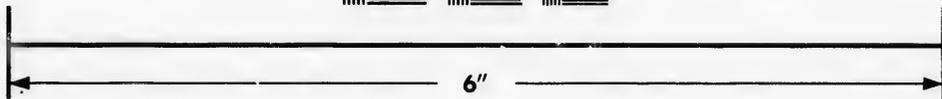
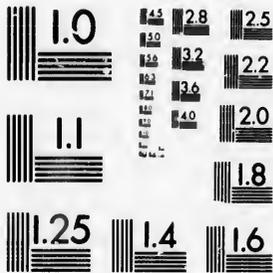
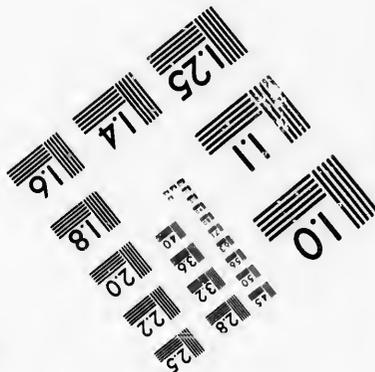


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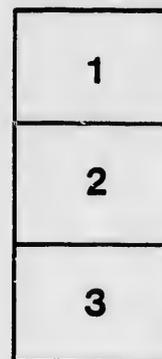
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TRANSLATION
OF A
GERMAN PAMPHLET,
RELATING TO
THE CATHOLIC QUESTION.

PRESENTED TO PARLIAMENT,
BY COMMAND OF
HIS ROYAL HIGHNESS THE PRINCE REGENT,
JULY 1815.

LONDON:

PRINTED BY R. G. CLARKE, CANNON-ROW, WESTMINSTER.

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TRANSLATION of a German Pamphlet, entitled: *Result of the Congress held at Ems by the Four Archbishops of Germany, who signed that result; to which are added His Imperial Majesty's Answer, approving the Proceedings at the above Congress, and the authentic Documents relating to it.* Franckfort and Leipzig, 1787, 8vo.

AT length we are enabled to present the public, in an authentic form, with the anxiously expected proceedings of the Congress convoked at Ems, accompanied by the documents relating to it. An account of these proceedings has long been called for, both in the German Empire and abroad, as they are said to have occasioned considerable sensation at Rome, and that they have been the subject of much comment in the public papers, so as to give rise to many incorrect reports concerning them. They are likely to become the groundwork for raising anew, or to furnish occasion for restoring as well the pristine constitution of the German church, as its hierarchical government and discipline; in which case they would be far more memorable than those disastrous concordates negotiated at Aschaffenburg, by which the German nation has been injured so many ways, as to its ecclesiastical rights, and from which such grievous disadvantages have resulted to its hierarchical constitution. For the reign of Joseph II. seems destined to witness the speedy approach of that happy epoch which is to realise the wishes cherished by the German nation upwards of three centuries; which is, to redress the bitter complaints and grievances respecting the encroachments and oppressions of the Roman court, that have been uttered ever since the Council of Constance and even before; which is, to restore the full exercise of that episcopal power and authority that are radically inherent in the pastoral office of Archbishops and Bishops, congenial to the fundamental constitution of the hierarchy, and have been handed down from the Apostles; and which is to carry into effect the privileges, franchises and immunities of the German church, stipulated by the celebrated compact concluded with Pope Eugene IV. and by what are termed the Concordates of the Princes. All this seems to have been reserved by Providence for our present enlightened times, when we are blessed with such a head of the Empire, and have the satisfaction of seeing raised to the first hierarchical dignities of the German church such ecclesiastical Electors and Archbishops, as a *Frederick Charles Joseph* at Mentz, a *Clement Venceslaus* at Treves, a *Maximilian Francis* at Cologne, and a *Serome* at Salzburg.

The commencement and occasion of this memorable epoch were the following:

The Pope persisting in his determination to send to the Court of Bavaria, and of the Palatinate, a Nuncio, not merely in the character of Envoy deputed to transact his master's affairs, in the manner of those residing at the Courts of Paris, Vienna, &c. but one invested with ecclesiastical authority and jurisdiction; urgent remonstrances were made to the court of Rome, but they proved abortive. The Elector of Mentz, who is the first Archbishop of Germany, and the Archbishop and Prince of Salzburg found themselves, therefore, compelled to address His Imperial Majesty, as the real protector and guardian of the German church, to claim His official interposition against such innovations and encroachments of the Roman See. The reply, worthy of Joseph II., surpassed the most sanguine expectation; His Imperial

Majesty not only promised them His protection, but in a gracious letter acquainted the four Archbishops, that he had, through the medium of His Ambassador, notified to His Holiness at Rome, His Imperial determination not to suffer henceforward any Nuncio in the German empire to exercise any ecclesiastical jurisdiction, nor allow the Archbishops and Bishops of the empire to be thus disturbed in the exercise of their diocesan rights, which they hold from God and the Church. His Imperial Majesty added, that he would use his utmost exertions to have the Bishops reinstated also, in such privileges as they might have lost by unwarrantable invasions, so as that the order originally established, and observed for centuries, should be entirely restored; solemnly calling upon them, their suffragans, and the exempted Bishops in Germany, to employ their united endeavours in asserting their metropolitan and diocesan rights against any attacks, and to oppose all usurpations of those rights by the Court of Rome and its Nuncios, as well as all practices militating against good order. We have inserted this interesting paper, No. I, though it be found elsewhere* in order to furnish the documents complete.

