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**Diana, Antonino**

**Lugduni, M. DC. LXXX.**

9. An Statutum, seu lex prohibens ne bona stabilia alienentur in Ecclesiis,  
& personas Ecclesiasticas sit licitum? Ex part. 6. tractat. 3. res. 1.
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### 310 Tract. III. De Statuto prohib. alienat.

Sup. hoc in  
duabus pra-  
cedentibus &  
Relol. & in  
alii sciam  
primarum  
annotat.

**S. I.** A ffirmatiuam sententiam docet Pereira de  
manu Regia part.2 cap.67. num.9. & seq. ra-  
tione publicæ utilitatis, cum oporteat bona illa re-  
tineri & conseruari pro defensione Reipublicæ, &  
pro subeundi tributis, quæ Ecclesiasticis personis  
nequeunt imponi. Deinde hoc pactum dominus dire-  
ctus in concessionem emphyteusis licet apponere po-  
test: ergo & Reipublica, & tandem, quia in tali statu-  
to tollitur Clericis solùm id, quod tanquam ciui-  
bus illis competit, ergo non erit contra libertatem  
Ecclesiasticam, quæ solum versatur in his, quæ Cle-  
ricis, vel Ecclesiis competent, quatenus tales sunt,  
non autem quatenus ciues.

2. Verum mihi displiceret his temporibus hanc  
opinione typis mandatum fuisse à viro tam docto,  
vt revera Pereira est, cùm fuerit reprobata à SS. Do-  
mino nostro Paulo V. & Paulus Seruita cum ratio-  
nibus adductis à Pereira simile statutum impositum  
defendebat, vt patet apud Iulium Roffo in *responf. ad M. Anzon. Capellam part.4. cap.1. & seq.* Valenzuelam in *defens. cens. Pauli V. part.3.* Bertran de Guevarra in *propugn. libert. Ecol. affert.2. §.6.* Theologos Religio-  
nis Scruite in *defen. cens. Pauli V. c.7.* Maynardum de  
privileg. cler. p.2. art.22. n.52. Antonium Bouium in  
*responf. ad Paulum Seruitam part. 3.* Fagnanum de iust.  
*cens. Pauli V. part.3.* Anastasiu Germoniu in *affert.*  
*immunit. Ecol. cap.7.* Ngolinum in *respon. ad Inviccons.*  
*Gymnasi Parauini cap.6.* respondentes ad argumenta,  
quæ Paulus Seruita, & nouissime Pereira pro tali statu-  
to adducunt; & cùm Paulus Seruita aduceret pro  
defensione huius sententia statutum Regni Portu-  
gallie, de quo loquitur Pereira, supradicti authores  
respondent statutum Portugallie iustificari ex priuilegio  
Pontificis, & Concordatis; & tamen Pereira,  
his non obstantibus, vult illud defendere in terminis  
iuris communis, quod minimè admittendum est,  
cùm sit aperte contra immunitatem Ecclesiasticam.

3. Sed non grauabor hic apponere verba ali-  
quorum Doctorum ex supradictis, & ideo Anto-  
nius Bouius *vbi supra ad argum. 10. fol. mibi 42.* sic  
affirmit. [In Portogallo vi sono simil leggi, ma fatte  
di concordia col Clero e di consenso del Papa. Veg-  
gasi Francisco Celiu nel trattato de immunitate Ec-  
clesiastica nel fine, che tiferisce trà l'altre leggi che  
haua fatto Alfonso III. ancora questa, e racconta  
che perciò ne fu comunicato a Honorio III. e  
tutto il Regno interdetto, fin che poi ne fu assoluto  
e si fecero d'accordo con questi Ecclesiastici alcuni  
articoli che furono dal Papa approbat, dice questo  
Autore d'auer egli stesso veduto le Bulle Apostoliche,  
e dice il luogo dove si conseruan. Iulius Roffo  
loc. cit. ad argum. 27. sic ait. [In Francia se fu fatta tal  
legge, fu fatta col consentimento della Santa Sede si  
come anche ne fu di Portogallo.] Fagnanus *vbi  
supr. fol. mibi 81.* sic ait. Legem verò Regni Lusitanie  
cum sanct. memor. Clemens IV. compertam habuisset,  
ad Regem protinus literas dedit, vt correctione  
non expectata eam revocaret. Imò Francise Celius  
*rat. de immun. Eccles.* scriptum reliquit, Regem Al-  
phonsum similem in dicto Regno legem condidisse,  
ac propterea ab Honorio III. fuisse excommunicatum,  
ac Regnum interdictum, posteaque ipsum ab-  
solutum initis cum Clero conuentiobus, quas ait  
fuisse postea à Summo Pontifice approbatas, sequē  
Apostolicum eius vidisse diploma. Ita Fagnanus, &  
Anastasius Germonius in *affert. libert. Ecol. cap.7. fol.  
mibi 73.* cum Collegio Bononiensi in *responf. pro liber-  
tat. Eccles. num. 39.* Igitur in Pontificio diploma debet  
Pereira legem illam Lusitanam fundare, &  
non in iure communis: fundamenta vero nostræ sen-

tentia videbis apud citatos Doctores, quæ ex sacris  
Canonibus, & aperiis rationibus illam acerrimè de-  
fendunt; nec aliter potest sustineri. Vide omnes Ca-  
nonistas in *cap. fin. de immunit. Eccles. in 6.* Dicendum  
est igitur, tale statutum esse contra immunitatem Ec-  
clesiasticam, quia in illo sunt nominati Clerici &  
Ecclesiæ, ut in seq. resol. videbimus; tum etiam, quia  
si non essent nominati, disponeret super pertinentiis  
bus ad iurisdictionem Ecclesiasticam, ac etiam, quia Ref. 10.  
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# Bonor. stabil. in Eccles. Resol. X. &c. 311

satione, Principis. Idem in Regno Portugallia. Idem in Dominio Veneto; cum hac tamen moderatione, vt infra biennium bona donata, vel testamento reliqua tenentur Ecclesiastici ponere extra manum, & alienare. Et tandem obseruat idem seruari in Brabantia, & Germania.

