

CONSTITUTION
OF OUR MOST HOLY LORD
LEO XIII.
BY DIVINE PROVIDENCE POPE
IN WHICH SUNDRY POINTS OF CONTROVERSY
BETWEEN THE BISHOPS AND REGULAR MISSIONARIES
OF ENGLAND AND SCOTLAND ARE DEFINED.

LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD

Let this be a permanent record of this matter

THE WARM AND PATERNAL LOVE which the Roman Pontiffs Our Predecessors have ever cherished towards the noble English people is evidenced by the monuments of history, and has received a clear and striking proof in the Letters *Universalis Ecclesiae* published by Pius IX., of happy memory, on the 20th day of September of the year of Our Lord 1850. When by means of those Letters the said Pontiff restored amongst the English the episcopal hierarchy, as far as the circumstances of the times would permit, he placed, so to say, the crowning grace on those favours of which the Apostolic See had been so profuse to that nation. For by the restoration of dioceses that portion of the Lord's flock which had already been called to the espousals of the Lamb, and joined to His mystic body, acquired still greater stability of truth and order through the government and rule of Bishops. For Bishops, says St. Irenaeus, are the successors of the Apostles, and have received, according to the decree of the Father, the undoubted gifts of truth. [*Adv. Haer 4:26:2*] Hence it is, as St. Cyprian remarks [*Epist. 29, Ad lapsos*], that the Church is established on the Bishops, and every action of the Church is regulated by these rulers.

The event has answered in a wonderful manner to this wise resolve; several provincial Councils have been held, at which most salutary laws have been passed regulating the religious affairs of the dioceses: day by day the Catholic faith has been more widely spread, and many persons distinguished by the nobility of their birth and by their learning have been led back into the Church; the clergy has greatly increased in number; so also have the Religious houses, not only those belonging to Regular Orders, but those also appertaining to institutions of more recent date, which, by devoting themselves to the training of youth, or to the exercise of works of charity, have deserved well of the Christian body and of civil society; pious confraternities of laymen have been established; new missions have been opened and many new churches have been built, enriched with noble ornament and splendid with the beauty of worship; a great many establishments have also been founded for the maintenance of orphans, as also seminaries, colleges, and schools, in which a considerable number of children and youths are trained in piety and learning.

For all these things no small degree of praise is due to the character of the British people, who, steadfast and unconquered when opposed by force, readily yield to the voice of truth and reason, so that Tertullian truly said of them 'Strongholds of the Britons inaccessible to the Romans are subject to Christ [*Adv. Iudaeos 5*]. But the chief meed of praise is due to the

constant watchfulness of the Bishops, on the one hand, and to the docile obedience and ready activity of all the clergy, on the other.

THE BISHOPS' REQUEST

Nevertheless, from the very nature of things, it has happened that certain difficulties and disagreements which have arisen between the Bishops and the members of Religious Orders have impeded the gathering of more abundant fruits. For whereas in the aforesaid letters of Our Predecessor the observance of the common law of the Church was enjoined, the former were of opinion that they were free to decree whatever appertained to the carrying out of the said law and which according to the general discipline of the Church had been intrusted to the authority of the Bishops. On the other hand many and grave reasons forbade that the special discipline belonging to missionary countries, which had been long in use should at once be totally abolished. In order therefore to remove these difficulties, and put an end to these controversies, the Bishops of England, with that deference which they ever show for this Apostolic See, addressed themselves to Us, entreating Us to settle these questions by Our supreme authority.

We, on Our part, not unwillingly acceded to their request, both on account of the good will which We, no less than Our Predecessors, cherish towards that noble nation, and also because there is nothing We desire more than to see the occasions of discord removed, and durable peace and mutual charity everywhere flourishing. But in order that We might act with greater gravity and caution in giving Our award, not only did We apply ourselves to a diligent consideration of the laws and authorities brought forward on either side, but moreover We earnestly sought the opinion of a Congregation of some of the Cardinals of the Holy Roman Church specially appointed for this purpose and chosen from two sacred Congregations, one of which presides over the transaction of affairs relating to Bishops and the other over the Propagation of the Christian faith. These, having accurately investigated all the subjects under deliberation, and having weighed the arguments alleged on either side, faithfully laid before Us what seemed to them in the Lord most equitable and best to determine regarding each of the questions proposed. Wherefore having taken the opinion of the aforesaid Cardinals, and with full knowledge of the case, We deliver Our supreme judgment on the controversies and doubts proposed, by means of this Constitution.

Manifold and intricate as is the list of matters which come under discussion, they may, nevertheless, in our opinion, all be conveniently ranged under three principal heads, the first of which relates to the exemption of Religious bodies from the jurisdiction of the Bishops; the next regards the ministration performed by missionary Regulars; the third embracing questions on temporal goods and the use to which these are to be devoted.

