

Constitutionum Apostolicarum una cum Caeremoniali
Gregoriano de pertinentibus ad electionem Papae:
Synopsis accurata et plana nec non elucidatio omnium
fere difficultatum, quae evenire possunt circa pertinentia
ad Electionem Romanorum Pontificum (*Apostolic
Constitutions Together with the Gregorian Ceremonial
Pertaining to the Election of the Pope: An Accurate and
Clear Synopsis and Explanation of Nearly All the
Difficulties That May Arise Regarding Matters Pertaining to
the Election of Roman Pontiffs*)

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Dissertationes 38–39

Latin

DISSERTATIO XXXVIII.

Quaenam exceptiones dari possint contra electionem Papae.

Ante difficultatum enodationem praemittendum est primo, quod exceptio, secundum Panormitanum in Rubr. de exceptionibus num. primo, est actionis, aut intentionis exclusio, et est duplex, alia judicialis, et proprie dicta, alia vere extrajudicialis, & impropria. Prima est actionis exclusio, supponitque litem, &

English

DISSERTATION XXXVIII

On what exceptions can be raised against the election of the Pope.

Before resolving the difficulties, it must first be stated that, according to Panormitanus in the rubric *De exceptionibus* at number one, an exception is the exclusion of an action or an intention. It is of two kinds: one judicial and properly so-called, the other truly extrajudicial and improper. The first is the exclusion of an action and presupposes a lawsuit and a plaintiff; this is properly the defendant's response

actorem, & haec proprie est provocatio Rei in iudicium facta ab Actore, & ab eo stimulati, sed ex parte, Actoris, seu Agentis correspondet replicatio, quae est exceptiones exclusio, secunda est intentionis exclusio, & haec non supponit iudicium neque Actorem, sed intentionem aliquid obtinendi, et conservandi, quod maxime locum habet in electionibus, quando aliquis excipiendo impedit ne aliquis eligatur, vel ne electus confirmetur, vel confirmatus consecratur; sicque ista exceptio est intentionis exclusio, illa vero actionis.

Secundo praemittendum est, quod inter huiusmodi exceptiones magnum reperitur discrimen, secundum Panormitanum, capite *super eo* numero secundo, exceptio enim judicialis ultra repulsionem nihil operatur, namque sufficit excipienti si repellat Actorem, & impediat actionem, sed exceptio extrajudicialis habet quamdam vim accusationis, & actionis, & qui excipit, quodammodo dicitur actor, & haec exceptio vocatur etiam accusatio his praemissis.

Inquires primo. Utrum contra electionem, & electum in Papam possit dari exceptio judicialis, & proprie dicta?

Respondeo negative, cuius ratio est, quia electus in Papam nihil agit contra aliquem, nec in aliquod iudicium vocat, ut contra eum possit Reus excipere, & cum ab agendo repellere, quinimo ipse electus statim, ac consentit electioni, Pontifex est, ac potens administrare Panatum capite *In nomine Domini* disputatione 23. igitur contra Papam electum non potest dari exceptio judicialis, & proprie dicta.

Ulterius verus Papa non habet, ut in iudicio sit vere Pars, quae ex aequo cum Actore concurrat, sed semper est verus Superior, si est verus Papa, vel Praesumptus, vel a sua obedientia reputatus; quomodo ergo contra illum locum habere poterit exceptio judicialis?

Ex qua doctrina colligitur, quod contra

in judgment, prompted by the plaintiff, yet from the side of the plaintiff or agent there corresponds a replication, which is the exclusion of exceptions. The second is the exclusion of an intention, and this does not presuppose a trial or a plaintiff, but the intention of obtaining or preserving something. This has particular application in elections, when by raising an exception someone prevents another from being elected, or, if elected, from being confirmed, or, if confirmed, from being consecrated. In this way that exception is the exclusion of an intention, whereas the first is the exclusion of an action.

Secondly, it must be stated that among these exceptions there is found a great difference, according to Panormitanus in the chapter *Super eo* number two. A judicial exception, beyond repelling the plaintiff, does nothing more, for it suffices the one who raises it if he repels the plaintiff and impedes the action. But an extrajudicial exception has a certain force of accusation and action, and the one raising it is in some manner said to be an accuser. This exception is also called an accusation, given what has been said above.

First Inquiry: Whether against the election and the one elected as Pope a judicial and properly so-called exception can be raised.

I answer in the negative. The reason is that one elected to the Papacy does nothing against anyone, nor does he call anyone into judgment, so that the defendant could raise an exception against him and repel him from taking action. On the contrary, as soon as the person elected consents to the election, he is the Pontiff and is able to govern, as Panormitanus notes in the chapter *In nomine Domini*, disputation 23. Therefore, no judicial and properly so-called exception can be raised against a Pope-elect.

Furthermore, the true Pope does not stand in judgment as a real “party” on equal footing with a plaintiff; if he is a true Pope, or even presumed as such, or reckoned so by those under his obedience, he is always the true superior. How then can a judicial exception have place against him?

From this doctrine it is concluded that against the

electionem Papae non potest dari, nisi exceptio nullitatis, quae ponitur inter exceptiones extrajudiciales secundum Panormitanum in Clementina prima num. 78. quia, secundum Turrecrematam, Belarminum, & alios citatos a Pallerino quaest. 72. de electione Papae, inutiliter opponitur contra electionem Papae quid quid electionem ejus non reddit nullam, quamvis enim ante electionem, opponi possint omnes defectus, etiam non irritantes ad perseverandam exclusionem indigni, non tamen ad effectum ut irrita sit electio, si non obstante aliquo tali defectu electio fiat, proindeque solum datur exceptio nullitatis, vel ex parte eligentium, vel ex parte electi vel ex parte electionis, ut melius explicabimus.

Inquires secundo in quibus casibus possit dari exceptio nullitatis electionis Papae ex parte eligentium.

Respondeo quod ex parte eligentium potest excipi pro nullitate electionis. I. actualis furor vel amentia tempore electionis. II. quod aliquis Cardinalis non sit Diaconus, neque ad hoc privilegiatus III. quod non sit legitimus Cardinalis. Sic tenent Panormitanus in cap. *licet* de electione num. 10. Iacobatius, Azorius, Ioannes a S. Thoma, & alii. IV. defectus libertatis proveniens ex vi, vel metu Cardinalibus illato, sic habetur ex Concilio Constantiensi supra citato.

Sed advertendum est, quod si demptis huiusmodi Cardinalibus supradictos defectus habentibus, adhuc electus esset nominatus a duabus partibus Cardinalium in Conclavi existentium, cessaret omnis exceptio, quia cum talis electus esset a duabus partibus Cardinalium electus, nil interesset, si alii essent, vel non essent legitimi vocales, sic colligitur ex cap. *licet* de electione, ex Iacobatio lib. 4. a 4. §. *tertio casu* pag. 201.

Uterius advertendum est, quod si vitium eligentis non opponeretur ante electionem, sed ipse sub titulo saltem colorato nullo reclamante eligeret, valide eligeret, & post electionem non esset tempus amplius

Pope's election no exception can be raised except one of nullity. Such an exception is counted among extrajudicial exceptions according to Panormitanus in *Clementina prima*, number 78. According to Turrecremata, Bellarmine, and others cited by Pallerino in question 72 on the election of the Pope, any objection that does not render the election null is of no effect against the election of the Pope. For although before the election one can raise all defects, even non-invalidating ones, to prevent an unworthy candidate, nonetheless, to render the election itself void, if it is made despite such a defect, is not possible. Thus, only an exception of nullity is granted, whether on the part of the electors, or of the elected, or of the election itself, as we shall explain more fully.

Second Inquiry: In what cases can an exception of nullity be raised against the Pope's election from the side of the electors?

I answer that from the side of the electors one may except for nullity of the election in the following cases: 1. Actual madness or insanity at the time of the election. 2. That some Cardinal is not a deacon nor legitimately privileged to vote. 3. That one is not a legitimate Cardinal. Thus hold Panormitanus in the chapter *Licet* de electione number 10, Iacobatius, Azorius, John of St. Thomas, and others. 4. A lack of freedom arising from force or fear inflicted upon the Cardinals, as is gathered from the Council of Constance cited above.