Prompted and encouraged by this letter from His Majesty, which relates to the Imperial right of affording protection, and, consequently, to the fundamental laws of the empire, the above four supreme superintendants of the church in Germany, as a preliminary step, judged it requisite, that the parties concerned should, at a general conference, come to an understanding as to the points to be stipulated, and, in order to it, resolved to appoint a meeting of their respective deputies at the baths of Ems, in the month of August 1786. The persons deputed, were, as may be easily conjectured, all of them, men of experience, divested of prejudice, and such, it would appear, as had studied the Canon law to better purpose than a *Reifenstuel*, *Prehler*, *Schmalzgruber*, *Engel*, &c. On the part of Mentz was chosen the titular Bishop *Heimes*; on the part of Treves the secret councillor and official *Beck*; on the part of Cologne the secret councillor and official of Munster, *Thauphaeus*; and on the part of Saltzburg, the ecclesiastical councillor *Barnecke*. After a long consultation they agreed upon, and obtained from their illustrious principals the sanction of the resolutions, No. II, which, having been furnished with the signatures of the above four prelates, were transmitted to His Imperial Majesty, whose high protection, in the character of Supreme Head of the empire, they implored, as appears from the letter No. III. This occasioned His Imperial Majesty's answer, No. IV. in which he signifies His acquiescence, approbation and promise of support,† but desires them, notwithstanding, to ascertain, through the medium of the above four metro-

* It first appeared in the Ecclesiastical Gazette of Vienna, and not till then in the 12th number of the Ecclesiastical Magazine of Mentz for 1785, which may afford matter of surprize, inasmuch as, if common report speaks true, some of the contributors to that periodical work are Gentlemen supposed to possess better opportunities, than others, for communicating to the public such interesting documents. We therefore beg leave to tell them, in this place, that they are, in general, more remiss, on such occasions, than the public expects, and is justified in expecting them to be. How long has it not called for an authentic account of the Congress at Ems, concerning which, notwithstanding their superior means of information, they have not, hitherto, published a syllable. They do not perform, in this particular, their original engagements. The other papers, given by them, were not so important, by a great deal, nor so interesting to Germany as this would have been.

† It might reasonably be expected that the authority of the four Metropolitans and Primates of the universal German church, headed, as they are, by their high protector, and representing the supreme hierarchy in Germany, would silence, and fill with proper respect, those shortsighted writers, who are in the ultramontane interest. But some will probably be found ready to lift up their voices, and raise a senseless clamour, as though the object of all this were nothing less than the overthrow of the Catholic church in Germany; that it would obviously terminate in

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What their sentiments will be, we have as yet no means of judging. It would certainly be lamentable if the German church should foster in her bosom Bishops, who, either blinded by ultramontane prejudices, or seduced by unexperienced narrow-minded advisers, or deceived by the intrigues and false professions of some emissaries, should suffer themselves to be prevailed upon, to continue deaf to the voice of their country, to disregard the concordates of the Princes, that is to say, the chief concordates of the German nation, adjusted by the most solemn treaty with Eugene IV., and confirmed by the oath of the Emperors at their coronation, and even to neglect those advantages and privileges which are their due.

Indeed it is known, from undoubted information, that means have been found, by misrepresentations, to make some Bishops distrustful of the Congress held at Ems. Perhaps officious pains have been taken to instil suspicion into their minds, and to disseminate unfounded conjectures, as if the Archbishops of Germany were availing themselves of the present opportunity to strengthen their metropolitan prerogative at the expence of the episcopal rights and dignities. It is, however, to be hoped, that every unprejudiced judge, on perusing the present authentic resolutions, will find the very reverse to be the case, for it must be evident both from the latter and the preliminary observations, that the principal object in view has been the restoration of the common rights of Bishops, and that, in regard to the metropolitans, nothing has been proposed, but what strictly agrees with the observance and constitution of the ecclesiastical discipline in Germany, and is allowed on all hands.

Another insinuation, equally groundless, and apparently spread with no less industry, has been, that the present opportunity was taken, on the part of the Archbishop of Mentz, to arrogate to himself, and exert on this occasion an unusual primacy, having annexed to it a certain prelatial power over other Archbishops of Germany, who, in some respect, especially in their dioceses, are, all of them, Primates. This was probably propagated with a view to sow the seeds of dissension and distrust among the metropolitans of the German empire, to divide men's minds, and to check not only the progress of amelioration introduced into the system of ecclesiastical government in Germany, but the redress of the grievances of the German nation. Such artifices are not unusual with the Roman court and its retainers; they were even employed at the celebrated concordates of the Princes, for which we have the authority of *Aeneas Sylvius*, a writer whose veracity, on this head, cannot be questioned, and who was fully acquainted with the facts; even the Emperor Frederick * endeavoured to promote the designs of the Court of Rome, and to disunite the German electors. But fortunately for Germany, Joseph II., her present Emperor, is very different from Frederick III. It

separation and schism, &c. *Feller*, the Editor of the Journal of Luxembourg, in his paper of the 1st of December, 1786, has actually made such an assertion, thereby approving himself again the first Satellite of the Roman Court, or its confessed agent in Germany for degrading the episcopal authority. But journalists of *Feller's* stamp, who are so little conversant with the Canon law, with the constitution, the privileges, and the immunities of the German church, and with the concordates of the German nation, may write whatever they please upon such subjects; they can never, at least with competent judges, injure the good cause.

* *Kollar* in *Analectis monumentorum omnis aevi Vindobonensis* T. II. p. 120. seqq. from the *Historia Austriaca* of *Aeneas Sylvius*, who, in the sequel, became Pope under the name of Pius II, quotes the following passage: Itaque summum Caesari studium erat, foedus electorum solvere, et aliquem ad se trahere, ut Eugenio et sibi consuleret. Contra enim omnes Electores nihil audebat agere, neque adversari Eugenio volebat. Ita neque solus Eugeniū sequi audebat, neque cum Electoribus illi adversari volebat.

would have been proper to have added a few observations concerning the Resolutions themselves, were it not that the subject matter of them is so important and so exuberant, that upon each of them, separately, a complete treatise might have been composed. They are also warded with so much precision and clearness, that every one, who is master of the subject, will easily understand them, without any explanation.

