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bar auf die *Coll. Hibernensis* zurückgehen (39.8; Wassersleben 151). Der Mittelteil (*non semel - corrigent*) konnte in einer wörtlichen Entsprechung bislang nicht ermittelt werden. 3.76 geht wiederum auf das sogenannte *Poenitentiale Theodori* zurück (2.6.5; Finsterwalder 320). Der von Hees als 3.77 gezählte Text ist ein Ausschnitt aus der *Vita* Papst Gregors I. von Johannes Diaconus (2.53; PL 75.110D), geht also nicht direkt auf das Register Gregors d. Gr. zurück.

Die von Hees angegebenen Parallelstellen lassen sich ohne weiteres noch ergänzen. Wir verzichten auf diesen Nachtrag, weil er unmittelbar für die Texttradition der *Collectio Farfensis* keinen Nutzen bringt.

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'Cum causam que': A decretal of Pope Innocent III

The canonists rarely added decretals to the margins of manuscripts which contained the *compilationes antiquae*, although the manuscripts' ample margins attracted a variety of other additions. An exception to this generalization is the addition of a previously unknown decretal to Leningrad lat. F II vel. 1, under the title 'De sententia et re iudicata' in *Compilatio tertia*. The decretal describes a case which concerned *ius patronatus*, but it was added under this title because it complemented the legal point made in 'Cum Bertholdus', which is on the same folio.¹

The manuscript originally belonged to the imperial abbey of St. Maximin in Trier,² and although one might assume that the decretal was written into the margin because it was of local interest, the format of the decretal argues against such an assumption. There is no inscription and either the scribe or a previous editor eliminated part of the *narratio* and *sanctio*. The initials of the imperial chancellor and the bishop of Albano are changed to the anonymous 'n.' These changes not only make it impossible to date the letter with certainty, but they indicate that the letter was probably not copied from an original in a local archive, but most likely from another — now unknown — decretal collection.

From the evidence that the letter still contains, it was written sometime between 1205 and 1224. The imperial chancellor mentioned in the beginning of the letter must be Conrad of Scharfenberg, who was bishop of Speyer from early in 1200 until his death in 1224. From 1212, he was also bishop of Metz.³ Since

¹ On the Leningrad manuscript, see A. Vetulani, 'Trois manuscrits canoniques de la Bibliothèque publique de Leningrad', *Collectanea Stephan Kuttner* II (SG 12; Bologna 1967) 201-03. G. Fransen, 'Les diverses formes de la *Compilatio prima*', *Serinium Lovaniense: Mélanges historiques Étienne van Cauwenberg* (Louvain 1961) 242, noted that several decretals were added to the margins of manuscripts which contain 1 Comp.

² R. Laufner, 'Vom Bereich der Trierer Klosterbibliothek St. Maximin in Hochmittelalter', *Armata Trevirensia* (Trier 1960) 9-35. G. Kentenich, 'Zur Schicksal der Bibliothek der Bened. Abtei St. Maximin bei Trier', *Trierisches Archiv* 12 (1908) 90-1.

³ C. Eubel, *Hierarchia catholica medi aevi* 1.337, 460 (wrongly 'Scharfeneck'). C. McCurry informs me that the date when Conrad became bishop of Speyer lies between March 18 and April 7, 1200.

the case concerned the diocese of Speyer, Conrad's episcopal court would have been the court of first instance. After Conrad's death, the imperial chancellorship — traditionally held by a bishop — was vacant until 1230, when Siegfried of Regensburg became chancellor.⁴

The papal auditor, Alatrino, had a long and distinguished career in the papal curia under three popes — so long a career that Elze wondered whether there might have been two auditors named Alatrino. He first appeared in 1205 as an auditor for Innocent III, and he is last mentioned in Gregory IX's register of 1238.⁵ In September of 1219, Honorius III entrusted him with a legatine mission to the Emperor Frederick II, and from that time on, Alatrino served as an important ambassador in the papal court, especially in imperial affairs. He was engaged in legatine missions from 1219 to 1221; since Conrad died in 1224, it is somewhat unlikely that the letter dates from this period.

Since the decretal was added to *Compilatio tertia* without an inscription and since it was clearly meant to supplement 'Cum Bertholdus', it is likely that the scribe who wrote the letter in the margin of the manuscript assumed that it was a decretal of Innocent III. The hand which wrote 'Cum causam que' is very similar to that of *Compilatio tertia*, and is contemporary with it. In sum, the evidence seems to point to the letter's being one of Innocent III.