It must be noted, however, that if, after excluding such Cardinals who had these aforesaid defects, the elect still had been chosen by two-thirds of the Cardinals in the Conclave, all exception would cease. Since he was elected by two-thirds of the Cardinals, it would not matter if the others were legitimate voters or not. This is concluded from the chapter *Licet* de electione, and from Iacobatius book 4, article 4, § *tertio casu*, page 201.

Furthermore, note that if a defect in an elector was not objected to before the election, and yet he voted under at least a colorable title without anyone challenging it, his vote would be valid, and after the election there would be no further time to raise an

excipiendi contra illum cuius ratio est, quia habens titulum coloratum, stante communi errore, & tolerantia, valide agit, quando ex publico officio agit, uti communiter tenent Canonistae.

Inquires tertio in quo casu possit dari exceptio nullitatis in electione Papae, ex parte electi?

Respondeo quod possunt dari in electione Papae exceptiones nullitatis ex parte electi primo ratione furoris, vel dementiae secundo si electus esset faemina, Hermaphroditus, Mutus, Surdus, Caecus &c. In quibus ambagibus, & ineptiis non est inutiliter immorandum, Cardinales enim non sunt, nec erunt tam fatui, qui ex speciali instinctu Spiritus Sancti ducuntur, ut similia genera Personarum ad Pontificatum promoveant tertio defectus moralis haeresis ex parte electi, quod tamen spectato jure antiquo debet cum limitatione intelligi. Quippe si electus haeresim detestaretur non potest illi dari talis exceptio quia haereticus non est deponendus a Pontificatu, nisi sit pertinax, & incorrigibilis, & electio haeretici non est de jure Divino ipso facto irrita, licet sit irritanda si electus noluerit corrigi quapropter ad talem electionem irritandam necessaria est Ecclesiae sententia de electi incorrigibilitate. Hoc autem, ut dixi intelligitur spectato jure antiquo caeterum spectato jure novo constitut. 19. Pauli IV. *Cum ex Apostolatus* innovate a Sancto Pio V. contra electionem Papae dari potest exceptio haeresis, & schismatis contra electum si apparuerit aliquando fuisse haereticum, vel schismaticum, ejus electionem irritam declarando, itaut si talis electus sit in possessione suae administrationis liceat Clero, & Populo ab eiusdem obedientia recedere, sed quomodo hoc intelligatur in sequentibus quaestionibus elucidabimus defectus 4. simoniae de quo fuse tractatum est, quomodo irritet electionem, & quando.

Praeter hoc defectus morales haeresis, schismatis, & Simoniae nullius alterius criminis exceptio dare potest contra canonice electum in Papam, quia Papae

exception against him. The reason is that having a colorable title, and given the common error and tolerance, when he acts by a public office, he acts validly, as the canonists commonly hold.

Third Inquiry: In what cases can an exception of nullity in the Pope's election be raised on the part of the one elected?

I answer that exceptions of nullity can be raised on the part of the one elected for the following: 1. Due to madness or insanity. 2. If the person elected were a woman, a hermaphrodite, mute, deaf, blind, etc. But there is no need to waste time uselessly on such absurdities. The Cardinals are not, nor will they ever be, so foolish as to promote such kinds of persons to the Pontificate, especially since they are led by a special inspiration of the Holy Spirit. 3. The moral defect of heresy on the part of the one elected, which must, however, be understood with some limitation in light of ancient law. For if the one elected detests heresy, then such an exception cannot be raised against him. A heretic cannot be deposed from the Pontificate unless he is pertinacious and incorrigible, and the election of a heretic is not by divine law ipso facto null, even if it ought to be annulled if the elected refuses correction. Thus, to annul such an election, the Church's sentence on the incorrigibility of the elected is necessary. This, however, I say considering the ancient law. Under the new law, according to Paul IV's constitution *Cum ex Apostolatus*, renewed by St. Pius V, an exception of heresy and schism can be raised against the Pope's election if it appears that at some time he was heretical or schismatic. By declaring his election null, if such a person is in possession of the administration, it would be lawful for the clergy and the people to withdraw their obedience from him. How this is to be understood will be explained in subsequent questions. 4. The defect of simony, which has been extensively discussed as to how and when it invalidates an election.

Apart from these moral defects of heresy, schism, and simony, no other crime can be used as grounds for an exception against a canonically elected Pope.

potestas a bonitate vitae non dependet, & nullo jure constat ex huiusmodi criminibus electionem Papae reddi irritam, & semper urget decretum Concilii Lateranensis in cap. *licet*, ubi expresse praecipitur, ut electus canonice, nulla obstante exceptione, habeatur tamquam verus Papa. Sic Passerinus quaest. 32. num. 8. pro se citans Panormitanum, Azorium, Iacobat. Bonacinam, & alios.

Uterius, sicuti ex huiusmodi criminibus modo nuper explicato non redditur irrita electio Papae, ita neque contra ipsam potest opponi exceptio excommunicationis, vel cuiuslibet alterius censurae, quia secundum constitutionem Pii IV. in *eligendis*, & Greg. XV. *Aeterni Patris* nulla excommunicatio; aut censura impedit in electione Papae usum vocis activi, aut passivae. Pariter nulla potest ei opponi irregularitas, seu inhabilitas, quae sit juris positivi; quapropter electio in Papam illius, qui sit in corpore vitatus, vel alio simili modo inhabilis est valida licet peccet mortaliter Cardinales illum hoc modo eligentes, uti docet Jacobat. liber. 3. a. I. pag. 150.

Inquires quarto, in quibus casibus possit dari exceptio nullitatis in electione Papae ex parte formae.

Respondeo, quod in electione Papae potest dari exceptio nullitatis ex parte formae ratione illorum defectuum, qui continentur in Bulla *Aeterni Patris* §. *Quod si electio*, puta, si electio fieret non in Conclavi clauso, si non a duabus partibus Cardinalium praesentium in Conclavi excluso voto electi, vel alia huiusmodi.

DISSERTATIO XXXIX

Qualiter possit excipi contra electionem Papae?

Statuto in superiori dissertatione, in quibus casibus possint dari exceptiones nullitatis contra electionem Papae, remanet modo discutiendum qualiter possit excipi contra illam, pro quo.

For the Pope's power does not depend on moral virtue, and there is no law confirming that such crimes invalidate the Pope's election. The decree of the Lateran Council in the chapter *Licet* always stands, where it is expressly commanded that someone canonically elected, notwithstanding any exception, should be held as the true Pope. Thus Passerinus in question 32, number 8, citing Panormitanus, Azorius, Jacobatius, Bonacina, and others on his behalf.

Furthermore, just as from these crimes, as just explained, the Pope's election is not rendered null, so neither can an exception be raised from excommunication or any other censure. For according to the constitutions of Pius IV *In eligendis* and Gregory XV *Aeterni Patris*, no excommunication or censure impedes the active or passive voice in a papal election. Likewise, no irregularity or positive-law incapacity can be raised against him. Therefore, the election of one who is bodily deformed or otherwise incapacitated is still valid, although the Cardinals would sin mortally by electing him in this manner, as Jacobatius teaches (book 3, article 1, page 150).

Fourth Inquiry: In what cases can an exception of nullity in the Pope's election be raised from the standpoint of form?

I answer that in the papal election an exception of nullity can be raised from the standpoint of form due to those defects contained in the Bull *Aeterni Patris* at the paragraph *Quod si electio*, for instance, if the election were not held in a closed Conclave, or if it were not carried out by two-thirds of the Cardinals present in the Conclave excluding the vote of the one elected, or other similar defects.

DISSERTATIO XXXIX

How can one bring an exception against the election of the Pope?

Having established in the previous dissertation the cases in which exceptions of nullity can be brought against the election of the Pope, there now remains to be discussed in what manner and by whom such an exception may be raised.

