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THE CHANCERY ORDINANCE OF NICHOLAS III,
A STUDY OF THE SOURCES.

BY
GEOFFREY BARRACLOUGH.

At the very beginning of his pontificate Nicholas III., by a severe limitation in the numbers of the *littere que solent dari sine lectione et transeunt per audientiam*, that is, of the letters which were not referred to, or, more precisely, read before, the pope before expedition, carried through what was, in effect, a thorough reform of the Papal Chancery¹). This reform, which followed a consultation between Nicholas III., the vicechancellor²), and certain notaries, was then registered in a document³) containing a list of *littere dande*⁴) according to the practice which held in the Chancery immediately prior to 21th January 1278, together with the papal decisions, or Resolutions, as to the future classification of the letters concerned⁵). The Resolutions usually take the form of *Dentur*, where the customary practice is endorsed, or of *Legantur*, where the rescript in question is in future to be read before the pope. More specific Resolutions are however not uncommon: *Legantur per vicecancellarium*, for example, and even references to certain *cedule*. The full significance

¹) The significance of the reform is summarized by TANGL, N. Arch. XLIII.

²) Peter of Milan, BRESSLAU, Urkundenlehre I² 253. ³) TANGL regards it as an Entwurf, a draught, which was prepared before the consultation (Die päpstlichen Kanzleiordnungen von 1200—1500, Innsbruck 1894, p. 70); for a detailed discussion of his views, see below p. 231 sqq. ⁴) An expression which, although usual in modern diplomatic literature, and useful as a short designation, is not corroborated by the contemporary authorities; cf. R. v. HECKEL, Festschrift für GEORG LEIDINGER (München 1930), p. 112 n. 2. ⁵) OTTENTHAL, MIÖG. IX (1888) 681, first recognised the true nature of the document. TANGL dismissed his view in the first place, but later expressed agreement.

¹) The Chancery, as GOELLER, Zur Geschichte der Rota Romana, Sonderabdruck from Archiv f. kath. Kirchenrecht XCI 9 remarks, was not wont to be slipshod in its phrasing: where it uses two different expressions, we must assume that it means two different things. *Legatur per vicecancellarium*, *legatur per notarios*, and the other variations must therefore in my opinion be distinguished from the normal *lectio* before the Pope, which, as I understand the Ordinance, is referred to by the single word *legantur* alone. Probably there was a reading and examination of different degrees of severity according to the importance of the class of rescript in question. Perhaps important letters were read more than once. (Is this what Bonaguida, *Summa super officio advocacionis*, ed. WUNDERLICH, *Anecdota quae processum civilem spectant*, Gottingae 1841, has in mind in a well-known and much discussed passage, p. 332?) It will be difficult to establish an accurate meaning, but the fact remains that the different Resolutions of the Ordinance demand different explanations. — It is in this connexion also, that I would draw attention to my departure from TANGL's text in the *Resols.* to §§ 8, 10, 21, 22, 26, 30, 31, 33, 47 and in the text of § 12, where I have substituted *notarios* for *notarium*. The alteration is indeed supported by the mss. *Notarios* occurs ten times, *notarium* only twice (cf. p. 238 nn. q; gg; 242 n. gg; 244 n. bb). But in the vast majority of cases the word is abbreviated, and the main consideration in making the change is that *legantur per notarios*, as a resolution, means something essentially different from the simple *legantur*. ²) MERKEL, *Documenta aliquot quae ad Romani pontificis notarios et curiales pertinent*, Arch. stor. Ital. App. 5, 140; PITRA, *Analecta novissima spicilegii Solesmensis* (1858) p. 162; ERLER, *Der Liber Cancellariae apostolicae vom Jahre 1380* p. 140; TANGL, *Die päpstlichen Kanzleiordnungen von 1200—1500*, 72; TANGL, *Neue Forschungen über den Liber Cancellariae Apostolicae*, N. Arch. XLIII 567.

of these Resolutions has not, as it appears to me, been recognised hitherto, the ultimate conclusions have not been drawn from their precise wording; but in this place no endeavour will be made to indicate the importance of the Ordinance for the elucidation of Chancery procedure¹). Our business here is to secure, by use of all the known mss., a definitive text, and at the same time to estimate, in the light of textual criticism, the value of the three different traditions, all of which are independently of unusual significance for the study of Chancery history.

The necessity for a new edition of the Chancery Ordinance of Nicholas III. exists in spite of the fact that it has already been published five times²). An inspection of the document itself shews, in the first place, that it is an unusual type of official act, which demands particularly careful handling. If it might be maintained that no special care is necessary to produce a satisfactory rendering of the text of the Ordinance, the very contrary is true of the Resolu-

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tions — and on their rendering depends, in the final analysis, the significance of the whole. For the value of the Ordinance lies precisely in the fact that it shews us exactly which classes of rescript the Chancery singled out as especially important, and referred to the pope, which, on the other hand, it issued *de cursu*. The exact classification is, however, made by the papal Resolution; and for this reason it is essential that no effort be spared to discover the correct rendering of the Resolutions which are appended to each clause of the document. As it proves that the text is, for reasons which will appear later, quite unusually corrupt — to such a degree that, although 15 mss. have been consulted, reliance has still to be placed, on more than one occasion, on emendation¹⁾ — the search for a correct text demands, not only a careful collation of a maximum number of mss., but also a critical survey of the value of each version, and above all of each mss.-group. In the five editions referred to, nothing of the sort has been attempted. As TANGL justly remarked, 'the first critical edition'²⁾ of the Ordinance was that which appeared in his *Kanzlei-Ordnungen*.

This edition, however, appeared as long ago as 1894, and the text of the Ordinance has not since then been essentially emended. The second edition, which TANGL published in 1920, claimed merely to solve the difficulties arising from the original inability to discover Cardinal PITRA's authority for the text he published³⁾, and further to correct certain *Schönheitsfehler*⁴⁾: the really difficult problem can hardly be said to have been opened up anew. The necessity for a new edition, indeed, depends in no way upon the criticism of the current text; for the critical principles from which TANGL set out were both inadequate and wrong. At the same time, it must be noted in passing,

¹⁾ So below p. 243 n. hh. No ms. again (in spite of TANGL's assertion to the contrary, N. Arch. XLIII 562—3) reproduces § 6 in its correct form: the version printed here, as in TANGL's second edition, is essentially an emendation deriving from OTTENTHAL's view of the Ordinance as exclusively a list of *littere dande* (cf. p. 238 n. i). The accepted phrasing of §§ 12 and 84 (cf. pp. 239 n. o; 250 n. n.) is also a rearrangement of the only complete version (D). Cf. also pp. 238 n. kk; 242 n. ee.
²⁾ N. Arch. XLIII 563. ³⁾ N. Arch. XLIII 562: 'Über die Lösung eines Zitatens-Rätsels zu berichten, das Kardinal PITRA verschuldet und mit dem er uns durch Jahrzehnte gepeinigt hat, ist nämlich der eigentliche Zweck dieser Zeilen'. As to the discovery of the error, cf. Q. u. F. IX 193—196; N. Arch. XXXI 770. ⁴⁾ N. Arch. 567.

that, in suppressing a large proportion of the textual variants, he left no means of controlling his results. Re-examination of the material proves not only that he was highly arbitrary in his choice of variants, but also that the facts he sets down do not always correspond to the reality. In actual fact § 27, for example, is omitted neither in B 1 nor in B 2¹⁾; § 59, on the other hand, is omitted in the ms. which is here (as in TANGL's edition) referred to as B 1, as well as in B 2²⁾. Detailed criticism of previous editions may well be spared; but it is well to point out that it is particularly in his renderings of the all-important Resolutions, that TANGL makes inaccurate statements and suppresses weighty evidence³⁾. In other ways, the variants chosen for reproduction appear to be intentionally misleading — it is throughout suggested that B 1, the new ms. whose discovery alone justified a new edition, is of exceptional value; as compared with B 2 it is made to stand in another class, as regards both accuracy and completeness⁴⁾. In actual fact, it proves to be of merely secondary importance⁵⁾.

There are, however, other reasons than the unexpected weakness of TANGL's edition, which justify a reconsideration of the various traditions of the Ordinance. In the years which have passed since the appearance of his work, certain studies have been made public⁶⁾,

¹⁾ Cf. N. Arch. 571 note g. ²⁾ Cf. N. Arch. 574 note m. ³⁾ Cf. among others N. Arch. 569 note h (to § 12): 'Resolution fehlt C1, C2, D2', but C1 and C2, like C3, have Resol. *Dentur*. The Resol. to § 39 is not omitted in C1 (c. f. N. Arch. 573 note d); similarly in regard to §§ 51 and 54 (N. Arch. 574 notes d and g). C1, on the other hand, omits Resols. to §§ 1 (N. Arch. 568 note a), 21 (N. Arch. 570 note i), 44 and 49, but TANGL (though noting certain other variants in the first two cases) ignores the omissions. In § 56 C3 has the Resol. *legantur*, not (as TANGL maintains, N. Arch. 574 note h) *dentur*. The words *pro quibus leprosis* in § 17 are not omitted in C3 (cf. N. Arch. 570 note b): in § 51 C2 has the variant *proposuit*, not *opposuerit* (below p. 245 n. e, cf. N. Arch. 574 note c).
⁴⁾ Why does TANGL point out (N. Arch. 575 notes f and g) that the Resols. to §§ 65 and 66 are missing in B1, when in actual fact the codex omits all Resols. after § 60? The special mention of two out of almost thirty omissions is quite clearly misleading in regard to the others. Note again that the misplacement of the Resols. of §§ 38—42 to §§ 37—41 is ignored. Compare with the corresponding places in the text printed below N. Arch. 571 note f, 572 note b, 574 note h, 575 note e, 576 notes a, b and g, 577 note e. ⁵⁾ See below p. 198. ⁶⁾ F. SCHILLMANN, Die Formularsammlung des Marinus von Eboli, Bibliothek des preuß. histor. Instituts in Rom,

or at the least have been in preparation¹), which have finally rendered possible a critical use and evaluation of the works in which the Ordinance of Nicholas III. is to be found. The works in question are three separate formularies of the papal Chancery; and the recognition by TANGEL, in his 1920 edition²), of the fact that the mss. containing the Ordinance fall into three distinct groups was beyond all doubt the first essential step towards a thorough understanding of the document. He was thus able to set up a B³) group, containing those mss. of the *Formularium audientie contradictarum* in which the Chancery Ordinance was to be found; a C group of mss. of the so-called Formula-Book of Marinus of Eboli; and a D group comprising mss. of the *Liber Cancellarie*. Small attempt, however, was made — no doubt on account of inadequate knowledge — to pursue this valuable distinction to its logical conclusion. Above all, no attempt was made at a critical comparison of the three traditions, with a view to establishing their respective worth. In the 1920, as in the 1894 edition the text was based on the admittedly eldest ms. Similarly the new edition maintained⁴) the general principle that was put forward in the old, that the text of the C group was inferior to that of either of the others⁵). But it is by no means certain that the eldest rendering, simply because it is the eldest, is the most trustworthy; and the general principle of the edition also is open to damaging criticism.

Bd. 16 (Rom 1929); C. ERDMANN, Zur Entstehung der Formelsammlung des Marinus von Eboli, Q. u. F. XXI (1929—1930) 176—208.

¹) I am thinking above all of R. v. HECKEL's edition of the *Formularium audientie contradictarum*. Prof. v. HECKEL's knowledge of the *audientia* has been placed freely at my disposal for the purposes of this study. To him, and to Dr. C. ERDMANN, I owe also my best thanks for knowledge of various mss., use of photographs and collations, and particularly for a continued interest in the progress of the work. ²) N. Arch. 564—565; to a lesser degree already in the Appendix to the Kanzleiordnungen (p. 429). ³) The letter A signified the (supposed) original draught, drawn up in the Chancery, previous to the consultation. But see below p. 231sq. ⁴) N. Arch. 566: the only evidence brought forward is the variation in the Resol. to § 41 (in regard to which, cf. below p. 239 n. 4). ⁵) KO. 430: 'insbesondere halte ich auch nach der Kenntnis dreier weiterer Hss. daran fest, dass uns die vor allem wichtigsten Resolutionen in der Fassung des Kanzleibuchs, die ja auch in den meisten Fällen durch die davon unabhängige Gruppe MC [B2, B1] gestützt wird, verlässlicher überliefert sind als in der Formelsammlung Marinus von Ebulo.'

To set forth, in the full light of our new knowledge of the three main sources, a well-founded general principle for the following edition will be my main task in the following lines. The very fact that we are dealing with three, as would appear at first sight¹) independent traditions, makes it impossible to edit the text empirically, essential to push back to first principles. Each of the three mss.-groups has many variants which are both common to all its members, and, in comparison with the other two versions, peculiar to it alone. How are we to decide which of two mutually exclusive variants is correct? Is it justifiable to rely on the easy principle of numerical majority, when the variants of a whole group may conceivably be due to the error of a common archetype? If in one version it appears that a rescript belongs to the class of *littere legende*, in another it is stated that it issues from the Chancery *de cursu*, and the variants of the third group hover undecided between the two possibilities²), which authority are we to accept?

The question is, at any rate, essentially one of groups, and not of individual mss. The earliest ms. will not necessarily be the best, if it belongs to a less trustworthy group than others which appear otherwise reliable. The cardinal point, therefore, is to decide which of the three groups has the greatest claim to respect: this will then be the governing factor in the building up of the text. The importance of the group principle, moreover, is not destroyed, though in some ways undoubtedly modified, by the recent discovery of two mss., which can only partially be brought within the group system³). A discovery of further material was, indeed, an essential preliminary to further progress. TANGEL's two B mss. could hardly be said to constitute a group: the use of five new mss. of the B class, and two new mss. of the C class, makes it possible for the first time to determine with reasonable certainty, which variants are group-variants, which are merely unimportant variations of individual mss.

The group-variations are not merely textual. In each of the three classes, into which the mss. divide, the external form in which

¹) It is indeed open to question, whether or not B is a derivative of the C group; see below p. 219sq. ²) As in §§ 11—13, the most difficult instances in the whole Ordinance. ³) Ca and Ba; cf. below pp. 204; 219.

the Ordinance is drawn up, is different; and this is no accident, for the arrangement adopted for each particular group is found in all its constituent mss. Moreover, these external differences cannot be neglected from the point of view of textual criticism: they are the fundamental cause of a large proportion of textual divergences, and it is essential that their effect should be grasped, if the significance of certain of the variants is to be justly appraised. It is therefore with these differences in mind, that I pass over to a description of the 15 mss., which have been collated¹). In a few cases detailed treatment is unavoidable; but in the main the descriptions will be as brief as possible, and in every case will be confined to the matter in hand.

B Class: Manuscripts of the Formularium audientie contradictarum.

B1. *Bibl. Vatican. Cod. Chigian. EV 137*, a ms. on which TANGI places special reliance, is written in one column in a cursive script of the later XIVth century. The whole formulary, including the rubrics, seems to have been copied by one scribe. The Ordinance begins on f. 16', and is divided from the foregoing by a space of three lines. The Resolutions, where they occur, are in red; but none appear on ff. 16', 17, 18', 19, and only half of f. 18 is supplied with them. As a result, this codex only supplies us with Resolutions to the small group, §§ 28—60; and these are added in the most unsystematic way. The Resolutions to §§ 28—29 stand on lines by themselves before the text of the Ordinance; those to §§ 30—32 stand in the outside margin. § 33 has Resolutions both before and after the text. From here onwards, as far as § 50, the Resolutions are added in the line at the conclusion of the text: in §§ 51—60, on the other hand, they stand in the inner margin at the beginning of the text.

The result of this lack of method is that, without comparison with other mss., it would be impossible to understand the Resolutions as they appear in this tradition; and the omission of two-thirds of

¹) Of the new mss. B3, B6 and Ba are my own discoveries. I owe my knowledge of B4, B5, C4 and Ca to Prof. v. HECKEL, who discovered the three former: the latter is a discovery of Dr. ERDMANN. The original, or a photographic reproduction, has been used of each codex except D2.

the Resolutions detracts seriously from the use of the codex for purposes of collation, and reduces it to a very subordinate position.

B2. *Cod. Marcian. Venet. lat. cl. IV, n. 30*, a frequently used codex¹), whose importance has been severely criticised²), is one of the latest mss. here collated. Its composition is to be placed in all probability at the beginning of the XVth century.

The Ordinance begins on f. 53', and as in B1 is divided from the foregoing document by a short space. As a rule, each clause begins a new line, and is marked by a paragraph sign. The Resolutions throughout stand in the outer margin against the paragraph to which they refer.

B3. *Cod. Univ. Lipsien. lat. 937*, a codex in two parts, including much interesting material³), contains as its second part the *Formularium audientie contradictarum*. The whole appears to be written in the same hand, and the second part is twice dated 1381⁴), thus providing us with a copy of the Ordinance of whose date we can be certain. The value of this codex is, however, impaired by the destruction of the first and last leaf of each quatern, but the text of the Ordinance of Nicholas III. fortunately does not suffer.

The Ordinance commences on f. 85'a, but breaks off after § 69, where we read: *Require in fine istius quaterni: ibi invenies completa. Super decimis . . .* The mention of tithes in § 69 is no doubt the occasion for this interpolation. After the rubric *Super decimis* follow others *Super ecclesia*, *Super prebenda* (f. 86'), *Super censibus*, *Contra illos qui affugiunt dominationem abbatis* (f. 87), *Executio quando cavetur alicui per litteras audientie et postmodum convenitur*, *Revocatio litterarum que transeunt per fraudem*. Then follows (f. 87'), at the beginning of a new line, but without any other sign of a break, § 70

¹) Literature summarised by TANGI, KO. lxvisq. ²) "a very bad manuscript of about 1400," POOLE, *Lectures on the History of the Papal Chancery* (Cambridge 1915) p. 188. But it does not appear that he has used the ms. himself. It is one of the better mss. of the Ordinance (below p. 221), and Prof. v. HECKEL assures me that it presents a normally competent text of the usual version of the *Formularium audientie contradictarum*. ³) Cf. R. HELSSIG, *Katalog der Hss. der Univ.-Bibl. zu Leipzig, VI* (Die lat. u. deutsch. Hss.) Bd. 3 (Die juristischen Hss.), Leipzig 1905, p. 65. I shall attempt a fuller description of the ms. in a study of the formulary contained in the first part. — The authorities of Leipzig University Library kindly sent the ms. to München for my use. ⁴) f. 114', f. 131.

of the Chancery Ordinance, which is now carried uninterruptedly to an end on f. 87'a, and is immediately followed by the rubric: *Super terris, debitis, et rebus aliis ad iudicem extra, quando actor et reus sunt laici et de diversis civitatibus et diocesisibus.*

A division of the Ordinance into two part occurs in no other mss. B3 is also peculiar in adding an extra clause after § 70: *Item quod Iudei deferant distinctum habitum a Christianis iuxta statutum concilii generalis.* It would, however, be a mistake to suppose that we have here a paragraph of the Ordinance which has been lost in all other traditions: the clause (which has no Resolution) is in essence a reduplication of § 26, for which the reference to the Jews in § 70 is no doubt responsible.

In this ms. the papal Resolutions, which are uniformly written in red, are placed before the text to which they refer. This is obviously a copyist's variation of the normal form of the B mss., where the Resolutions find a place in the margin at the beginning of each paragraph: in B3, on the other hand, the Resolution is brought within the column, to leave the margin free, and takes its natural place at the head of the text to which it refers. In §§ 72—75, however, the arrangement changes, and the Resolutions occur at the end of the clause. Further the plan is to begin each paragraph with a new line. From § 41 till the break after § 69, however, this plan is not carried out: the text is continuous, the papal Resolutions nevertheless being inserted in red as before¹). Where the same Resolution is repeated more times in succession, on the other hand, it appears that the copyist has allowed one Resolution to serve for more paragraphs²). The alteration in the method of drawing up the document is also without doubt responsible for the serious misplacement of Resolutions, extending for ten paragraphs from § 59 to the break at § 69.

The ms. is written in a typical legible current-hand of the period; but it has apparently been written in great haste, and is full of crude mistakes³). Since, however, these are mainly misreadings of single

¹) In this ms., therefore, Resols. which stand in the margin (e. g. to §§ 62, 77) are additions. ²) E. g. the Resol. to § 41 serves for §§ 42, 43; that to § 45 serves for § 46; that to § 54 for § 55. ³) Cf. below pp. 237 n. pp; 240 nn. c; i; k; l; 242 n. p; 244 n. e; 246 n. y; 248 n. v; 250 n. k. On the other hand B 3 is valuable for the variant below, p. 243 nn. gg; hh.

words, and of only local significance, they do not seriously affect the value of the ms. for purposes of collation.