The church in dispute was located in Steinheim, a small town in the diocese of Speyer. One of the litigants was a canon at Speyer, and the other was a priest from a small town near Steinheim, Marbach.⁶ The ranking prelate among the judges to whom the case was first delegated was the abbot either of Lorsch nearby, or of Lorch in Württemberg.⁷

Both 'Cum causam que' and 'Cum Bertholdus' dealt with the problem of ecclesiastical patronage and are of some interest for the point of law which each makes. In 'Cum Bertholdus', a lay knight, Bertholdus, granted an estate in pledge (*pignus*) to another knight, Peregrinus. Peregrinus died and was succeeded by his nephew, Hartongus, who inherited the land. The church on the property soon became vacant, and Hartongus presented a cleric to it. Bertholdus objected that he had expressly retained the right of patronage to the church in the pledge, and his claim was ultimately upheld.⁸

The case in 'Cum causam que' is obscured by the deletion of part of the *narratio* and by the terse and possibly telescoped presentation of the auditor's decision. The right of presentation to the church at Steinheim was included in a contract of 'obligatio' (presumably as a pledge) which had been made some time before the two clerics, O. and C., were presented to the church. The presentation of O. was confirmed; from the narrative of the decretal, he seems to have been presented by the debtor of the contract. Although the auditor's reasoning is not absolutely clear, the following is the most likely interpretation: the creditor

⁴ J. Huillard-Bréholles, *Historia diplomatica Friderici secundi* (Paris 1852) 1.cxx-cxxiii.

⁵ On Alatrino's career, see R. Elze, 'Die päpstliche Kapelle im 12. und 13. Jahrhundert', ZRG Kan. Abt. 36 (1950) 179; R. Manselli, 'Federico II ed Alatrino, diplomatico pontificio del secolo XIII', *Studi Romani* 6 (1958) 649-58.

⁶ For a map of the diocese of Speyer which shows both places, see LThK¹ 9 (1937) 719-20.

⁷ *Ibid.* 641, 648.

⁸ 3 Comp. 2.18.8 (X 2.27.18); P. Landau, *Ius patronatus: Studien zur Entwicklung des Patronats im Dekretalenrecht und der Kanonistik des 12. und 13. Jahrhunderts* (Köln-Wien 1975) 162, 169.

had the right of patronage included in the contract of obligation, even though this right normally would pass to the creditor with the whole estate (*cum universitate*). But the creditor did not have *ius in re* to the presentation (only *ius ad rem*) until the debt became due.⁹ Therefore, the creditor could not use the right of patronage to present C. Finally, when C. appealed the decision of the bishop of Speyer, he did not carry through his appeal properly (*legitime*).

'Cum causam que' is an illustration of the principle that *ius patronatus* could be excepted in a contract — a principle which first entered canonical thought through a decretal of Alexander III, 'Ex litteris'.¹⁰ The canonists developed the doctrine that the sale, exchange, lease, gift, or infeudation of a property which had a church with patronage attached to it was always 'cum universitate', a concept which they had borrowed from Roman law. Even though the canonists developed the terminology in the 1180's, 'Cum Bertholdus' is the only decretal in the *Compilationes antiquae* which has this phrase in it.

Although Alexander's 'Ex litteris' demonstrated that a debtor must have an explicit exclusion entered in his contract to retain patronage, the canonists began to see a crucial difference between the legal situation in 'Ex litteris' and 'Cum Bertholdus'. They observed that, according to Roman law, when a debtor gave a thing in pledge (*pignus*), the creditor could not collect the fruits of the thing which was pledged nor use the thing itself. Thus, a creditor who accepted an estate with a church as a pledge could not use the right of presentation, and the right of patronage did not have to be reserved in the contract for the debtor to maintain his right.¹¹ When Bertholdus claimed that he had expressly retained his right of patronage, he was, legally speaking, being redundant. 'Cum causam que' is another example of this problem, and the lawyer-scribe probably had this legal distinction in mind when he added 'Cum causam que' to the Leningrad manuscript.

⁹ For a discussion of 'cum universitate', see Landau, *Ius patronatus* 108-15. For the distinction between *ius in re* and *ius ad rem petendam*, see Landau, *op. cit.* 164-70.

¹⁰ 1 Comp. 3.33.9 (X 3.38.7); Landau, *Ius patronatus* 111-14, 203-05, 209.