Praemittendum est, exceptionem nullitatis dupplicem esse, videlicet de iure tantum, et de iure et de facto simul. Exceptio de iure contingit, quando obiiciuntur nullitates coram iudice competente probandae, interim electo obedientiam non praestando, non tamen eum deiciendo, sed in sua possessione relinquendo, usquequo causa Papatus fuerit coram Concilio definita et de electionis valore vel nullitate pronuntiatum. Talis exceptio dicitur de iure, sed non de facto, quia non spoliatur intrusus via facti, sicuti est illa exceptio, quae secundum decretum Concilii Constantiensis sessione 39 dari potest contra electionem Papae, si praesupponatur facta per metum. Exceptio de iure et de facto contingit, quando, ne dum per excipientes apponitur aliqua nullitas contra electionem vel electum, sed negatur etiam omnino obedientia electo, taliter ut, si ille velit, in Papatu persistere possit per vim et per potentiam brachii saecularis expelli, et alius, loco illius, Papa valide eligi hoc praemisso.

Inquiritur primo, an ubi nullitas electionis Papae, ex quacumque causa proveniat, est omnino notoria et undequaque manifesta possit contra electum excipi, et de iure et de facto? Respondeo affirmative cum Passerino quaest. 32. num. 14, qui etiam asserit hanc sententiam esse communem Doctorum et Canonistarum, cuius ratio est evidentissima, in primis, quia loquendo de nullitatibus, quae possunt esse ex parte formae, nimirum quia electus est intrusus, idest non electus ex concordia et legitima electione duarum Partium Cardinalium, habetur ex cap. *In nomine Domini* dist. 23 et ex cap. *Si pecunia* dis. 79. quod sic electus debet reiici et alius legitime eligi. In Constitutione *Aeterni Patris* et *Quod si electio* praecipitur quod electus, non servata forma ibi statuta, tamquam Apostaticus habeatur et sub poena excommunicationis prohibetur omnibus illi obedientiam praestare.

It must first be stated that an exception of nullity is of two kinds, namely, one of law alone (de iure tantum), and one both of law and fact (de iure et de facto). An exception of law alone occurs when nullities are alleged before a competent judge and must be proven, while, in the meantime, obedience is not rendered to the elected individual. However, the alleged Pope is not forcibly removed from his possession, but left in place until the case of the Papacy is decided by a Council and a judgment is pronounced on the validity or nullity of the election. Such an exception is said to be of law but not of fact, because the intruder is not deprived of possession by force. This differs from the exception allowed by the decree of the Council of Constance in session 39, which can be raised against a papal election if it is presumed to have been carried out under duress. An exception of both law and fact occurs when those raising the exception not only allege some nullity against the election or the elected, but also completely refuse obedience to the elected man. They do so in such a way that, if he persists in claiming the Papacy, he might be expelled by force and the power of secular arms, and another might be validly elected in his place, once this step has been taken.

First Inquiry It is asked, first, whether, where the nullity of a papal election is entirely notorious and everywhere manifest, arising from whatever cause, it is permissible to raise an exception against the elected, both in law and in fact. I respond affirmatively, following Passerinus (Question 32, no. 14), who also asserts that this view is common among Doctors and Canonists. The reasoning is most evident, especially if we speak of nullities that may arise from the form itself, namely because the person elected is an intruder; that is, not elected by a concordant and legitimate election of two-thirds of the Cardinals. From the chapter *In nomine Domini* (Dist. 23) and the chapter *Si pecunia* (Dist. 79), it is established that such an intruder must be rejected and another legitimately elected. In the Constitutions *Aeterni Patris* and *Quod si electio*, it is prescribed that someone elected without observing the form established therein should be considered apostate, and under pain of excommunication all are forbidden

Ulterius, loquendo de crimine haeresis vel schismatis undequaque notorio, adest constitutio D. Pauli IV *Cum ex Apostolatus*, quae dat facultatem recedendi ab obedientia eius, de quo apparuerit aliquando fuisse haereticum vel schismaticum. Tandem de crimine notorio simoniae statuitur per Iulium II et datur Cardinalibus facultas spoliandi intrusum et alium eligendi. Igitur contra nulliter electum nullitate undequaque notoria vere potest excipi exceptione tam iuris quam facti, illi denegando obedientiam et alium eligendo, qui sit legitimus Papa, nullo alio expectato iudicio.

Huius autem sunt exempla quam plurima. Constantinus enim Totonis Ducis Nepesini frater, ex Laico per vim intrusus et sine electione Cardinalium ordinatus, post annum a Christophoro Primicerio et Sergio Sacellario eius filio ejectus est et canonice electus fuit Stephanus IV. Ulterius Christophorus Cardinalis tituli S. Laurentii in Damaso detruso Leone V legitimo Pontifice Sedem Apostolicam invasit, sed post septem menses expulsus fuit, quamvis ab alio sedem invadente, qui fuit Sergius III, expoliatus, quem Ecclesia sustinuit, usque quo post tres annos defunctus est.

Inquiritur secundo, utrum possit dari aliqua exceptio contra electum, receptum tamen nedum a Cardinalibus, sed a tota Ecclesia pacifice et sine oppositione? Respondeo negative cum Passerino num. 17, citante pro se plures Doctores Canonistas, Innocentem Compostellanum, Iacobatium et alios. Ratio autem est evidentissima, quia Pontifex electus a Cardinalibus et a tota Ecclesia pacifice receptus non potest non esse verus Pontifex. Quod sic probatur: quia Ecclesia, postquam adhibuit moralem diligentiam in electione Papae, recipit Papam ex speciali instinctu Spiritus Sancti, ut suae fidei regulam infallibilem, in quo non potest errare, cum sit Columna veritatis, contra quam portae inferi non praevalerunt. Igitur Papa sic receptus non

to render him obedience.

Furthermore, speaking of the crime of heresy or schism, if it is altogether notorious, there stands the constitution of Pope Paul IV *Cum ex Apostolatus*, which grants the faculty of withdrawing obedience from one who at some time has been shown to be a heretic or schismatic. Finally, concerning the crime of notorious simony, Julius II established that the Cardinals have the faculty to depose the intruder and elect another. Therefore, against someone elected nullity, with a nullity that is entirely notorious, it is truly possible to raise an exception both of law and fact, denying him obedience and electing another who is a legitimate Pope, without awaiting any further judgment.

There are many examples of this. For instance, Constantine, brother of Duke Toto of Nepi, an intruder from the laity and ordained without the election of the Cardinals but rather by force, was expelled after a year by Christopher the Primicerius and his son Sergius the Sacellarius, and Stephen IV was canonically elected. Further, Christopher, Cardinal of the title of St. Lawrence in Damaso, having deposed the legitimate Pope Leo V, invaded the Apostolic See, but after seven months, though he was expelled by another invader, Sergius III (whom the Church tolerated until his death three years later), he was removed.

Second Inquiry It is asked secondly, whether any exception can be raised against someone who has not only been received by the Cardinals but by the whole Church peacefully and without opposition. I respond in the negative with Passerinus (no. 17), citing several Doctors of Canon Law, Innocent the Archbishop of Compostela, Jacobatius, and others in his favor. The reason is very clear: A Pope elected by the Cardinals and peacefully accepted by the whole Church cannot fail to be the true Pope. This can be proven as follows: The Church, after applying moral diligence to the papal election, receives the Pope by a special instinct of the Holy Spirit as the infallible rule of her faith, in whom she cannot err since she is the pillar of truth, against which the gates of hell will not prevail. Therefore, a Pope so received cannot fail to be a true Pope, and

potest non esse verus Papa, et consequenter contra talem sic electum et receptum nulla potest dari exceptio.

Ulterius, Ecclesia debet esse certa quod non possit a Pontifice in rebus fidei decipi, et debet etiam esse certa quod Papa sit legitimus et habeat infallibilem assistentiam Spiritus Sancti. Igitur in terris debet dari iudex, qui infallibiliter possit decernere quod electus in Papam sit verus et legitimus Papa. Atqui hic iudex non potest esse nisi Ecclesia, cui Christus electionem Pontificis commisit, proindeque iudicium certum et infallibile tradidit de legitima electione Papae, sive judicialiter per Concilium, sive extrajudicialiter per communem et pacificam Pontificis receptionem. Igitur Ecclesia non potest errare in recipiendo pacifice Papam a Cardinalibus electum, proindeque nulla potest dari exceptio contra Papam legitime electum a Cardinalibus et ab Ecclesia receptum.