EXEMPTION OF REGULARS

As regards the exemption of Regulars, the rules laid down by canon law are positive and well-known. To wit, although in the ecclesiastical hierarchy, as by divine ordinance, established priests and ministers are inferior to Bishops and subject to their authority [*Trent 23: de sacram.ord, can.1*], nevertheless the better to connect and fit together all things appertaining to the Religious Orders, and to secure for each of their members a quiet and

orderly method of life, in order lastly to provide for the increase and perfecting of Religious life, the Roman Pontiffs, whose right it is to fix the limits of dioceses and to assign to the head of each diocese the subjects to be ruled by his sacred authority, has not without reason ordained that the Regular clergy shall be exempted from the jurisdiction of the Bishops. The reason for which ordinance is grounded, not on any wish that the Religious bodies should enjoy a higher position than the secular clergy, but on the circumstance that their houses are regarded by a legal fiction as if they were territories cut off from the dioceses in which they are placed. Hence it happens that Religious communities, which by common law ought to be immediately subject both to the Bishops on account of their hierarchical pre-eminence and to the Supreme Pontiff by reason of the Papal Primacy, have remained under the power of the latter, and have by privilege passed out of that of the Bishops. But since, as a matter of fact, the Religious lead their lives within the limits of the diocese, the action of this privilege has been so far modified as to preserve intact diocesan discipline, so that in many things the clergy must be subject to the authority, whether ordinary or delegated, of the Bishops.

Now, as regards this privilege of exemption, a doubt has been raised whether it be enjoyed by the members of religious bodies dwelling as missionaries in England and Scotland, inasmuch as these reside for the most part two or three together and sometimes alone in private houses. And although Benedict XIV., in his Apostolic Constitution, beginning with the words *Apostolicum Ministerium* [30 May 1853], has declared that the aforesaid missionaries were in the enjoyment of that privilege, the Bishops nevertheless considered that there was some doubt whether they did so at present, inasmuch as, since the restoration of the episcopal hierarchy Catholic affairs were to be governed in those parts in conformity with common law. Now, common law provides [Innocent X, *Instaurandae*, 15 Oct 1651] that houses occupied by Religious men in number less than six shall be altogether under the power of the Bishops. Moreover the very author of that Constitution seems to have declared that the reason for which the privilege was granted was on account of the 'civil laws of the kingdom according to which all communities were forbidden'; but this reason is well-known to have ceased to exist, since, for many years past, it has been lawful according to the laws of that kingdom for religious men to live in communities.

Nevertheless these reasons are not such as to lead Us to judge that the privilege has really ceased to exist. For although the re-establishment of the Hierarchy has the effect of rendering possible the adoption of the ordinary discipline of the Church in the management of Catholic affairs amongst the English, nevertheless things continue to be managed there as yet very much in the same manner in which they are managed in missions. Now the Sacred Congregation of Propaganda has repeatedly declared that the Constitutions of Clement VIII, *Quoniam*, [23 June 1603]; of Gregory XV, *Cum alias* [17 August 1622]; of Urban VIII., *Romanus Pontifex* [28 August 1624]; as also the Constitutions of Innocent X; are not to be understood as applying to houses and residences in missions. And rightly so; for when long ago the doubt was proposed to Clement VIII, whether Religious men sent to India for the good of souls were to be considered as leading extra-claustral lives, and therefore, as ordered by the Council of Trent, to be subject to the Bishops, that Pontiff decreed by the Constitution *Religiosorum quorumcumque* [8 November 1601] 'that they were to be reputed as religious living in convents'; wherefore that in all things concerning the cure of souls they were under the local Ordinary; but in other matters they remained subject not to the local Ordinary but to their own superiors. Such was also the opinion held by Benedict XIV, and the award given by him in his

Constitutions *Quamvis* [25 February 1746]; *Cum nuper* [8 November 1751]; and *Cum alias* [9 July 1753]. From all which things it is clear that also the residences and houses tenanted by ever so small a number of inmates are comprised under the terms of the privilege here referred to, and this is true not only in places where there are Vicars Apostolic but in those also presided over by Bishops; for it is Bishops that are spoken of in the Constitutions alluded to. Moreover, it appears that the chief ground for the exemption of missionary Regulars in England is to be sought, not in the opposition raised by the laws of the country to the erection of convents, but rather in that salutary and most noble ministry exercised by apostolic men. This is not obscurely pointed out by Benedict XIV. when he says that ‘the Regulars sent on the mission in England go there for the advantage of our holy religion’ The same reason was adduced by Clement VIII, when, speaking of the Religious men who had started for India, he explained that they had gone there by order of their own superiors, and lived there under the rule of the prefect of the province ‘in order to preach the holy Gospel of God. and to show forth the way of truth and salvation’. Wherefore, after the repeal of the laws hostile to Religious Orders, and after the full restoration of the Catholic Hierarchy, the British Bishops themselves bore witness in the First Synod of Westminster that they held as valid the privileges ‘lawfully enjoyed by Religious men both in their own houses and outside the same’, although in most cases they well outside monasteries. Wherefore, also, in the present condition of the Catholic Church in Great Britain We hesitate not to declare that:

Regulars dwelling in residences on the mission are exempt from the jurisdiction of the Ordinary, no less than Regulars living within cloisters, except in cases expressly mentioned by the law, and, generally speaking, in those matters that have reference to the cure of souls and the administration of the Sacraments.

