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In Qvibvs Vnivers[a]e Qvaestiones ad Conscientiam recte aut prauè
factorum pertinentes, breuiter tractantur

Azor, Juan

Coloniae Agrippinae, 1616

1. Qvod Beneficarius antequam beneficij possessionem adeat, debeat diploma Pontificium obtainere.

urn:nbn:de:hbz:466:1-14007

tem, & iura nisi aliud exp̄esserint, futura comprehen-
dunt, quando generatim feruntur, nam lex semper loqui-
tur. *Arriani, C. de heret.* s̄ecus vero est de his, quæ à princi-
pio sunt polita, & obiecta: illa enim vel ad contractus, vel
quasi contractus, vel ad mandata spectant.

Finis Libri sexti.

IOANNIS AZORII LOR- CITANI E SOCIE- TATE IESV,

INSTITUTIONVM

MORALIVM

Pars secunda:

LIBER SEPTIMVS.

CAPVT I.

*Quod Beneficiarius, antequam beneficij poss̄sionem
adeat, debet diploma Pontificium
obtinere.*

HACTENVS explicui quo pacto beneficia canonice & legitime acquirantur: nunc re-
liquum est, vt exponam qua ratione ante-
iam comparata, & acquista beneficia con-
seruentur. Quia propter dicendum mihi est,
quidnam Clericus postquam est beneficium
consecutus, praestare iure cogatur, ac beneficij ius aut feu-
ditus amittat: ac proinde vniuersa onera que sunt iure Ca-
nonico beneficis imposta, breuiter explicabo.

Primo queritur, An cum aliquicū beneficij confertur,
necessaria sit ad ius in illo acquirendum, scriptura, An ve-
ro sufficiat si testibus probetur, Beneficium illi esse collatum?
Respondeo distinguendo, aut beneficium est à Pa-
pa concessum, aut ab aliquo alio loci ordinario. Si pri-
mum, quanquam necessaria scriptura non est iuramento
communi: ac v̄su Romanæ curiæ mulcis Romano-
rum Pontificum Constitutionibus confirmato, omnino
est necessaria. Vtrumque docet Flaminius Parisius lib. 8.
dere signationibus q. 2. n. 8. vbi plurimos citat auctores. Qui
fir, vt, cum supplex Papæ libellus offetur, in quo be-
neficium Ecclesiasticum petitur, solo verbo ipsius quo re-
spondet: *Fiat*, aut, *Placeat ut petitus*, Pontifícia gratia iure
communi perificatur: ac proinde firma est & rata statim,
vt est signata, nondum Pontificio diplomate confecto:
imo vt aiunt Bald. Geminianus, Francus, Bonifacius, Io-
annes Selva, quos refert idem Flaminius, cum primum
Papa Tertium certa ciuitatis episcopum, aut certa Eccl-
esi parochum nominat, est vere episcopus, aut Parochus,
videlicet potestate iurisdictionis, non ordinis; illa enim
potestas solo verbo traditur, hæc non nisi consecratione
datur.

An vero v̄su curiæ Romanæ, ad poss̄sionem adipi-
scendam, omnino scriptura, hoc est, Pontificium diplo-
ma requiritur. Cæterum si beneficium, inferior loci ordi-
narii contulerit, nec iure communi, nec vlla consuetu-
dine necessaria est scriptura: Sed satis est, si collatum esse
beneficium testibus constiterit, yflex communi opinione
docet idem Flaminius libro, & q. citatis, n. 20.

Quæres, An beneficij à Papa impetrato, & Pontificio

confecto diplomate, quod deinde casu est amissum, satis
sit, si testibus probetur, beneficium esse collatum, & di-
ploma cōscriptum, sed deinde amissum. Respondet idem
Flaminius ex communī sufficere: v̄su & more curiæ Ro-
manæ non item.

Quæres deinde, An saltem secundum conscientiam
sufficiat, Pontificiam gratiam solum esse à Papa signatam
literis Apostolicis non acceptus? Idem Flaminius repon-
det num 24. Abbatem, Felinum, Rebuffum, & alios Do-
ctores securi, sufficere iure communi, & antiquo: ac in
iudicio necessariam esse omnino scripturam. Quæres ter-
tio, An quando literæ sunt amissæ, satis sit, si testibus be-
neficij conditiones, quas vocant qualitates, constituerint?
Idem auctor Flaminius testatur num. 25, communem esse
sententiam, ad corpus beneficij probandum, prorsus scri-
pturam, etiam literis amissis, v̄su curiæ requiri, non autem
ad probandas beneficij qualitates.