Advertendum tamen est, ut omnis aequivocatio tollatur, quod contra electionem Papae pacifice recepti ab Ecclesia non datur exceptio non quia consensus vel acceptatio Ecclesiae sit electio vel vi sua possit non electum eligere, quia facultas eligendi competit solis Cardinalibus, nec quia fidelium consensus aut acceptatio sit veluti confirmatio electionis, quia electio Papae non indiget confirmatione, nec quia electionis valor dependeat a consensu et acceptatione populorum, quia canonice electus a Cardinalibus ex vi electionis ab illis factae est verus et legitimus Papa antedecenter ad acceptationem Ecclesiae.

Hic fidelium consensus et totius Ecclesiae acceptatio est affectus infallibilis validae electionis eiusque valorem a posteriori infallibiliter probat. Proindeque, stante infallibilitate electionis, non potest contra illam ulla exceptio dari. Neque obstat quod stante infallibilitate iudicii Ecclesiae in pacifica receptione Papae, adhuc potest dari locus exceptioni contra Papam electum et receptum ab Ecclesia, non quidem in foro conscientiae et Dei, sed

consequently no exception can be brought against one who has been so elected and received.

Furthermore, the Church must be certain that she cannot be deceived by the Pope in matters of faith and must also be certain that the Pope is legitimate and has the infallible assistance of the Holy Spirit. Therefore, there must be on earth a judge who can infallibly determine that the one elected as Pope is truly and legitimately the Pope. But this judge can only be the Church, to whom Christ entrusted the election of the Pontiff, and consequently He also entrusted to her a certain and infallible judgment regarding the legitimacy of the papal election, whether this is done judicially through a Council or extra-judicially by the common and peaceful acceptance of the Pope. Thus, the Church cannot err in peacefully receiving a Pope elected by the Cardinals, and no exception can be raised against a legitimately elected and accepted Pope.

It must be noted, to remove all ambiguity, that no exception can be brought against the election of a Pope peacefully received by the Church not because the consensus or acceptance of the Church is itself an election or by its force can elect one who was not elected, for the faculty of election belongs only to the Cardinals; nor because the consent or acceptance of the faithful acts as a confirmation of the election, for a papal election does not require confirmation; nor because the value of the election depends on the consent and acceptance of the people, since a pope canonically elected by the Cardinals is already a true and legitimate Pope by virtue of that election alone, prior to the acceptance by the Church.

Rather, the faithful consensus and the total acceptance by the Church is an infallible manifestation that the election was valid; it infallibly proves its value a posteriori. Hence, given the infallibility of this acceptance, no exception can be raised against it. Nor does it matter that, despite the infallibility of the Church's judgment in the peaceful reception of the Pope, one might think there is still room for an exception against a Pope elected and received by the Church, not indeed in the forum of

solum in foro exteriori, ita ut electio in foro externo irritetur.

Non inquam obstat, quia neque in foro conscientiae neque in foro exteriori, posita electione et pacifica receptione Papae facta ab Ecclesia, potest dari exceptio. Nullum enim debet esse dubium de veritate electionis Papae, quia Ecclesiae necessaria est fides certa absque ulla formidine quod electus simpliciter sit verus Papa, et gesta per eum sint infallibilia. Quod non posset verificari, si esset minimus locus exceptioni. Fateor ante electionem et pacificam receptionem Papae posse contra ipsum excipi et de iure et de facto, sed quia electio Papae fit ex speciali ductu Spiritus Sancti et Ecclesia non potest errare in accipienda regula viva fidei, cuiusmodi est Papa, ideo post legitimam electionem Papae et receptionem nulla potest dari exceptio, nec in foro interiori neque exteriori.

Et haec Ecclesiae acceptatio (uti egregie explicat Ioannes a Sancto Thoma, secunda secundae quaest. 7, disp. 2, art. a) primo fit per concordem electionem saltem duarum partium Cardinalium, nullo eorum excipiente aut opponente. Secundo, per publicationem, qua ab uno Cardinali nomine omnium electio publicatur populo, estque quasi definitiva declaratio huius legitimae electionis. Tertio tandem per acceptationem factam a reliquis Praelatis et Populo Romano et successive ab aliis Praelatis extra Romam existentibus, nullo fidelium contradicente.

Quod totum explicatur et corroboratur exemplo Canonizationis Sanctorum. Licet enim Pontifex antecederet ad Canonizationem Sanctorum innitatur fallibilibus Processibus, quibus potest subesse falsum, attamen in actu Canonizationis instinctu Spiritus Sancti infallibili ducitur et numquam potest errare. Ita pariformiter dicimus quod licet iudicium electionis Papae in suo fieri dependeat a fallibilibus principiis, tamen ipsa actualis Ecclesiae receptio est ex

conscience and before God, but only in the external forum, so that the election might be invalidated there.

I say this does not stand, because neither in the internal nor in the external forum, once the election and peaceful reception of the Pope by the Church is established, can any exception be given. There should be no doubt whatsoever about the truth of a papal election, because the Church needs certain faith, without any fear that the elected person is not simply the true Pope, and that his acts are infallible. This could not be verified if there were the slightest room for exception. I admit that before the election and peaceful reception of the Pope it is possible to raise an exception both in law and in fact against him; but because the papal election is carried out by the special guidance of the Holy Spirit, and because the Church cannot err in accepting the living rule of faith (which the Pope is), once a legitimate papal election and acceptance has occurred, no exception can be raised—neither in the internal nor the external forum.

John of St. Thomas (Secunda Secundae, q. 7, disp. 2, art. a) excellently explains that this acceptance of the Church takes place first by the concordant election of at least two-thirds of the Cardinals, with none of them raising exception or opposition; secondly, by the publication of the election to the people by one Cardinal on behalf of all, which is, as it were, a definitive declaration of the legitimacy of that election; and thirdly, by the acceptance of other prelates and the Roman people, and subsequently by other prelates outside of Rome, with no faithful person contradicting.

All this is further explained and strengthened by the example of the canonization of saints. Although the Pope, prior to the canonization of saints, relies on fallible processes which may contain falsehoods, yet in the very act of canonization he is led infallibly by the Holy Spirit and can never err. Similarly, we say that although the judgment about the papal election in its making may depend on fallible principles, the actual reception by the Church is guided by the infallible instinct of the Holy Spirit. Thus, the Church is governed so that she never accepted nor

infallibili instinctu Spiritus Sancti. Ideoque sic Ecclesia regitur, quod numquam accepit nec recipiet incapacem nec recipiet nisi verum Pontificem. Ita quod in recipiendo Pontificem non possit errare. Ita sustinent Gravina, Ioannes a Sancto Thoma, Passerinus num. 20 et alii Theologi sentientes de fide esse quod Pontifex in facie Ecclesiae canonice electus et ut talis ab Ecclesia receptus sit verus Papa, Successor Beati Petri, habens plenitudinem potestatis in Dei Ecclesiam.

Sed quid dicendum si post electionem factam a Cardinalibus et pacificam acceptationem Ecclesiae manifestaretur aliqua nullitas occulta electionis? An liceret de nullitate excipere?

Respondeo negative cum Passerino num. 22. Cuius ratio est quia leges annullantes et irritantes electionem Papae habent pro fine libertatem electionis Pontificis et praecipue eius securitatem, et ut schismata vitentur. Atqui si Papa in facie Ecclesiae, servata Canonica forma eligitur et sic electus ab universa Ecclesia recipitur, et post receptionem aliqua notitia defectus superveniente quis posset contra talem electum excipere, illiusque electionem impugnare, sicque electum eiicere, maximum periculum schismatis in Ecclesia immineret. Igitur ad vitanda schismata non licet in supradicta hypothesis de nullitate electionis excipere.