B4. *Cod. Vatican. lat. 5711.* The Chancery Ordinance begins on f. 21 of this codex, which is written in one column with wide margins. There is a space of one line between the preceding text and the Ordinance, no space however, after the Ordinance — the rubric to the next number begins in the same line as that in which the text of the Ordinance ends. Each paragraph is given a new line, and is further marked by a paragraph-sign and an initial capital. There is thus no difficulty in correctly distinguishing the divisions of the document. The papal Resolutions are placed in the left-hand margin, and a red line — or lines — connects the Resolution with the clause to which it refers.

The codex is written in a small, neat, ornamental book-script, such as was used for better-class work in the curia about the middle of the XIVth century. The lay-out of the whole is neat and careful: the copy is a conscientious piece of work — in its small way, almost a *Prunkcodex*. As regards the dating, it seems possible to arrive at reasonably clear indications. On f. 15' a notice of the death of Clement VI (1352) is added: f. 16 contains the addition of an Easter Table for the years 1344—1400. It is thus probable that the main work was completed by the beginning of fourth decade of the XIVth century.

B5. *Cod. Vatican. lat. 6332,* contains Nicholas III.'s Ordinance on ff. 27—30, and is written in a large, easily legible current-script, which appears very definitely to belong to the last quarter of the XIVth century. The whole is no doubt written by one hand, but a book-hand is adopted for the Resolutions (which are also written in black).

The Resolutions are placed in the outer margin, opposite the beginning of the clause to which they refer. As in B3 a recurring Resolution is not always repeated¹): whether the omission is intentional or not, is not clear — there are occasional exceptions²). A space of two lines divides the Ordinance from the succeeding text: at the

¹) The Resol. to § 6, e. g. appears to apply to § 7; that to § 45 to § 46; that to § 63 to § 64. ²) Thus no Resols. are given to §§ 27, 48, 60; but if the Resols. to §§ 26, 47, 59 are intended to apply, there is a radical incorrectness in the ms.

beginning there is no break, but the Ordinance starts with a large capital. Here again each clause of the Ordinance begins a new line¹⁾, but without a paragraph-sign.

B6. *Cod. Ottobonian. lat.* 747, a ms. from the middle of the XIVth century, in which (ff. 96'—98') the initial letters of the clauses are picked out in red, and preceded by paragraph-signs alternatively in red and blue. The Resolutions, in the outer margin, are written in black by the scribe who copied the text. A space of one line divides the ordinance from the preceding charter of Clement V²⁾. At the end, there is no space: the rubric *Exceptiones* follows immediately, and in the next line begins an *Exceptio fori*. The Ordinance appears on ff. 56'—58', and each paragraph normally begins a new line.

Ba. *Cod. Univ. Göttingen. iurid.* 90g is only a short fragment. On account of its special importance, however, it will be convenient to leave its discussion till later³⁾.

C Class: Manuscripts of the Marinus Formulary.

C1. *Cod. Vatican. Lat.* 3975 is dated *pontificatu sanctissimi patris domini Benedicti XII^{mi} anno secundo*, i. e. 1336⁴⁾. The Ordinance follows on the previous text without a break, but is distinguished from the other parts of the formulary by being divided into two columns⁵⁾. After the Ordinance also ff. 265b and 265' are left blank, thus marking by a considerable space the fact that the older part of the work ends here. Each paragraph begins a new line, and is marked by alternatively blue and red paragraph-signs. The Resolutions are added (in red) in the spaces left at the end of the lines, and thus stand at the conclusion of the text to which they refer.

C2. *Cod. Vatican. lat.* 3976 was made the basis of SCHILLMANN'S work on the Marinus formulary⁶⁾, and was regarded by him as the first official copy of the Chancery, laid down during the pontificate

¹⁾ There are exceptions: § 43 e. g. follows immediately on § 42. ²⁾ To the bishop of Policastro, as delegate in the case of the exempt monastery of s. Maria de Criptaferata, o. s. Basill, Tusculanen. dioc., whose exemption from visitation has been ignored by the bishop of Capaccio. *Datum Carpentatori X^o Kal. Aprilis pont. nostri anno nono.* ³⁾ below pp. 219sq. ⁴⁾ Cf. SCHILLMANN'S description, *op. cit.* 5—6. ⁵⁾ The introduction and § 1, however, are written in one column. ⁶⁾ *Op. cit.* 1—4.

of Boniface VIII. This view has been discredited by ERDMANN¹⁾, whose theory that C2, like C1, falls in the second third of the XIVth century, appears to be well-grounded.

The Ordinance occurs on f. 295 sqq. As in all codices of this rendering, the initial *Anno* and *Ea* (§ 1) have large ornamental capitals, and here the beginning of the Ordinance is further marked by a break of one line. The ms. is written in one column, and since each paragraph begins a new line (and is marked by a paragraph-sign), there is consequently much free space after each clause. This space is used, as in C1, for the addition of the Resolutions (in red). When necessary, they are continued into the space at the end of the following line. Between §§ 34 and 35 there is a space of one line, which was no doubt intentionally left free on account of the long Resolutions to §§ 31—33, which could not be fitted into the normal spaces; the omission of a whole sentence²⁾, however, upset the balance, and the break results.

After the end, on the fourth line of f. 296', the remaining page is left empty, and a later hand has added: *Explicit primus liber*. The later part of the formulary then continues on f. 297.

C3. *Cod. Arch. Vatican. Arm. XXXI., tom. 72³⁾* is to be dated from about 1345⁴⁾, and is thus probably the latest ms. of its class. The Ordinance is contained, as Nos. 3039, 3040, on f. 291 sqq. (new 329 sqq.). The description of C1 and C2 applies here: there is a space of one line between the Constitution and the preceding text, a longer space at the end, majuscule capitals at the beginning. Each clause begins a new line, and the Resolutions are added in red after the text to which they refer.

C4. *Cod. Carnoten.* 312⁵⁾ is written in one column in a Book-script of the first half of the XIVth century, thus hardly younger

¹⁾ *Op. cit.* 178—181. ²⁾ Cf. below p. 243 n. c. ³⁾ As to which ERDMANN, 177; SCHILLMANN, 6—10; TANGL, N. Arch. XLIII 564. ⁴⁾ ERDMANN shows that P[etrus] de Spinalo (= Spinello), whom SCHILLMANN (p. 8) regarded as a Corrector, and whose name appears on four occasions in the margin of the codex, is in fact a scribe in the employment of the Chancery in 1344 and 1345: this evidence gives us 'den ungefähren Zeitpunkt'. ⁵⁾ Cf. Catalogue Général des Manuscrits des Bibliothèques publiques de France II (Paris 1890), 152. The ms. has been examined by Dr. ERDMANN. I have to thank Prof. V. HECKEL for the use of the photographs which Dr. ERDMANN procured.

than C3, but not essentially older than C1 or C2. The arrangement is the same as in the other three mss. of the C tradition. In addition to the initials at the beginning, the *Item* at the beginning of a clause is occasionally written in elongated letters. As a rule each clause begins a new line, but shorter paragraphs are occasionally written together¹⁾ — perhaps they are regarded as one. The Resolutions fill up the spaces left when the text to which they refer is ended: where a long Resolution occurs²⁾, or where no space is left free³⁾, the Resolution occasionally overlaps into the margin, or is placed by the following clause. If, however, it is placed in the outer margin and connected with the text by a conventional sign, it is to be regarded as a correction or addition.

The Ordinance appears on ff. 311—312.

Ca. *Cod. Paris. lat.* 4184, recently discovered by Dr. ERDMANN⁴⁾, has been given the signature Ca, with the object of contrasting it with the other mss. of the Marinus formulary. What we have here is a copy of an earlier version of the work, whose existence had already been proved, but of which no complete rendering had come to light till the discovery of this ms.⁵⁾ This form of the work includes, besides the original five books arranged after the model of the *Liber Extra* of Gregory IX.⁶⁾, the *Tractatus extravagantium*, which finishes (f. 230—232) with Nicholas III.'s Constitution, the formulary of the *Audientia*⁷⁾, and single pieces. Immediately after the Ordinance occurs a letter⁸⁾ which is not a part of the Marinus formulary. Other letters appended to the formulary date from the pontificate of Clement V. (1305—1314); and if the codex is therefore to be attributed to the second decade of the XIVth century, this would well agree with the character of the script. The large initials are finely decorated, each clause of the Ordinance has a paragraph-sign, and in the initials and paragraph-

¹⁾ E. g. §§ 4, 5. ²⁾ E. g. § 33. ³⁾ E. g. § 4. ⁴⁾ The following description is made solely for the purposes of this study: it is not intended to anticipate the public notice of the discovery, which has yet to follow. See, for the moment, *Catalogus codicum mss. bibl. regiae*, P. 3, III (Parisii 1744) 558, where however the ms. is placed in the XVth century. ⁵⁾ It is not my business to discuss its relation to the two fragments C (= *Cod. C117* of the Chapter-Archives of St. Peter's) and E (attached to C3); cf. ERDMANN, 195. ⁶⁾ ERDMANN, 190sq. ⁷⁾ SCHILLMANN, Nos. 3366—3425. ⁸⁾ Inc.: *Loquimur ex commotione cordis*.

signs the typical XIVth century alternation between red and blue is observed. The codex is painstakingly written, carefully arranged — in short, a high-class piece of work.

The style of the Ordinance is that of the other C mss. The Resolutions are added within the text (but in coloured ink) after the conclusion of the paragraph. Here again lack of space results in a Resolution being concluded in the next, or written in the previous¹⁾, line or lines²⁾; but to prevent confusion a vertical line is, if necessary, introduced to divide the Resolution from the text to which it might mistakenly be thought to belong.

D Class: Manuscripts of the Liber Cancellarie.

D1. *Cod. Collegii Hispanici Bononien.* 275³⁾, undoubtedly one of the most important sources at our disposal, is to all appearance the oldest copy of the Ordinance in existence. TANGL's attempt to give it a fixed date, i. e. 1281 (or possibly 1296), is unconvincing⁴⁾; but the palaeographical evidence indicates beyond doubt that it was written before the end of the XIIIth century.

The codex is arranged in one column and numbered in pages. The Ordinance starts at the beginning of p. 97, and ends halfway through p. 101, the rest of the page being left free⁵⁾. Each clause begins with a new line and is distinguished by a paragraph-sign. The treatment of the Resolutions is characteristic of the D class as a whole, in all copies of which the clauses are rearranged into two groups in accordance with the revised rules for the handling of the rescripts concerned, which Nicholas III. established⁶⁾. First come the

¹⁾ E. g. Resol. to § 81. ²⁾ The Resol. to § 73 is continued into the two following lines. ³⁾ See TANGL's detailed description, KO. lxii—lxv. ⁴⁾ This was also BRESSLAU's opinion, UL I² 346 n. 4. BRESSLAU suggests that the codex was brought to Bologna by Jacobus, canon of Bologna, who was *Auditor Litterarum Contradictarum* on 6 July 1278, but replaced (whether on account of death or of resignation is, as BRESSLAU admits, a moot question) in the following year. The suggestion is ingenious. But the note in the margin of p. 21 of the ms., on which TANGL (KO. lxiv) relies for his dating (although it is impossible to give it any very definite meaning), seems to indicate that a Johannes, (son of) Franciscus de Bononia, stood in that relation to the codex, in which BRESSLAU would place Jacobus. ⁵⁾ After p. 98 pp. 89—90 (containing Const. V, KO. 61—64) are inserted: here again half of p. 90 is empty. ⁶⁾ Cf. TANGL, KO. 70—71.

littere dande, ending with § 3 of the original document, after which the note is added: *Ista hodie dantur*¹⁾. Then follow the *littere legende*. To the significance of this rearrangement it will be necessary to return. The immediate consequence was that it was no longer necessary to write *legantur* or *dentur* after each clause: so much was implied by the position which the paragraph was given in the document. Thus only the longer Resolutions appear in this version, and here also the leading word is usually omitted²⁾.

In D1, however, another hand — as it seems to me, a characteristically XIIIth century current-hand — has added Resolutions in the outer margin of each page. These extra Resolutions, the necessity for which it is incidentally difficult to understand, are connected with the paragraphs to which they refer by conventional signs³⁾.

TANGL'S editions of the Ordinance, it must be noted, print in essence the text of D1⁴⁾, together with the Resolutions which are found in the margin of the same codex. But this procedure, which would regard the text and the additions in the margin as a unity, seems to me to be open to grave criticism. It was probably occasioned by the fact that the Resolutions in the margin are in some degree a supplement to those in the text: where a Resolution appears in full in the text, it is often omitted in the margin⁵⁾. But the two series

¹⁾ Cf. below p. 237 n. ss. ²⁾ TANGL, KO. 71. ³⁾ These are not always exactly opposite the clauses to which they refer — a discrepancy which has led TANGL into not a few errors. The Resol. to § 11 ('versehentlich schon zu n. 10', according to TANGL) is written opposite to § 10, but unmistakably connected by a sign with the paragraph to which it refers. The Resol. to § 10 is written opposite to § 8 (§ 9 is a *littera danda* and therefore removed to another position): here again an unmistakable sign connects the Resol. with § 10, while there is no sign after § 8, which is thus left without a Resol. in the margin (no doubt because a full Resol. occurs in the text). The information which TANGL gives in regard to this group of clauses is thus confused and misleading. — It is impossible to say where TANGL found the Resol. *dentur* to § 26 in his edition of the document in the Kanzleiordnungen (p. 75 note w). The Resol. in the margin of D1 is *leg. per not.*; in the text the clause is arrayed under the *littere legende* and the Resol. *legatur* is therefore presupposed. In TANGL'S second edition we are led to presume that the reading *dentur* is supported by B1: in actual fact, however, B1 omits the Resol. ⁴⁾ The second edition introduces a few modifications, e. g. in § 38 (cf. below p. 243 n. z) the *pape III.* after *Honorii*, which is found only in D, is omitted. ⁵⁾ Cf. above n. 3; also e. g. the

of Resolutions nevertheless represent two different traditions. Those in the margin must have been taken from some other version of the Ordinance than D1, i. e. from the original document, from a Marinus codex, or from an early edition of the *Formularium audientie contradictarum*²⁾. With the limited material for comparison at hand, it is practically impossible to put forward a certain theory of the origin of the additions to D1, particularly since they present us with not unimportant variants, which have no apparent connexion with the other traditions. In § 73, for example, the Resolution *dentur* is found in no other ms., and is at variance with the arrangement in D, which would make this and the following clause refer to *littere legende*³⁾. If, however, the original from which the additions were copied was a Marinus codex, the Resolution *legantur* to § 6 would suggest that it was a ms. of the later edition of the formulary⁴⁾; for Ca, in contrast to the later edition, has correctly *legantur per vicecancellarium*⁵⁾. To this view, however, I do not incline; and it appears doubtful whether the marginal entries refer back to an 'original', for the Resolution to § 5 is obviously incorrect⁶⁾, and this in spite of the check which must have been exercised by reference to the correct placing of the paragraph in the text of D1.

Many factors, on the other hand, suggest a connexion between the additions to D1 and the B rendering. Not least among these is that of external arrangement. We have seen that the normal procedure in B was to copy the Resolutions into the margin by the side of the text to which they refer: the same plan, we should surmise, held in the ms. from which the additions to D1 were transcribed. The

Resol. to § 84. But all the omissions in the margin cannot be explained so, cf. § 68 (below p. 247 n. r).

¹⁾ The rearrangement of D makes this obvious. ²⁾ The final version, it will be seen below p. 212, was in all probability not composed till after the period at which D1 was copied. ³⁾ See below p. 248 n. i. ⁴⁾ In this case X, if not D1, would have to be placed, at the earliest, at the very end of the XIIIth century; for the final edition of the Marinus formulary dates from the years 1292—1294, ERDMANN, *op. cit.* 190. On the other hand, X supplies us with Resolutions to both §§ 26 and 27, whereas § 26 is omitted altogether in C. Ca however has at § 27 not only the Resol. which properly applies, but also that to the omitted § 26: this, if it were possible to make any hypothesis as to C and X, would imply a connexion between X and Ca. ⁵⁾ See below p. 238 n. i. ⁶⁾ *Ibid.*, n. h.

marginal Resolutions to §§ 10—13 in D1 receive corroboration from a number, if not all, of the B mss.¹⁾; § 26, which is omitted in B2 B6 C and the other D mss., receives a Resolution, and that in fact which is found in B1 B3 B4 B5²⁾.

It would perhaps be difficult to assert with certainty that the marginal entries in D1 are taken from B, particularly in view of the fact that the mss. of this rendering with which comparison is possible belong to an edition of the *Formularium audientie contradictarum* which is essentially a product of the XIVth century³⁾. But it is clear that they must be sharply distinguished from D1 itself. With this in view, I have regarded them as fragments of an unknown codex, whose class cannot be decided, and to which I have given the signature X.

X offers a more accurate reading of the all-important Resolutions than D1 itself⁴⁾, and it is clear, in view of its early date, that as regards the limited information which it contains, it may conceivably be the most valuable evidence we possess. On the other hand, though we know where the copyist of X diverged from the readings of D1, we do not know where, under the influence of D1, he diverged from the readings of his authority⁵⁾. A copyist, working with two renderings before him which did not always agree, was given food for thought: the fact of the re-arrangement in D alone necessitated a careful collation of the two codices — much more careful, for instance, than in transcribing a B codex, where the Resolutions, following in the same order, could be almost thoughtlessly copied from the old into the new ms. In view of this, a certain degree of caution in the use of X is necessary⁶⁾.

¹⁾ Particularly B2 and B6; cf. below pp. 238 nn. ff; ll; 239c; d; e; p; r; s.

²⁾ Except for a minor variation, below p. 35 n. 81. ³⁾ The fragment Ba, whose archetype at least must be set in an earlier period, contains no papal Resolutions.

⁴⁾ To the instances cited in the text should be added those of §§ 19 and 24; cf. below pp. 240 n. a; 241 n. aa.

⁵⁾ Such may have been the case in regard to §§ 12 and 13.

⁶⁾ A final peculiarity of D1 is to be noted. At the beginning of many §§ the abbreviation *n̄* (= normally *non*) is added in the margin at the beginning of the text. In a number of cases it falls partially under the paragraph-sign, and was thus probably added at an early date — whether by the hand which wrote D1, that which wrote X, or another, I cannot say. Neither can I say what the abbreviation signifies: probably it is merely an unusual abbreviation for *nota*. In any case, it has

D2. *Cod. Paris. lat.* 4169 is a copy of the old *Liber Cancellarie* made by Dietrich of Nieheim in 1380¹⁾. The Chancery Ordinance appears on f. 72 sqq., and has been printed by ERLER in his edition of the codex²⁾, which offers a fuller reading of the variants than either of TANGL's editions. I have not been able to use the codex personally, but it is clearly nearly identical with the text of D3.

D3. *Cod. Ottobonian. lat.* 911 is a copy of D2 made towards the end of the pontificate of Boniface IX.³⁾ The Ordinance (ff. 62'—66) has the title: *Forma rescriptorum introducta ex antiquo*, and although the rearrangement renders Resolutions unnecessary, most clauses in the first group of *littere dande* are followed by the words (added in red) *Ad idem*⁴⁾. The codex is drawn up in one column, and each paragraph of the Ordinance begins on a new line.

Considered from the point of view of external arrangement, we have thus three types of ms. D is a total rearrangement of the original text (A); in B the Resolutions are placed, as a general rule⁵⁾, in the outer margin by the side of the clause to which they refer; in C they follow within the column in spaces left after the text is finished. The form of D will need separate consideration later⁶⁾; the effect of the other two versions is not difficult to conceive. The object in the B mss. is probably to single out the leading-word, so that the significance of the papal ruling is immediately apparent — an object which is easily explained by the practical uses for which the *Formularium audientie contradictarum* was designed⁷⁾. Only occasionally is more

clearly no connexion with the Resols. (whether i. e. they are *legantur*, *dentur*, or neither), for it appears before the following §§: 10, 11 (both sentences), 21, 23, 26, 27, 30, 31, 33 (both § 14 and § 59 of the rearranged version), 40—43, 45—49, 51, 52, 57, 60, 63, 64, 66, 68, 70, 75, 81, 83.

¹⁾ Cf. TANGL, KO. lxxv; ERLER, *op. cit.* 1 sqq. ²⁾ *Op. cit.* 140 sqq. ³⁾ TANGL, KO. lxxvi.

⁴⁾ Except §§ 34—6, 39, 49, 51, 53, 59, 62, 65, 71, 75, 76, 81. The same words, however, appear at the end of clauses in other Constitutions (e. g. f. 58'—59', 60'—61'), and have no significance for the purposes of the edition. For this reason, they are ignored in the textual apparatus, below p. 236 sqq.

⁵⁾ As to B1 — admittedly exceptional — and B3, see above pp. 198 sqq.