¹¹ The canonistic discussion of this point centered around 'Cum Bertholdus'; e.g. Johannes Teutonicus to 3 Comp. 2.18.8 (X 2.27.18) v. *uero patrono*, Admont 22, fol. 188v: 'Hoc intelligi consuevit in eo casu quando debitor exceptit ius patronatus, ut supra de iure patron. Ex litteris, alioquin transiret cum universitate ut ibi dicitur, et ff. de contrahend. empt. In modicis; sic supra eodem c.i. Sic et fundo uendito accedunt seruitutes et alia iura, ut ff. de contrahend. empt. Si aque ductus et l. sequenti et l. Dolia, et est simile ff. de fundo dotal. l.i. Set certe alia ratio est in emptore uel feudatario qui directum uel utile dominium habet in re, et aliud in creditore, quia si ius presentandi consistit in fructu, eo ipso quod creditor uteretur tali iure, deberet exonerari quantitas debiti. . . Item nec aliis iuribus utitur creditor nisi hoc conuenerit. . . Item quia soluto debito esset priuandus ecclesia quod est contra id xvi.q.vii. Inuentum. Item quia creditor peccat utendo pignore . . . Licet enim in uenditione siue infeudatione omnia iura transeant . . . non tamen in obligatione'. Innocent IV and Hostiensis repeat the core of Johannes's arguments in their commentaries, but Bernardus Parmensis in his ordinary gloss to the Decretals either was ill-served by the manuscript tradition or confused the issue. Johannes Andrea commented: 'glossator uero sic loquitur in parte quae sequitur, quod quid sentiat non apparet'.

Text

Leningrad lat. F II vel. 1, fol. 59r

Cum causam que inter O. canonicum Spirensis et C. presbyterum de Marbach Spirensis diocesis super ecclesia de Stenheim uertitur, olim ad nos ab audientia uenerabilis fratris n. imperialis aule cancellarij, non ex delegatione nostra cognoscentis de ipsa, per appellationem delatam, dilectis filijs abbati de Lozche et coniudicibus eius fine debito commissemus terminandam etc. et infra. Cumque super hiis coram eisdem iudicibus a partibus fuisset diutius litigatum et post productionem et publicationem testium hic inde conclusum, ipsi causam ipsam de utriusque partis assensu ad nos remiserunt instructam, quam dilecto filio Alatrino subdiacono et capellano nostro commisimus audiendam. Qui partibus in sua presentia constitutis, auditis hinc inde propositis et rationibus diligenter inspectis, tum quia ius patronatus expresse deductum in obligationis contractum, tum quia ius tale iam debet dici cum uniuersitate ad creditorem transire, cum <tamen> creditor ius in re non dicatur habere, ac sic nec tamquam uerus nec tamquam putatius presentaret patronus, licet memoratus presbyter a sententia diocesani episcopi qui eius institutionem cassauerat appellasset, tum etiam quia non fuerat legitime prosecutus <appellationem>, de mandato nostro, habito consilio uenerabilis fratris n. Albanensis episcopi et aliorum prudentum uirorum, institutionem factam de presbytero antedicto sententialiter irritauit, presentationem prenominati O. si alias ydoneus sit approbando. Volentes igitur que per capellanum predictum sententialiter sunt diffinita firmitatem debitam optinere, discretioni uestre per apostolice sedis mandatum <precipimus> quatinus eam executioni mandetis.^a Contradictores etc.

^a qua ea executioni mandantes *cod.*

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A Liber Sextus from the Bonifacian library: Vatican Borghese 7

The well-documented library of Pope Boniface VIII¹ naturally contained five copies of the *Liber Sextus*, his own contribution to the *Corpus iuris canonici*. By means of a *dictio probatoria*, in this case those few words of the text which began the second folio recto, it can be proven that one of those copies, inventoried at Perugia in 1311 and again at Avignon in 1411, survives as no. 7 in the Fondo Borghese of the Vatican Library. The positive tracing of this manuscript to a provenance 666 years old is a demonstration of the usefulness of the *probatoria* as a research instrument. In this particular case, the combination of data contained in the medieval inventories with a close examination of the codex itself leads to the tentative identification of Borghese 7 as the original exemplar of the *Liber Sextus*.

¹ Four library inventories and related sources are to be found in F. Ehrle, *Historia bibliothecae romanorum pontificum tum bonifatianae tum auenionensis* I (Rome 1890) and A. Pelzer, *Addenda et emendanda ad Francisci Ehrle historiae . . . tomum I* (Vatican City 1947).