Ulterius, Ecclesiae universalis pacifica et libera receptio est veluti declaratio valoris electionis infallibilis. Igitur, si adsit pacifica acceptatio Ecclesiae respectu Papae et postea adveniat aliquis defectus occultus, signum est non interesse electionem. Alias Ecclesia in recipiendo Pontifice potuisset errare, quo posito nulla esset certitudo legitimi Papatus in Ecclesia, et de quolibet Pontifice posset dubitari, vel an esset non baptizatus vel ex alia causa occulta non Papa legitimus.

Neque obstat quod obiiciunt adversarii, videlicet quod quidem adest certitudo Pontificem electum et receptum ab

will accept an incapable person, nor will she accept anyone but a true Pontiff. Hence, in receiving a Pope, she cannot err. Thus, Gravina, John of St. Thomas, Passerinus (no. 20), and other theologians hold that it is de fide (of faith) that a Pope canonically elected in the face of the Church and received by the Church as such is a true Pope, the successor of Blessed Peter, having the fullness of power over God's Church.

But what should be said if, after the election made by the Cardinals and the peaceful acceptance by the Church, some hidden nullity of the election is subsequently revealed? Could one then raise an exception of nullity?

I respond negatively with Passerinus (no. 22). The reason is that laws nullifying and annulling a papal election are aimed at ensuring the freedom and security of the papal election, and especially at avoiding schisms. But if the Pope, elected in the face of the Church with the canonical form observed, is received by the universal Church, and only after this reception some awareness of a defect arises allowing someone to raise an exception and challenge the election, thereby expelling the elected, a great danger of schism would threaten the Church. Therefore, to avoid schisms, it is not permitted to raise an exception of nullity under the above hypothesis.

Moreover, the universal and peaceful acceptance by the Church is like an infallible declaration of the election's validity. Therefore, if a peaceful acceptance of the Pope by the Church exists, and afterwards some hidden defect comes to light, it is a sign that such a defect does not matter for the validity of the election. Otherwise, the Church could have erred in receiving the Pontiff, and no certainty of a legitimate Papacy could ever be had in the Church. We could doubt any Pope whatsoever, whether he was not baptized or had some other hidden defect making him not a legitimate Pope.

The adversaries object that there is indeed certainty that the Pope elected and received by the Church is guided by a special assistance of the Holy Spirit in

Ecclesia duce speciali assistentia Spiritus Sancti, ut Ecclesiam regat, supplente quidquid opus est, ut actio Pontificis sic sedentis sit valida. Non tamen est omnino certum quod Ecclesia in recipiendo Pontifice cum aliquo defectu nullitatis occulto non erraverit, sicque possit dari locus exceptioni.

Non inquam obstat, ut valide impugnatur Ioannes a Sancto Thoma loco nuper citato. Hic enim sunt duae propositiones: videlicet, Pontifex pacifice a tota Ecclesia receptus est verus Pontifex, seu Ecclesia non potest errare in recipiendo Pontificem legitime electum; et alia propositio, Pontifex receptus ab Ecclesia habet assistentiam Spiritus Sancti, ut non possit invalide agere. Cur ergo una propositio erit certior alteri? Et si conceditur quod Ecclesia possit errare in recipiendo Papam et possit habere Papam falsum pro vero Papa, quanta certitudine poterit asseri quod Pontifici falso ab Ecclesia recepto assistat Spiritus Sanctus ne erret et invalide agat? Igitur convenientius dicitur et dici debet quod Spiritus Sanctus Ecclesiam regit, ut Papam falsum non recipiat et quod in Sede Petri nullum Papam falsum pacifice sedere permittat. Proindeque nulla potest dari exceptio nullitatis etiam occultae post legitimam electionem Papae eiusque pacificam acceptionem Ecclesiae.

Neque iterum obstat quod, posita electione Papae illiusque pacifica acceptione facta ab Ecclesia, talis Papa est verus Papa, cum Ecclesiae receptio sit signum infallibile veritatis electionis Papae. Non tamen est Papa non deponibilis, constituto de defectu irritante electionem ex vi iuris positivi.

Non inquam obstat, quia lites et schismata debent ab Ecclesia eliminari ut non in aeternum perseverent. Quod si vis praescriptionis tanta est ut faciat suum quod suum non erat, iure clamant quod contra sententiam quae transit in iudicatum non detur appellatio et oppositio. Debet ne forsitan Ecclesia continuis litibus et contentionibus agitari

ruling the Church, and that the Holy Spirit supplies whatever is needed for the Pope's action to be valid. But they say it is not entirely certain that the Church in receiving this Pope, where there was some hidden defect, has not erred, and thus there could still be room for an exception.

I say this objection does not hold, as John of St. Thomas convincingly refutes it in the cited place. There are two propositions here: first, that the Pope peacefully received by the whole Church is a true Pope, or that the Church cannot err in receiving a legitimately elected Pontiff; and second, that a Pope received by the Church has the assistance of the Holy Spirit so he cannot act invalidly. Why should one proposition be more certain than the other? And if it is conceded that the Church can err in receiving the Pope and take a false Pope for a true one, with what certainty can it be affirmed that the Holy Spirit assists this falsely received Pope so that he will not err or act invalidly? Therefore, it is more fitting and must be asserted that the Holy Spirit so governs the Church that she does not receive a false Pope, and that He does not permit anyone false to sit peacefully on Peter's Chair. Hence no exception of nullity, even a hidden one, can be raised after a legitimate papal election and the Church's peaceful acceptance.

Nor does it stand that once the papal election and its peaceful acceptance by the Church have taken place, this Pope is a true Pope, but that he is not beyond deposition if a nullifying defect subsequently becomes evident from positive law.

I say this does not stand, because disputes and schisms must be eliminated by the Church so they do not endure forever. If the force of prescription is so strong as to make what was not one's own become one's own, they rightly proclaim that no appeal or objection is allowed against a judgment that has become *res iudicata*. Should the Church be constantly shaken by lawsuits and contentions, and

eiusque caput subdi violentiae principum, ut toties, quoties Papa pro Domo Dei contra principes murus steterit inflexibilis, possint potentatus et principes sub praetextu nullitatis electionis Papam persequi? Absit hoc. Sed Ecclesiae acceptatio sumi debet tamquam omnimoda et publica declaratio valoris electionis, contra quem non valeat alia oppositio, et Ecclesia possit sub suo Pastore quiete vivere, et Papa sine timore principum possit viriliter agere et iurisdictionem Ecclesiae tueri, vitia arguendo et mores reformando.

Quapropter dicendum est quod leges ecclesiasticae irritantes electionem Papae non comprehendunt hunc casum electionis cuius defectus ita fuerit occultus, ut eo non obstante, Papa fuerit tamquam legitimus ab Ecclesia universali receptus. Neque potest absque errore asseri quod Papa ab Ecclesia pacifice electus sit verus Papa et deponibilis superveniente defectu occulto nullitatis.

Non tamen dixi quod electio nulla convalidetur ex acceptione Ecclesiae, sed quod per nullam legem positivam electio sit occulte deficiens et nihilominus, postquam est acceptata et approbata ab Ecclesia, sit irrita et inanis. Quia hoc requirit Ecclesiae universalis pax, securitas et tranquillitas.

Inquiritur tertio, utrum antequam Papa sit pacifice receptus ab Ecclesia, possit excipi contra eius electionem tam de iure quam de iure et facto?

Antequam quaesito respondeatur, praemittendum est quod triplex casus distinguendus est in tali exceptione: primo, si nullitas sit omnino notoria et undequaque manifesta; secundo, si nullitas non sit in rigore notoria et manifesta sed certa et indubitata; tertio tandem, si nullitas sit solum probabilis.

Circa primum casum iam fuse tractatum est supra in hac dissertatione quaesito primo. Solum advertendum est quod in casu simoniace intrusi simonia undequaque notoria, optimum esset

should her head be subject to the violence of princes so that as often as the Pope stands as a wall for God's house against princes, these princes under the pretext of nullity in the papal election can persecute the Pope? God forbid. Rather, the Church's acceptance must be taken as a complete and public declaration of the election's validity, against which no further objection is valid. Thus the Church can live peacefully under her Pastor, and the Pope can act vigorously without fear of princes and defend the Church's jurisdiction by reproofing vices and reforming morals.