One of the most characteristic features of them, no doubt, is this, that the Concordates of the Princes repeatedly mentioned, and the Decrees of the Council of Basle, which were solemnly ratified at Mentz, in the year 1439, but of which the writers advocating the cause of the Court of Rome scarcely take any notice, have, by the four first hierarchs of Germany, been declared and acknowledged to be the principal Concordates of the German nation, and those subsequently concluded at Aschaffenburg to be only an exception to the rule, and a contract of inferior note, inasmuch as it was to remain in force only for a time. In the latter Concordates, negotiated at Aschaffenburg, and which are extremely prejudicial to the interests of the German Church, we find several times the following clause: "except and unless this provision should be rescinded at some future general council, with the concurrence of the German nation."* In the Bull of Eugenius IV. of the 5th of February 1447, which forms part of the Concordates of the Princes, the Pope engages explicitly to call for that purpose a general council within ten or eighteen months.† By the decree called *Frequens*, which the Pope solemnly recognizes in that very Bull, he bound himself, once for all, to convene such a general council every ten years at least.‡ This engagement is repeated by Eugenius in another Bull, dated the same day and year,§ and by which he confirms the recognition of the Decree of Basle. He there makes use of these words: "It is also our pleasure that the preceding (modifications) be maintained and supported in regard to all the above-mentioned points, until any of our Legates shall have entered into a different agreement, or until a different ordinance shall have been issued by

* Nisi in futuro Concilio de consensu nationis aliter fuerit ordinatum.

† Contendamus apud Reges et principes Christianos eam et diligentiam adhibere fideliter, ut ad votum nostrum trahi valeant, et conduci, ita, quod in uno ex quibus locis consentiant generale Concilium convocari, quod infra decem a die dato presentium computandos, intendamus experiri, et si Consensus huiusmodi haberi poterit, in fine dictorum decem mensium generale Concilium ad decimum octavum immediate sequentes Initiantium in uno ex prenotatis locis, in nomine domini convocabimus.

In eventum vero, quod ad aliquem ex dictis locis nationis Germanicæ cæteri Reges et Principes defecti non possent, convocabimus solitum intra decem menses generale concilium in alio loco, rebus gerendis accommodo, infra decem et octo menses, ut præfertur, consequentes Initiantium, tam ut vobis rem gratas faciamus, quam ut ecclesiæ necessitatibus succurratur. Concord. Nat. Germ. integra T. I. p. 139.

‡ Frequens generalium Conciliorum celebratio agrî dominicæ præcipua cultura est, quæ vepres, spinus, et tribulus hæresum, errorum et schismatum extirpat, excessus corrigit, deformata reformat, et vineam domini ad frugem uberrimæ fertilitatis adiucit; illorum vero neglectus præmissa disseminat, atque fovet. Hæc præteritorum temporum recordatio, et presentium consideratio ante mentis nostros ponunt. Quapropter hoc ælietio perpetuo sancimus, cœcurnimus atque ordinamus ut a modo concilia generalia celebrentur; ita, quod primum a fine huius concilii in quinquenium immediate sequens, secundum vero a fine illius immediate sequentis concilii in septennium, et deinceps de decennio in decennium perpetuo celebrentur, in locis, quæ summus Pontifex per mensem ante finem cœsulit concilii approbante vel consentiente concilio, vel in ejus defectum ipsius concilium deputare et assignare teneatur: ut sic per quamdam continuationem semper aut concilium viget, aut per terminum pendentiæ expectetur; quem terminum licet summus Pontifex de fratrum suorum sanctæ Romanæ ecclesiæ cardinalium consilio, ab emergentibus forte casibus, abbreviare, sed nullatenus prorogetur. Locum autem pro futuro concilio celebrando deputatum, absque evidenti necessitate, non mutet.

§ Quasiæciani circa singula promissa manuteneri et defensari volumus, donec per legatum huiusmodi, ut prædictum est concordatum fuerit, vel per concilium, quod ad prædictorum Regis, Prælatorum et principum exhortationem convocare proponimus, aliter fuerit ordinatum. loco cit. p. 145.

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"a council, which, at the instance of the King, the Prelates, and the Princes, we have resolved to convolve." For this reason, and because the Court of Rome frequently transgressed the Concordates of Aschaffenburg, asserting that it did not consider itself bound by them,* such German Bishops and Princes, as had been parties to those Concordates (for it is well known that all of them did not give their consent thereto) on finding that not only the term of eighteen months originally fixed, but ten years had passed without any step being taken, declared, in the year 1457, that they did no longer acknowledge those concordates to be obligatory upon them. An unexceptionable proof of it exists in the letter which the celebrated *Majer*, formerly Chancellor of Mentz, on the 31st August 1457, wrote to *Aeneas Sylvius*, and towards the conclusion of which he says: "At length our Princes, as if aroused from sleep, begin to consider by what proper means they may remedy that mischief, being determined to shake off the yoke entirely, and to recover their former liberty."† But from the ardent attachment of the Emperor *Frederick III.* to the interests of the Court of Rome, and from the artful manœuvres of *Aeneas Sylvius*, the plan failed, and notwithstanding the many strenuous efforts of the German states, even at the diet, things have remained in their former situation to this very day.‡ But the moment seems to be near at hand, when the matter will be taken up with serious earnest; and by the assistance of so enlightened an Emperor as *Joseph*, there is every reason to hope for better success.

To carry this important object into execution, the present Resolutions of the Congress held at Ems propose, in the first instance, the convocation of a general council, which has already been promised by the Concordates, more than once. But as, from a variety of causes, there seems to be very little probability of it, they advise to call a national council, and, finally, a diet. The Court of Rome will, no doubt, vigorously oppose the two first expedients,§ but the third it will not be in its power to prevent, any more than it was able to counteract the celebrated *formula* of Reformation established for the government of the German Church during the reign of Charles V. in 1548, at Augsburg, and which is to remain in force till a general Council shall be convened.

It is only to be wished, and our enlightened times afford for hoping, that the present happy prospect of a final adjournment again vanish.

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* It is astonishing that the very learned Benedict XIV. in his Apostolic Letter of the 17th December 1740, addressed to the Chapter of Liege, should have declared, that he considered the German concordates binding on himself.

† Nunc vero, quasi e somno excitati optimates nostri quibus remediis huic calamitati obviam pergant, cogitare coeperunt, Jugumque prorsus excutere, et se in pristinam vivicare libertatem decreverunt. Vide *Wolffium* in Memorabil. Tom. I. p. 873.

‡ See *Moser*, Jus. Publ. Germ. Tom. I. lib. I. cap. 18. sat 55. Concord. nat. germ. Integr. Tom. 3. 170. seqq.

§ Of this any one may fully convince himself, by turning to the History of the Council of Trent.

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Answer of His Imperial Majesty to the Electors of Mentz, dated the 12th of October 1785: Copies of which were sent to the Electors of Trier and Cologne, and to the Archbishop of Salzburg.