Secundo queritur, Que p̄enæ sint iure constitutæ in
eos, qui beneficij à Papa impetrati poss̄sionem confe-
quuntur, antequā diploma Pontificium acceperint? Re-
spondeo, Bonifacium VIII. Constitutionem edidisse,
quæ incipit, *In iuncta, & habetur inter Extravagantes com-
munes, deelatio, vbi ait: Præsentis Confutatione facimus, ut
Episcopi, & alii prelati superiores, necnon Abbates, Pries, &
cateri monasteriorum regimina exortentes, quocumque nomine
censeantur, qui apud dictam sedem promeantur, aut confirmationis
consecrationis, vel benedictionis munus recipiunt ad com-
missas eis Ecclesiæ & monasteria absque dicta Sedit literis, hu-
iustis modis horum prouisionem, confirmationem, consecrationem,
sive benedictionem continentibus accedere, vel honorum Ecclie-
stasticorum administrationem accipere non presumant, nulli
eos abfugientiæ literarum ostensione recipiant, aut eis pa-
reant, vel intendant: Quid si forsitan alter presumpsum fuerit,
ipsi Episcopi, & ceteri predici: Prelati, nihil de Ecclesiæ, vel
Monasteriorum prouentibus perciperi queant: Et irritum ha-
beatur quicquid per eos interim factum fuerit. Capitula vero &
Conventua Ecclesiæ & Monasteriorum, & quicunque ipso
abfugientiæ literis receperint, vel ejdem obediunt, tam
diu sint à beneficiorum suorum perceptione suspensi, donec super
hoc, eiusdem Sedi gratiam meruerint obtinere. Hæc ibi. Et
quia in hac Constitutione non est vniuersale omnibus
beneficij decreatum: ideo successores Pontificis eam ad
omnia generatim beneficia protendam curarunt. Iuli-
lius II. Constitutionem edita talis exordi: *Romani: quæ
comprehendit omnes Ecclesiæ Cathedrales, Metropoli-
tanæ, Patriarchales, omnes Abbatias, Prioratus sive iure
tituli, sive commendationis, sive administrationis con-
cedantur.**

Paulus III. aliam edidit, quæ initio sic habet: *Cum no-
bis, in qua quia iudices Romanæ curiæ prætextu suppli-
cationum super prouisionibus beneficiorum, & alii gra-
tis signatarum, & registratarum literas & mandata da-
bant de illorum beneficiorum adipiscenda poss̄sionem li-
teris non expeditis, præcipit ne id amplius faciant: & no-
tariis, tabellionibus, & ceteris Romanæ curiæ officiali-
bus id non seruansibus pœnam excommunicationis ir-
rogat ipso iure, à qua nisi per Romanū Pontificem extra
mortis articulum absolvi nequeant. Et generatim Con-
stitutio loquitur de omnibus beneficij à Sede Apostolica
quomodo libet impetratis.*

Exstat etiam alia Constitutio Iulii III. sic incipiens,
*Sanctissimus, in qua in vniuersum quoque decernitur: Vt
quicunque beneficij quacumque apud Sedem Apostolicam im-
petraverint, vel per collationem, vel per confirmationem, vel per
unionem, vel per aliam quacumque dispositiōnem, si ante con-
ficiā & accepta Pontifícia diplomata poss̄sionem appre-
henderint per se, vel per alium suo nomine, aut per alium appre-
hensionem fidam ratam habuerint, pro intrusis & violenti detento-
ribus habeantur: nec suos fructus faciant, sed in conscientia et
iam refutare debeant. Nec suffragetur illis regula Cancelleria
de annali, vel triennali poss̄esse. Et ipso iure priuaniur benefi-
cij obtentis, & omni iure in illis vel ad illa acquisito, ita ut ipsa*

Azor. Instit. Moral. Pars II.

§ 5

beneficii

beneficia impetrata iure & facto videntur Romano Pontifici referuntur: & qui impetrarunt, inhabiles reddantur ad illa denso obtinenda. Hec in illa constitutione.

Admonendum duximus, Lectorem: ut intelligat id, quod via curiae Romanae in hac parte fieri solet: in primis enim, qui beneficium petti, Papæ: libellum supplicem offert, in quo eius petitio continetur, quæ vulgo supplicatio dicitur: Et Papa responderet verbo *Placet*, aut, *Fiat ut petitur*, subscripto, & postea recognoscitur, & datur a *Datario*, & in *Registrum* inseritur, & tunc dicitur supplicatio signata: Deinde in compendium quadam redigitur & recognoscitur: & postremo Pontificium diploma conscribitur, & in *Registrum* reponitur, & inde exemplar re-scribitur: quod vulgo *Bulla*, seu literæ a apostolicæ appellatur. Et quia hæc omnia opera & ministerio multorum curiarum Scriptorum factitantur, quibus ob id certa quidem stipendia debentur: constitueret Romani Pontifices: ne quis beneficium in curia Romana impetrari possit, si nanciscatur, antequam diploma Pontificium accipiat, ne prefati curiarum Scriptores & ministri suis debitis stipendiis fraudentur.

