from the Abbey of Lyre.

Rouen.

The City of Rouen is rich in MSS. of the Canon Law.

There are 3 copies of Isidorus Mercator, one of the eleventh, two of the twelfth century.

One MS. of collectio Canonum et excerptorum S.S.

* The Libraries of France are so well catalogued that there is little difficulty in ascertaining the value and nature of the MSS. collections.

Patrum, and one MS. of Panormia Ivonis, Carnotensis episcopi, belonging to the thirteenth century.

There is a MS. of Gratian with the gloss of Bartholomew of Bresica, which once belonged to Georges d'Amboise, Cardinal Archbishop of Rouen, and has his initials and coat of arms in various parts.*

This very magnificent MS. belongs to the fifteenth century, and consists of 257 sheets.

These four MSS. came from the Abbey of Jumièges :—

1. Summa super Decretum Gratiani Sicardi Cremonensis, consisting of 141 sheets, and belonging to the thirteenth century.

2. MS. Commentary on Gratian of the thirteenth century.

3. MS. Commentary of Henry of Segusia, Cardinal Bishop of Ostia. This MS. is of the fourteenth century on 325 sheets.

4. Another MS. of the same Commentary belonging to the same century on 340 sheets.

Rouen possesses fifteen MSS. of the Decretals of Gregory IX., nine of which came from the Abbey of Jumièges, three from Fècamp, and three from S. Ouen de Rouen. They all belong to the thirteenth or fourteenth centuries.

There is also one MS. of the Decretals in French, and three MS. of the Statuta Gregorii Noni.

The Library of Alençon has one fourteenth century MS. of the Decretals, on 314 sheets, which came from Saint-Evroult.

Chartres.

This Library possesses a fine copy of the Decretum of Gratian with the gloss of Bartholomew of Brescia. This MS., No. 269, consists of 437 sheets of parchment without illustrations.

> The text commences "Humanum genus," and the gloss commences "Quoniam novis supervenientibus causis" . . . and finishes "Decretum compilatum a Graciano, monacho monasterii Sancti Felicis de Bononia."

* See article by M. Beaurain in *Journal de Rouen*, 4th Jan. 1882.

MS. 207, on sheets 308–316, gives a list of the Titles of Gratian, and sheets 317–23 other Titles of the Canon Law. This part of the MS. is of the fourteenth century, but the earlier part belongs to the thirteenth century.

MS. 169 contains at the close of an abbreviated Bible, at folio 69, a brief Commentary on a part of the Decretum of Gratian, and at folio 76 a passage commencing "Jus naturale." These fragments are arranged in no sort of order. This MS. is of the thirteenth and fourteenth centuries.

MS. 514 is a fine fourteenth century MS. of the Decretals in five books, and 276 sheets of parchment.

MS. 149 is a thirteenth century MS. of the Decretals in 338 sheets.

MS. 280 is a MS. of the Decretals with the gloss of Bernard of Parma in 499 sheets.

MS. 332 contains the Decretals in 255 sheets.

MS. 384 contains the Decretals in 317 sheets.

MS. 145 is the Decretals with a commentary in 169 sheets.

MS. 296 contains an incomplete and imperfect Commentary on the Decretals.

MS. 305 contains the Decretals with the apparatus of Guido in 155 sheets.

Amiens.

This Library possesses over 500 MSS. and 80,000 books.

Many of the early MSS. came from the Abbey of S. Acheul, the original site of the Bishopric of Amiens, and other ecclesiastical corporations.

There are three copies of the Decretum of Gratian, and all three contain the gloss of Bartholomew of Brescia.

One copy of the Decretum came from the Church of Corbey.

> Sciunt cuncti quod istud Decretum est de ecclesia Corbeyensi; verum quod, postquam magister Stephanus de Contyaco recepit eum ab ecclesia ante dicta in commodato, fecit addere in eo hystorias et paleas decretorum cum bro-

cardicis juris canonici; ideo studens cum appetitu in illo, oret Deum pro eo.

Thus runs the fly-leaf. The text of Gratian begins on folio 46, certain other matter preceding, as well as the Tabula of John de Dios.

In three of these preliminary treatises the arms of Stephen Conty occur within the first initial letter. There are numerous other painted initial letters. This MS. belongs to the fourteenth century, and consists of 392 sheets of parchment.

Another fourteenth century MS. of Gratian also came from Corbey, but was of Italian origin, having on the first sheet the name Johannes de Socco. It has various painted initial letters, and consists of 281 sheets of parchment.

The third MS. of Gratian at Amiens also came from Corbey, and is of Italian origin. It belongs to the fourteenth century, and consists of 413 sheets of parchment.

There are also two copies of the Decretals of Gregory IX., with the gloss of Bernard of Compostella. Both belong to the fourteenth century. One has 294 sheets of parchment, and the other 273. Both came from Corbey. On the outer leaf of one of them (No. 358) is written—

Pars prior officia parat ecclesiæque ministros
Altera pars testes et cetera judiciorum,
Tercia de rebus et vita presbiterorum
Dat formam, recte nubem quarta docet,
Ultima de viciis et pænis tractat eorum.