By the detailed statement contained in your Highness's letter, I find, that, for the purpose of maintaining the diocesan rights of the Archbishops and Bishops in the different districts of the Empire and in the Bishopricks, it will be expedient to provide against any encroachments that are perhaps to be apprehended by the territories of the Palatinate and of Bavaria, from the Papal Court, especially on account of its resolution to send a special Nuncio to Munich, where it has hitherto not been the practice of having such an Envoy; for which reason you solicit my Imperial protection, expecting it from me in my character of Supreme Guardian of the Ecclesiastical Constitution of Germany.

As, on every occasion, it has been my custom and constant endeavour, to afford the most candid, and the most sincere testimonies of the patriotic and paternal sentiments which I entertain for the prosperity and preservation of the empire, in all parts of its constitution; it is also my intention, not only strenuously to support the episcopal rights in their dioceses, as forming an essential part of a good disciplinary constitution, but to endeavour that the Bishops, according to the order originally established and observed for centuries, may be reinstated in all those rights, which they may have lost by proceedings as unwarrantable as they were contrary to what they were intended to have been.

Induced by the above representations, I have determined to declare to the whole Empire, in the most candid and explicit manner, my sentiments as Chief Protector of it, and to cause it to be intimated to the Papal See, that I can never permit the Archbishops and Bishops of the Empire to be disturbed in the diocesan rights, which they hold from God and the Church; and that, consequently, I consider the Nuncios only as Papal Envoys destined for political, and such objects as fall under the immediate cognizance of the Pope in his capacity of Supreme head of the Church; but that I cannot allow to these Nuncios either the exercise of any jurisdiction in Ecclesiastical matters, or any Court of Judicature; wherefore, such privileges shall neither belong, nor be granted, to the Pope's Nuncio residing at Cologne, or at Vienna, or to any other who may henceforward come into the territories of the German Empire.

In manifesting these my sentiments to your Highness, I, at the same time, call upon you, by your personal exertions, as well as by instructing to that effect, your Suffragans and the exempted Bishops, firmly to maintain all your metropolitan and diocesan rights, against all attacks, and against whatever may appear an encroachment of the Papal Court or of its Nuncios upon such rights, and upon good order; in which effort I promise you and them my whole Imperial assistance. I expect, however, that in all matters relating to benefices, the clear letter of the Concordates, concluded by the German Nation, will, for the future, be adhered to, trusting that by these my patriotic views, I shall be able at once, to advance the interests of religion, and to afford to the Ecclesiastical States and Bishops of the Empire, convincing proofs of my unremitting care for the maintenance of its laws and constitutional liberties.

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II.

Resolutions of the Congress held at Ems.

His Imperial Majesty, in his most gracious letter, addressed to the four Archbishops of the German Empire, viz. of Mentz, Treves, Cologne, and Salzburgh, dated 19th October 1785, having been pleased to promise to the episcopacy of the German Church, not only to maintain the episcopal rights in their respective dioceses, as forming an essential part of a good church discipline, but to take measures for reinstating the Bishops in all those privileges which they may have lost by unwarrantable usurpations, so as to re-establish the order originally introduced and observed for centuries, has promulgated to the whole Empire the sentiments by which he is actuated as its supreme protector, and has, at the same time, caused it to be intimated to the Holy See, that he would never allow the Archbishops and Bishops of the Empire to be disturbed in the exercise of those diocesan rights, which had been conceded to them by God and by the Church.

This promise made them by the Head of the German Church, has encouraged and induced the four Archbishops, in compliance with the wishes long entertained by their country, to discharge the duty which they owe to their particular religious communities, no less than to the German Church in general, by directing the four Deputies, signed underneath, to specify the principal episcopal rights in question, (from the exercise of which, under their own immediate authority, they have been excluded for centuries back,) and by causing such rights to be carefully examined, according to the standard of sound principles.

Although the Pope at Rome is, and continues to be, the Head and Primate of the whole Church and the centre of unity, holding from God the jurisdiction required for that purpose, insomuch that every Catholic is bound to obey, and most respectfully, to yield to him canonical obedience, yet all other privileges and reservations, not connected with this primacy in the earlier centuries of the Christian Era, but which have emanated from the later Decretals of Isidore, to the manifest prejudice of the Bishops, cannot, now that the forgery and fallacy of them is sufficiently proved, and generally acknowledged, be drawn within the limits of that jurisdiction, as they must be classed with the encroachments of the Roman Court. The Bishops are then justified in reassuming, under the powerful protection of His Imperial Majesty, the exercise of the authority granted to them by God, more particularly, as no remonstrances, addressed to the Papal See, relative to this subject, have been of any avail.

The leading points of this question are exhibited in the following propositions, and in the direct inferences deduced from them.

Christ, the founder of our Holy Church, has granted to the Apostles, and to their successors, the Bishops, an unlimited power "to bind and to loose," in all cases, where either the necessity, or the good of their Churches, or of the faithful belonging to them, may require it.

(a) Wherefore, agreeably to the nature of the original constitution of the Church, no doubt can exist, but that all persons, without distinction, living within the dioceses of the Bishops, are placed under their orders, as to matters of religion, both internal and external.

(b) Hence diocesans, in cases of appeal, shall not be permitted to pass over their immediate ecclesiastical superiors with a view of applying to the Court of Rome. However, in such cases as are specified by the Canon Law, they are not prevented from appealing to the higher Ecclesiastical Authorities, according to the degrees of the Hierarchical Constitution.

(c) Exemptions being at variance with the discharge of the episcopal office, shall be allowed no more; yet this prohibition does not apply to those bodies and individuals, whose exemption has been confirmed by Imperial Charter, and is generally recognised in the Empire.

(d) No Religions shall be allowed to receive of their Generals or Chapters, General, or of other superiors residing out of Germany, (from every connection with whom they are hereby entirely absolved) any orders or replies, or to attend the general assemblies, or to send thither any pecuniary contributions, under any pretext whatever.

II.

It is lawful for every Bishop, in virtue of the power "of binding and loosing," which he holds from God, to enact laws, and to dispense with them upon sufficient grounds. He alone is acquainted with the wants of his flock and with the proper means for relieving them, and ought, therefore, to possess the power of granting to the faithful, for a time specified, or as long as it may appear expedient, some indulgence, both as to the particular and the general Church Laws.