ATTENDING SYNODS

Akin to this main controversy which We have decided is another regarding the obligation of those Regulars to whom is confided the cure of souls, their vicars, and other Religious brethren furnished with faculties such as are usually granted to missionaries, to attend those meetings of the clergy known as Clergy meetings or Conferences as also at diocesan Synods. The better to understand the force and bearing of this question, it will be well to recall what the Fourth Council of Westminster ordains in the following words: ‘If two or more than two priests reside in the same mission only one of them shall be denominated head priest, and shall be charged with the cure of souls and the administration of the church. . . all the others shall exercise the cure of souls confided to them, dependently on the first [10:10]. The nature of the fact about which We are treating being thus made clear, and setting aside for the Present that portion of the question which relates to Synods, it cannot be called in question that the Rectors of missions are bound to attend the meetings of the clergy called Conferences. For their case is almost the same as that of parish priests; and Benedict XIV in his Constitution *Firmandis* [§ 6, 8 Nov 1744], and the Sacred Congregation presiding over the interpretation of the decrees of the Council of Trent have repeatedly declared that parish priests, even when Regulars, are so bound to attend. Wherefore it was rightly decreed in the aforesaid Synod of Westminster that ‘all secular priests, and regulars also (saving their rights) who have the care of souls, are bound to attend their respective Conferences.’ It may seem to be otherwise as regards vicars and other Religious men exercising the apostolic ministry. For, according to the established law, these are free to absent themselves from the said Conferences, according

as the Sacred Congregation of the Council as on other occasions declared. But it does not escape Our memory that the Roman Council held in the year 1725 by authority of Benedict XIII ordered all confessors, even belonging to Regular Orders, residing within the province to take part in those meetings, ‘unless moral lectures were held in their own convents’. But inasmuch as that which is ineffectually done may be considered as not done at all, the Sacred Congregation of Propaganda, rightly judging that in certain missionary localities the domestic conferences of Regulars could bear but little fruit owing to the very small number of members who could attend, gave orders that each of those who exercise that office should attend the conferences of the clergy. Moved therefore by these reasons, We declare:

That all Rectors of missions are bound by their office to attend the Conferences of the clergy, and moreover We ordain and command that vicars also and other Religious men holding ordinary missionary faculties and who reside in detached dwellings and in small missions shall do the same.

As regards the duty of attending Synod, the Tridentine law is well known [24:2, *de reform.*]: ‘Diocesan Synods also shall be held each year at which all, even exempt, persons, who otherwise would be bound to attend if the exemption ceased, and who are not subject to General Chapters, are bound to be present. Those who have charge either of parochial or other churches of seculars, even if annexed, whoever they may be, are bound on account of the said churches to be present at the Synod.’ And this law has been admirably explained by Benedict XIV. Nor do We imagine that any difficulty can arise in anybody’s mind on account of a decree of Alexander VIII [30 March 1691], wherein warning is given that all abbots, rectors, prefects, and all superiors of Religious houses who had been subjected by Innocent X to the power of the Bishop should go to the Synod. For inasmuch as the Innocentian Constitution has no reference to apostolic men who are employed in sacred mission, it is easy to see that neither does the decree of Alexander VIII belong to those persons of whom We are at present treating. Wherefore to this latter part of the question We briefly reply:

Let the decrees of the Council of Trent be observed.

APPEALS ON INTERPRETATIONS

Next in order comes a question regarding appeals made from the interpretation published by the Bishop of Synodical decrees. For Religious men, no less than others, are required to render obedience to such decrees in matters regarding the cure of souls and the administration of the Sacraments, [Trent 25:11 *de regular.*] as well as in other things ‘in which the Canon Law bids them to submit to the jurisdiction of the Bishops.’ There cannot, indeed, be any doubt that it is lawful to appeal from such interpretations to the Apostolic See, for Gelasius I and Nicholas I assert that the Canons ‘authorise an appeal to this See from whatever part of the world it may come, whilst, on the other hand, nobody is allowed to appeal from its decisions.’ A doubt, therefore, can only be raised as to the force and the effect of such an appeal. But such a doubt may easily be removed, provided a proper distinction be made between different cases. Thus it is lawful for Regulars to appeal, but only *in devolutivo*, [i.e., without arrest of judgment] in the case of an interpretation of such decrees as by common law either ordinary or delegated affect also Regulars; and in the case of the interpretation of other decrees also *in suspensivo*. [i.e. judgment to be arrested during the appeal.] For the authenticity of an interpretation issued by the Bishops, with whom the Synods originate, is equivalent to that of the decrees themselves. It follows, therefore, as a necessary consequence,