⁶⁾ Below p. 225 sq. ⁷⁾ Its wide circulation is explained as due to the invaluable practical guidance which it offered to the Proctors (*procuratores*) at the Curia: for them it was a handbook of practice; cf. v. HECKEL, Eine Kanzleianweisung über die schriftmässige Ausstattung der Papsturkunden in the *Festschrift für GEORG LEIDINGER* (München 1930), p. 112 n. 4.

than *dentur* or *legantur* written in the margin. Where a longer Resolution occurs, the larger part of it follows the text, usually without being distinguished by use of a different coloured ink¹); the governing word alone is singled out and placed on one side. On other occasions the Resolution is included in the text²), and a shorter Resolution, to the same effect, finds its place in the marginal list. All this renders it difficult to deduce the original wording from the B tradition alone; and the difficulty is increased by the ease with which, under this method, copyist's errors could take place. Where the Resolutions are reduced, as far as possible to a list of single words, misplacement is not difficult³), particularly if the rubricator who added the Resolutions was not the copyist of the text of the Ordinance. Errors of this sort are, indeed, guarded against in the best ms. of the class (B4)⁴) by lines which connect the Resolution directly with the corresponding paragraph. In other B mss., on the contrary, serious misplacements of the Resolutions are common⁵).

The arrangement of the C group leads to misplacement of another sort misplacement which can truly be said to be more apparent than real. Where a clause fills the line, or lines, in which it is written, where an unusually long Resolution occurs, the Resolution, or part of it, is not infrequently transposed to the end of the following paragraph⁶). Here again the best ms. of the class (Ca) provides a safeguard⁷). But it is not surprising that in cases of this sort frequent copying produces complicated results — that parts of Resolutions, for example, are found inserted in the middle of the text of succeeding clauses⁸).

From the point of view of group-variants — real textual differences between the three classes of ms. — variations of this sort have to be discounted. The Resolution *dentur* (*detur*) to § 68 in B3 B5, for example, has no generic importance, is not from a textual point of view an actual variant, since it proves that in both cases the Resolution applies to § 69⁹). Once understood, in other words,

¹) E. g. §§ 58, 69, 76, 79. ²) §§ 6, 8, 22, 29, 33, 38, 73, 74, 84. ³) Cf. above p. 208. ⁴) See above p. 201. ⁵) As to B1, see above p. 195 n. 4; as to B3, above p. 201. ⁶) Instances will be found below pp. 237 n. aa; 238 n. ff; 240 n. ll; 241 n. m; 242 nn. aa; ff; 243 nn. b; c; d; 244 n. tt; 245 n. e; 247 nn. i; s; 248 nn. u; ff; nn. ⁷) Cf. above p. 205 ⁸) Thus p. 243 n. b. ⁹) Below p. 247 nn. r and y.

variations of this type affect the classification neither of mss. nor of variant-readings. But they are at the same time a far-reaching complication of the work of editing; for if they are not understood, they are bound to influence the valuation of mss., and may even affect the choice of variants. An inspection of the textual apparatus sufficiently indicates their frequency in all mss. and versions: scores of variants go to prove that a more complicated text than the present could scarcely face an editor¹).

In view of this situation, it is well to ask whether there are no external aids, by which the correctness of the various readings can be judged; and here as in most questions concerning the Ordinance, we have to distinguish between text and Resolutions. As TANGL had already noticed²), both the *Corpus iuris canonici* and the papal Registers offer a check on the text. Both have been used here³), and evidence from the papal Registers has finally rendered possible a wholly satisfactory emendation of one of the most puzzling readings of the whole document — the concluding word of the Resolution to § 38, which TANGL was forced to omit in both his editions⁴).

¹) E. g. below pp. 238 n. ff; 240 n. vv; 242 nn. aa; ff; 243 nn. c; cc; 245 n. t; 246 n. s; 247 nn. f; o; y; 248 nn. c; i; s; 249 nn. ff; nn. ²) KO. 81, note to § 82. ³) In support of the reading *minutis* in § 24 (below p. 241 n. y), see cc. 3, 30 X3, 30. The omission in the C mss. of the qualification *de assensu dioecani* to § 39 is shewn to be false by c. 3 X5, 33. In regard to p. 237 n. pp, cf. Reg. Vat. 20 (Greg. IX. a. 4) f. 3, n. 10 (ed. AUVRAY, No. 5132): *Tuis devotis precibus inclinati . . . concedimus, ut cum illegitimis provincie tue clericis . . . quod in susceptis ministrare ordinibus et ad maiores promovere ac beneficia ecclesiastica obtinere valeant, exceptis de incestu, adulterio et sacerdotibus ac regularibus procreatis, auctoritate nostra valeas, prout saluti eorum expedire videris, dispensare* (to the archbishop of Compostella, 1240 April 5). Similarly to the archbishop of Rouen, 1240 May 18, *op. cit.* f. 11', n. 60 (AUVRAY, No. 5186). — It is worth remarking that the extra clause in B3 (cf. above p. 200) is, in its reference to the *statutum concilii generalis*, more precise than the corresponding § 26 of the Ordinance; for c. 15 X5, 6 was issued in the Lateran Council of 1215. ⁴) Reg. Vat. 52 f. 14' (Clem. V. a. 1, ed. BENED n. 82): *Tuorum exigentia meritum . . . Hinc est, quod nos volentes tibi gratiam facere specialem tibi auctoritate presentium indulgemus, ut scolasticis disciplinis insistens in loco, ubi studium vigeat generale, fructus redditus et proventus beneficiorum tuorum, que nunc obtines, etiam si dignitates existant, et curam habeant animarum, cum ea possis usque ad biennium integritate percipere, cotidianis distributionibus dumtaxat exceptis, cum qua illos perciperes, cum in ecclesiis, in quibus illa obtines, personaliter resideres, et ad residendum interim in eis*

The justification of a new edition, however, does not, and cannot, lie in minor textual corrections. A reliable reading of the Resolutions is the first essential; and it is obvious that the external aid of the Law-Books of the Church or the Registers of the Popes is of small avail in helping us to decide whether a rescript is to be classed as a *littera legenda* or to be grouped with the letters which passed through the *audientia*. The only support which could be won in this connexion would be that provided by a hand-book of Chancery procedure. Such a hand-book, however, is the *Formularium audientie contradictarum*, which is essentially a practical collection of the rescripts which issued from the Chancery *de cursu*. Is it then possible to maintain that letters which find no place in the *Formularium audientie contradictarum* must be classed in the Constitution of Nicholas III. as *littere legende*? Have we in the formulary of the *audientia* itself a check on the Resolutions of the Ordinance?

It would at first sight appear that this was distinctly not the case. The practice of the Curia (though Nicholas III.'s Ordinance was perhaps a stabilising influence) changed rapidly¹⁾, and the *Formularium audientie contradictarum*, in the eldest form of which more than a short fragment is available, represents the practice which held more than a quarter of a century after Nicholas III.'s reform was put into effect. As found today in a large number of codices in all parts of Europe, the *Formularium audientie contradictarum* is a product of the early XIVth century: no ms. carries us back beyond the Avignonesse period in the history of the papacy²⁾, though its existence as such can be traced back to the pontificate of Boniface VIII³⁾. It is indeed proved by the existence of Nicholas III.'s Constitution itself and other strong evidence, that a forerunner of the

minime tenearis, nec ad id a quoquam valeas cohortari. Non obstantibus . . . Similarly *op. cit.* ff. 11', 13 (ed. Nos. 62, 72).

¹⁾ Besides §§ 3, 10, 12, 19, 30, 76 and 84 of the Ordinance itself, cf. the notes quoted from Cod. Barberini XXXI, 11 by KIRSCH, Ein Formelbuch der päpstlichen Kanzlei aus der Mitte des 14. Jhs., *Histor. Jahrbuch XIV* (1893) 814—820; e. g. f. 155': *Et sic servatum fuit, ut prescribitur, tempore quo cardinalis Albus erat vicecancellarius et magister Manuel regebat vicecancellariam. Tempore vero cardinalis de Pugeto servatum fuit, quod etiam . . . et etiam tempore domini P. tit. s. Stephani in Celiomonte presbiteri cardinalis in litteris de Altopassu . . .* See also ff. 41b, 106b, 143, 158b.
²⁾ BRESSLAU, UL. II², 269. ³⁾ v. HECKEL in the LEIDINGER Festschrift 110.

collection was in use at a considerably earlier period¹⁾; and of this archetype I have in the Göttinger codex *iurid.* 90 g (Ba) discovered a valuable fragment. But what remains is too short to be of service for the purpose in hand²⁾. It is, moreover, to be observed that by no means all, and notably not the earlier, mss. of the *Formularium* contain Nicholas III.'s Ordinance³⁾. It is indeed a curious fact, of which it is not necessary for me to attempt an explanation here, that the Ordinance appears in the later mss. of the *audientia* formulary precisely at a period in which it had lost its practical value⁴⁾. For the reorganisation of the Chancery at the turn of the XIIIth and XIVth centuries, the handing over of Letters of Grace to a newly-formed class of Referendaries and the leaving of Letters of Justice alone to the Notaries⁵⁾, must have removed most doubts as to procedure, and rendered unnecessary a handy Reference-List, which is what for practical purposes the Ordinance had become⁶⁾.

¹⁾ It was used by Duranti as a source for the *Speculum Iudiciale*, as v. HECKEL shews conclusively, *op. cit.* J. TEIGE, Beiträge zur Geschichte der *Audientia litterarum contradictarum* (Prag 1897) p. 17, refers to the as yet unknown work as the *Stilus* or *Modus curie*, on Duranti's authority. But there can be no doubt that when Duranti writes '*secundum stilum curie*', he means literally 'according to the practice of the curia', and is not citing the title of the work he is quoting. At the same time, this is a minor point: some work must have existed, and its title is of small account. ERDMANN'S suggestion, *op. cit.* 198 note 5, that this work is identical with the Marinus formulary, is however unfortunate. The discovery of Ba should make it easy for further research to demonstrate that it is with the *Formularium audientie contradictarum*, or rather its predecessor, that the so called *Stilus Curie* is identical.
²⁾ Cf. below p. 219. ³⁾ To the already well-known *Codd. Vindob. lat.* 2188, *Monacen. lat.* 17788, and *Paris. lat.* 4163, I am able to add an early and unusual version of the formulary, which I have discovered in *Cod. Ottob. lat.* 762. ⁴⁾ Although the uses of the formulary were essentially practical (thus, indeed, its wide circulation), v. HECKEL, *op. cit.* 112 n. 4. ⁵⁾ BRESSLAU, UL. II² 10, particularly note 2.
⁶⁾ The Letters of Grace which passed through the *Audientia* constitute a possible exception, though it is generally admitted that their numbers declined during the XIVth century, and that the category of *littere que transeunt per audientiam* came to approximate more nearly to the category of *littere de iustitia*; cf. generally BRESSLAU, UL. I² 281sq. On the other hand, I am far from convinced that the accepted view of the reorganisation of the Chancery at this time is the correct one. I have not seen it questioned, that Letters of Grace were given over, in the new order of things, to the Referendaries; but it seems more probable that they dealt with *littere legende*, the notaries with all classes of *littere simplices* — and these could be either Letters

In sum, therefore, it is in no wise to be assumed that a letter which is found in the *Formularium audientie contradictarum* (and was thus undoubtedly a *littera danda* at the time of Clement V. or John XXII.) was also a *littera danda* in 1278. But the question is not so simple as this. Like the Marinus collection, the formulary of the *audientia* only gradually assumed its final shape and dimensions: it was revised, added to, rearranged. To the earlier main body of the work, which was complete and ordered in itself, was appended an unarranged group of formulae, as first the *Tractatus extravagantium*¹⁾ and then the so-called Sixth Book was appended to the earlier Marinus formulary²⁾. If therefore a letter is found in this unarranged appendix, it is possible that it had only recently come to be arrayed among the *littere que transeunt per audientiam*; that, in other words, it was still in 1278 one of the letters which would only be issued *cum lectione*, or that it had again been brought within this category by Nicholas III.'s severer ruling. Important clauses of the Ordinance, clauses in which I have been forced to differ from the text of TANGEL'S edition³⁾, refer to this class of rescript. It is therefore essential to test the hypothesis more fully; to decide whether we can in general accept the distinction between old and new, between original text and appendix, in the *Formularium audientie contradictarum* as an indication, in cases of doubt, whether rescripts with which certain paragraphs of the Chancery Ordinance were concerned, belonged to the *dande* or to the *legende* class.

Of the paragraphs in question No. 55 (*Item quod tempore interdicti possint religiosi clausis ianuis celebrare divina etc. — Dentur*) is a simple example — simple because in all the fourteen mss. consulted

of Grace or Letters of Justice (though the latter, of course, predominated); cf. TANGEL, KO. *Const. XII*, § 12. Moreover, the history of the office of Referendary, particularly in its origins, needs further treatment, as recent researches have shewn; cf. GOELLER, *Papsttum u. Kaisertum* (1927) p. 622—44; BAETHGEN Q. u. F. XX 131 n. 3. From our point of view, however, procedure would be even more simplified by the division of work between Notaries and Referendaries, if the theory I have put forward proved to be correct.

¹⁾ SCHILLMANN, Nos. 2782—3064. No. 3064 is the Ordinance of Nicholas III.

²⁾ ERDMANN, 190sqq. ³⁾ Above all §§ 12, 13 (according to information for which my best thanks are due to Prof. v. HECKEL).

no variant of the papal Resolution is to be found¹⁾. There is thus unanimous testimony that in 1278 the Indulgence in question was issued *sine lectione* and passed through the *audientia*. In the formulary of the *audientia*, on the other hand, it is placed in the unclassified appendix²⁾, i. e. among the letters, whose addition at the end of the earlier part of the formulary, it has been suggested, would indicate that procedure in regard to them had been fluctuating; which may well, at the period when the original collection of letters *que transeunt per audientiam* was compiled, have still been *littere legende*. It thus appears that this line of enquiry can get us no further. But there is a further point. If the pontificate of Boniface VIII. is to be regarded as a turning-point in the history of the *Formularium audientie contradictarum*³⁾, it is immediately apparent that there may by a connexion between the large group of unordered formulae which was appended to the *Formularium* and the appearance of the *Liber Sextus*⁴⁾; in other words, that a change of law⁵⁾, as well as a change of practice, could affect the amount and the nature of the business which passed through the *Audientia litterarum contradictarum*, and that the appendix in question represents this change.

Privileges of the sort referred to in § 55 of the Ordinance were granted to *religiosi* as a "*favor personarum*"⁶⁾ before 1215. In the Lateran Council of that year a similar indulgence was then granted to bishops *de iure*; that is, in such wise that the right could be exercised without special papal permission⁷⁾. Gregory IX. extended the privilege

¹⁾ In one ms. it is omitted (cf. below p. 245 n. bb) but no doubt the Resol. to § 54 was intended to serve here as well, above p. 200 n. 2. ²⁾ According to information received from Prof. v. HECKEL. ³⁾ Cf. above p. 212 n. 3.

⁴⁾ 1298 March 3; cf. the Publication Bull, *Sacrosanctae Romanae ecclesiae*.

⁵⁾ It is, of course, true that the law changed gradually, that there was no gap between the *Liber Extra* of Gregory IX. and the *Liber Sextus* (cf. SCHULTE, *Die Dekretalen zwischen den Decretales Gregorii IX. und Liber Sextus Bonifacii VIII., ihre Sammlung und Verarbeitung*, Sitz.-Ber. d. phil.-hist. Klasse d. kais. Akad. d. Wissensch. LV (Wien 1867) 701sqq.); but the Sext was nevertheless very much more the work of Boniface VIII. than the *Liber Extra* was that of Gregory — this appears clearly enough in FRIEDBERG'S analyses of their respective sources, *Corpus Iuris Canonici* (Lipsiae 1881), coll. xi—xviii, 1. ⁶⁾ c. 57 X 5, 39 *gl. ad v. Excommunicatis et interdictis* (ed. Paris 1612).

⁷⁾ c. 25 X 5, 33. The decretal was further understood to confer a similar right on the bishop's *familiares*, '*quia alias nihil eis conferret*',

similarly to *ministri ecclesiarum*¹⁾. Thus the original privileges for *religiosi*, although they were interpreted strictly²⁾, had already early in the XIIIth century changed their significance. Bishops, ministers of churches, the *familiares* of bishops, and in some cases at least secular canons, enjoyed the same right, without the need of a special papal privilege: regulars, from being in a more privileged position, had come to find themselves if anything at a disadvantage. It was no doubt with the object of putting to an end this anomalous situation, of equalising the legal position of all clerics, secular and regular³⁾, that Boniface VIII. finally issued his decretal: *Alma mater*⁴⁾, which provided:

quod singulis diebus in ecclesiis et monasteriis missae celebrentur, et alia dicantur divina officia sicut prius, submissa tamen voce et ianuis clausis, excommunicatis ac interdictis exclusis, et campanis etiam non pulsatis. Et tam canonici quam clerici ecclesiarum, in quibus distributiones quotidianae illis, qui horis intersunt canonicis, tribuuntur, si ad officia non venerint supradicta, distributiones easdem amittant, sicut interdicto perderent non exstante, si divinis officiis non adessent.

The consequence of this decretal is indubitable⁵⁾. It granted to all clerics *de iure communi* the right which *de iure* had formerly only belonged to certain of them, and which certain *religiosi* had acquired *de privilegio*⁶⁾. In other words, it rendered such privileges

according to Innocent IV., *Apparatus super quinque libros decretalium* — I use the Venetian edition of 1481 — *ad id. cap., v. Et interdictis*. Bernard of Parma, in the *Glossa ordinaria*, *ad id. cap. v. Quandoque*, is doubtful how far the right can be extended to canonici: "non deberent semper celebrare, sed aliquando: ita quod non esset scandalum."

¹⁾ c. 57 X 5, 39. Ministers seems to mean *rectores*, but not *vicarii*; cf. Innocent IV. *ad v. Ministris*. ²⁾ c. 11 in VI^o 5, 7. ³⁾ Another reason is, however, alleged in the decretal itself: "Quia vero ex distractione huiusmodi statutorum exerescit indevotio populi, pullulant haereses, et infinita pericula animarum insurgunt . . ." ⁴⁾ c. 24 in VI^o 5, 11. ⁵⁾ It is expressed particularly clearly in the gloss of Abbas to c. 57 X 5, 39 v. *Permittimus*: "Hodie hoc c. servit de nihilo; quia hodie permittitur singulis clericis celebrare ianuis clausis, excommunicatis vel interdictis exclusis; ut habetur in c. fi. § adiciamus et § seq. eo. tit. li. VI." Further in the *Summarium* at the head of c. 25 X 5, 33: "Tempore generalis interdicti episcopi non prohibiti, qui non fuerunt culpabiles interdicti, clam celebrare possunt; et hodie istud non est privilegium episcoporum, sed ius commune, ut in c. fin. de sent. excomm. in VI." ⁶⁾ Incidentally it cancelled all privileges exceeding the

superfluous. Holy offices could be exercised — must, indeed, under pain of a *subtractio distributionum*, be exercised — without a privilege. From this time forward a privilege to this end, costing as it did both trouble and money, would not be unnecessarily sought: a privilege of this sort, indeed, would henceforth be out of place — for the idea of a *privilegium secundum ius commune* is a contradiction in terms¹⁾. Whatever the inclusion of this indulgence in the additions to the *Formularium audientie contradictarum* signifies, it is thus abundantly clear that it does not mean that now for the first time, as a result of a change in law or practice, this class of rescript would issue from the Chancery *sine lectione*. A change in law had certainly occurred, but it was such as rendered the rescript in question obsolete. Are we, in consequence, to conclude that the appendix in the *Formularium* consists of 'discards,' of letters which were relegated to the end of the collection because they had lost their practical importance for the procedure of the *audientia*?

This point²⁾, important as it is for the general history of the *Formularium audientie contradictarum*, cannot detain us here. In addition to what has been said above, there is independent evidence that the rescript referred to in § 55 of the Ordinance was issued, at any rate some twenty years before the publication of the latter, without being read before the pope. In the *Consuetudines Curie Romane* of Bonaguia of Arezzo³⁾, a work composed about the end of the pontificate of Innocent IV.⁴⁾, we read: *Item conventibus et*

limits which it set. Examples of such privileges are given in the Gloss *ad v. Concessis*, where it is also observed that this cancellation cannot bind the future. But the privilege contemplated by § 55 of Nicholas III.'s Ordinance does not exceed the limits of the new law; so that this point does not concern us here.

¹⁾ HINSCHIUS, *Das Kirchenrecht der Katholiken u. Protestanten in Deutschland III* (Berlin 1883) 808 n. 6. If c. 7 X 1, 38 appears to be an exception, the Glossator's explanation of the word *Concedimus* ("i. e. concessum esse ostendimus a iure communi") shews that every attempt was made to bring the decretal within the normal system. Cf. however the *Prohemium quomodo indulgetur ius commune* in the Marinus formulary (ed. SCHILLMANN, No. 804: I use *Cod. Vat. lat.* 3976, f. 115^v): *Licet superfluum videatur precibus postulari quod conceditur a iure communi, interdum tamen propter cavillationes malignantium et adiectionem roboris potioris ipsa quoque iustitia non inutiliter indulgetur.* ²⁾ I am indebted for the valuable suggestion to Mr. E. S. CORN, Fellow of Brasenose College, Oxford. ³⁾ Ed. WAHRMUND, *Archiv f. kath. Kirchenrecht LXXIX* (1899) 18. ⁴⁾ A detailed grounding of this dating against WAHRMUND, who places the

*collegiis conceditur de facili, quod possint celebrare divina tempore generalis interdicti*¹). 'De facili,' there can be little doubt, implies that the rescript concerned was a *littera danda*²).