(a) Wherefore he is competent to grant dispensations, in the manner just mentioned, with respect to the general prescriptions relating to abstinence, if such dispensations be founded upon some public necessity, or if they benefit the diocesans over whom he presides.

(b) As also, to remove those obstacles to marriages, for which the Holy See hitherto used to grant general powers of dispensation, including those particular cases, the second degree of consanguinity, and the first and second degrees of affinity, which heretofore required special dispensations from Rome. Archbishops and Suffragans, however, in such cases of particular delicacy, may apply for the opinions of his Holiness.

(c) Dispensations being scarcely ever withheld in the third and fourth degrees of consanguinity and affinity, any more than in most cases of ecclesiastical kindred, or in the case of what is called the *Impedimentum publicæ honestatis*, the sense of the Suffragan ought to be taken, as to the propriety of abolishing those impediments entirely.

(d) It being, moreover, a right pertaining to Bishops, to absolve from obligations arising from clerical consecration,—all Archbishops and their Suffragans shall exercise it, with respect to Deacons and Sub-deacons, whenever important and urgent causes call for such exercise.

(e) They shall also absolve the conventual clergy from their solemn vows, where sufficient canonical reasons shall appear for it, and shall direct, that in all convents for monks, such vow be not taken before the completion of the twenty-fifth year, and in convents for nuns, not before the expiration of the fortieth.

III.

It being found that from the altered circumstances of the times, even the best views of some charitable institutions cannot be accomplished, or at least, very imperfectly, it behoves Bishops, for the benefit of religion and of

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the community, to replace charitable institutions so situated, by others more consonant to their original object, and which may supply real necessities.

Accordingly,

(a) No further application shall be made to the Court of Rome for what are termed *facultates quinquennales*, but it shall be competent to Bishops to grant dispensations, whenever any canonical grounds appear for it, in all cases for which the *facultates quinquennales* were formerly required. All dispensations obtained abroad, shall be null and void.

(b) No bulls, briefs, or other ordinances of the Pope, shall be binding on Bishops, unless the latter signify their formal assent.

(c) Without such assent, no declarations, replies, or orders from Rome whatsoever, shall be valid in Germany.

(d) All Nunciatures to cease totally. Nuncios can be received only in the character of Envoys from the Pope, and pursuant to the declaration issued by His Imperial Majesty under date of October 12, 1785, which is founded upon the ordinances of the Church, as well as on the fundamental laws of the Empire, and they must no longer exercise any *actus jurisdictionis voluntarie aut contentiosæ*.

(e) The Apostolic Notaries, and Proto-Notaries, to exercise their functions in Germany no longer, unless they be previously examined and immatriculated in the Ecclesiastical Courts of Judicature. Every Bishop, in his diocese, may appoint notaries of his own, but the heads of religious orders shall no longer be allowed to create notaries for themselves, for transacting the affairs of their respective communities.

V.

The Bishop to possess exclusive authority for granting dispensation with respect to a plurality of prebends.

(a) Such dispensation, however, not to be given, except in the case of a *Capitulum de multa*, it being alike contrary to the spirit of the Church and to the intentions of the pious founder, for a Priest, who is scarcely able to discharge the duties of one benefice, to enjoy two or more prebends.

(b) Whether such *casus capituli* really do exist, it is for the Bishop in each respective chapter to decide.

Chapters are, therefore, prohibited from conferring upon any individual a second prebend, until they shall have received the Bishop's declaration as to the dispensation being granted. But if the chapters be situated in different dioceses, the power of inquiring into the merits of the application for dispensation, and of granting the same, shall rest with the Bishop in whose gift is the second prebend.

VI.

The innovations introduced by the forged decretals abovementioned were soon made the subject of complaint by the German Nation; it also endeavoured to procure redress from the councils of Constance, Basle and Trent; but the *Decreta Basileensia*, issued with a view of giving them redress, were, not long after, again limited by the Concordate concluded at Aschaffenburg, till at length those *Decreta*, as well as the Concordate just stated, were, in some points, misconstrued in prejudice of the German nation, and in many more totally transgressed; of which public complaints were made by the Emperor Frederic III. Maximilian I. Charles IV. &c.

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at the Diets of Nuremberg, Freyburg, Worms, Augshurg, &c.; and even antecedently, by the Rhenish clergy, who alleged "That the Concordates erected and concluded at Basle, between the See of Rome and the German nation, had been infringed in a variety of ways." The continuance of these grievances appears from the letter of the Electoral College of the 19th March 1764, to His Imperial Majesty; from the *Gravamina* specified by the three Ecclesiastical Electors at Coblence, and from daily experience.

VII.

By way of provisional redress of the same, the following points are proposed, while a most respectful, yet confident hope is entertained, that should it be necessary, His Imperial Majesty will vigorously exert his office of Protector.

(a) While the Concordates are yet in force, and that the nation has not yet made other provision, the *Deereta Basiliensia*, such as received in the year 1439, at Mentz, in the reign of King *Albert*, shall be recognised as the standard Concordates, and rights provisionally conceded to the See of Rome in the *Concordia* of Aschaffenburg in 1448, shall be considered an exception to the rule.

(b) The Bull called *Extravagans Execrabilis* can not take from the German Churches of the Cathedral and other Chapters, the right of bestowing such benefices as become vacant pursuant to that Bull.

The first benefice is not vacated by the induction into another of the description just referred to, when the beneficed individual is a titular Canon (domicellus, domicellarius) or holds a prebend which is not a competency.

(c) The reservations in the Bull called *Extravagans ad Regimen* cannot take place in Germany. For not being calculated for the state of the German Church, the cases of translation, deposition, privation, &c. mentioned in it, are inapplicable to that church. Of all these cases, none now belongs to Rome, except the confirmation of a new-elected Bishop, which can never be refused but on important canonical grounds. An exception must however, be made with respect to those provisions which may perhaps depend solely on the liberality and discretion of the Apostolic See.

(d) No validity attaches to those clauses which are usually appended to the *Indulta de retinendis dignitatibus et beneficiis prehabitis*, and which are to suspend, and defer yet farther, the effect of the reservation, namely, even to future cases *i. e.* of vacation by death.