that members of a Religious body may appeal from the first class of decrees referred to by the same right, and in the same manner that it is lawful for any member of a diocese to appeal from the common law: that is to say, *in devolutivo* [without arrest of judgment]. But as regards the other decrees, they certainly, when issued against Regulars, lose the force and essence of law: and so it is certain that they possess an exemption from Episcopal jurisdiction the same as before, until such time as the authority of the Supreme Pontiff shall decide, whether they have been dealt with according to law or otherwise.

DIVIDING MISSIONS

Thus far regarding the privilege of exemption; We shall now proceed to treat those questions to which certain ministrations exercised by Regulars have given rise. Foremost among these is the office of the cure of souls, which, as already noticed, is often deputed to Religious men within certain limits prescribed by the Bishops. The district comprised within those limits is designated a mission. Now a controversy has arisen with regard to these mission, whether, and in what manner, they may be by the Bishop divided, or, as the phrase is, dismembered. For they who maintained the rights of the Regulars denied that such division could be made except for legitimate reasons, and with the aid of the legal solemnities prescribed by Alexander III, and by the Council of Trent [21:4 *de reform.*]. The Bishops, on the other hand, held a different opinion.

Of course, where the case is one of dividing a parish properly so-called, whether of ancient origin or legally constituted within a recent period, it is undoubtedly unlawful for the Bishop to disregard what is prescribed by Canon Law. But the British missions, generally speaking, have not been erected into parishes in the way marked out by law: and for this reason the Sacred Congregation of Propaganda Fide, in the year 1866, decided that the duty of applying the Mass for the people rested with the Bishop, inasmuch as the British dioceses were not constituted in such a way as to be distributed into real parishes. So that the customary legal formalities which have been drawn up for the dismemberment of parishes must not be applied to the division of a simple mission: the more so because, owing to the nature of the missions and their special circumstances, more numerous and less weighty reasons may present themselves in favour of their being divided, than those which have been laid down by law as necessary for the division of parishes. Nor should the similarity between them be urged, because inasmuch as the obligation of observing the customary formalities of law is a check upon freedom of action, it must not be drawn into cases that are similar. Therefore, as the general laws of the Church are silent on this subject, it is necessary that the authority of the Provincial Council of Westminster should have force when it decrees as follows: 'Notwithstanding the appointment of a missionary rector, the Bishop shall be at liberty, with the advice of the Chapter, to establish within the limits of the mission which has been intrusted to his charge new churches, and to assign to them a part of the district if necessity or the good of the faithful require it.' Under these circumstances, to the question proposed, We reply:

The Bishops are at liberty to divide Missions, if they keep to the form laid down by the Sacred Council of Trent [4:21], in respect to missions which are really and properly so-called parishes; but in respect to all the others, if they act in conformity with the First Provincial Synod of Westminster [*de regimine congregationum* 5]. Moreover, in order that the good of the mission and of those who serve it may be the better provided for, We will and ordain that the opinion of the Rector should likewise be asked for, which laudable practice, as We are

informed, is customary: and if the mission is served by members of a Religious body, then the Superior of the Order is to be consulted: leaving intact the right of appealing, if the matter requires it, from the decree of the Bishop to the Holy See, but only in devolutive..

Another question arises where the dismemberment of a mission in charge of Regulars has been effected – whether, namely, the Bishop, in the appointment of a Rector to the new mission which is erected, is bound to give the preference to the members of such Religious body. Although the latter claim this as their right, it is clear that such a claim would give rise to difficulties and disagreeable incidents. But in the case of the new erection of which we are now speaking one of two things must happen; that is to say, either a parish properly so called, or else a simple mission, is being established. If the former, then to obtain a parish priest from a Religious community and give him the preference would be most contrary to the discipline of the Church; for by the law now in force Regulars are so far inhibited from accepting the office of parish priest as that they who intend to accept it require the leave of the Holy See. On this point Benedict XIV, in the Constitution *Cum nuper* [8 November 1751], says, ‘Just as it cannot be denied that, according to ancient canon law, monks and Regulars were eligible for the charge of parochial churches, so it is now certain that in virtue of more recent canonical discipline Regulars are forbidden to take charge of parishes without a dispensation from the Apostolic See.’ Hence the Sacred Congregation appointed for the interpretation of the Tridentine Decrees, in reply to the question ‘whether the petition of the Augustinian Fathers to have a new parish assigned to them should be complied with’, issue a rescript in the negative, directing that the matter should not be again brought forward.