The detailed examination of one single clause of the Ordinance provides us, at most, with negative evidence. It is possible that the appendix to the *Formularium audientie contradictarum* consists of discarded pieces; but before this positive suggestion could be adopted, it would be necessary to trace the individual history of all the formulæ concerned, and this is a question which concerns the *Formularium* itself rather than the Ordinance of Nicholas III. Something has occurred to give rise to this appendix, and we cannot say what it is: we can only say what, with reference to § 55, it is not. It is not, in other words, a change in Chancery procedure in the years immediately preceding the beginning of the XIVth century: in the absence of other, and precise, evidence to the contrary, no definite significance can, for our purposes, be attributed to the position in which a letter is found in the *Formularium audientie contradictarum*. From the point of view of the Ordinance, therefore, we are thrown back upon the normal resources of textual criticism for the solution of any doubts which may arise.

The lettering (BCD) adopted by TANGL for his second edition of the Ordinance expresses an apparent preference for the rendering of the Ordinance which appears in the *Formularium audientie contradictarum*; but the preference is only apparent, for, as has been

work in the years 1245—6, would be out of place here. It may be remarked that the *Apparatus* of Innocent IV. (written, as WAHRMUND admits, after the years mentioned above) receives indirect mention; further that the *causa electi Cassalensis* (Cashel, Ireland), to which the *Consuetudines* refer, is doubtless the case mentioned in the Register of Innocent IV. under the year 1254 (*Reg. Inn. IV.*, ed. BERGER, 7955).

¹) The *clausis ianuis* of the Ordinance is no doubt to be understood.

²) Cf. the Saxon *Summa prosarum dictaminis* (ed. ROCKINGER, Quellen u. Erörterungen z. bayer. u. deutschen Gesch. IX) 222: "*Et dicuntur simplices vel communes eo, quod sine difficultate dentur.*" There is no doubt that *sine difficultate* = *de facili*. The work is dated by ROCKINGER (p. 205) before 1241; by ROSENSTOCK, *Ostfalens Rechtsliteratur unter Friedrich II.* (Weimar 1912) p. 66, after 1236. See also v. HECKEL in H. GRAUERT, *Magister Heinrich der Poet in Würzburg* (Abh. d. k. b. Akad. d. Wissensch., phil. hist. Classe, XXVII, München 1912) 219, with references given there (above all, to the *Libellus petitionum* of Cardinal Guala, ed. v. HECKEL, *Arch. f. Urkundenforsch.* I 502, which however is even earlier in date than the Saxon *Summa*).

said, TANGL's text is based on that of the *Liber Cancellarie*. The use of D as a textual basis is the more surprising as TANGL evidently thought it necessary to place the two classes which contained the document in its original form, first, at any rate so far as his apparatus was concerned¹). But the lettering, if perhaps misleading in regard to the D class, represents, whatever else, a real preference of B over C²). There is, however, little difficulty in shewing that of the two classes, B and C, the latter should, according to all standards of criticism, provide the better text. The real difficulty is to decide between the comparative merits of C and D.

The six mss. of the B class which have been described above belong, as a group, to the latter part of the XIVth century — B 4 alone perhaps being somewhat earlier in date³). Of the three classes, B is thus furthest removed on point of time from the publication of Nicholas III.'s Constitution. Moreover, it is known that a number of early mss. of the *Formularium audientie contradictarum* are in existence, which do not contain the Ordinance⁴) — a fact which would suggest that the Ordinance was introduced into the formulary at a comparatively late date, perhaps on account of the obvious connexion in subject-matter between the two. These indications would be telling, were it not for two further points: the possible connexion of X (dating in all likelihood from the XIIIth century) with B, and the discovery of Ba. The evidence of X is unfortunately too fragmentary to carry us further⁵); but further consideration of Ba is necessary.

This fragment, which occupies ff. 13—16 of the Göttinger Codex *iurid. 90g*, seems on palaeographical grounds to date from no later than the first quarter of the XIVth century, and is the middle part of a quire, the two outer leaves of which are lost. It begins with the words "*numerari non possunt*," i. e. the end of § 86 of the Ordinance, of which therefore only the comparatively insignificant conclusion is left. After the final sentence: *Cetera omnia sunt legenda*, however, the scribe continues without any break: "*Reliquæ autem cedulae coram ipso, ut predicatur, confectæ*" tenor talis est: *Clemens ep. servus servorum*

¹) N. Arch. 565; 567.

²) Cf. above p. 196.

³) Cf. above p. 201.

⁴) Above p. 213 n. 3.

⁵) See above pp. 207sq.

⁶) In my opinion, an emendation of this word into *oblata* (in accordance with the Introductory paragraph of the Ordinance) would be in place. In view of what is said p. 233, however, it would

dei ven. fratribus archiepiscopo Roth[omagen]. etc., prout inferius declarabitur," a formula which appears at a later stage. What immediately follows is a series of *Notule*, under the rubric *Quis, quid, et contra quem possit impetrare in curia Romana*, which is succeeded by the common formulae of the *audientia*.

In Ba, therefore, we have to all appearance a link which carries back the history of the B version of the Ordinance to approximately the end of the XIIIth century. At the same time it must be observed that our knowledge of Ba is far from complete. It is not unlikely¹⁾ that, in its complete form, the fragment covered no more than the single quire of which half is lost, i. e. that it contained no more than the complete Ordinance of Nicholas III. and six folios of formulae of which four still remain. In this case it would be more correct to regard Ba as a separate schedule based upon the *Formularium audientie contradictarum*, rather than as the *Formularium audientie contradictarum* itself. The formulary, it is made once and for all time clear²⁾, dates from the pontificate of Clement IV.; Ba on the other hand (with the Ordinance of 1278), necessarily represents a text at least a decade later in date, and this text does not contain the whole of the *Formularium audientie contradictarum*. The larger part of the the collection of formulae, it appears, is replaced by the concise list found in the Ordinance; then follows (apart from the *Notule*) "the rest of the schedule" — without doubt the *littere simplices* (or a selection of them) which §§ 85—89 of the Ordinance mention without entering into detail.

It thus remains possible that a later version of the *Formularium audientie contradictarum*, deriving directly from the earlier version whose origin is to be set in a period at least ten years before the

be interesting, if '*coram ipso . . . confecte*' were correct. The context, with the beginning of a *formula* from the *Formularium audientie contradictarum*, is reasonably clear evidence, on the other hand, that an emendation is necessary. The whole sentence, with its use of the word *cedula*, and the very definite light it throws on the proceedings before Nicholas III., is in any case important support for the view I put forward, below *loc. cit.*

¹⁾ An index of contents supports the calculation; further discussion, however, I leave to Prof. v. HECKEL. ²⁾ The same conclusion had already been deduced indirectly by Prof. v. HECKEL in the LEIDINGER Festschrift 114.

pontificate of Nicholas III., may not have included Nicholas III.'s Constitution; in other words, that the Ordinance was, as has been suggested above, introduced into the main version at a comparatively late date. In this connexion it is striking enough, that the later mss. of B omit as a body the very clauses (§§ 87—89) which Ba provides¹⁾. This fact suggests that all derive from one and the same archetype, which was obviously corrupt and therefore of a late date — which can, in fact, scarcely have been a derivative of Ba itself. It also makes a textual comparison of Ba and the later B mss. impossible. If, on the other hand, we examine the few variants of Ba which make comparison possible, it seems not unlikely that Ba derives from a C ms. At any rate, it shares with C the one variant of this class²⁾, and has nothing in common with the D text³⁾. In addition, however, it is necessary to note that Ba has a number of trifling variants of its own⁴⁾, which are probably sufficient to indicate that the archetype from which it derived, even if it was essentially an earlier text than that behind the other B mss., stood nevertheless at some considerable distance from the original document, and could therefore have been at the most of secondary importance.

Faced by a vast collection of variants, which do not point decidedly in any one direction, it is not easy to discover the origins of the later B codices. The unity of the group of six mss. is not difficult to prove: it is evident not only in the omission of the concluding paragraphs of the Ordinance and of § 61, but also in the change in the order of §§ 22 and 23, 65 and 66⁵⁾, as well as in a number of common textual variants⁶⁾. But there is further evidence, scarcely less conclusive, which points to a sub-division of the B class, B1=B3=B5, as it seems, building one group, B2=B4=B6 building the other⁷⁾. There can be little doubt — though the evidence points both ways — that the latter sub-division represents the better tradition⁸⁾. In

¹⁾ Below p. 250 nn. bb; cc. ²⁾ Below p. 250 n. dd. ³⁾ Cf. *loc. cit.* nn. bb; ff; kk; ll. ⁴⁾ *loc. cit.* nn. ee—ii; mm. ⁵⁾ Below p. 240 n. oo; p. 246 n. ii; ⁶⁾ Cf. pp. 237 n. t; 238 n. g; 239 nn. m; mm; uu; 241 nn. bb; rr; 242 n. f; 243 nn. b; f; bb; pp; 245 n. o; 246 n. t; 247 nn. z; ff; gg; 248 nn. p; mm; 249 nn; i; k. ⁷⁾ Cf. pp. 237 n. x; 238 n. s; 240 n. g; 241 nn. l; t; kk; uu; c¹; 242 nn. h; k; l; x; 243 n. p; 244 nn. v; aa; 245 n. mm; 248 nn. dd; ff; 249 nn. r; ll. ⁸⁾ As an analysis of the examples in the previous note, and in nn. 9 and 10 below, can show.

the former group, B1 is in every way the weakest rendering¹); but although B3 is in itself as careless a piece of work as B1, there are indications that it represents a better tradition than B5, which may be related directly to B1, shews at any rate a closer similarity to it than to B3²). In the latter group, a direct relationship between B2 and B6 is unmistakable³); but if of these B6 is without doubt the earlier and better⁴), neither is so trustworthy as B4. This is seen plainly in the omission by B2=B6 of §§ 26 and 59. In the case of textual variants, on the other hand, the evidence is not so conclusive: B4, as its early date would lead us to expect, is undoubtedly in many cases the best ms. of all⁵), but instances are not uncommon where B2=B6 offers us a preferable reading⁶). To account for all the combinations and permutations of the six mss., which an analysis of the variant-readings brings to light, is indeed outside the bounds of possibility. Variations occur which cut across the sub-divisions⁷), which postulate a complicated history of derivation, and make it plain that the mss. we have before us, with the exception of B2 and B6, are divided by an unusually large number of intermediaries — now, no doubt, lost — without whose aid a full understanding of the present relationship cannot be expected.

¹) See above p. 198; also below pp. 240 n. aa; 241 n. r; 247 n. 11; 248 nn. p; u. It is better than B3=B5, however, below pp. 240 nn. k, y; 248 n. dd; 249 n. s. ²) B3 is correcter than B1=B5 below pp. 237 n. z; 238 n. ii; 239 n. i; 240 nn. p; ww; 244 n. o; 248 nn. e; y; 250 n. v. On the other hand B5 is best below pp. 237 n. ff; 238 nn. h; t; 240 n. f; 241 n. o; 244 n. m; 245 n. n; 246 n. q. ³) Cf. pp. 237 nn. d; e; n; ff; 238, n. mm; 239 nn. d; p; ee; ll; oo; tt; 240 nn. e, m; o; q; x; vv; 241 nn. z; kk; uu; 242 nn. f; k; w; y; ff; ll; 243 nn. g; s; t; hh and many other examples. ⁴) Cf. pp. 240 nn. aa; 241 nn. t; tt; 243 nn. k; l; 245 n. b; 246 nn. mm; oo; pp; 247 n. ll. On the other hand, B2 is best pp. 238 n. m (n); 245 n. c. ⁵) Thus pp. 237 nn. ii; nn; 238 nn. c; kk; 240 n. bb; 241 n. a¹; 242 nn. w; y; 243 n. e; 247 n. bb; 249 n. dd; 250 n. aa. In comparison with B2=B6 alone, it is to be preferred below pp. 239 n. nn; 242 n. 11; 243 nn. n; t; ss; 244 n. a; 245 n. ff; 246 n. q; 249 n. x; 250 n. m. ⁶) E. g. pp. 237 nn. f; n; 238 n. x; 245 n. hh; 246 n. r; 249 nn. v; ee. ⁷) A few be cited. Thus B1=B3=B4 is correct, as a group, against B2=B5=B6, below p. 237 nn. d; e. Below p. 237 n. z B2=B3=B6 is correct against B1=B4=B5; similarly p. 240 n. ww; and B2=B3=B6 again below p. 238 n. t. On p. 240 n. p B3=B4=B6 are correct. The grouping on p. 249 n. nn is B3=B4=B5, B1=B2=B6, but neither is correct. In general, it would seem that B3 occupies a more intermediate position between the two groups; but B5 is strikingly the intermediate text in p. 237 n. f.

The most important question in regard to B, however, is that of its origin. It cannot, in the nature of the case, be connected directly with D; it may, on the other hand, be no more than a derivative of C. If, however, the evidence suggests that it derives directly from the original document in which the Ordinance was registered, its independent information will be of high importance, despite its late date and obvious corruptness, because its approximation to C, on the one hand, or to D, will enable us to estimate the correctness of either. And it is hard to escape the conclusion that B represents an independent source. B1, B3, B4, B5 all include § 26, which is omitted in the C mss. of both classes, as well as D2 and D3, though present in D1¹). Derivation from C, if not excluded, is thus rendered unlikely. More conclusive, however, is a variant to § 76: here B1, B2, B4, B6 alone of all the mss. known provide the words '*sed in virtute obedientie*'²) — mss., in other words, whose date hardly falls within a century of the promulgation of the Ordinance, alone give us the correct reading. Both these instances may be due to fortuitous survival³), and it must be admitted that they stand alone — on no other occasion is it necessary to accept the unsupported evidence of the B class. If, however, the indication they give is regarded as sufficient, it is logically necessary to accept B as a direct descendant of the original text of the Ordinance.

This conclusion is all the more important, when it is considered that, in the textual variants, B undoubtedly shews a greater similarity to C⁴) than to D⁵). At the same time, the degree of similarity is not sufficient — apart from the positive indications to the contrary — to warrant the supposition that B is a derivative of C: there are e. g. very few instances where a variant is found in all mss. of two separate classes⁶), though group-variants covering all mss. of one class are

¹) Below p. 241 n. ll. ²) Below p. 231 n. dd. ³) If, in other words, B derives from an early C ms., it may be that, in these two isolated cases, the original text is better preserved in the indirect, than in the direct, descendant. On the other hand, an early C ms. (Ca) is preserved, and it omits both passages. ⁴) The most important cases are below p. 246 n. w and dd; in the former, it will be seen, B is a stage further away from the D text than C. There is a certain similarity of B and C also below pp. 237 n. pp; 238 n. mm; 239 nn. gg; ii. ⁵) A certain similarity of B and D is to be observed below pp. 240 n. o; 242 n. y; 248 n. mm. Both B and D are wrongly arranged, p. 249 n. gg. ⁶) The similarity of B and D below

frequent enough in each rendering. But if B is an independent version, its value is only secondary, not only because of the lateness of all the mss. which have come down to us, but also because it is clear that all stand at a considerable distance from the archetype of the class. The most cursory glance through the variant-readings to the text of the Ordinance which follows, is sufficient to demonstrate the weakness of the B rendering as a whole: the point does not need labouring. Nor does Ba encourage us to raise our opinion of the later B text: there is little reason to think that there is a direct connexion between the two — on the contrary, Ba is more probably a corrupt derivative of C.

This is clearly not the case with the text which has been handed down to us in the Chancery-Book. It has till now not been doubted, and it is scarcely open to doubt, that D goes back directly to the original document. TANGL also places particular reliance on it, because it represents the 'official curial' text¹). But what does this imply? It is recognised on all sides that the official peerage-law in England does not represent the historical facts²): it is equally true that the official Roman text of the *Corpus Iuris Canonici* was not historically correct³). In this sense, the text of Nicholas III.'s Ordinance in the *Liber Cancellarie* may have been official, but the group-variants of the D mss. are positive evidence that it was not accurate⁴). To the textual question I shall have to return. It must first be remarked that, even in this narrower sense, official means little. All three classes of ms. with which we are dealing, are in some way official. The Marinus formulary was without doubt designed in the first place for use in the Curia: its circulation outside the Curia was far and away smaller than that of the *Formularium audientie contradictarum*⁵).

p. 236 nn. b; d is counterbalanced by that of B and C, below p. 239 n. o and p. 250 n. n: B=D, below p. 239 n. w.

¹) N. Arch. 565. Perhaps his preference of B over C is in the main due to the same persuasion regarding the *Formularium audientie* (*loc. cit.*, n. 1). ²) J. H. ROUND, *Peerage and Pedigree*, *passim*. ³) So, among others, SCHULTE, *Das katholische Kirchenrecht I* (Glossen 1860) 344. ⁴) They are also very considerable in number; e. g. below pp. 236 nn. b; d; 237 n. ll; 238 nn. d; p; ee; 239 nn. hh; qq; 240 nn. d; q; qq; 241 nn. h; bb; ee; gg; rr; 242 n. kk; 243 nn. a; v; z; tt; 244 nn. g—k; n; ii; 245 nn. a; z; hh; 246 nn. d; x; 247 nn. q; x; z; hh; uu; 248 nn. k; q; gg; ll; mm; oo; 249 nn. h; pp; 250 nn. r; bb. ⁵) Thus ERDMANN (p. 198) was led

In this connexion it must be repeated, that the oldest, and best, ms. of the *Liber Cancellarie* which we possess is to be found in Bologna, and was in Bologna at a very early date¹): we have no right to assume that it must have come there illicitly. Of the three groups of codices, therefore, all were originally designed for curial use, and none was confined in use to the Curia. And even in the Curia, it has still to be proved that one, i. e. the *Liber Provincialis* — for that, and not the more official-sounding *Liber Cancellarie* was after all its name in the XIIIth century — was in practice preferred above the others. In the XIVth century, indeed, the probability is that the *Formularium audientie contradictarum*, in which the Ordinance was brought together with the material to which it referred, would receive most practical attention. But probabilities need not detain us. The fact remains that B C and D were all in the first place intended for official use in the Chancery, and that it would be difficult to attach the idea of officialness to the *Liber Provincialis* in any sense in which it could not equally be attached to the *Formularium audientie contradictarum* or to the Marinus formulary. It seems to have been forgotten that we do not need to suppose that there was any call for an official, authenticated copy of the document. We should rather understand that, till at the earliest the removal of the Curia to Avignon, the original document was always to be found, if absolute certainty happened to be required. Where this was not the case — that is, in ordinary day-to-day practice — one copy of the Ordinance was doubtless as good as another.

If I have entered into the theory of the 'official' character of D at some length, it is because, from other points of view, I cannot concede to this group, and particularly to D I, the first-rate importance which TANGL, in the face of telling criticism²), attributed to it. It

to suggest that it 'nicht wie die anderen sozusagen veröffentlicht und handschriftlich verbreitet, sondern nur in der päpstlichen Kanzlei gebraucht wurde;' but his own discovery of the Paris ms. (Ca) indicates that this suggestion was precipitate.

¹) TANGL, KO. lxx. ²) On the part of BRESSLAU; both sides of the argument are given in KO. 71. BRESSLAU apparently withdrew his criticism of D I and his preference for the C text in the second edition of his *Urkundenlehre*, i. e. after the publication of TANGL's *Kanzlei-Ordnungen*. His first view is nevertheless essentially that at which I have independently arrived, and his subsequent withdrawal

is indeed possible that, as regards the detail of the text, D1 presents us with the best individual rendering which we have. Ca is certainly the only other ms. that can, in this connexion, compare with it; and Ca has its share, if by no means all, of the peculiarities common to the text of the Ordinance in the Marinus formulary¹). But even in the text, as opposed to the Resolutions, the re-arrangement in D1 has had its effects. Thus the fact that in D1²) § 29 was separated from § 28, rendered the beginning of § 29 in its original form incomprehensible. Instead of "*Item quasi similis pro redeuntibus . . .*" D1 therefore gives us the reading "*Item solet dari 'Post iter arreptum' pro redeuntibus . . .*"³). The sense is correct enough; but in so far as an edition of the original version of the document is (as TANGL justly observes⁴) the object, the reading is misleading. In comparison with this sort of general alteration, little attention need be paid to those variants of the usual sort in the text of D as a whole, which are to be regarded as mere errors⁵). These are in fact numerous enough to dispose of the theory that we are dealing here with an official text, if that word is understood to mean a text which was collated with the "original" and officially certified to be correct. There is, however, no need to suppose that the D text is anything more than

is sufficiently explained by the almost total lack of information, at that date, concerning either the Marinus formulary or the *Formularium audientie contradictarum*. If I am correct, later research has only served to shew that his first opinion was well-founded — it is another proof of BRESSLAU's critical soundness.