(e) Equally null and void are those reservations which have been introduced by the Court of Rome against the liberties of Germany, posterior to the Concordates.

(f) Yet when it is deemed necessary, application may be made to Rome for the *Brevia eligibilitatis*, until it shall have been provided otherwise by a general reformation of the Church.

VIII.

To do away entirely the transmission of ecclesiastical benefices by inheritance, it is ordered, that

(a) The *resignationes in favorem*, whether real or fictitious, shall be inadmissible everywhere throughout Germany, and shall be prohibited, whether given in to the Court of Rome, or to the Bishops. They must be made without any reservation of the party resigning, so as to enable the

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Bishop, or whosoever has the gift of it, freely to bestow the benefice on whom he pleases.

(b) If, however, any German Bishop be disposed to allow the resignations of certain benefices to take place at the Court of Rome, he is not obliged to accept from thence a collation, unless the *Provisus* have previously received from him the *testimonium idoneitatis*, and that the particular benefice, for which it is given, be specified. Such certificate shall have no validity, if more than six months shall have elapsed from the day when it was made out, and it shall be competent for every Bishop to refuse or grant it, according as he may see occasion, nor shall there lie any appeal from his decision.

(c) In this case, the resignee is bound, within three months, to lay the papal collation before the Bishop in whose diocese the benefice is situated, as well as before the Chapter; or the resignation is to be considered as null and void.

(d) The Bishops are, however, obliged to accept, in every month, the resignation of all benefices of their diocese, though without prejudice to the patronage, and, according as circumstances may require it, either to assign it again, or to declare it vacant.

IX.

But should the Court of Rome even have given away any coadjutories, provostships, deaneries or prebends in Germany, the Bishops will not allow such gifts to take any effect.

X.

The *dignitates majores, pos. pontificales*, in the Cathedral Churches, and the *principales* in the Collegiate Churches not being by the Concordates reserved for the Papal See, shall, when vacated, be in the gift of those who have the right of conferring it. No papal presentation or confirmation of such provosts as have hitherto been elected *ex indulto papali*, shall any longer be admissible.

XI.

It shall also be a rule with the Bishops

(a) Not to suffer any dignities or benefices in their dioceses to be conferred by the Court of Rome, so long as German benefices shall be in its gift, except after the production of the above-mentioned certificate of ability; neither to allow those bestowed by other patrons, and especially by themselves, to be given to any but able, worthy and deserving persons, but particularly to such as have, for a long time, usefully employed themselves in the cure of souls, or in education, and either have rendered, or are still rendering, useful services to the church in which they are incorporated.

(b) To fix the age required for entering on a benefice according to the nature of it. To be a Subdeacon, therefore, it will be necessary to have attained the 22d, a Deacon the 23d, and a prebend, to be held by a Priest, the 25th year of age.

XII.

In order not to deprive such Collegiate and other Churches of the necessary services of their Clergy, those Canons or Incumbents of benefices, who

have attained the proper age, shall, within a year, receive the holy consecration requisite, after having previously acquired the necessary qualifications, and shall, then, discharge the duties attached to their benefice, or, in default thereof, the Bishop shall be authorised, upon having duly admonished the party chargeable with neglect, not only to declare the prebend or benefice vacant, but, unless barred by patronage, immediately confer it, except the impediment be not imputable to the incumbent, but to the benefice itself.

XIII.

Finally, in order to exclude from the German Churches all foreign candidates, it is hereby declared, after the precedent of several Churches abroad, that all who are not natives of Germany, are incapable of obtaining a benefice, unless they have previously been naturalized; still, however, this latter exception cannot derogate from any statutes that may have been enacted by some Chapters on this subject.

XIV.

The dispensations of the Court of Rome can never affect any statutes of German Churches.

XV.

The *Indultum perpetuum* of collating to prebends void during the unequal months, which *indultum perpetuum* was granted *ex facto* immediately after the Concordates, to the three Archbishops and Electors of the German Empire, in those Churches, where the *alternativa mensium* takes place, has not only been restricted by the Court of Rome to single years, but that Court has also, in the sequel, bestowed some months, appertaining, by the *indultum*, to the Archbishops, upon other bodies subordinate to the Archbishop of some or other of the Archbishops.

(a) His Imperial Majesty is to be solicited to make an earnest representation to His Holiness, to the end that such Papal months, conferred in a particular Bishoprick, contrary to the above *factum post Concordata*, upon persons other than the Archbishop, in prejudice to the *Indultum*, may be taken back, and returned by the Pope to the Bishop only.

(b) The instrument of the *Indultum perpetuum* is to be made out for the Archbishops immediately on their institution, along with the Bull of confirmation. But if the Papal Court, contrary to expectation, should refuse complying with the above two points, then

(c) The Archbishops are authorized to confer, without any further hesitation, those prebends which are vacated during the Papal months, and His Imperial Majesty will most graciously be pleased to protect, in the Character of Head of the Empire, the Archbishops against all encroachments, in regard to this right, as well as to the particular privileges of the Archbishopsrick of Salzburgh, relating to this subject. But as

(d) The Archbishops and Bishops of Germany, in order to the regular administration of their dioceses, must enjoy the collation to benefices, and that the six months are not for ever conceded to the Popes, by the Concordates, redress may also be expected, in this particular, from the National Council, which, it is to be hoped, will soon be effected.

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XVI.

The second provision, unknown to the Concordates, and, at a subsequent period, foisted into the *Indulta* by the Jurisconsults of the Court of Rome, must, from this day forward, cease entirely, especially as it not only causes great and unnecessary expence to the party, but occasions many disputes and intrigues for benefices.

XVII.

As the *Processus informativus*, on the installation of new Bishops, ought to be performed according to the directions of the Council of Trent, sess. 22, chap. 2, *de reform.* either by the Nunciatures, or by the ordinary Bishops, and, in default of them, by the nearest Bishop, and that, besides, the Nunciatures, are now about to cease, the above tridentine provision shall in future be strictly observed; but to prevent any hesitation as to who of the neighbouring Bishops is to perform the *Processus informativus*, the *Consecrator* is hereby ordered to take charge of it, pursuant to the ancient discipline of the Church.