But if (as proposed in the second place) a simple mission has to be formed, it is true that the law is not so far adverse to the Religious as to forbid the Rector being chosen from amongst them, but neither does it favour their claim to be chosen in preference. The Bishop on approaching the question finds it and his power untouched, and is free to follow his own choice; for when the law is silent the authority of the Bishop stands in the place of law: the more so as, according to the adage of the jurists, that which is in the mind of the Bishop has the support of the law in all matters that regard the administration of his diocese. Hence the claim put forward by the Regulars to the presidency of the new mission is either destitute of support from the law or else runs counter to what the law clearly enacts. The duty of the cure of souls, as confided to the diligence of the Regulars, gives rise to further doubts. These have reference to places comprised within the limits of missions under their charge. For it began to be questioned whether the Bishop had a right to visit the cemeteries and pious establishments existing within those limits. But as regards cemeteries, an easy distinction readily presents itself which settles the controversy. For if there be question of cemeteries exclusively reserved for the interment of Religious communities, they are clearly exempt from the jurisdiction of the Bishop and, consequently, from his visitation; but other cemeteries which are open to the multitude of the faithful, inasmuch as they are of the nature of parochial cemeteries, are beyond all doubt subject the jurisdiction of the Ordinary, and therefore are of full right visited by the Bishop, as Benedict XIV decreed in his Constitution *Firmandis* [6 Nov 1744]. So the question regarding pious establishments is settled by making a similar distinction, and separating such as are exempt from such as are subject to the Bishop, either by ordinary or by delegated right.

Therefore, both as regards cemeteries and pious establishments, We briefly pronounce Our decision, which is, That the regulations of the Sacred Canons and of the Apostolic Constitution be observed.

EDUCATION AND SCHOOLS

Closely connected with the preceding doubts is that other in which the question is proposed, whether poor schools called *elementary*, *primary*, or *children's* schools, should be subject to the Bishops; for the ministry of teaching is most sacred, and the schools in question occupy a rank very closely allied to pious establishments. The scope of these schools is discernible from their very name. They are directed, that is, to the due instruction of young children in the first elements of letters, and the primary truths of faith and precepts of morality: an instruction which is necessary for all times, places, and kinds of life and is of the greatest importance to the well-being, no less of human society in general, than of individuals; for, from the education which a man receives in childhood, depends for the most part, how he will behave during the rest of his life. Pius IX therefore wisely set forth the chief duties of teachers in such schools when he wrote: 'In these schools especially all children of every class of the people, even from their tender years, are to be carefully instructed in the mysteries and precepts of our most Holy Religion, and carefully formed both to piety and moral virtue, and to religious and civil culture: and in these schools religious doctrine in particular ought to hold so primary and dominant a place in instruction and education that all other kinds of knowledge which are there imparted to the young should plainly appear to be merely accessory to this [*Ep. ad Archiep. Friburg.* 14 Jul 1864]. Hence it is obvious to everyone that this education of children must be ranked among the duties of Bishops, and that the schools in question, whether in crowded cities, or in small villages, are comprised among those works which belong in the strictest sense to the management of the diocese.

Moreover the persuasions of reason are confirmed by the light of history. For there never was a time in which the care of Councils in the appointment and protection of such schools has not been singularly conspicuous, and they have made many wise ordinances to this effect. By their decrees it has been provided, that Bishops should cause these schools to be restored or increased, both in towns and villages, and that children should be admitted as scholars, if possible, without any payment whatsoever. By the same authority regulations have been made for the training of the pupils in religion and piety: the qualifications and dispositions which the masters ought to possess have been defined; and these have been commanded to make sworn profession of the Catholic Faith; lastly, inspectors of schools have been appointed to visit them, and observe carefully that nothing faulty or unsuitable be introduced, nor anything omitted which the laws of the diocese have enacted concerning the discipline to be maintained. In addition to this, as the Fathers of the Councils were well aware that parish priests also are participators in the pastoral ministry, they assigned to these no small part in the management of the children's schools, the care of which is so intimately connected with the cure of souls.

It was ordained therefore that in every parish schools for children should be established, which were styled parochial schools; parish priests were commanded to undertake the duty of teaching, and to associate to themselves masters and mistresses as assistants; they were required to exercise the utmost diligence in the direction and care of their schools: should these functions not be performed with fidelity and completeness they are charged with having neglected their duty and held to be deserving of Episcopal censure. The arguments therefore derived from reason and from facts converge to prove that the so-called poor schools are by full legal right to be numbered among diocesan and parochial institutions; and for this reason, the British Bishops down to the present time, both Regular and Secular Missions, have been,

in accordance with their power, accustomed to visit them. And this We also approve, and declare that Bishops have the right to visit for all effects and purposes such poor schools in missions and parishes, both Regular as well as Secular.