## RESOL. X.

Proponuntur fundamenta pro negativa sententia.  
Et deducitur, an dictum statutum sit contra sacros Canones, & illud promulgantes, & observantes sint violatores libertatis Ecclesiasticae, & incidentia in censuram Bullae Cœna: Ex part. 6. tr. 3. Ref. 2.

& i. generali, & i. libernus la. 2. & i. fin. C. de sacro sacerdotio.  
Eccles. quod adeo verum est, ut frequentia excent antiquitatis exempla, vnde constat inuitari solitos fideles ad dandum Ecclesiis, & principes & ecclares latius legibus constituisse, vt collata eterna firmitate robarentur: nam omisiss ceteris lib. 2. Legum VVulgaturum, tit. 1. l. 1. sic constitutum extat. Quacumque res Sancti Dei Basilicis, aut per Principum, aut per quorumlibet fidelium cognationes collata reperiuntur, votiuè ad potentialiter pro certo censimus, ut in eorum iure, irreuocabili modo, legum aeternitate firmantur. Hæc ibi. Ergo cum hoc statutum prohibetur Clericis, id quod eis de iure divino, Canonico & Civili competit, esse contra libertatem Ecclesiasticam dicendum est.

## RESOL. XI.

Fundamentum secundum.  
Et infertur posse indices Ecclesiasticos cogere laicos ita statuentes, ut declarent, quod in huicmodi statutis non comprehendantur Clerici, neque Ecclesia.  
Et docetur, quod Statuta laicorum quamvis favorabilia non ligant Clericos, neque Ecclesiam: Ex part. 6. tr. 3. Ref. 3.

**S**ed his minimè suffragantibus dictum statutum esse contra Sacros Canones, & illud promulgantes, & obseruatorum esse violatores libertatis Ecclesiasticae, & in censuram Cœnae incidere omnino dicendum est. Probatur primum, quia statutum prohibens Ecclesiis, & p̄iis causis, personisque Ecclesiasticis, id quod eis competit ex priuilegio dato, vel à Romanis Pontificibus, vel ab Imperatoribus, est contra libertatem Ecclesiasticam: sed statutum de quo loquimur est tales ergo, &c. Maior patet ex communi Doctorum sententia; ita docet Hostiensis in cap. final. de reb. Eccles. non alienand. Innocentius in cap. nov. 1. num. 2. vers. his igitur, de sentent. excommunicar. & ibi Ioan. Andreas num. 2. Panormitanus in cap. Ecclesia Sanc̄tæ Mariae, de constitut. num. 23. & ibi Felinus num. 69. Decius num. 6. Bartolus in l. filius familias, §. Dini il. 2. num. 12. ff. de legat. 1. & in l. cuncto populus, n. 29. C. de summa Trinitat. Baldus in l. priuilegia, num. 1. C. de sacro sacerdotio. Eccle. Lucas de Peñia in l. 21. numero 5. C. de nauib. non excus. lib. 11. Cagnolus in l. final. C. de pastis, num. 186. Bertrandus lib. consil. 50. num. 2. Ioannes Lupus tract. de libert. Eccles. part. 2. qnaest. 10. num. 12. & 16. Lopus alleg. 92. num. 2. in fin. Grammaticus decisi. 100. num. 13. & alij.

1. Quid autem hoc statutum (vt in minore argumenti supponitur) tollat priuilegium concessum Ecclesiæ & Clericis à Deo, à iure Canonico & Ciuii, probatur. Et iure quidem diuino: quia Deus, cuius intuitu donatur Ecclesiæ, & qui rerum omnium verus est & proprius Dominus, ex l. ad. 5. c. qnaest. ff. de acquirend. rer. domin. & apud quem est verum dominum super omnem Creaturam, cum sit creator omnium, vt explicat Petrus Cardinalis Bertrandus tract. de origin. iuris diuini, qnaest. 4. n. 13. omnia in vsum hominum concessi. l. in pacudem ff. de usur. l. 2. ff. de stat. homin. idem Bertrandus prædicto loco, num. 17. vers. & sic referuntur: cum ab hac Dei liberali concessione Ecclesiæ & Ecclesiasticae persona non reperiatur excepta, necesse est fateri, eas hoc quoque Dei beneficio ex diuina concessione & largitione proueniente vti debere.

3. Iure etiam Canonico particulariter Ecclesiæ, Ecclesiasticæque persona priuilegiatae reperiuntur, cap. futuram Ecclesiam, & cap. evidentes 12. qnaest. 1. vbi Urbanus Papa idoneam rationem reddit; cur oportuerit Ecclesiis prædia donare, & semel donata in uiolabilitate retinere; quia videlicet plus utilitatis conferri poterat fidelibus, si hæreditates & agros, quos prius vendebant, tradicerent ipsi Ecclesiis habendos, vi ex fructibus eorum fidelibus prouideretur, quam si solum premium consignarent.

4. De iure ciuili exploratum est, licere vniuersitate relinquerre Ecclesiæ & Ecclesiasticæ personis quantum bonorum etiam immobilium optauerit l. 1.

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162. §. Ad  
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190. §. Ref.  
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