¹) Group-variants of C (including Ca) are to be found below pp. 238 n. b; 239 n. ii; 240 nn. b; gg; kk; rr; 241 nn. vv; yy; 242 nn. v; hh; ii; 244 n. b; 245 nn. e; uu; 246 nn. o; w; 247 nn. u; v; dd; ii; 249 n. y; 250 nn. p; s; dd. Cf. on the other hand, below p. 229 n. 4. ²) In D2, D3 § 29 is wanting. ³) Cf. below p. 242 nn. b and c. According to TANGL's edition, it should be noted, the words *solet dari* occur also in B1, B2, C1, C2, C3. ⁴) N. Arch. 566: „Es ist die Aufgabe jeder Edition, unter Nutzung aller durch die Überlieferung und die Grundsätze der Kritik gebotenen Handhaben, den Text möglichst nahe und getreu an die Urform heranzubringen. In diesem Sinne bin ich auch bei meiner Ausgabe verfahren und habe die Anordnung des ursprünglichen Entwurfs, nicht die spätere Umgruppierung des Kanzleibuchs, zugrunde gelegt, während für die Textgestaltung die sorgfältige und der Verordnung nahezu gleichzeitige älteste Überlieferung des Kanzleibuchs (D1) stark in den Vordergrund rückte.“ But the example in the text shews that it is as dangerous to rely on D for Textgestaltung as it is, on TANGL's admission, for purposes of Anordnung. ⁵) A list above p. 224 n. 4.

one of three renderings, all equally valuable — or valueless — until a critical examination has enabled a judgement of their respective merits to be given. We have, in other words, every reason to subject D, with the other two groups, to the normal critical controls.

When we do this, it is immediately obvious that the great weakness of D is the re-arrangement; the fact that it does not, and indeed makes no attempt to, provide us with the original text of the Ordinance. The effect of this on the clauses has been indicated: the effect on the all-important Resolutions is even more marked. In the first place, it is notable that the general clauses at the end of the document (§§ 85—89), which refer to those rescripts so obviously *littere que transeunt per audientiam* that they did not need detailed discussion, are all brought within the category of *littere legende*¹). Other paragraphs of greater importance are wrongly, or doubtfully, arrayed²). We must regard the re-arrangement, in fact, as a potent cause of confusion, though it is a cause of confusion which, with the help of the other versions, it is not difficult to check. Because of this safeguard, and because of the early date which must be assigned to it, D1 is undoubtedly one of the most important mss. But it would be a contraversion of the normal standards of criticism, if a re-arranged text were to be made the basis of an edition of the document in its original form. Such a course could only be justified, if it were shewn that D1 is so much the earliest, and so much the nearest to the original, of the texts which have been handed down to us, as to present us with the only rendering on which, in point of time, reliance can be placed.

This could perhaps be maintained, as against the claims of the Marinus class, if we possessed only mss. of the final edition of the

¹) B2 and C4 also add a Resol. *legantur (legatur)* after § 85; but this may be dismissed as mere carelessness. ²) Notably § 24. We do not know whether the arrangement of §§ 73, 74 under the *littere legende* is correct or not: at any rate, it is at variance with the reading of X. I have adopted the reading of D (in so far as it presupposes a *lectio*) in regard to § 26: it is, however, opposed to TANGL's version, and the Resol. in D is incomplete. In so far as a further explanation of the *legenda* Resolutions must sooner or later be sought (cf. above p. 193 n. 1), the incompleteness of the rendering of them in D must, indeed, be regarded as a serious weakness. — Cf. also pp. 239 nn. q; s; 240 n. a.

formulary. These mss. must, as has been seen, be placed as a group in approximately the relatively narrow period 1330—1345, i. e. they date from at least half a century after the publication of Nicholas III.'s Ordinance. Moreover the archetype of the final edition of the Marinus formulary — its relation to C1 C2 C3 C4 does not need discussion here¹⁾ — was composed, we may say with reasonable certainty, in the years 1292—1294²⁾. The presumption therefore lies at hand, that, even if the four mss. are accurate copies of the archetype, they do not bring us within a period of ten years of the publication of the Ordinance.

But these criticisms of the C group do not apply to Ca. In the first place, the codex itself is without any doubt considerably older than the other C mss. More important is the fact that it goes back to an older original. The earliest version of the so-called Marinus formulary was composed during the vacancy of the Holy See before the elevation to the Papacy of Gregory X., i. e. in the years 1268—1271³⁾. The inclusion of Nicholas III.'s Ordinance is sufficient indication that Ca does not belong to this tradition. It is, however, an earlier text than the other C mss., which derive from a version composed in the years 1292—1294⁴⁾. The composition of the archetype of Ca must therefore have fallen within the period 1278—1292. With a limited knowledge of the codex itself, there is no use in attempting to estimate the date more closely than this: the main consequence, for our purpose, is that the ms. from which Ca derives, was not essentially younger than D1. But there are also textual indications that Ca itself was derived at first hand from the original copy of its class, just as D1 in all probability was an immediate copy of the

¹⁾ See however ERDMANN, particularly p. 182. ²⁾ ERDMANN 190. If TANGL, when he speaks (KO. 430) of the definite date which C alone of the three mss. groups sets to the Ordinance, as an „Emendationsversuch aus dem 14. Jahrhundert“, means to place the composition of the Marinus formulary as a whole as late as this, the serious error in his calculations may well be one explanation of the low value which, for the purposes of his editions, he attributed to the C class. ³⁾ ERDMANN 188sq. ⁴⁾ It is not necessary to consider its relation to the two fragments, to which SCHILLMANN and ERDMANN give the signatures C and E. They do not include the Ordinance, and are no doubt derived from the earliest version; as to them, cf. ERDMANN 196.

*Liber Provincialis*¹⁾. Nor is it difficult to accept these indications, when we consider, first, that on account of its length, the immense Marinus formula book was rarely copied²⁾, secondly, that after 1294 the version represented by Ca was superseded by the final edition of the work. Moreover, there is every reason to place confidence in the conscientiousness of the scribe who copied Ca³⁾. In sum, therefore, we can regard Ca as a text which varies little from its predecessor, and in substance reproduces the Ordinance as it found its way into the Marinus formulary, probably within a decade of its promulgation. Nor can it be ignored that the Ordinance's entry into this essentially curial formulary — whose size and individual character must, in the eyes of the officials of the Chancery, as much as in ours today, have singled it out from its fellows — was, for all we know, in every way as official as its entry into the *Liber Provincialis*.

When we consider Ca in detail, it is immediately clear that the text which it offers is, as far as concerns the all-important Resolutions, much nearer to that of D1 than the text of the other C mss.⁴⁾ In other words, as we approach the original document, the degree of uniformity between the mss., as is to be expected, increases. This fact alone perhaps warrants the dismissal of TANGL's theory⁵⁾, that C and D go back to different draughts of the document. But if there is a notable discrepancy between the renderings of the Resolutions in Ca and C — i. e., a discrepancy in the very place where in time

¹⁾ Thus the variants in pp. 241 n. y; 243 n. hh are obvious attempts to reproduce the orthography of the archetype: the latter almost illegible word is a closer reproduction of the correct *interim* than the corruption *iurare* in D. Particularly interesting is p. 241 n. h. Here B and D have the reading *puniri*, C on the other hand has the correct form *publicari*. But the abbreviation for *publicari* in Ca is *puri*. If as I suggest, Ca is an immediate copy of the archetype of its class, it is not improbable that the same abbreviation obtained in the archetype of all three classes, and it is thus easy to see how the variant of B and D arose. Even the mistakes in Ca support the theory of its authenticity; the variants on p. 240 n. ii, p. 243 n. m, and p. 245 n. y appear to be due to an attempt to reproduce the somewhat illegible hand of a correct copy. ²⁾ Cf. above p. 224 n. 5 and the reference there. ³⁾ See above p. 204sq. ⁴⁾ Cf. the Resols. to §§ 6, 27, 35, 41, 47, 48, 62, where C1—4 are at fault, Ca on the contrary correct. Similarly also the variants below p. 240 nn. v; nn; p. 224 nn. cc; gg; p. 246 nn. a; mm; p. 246 nn. c; s; p. 247 nn. ff; ii. On p. 238 n. mm Ca and D alone are correct. ⁵⁾ As to which, below p. 232.

error was most likely to creep in — the fact remains that, in the details of the text, Ca includes also a number of the variants which are found in the other mss. of the Marinus class¹). Between Ca and C1 C2 C3 stands, indeed, C4 — it is the best text of the final version, and a link between the two main types, which serves at the same time to demonstrate the unity of the C class as a whole²). The later C text is therefore not an independent or semi-independent rendering, but a corruption of Ca. Nevertheless the discovery of Ca has, as has been hinted, presented us with a virtually new version of the Chancery Ordinance; for it is C which is dependent on Ca, and not the contrary, and with the appearance of Ca, C must necessarily fall into the background.

The evidence of C alone, however, even before the discovery of Ca, was in one particular sufficient to raise doubts as to the claim of D to priority. I refer to the question of completeness. The C text omits only one clause (§ 26) of the Ordinance³); and the omission is readily — if, as far as the original copyist of the Ordinance into the Marinus formulary is concerned, not altogether creditably — explained by the similarity of the opening words to §§ 26 and 27. D1, on the other hand, retains § 26, but omits §§ 44 and 67 — omissions which are more difficult to explain, for no supposition such as can be made regarding the single lapse in C holds good here⁴). The cause was without doubt the confusion introduced by the rearrangement, and we have thus a final piece of evidence of the danger of basing the text on the rearranged version as such. Similar also is the much-discussed evidence of the date at the head of the Ordinance —

¹) See above p. 226 n. 1. ²) Cf. Resols. to §§ 56, 62. Particularly noteworthy is the latter, where in C4 the correct *dentur* is changed by another hand into *legatur*, and thus made to agree with the false reading of C1, C2, C3. Of special interest for the classification of the C mss. is the variant below p. 238 n. o. C1, C2 and C3 are all in error in one way or another. In Ca the common variant of the group has been corrected — perhaps an indication that the ms. was collated with another, and a further reason to value it highly. In C4, which alone was originally correct, an addition in the margin has brought the ms. into line with the later C tradition, making its text the same as that of C3. Here again, therefore, C4 takes up a middle position. ³) C3 however also omits the text of § 33; cf. below p. 242 n. bb. ⁴) D2 and D3 omit in addition §§ 24, 26, 29.

XII. Kalendas Februarii appears in C alone — though here the incomplete version of D is found in the B mss. as well¹).

It is not necessary to cast doubts on the age and carefulness of D1: it is certainly a codex which we could ill do without. Occasionally also the text of the *Liber Cancellarie* alone is complete: only D, for example, includes the sentence '*datur per vicecancellarium, sed per notarios dari debet*' in §§ 12 and 84²). This is indeed not hard to explain. In neither the *Formularium audientie contradictarum* nor the Marinus formulary had this information any practical value: it was merely an antiquity of the Chancery, which did not affect actual procedure. For the Chancery organisation it could, on the other hand, always be of practical importance — if, e.g. another inquest, similar to that of Nicholas III., were to be made, it would be necessary, as in 1278 it was necessary³), to know what changes in procedure had in past time occurred. The D version, therefore, without doubt makes an individual contribution to the problem of textual elucidation. But it is for purposes of collation that, as our earliest ms., D¹ is invaluable: it cannot usurp the place natural to a ms. which seeks to present us with the text of the Ordinance in its original form. It is idle to speculate whether the other C codices would merit preference to D1, if Ca had not come to light; for Ca provides us with the authority we have been looking for — a text of the original version of the Ordinance which has some claim to equal D1 in age⁴) and authenticity.

But what is the nature of the document we have been considering? The question, has, besides its general interest, a certain significance for the purposes of textual criticism. TANGL has two suggestions

¹) The problem, why there is this important discrepancy between BD and C, seems to me to be incapable of solution. TANGL has offered various solutions (cf. for example, above p. 228 n. 2), all of which appear to me to be gratuitous; but in doing so, has ignored the main fact, that the full dating in the Marinus formulary is strong evidence of the first-rate importance of the C class. ²) The phrasing of § 12 is different, but the sense is the same. ³) Cf. besides the two paragraphs concerned, §§ 3, 10, 19, 30, 76. ⁴) The actual age of Ca itself is not of first-rate importance, provided that it stands in immediate connexion with the archetype of its class, and that the archetype satisfies the time-qualification. Dietrich of Nieheim's copy of the *Liber Cancellarie* is approximately a century younger than D1: yet to all appearance the two stand in the same relation to the original.

to make: first, that the Ordinance is, to use his own word, an *Entwurf*, i.e. a Chancery draught, prepared before the consultation, into which, when Nicholas III. had made his decision, the Resolutions were added¹); secondly, that each party to the consultation had a copy of the draught before him, that the Vicechancellor's draught passed into the Chancery as an official text, and that the draught of one of the notaries was the basis of one of the other traditions of the Ordinance²). The latter theory is clearly put forward as an attempt to account for the uniquely complicated textual relationship, which an examination of the mss. reveals. In another place he then adds: „Ich stimme insbesondere der Annahme BRESSLAUS vollkommen bei, dass der Verhandlung von 1278 über die litterae legendae et dandae die in den betreffenden Absätzen des Entwurfs nur mit kurzen Schlagworten bezeichneten Formeln selbst zugrunde gelegt waren“³); but this statement is apparently not intended to contradict his former theory. If we combine the two statements, they thus produce the impression that, in TANGEL'S view, the formulae to which the Ordinance refers, were themselves used at the consultation; but that at the same time a short summarising document, the Ordinance, lay before the parties, no doubt as a guide through the complicated business.

There will be no disputing the fact that formulae, or indeed a formula book, were employed at the consultation⁴): of this the newly discovered fragment Ba leaves us in no doubt⁵), and one copy of the *Formularium audientie contradictarum* explains the Ordinance as the '*presentatio huius libri facta pape Nicolao*'⁶). In the introductory paragraph of the Ordinance it is indeed stated that '*quedam cedula*' was laid before the pope: but the word *cedula*, if it normally means 'schedule', is found otherwise in the less usual sense of a 'collection of schedules' or a 'formulary'⁷), and need cause us

¹) Cf. above p. 1 n. 3. ²) N. Arch. 566. ³) KO. xlv. ⁴) See v. HECKEL in the LEIDINGER Festschrift 112. ⁵) Cf. the sentence quoted above p. 219 (together with the emendation in n. 6). ⁶) B5; cf. below p. 236 n. a. The title is interesting, even if it is, no doubt, merely the interpretation of a XIVth century copyist. ⁷) Thus in *Marculfi formulae* (MG. Formulae, p. 37 — a reference I owe to Prof. v. HECKEL): *Propterea eliganter facere non potui, ut volui, feci tamen ordinatus, ut potui, non solum ea que iussistis, verum etiam multa alia. In hanc scedola tam praeceptiones regales quam cartas pagenses iuxta simplicitate et rusticitatis meae natura intimare curavi.* Immediately afterwards the word is used (*incipiunt capitula*

no difficulties. More important, indeed, is the fact that 'a certain schedule', not 'this schedule' (*hec cedula*, i.e. the Ordinance itself) is mentioned. Moreover, references throughout the Ordinance to other *cedulae*¹) are sufficient in themselves to prove that other sources than the Ordinance lay before the consulting parties. A closer examination of these references, supported by other evidence, has however convinced me that, as regards the nature of the Ordinance, TANGEL'S conclusions leave something to be desired. There are, in other words, reasons to believe that what we call the Ordinance was rather a minute of proceedings than a draught of business. Particularly important in this connexion is the Resolution to § 73: *Quod dictum est in cedula de 'partibus convocatis' et 'vocatis qui fuerint evocandi'*²). No clause referring to this subject is to be found in the Ordinance. But TANGEL'S view is that the Ordinance was a draught — and if it was to have any practical value, it must necessarily have been a complete draught — of the matters which were to be brought up for discussion. In support of this theory he is therefore driven to the explanation that the document as it has been handed down to us, is incomplete³). Internal evidence of incompleteness is however wanting, despite the number of mss. consulted, and the marked differences between the three versions of the Ordinance⁴).

The view which I put forward, that the Ordinance was not a draught but a minute of proceedings, has the advantage, in contrast to TANGEL'S theory, that it does not necessitate the presumption of incompleteness. Moreover, it is supported by certain positive evidence

scedolae operis huius) in the sense of single *formulae*. In Ba also it is necessarily in the sense of a collection of schedules that the word is to be understood.

¹) §§ 20, 24, 69, 73, 79. ²) TANGEL, in his editions, affixes '*Dentur, sed servetur . . .*' But there is no warrant for this. *Sed servetur* is his own emendation: *dentur* (alone) is the Resolution in X. In D, on the other hand, the clause is arranged under the *littere legende*. The Resolution which is found in B — *partibus convocatis* — also affords indirect support for the reading which I give: for where a longer Resolution is abbreviated, it is the normal rule (cf. above p. 209) that the decisive word — which *Dentur* (or *legantur*), if present, would necessarily be — is singled out, and placed in the margin. The point is textually important; but does not affect the argument here. ³) N. Arch. 576 note. ⁴) The only possible argument in favour of incompleteness would be based on the appearance of an additional clause in B3. This, however, can be dismissed as a reduplication of § 26 (see above p. 200), and in any case TANGEL was not acquainted with this codex.

in the text, of which the Resolution to § 58 — *Legatur, et idem de litteris, que inveniuntur in registris eorundum pontificum* — is particularly noteworthy. In substance this, or rather the second part of it, is clearly not a Resolution, but another clause. In a draught, if the word is used at all precisely, it would appear as a separate paragraph, with a Resolution of its own¹). Its appearance in this form, i.e. as an addition made by the Pope, could only be explained on the theory that the official who drew up the schedule had carelessly overlooked the formula. In a minute, on the other hand, in which text and Resolution were written approximately at the same time²), the wording with which the Ordinance presents us, was possible enough; for it does not affect the sense, and may have had some justification in the method of procedure at the consultation³). The repetition in § 88 of the *littere revocatorie*, which had already been mentioned in the long list of *littere que dantur sine lectione* in § 85, is still another indication that we are dealing with a minute of proceedings, rather than with a (necessarily carefully drawn-up) schedule of business to be performed.

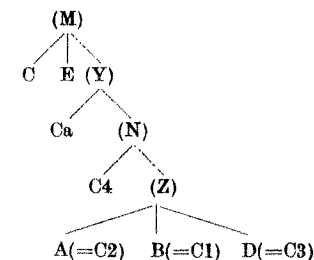
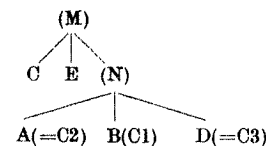
If this is the case, it is not difficult to explain the admitted complications and weaknesses of the text of the Ordinance, without recourse to TANGEL's gratuitous and purely hypothetical theory of multiple origin. The weaknesses themselves, which are pronounced enough to necessitate occasional emendation⁴), are hardly to be traced to the normal cause of incorrect copying and the lack of a conscientious and contemporary text; for it can be maintained with reasonable certainty that between D 1, and probably also Ca and D 2,

¹) It must be added that (despite the omission of *et* in C) the Resolution appears quite clearly as a Resolution in the two most important mss., Ca and D 1. (In X it has nevertheless a Resol. of its own; cf. below p. 245 n. tt). ²) The procedure, as I envisage it, is that the text of each clause was written when the discussion of that particular formula was entered upon; that when the discussion was ended, the Resolution was added; and that, first then, the next formula was in similar fashion discussed and minuted. ³) If the method of procedure was to work through a formula-book, it may well be that the Pope himself, his attention drawn to the subject by the *littere predecessorum Romanorum pontificum*, brought up the further question of the use of the Registers at this stage, although the subject did not appear in this position in the formulary itself; hence the form of minuting. ⁴) Cf. above p. 194 n. 1.

and the original document, there stands no more than one intermediary¹). The cause therefore lies further back — it is to be explained, in other words, by the nature of the original document itself. If this is to be regarded as a carefully written, carefully composed, planned, arranged, premeditated schedule, there is no place for corruptions. If, on the other hand, it was a hastily and, we may almost say, casually written minute, they become comprehensible.