A third fourteenth century copy from Corbey consists of 368 sheets of parchment, with gloss, and the Decretals of Gregory IX. end at sheet 345. Then there follows "Constitutiones Gregorii X. in generali concilio Lugdunensi edite." To these constitutions there is an elaborate gloss.*

Gregorius vigilans interpretatur quasi gregem regens.

* On a copy of the Hours of the Virgin, No. 331 (MSS. Amiens, *old* catalogue of Corbie):—

Hunc sudore gravi quondam varioque libellum
Conscripsit Monachus cui Belvacensis origo est.

Folio 359 contains the constitutions of Simon the Legate

> Symon miseratione divina, tituli Sancte Cecilie presbiter cardinalis, etc. Inter curas, etc..

Folio 361 contains the Tabula of John de Dios, and folio 363 his "Questiones Canonice in IV. librum Decretalium"; and folio 364 his "Tituli." Folio 365 gives the Tractatus de Consanguinitate of Jean André, with two elaborate painted genealogical trees.

On the first sheet of this MS.,* and also on sheet 362, this note is found:—

> Magister Stephanus de Contyaco, decretorum doctor istas Decretales emit a magistro Johanne de Belvaco, librario Parisiensi jurato, in II. anno quo audivit jura canonica in vico Brunelli, pro pre (cio xx)xiiij francorum: ideo studens in ipsis cum devotione roget Deum pro eo, filium virginis Marie.

Nice.

This Library contains:—

1. Summa S. Raymondi de Pennaforte.
2. The Commentary of Isidore, Epus. Hispalensis.

Lille.

This Library contains an MS. of the Rule of the Cistercian Order, dated 1289, and a few commentaries on the Canon Law.

* The Abbey of Corbey was founded in the seventh century by Queen Bathilde, was filled with monks from Luxeuil, and once contained the finest monastic library in Picardie, possessing Italian, German, and Irish MSS., as well as French.

INDEX.

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The Archdeacon of Brecon.
The Archdeacon of Bucks.
The Archdeacon of London.
The Archdeacon of Merioneth.
The Archdeacon of Northampton.
The Archdeacon of S. Albans.
Professor Goudy.
Professor Firth.
Professor Haverfield.
Rev. Professor Mitchell.
Professor Oman.
Professor L. Pontalis.
Rev. Professor White.
Ven. W. M. Sinclair.
Canon Pearce.
Canon T. G. Bonney.
Canon H. Clayton.
Canon Fairchild.
Canon Livingstone.
Canon Phillips.

Canon Randolph.
Canon Skeggs.
Canon Southwell.
Canon Williams.
Rev. Prebendary Codrington.
Rev. Prebendary Ingram.

Libraries.

The Vatican.
The Bodleian.
University of Cambridge.
British Museum.
Trinity College, Dublin.
Advocates' Library, Edinburgh.
The Signet, Edinburgh.
Eton College.
The National Library of France.
S. Andrews University.
Aberdeen University.
Edinburgh University.
Glasgow University.
Durham University.
Bishop Marsh Library, Dublin.
Guildhall Library, London.
Winchester College.
Sion College.
The Athenæum.
Society of Antiquaries.
Aberdeen.
Alloa.
Banff.
Birmingham.
Bedford.
Bradford.
Brighton.
Bristol.
Bury.
Camberwell.

Cardiff.
Carlisle.
Carnegie Library, George IV. Bridge.
Cheltenham.
Chester.
Croydon.
Derby.
Dunfermline.
Eastbourne.
Elgin.
Exeter.
Fochabers.
Folkestone.
Gravesend.
Greenwich.
Gloucester.
Hammersmith.
Hastings.
Hertford.
Hull.
Islington.
Kensington.
Kirkwall.
Lancaster.
Leeds.
Leicester.
Liverpool.
Manchester.
Maidstone.
Newcastle.
Nottingham.
Northampton.
Rochester.
Rochdale.
Rotherham.
Wm. Salt Library, Stafford.
Southend.
South Shields.
Sunderland.

Swansea.
Tain.
Tonbridge.
Westminster.
Wolverhampton.
Worcester.
York.
South African Library, Capetown.
New South Wales Library, Sydney.
Laval University, Quebec.
Legislative Library, Halifax.
Legislative Library, Prince Edward Island, Charlottetown.
M'Gill University, Montreal.
Parliament Library, Ottowa.
Toronto University.

American Libraries.

Boston.
Cincinnati.
Congress Library, Washington.
Enoch Pratt Library, Baltimore.
Massachusetts Historical Society.
New York.
Newark, New Jersey.
Newberry, Chicago.
Philadelphia.
Pittsburgh.
Worcester, Massachusetts.

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John Brewer.
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Percy Fitzgerald.
Forsyth Grant.
Swinfen Harris.
W. H. Harrison.
C. Hettier.
G. Milne Home.
W. W. Mangles.
H. W. Monckton.
Ev. Mylne.
Phil Norman.
James Parker.
E. S. Perowne.
C. H. Read.
Athelstan Riley.
C. R. Rivington.
A. Rivington.
Dr. Ross.
E. O. Savigny.
A. Smith.
Dr. J. Maitland Thomson.
Dr. Trail.
C. H. Turner.
Aymer Vallance.
Henry Wagner.
P. F. Wheeler.
E. A. Whittuck.