Therefore, one must say that the ecclesiastical laws nullifying papal elections do not include the case of an election whose defect was so hidden that, notwithstanding it, the Pope was universally accepted by the Church as legitimate. Nor can it be asserted without error that a Pope chosen by the Church's peaceful election is the true Pope yet is deposable if a hidden defect of nullity later emerges.

I did not say that a null election is convalidated by the Church's acceptance, but that by no positive law shall an election, secretly deficient, after having been accepted and approved by the Church, remain invalid and empty. Because the peace, security, and tranquility of the universal Church require this.

Third Inquiry It is asked, third, whether before the Pope is peacefully received by the Church, one can raise an exception against his election, either in law only or both in law and fact.

Before answering this question, a threefold case must be distinguished concerning such exception: first, if the nullity of the papal election is entirely notorious and everywhere manifest; second, if the nullity is not strictly notorious and manifest but still certain and indubitable; and third, if the nullity is only probable.

As to the first case, it has already been discussed at length in this dissertation under the first inquiry. Just note that in the case of a simoniacal intruder with a completely notorious simony, the best approach is

universaliter quod statuit Iulius II in §. *Licet* et in §. *Ad cuius*, qui distinguit inter haec tria, videlicet inter non recipere Pontificem intrusum, inter habere illum ut excommunicatum et haereticum, et inter violenter expoliare Papatu intrusum. Duo prima concessit omnibus fidelibus, sed tertium Cardinalibus, quia in casu intrusi Laicorum non est esse primos duces belli, sed subditos, qui ad instantiam Cardinalium, quorum interest providentia et gubernatio Ecclesiae in vacantia Pontificatus, et Concilii, debent bellum gerere. Sicque optimus ordo servabitur, si Laici duci se sinant ab Ecclesiasticis et ad eorum directionem et instantiam contra Papam intrusum se moveant, neque ab eius obedientia recedant nisi Clero et eorum Pastoribus recedentibus. Quia in rebus fidei et religionis, Laicorum est duci et dirigi, non vero ducere et regere alios.

Quoad secundum casum, si nullitas electionis sit certa et indubitata, non tamen omnino notoria, respondeo quod, licet non tam de facili eveniat quod nullitas Papae sit certa et indubitata, non tamen omnino notoria, attamen si ita contingat, in data hypothesi potest contra Papae electionem excipi de iure et aliquo modo de facto, videlicet non recipiendo electum nec praestando illi obedientiam et communicando cum illo, sed habendo illum ut haeresiarcam. Non tamen potest excipi omnino de facto, intrusum privando possessione quam habet eumque vi eiiciendo et expellendo et compellendo ei adhaerentes ad hoc ut ab eius obedientia recedant.

Probatur prima pars de exceptione de iure et aliquo modo de facto, quia in cap. *Licet* expresse dicitur, loquendo de simonia, *Sed etiam contra dictum sic electum vel assumptum de simoniaca labe a quocumque Cardinali, qui eidem electioni interfuerit, opponi et excipi possit sicut de vera et indubitata haeresi*. Pariter etiam locum habent quae omnibus conceduntur in §. *Liceatque omnibus*, scilicet non reddere obedientiam tali electo et posse habere illum ut haeresiarcam

that established by Julius II in the paragraphs *Licet* and *Ad cuius*, which distinguishes among three things: not receiving the intruder Pope, treating him as excommunicated and heretical, and forcibly stripping him of the Papacy. The first two are granted to all the faithful, but the third to the Cardinals. For in the case of an intruder, the laity should not be the first leaders of war, but subjects who fight at the instance of the Cardinals and a Council, since it pertains to them to provide and govern the Church during a papal vacancy. Thus the best order is preserved if the laity let themselves be led by the clergy, and at their direction and request move against the intruder Pope, nor withdraw from his obedience unless the clergy and their pastors do so first. For in matters of faith and religion, the laity are to be led and directed, not to lead and govern others.

As for the second case, if the nullity of the election is certain and indubitable, but not altogether notorious, I respond that, although it is not easy for the nullity of a Papal election to be certain and indubitable without being altogether notorious, if that should happen, in such a hypothesis one may raise an exception in law and partially in fact, namely, by not receiving the elected nor rendering obedience to him or communicating with him, but treating him as a heresiarch. However, one may not raise an exception entirely in fact, depriving the intruder of possession by force, expelling him, and compelling his adherents to withdraw obedience.

The first part is proven because the chapter *Licet*, speaking of simony, expressly says: “But also against such a person thus elected or assumed through simoniacal stain, an exception may be raised by any Cardinal who was involved in that election, just as in the case of true and indubitable heresy.” Similarly, the same holds for all that is granted in § *Liceatque omnibus*, i.e., not to render obedience to such an elected and to treat him as a heresiarch and excommunicated person, not communicating with him. Moreover, from these same words it is gathered

excommunicatum, non communicando cum illo. Insuper ex eodem loco et verbis colligitur quod eodem modo potest excipi de crimine haeresis, quia Iulius II ex hoc decernit posse excipi de simonia, quia supposuit de vera et indubitata haeresi posse excipi contra electum in Papam. Tandem ex Constitutione *Aeterni Patris* et *Quod si electio* statuitur quod electus, non servata forma dictae Constitutionis, sit et habeatur ut Apostaticus. Igitur iam clare patet quod, ubi nullitas electionis sit certa et indubitata, antequam Papa sit pacifice receptus ab Ecclesia, potest excipi de iure et aliquo modo de facto.

Ulterius in Constitutione *Aeterni Patris* excommunicantur nedum intrusus sed etiam eligentes, fautores et complices, et prohibetur illi praestare obedientiam. Quod etiam prohibetur capite *In nomine Domini* respectu eius qui fuerit electus forma dicti capitis non servata. In Constitutione Iulii II *Cum tam Divino* pariter praecipitur quod electus simoniace habeatur ut Apostaticus. Igitur ubi est certum electum esse intrusum, nedum possunt, sed etiam tenentur fideles negare obedientiam tali intruso et habere illum ut Apostaticum. Consequenter potest excipi de iure et aliquo modo de facto.

Ex qua doctrina colligitur primo licere etiam iis qui obedientiam praestiterunt intruso ab eius obedientia recedere. Quia in terminis Constit. Iulii II §. *Liceatque*, hoc illis conceditur. In terminis Constitut. Gregorii XV et in capit. *In nomine Domini* dist. 23, hoc illis sub poena excommunicationis praecipitur, cum Papae intrusi fautores excommunicentur. Qua propter qui prius tali intruso obedivit, tenetur ab eius obedientia discedere, ne in fautoria aut delicti complicitate vel sequacitate perseveret.

Colligitur secundo quod, licet in terminis Constitut. Iulii II concedatur facultas excipiendi et recedendi ab obedientia intrusi per simoniam et habendi illum ut Apostaticum, hoc tamen sub aliqua poena

that the same mode of exception applies to the crime of heresy, since Julius II decreed that an exception can be raised from simony because he presupposed that in the case of true and indubitable heresy one can raise an exception against the pope-elect. Finally, the Constitutions *Aeterni Patris* and *Quod si electio* establish that if the form mandated by these constitutions is not followed, the elected should be held as apostate. Therefore, it is now clear that where the nullity of the election is certain and indubitable, before the Pope is peacefully received by the Church, an exception may be raised at law and partially in fact.

Furthermore, in the Constitution *Aeterni Patris*, not only the intruder but also the electors, supporters, and accomplices are excommunicated, and all are forbidden to render him obedience. This same prohibition is found in the chapter *In nomine Domini* concerning one who might be elected without observing that chapter's form. In the Constitution *Cum tam Divino* of Julius II, it is likewise commanded that a pope simoniacally elected is to be held as apostate. Thus, when it is certain that the elected is an intruder, not only may the faithful refuse obedience, but they must also treat him as an apostate. Consequently, one may raise an exception in law and partially in fact.