The Ordinance is therefore a text in which certain defects are inherent. For this reason the aid and careful collation of all three versions is to be welcomed. At the same time difficulties and complications do not absolve the editor from the normal critical controls, and leave him free to reconstruct the text empirically. A critical study of the sources is as necessary as ever: an objective standard is the only means, in all decisive instances, of estimating the significance of alternative-readings. The result of the foregoing critical examination has been the rehabilitation of the C text: the following edition is based on the rendering of the Ordinance, which appears in the Marinus formulary. But there is a further point. A study of the sources throws new light on the Ordinance: a study of the Ordinance equally throws new light on the sources. Critical interest in the formularies which contain the Ordinance is new: only a beginning of their examination has been made. To the elucidation of the problem of the descent and relationship of mss. the detailed treatment of the textual variants of one small section from the main work will, it is hoped, in each case point the way. A further development of the relationship of the C mss. is already apparent²).

¹) Cf. above pp. 228; 231 n. 4. ²) ERDMANN's scheme (*op. cit.* p. 188) is on the left; my attempt at extension on the right: —



But it is particularly as regards the *Formularium audientie contradictarum* that new developments are suggested. It has been part of the theory of this study that the relations of the Ordinance of Nicholas III. and the *Formularium audientie contradictarum*, though obviously very close, are still so obscure that, without a particular treatment of the particular case, the one cannot be used as a commentary to the other¹). For this reason, no diplomatic elucidation of the clauses of the Ordinance has been attempted²). On the other hand, the very fact of its independent position in the history of the *Audientia litterarum contradictarum* has seemed to me to justify an independent study of the Ordinance of 1278. If the details of the procedure in regard to the *littere que transeunt per audientiam* are finally settled for this earlier period, the difficulties of the work on the *Formularium audientie contradictarum*, and on the *Audientia* itself in the succeeding age, must of necessity be materially lessened.

Anno^a) nativitatis Christi^b) MCCLXXVIII, XII. Kalendas^c) Februarii^d), pontificatus domini Nicolai pape III.^e) anno primo. Cum^f) quedam^g)

^a) In B5 add. in margin: Presentatio huius libri facta pape Nicolao. As title in D3: Forma rescriptorum introducta ex antiquo. ^b) Anno domini B D. ^c) Kal. C1 C2 C3 C4. ^d) For XII. Kal. Feb., die . . B D. ^e) domini N. III. B1 B4, domini N. tertii B3; om. pape III. B5. ^f) cum B6 C1 C4. ^g) quidam B2, quadam B5 C4.

¹) Above pp. 212—218. ²) I may refer for the moment to the examples of formulae, mentioned in the Ordinance, which TANGL has collected in the notes to both his editions. — As regards the edition which follows, only two points need be added. The numbers in brackets represent the order of the paragraphs of the Ordinance, as it is found in the *Liber Cancellarie* of Dietrich of Nieheim. The treatment of D is different from that of previous editors. Besides the separation of the X text (c. f. above p. 206sq.), I have added the supposed Resolution of D on some occasions in square brackets. The supposition is that the Resolution in D in any given case is *dentur* or *legantur*, unless the remaining words are actually added. In many cases where B and C have a longer Resolution, however, the remaining words are not added in D. To make this fact immediately apparent, I have added the Resolution for which the arrangement of D gives warrant, in square brackets. If (cf. above p. 227 n. 2) these far from rare variations are taken into consideration, the reading of the Resolutions which D offers becomes very unsatisfactory, and no doubt is left, that it is impossible to rely on a version which reproduces neither the complete nor the original text of the Ordinance.

cedula continens^a) formas litterarum apostolicarum infrascriptas oblata^b) esset eidem^c) domino^d) per vicecancellarium, idem dominus^e) dictis formis inspectis^f) et discussis^g), presentibus eodem^h) vicecancellario et quibusdam notariis, dedit certum modum, quem circa easdemⁱ) formas vult^k) observari, quousque aliud duxerit^l) ordinandum^m).

Iste sunt littereⁿ), que solent dari sine lectione^o) et transeunt^p) per audientiam^q):

1. (1) 'Ea, que de bonis' in maiori forma, ubi continetur^r), quod non obstantibus^s) iuramentis renunciationibus instrumentis^t) et confirmationibus in forma communi ab apostolica sede obtentis, bona ecclesiarum alienata illicite vel^u) distracta ad ius et^v) proprietatem ecclesiarum legitime^w) revocentur. — Dentur^x).

2. (2) Item 'Ea, que de bonis' in minori^y) forma, ubi non es tali^{quod}z) non obstante. — Dentur^{aa}).

3. (43) Item dispensationes super defectu natalium, que mittuntur^{bb}) sub^{cc}) sigillo^{dd}) cardinalis penitentiarii^{ee}), tam pro^{ff}) presentibus quam pro^{gg}) absentibus^{hh}) expediebantur usque ad tempus domini Gregoriiⁱⁱ) pape X., qui restrinxit^{kk}) eas^{ll}) ad presentes tantum^{mm}); quarumⁿⁿ) nulla legebatur^{oo}), nisi fuisset pro natis de adulterio vel regularibus^{pp}) aut incestu procreatis^{qq}). — Dentur presentibus^{rr}) sine lectione^{ss}).

^a) cedula(e) continentes B4, continens C3. ^b) ablata B5. ^c) ibidem B2. ^d) add. pape B2 B5 B6. ^e) add. papa B2 B5 B6. ^f) dictas formas dictis formis inspectis B1 B3 B4, dictas formas eis inspectis B5. ^g) discussis corr. C3. ^h) add. domino B1. ⁱ) corr. from eadem D1. ^k) vult B5. ^l) duceret B5. ^m) add. Dentur B3 B5 D1; in B3 and B5, if not in D1, this is the Resol. to § 1. ⁿ) Iste littere sunt B1 B3 B4 B5. ^o) electione C3. ^p) transeant C1. ^q) Iste — audientiam as Rubric C; as Rubric at beginning D1 X; om. D2 D3; add. in margin Secuntur littere, que transeunt per audientiam contradictarum B5. ^r) continentur C2 C3 C4. ^s) add. in B3. ^t) instrumentis Ca; instrumentis before renunciationibus B; add. penis B2. ^u) et B3. ^v) vel ad B5. ^w) legitime C3. ^x) om. Resol. B1 B3 B5 C1; add. in left-hand margin, apparently by same hand, D1. ^y) maiori B4. ^z) aliquid B1 B4 B5 C3 D2 D3. ^{aa}) om. Resol. B1 B5; instead Resol. to § 3 B5. Resol. in margin at end of following line C4. ^{bb}) mittuntur B2. ^{cc}) tali C3. ^{dd}) With sigillo the § ends; i. 21' begins a new §: Cardinalis etc. B4. ^{ee}) penitentiam B3. ^{ff}) om. B1 B3 B4, per C3. ^{gg}) om. B4; add. above line B3. ^{hh}) presentibus D3. ⁱⁱ) G. B1 B2 B3 B5 B6. ^{kk}) restrixit B1. ^{ll}) eam D. ^{mm}) tamen B3. ⁿⁿ) quorum B2 B3 B5 B6 C2 C3 C4. ^{oo}) legebantur C4. ^{pp}) irregularibus B1 B4 B5 C; in regularibus B2 B6; in regularibus B3. ^{qq}) procuratis B1, procreati B2. ^{rr}) presente C4. ^{ss}) Resol. om. B1 X; at § 2 B5; at § 4 Ca. Resol.: Ista hodie dantur D (in this arrangement, the last of the 'littere dande').

4. (44) Item citationes^a citra^b duas dietas. — Legantur^c.
 5. (45) Examinaciones^d testium sententiarum prolatarum^e per auditores a^f Romano pontifice deputatos ad mandatum auditoris factum per sigillum vel nuncium speciale expediebantur^g. — Legantur^h.
 6. (46) Item confirmationes. — Legantur per vicecancellariumⁱ.
 7. (47) Item privilegia communia^k non^l legebantur, sed scripta in grossa per vicecancellarium portabantur ad papam, ut signarentur. — Legantur^m per vicecancellariumⁿ.
 8. (48) Item privilegia exemptorum, si petantur^o renovari^p. — Legantur per notarios^q et^r per^s vicecancellarium^t.
 9. (3) Item 'Ordinati^u a^v non suo episcopo^w expediebantur^x sigillo apposito^y summi penitentiarum. — Dentur^z.
 10. (49) Item indulgentia X dierum pro benefactoribus^{aa} leprosorum per unam^{bb} civitatem et diocesim data fuit usque ad tempus domini^{cc} Gregorii^{dd} pape^{ee} X. — Legantur^{ff} per vicecancellarium et notarios^{gg}.
 11. (50—51) Item de danda licentia nobilibus construendi^{hh} capellam, si suntⁱⁱ ab ecclesia matrici^{kk} remoti^{ll}. Hec^{mm} etiam datur religiosis de

^a) om. C3; instead quotiens, but this is cancelled by striking out. ^b) circa B5 C D2 D3. ^c) §§ 4 and 5 written as one B C1 C3 C4; only one Resol. for both B2 B3 B5 B6 C1 C3; Resol. om. B1 C2; Resol. to § 3 Ca. ^d) Item examinationes D. ^e) promulgatorum B5. ^f) in B1. ^g) om. B. ^h) Legatur C4, dentur X; om. Resol. B1 B3. ⁱ) Resol. incorporated into text B C D; add. Resol. Legantur B2 B3 B4 B6 C1 C2 C3 C4 X (in D it is presupposed by the arrangement); add. Resol. Legantur per vicecancellarium B5 Ca. ^k) add. in margin Ca. ^l) om. B5. ^m) Legenda B3 B6, Legenda sunt B4. ⁿ) Resol. legantur Ca [D]; no Resol. B1 B5. ^o) oportantur C1, portantur C2; add. portantur C3, add. in margin (by other hand) C4; petantur corr. from portantur Ca. ^p) revocari D. ^q) sic B1 B5 C2 Ca D1; not. B3 B4 B6 C1 C3 C4 D2 D3; notarium B2. ^r) add. above line D1; vel B1 B2 B4 B5 B6. ^s) om. B1 B3 B5 C1 D. ^t) Resol. incorporated in text B C1 C2 C3 C4 D2 D3; add. Resol. legentur B2 B3 B6, legantur B4 C1 C2 C3 C4, legantur per vicecancellarium B5. No Resol. X. ^u) om. C2. ^v) ordinaria for ordinati a B1. ^w) a non suo ep. ord. Ca. ^x) expediantur B1 B3 B4 B5, expediantur C3. ^y) om. Ca. ^z) om. B1. ^{aa}) benefactorum B5 C2 C4. ^{bb}) vestram D3. ^{cc}) om. D. ^{dd}) G. B D1: ^{ee}) om. D3. ^{ff}) legantur per not. et vic. X; legantur per not. vel vic. B4; legenda per not. et vic. B2; legenda per not. et per vic. B6; legendum per not. vel per vic. B3; legende per not. vel vic. B5. No Resol. B1; et not. as Resol. to § 11 C4; add. further Resol. to § 11 B5. In D no Resol.: 'legantur' must be understood. ^{gg}) sic C3 Ca; in other codd. abbreviated. ^{hh}) construenda D2 D3. In B3 constr. capellam follows remoti. ⁱⁱ) sint B1 B5 D. ^{kk}) matrice B1 B2 B3 B5 B6 C1 C2 C3 D, matre Ca. ^{ll}) add. Resol. Non detur sine lectione X. ^{mm}) Hoc B2 B6 C1 C2 C3 C4, Item B1 B3 B4 B5.

novo edificantibus^a), et scribitur^b diocesano. — Non^c dentur^d sine lectione^e).

12. (52) Item 'Nonnulli iniquitatis filii', ubi mandatur^f, quod occultatores bonorum ecclesiasticorum^g et alii occulti sacrilegi^h, qui sciriⁱ non possunt, nisi post^k monitionem publice in ecclesiis^l coram populo factam satisfaciunt^m, excommunicantur et denuntiantur excommunicati, dari solet per notariosⁿ, sed modo datur per vicecancellarium^o. — Dentur^p sine lectione^q).

13. (53) Item datur contra incendiarios ecclesiarum. — Dentur^r sine lectione^s).

14. (4) Item solet dari cum speciali^t et iusta^u conclusione^v contra comites et^w barones milites et alios, qui possessiones et bona^x tenent ab ecclesiis, quod^y censum^z seu redditum^{aa} pro illis debitum^{bb} solvere^{cc} compellantur^{dd}. — Dentur^{ee}).

15. (5) Item contra eosdem^{ff}, quod^{gg} de possessionibus et bonis, que tenent ab ecclesiis, sine consensu dominorum ecclesiasticorum^{hh} aliosⁱⁱ non infeudent^{kk}. — Dentur^{ll}).

16. (6) Item indulgeri^{mm} soletⁿⁿ religiosis, ne aliqui^{oo} temeritate propria occasione questionum, quas^{pp} contra illos^{qq} asserunt se habere, bona ipsorum^{rr} pignorare presumant nec^{ss} etiam vadiare. — Dentur^{tt}).

17. (7) Item protectio et^{uu} bonorum^{vv} confirmatio in forma communi datur religiosis et omnibus piis locis acetiam^{ww} leprosis; pro quibus leprosis^{xx}

^a) edificantibus Ca, edificandum B5; edif. de novo C1. ^b) scribatur D2 D3. ^c) Item B3. ^d) datur B2 B6, dantur B4. ^e) Resol. at § 10 B5; Resol. et not. C4 (cf. p. 238 n. ff). Resol. om. B1 C1 C2 C3 (is behind 9, 10, 11) X; dentur Ca, [legantur] D. ^f) moniti D3. ^g) ecclesiarum C4. ^h) sacrilegii C3. ⁱ) sacri B1, satis B5. ^k) potest B1. ^l) ecclesia B5. ^m) satisfaciunt B D1, satisfecerint D2 D3. ⁿ) notar. codd. ^o) om. dari solet — vicecancellarium B C; as separate § D. ^p) dantur B4; non datur B2 B6; non detur X. ^q) om. sine lectione C. Resol. legantur sine lectione B3, [legantur] D; Resol. om. B1. ^r) Item datur B3; non datur B2 B4 B6; non detur X. ^s) om. sine lectione C; ut supra X. Resol. [legantur] D; no Resol. B1. ^t) speciali et iusta after conclusione C1. ^u) iuxta C2 C3 C4 Ca. ^v) conclusionem C2 C4 Ca. ^w) om. B D. ^x) bona et possess. B4. ^y) per B1. ^z) ca(us)um C3, sensum Ca. ^{aa}) reddum Ca. ^{bb}) om. B4. ^{cc}) om. B2. ^{dd}) non compellantur D2 D3. ^{ee}) datur B2 B6, dantur B3 B4; Resol. om. B1. ^{ff}) add. dantur B3. ^{gg}) qui B2 B5 C1 C2 C3 Ca. ^{hh}) ecclesiarum D. ⁱⁱ) alii C, alias B2 B5. ^{kk}) infendent C1, infendentur C4. ^{ll}) datur B2 B6, dantur B3 B4; Resol. om. B1. ^{mm}) indulgentia B, indulgiã C3. ⁿⁿ) dari solet B2 B6. ^{oo}) alicui B1 B3 B4 B5. ^{pp}) om. C1. ^{qq}) illas D1 D3. ^{rr}) eorum B1. ^{ss}) om. B2. ^{tt}) datur B2 B6, dantur B3 B4; Resol. om. B1. ^{uu}) om. B. ^{vv}) b(ea)torum C1. ^{ww}) add. pro C1. ^{xx}) om. pro quibus leprosis C2.

adicitur^a), quod de^b) ortis^c) et virgultis et animalium nutrimentis^d) decimas non persolvant. — Dentur^e).

18. (8) Item quod^f) religiosi^g), preter^h) illos qui possessiones non habent, possint succedere in bonis fratrumⁱ) professorum^k) sine iuris preiudicio^l) alieni. — Dentur^m).

19. (9) Item confirmatio libertatum et immunitatumⁿ) in forma generali data fuit^o) usque ad dies fere ultimos domini Iohannis^p) pape. — Dentur^q).

20. (10) Item sententiar^r) late ubicumque^s) in foro ecclesiastico^t), ubi concludi potest 'Sicut^u) provide' etc.^v), confirmari solent^w) in forma communi. — Dentur^x) ut^y) in cedula^z).

21. (54) Item quicquid contingeret^{aa}) statum^{bb}) ecclesiastice^{cc}) libertatis, sive per^{dd}) statuta edita contra^{ee}) eam^{ff}) sive per similia^{gg}), solet^{hh}) expediri et dariⁱⁱ) clausula illa 'Invocato'^{kk}) etc. — Legantur^{ll}) per notarios^{mm}) et vicecancellariumⁿⁿ).

22^{oo}). (55) Similiter contra imponentes nova pedagia, nisi^{pp}) contra reges^{qq}). — Legatur^{rr}) per notarios^{ss}), si contra specialem^{tt}) petitur^{uu}), alioquin detur sine lectione^{vv}).

23. (56) Similiter contra^{ww}) impediētes vel^{xx}) capientes^{yy}) illos, qui veniunt ad sedem apostolicam seu^{zz}) recedentes ab ipsa^{aa}), contra quos

^a) addicitur B3 D, dicitur C1, audicitur corr. into adicitur C3. ^b) om. C.
^c) ortis B3. ^d) nutrimentibus B4, incrementis D. ^e) datur B2 B6, dantur B3 B4; Resol. om. B1. ^f) om. B1 B2 B2 B4 B6. ^g) religiosi D3. ^h) propter B5.
ⁱ) factum B3. ^k) proferorum B3, possessorum B5; corr. by later hand from leproorum B4. ^l) pro iudicium B3. ^m) datur B2 B6, dantur B3 B5; Resol. om. B1. ⁿ) immunitatum B5 Ca. ^o) fuit data B1 B3 B4 B5 D; om. B2 B6.
^p) I. B1 B5 C4, Io. B2. ^q) datur B2 B6, dantur B3 B4; Resol. om. B1. Resol. to § 20 D. ^r) om. B3; dentur cedule for sententie late C1. ^s) unicumque B3.
^t) ecclesiasticorum B1. ^u) sicut B3. ^v) add. usque C1 C2 C3 C4. ^w) add. ut B4. ^x) datur B2 B6, dantur B3 B4, et dentur D (Resol. at § 19; c. f. above n. q). ^y) om. B3 B5 C2. ^z) No Resol. B1. ^{aa}) contigerit B1, contingit B2.
^{bb}) statutum B1 B2 B3 B6, contra statutum B5, statim C3. ^{cc}) ecclesie B5 D3.
^{dd}) pro C4. ^{ee}) om. B5. ^{ff}) eum D2 D3. ^{gg}) familiam C. ^{hh}) om. C1.
ⁱⁱ) dicta Ca. ^{kk}) om. C. ^{ll}) legatur B2 B3 B4, legitur B6, legenda X. No Resol. B1; first three words of Resol. to § 22 C1; Resol. [legantur] D. ^{mm}) abbreviated Codd. ⁿⁿ) per vic. et not. C2 C3 C4. ^{oo}) § 23 before § 22 B. ^{pp}) et D2 D3.
^{qq}) leges D. ^{rr}) legantur C. ^{ss}) abbreviated Codd.; Item per not. at end C4.
^{tt}) speciale C4 Ca, papalem D3. ^{uu}) queritur C1, pntar D2 D3. ^{vv}) electione C3, lesione C4. Resol. incorporated into text B D3; add. Resol. ut supra B3 B4, ut in proxima superiori (shared with § 23) B2 B6. No Resol. X. ^{ww}) add. illos B1 B4 B5. ^{xx}) om. B4 B5. ^{yy}) om. imp. vel cap. B3. ^{zz}) et D2 D3. ^{aa}) om. ab ipsa B3.

sententia^a) Romani pontificis^b) annuatim^c) in^d) tales ter^e) promulgata^f) usque ad satisfactionem condignam^g) publicari^h) mandaturⁱ), 'Invocato'^{etc. k}). — Legatur^l) ut in proxima superiori^m).

24. (—)ⁿ) Item quod^o) parrochiani ecclesiarum compelluntur solvere decimas de proventibus terrarum vinearum^p) ortorum et^q) aliorum bonorum, que habent infra parrochias illarum^r); de^s) qua quidem forma dominus Clemens^t) amoveri^u) fecit 'de^v) fructibus arborum leguminibus ovis^w) et pullis ac^x) minutis^y)). — Dentur^z) ut in cedula^{aa}).

25. (12) Item^{bb}) contra^{cc}) Iudeos super decimis^{dd}) de^{ee}) possessionibus et^{ff}) domibus^{gg}), que^{hh}) a Christianis deveneruntⁱⁱ) ad illos. — Dentur^{kk}).

26.^{ll}) (—) Item solet scribi diocesanis^{mm}) quod Iudeos compellantⁿⁿ) ferre habitum, quo distinguantur a Christianis. — Legantur^{oo}) per notarios^{pp}).

27. (11) Item solet^{qq}) scribi diocesanis^{rr}) contra rectores, qui pro exequiis mortuorum benedictionibus nubentium^{ss}) et ecclesiasticis sacramentis pecuniam exigunt a parrochianis suis^{tt}). — Dentur^{uu}).