REGULARS' SCHOOLS & COLLEGES

Quite different is the case of the other schools and colleges in which Religious men, according to the rules of their Order, devote themselves to the education of Catholic youth. For in these both reason requires, and Our will is,

That the privileges bestowed upon them by the Apostolic See should remain firm and entire, as was plainly declared in the year 1874 by the Sacred Congregation of Propaganda, when revising the acts of the Fourth Provincial Council of Westminster. (2)

This much being settled with respect to the schools and colleges of the Regulars already established, a doubt still remains when it is a question of opening new ones. In the case of these is the permission of a superior to be obtained? and of what superior? Moreover, since this doubt has a wider extension, and affects also the establishment of churches and monasteries, we comprise all these within the limits of one question and decision. And here in the first place we are met by the ancient Decretals, in which it is provided that no such institution be established by any one without special permission of the Apostolic See. Subsequently the Council of Trent forbade any establishments of this kind to be undertaken without first obtaining the license of the Bishop in whose diocese they are to be erected. But by this decree of the Council no derogation was intended from the more ancient laws, which require that permission be obtained from the Apostolic See [25:3 de regular.]. Wherefore, as too great freedom in this matter was everywhere prevalent, Urban VIII [*Romanus Pontifex* 28 Aug 1624], with the view of amending this irregular practice, disapproved of all works of this kind undertaken either without the permission of the Bishop, or by his sole authority; and decreed that the laws as well of the ancient canons as of the Council of Trent should be absolutely observed for the future. In the same sense Innocent X, in the Constitution *Instaurandae* [15 Oct 1652], forbade any member of a Religious Order 'to presume to receive or found new houses or establishments of whatever kind without special permission of the Apostolic See'. Wherefore it is now the common opinion, supported also universally by the authority of judicial decisions, that it is not lawful for Regulars, whether within or without the limits of Italy, to found new monasteries, convents, or colleges, with the sole permission of the Bishop, but that there is further required the faculty granted by the Apostolic See. Following the same track, the Sacred Congregation of Propaganda has several times decreed, that for the erection of churches and colleges, even in missions where Religious Orders possess houses and residences, the permission of the Apostolic See and of the Bishop or Vicar Apostolic is absolutely necessary. For these reasons, therefore, We reply to the doubt proposed,

That it is unlawful for Religious Orders to create for themselves new establishments, by erecting new churches, or opening monasteries, colleges, or schools, without having first obtained the express licence of the local Ordinary, and of the Apostolic See.

It is customary, undoubtedly, to pursue the inquiry further, and to ask whether such twofold consent is necessary when a Religious body is not undertaking a work that is entirely new, but wishes to apply to other purposes an existing foundation. But the answer to be given is neither obscure nor doubtful, if we discriminate between the various cases that may present

themselves. For, in the first place, who can entertain a serious doubt as to whether it is lawful to apply charitable and religious foundations to uses alien to charity and religion? Therefore we have to confine our inquiry to these three points – namely, whether it is allowable to remove foundations from one place to another, or to divert them to some suitable use, such as would be the change of a school into a church, of a religious house into a college, an orphanage, or a hospital, or *vice versa*; Or; lastly, whether, while keeping such establishments to their original use, it would be permissible to unite therewith some new scope or use? Now, as to the first two cases, members of religious bodies are inhibited from acting on their own private authority by a decree of Boniface VIII, who forbade them ‘to receive in future dwelling-houses or places of any kind whatsoever, or to make a change in those already in their possession’. How, again, is it possible to do either the one or the other without such act being tantamount to a fresh foundation ‘of Monasteries, Colleges, houses, convents, and other erections of this kind’? But this was prohibited by Urban VIII. in his Constitution *Romanus Pontifex*, unless ‘in perfect conformity with the Sacred Canons and the Council of Trent.’

Therefore, one point alone remains for discussion; whether, while keeping to the original use, it is permissible to add thereto another scope or use. In this case, it is necessary to press the question still further, and to examine carefully whether such additional use regards internal administration and domestic discipline, as when an elementary school or house of studies is set up in a Monastery for the benefit of the younger members of the community; or whether it goes beyond the limits of internal administration, as when, for instance, a school or college is there set up for the admission of externs likewise. It is clear that if those limits are transgressed the proceeding is identical in character with the one or the other of those which, as we have said, Boniface VIII and Urban VIII prohibit being done at will. But if the change be confined within the limits of domestic discipline, Regulars will, of course, avail themselves of their right; unless it should happen that the conditions of the foundation are contrary thereto. Taking all these several considerations into account, it clearly results

That members of a Religious body are not allowed to convert existing institutions to other uses without the express permission of the Apostolic See and of the Ordinary of the place, except in the case where the conversion regards merely internal government and Regular discipline, and the conditions of the foundation are left intact.