From this doctrine it follows, first, that it is also permissible for those who have already rendered obedience to an intruder to withdraw from his obedience. For according to the very words of Julius II's Constitution § *Liceatque*, this is allowed. Under the Constitutions of Gregory XV and in the chapter *In nomine Domini* (Dist. 23), it is even commanded under penalty of excommunication, since the supporters of an intruded Pope are excommunicated. Therefore, whoever previously obeyed such an intruder is bound to withdraw from his obedience, lest he persist as a supporter, accomplice, or follower in wrongdoing.

Secondly, although Julius II's Constitution grants the faculty of raising an exception and withdrawing obedience from an intruder by simony, holding him as apostate, this is not imposed under some penalty. Only to the Cardinals is it mandated under pain of

non praecipitur. Solum Cardinalibus sub poena excommunicationis mandatur, ne contra dictam Constitutionem faciant. Attamen ex cap. *In nomine Domini* et Constitut. Gregorii XV, fautores, complices, authores et sequaces intrusi contra dictas Constitutiones excommunicantur.

Probatur secunda pars, videlicet quod extra casum notorii, quamvis nullitas electionis Papae sit certa, non liceat omnino de facto excipere, intrusum privando possessione eumque vi expellendo. Quia hoc fidelibus in hoc casu non est concessum, et alias de iure communi possessor non potest via facti expoliari. Quod autem hoc non sit concessum, evidenter ostenditur. In terminis enim Constitutionis Gregorii XV praecipitur quidem quod nullus intruso faveat, sed non dicitur quod intrusus violenter eiiciatur nec datur facultas novum Pontificem eligendi.

In terminis vero cap. *Si quis pecunia*, licet mandetur intrusum expelli, ibi fit sermo de intruso notorie, sicut etiam de intruso violenter et notorie absque concordia electione Cardinalium, sicuti etiam de eo loquitur Romanum Concilium cap. *In nomine Domini* et Constitutio 19 Pauli IV. Pariter Concilium Constantiensis, loquens de intruso per metum, aperte prohibet procedi ad aliam electionem et vult electum manutenere in sua possessione usque ad Concilium, pro cuius tempore eius iurisdictionem suspendit. Igitur ex supradictis Constitutionibus constat quod numquam fuerit concessum fidelibus, extra casum notorii, excipere omnino de facto intrusum, privando possessione. Hic, absque dubio, est modus tutus procedendi et amplectendus in similibus casibus, fugiendo violentias, bella, homicidia et damna irreparabilia, quae secum ferunt violentiae et bellicae hostilitates.

Neque obstat quia Gratianus in §. *Solet* I. quaest. 5 docet quod Papa intrusus potest vi expoliari et non debet restitui, cuius rationem assignat, quia in casu electionis Papae Ecclesia se habet ut Princeps

excommunication that they not act contrary to that Constitution. Yet from the chapter *In nomine Domini* and Gregory XV's Constitution, supporters, accomplices, authors, and followers of an intruder against these Constitutions are excommunicated.

The second part is proven, namely that outside the case of notoriety, even if the nullity of the papal election is certain, it is not permissible to raise a complete exception in fact by forcibly depriving the intruder of possession and expelling him. For such a thing is not granted to the faithful in this case, and generally one cannot strip a possessor by force without due process of law. That this is not granted is clearly shown: In the Constitutions of Gregory XV it is indeed prescribed that no one should favor the intruder, but it is not said that the intruder should be violently ejected, nor is there any faculty given to elect a new Pontiff.

In the chapter *Si quis pecunia*, although it is commanded that the intruder be expelled, it speaks of one notoriously intruded, as also in the Roman Council chapter *In nomine Domini* and the 19th Constitution of Paul IV. Likewise, the Council of Constance, speaking of one intruded by fear, openly forbids proceeding to another election and wants the elected to be maintained in his possession until the Council decides, suspending his jurisdiction until that time. Therefore, from the said Constitutions, it is clear that the faithful were never granted the right, outside the case of notoriety, to raise a purely factual exception by expelling the intruder. This is undoubtedly a safe way to proceed in similar cases, avoiding violence, wars, homicides, and irreparable damages that come with violent and warlike hostilities.

Nor does it matter that Gratian, in § *Solet* (I, quaest. 5), teaches that an intruded Pope may be dispossessed by force and should not be restored, and explains this by saying that in the case of a papal

supremus, qui in casu certo, secundum communem Doctorum sententiam, potest bellum indicere illi, qui admonitus nolit reddere sibi quod debet. Igitur Cardinales vi poterunt expellere intrusum simoniace, si admonitus nolit recedere, quando simonia est certa, exclusa etiam notorietate.

Non inquam obstat, quia Gratianus ibi loquitur expresse in casu notorii, cum ibi sermo sit de intruso sine legitima electione Cardinalium. Ad rationem Gratiani respondeo quod Collegium Cardinalium non est iudex, sicuti est Princeps supremus. Immo nec Ecclesia in vacantia Papatus est proprie iudex, nisi ut congregata in legitimo Concilio. Sicque verum est quod Concilium Generale, si intrusus contra eius sententiam vellet persistere in Papatu, potest vi illum deicere. Sed Ecclesia non congregata in Concilio habet ut contra intrusum procedat solum via exceptionis iuris et non omnino facti, ideoque non potest intrusum spoliare extra casum notorii, cum nullus sit spoliandus, non servato iuris ordine, eo quod possidet.

Ex qua doctrina colligitur quod extra casum notorii non liceat Cardinalibus devenire ad secundam electionem via facti ante Concilii decretum irritans priorem electionem. Cuius ratio est quia non licet in Ecclesia esse duo capita, duos pastores et duos summos Pontifices. Igitur, ubi unus adest, isto non ejecto vel non spoliato, non licet alium eligere. Atqui extra casum notorii non licet via facti intrusum reiicere, igitur neque licet alium eligere. Quapropter, si alius eligeretur, primus esset in possessione manutenendus usquequo judicialiter de eius nullitate constaret.

Advertendum tamen est quod in casu haeresis vel simoniae, qui tamen non sint undequaque notorii, si Papa electus sit sine oppositione ab universali Ecclesia receptus, alter secundo electus esset omnino schismaticus. Caeterum, in casu notorii Papa electus, antequam sit ab

election, the Church acts as the supreme Prince, who, in a certain case and following the common opinion of Doctors, may declare war against him who, after admonition, refuses to return what he owes. Therefore, one might argue, the Cardinals can, by force, depose a simoniacal intruder who, once admonished, refuses to recede, even without notoriety.

I say this does not stand, because Gratian is there speaking expressly of a case of notoriety, dealing with someone intruded without a legitimate election by the Cardinals. To Gratian's reasoning I respond that the College of Cardinals is not a judge like a supreme Prince. Indeed, the Church during a papal vacancy is not properly a judge unless assembled in a legitimate Council. Thus it is true that a General Council, if the intruder resists its sentence and persists in the Papacy, could depose him by force. But the Church not assembled in Council can only proceed against the intruder by way of a legal exception, not by entirely factual means. Therefore, it cannot dispossess the intruder outside the case of notoriety, since no one should be stripped of possession without legal order.

From this doctrine it follows that outside the case of notoriety, the Cardinals may not proceed to a second election by factual means before a Council's decree invalidating the first election. The reason is that there cannot be two heads, two shepherds, or two Supreme Pontiffs in the Church. Therefore, where one exists, unless this one is first ejected or stripped of possession, another cannot be elected. But outside the case of notoriety, one may not factually expel the intruder, hence one cannot proceed to elect another. Consequently, if another were elected, the first should still be maintained in his possession until a judicial declaration of his nullity is made.

However, it must be noted that in the case of heresy or simony, even if not altogether notorious, if the Pope-elect is received without opposition by the universal Church, a second elect would be altogether schismatic. On the other hand, in the case of notoriety, before the Pope is received by the universal Church, just as he can be expelled by

universali Ecclesia receptus, sicuti potest vi expoliari, ita eius loco potest alius eligi, non obstante quacumque longitudine temporis. Sed extra casum notorii prior electus sic debet in sua possessione manutene, quod non debet violenter expelli. Sed tunc tam contra primum quam contra alios electos debet servari decretum Concilii Constantiensis sessione 39.