28. (13) Item 'Post^{vv}) iter arreptum' tam pro peregrinantibus^{ww}) clericis quam pro aliis personis ecclesiasticis, qui^{xx}) causa peregrinationis et pro^{yy}) aliis negotiis^{zz}) venerunt^{aa}) ad curiam, littera dari solet^{bb}). — Dentur^{cc}) cum expressione legitime cause^{dd}) adventus^{ee}).

^a) sententiam D2 D3. ^b) pontifex B3, Romanus pontifex C2. ^c) annuatim B2. ^d) et B5, om. D3. ^e) etc. B1. ^f) promulgatam D2 D3; instead privilegiata ter B2. ^g) condig. satisf. B3. ^h) puniri B D. ⁱ) mandantur D3. ^k) om. Invocato etc. B3. ^l) om. B2 B3 B4 B6. ^m) No Resol. B1; aliquando sine lectione detur (i. e. conclusion of Resol. to § 22) B5; Resol. to § 24 C1; Resol. [legatur] D. ⁿ) om. D2 D3. ^o) om. B1 B3. ^p) om. C3.
^q) ac (add. above line) B1. ^r) illas B1. ^s) di C3. ^t) C. B1 B3; G. B2; O. B5; add. papa III^{us} D1. ^u) amoveri C3 D1. ^v) om. C1. ^w) onus C4. ^x) et C1. ^y) iumentis B5 D1, inimicis C2, funitis C4, Imaicis Ca. ^z) datur B2 B3 B6, dantur B4, detur B5. ^{aa}) om. ut in cedula B4. Resol. om. B1; also D1, but as the § is here arrayed under the 'littere legende', legantur must be understood.
^{bb}) Similiter B, et D. ^{cc}) om. B4. ^{dd}) decimas Ca. ^{ee}) om. B4 D, et B5. ^{ff}) om. B4. ^{gg}) domibus C3, donationibus D. ^{hh}) om. C4. ⁱⁱ) devenerunt B5, deveniunt Ca, devenerint D3. ^{kk}) datur B2 B6, detur B4; Resol. om. B1. ^{ll}) om. B2 B6 C D2 D3. ^{mm}) diocetano D1. ⁿⁿ) compellat D1. ^{oo}) legatur B3 X; Resol. [legantur] D1. No Resol. B1. ^{pp}) abbreviated Codd. ^{qq}) soli C1. ^{rr}) diocetano D B6; add. quod B. ^{ss}) inhihentium C2 C3 C4 Ca D2 D3. ^{tt}) om. B2. ^{uu}) detur B2 B6. Resol. om. B1 B5; legantur per not. (i. e. Resol. to the omitted § 26) C1 C2 C3 C4; legantur per not. and dentur Ca. ^{vv}) Quod C. ^{ww}) peregrinationibus C4. ^{xx}) om. B3. ^{yy}) om. B2 C. ^{zz}) om. D2. ^{aa}) veniunt B1 B2 B3 B5 B6. ^{bb}) solet dari B5. ^{cc}) dantur B5, detur B2 B4 B6 C1 D; Resol. om. X. ^{dd}) esse B1. ^{ee}) om. Ca.

29. (—) ^{a)} Item ^{b)} quasi similis ^{c)} pro redeuntibus de partibus transmarinis, que ^{d)} vocatur 'Cum in sacro'. — Non detur ^{e)}, nisi melius discutiat ^{f)}.

30. (57) Item a tempore dominis Urbani data fuit littera omni canonico dicenti se receptum et non habere prebendam, quod provideatur sibi de prebenda sic ^{h)} sibi quod nulli ⁱ⁾ alii ^{k)} de iure debita ^{l)}. — Legatur ^{m)} per notarios ⁿ⁾.

31. (58) Item 'Cum tanta prematur ^{o)} inopia ^{p)} committitur diocesano pro pauperibus ecclesiarum patronis ^{q)}. — Legatur ^{r)} per notarios ^{s)}.

32. (13, § 2) Item 'Cum ^{t)} secundum apostolum ^{u)} datur sine certo titulo ordinatis ^{v)} tam prima, que dirigitur ordinatori ^{w)} vel presentatori ^{x)}, quam alia monitoria ^{y)}. — Detur ^{z)} sine lectione, executoria legatur ^{aa)}.

33 ^{bb)} (14=59) Item de episcopis regibus ^{cc)} et etiam aliis magnatibus ^{dd)} conservatoria ^{ee)}. — Legatur ^{ff)} per notarios ^{gg)}, reliquos ^{hh)} detur ⁱⁱ⁾ sine lectione ^{kk)} et scribatur ^{ll)} ordinariis.

^{a)} om. D2 D3. ^{b)} add. solet dari D1. ^{c)} Post iter arreptum for quasi similis D1. ^{d)} qui C1. ^{e)} dentur C4. ^{f)} discutietur C2. *Resol. om. X, as separate § D1. Resol. Distinguat B1 B5, distigwatur B3, ditinguatur B4, discutiat B2 B6.*
^{g)} om. C1. ^{h)} sit B1, si B3 B5. ⁱ⁾ nonnulli for quod nulli B5. ^{k)} add. sit B2 B6. ^{l)} debitum B1, debita sit B4, debetur B5. ^{m)} legatur C3; *Resol. [legatur] D.* ⁿ⁾ *abbreviated Codd.* ^{o)} primatur C3. ^{p)} in copia B3. ^{q)} patr. eccl. D1 D2, om. eccl. D3. ^{r)} legatur C3; *Resol. [legatur] D. Resol. at § 32 C4.* ^{s)} *abbreviated Codd.* ^{t)} si B3. ^{u)} apostolicum B1. ^{v)} ordinario B3; *datis ord. sine certo tit. C.* ^{w)} ordinari B1 B3, ordinario B2 B6, ordinanti B5. ^{x)} presentari B1 B3, presentanti B5. ^{y)} monutori B1, monitori B2 B5 B6 D1, incantori D2 D3; *om. quam alia monitoria B3. After text, Item — certo repeated, but cancelled C3; opposite the repetition, Resol. dentur.* ^{z)} dentur B5 C4 Ca. ^{aa)} *exec. leg. in text immediately after monitoria B5, as separate § B1 B2 B3 B4 B6, as Rubric (Dentur sine lectione om., but dentur presupposed by arrangement) D, in X cancelled. Resol. to § 31 C4; Resol. at § 33 C2 C4.* ^{bb)} om. C3; *but the Resol. occurs after the word conservatoria in § 34.* ^{cc)} regibus B3. ^{dd)} magistrantibus B5. ^{ee)} *after legatur B C D (§ 14) D3 (§ 59).* ^{ff)} *Resol. included in text B2 B6 D; legatur — lectione in text B1 B3 B4 B5; add. Resol. Conservatoria legatur — ordinariis B4; Conservatoria legatur per not. et scribitur ord. B1 B3; Conservatoria legatur per not. B2 B6; leg. per not. reliq. sine lect. et scrib. ord. B5. Resol. at § 34 C1 C2 C3 C4, sine — ordinariis at same place Ca. Resol. legatur per not. (§ 14), om. (§ 59) X. In B1 a further Resol. dentur is added at end; in D1 D2 X there is the addition (§ 59) Datur hodie tantum canonicis.* ^{gg)} *sic D (§ 59); abbreviated B C2 C3 C4 Ca; om. per not., but repeated conservatoria C1.* ^{hh)} reliqua C, reliquos D3 (§ 59). ⁱⁱ⁾ dentur B5 C. ^{kk)} om. sine lectione D (§ 14). ^{ll)} scribitur B2 B6.

34. (15) Item protectio cruce signatorum ^{a)} et conservatoria datur ^{b)} clericis et laicis, non tamen episcopis et regibus sine lectione ^{c)}. — Dentur ^{d)}.

35. (16) Item quod ordinarii et ^{e)} abbates circa subditorum excessus officii sui ^{f)} debitum exequantur. — Dentur ^{g)}.

36. (17) Item quodcumque ecclesia ^{h)} se dicit enormiter ⁱ⁾ esse lesam ^{k)}, subvenitur ei ^{l)} per beneficium restitutionis in integrum ^{m)} non obstante iuramento. — Dentur ⁿ⁾.

37. (18) Item super absoluteione ^{o)} monachorum et ^{p)} dispensatione scribitur prelati suis, ut ^{q)} haec ^{r)} vice etc. — Dentur ^{s)}.

38. (60) Item diocesanis ^{t)} scribitur communiter pro beneficiatis ^{u)} sue diocesis in theologia studentibus ^{v)}, ut proventus ^{w)} suos ecclesiasticos iuxta ^{x)} constitutionem ^{y)} domini Honorii ^{z)} faciant ^{aa)} ministrari ^{bb)}. — Legantur ^{cc)} quoad ^{dd)} personatus et ^{ee)} beneficia cum cura, et si immineret ^{ff)} onus ^{gg)} residentie interim ^{hh)}.

39. (19) Item 'Sicut ⁱⁱ⁾ provide' confirmatur quicquid ^{kk)} a laicis ^{ll)} datur ecclesiis, sive ^{mm)} sit ius ⁿⁿ⁾ patronatus sive ^{oo)} decima, de assensu ^{pp)} diocesani. — Dentur ^{qq)}.

40. (20) Item ad petitionem religiosorum collegiorum ^{rr)} scribitur diocesanis ^{ss)}, ne tempore visitationis introducant seculares in claustra, nisi duos ^{tt)} vel tres de ecclesia cathedrali. — Dentur ^{uu)}.

^{a)} cruce signatis D. ^{b)} detur B. *At this point sine lect. et scrib. ord. is inserted Ca; Resol. to § 33 inserted C3.* ^{c)} om. datur clericis — lectione C2 C4; *at § 35 C1, as part of Resol. after Resol. to § 33 C3; non tamen — lectione inserted at end of § 35 Ca.* ^{d)} om. C2 C4 X, *at § 35 C1, detur B2 B5 B6.* ^{e)} om. B1 B2 B3 B5 B6. ^{f)} sui officii B. ^{g)} detur B2 B6; *om. C1, but dat. clericis et laicis non tamen episcopis et regibus sine lectione; C2 C3 C4.* ^{h)} etiam B3. ⁱ⁾ in enormiter B3. ^{k)} lesam esse B2. ^{l)} om. B2. ^{m)} *for in integrum, ius regnum Ca; om. in C3 C4.* ⁿ⁾ detur B2, datur B6. ^{o)} absoluteionem B5 D2 D3. ^{p)} ex B1 B3, vel B5. ^{q)} in B1. ^{r)} hic B5. ^{s)} datur B2 B6, legatur quoad personas (i. e. beginning of Resol. to § 38) B1. ^{t)} diocesano B2 B6 D1. ^{u)} beneficiis C1, beneficiatis D1. ^{v)} stud. in theol. D. ^{w)} proventus C3. ^{x)} iuxta Ca. ^{y)} constitutiones C4. ^{z)} *add. pape III. D.* ^{aa)} faciat D1. ^{bb)} observari B. ^{cc)} legatur B5 B6 C1. *Resol. om. B4 X; Resol. to § 39 B1; Resol. included in text, add. Resol. leg. quoad person. B2 B6.* ^{dd)} quod ad B3. ^{ee)} om. et beneficia — interim B5. ^{ff)} imminet B2, imineret C2 C3, immineret C4, iminēt Ca. ^{gg)} in (terim) B3. ^{hh)} *cf. above p. 211 n. 4, iurare B2 B6 D, init'e Ca; om. B1 B4 B5 C1 C2 C3 C4; instead of onus B3.* ⁱⁱ⁾ sicut B3. ^{kk)} quicquid B2 B3 B5. ^{ll)} laicis B6. ^{mm)} om. B4, *but over the 't' of sit (from other hand) -ve.* ⁿⁿ⁾ om. B2. ^{oo)} *add. sit B2 B6.* ^{pp)} consensu B, om. de ass. dioc. C. ^{qq)} datur B2 B6, om. C2 C3. *Resol. to § 40 B1.* ^{rr)} om. C4. ^{ss)} diocesano B2 B6 D2. ^{tt)} duo D. ^{uu)} datur B2 B6, detur C4; *Resol. to § 41 B1, to §§ 40 and 41 B5.*

41. (61) Similiter scribitur diocesanis^{a)}, quod^{b)} volentibus^{c)} simul^{d)} religiose vivere^{e)} de loco provideant competenti, prout ad suum spectat officium, sine preiudicio iuris alieni. — Legatur^{f)}.

42. (62) Item ad petitionem religiosorum collegiorum^{g)} non habentium certam regulam scribitur diocesanis^{h)}, quod eisⁱ⁾ provideant^{k)} de aliquo ordine approbato. — Legatur^{l)}.

43. (63) Item scribitur diocesanis, quod canonicos et^{m)} rectores ecclesiarum sibi subiectarum residere compellant in eisⁿ⁾ per subtractionem^{o)} proventuum, nisi habeant indulgentiam vel domini pape^{p)} aut cardinalium obsequiis immorentur. — Legantur^{q)}.

44. (—)r) Similiter contra rectores non curantes promoveri. — Dentur^{s)}.

45. (21) Item quod diocesani amoveant^{t)} illegitime natos a beneficiis, que habent sine dispensatione. — Dentur.

46. (22) Item quod diocesani possint^{u)} cogere executores testamentorum negligentes ad executionem illorum. — Dentur^{v)}.

47. (64) Item quod diocesani^{w)} contra obtinentes plura beneficia cum cura^{x)} sine dispensatione faciant^{y)} formam concilii^{z)} observari. — Legantur^{aa)} per notarios^{bb)}.

48. (23) Item quod diocesani^{cc)} contra monachos solitarios formam concilii^{dd)} contra tales^{ee)} editam^{ff)} faciant^{gg)} observari. — Dentur^{hh)}.

49. (24) Item contra concubenarios beneficiatos officiiⁱⁱ⁾ sui^{kk)} debitum exequantur. — Dentur^{ll)}.

^{a)} diocesano B2 B6. ^{b)} pro C. ^{c)} nolentibus B5 B6. ^{d)} om. B5.
^{e)} vivis B3. ^{f)} Resol. to § 42 B1, Resol. at § 40 B5; legantur B3 B4 B5, dentur C1 C2 C3, detur C4. ^{g)} om. D; coll. rel. B4. ^{h)} diocesano B4 C4 D. ⁱ⁾ om. D. ^{k)} provideat B4 C4 D. ^{l)} om. B3; legantur B1 B4 B5. Resol. at § 41, no Resol. here B1. ^{m)} om. B1 B2 B3 B4 B6. ⁿ⁾ om. in eis D. ^{o)} om. C1, surreptionem C2 C3 C4 Ca, subventiones B1, subiectionem B4, abstractionem B5. ^{p)} papa B3, domini . . . pape C4. ^{q)} legatur B2 C1 C2 C3 X; Resol. to § 44 B1 B5; Resol. om. B3. ^{r)} om. D. ^{s)} om. C1; at § 43 B1 B5. ^{t)} diocesanus amoveat B2 B3 B4 B5 B6 D2 D3, diocesanus amoveat D1. ^{u)} possunt B2. ^{v)} No Resol. B1 B3 B5; in B1 leg. per not., but this is cancelled. ^{w)} diocesanus B2 B5. ^{x)} iure D3. ^{y)} faciat B5. ^{z)} concilii B5 Ca C2, concilii C3; in D1 consil. (before concilii) and generali (after) are cancelled. ^{aa)} legatur B2 B4 B6 X. Resol. dentur C1 C2 C3 C4 (but correct Resol. at § 43), [legantur] D. ^{bb)} notarium B1; in other mss. abbreviated. ^{cc)} diocesanus B4 C1 C2 C3 C4. ^{dd)} om. B5, concilii B4 C2 Ca, concilii C3. ^{ee)} t. C4. ^{ff)} editum B1. ^{gg)} faciat B4 C1 C2 C3 C4. ^{hh)} om. B5; dentur et legantur per not. (the second part here instead of at § 47) C1 C2 C3 C4. ⁱⁱ⁾ ut officii D. ^{kk)} sive B1. ^{ll)} om. B1 B4 C1.

50. (24, § 2) Similiter contra clericos arma portantes et^{a)} usurarios. — Dentur.

51. (25) Item solet scribi iudicibus, ut ea que a maiori^{b)} parte collegiorum ecclesiasticorum^{c)} licite ordinantur, faciant observari, nisi minor^{d)} pars rationabile contrarium proposuerit^{e)} et ostendat^{f)}. — Dentur^{g)}.

52. (26) Item indulgetur^{h)} religiosis, quodⁱ⁾ in causis propriis possint testimonio fratrum suorum uti^{k)}. — Dentur^{l)}.

53 (27) Item mandatur iudicibus, quod recipiant testes^{m)} ad futuram memoriam super bonis ecclesiarum, de quibus non apparentⁿ⁾ publica instrumenta^{o)}. — Dentur.

54. (28) Item quod religiosi possint uti privilegiis^{p)}, quibus per negligentiam non sunt usi^{q)}, nisi^{r)} per^{s)} prescriptionem^{t)} vel alias^{u)} sit eis legitime derogatum^{v)}. — Dentur^{w)}.

55. (29) Item quod tempore interdicti^{x)} possint religiosi^{y)} clausis ianuis^{z)} celebrare divina etc.^{aa)}. — Dentur^{bb)}.

56 (65) Item scribitur diocesanis^{cc)} ad petitionem alicuius^{dd)} rectoris ecclesie, ut in procurationibus, que imponuntur clero, illum non permittant^{ee)} ultra facultates proprias aggravari. — Legantur^{ff)}.

57. (66) Item indulgetur religiosis, quod^{gg)} ordinariis visitantibus^{hh)} denegareⁱⁱ⁾ liceat^{kk)}, quicquid^{ll)} petunt ultra id^{mm)}, quodⁿⁿ⁾ in concilio^{oo)} est^{pp)} taxatum. — Legantur^{qq)}.

58. (67) Item littere^{rr)} predecessorum Romanorum pontificum in litteris apostolicis annotantur^{ss)}. — Legatur^{tt)}, et^{uu)} idem de

^{a)} vel D. ^{b)} maiore B2. ^{c)} ecclesiarum B1 B3 B5 B6; om. C1. ^{d)} maior D3. ^{e)} proposuerat B3, proposuit C. ^{f)} ostendit B3; ostendat corr. from ostendit C4. ^{g)} om. C2 C3. ^{h)} indulgentia B5. ⁱ⁾ que B5. ^{k)} add. etc. B5. ^{l)} add. et leg. per not. C4. ^{m)} om. C2 C3. ⁿ⁾ apparent B1 B3. ^{o)} instr. pub. B. ^{p)} add. suis B5. ^{q)} om. B1 B3 C1, add. by later hand B4; usi non sunt C3. ^{r)} om. B2 B6 C3. ^{s)} om. B5. ^{t)} prescriptione B5. ^{u)} om. B3. ^{v)} derogatam B3. ^{w)} om. C2 C3. ^{x)} intradicti C3. ^{y)} uti (followed by space for about 5 letters) Ca. ^{z)} ianuis clausis D. ^{aa)} om. B3 D1, officia D2 D3. ^{bb)} om. B3. ^{cc)} diocesanus B1 D2. ^{dd)} alicui B3. ^{ee)} permittat B1 D2. ^{ff)} legatur X, dentur B2 B6 C1 C2; Resol. om. B1 B4. ^{gg)} pro B1. ^{hh)} insistentibus B1 B3, insistentibus B4 B5, visitationibus C3 D. ⁱⁱ⁾ denegari B2. ^{kk)} licet C1; liceat deneg. before ordinariis B5. ^{ll)} quicquid B2 B3 B5. ^{mm)} illud B1 B3 B5, ad id D2 D3. ⁿⁿ⁾ quo B4. ^{oo)} consilio B5 Ca. ^{pp)} om. D2 D3. ^{qq)} legatur B2 B6 X; add. further Resol. to § 58 Ca. ^{rr)} om. Ca. ^{ss)} annot. apost. B1, annotanter B3. ^{tt)} legantur B1 B4, dentur B5, om. B3 C1 C4. Resol. at § 57 Ca; et idem — pontificum included in text B D2 D3. Legatur starts new § D1: in accordance with this arrangement X has Resol. (legatur) twice. ^{uu)} ut B2, om. C.

litteris^a), que inveniuntur^b) in registris^c) eorundem^d) pontificum^e).

59^f). (30) Item indulgetur religiosis, quod in questionibus adversus eos motis non teneantur se defendere per duellum. — Dentur^g).

60. (68) Item indulgetur religiosis, quod^h) possintⁱ) percipere decimas novalium in forma communi pro^k) ea portione^l), qua^m) percipiunt veteres ex privilegioⁿ). — Legatur^o).

61^p). (31) Item quando reus excommunicatur a delegato pro contumacia, committitur absolutio excommunicatori vel ordinario, quando expiravit iurisdictio excommunicantis. — Dentur.