Exstat etiam regula 25. Cancellariae: ut gratia Apostolica pro informi habeatur ante literas expeditas: & quod non inducatur uox formam supplicationum signatarum super quibuscumque impetracionibus, vel concessionibus per verbum *Placet*, vel per sanctam Romanam Ecclesiæ Vicecancellarium, nisi sint commissiones institutæ concorrentes. Sic ibi.

C. A. P. II.

De publica fidei professione à beneficiis facienda.

Primo queritur, qui Beneficiarii publicam fidei Catholicæ professionem facere debant? Respondeo, Concilium Tridentinum *ff. 14. c. 12. De reformatione* statuiss: Pronisi etiam de beneficio quibuscumque, etiam ammarum habentibus, tentantur à die adeste possessionem, ad minus intra duos menses, in manus ipsius Episcopi, vel eo impedito, coram generali eius Vicario, seu officiali, orthodoxa sua fidei publicam facere possessionem, & in Romana Ecclesiæ obedientia se permanens spondentes, accedentes. Pronisi autem de Canonicebus & dignitatibus, in Ecclesiæ Cathedralibus non solum coram Episcopo, seu eius officiali, sed etiam in Capitulo idem facere tenentur: alioquin prædicti annes pronisi, ut supra fructus non faciant suos: nec illis possessio suffragetur. Sic ibi.

Exstat præterea Pii LV. Constitutio, cuius principium est: *In unum cum nobis, vbi præcipit, ut publicam quoque fidei professionem faciant, quicumque Monasteriorum, Conventibus, & Domibus regulatiorum ordinum, etiam Militarium practiciuntur. Iuber similiiter fidei professione fieri iuxta formulam ab eo in ea Constitutione præscriptam.*

Quæres, An ob professionem fidei prætermissem, pena in Concilio Tridentino interrogata in foro conscientia, ante ullam iudicis sententiam contrahatur? Respondeo, contrahit, quia Concilium ait, qui eam omitunt, fructus non facere suos: ergo fructuum ius & dominium acquirent iure non possunt.

Secundo queritur, An Parochi, vel Canonici, qui per iusquam ignorantiam, vel obliuionem intra duos menses publicam fidei professionem non fecerint, fructus beneficii lucifacient? Responderet Nauartus tom 2. *Consistorium, de summa Trinitate, consil. 3.* quod ad forum conscientia attinet, eos non peccasse, ac proinde sibi fructus lucrari. Primo, quia iusta ignorantia, vel obliuio scriptæ legis excusat à culpa. Secundo, quia iuxta *Glossam in c. Fraternitas, 12. q. 2.* pena ante iudicariam criminis condemnationem, non debetur. Tertio, quia qui leges & scripta iura bona fidei prætermissem, sicut culpam, sic etiam penam non contrahit.

Quibusdam tamen hæc non omni ex parte probantur. Primo quia in iudicio huiusmodi ignorantia, vel ob-

linio locum non habet, nisi iusta esse proberur, quia est ignorantia Canonis, sive legis iure communis constituta. Deinde, quod ad forum etiam conscientia pertinet, in predicationis Parochis, vel Canonici non videtur iusta esse ignorantia: quisque enim id nosse debet, quod ad suum statum, & vita conditionem communis iure spectat.

Potestem, quia licet huiusmodi beneficium sit à culpa liberi & immunes, fructus tamen beneficij restituere debent: hæc enim poena, cum eam leges irogant, ante iudicis sententiam contrahitur, praesertim à beneficiariis, tacite nimis in ea conditione accipientibus beneficia, ut publicam fidei professionem faciant; aliqui beneficij fructus amittant.

Meo iudicio, Nauartii sententia in hac parte vera est, quod ad conscientiam pertinet: quia huiusmodi lex hinc ignorati, vel saltem memoria excidere potest, & ubi quis contra legem præcipitem, vel prohibentem aliquid fieri, sine culpa facit, poena non meretur: talis vero lex poenalis est, non conventionalis.

Tertio queritur, An prædicti beneficiarii, qui fidei professionem non fecerint, possint sibi fructus beneficij retinere, Privilegio regule Cancellariae de Annali, vel triennali possessori? Respondeo, cum Nauarro *l. 1. Consistorium, de summa Trinitate, consil. 1. n. 1.* regulam Cancellariae de annali, vel triennali possessori prædictis beneficiariis nihil prædestet, quod accinet ad fructus lucrificandos: eo quod regula in fructibus non tribuit, sed solum in proprietate, titulo, & dominio beneficij.

At vero utrum ius & titulum beneficij ipso sit perdat, dubitari potest, propertea quod ob publicam fidei professionem titulus beneficij iam acquisitus, ad non titulum reduci videatur. Præterea vbi lex generalis possessori resolut, tunc possessor potius est decurtor, & intrusus, quam verus possessor est. *Ad decimas. 2. e. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 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