XVIII.

The usual *testimonium idoneitatis* made out by the Bishops nominating and presenting at Rome the Bishops *in partibus*, may suffice to supply the place of the process in question, more especially as the former must be best acquainted with the necessary qualifications of the nominee.

XIX.

Both the *Indultum Administrationis*, which formerly has been attempted to be forced upon us, and the *Clausula in temporalibus* in the Bulls confirming elections, are henceforth totally inadmissible, the latter being, besides, quite contrary to the rights of His Imperial Majesty, and of the Empire.

XX.

The oath required from Bishops, devised by Pope Gregory VII, and inserted in the Decretals, by Gregory IX, which enforces the duties belonging to a vassal, rather than canonical obedience, ought no longer to be taken, the more especially, as the German Episcopacy thereby actually bind themselves to what, as Members of the Empire, they cannot possibly observe. Another oath is, therefore, to be substituted in its stead, so worded as not to trench either on the Pope's Primacy, or on the rights of the Bishops.

XXI.

The hardships which the Bishopricks of Germany suffer through the *Annats* and the *Fall-money*, may be inferred not only from the incredible sums of money sent hitherto, on those accounts, from Germany to Rome, but from

the debts thereby contracted and accumulated in many Bishopricks. The Court of Rome, not insensible to the unfairness of this proceeding, had, in the Concordates, concluded at Aschaffenburg, promised some relaxation, which, however, has not yet been carried into effect. Now, though the German Nation will have no objection to pay a compensation for the Annats and Pallium-money, with a view of rewarding the officer collecting them, yet it cannot but wish and hope that the said compensation may be valued and fixed, according to the estimated revenues of the Archbishopsricks and Bishopricks, within two years, either at a national Council, or if, from any impediments, it should not take place, by His Imperial Majesty and the whole Empire. If, in this case, the Court of Rome should refuse either the confirmation, which has been insured by the Concordates, and cannot be denied without particular canonical grounds, or the *Pallium*, the German Archbishops and Bishops will be sure of finding in the ancient discipline of the Church such remedies as shall preserve them, on one hand, from trespassing on the reverence and subordination due to the See of Rome, and, on the other, enable them tranquilly to discharge their Archiepiscopal and Episcopal offices under the high protection of His Imperial Majesty.

XXII.

All matters which, by the observance of the German Empire, and of the ancient Church, are referable to the Ecclesiastical Jurisdiction, must

(a) Be tried, in the first place, in the Ecclesiastical Court of each particular Diocese, and if the cause is to be removed to a higher tribunal, an appeal shall lie from the Bishop to the Metropolitan Court.

(b) The Papal Nuncios must not interfere in any cause, whether depending in an inferior or a superior Court.

(c) For this reason, the Archbishops and Bishops will be careful in making choice for the offices in their Ecclesiastical Courts of Justice, of experienced, tried, and worthy men, and in directing them to regulate their proceedings by a system conformable both to the Canonic Law and the practice usual in the Empire, if they do not act already upon such a system, to prevent sacred justice from being any ways obstructed or violated in prejudice of either of the parties.

(d) Should any appeal be brought from them to the See of Rome, the latter shall appoint *Judices in partibus*, and that natives; and they shall be selected according to the provisions of the Council of Trent, and afterwards nominated at Rome.

(e) This object will be accomplished yet more effectually, if every Archbishop, with the concurrence of his suffragans, establish in his respective diocese, a Synodal Court of Justice, and remove thither all causes of appeal. The President, and some of the members of such Court of Appeal, might be nominated and maintained by the Archbishop, and two members by each of the suffragans.

XXIII.

If the Archbishops and Bishops of Germany should, by the powerful assistance of His Imperial Majesty, be again reinstated in these rights which belong to them by the appointment of God, and should be emancipated from the principal causes of complaint against the Court of Rome, they will then, and not till then, be capable, in so far as they are fully resolved to do, to

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proceed speedily to the amendment of the Church-discipline, in all its parts, according to uniform principles,—to take the necessary steps towards the amelioration of the cure of souls, chapters and convents, and radically to extirpate all defects and abuses which have gradually crept in.

For the rest, as the *Concordatum Aschaffenbugeuse* has, from its very beginning, been considered as one of the greatest grievances of the German nation;—as the Bishops have thereby been sensibly obstructed in the execution of their original rights;—as it was concluded only for a time, until the next expected Council;—and that the promised redress was not given at the Council of Trent, held a whole century after, the German nation most earnestly, but, at the same time, most submissively express an expectation, that His Imperial Majesty, in the character of Supreme Head of the Empire, will be pleased to apply to the See of Rome, in order, by His high intercession, to bring about, within two years at farthest, a national Council, promised in the said Concordate as an essential condition, for the final redress of all these grievances; and, if even in this respect the former obstacles should operate, most graciously to procure the indispensable redress by steps consistent with the Constitution of the Empire.

The above Resolutions having been taken into mature consideration, by the undersigned, have been unanimously resolved upon, and, after the production of their respective full powers, signed in the names of their constituents, and sealed with their own usual seals.

Bath of Ems, 25th August, 1786.

- (L. S.) VALENTIN HEIMES, His Electoral Grace of Mentz's Titular Bishop and Privy Councillor.
- (L. S.) JOSEPH LOUIS BECK, His Electoral Highness of Treves's Privy Councillor and Official.
- (L. S.) GEORGE HENRY VON TAUTPHAEUS, His Electoral Highness of Cologne's Ecclesiastical and Privy Councillor.
- (L. S.) JOHN MICHAEL BŒNIKE, Consistorial Councillor of the Archbishop of Salzburg.

III.

Copy of a Letter, addressed to His Imperial and Apostolic Majesty, by the Archbishops, Electors, and Princes of Mentz, Treves, Cologne, and Salzburg. Dated Aschaffenburg the 3d, Schönbornlust the 7th, and Brühl the 8th September 1786.

Your Imperial Majesty, under date of October the 12th of last year, was pleased to impart to us the invaluable assurance of your high protection and assistance, in the character of Head of the Empire, accompanied by that most just requisition to us, firmly to maintain, in future, all our metropolitan and diocesan rights, against all attacks, and against whatever might ap-

pear an encroachment of the Papal Court, or of its Nuncios, upon such rights, and upon good order.