62. (32) Item quando reus dicit impetratum^q) esse contra se ad unum iudicem, dummodo ad litis contestationem non sit processum in causa, additur unus iudex officio^r) auditoris et alter ad instantiam rei. — Dentur^s).

63. (69) Item quando aliquis rite^t) excommunicatus moritur^u) non^v) absolutus, nec precedant^w) penitentie signa^x), exhumari^y) mandatur. — Legatur^z).

64. (70) Item si fuerint^{aa}) in eo^{bb}) penitentie signa^{cc}) et morte preoccupatus fuerit^{dd}), sepeliri^{ee}) mandatur debita absolutione^{ff}) premissa^{gg}). — Legatur^{hh}).

65ⁱⁱ). (33) Item indulgetur collegiis ecclesiarum secularium, quod^{kk}) possint redimere decimas de manibus laicorum de^{ll}) consensu rectoris parochialis^{mm}) et^{na}) diocesani^{oo}). — Dentur^{pp}).

^a) bonis C1 C2 C3 C4. ^b) inveniuntur C4, innovantur D2, innovantur D3. ^c) registris B3 B5 C1 C2 D2; litteris registris D3. ^d) om. D2 D3, add. above line D1; add. Romanorum D. ^e) add. dentur (Resol. to § 59) B3 C3. Resol. to § 59 appears in this place in Ca also, but is marked off from text. ^f) om. B1 B2 B6. ^g) om. C4; Resol. to § 60 B3. ^h) ut B5. ⁱ) possunt B3. ^k) per D3. ^l) procaratione B1. ^m) quam B2. ⁿ) privilegiorum B5. ^o) legatur B2 B6, legenda C; om. B5. B3 has Resol. to § 62, own Resol. at § 59. ^p) om. B. ^q) impetrari B1 B2 B3 B6. ^r) ex officio B1 B3 B4 B5 C1 C2 C3. ^s) legatur C1 C2 C3 C4 (in C4 corr. by other hand from dentur). No Resol. B1; in B3 Resol. to § 63 add. in margin: own Resol. at § 60. ^t) om. B. ^u) moritur exoom. B3. ^v) nec C2 C3. ^w) pretendens B1 B2 B3 B4 B6, ostendens B5, precedens C. ^x) signa penit. D. ^y) ex humani generis B3, exhumarii D3. ^z) legantur B3 B4 B5. No Resol. B1; in B3 Resol. to § 64, own Resol. at § 62. ^{aa}) fuerant D3. ^{bb}) ea B3. ^{cc}) signa penit. C3. ^{dd}) om. B.C. ^{ee}) sepelire B3, sepeliri D1. ^{ff}) solutione B5. ^{gg}) for fuerit — premissa, non precedens penitentie si(gna) C3. ^{hh}) legantur B3 B4 C4. Resol. om. B1 B5; Resol. to § 66, own Resol. at § 63 B3. ⁱⁱ) in B § 66 precedes § 65. ^{kk}) non B5. ^{ll}) om. B5. ^{mm}) parochialium B2, parochialis C1 C2 C3 C4, add. ecclesie D2 D3. ^{na}) om. D3. ^{oo}) diocesanorum B2. ^{pp}) om. B1; legatur B2. Resol. to § 67, own Resol. at § 66 B3.

66. (71) Item indulgetur^a) prelati et locis ecclesiasticis, ut^b) non teneantur ad solutionem^c) debitorum, nisi probaverint creditores^d) etc.^e). — Legatur^f).

67. (—)g). Item si prelati obligent^h) se providere alicui clericoⁱ) de beneficio^k), compellantur promissionem^l) servare et solvere pensionem^m) subtractamⁿ) medio tempore et cavere quod iuxta promissionem persolvant in futurum. — Legatur^o).

68. (72) Item datur etiam^p) littera de sola pensione^q) subtracta. — Legatur^r).

69. (34) Item compositiones et arbitria rite lata^s) confirmantur (Sicut^t) provide^u); et si agatur^v) de decimis vel spiritualibus rebus, additur (et in alicuius^w) preiudicium non redundat^x). — Dentur^y), sed^z) servetur^{aa}) in eorum^{bb}) concessione^{cc}), quod dictum est in cedula de litteris super confirmationibus sententiarum^{dd}) in forma communi^{ee}) dandis.

70. (73) Item scribitur diocesanis^{ff}), quod compellant^{gg}) Iudeos^{hh}) ad demolendumⁱⁱ) sinagogam^{kk}) plus quam veterem exaltatam^{ll}) — Legatur^{mm}).

71ⁿⁿ). (35) Item quando clericus^{oo}) convenit^{pp}) clericum coram iudice seculari, scribitur^{qq}) diocesano vel iudici, quod puniat^{rr}) in hoc^{ss}) actorem^{tt}) iuxta^{uu}) canonicas sanctiones^{vv}). — Dentur^{ww}).

^a) indulgetur D3. ^b) et B3. ^c) absolutionem for ad solut. D3. ^d) creditorum D2. ^e) om. B2 B3. ^f) legantur C1, dentur B2 B3 B5 B6, detur B4; Resol. om. B1. Resol. to § 65, own Resol. at § 64 B3. ^g) om. D. ^h) obligant B1, se ob. C4. ⁱ) alicui cler. prov. C1. ^k) om. de beneficio B4. ^l) provisionem B5. ^m) pensiones B4. ⁿ) subtrata C4. ^o) legantur B3 B4, dentur B5; Resol. om. B1. Resol. to § 68, own Resol. at § 65 B3. ^p) s(ecund)u(m) B5. ^q) petitione D. ^r) Resol. om. B1 X. Legantur B3 (Resol. at § 67): here, and in B5, dentur, i. e. part of Resol. to § 69. ^s) lata irrita C3. ^t) sicut B3. ^u) providere C. ^v) agant C. ^w) alicui B3. ^x) redundant D. ^y) om. B1 B2, at § 68 B3 B5, instead Resol. to § 70 B5; om. also D, but presupposed by arrangement; Resol. dentur X, legatur dentur C3. ^z) om. B; sic D. ^{aa}) serventur C1; servetur — dandis included in text B D2 D3. ^{bb}) earum B1 B2 B3 B6 D, eadem B5. ^{cc}) possessione B2, concessio -one Ca. ^{dd}) litterarum C. ^{ee}) cum B1, com. forma C1. ^{ff}) diocesano B. ^{gg}) compellat B. ^{hh}) om. D2 D3; add. by other hand above line D1. ⁱⁱ) demoligendum B5, devolvendum C. ^{kk}) synag. C2 C3. ^{ll}) exaltare B1, exalta B2. ^{mm}) legantur B3 B4 B5. No Resol. B1; Resol. to § 71, own Resol. at § 69 B5. ⁿⁿ) add. extra §: Item quod Iudei deferant distinctum habitum a Christianis iuxta statutum concilii generalis B3. ^{oo}) clericis C1. ^{pp}) convenit D3. ^{qq}) scriberet et C3. ^{rr}) puniant B1; poniant ad adsolvendum C3. ^{ss}) om. B5, hec C3. ^{tt}) actore B3. ^{uu}) secundum D. ^{vv}) sanctiones B1 Ca, canonicas sarritiones B3. ^{ww}) leg. B4; Resol. om. B1; Resol. to § 72, own Resol. at § 70 B5; Resol. corr. from leg. C4.

72. (74) Item dantur littere contra falsarios litterarum apostolicarum^{a)} seu bulle^{b)}. — Legatur^{c)} per vicecancellarium^{d)}.

73. (75) Item dantur iudices^{e)} contra scolares et alios^{f)}, qui fideiussores suos^{g)} super hiis non servant^{h)} indemnes. — Quodⁱ⁾ dictum est in cedula de^{k)} 'partibus convocatis'^{l)} et^{m)} 'vocatis qui fuerintⁿ⁾ evocandi'^{o)}.

74. (76) Item^{p)} pro dominis contra homines suos, qui se subtrahunt a dominio^{q)} eorundem^{r)}. — Ut^{s)} in proxima^{t)}.

75. (36) Item hospitalariis et similibus^{u)} datur littera contra^{v)} falsos nuntios^{w)} seu questuarios^{x)} eorum nomine elemosinas postulantem. — Dentur^{y)}.

76. (37) Item dantur littere super^{z)} monachatu, primo preces^{aa)} postmodum preceptoria^{bb)} et monitoria et demum 'in virtute^{cc)} obedientie'; sed 'in virtute obedientie'^{dd)} data fuit^{ee)} tempore aliquorum Romanorum pontificum sine lectione et tempore aliquorum cum lectione. — Dentur^{ff)}, sed^{gg)} illa^{hh)} 'inⁱⁱ⁾ virtute^{kk)} obedientie' legatur^{ll)}.

77. (38) Similiter^{mm)} danturⁿⁿ⁾ pro leprosis, quod recipiantur^{oo)} in^{pp)} fratres et^{qq)} socios. — Dentur^{rr)} ut in proxima^{ss)} superiori.

a) om. Ca. b) om. seu bulle B1. c) legatur B3. Resol. om. B1; to § 73, own Resol. at § 71 B5; Resol. to § 71 repeated, own Resol. at § 73 C1 C2 C3 C4. Resol. [legatur] D. d) notar. B5. e) littere B1 B5. f) om. et alios B5. g) om. Ca. h) servent C1. i) Resol. included in text B, add. Resol. par(tibus) con(vocatis) B2 B3 B4 B5 B6; Resol. to § 72 C1 C2 C3 C4, own Resol. at § 74 C. In D1 Quod begins new § in text; [legatur] must be understood as Resol., since the § is placed among the 'littere legende'; nevertheless Resol. dentur X. k) om. D. l) om. B2 B3. m) om. B5. n) fuerant B4. o) add. etc. B5. p) Item quod domini tenentur homines B2 B3 B4 B5 B6, Item quod homines tenentur dominos B1. q) dominiis D, domino B2. r) eorum B5. s) Resol. included in text B, add. Resol. par(tibus) con(vocatis) B2 B3 B4 B5 (at § 73) B6. Resol. to § 73 C, own Resol. om. C1 C2 C3 C4 X, but not Ca, where second half of first line of § 75 is left free to receive Resol. to § 74. t) proximo D2 D3. u) dominis suis B1. v) dotra B3. w) nuntio C1. x) questuarios B3. y) dantur B2 B6; om. B1 B4 B5. z) om. D3. aa) add. et mandata B2. bb) preceptoris B4. cc) add. sancte B3. dd) sed — obedientie om. B3 B5 C D. ee) fuerit B5, sūt C3. ff) om. B1 B3 D X, but in D presupposed by arrangement; legatur B5. No Resol. D3. gg) om. D X, pro C3. Sed — legatur as part of text B, as separate line Ca, as Rubric D1 D2. hh) om. C4, after obedientie C1. ii) om. C3. kk) add. sancte B5, scilicet C4. ll) legatur D1 D2 X. mm) Item similiter B, item dantur similiter D. nn) dentur C1. oo) recipient D. pp) om. B5. qq) om. C1. rr) dantur B2 B6; Resol. om. B1, [dentur] D. ss) om. B3; supra prox. for in prox. super. C4.

78. (39) Item scribitur^{a)} pro electis^{b)} et fugitivis presidentibus^{c)} capitulo generali sui^{d)} ordinis^{e)}, si ordo ipse habeat^{f)} presidentes^{g)}; alioquin^{h)} scribitur diocesanisⁱ⁾, quod faciant^{k)} statutum^{l)} Gregorii^{m)} circa tales observari. — Denturⁿ⁾.

79. (40) Item confirmantur^{o)} in forma^{p)} communi beneficia ecclesiastica dicentibus ea se^{q)} esse^{r)} canonicè assecutos^{s)} et pacifice possidere. — Dentur^{t)}, sed^{u)} servetur, quod dictum est^{v)} in cedula^{w)} de litteris super confirmatione^{x)} sententiarum^{y)} in forma communi dandis^{z)}.

80. (41) Item 'Sicut^{aa)} provide' confirmantur^{bb)} in communi^{cc)} forma statuta et ordinationes, que fiunt^{dd)} per capitula et^{ee)} abbates et conventus et alias personas ecclesiasticas. — Dentur^{ff)}, sed^{gg)} servetur^{hh)} utⁱⁱ⁾ dictum est supra in proxima^{kk)}.

81. (42) Similiter confirmantur^{ll)} in forma communi 'certus numerus canonicorum' et 'monialium' institutus de consensu diocesani^{mm)}. — Denturⁿⁿ⁾.

82. (77) Item scribitur diocesanis^{oo)} pro illis^{pp)}, qui intrant^{qq)} ordinem aliquem^{rr)} et non facta professione^{ss)} exeunt^{tt)} infra^{uu)} annum, quod nisi per^{vv)} religionis habitum, qui dari consuevit^{ww)} profitentibus, vel^{xx)} profes-

a) add. quod B1. b) proiectis B4 B5, electis C4. c) precedentibus B2. d) seu B1. e) ordini B1. f) hanc B2. g) presidentis B6. h) alias C4, aliquando D. i) diocesano B D I. k) faciat B. l) statum B3. m) G. B2 B4. n) Resol. om. B1; Resol. to § 79 C2. o) confirmatur B5 C1, confor(mi)tur C4. p) om. C1. q) om. B3. r) om. B1 B3 B5. s) assecuta B3 B5. t) om. B1; om., but to be understood D; Resol. dentur X. u) sed servetur — dandis included in text B D; ut supra cancelled and sed servetur — dandis add. (by other hand) in margin C4; Resol. at § 78 C2; followed by Resol. to § 80 C3. v) add. supra B1 B4 B5, super B3. w) sedula C4. x) confirmationibus B2 B6, afirmatione D1; super conf. de litt. C1. y) litterarum C. z) danda etc. B5. aa) sicut B3. bb) confirmatur B3 C4 D3. cc) om. B1 B3 B4 B5; forma com. C1. dd) sunt B1 B2 B3 B5 B6. ee) om. B2. ff) om. B1; in D om., but presupposed by arrangement; add. ut supra C1 C2 C4. Resol. to § 81 (instead of dentur) B5; Resol. at § 81 C1 C2 C4, after § 79 C3; dentur ut supra sed — proxima. Resol. dentur X. gg) sed servetur — proxima included in text B D. hh) serventur B5. ii) quod C1 C2 C3 C4 add. supra B2. kk) proximo D2. ll) confirmatur B2 B4 B6. mm) diocesanorum B2. nn) Resol. om. B1 B2 B6; ut supra B3 B4 B5 (in B5 at § 80; here no Resol.); Resol. to § 80 C1 C2 C4, followed by own Resol. C2. oo) diocesano B3. pp) quod D. qq) intraverunt B4. rr) om. C1, aliquando D1. ss) add. expressa evidenter appareat quod abso(lute) C3. tt) om. C3. uu) per B5. vv) pro C3. ww) consueverunt B4. xx) add. per B2.

sionem expressam^{a)} evidenter^{b)} appareat, quod absolute voluerint^{c)} vitam mutare^{d)}, denuncient^{e)} eos ad regularem^{f)} observantiam^{g)} non teneri. — Legatur^{h)}.

83. (78) Itemⁱ⁾ conservatoria^{k)} privilegiorum contra indulta. — Legatur^{l)}.

84. (79) Item contra raptos^{m)} et predones daturⁿ⁾ per vicecancellarium, sed per notarios dari debet. — Detur^{o)} exemptis sine lectione, sed^{p)} pro aliis legatur^{q)}.

85. (80) Simplicium vero super possessionibus^{r)} debitis et diversitate iniuriarum, super usuris pignoribus iniectio manuum matrimoniis et presentationibus clericorum ad beneficia^{s)} et excommunicationum^{t)} sententiis receptionibus testium et super appellationibus et revocatoriis litterarum seu formarum^{u)} numerus vix^{v)} habetur^{w)}.

86. (81) Item littere alie, que iustitiam continent^{x)}, dantur^{y)} sub iustis narrationibus et conclusionibus, que^{z)} propter varietatem^{aa)} negotiorum numerari non possunt^{bb)}.

87. (82) Item in^{dd)} premissa generalitate litterarum, que iustitiam continent, hoc servetur, ut si quando emergat seu occurrat forma^{ee)}, que non contineatur inter supra expensas^{ff)}, legatur domino nostro forma que occurrit, ut^{ss)} ipse mandat, quid velit in litteris eiusdem forme servari^{hh)}, scilicet utrum velit easⁱⁱ⁾ dari^{kk)} cum lectione^{ll)} vel sine^{mm)}.

88. (83) Item de revocatoriis.

89. (84) Itemⁿⁿ⁾ de hiis, que continentur in provinciali. Cetera^{oo)} omnia sunt legenda.

^{a)} expressa evidenter appareat etc. C3, cf. p. 249 n. ss. ^{b)} evid. express. C4.
^{c)} voluit B1 B2 B3, noluit B4, nolunt B5 B6, voluerit C1, noluerint C2 D2.
^{d)} immutare B2. ^{e)} denunciet B3; om. C2. ^{f)} ad regularem repeated D1; regularitatem C4. ^{g)} om. Ca. ^{h)} e) om. B1; legatur B3 B4 B5. ⁱ⁾ add. pro C4.
^{k)} confirmatoria B3. ^{l)} om. B1; legatur B3 B5. ^{m)} latrones B2 B6.
ⁿ⁾ datur — debet om. B C; in D the words follow the Resol., but in D1 sed — debet cancelled. ^{o)} dentur B1 B3 B4 B5 D. Resol. included in text B, add. Resol. legatur B2 B3 B4 B6; Resol. om. C4 X. ^{p)} om. C1 C2 C3 Ca. ^{q)} legatur B C4 Ca. ^{r)} professionibus B5, portionibus D. ^{s)} om. ad beneficia C1; add. clericorum C2 C3 C4 Ca. ^{t)} excommunicationis B5, excommunicationem D3.
^{u)} forma D3. ^{v)} non B1 B4 B5. ^{w)} add. legatur B2, legatur C4. In D this and the following §§ are placed under the 'littere legende'. ^{x)} continentur B3.
^{y)} datur B3. ^{z)} et B3. ^{aa)} narrationem B1 B2 B3 B5 B6. ^{bb)} possint B5 D. With numerari non possunt starts Ba. ^{cc)} This and the subsequent §§ om. B1 B2 B3 B4 B5 B6. ^{dd)} om. Ba C1 C2 C3 Ca; si C4. ^{ee)} fama Ba. ^{ff)} expressa Ba; om. D. ^{gg)} om. Ba. ^{hh)} om. Ba. ⁱⁱ⁾ eam Ba. ^{kk)} dare D1 D3. ^{ll)} om. cum lectione D2 D3. ^{mm)} add. lectione Ba. ⁿⁿ⁾ Idem C3. ^{oo)} Cetero C3.

DIE PROKURATORIIEN KAISER LUDWIGS IV. AN PAPST BENEDIKT XII.

VON
FRIEDRICH BOCK.

Es gibt wohl keine schwierigere Aufgabe in der wechselvollen Geschichte Kaiser Ludwigs IV. als die Klärung der diplomatischen Fragen, die die Aktenstücke über die Verhandlungen mit der Kurie seit dem Beginn der dreissiger Jahre dem Historiker stellen. Die formale Seite der z. T. recht umfangreichen Urkunden führt einerseits hinein in die Bräuche des spätmittelalterlichen Gesandtschaftswesens, andererseits aber auch in strafprozessuale Formalitäten, die geklärt sein müssen, ehe man an die politische Fragestellung herantreten kann: die Einordnung der Avignoneser Verhandlungen in das Konzert der damaligen Grossmächte. Das soll im folgenden ganz beiseite gelassen werden. Die älteren Untersuchungen über unser Thema¹⁾ arbeiten mit lückenhaftem Material. Erst RIEZLER legte den grössten Teil der Quellen bereit. Nach dem Erscheinen der Vat. Akten kannte nur J. SCHWALM die Originale aus eigener Anschauung. Mit Unterstützung des ausgezeichneten Kenners des vatikanischen Archivs, Heinrich POGATSCHER, sammelte er die bis dahin noch unbekanntenen Dokumente und edierte sie²⁾. Gleichzeitig versprach er eine Untersuchung darüber, die aber nicht geschrieben ist. Nach SCHWALMS Veröffentlichungen liess Wilhelm ERBEN von einem

¹⁾ A. ROHRMANN, Die Prokuratorien Ludwigs d. B., Diss. Göttingen 1882. V. MENZEL, Deutsches Gesandtschaftswesen im Mittelalter, 1892. C. MÜLLER, Der Kampf Ludwigs d. B. mit der röm. Curie, 1879f. F. GLASSHÖRDER konnte in seinem einschlägigen Aufsatz, Zs. f. Schwaben-Neuburg XV (1888) schon RIEZLERS Vat. Akt. benutzen. Derselbe in Röm. Quartalschrift III (1888). Weitere Literatur wird in den Anmerkungen zitiert. ²⁾ N. Archiv XXVI (1901) 709ff.