Sed, an in hoc casu alterius electio esset nulla, dico quod in casu metus secunda electio est ipso iure nulla, ut patet ex decreto Concilii Constantiensis. Sed extra casum metus et notorietatis electio secundi non est ipso iure nulla, quinimo est valida iudicanda, si alias contingat priorem declarari nullam, et secunda sine alio defectu subsistat.

Quoad tertium casum, videlicet si nullitas electionis sit solum probabilis, immo probabilior et probabilissima, respondeo quod nullo modo licet excipere, nec de iure nec de facto, contra electionem Papae nec aliquo modo ab eius obedientia discedere, si Papa sit electus a duabus partibus Cardinalium. Cuius ratio est evidentissima, quia nulla lex positiva quae induxit nullitatem contra electum a duabus partibus Cardinalium in casu dubio potest praevalere contra legem Alexandri III in Concilio Lateranensi contentam in cap. *Licet* et praecipientem electum a duabus partibus Cardinalium debere haberi ut verum Papam, nulla exceptione obstante. Cum non sit censendum quod in casu dubio per posteriores leges sit praeiudicatum legi Conciliarii, igitur ubi nullitas electionis sit probabilis, vel improbabiliior, sive probabilissima, nullo modo licet excipere, et cetera.

Ulterius, si in data hypothesis liceret exceptio, esset aperta amplissima via schismatibus et bellis Ecclesiam devastantibus, et de facili posset reddi dubia electio Pontificum. Igitur, ut omnis occasio schismatum tollatur, et ne dubitari possit de legitimitate electionis Papae, in casu dubio omnis vitanda est exceptio, et rationabiliter statutum est ab Alexandro III in Concilio Lateranensi contra electum

force, so another can be elected in his place, no matter how long the time. But outside the case of notoriety, the first elect must be maintained in possession to the extent that he may not be violently expelled. Then, against both the first and any other elects, the decree of the Council of Constance session 39 must be observed.

But if in this case another election were made, would it be null? I say that in the case of fear, a second election is invalid by the law itself, as appears from the decree of the Council of Constance. But outside the case of fear and notoriety, the second election is not by itself null. On the contrary, it would be judged valid if afterwards the first is declared null and the second remains free from any defect.

As for the third case, namely if the nullity of the election is only probable, even more probable, or most probable, I respond that in no way is it permitted to raise an exception, neither of law nor of fact, nor to depart in any manner from obedience, if the Pope is elected by two-thirds of the Cardinals. The reason is evident: no positive law introducing nullity against a Pope elected by two-thirds of the Cardinals in a doubtful case can prevail against the law of Alexander III contained in the Lateran Council chapter *Licet*, which prescribes that one elected by two-thirds of the Cardinals must be held as the true Pope, with no exception admissible. It is not to be presumed that subsequent laws would prejudice a conciliar law in a doubtful case. Therefore, where nullity is merely probable or even most probable, no exception may be raised, and so forth.

Furthermore, if in such a hypothesis an exception were allowed, it would open the widest door to schisms and wars devastating the Church, and it would become easy to render the election of pontiffs doubtful. Hence, to remove all occasion of schisms, and so that no one can doubt the legitimacy of the papal election, in a doubtful case all exceptions must be avoided, and it was reasonably established by Alexander III at the Lateran Council that no

a duabus partibus Cardinalium nullam posse dari exceptionem.

Tandem hoc patet inductive, quia iuxta Constitutionem Iulii II exceptio simoniae non potest dari nisi sit vera et indubitata. Quod idem dicitur de crimine haeresis. In terminis etiam Constitutionis Gregorii XV exceptio ex parte formae locum non habet ubi nullitas non sit certa et indubitata. Quia ex Concilio Lateranensi electio Papae facta sub qualibet forma, dummodo sit ex consensu duarum partium Cardinalium, valida est, et locum non habet exceptio, idest quae in iure positivo fundatur, uti explicat Panormitanus in capit. *Licet* de electione num. II. Igitur, quandocumque ius positivum aliquam nullitatem contra electionem Papae induxit, si de hoc plene et plenissime non constat, possessio semper stabit pro lege priori Conciliari, omnisque exceptio est reiicienda, si non sit undequaque certa et indubitata. Proindeque nec Concilium Generale potest electionem electi ex duabus partibus Cardinalium nullam declarare remota omnimoda certitudine et indubitate nullitatis.

Sed quid dicendum, si nullitas sit ex defectu naturalis consensus duarum partium Cardinalium?

Respondeo quod, si defectus iste sit undequaque certus et notorius, potest dari exceptio tam de iure quam de facto. Si vero sit dubius, ante acceptionem universalis Ecclesiae esset ex iure communi decidendus, et locum haberet exceptio de iure tantum. Et talis electus ante iudicium Generalis Concilii non potest Papatu expoliari nec alius Papa eligi.

Inquiritur tandem, an in hypothesi qua posset de iure excipi contra electionem Papae, electus possit vi impediri, ne accipiat possessionem administrationis Papatus?

Respondeo, electum posse impediri negative, ei non obediendo, ut vi etiam ei resistendo, si vim faceret, quia superior

exception can be brought against one elected by two-thirds of the Cardinals.

Finally, this is clear inductively: According to Julius II's Constitution, an exception of simony can only be made if it is true and indubitable. The same is said about the crime of heresy. Likewise, in Gregory XV's Constitution, an exception regarding form does not hold if the nullity is not certain and indubitable. For from the Lateran Council, any election of a Pope made in any manner, provided it is done by two-thirds of the Cardinals, is valid, and no exception applies—that is, no exception founded on positive law, as Panormitanus explains in the chapter *Licet* on election (no. II). Therefore, whenever positive law introduces some nullity against a papal election, if it does not appear fully and completely evident, possession always stands for the prior conciliar law, and every exception is to be rejected unless it is altogether certain and indubitable. Hence even a General Council cannot declare null the election of one chosen by two-thirds of the Cardinals if complete certainty and indubitability of nullity is lacking.

But what is to be said if nullity arises from a defect in the natural consensus of two-thirds of the Cardinals?

I respond that if this defect is entirely certain and notorious, an exception can be raised both in law and fact. If, however, it is doubtful, then before the universal acceptance by the Church, it must be decided according to common law, and an exception in law only would apply. In that case, before a judgment by a General Council, the elected cannot be deposed from the Papacy nor can another Pope be elected.

Finally, it is asked whether, in a hypothesis where one can raise an exception at law against the papal election, the elected person may be forcibly prevented from taking possession of the papal administration?

I respond that the elected can indeed be prevented negatively by not obeying him and by resisting him if he uses force, because a dubious superior who is

dubius, qui non est in possessione, non potest ad sui obedientiam obligare, uti bene tradunt Ioannes a Sancto Thoma, Idelphonsus Baptista, citati a Passerino num. 44. Et expresse habetur in capite *Significasti* et cap. *Si vero* de sententia excommunicationis et cap. *Dilecto* eodem titulo in sexto. Attamen non liceret vi impedire ne electus praecipiat vel ne ei praecipienti obediatur ab illis qui volunt ei obedire. Quia Papa ex vi electionis possidet ius praecipiendi, ideoque, nisi simus in casu in quo liceat vi eum expoliare Papatu, non potest impediri ne Papatum administret cum illis qui volunt illum recipere. Sicque non potest impediri quin etiam ex parte Ecclesiae possessione accipiat respectu eorum qui volunt in Papam recipere.

not in possession cannot oblige to obedience, as taught by John of St. Thomas and Idelphonsus Baptista, quoted by Passerinus (no. 44). And this is expressly contained in the chapters *Significasti*, *Si vero*, and *Dilecto* on sentences of excommunication in the Sixth Book of Decretals. However, it is not permitted to use force to prevent the elected from issuing commands or to prevent those willing to obey him from doing so. Because by virtue of his election, the Pope possesses the right to command, and unless we are in a case where he may be violently deprived of the Papacy, he cannot be prevented from exercising the Papacy with those who wish to receive him as Pope. Thus, he cannot be prevented from taking possession with regard to those willing to accept him as Pope.