TEMPORAL GOODS OF THE MISSIONS

We now come to that part of the controversy which relates to the discussion about the temporal goods of the missions. These goods have their origin in the generosity of the faithful, who, in the spontaneous and voluntary bestowal of their gifts, have in view either the mission or else the person who has charge of the mission. Where the donation has been made with a view to the mission, it is debated whether the Religious to whom the donation has been made are bound to give an account of receipts and expenses. Now that this is obligatory results from the following words of the Rescript published by the Sacred Congregation of Propaganda [19 April 1869], in answer to a question proposed in reference to Missions in Great Britain intrusted to Religious Orders or Institutes:

- 1 Missionary Regulars are not bound to give an account to the Bishops of temporal goods belonging to them as Regulars.**
- 2 The Bishops, however, have the right to exact from the said Missionary Regulars, just the same as from the parish priests of the secular clergy, an**

account of those goods which have been given to the mission, or the Regulars with a view to the mission.

And in order that an accurate account might be kept of receipts and expenses, the said Sacred Congregation [10 May 1868] gave orders for a careful description of the property of the missions, setting forth such as belonged to the missions separately from those which belonged to the Religious bodies or the individual members.

There was nothing, it is true, in these decrees and injunctions in the least at variance with the commonest teaching of general law. For any offering whatever made to a parish priest or other Rector of a church with a view to some pious purpose accrues to the pious purpose itself. And hence it follows that he who receives the thing or sum of money offered holds the place of administrator, and is bound to dispose of it according to the mind and intention of the donor. But as the office of administrator involves the obligation of drawing up an account of what he has done, and presenting it to the person in whose behalf it has been done, therefore the parish priest or Rector of the church cannot but give an account to the Ordinary of the place, to whom belongs the jurisdiction and the guardianship of the pious purpose. But the missions, about which we have been appealed to, belong to the Bishop in full right; to him, therefore, must an account be rendered of any offering whatever that has been received with a view to them. Nor is the force of what We have just said weakened by the fact that Urban II in the Council of Clermont, and other Roman Pontiffs after him, have decreed in reference to parochial churches, united to monasteries as to the temporalities, that the vicars are bound to account to the Bishops for the care of the people, but not so with regard to the temporalities, since they are subject to their own monastery; for even apart from the historical consideration as to the origin of that legal provision, it is well known that in those Pontifical decrees the revenues of the benefice and the savings which attach to the person of him who holds it, are signified by the designation of temporalities. Wherefore, in confirmation of the Rescripts and injunctions of the S. Congregation of Propaganda Fide, We decree

That members of Religious bodies, in giving their accounts to the Bishop, are bound to inform him of the money given to them with a view to the missions, and how much of it and for what purposes they have spent, just as missionaries of the secular clergy are bound, in accordance with the above-mentioned decisions of the said Congregation [19 April 1869], and the Instruction [10 May 1868].

MONIES OFFERED TO RELIGIOUS MISSIONS

Lastly, to obviate the risk of error or disagreement in the execution of what We have just decreed, We think it necessary to define what monies and what things are understood to be offered to members of Religious bodies with a view to the missions. For on this point it has been held that the wish of the donor should be looked to in the first place; and, failing evidence of that, it was agreed that the donation should be presumed to have been made in favour of the parish priest or the rector of the church. But this rule has been widely departed from owing to a custom asserted by some skilled in ecclesiastical law to have become almost general, in force of which at the present day almost the only offerings which belong to the parish priest are those which are made in the church during Mass at the altar, and those which are specially made for the administration of the Sacraments, for the blessing of marriages or of women after childbirth, for funeral services and burials, or other similar functions; nearly all the rest being applied by custom to the churches themselves, or to the chapels, or to other definite

objects. Moreover, if a gift may not unreasonably be presumed to have been made in favour of the parish priest or the rector, from whom the faithful receive spiritual aid, where a church possesses endowments sufficient to provide for religious decorum and the maintenance of the ministers, a very different judgment must be formed where a church is not so abundantly endowed, and is maintained solely or chiefly by the contributions of the faithful. For then the donors would have to be regarded as having intended to provide for the splendour of divine worship, and the dignity of religion, in such manner and measure as ecclesiastical authority should determine. And so among the Christians of the early Church it was made a law that all money received as a gift should be divided between the Church, the Bishop, the clergy, and the poor. Moreover, the authority of law interposing itself, when it prescribes times and reasons for the making of offerings, produces this effect also, namely, that the faithful are not always allowed to fix at will the manner and object in and to which the offering must be applied; for the will of private individuals cannot deprive of certain effect that which is ordered by legitimate authority for the common good. With these considerations in mind it has seemed to us that the Fathers of the Second Provincial Council of Westminster acted prudently and opportunely, when, partly interpreting the pious and just wish of the donors, partly availing themselves of that power which Bishops possess of ordering collections to be made and of deciding the time and scope of such collections, they decreed, in the chapter concerning ecclesiastical property, what was to be regarded as having been given in consideration of the mission. Therefore reason prescribes, and We also ordain,

That in this matter members of Religious bodies must entirely conform to the regulations of the Synod of Westminster.