While these estimable sentiments excited our most lively gratitude, we judged it consistent with the good both of the Diocesan Church, entrusted to us, and that of the Church of the universal German nation, to consult together upon a subject of such importance; to trace the Episcopal rights to the source of the Apostles themselves, who have handed them down to us; and, at the same time, provisionally to define the principal prerogatives which we deem inseparable from our Episcopal Office, pursuant alike to the original Constitution of the Church and to divine institution, and which we intend to resume, and mutually to secure and uphold against all ulterior limitations.

We anticipate the desire of the Head of the Empire, who is already convinced of our past mortifications, in respectfully offering to your Imperial Majesty, by means of the inclosed, maturely considered, and unanimously voted, Resolutions, an abstract of those rights and prerogatives, and by recommending them, under the Imperial protection, as being a fundamental law of the empire, to Your Majesty's powerful support, as well as, should there be need, to the Supreme interposition and mediation with the Court of Rome, and that so much the more confidently, as the exalted attention of Your Majesty, from your own gracious impulse, has anticipated our overtures.

Your Imperial Majesty will remark, from the purport of our grievances, how melancholy the state of the German Church must have been, ever since the time that the unrestricted and plenary exertion of our arduous pastoral duty, and of the power required for it, and which admits neither of prescription nor transfer, was restrained, on all sides, by the misconceptions of an unenlightened age, and that, in the discharge of our pastoral duty, we were circumscribed by nothing so much as by the encroachments of the Court of Rome.

These encroachments, so prejudicial to the liberty of the German Church, were on the increase, indeed, at an early period, and especially since the general adoption of the Decretals fabricated by Isidore, after which period those usurpations were extended, more and more, by the retainers of the Court of Rome; such grievous wrongs have impelled the German nation, for centuries past, to raise many and loud complaints, and, at the Councils of Constance, Basle and Trent, to press for a radical and complete redress, which, however, it has never been able to obtain; nay, even those public agreements, concluded provisionally to remove some particular grievances, were never entirely carried into effect.

The resumption of our original rights, therefore, at which we now aim, becomes more justifiable in proportion as the usurpation of them has been of long continuance; and as the said agreements contain many provisions to which the German nation has been forced to consent by the circumstances of the times, and which still press upon it very heavily, nothing is more reasonable and more desirable, in every respect, than that the redress, now sought, should extend also to those agreements so burthensome to the nation.

As, however, it is not our intention yet to relinquish the observance of the Concordates; as we, consequently, confine our complaints to the partial constructions, and to the deviations of the Court of Rome; and that, besides, under the protection of His Imperial Majesty, we shall resist such partial constructions or arbitrary deviations; we beg leave to bring under Your Imperial Majesty's consideration only the observation, that to the agreements concluded with the said Court are manifestly appended such

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obligations as the German nation has by no means engaged to fulfil for ever, but that, on the contrary, it has reserved for itself, speedily, another provision, part of which is founded upon such views, as, in the present instance, are totally laid aside.

Your Imperial Majesty will, accordingly, deem it most equitable, for us, on that account, to solicit Your Majesty's mild intercession, to induce the Court of Rome, of its own accord, fully to tranquillise the German nation with respect to those agreements which are no longer suited to the present times.

But if, contrary to expectation, nothing can be effected by fair means, we implore Your Imperial Majesty graciously to vouchsafe to take immediate steps for bringing about the Council stipulated, and expressly promised in the German Concordates (since the expected relief has not resulted from that of Trent), by a national Convention of the German Archbishops and Bishops, in order that thereby the German nation may be entirely freed from all apprehensions, and have again restored to it, that perfect liberty, which is its due, and which, in earlier ages, it enjoyed for centuries.

And if, against all reasonable hope, even this expedient, which is so congenial to the Constitution of the Church, should either not appear practicable, or be difficult to be carried into execution; or if the object in view should not be attainable to the extent desired, we are inflexibly resolved to supplicate, that our grievances, and particularly those relating to burthensome exactions, or to the secular weal of our subjects, and of those of the Empire, be more fully laid before Your Imperial Majesty and the whole Empire, and be taken into consideration; as well as that, in order to the redress of them, such measures be pursued, as either the laws may furnish, or circumstances suggest.

In conclusion, recommending ourselves to Your Imperial Majesty's favour, we remain, &c. &c.

IV.

Copy of His Imperial and Apostolic Majesty's Reply to the four Archbishops and respective Electors of Mentz, Treves, Cologne and Salzburg, dated Vienna 16th November 1786.

I have learnt with great satisfaction, from your Highnesses' joint address to me, under dates of the 3d, 7th, and 8th of September of the present year, the warm zeal, and, at the same time, the perfect confidence with which, conformably to the contents of my letter of the 12th October 1785, you have unanimously expressed yourselves towards me, with a view to the redress of the abuses which have found their way into the disciplinary constitution of the Church.

As the measures taken in my hereditary dominions to promote the interests of religion are already productive of the most desirable effects, I am the more anxious for the uniform adoption of them in the German Empire, and am the more sincerely disposed, consistently with the rights belonging to me as Head of the Empire, to support both the Ecclesiastical and the Secular

States in their respective dioceses and districts, by promoting this important object, as much as possible.

As to the several Resolutions, annexed to your joint letter, I content myself at present with observing, that the possibility of their accomplishment, and the benefit to be expected from them, depend, in a great measure, on the previous and perfect agreement of the Archbishops with the exempted Prelates, as well as with their Suffragans, and with those States of the Empire, into whose dominions the Episcopal Dioceses extend. It is, therefore, essentially necessary for your Highnesses to come with those Bishops to a confidential understanding; and I, for my part, wish us sincerely, as I confidently hope and trust, that these latter, actuated by the same sentiments, and the same conviction, will, without loss of time, concur in the present salutary work, and will, in consequence, with united efforts and activity, exert themselves, upon common principles, for the interests of our holy Religion, and of its administration, in all its parts.

Of my vigorous co-operation and support, according to the whole extent of my Imperial protection of the Church, agreeably to the Laws of the Empire, your Highnesses may be as fully assured, as you may be convinced, that I am, &c. &c.

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