And now that we have disposed of the points in dispute which have been brought to Our cognisance, We trust that the care which We have bestowed on the settlement of them will so far avail as to contribute in no slight degree to peace and the progress of Catholicity in England. For We have studiously and religiously tested Our decisions by the rule of law and equity, and We do not doubt that those between whom We have delivered judgment will display a like diligence and conscientiousness in the execution of them. For thus it will come to pass that under the guidance and by the prudence of the Bishops the Religious bodies, which have deserved especially well of the English missions, will continue with vigour and alacrity to bring forth from their labours most joyful fruits of salvation, and both of them (to use the words of Gregory the Great to the Bishops of England) ‘with common ... accord and united action prepare together all that they have to undertake for the zeal of Christ, be righteous in the resolutions they come to, and carry out without difference amongst themselves their common resolves’ [Bede, *Hist Angl.* 2: 29]. This spirit of union is required by the fatherly charity which Bishops ought to show towards their co-operators and the respect which on their part the clergy should render to the Bishops; it is demanded by the end which they have in common, and which consists in seeking the salvation of souls by unity of will and effort; it is rendered necessary by the obligation of resisting the enemies of the Catholic faith. This concord is the source of strength, this it is which makes even the feeble equal to the greatest undertakings; this is the mark by which the true disciples of Christ are distinguished from those who falsely claim that title. To this, therefore, do We earnestly exhort one and all, beseeching them with St. Paul to fulfil Our joy, that they be of one mind, having the same charity, being of one accord, agreeing in sentiment [Phil 2:2].

FOR CANONICAL COMPLETENESS

Finally, in order to give strength and durability to all that We have ordained, We will and decree that these present and all that is contained therein shall not at any future time, either on the plea of surreptitiousness or of obreptitiousness, or of nullity or want of intention on Our part, or of absence of the consent of the parties interested in the case, or any other defect, be it ever so great and substantial, and requiring special mention, ever be impugned, infringed, revoked, called in question, or reduced to the terms of law. Neither shall anybody seek or obtain against them restitution *in integrum* or any other legal remedy whatsoever, even on the ground that the aforesaid members of Religious bodies and others whosoever having interest in the premisses of whatever state, grade, order and dignity they may be, or who are otherwise entitled to special mention, refuse to assent to them, or plead that they not been cited or heard, or that the causes leading to the publication of these presents have not been sufficiently set forth, verified and proved, or on any other, be it ever so juridical or privileged cause, colour, or reason even if included in the Corpus Juris. But that these present letters shall ever remain and be firm, valid and of full effect, and no defect of law or fact charged against them with a view to let or hinder or hinder the execution of the same in any way or from whatever motive, but they shall h full and plenary effect notwithstanding any defect in law or in fact that they may be pleaded against them under any form by whosoever he may be for the purpose of causing let or hindrance in the execution of the same. And therefore every let and hindrance being utterly cast aside, they shall be by all those whom it may concern, be inviolably kept. And thus and not otherwise all judges whether ordinary or delegated in these matters shall adjudicate and define, and all attempts to rule otherwise on the part of any man whatsoever or by whatever authority, whether knowingly or in ignorance shall be null and void.

Notwithstanding the above, and, in so far as is necessary, the rule published by Us and the Apostolic Chancery, *de jure quasito non tollendo* [that acquired rights may not be taken away] and other Apostolic Constitutions, and those published in General, Provincial, and Synodical Councils; notwithstanding also the statutes and customs of all Orders, Congregations, Institutes, and Societies whatsoever, including the Society of Jesus, and of all churches, and all other statutes, usages, prescriptions, even from time immemorial; also all privileges, indults, and Apostolic letters, granted, published, and executed in any form whatsoever contrary to the premisses, even if several times renewed. From all, and each of these, even if requiring a special form of derogation, and the tenor of which We hold to be fully and sufficiently described herein, in so far only as they affect these presents, We specially and expressly derogate, all other things whatsoever notwithstanding.

Moreover, in whatever manner copies of these same letters shall be published in England, We will that, forthwith after such publication has been made, they shall take effect in regard to all and each of the persons whom they concern, or hereafter may concern, as if they had been intimated and notified to each of them individually. Let no man, therefore, infringe or rashly contravene these Our decisions, declarations, decrees, precepts, and will, in these pages set forth. And if any man shall presume to essay to do so, let him know that ‘he will incur the anger of God and of His blessed Apostles, Peter and Paul.

Given at Rome, at St. Peter’s, in the year of our Lord 1881, eight days before the Ides of May, in the fourth year of Our Pontificate.

C. CARD SACCONI, PRO-DATARIUS
T. CARD. MERTEL.

Visum de Curia I. DE AQUILA E VISCONTI

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I Cugnioni