Brief no. 1, Which proves that the emphyteuta does not have any right over the so-called treasures and antiquities, notwithstanding three decisions of the Roman Rota.

Primary Question: Whether the antiquities—coins, objects in metal, gold, silver, bronze, or lead, whether isolated or contained within other decorations and figures, as well as the marble paraments of sculptures, the inscriptions, the scattered stones or other objects which may be found in the ruins of ancient and formerly public buildings as well as in the properties of private persons, in towns and in the countryside, in private dwellings and in tombs both above and under ground—whether all these so-called antiquities and treasures legally belong to the direct owner of the property or, if there is one, to the emphyteuta.

1. In order to decide this economic-political question in terms beyond controversy, one must suppose that, in the instrument of the emphyteusis, there be not expressly stated the convention that all or part of the things found or to be found on the property belong to the grantor or the grantee, and that there be not expressly stated any license to excavate, if the excavation and the things thereby found are not accidental. We must also suppose the question to be a matter between private persons and leave aside the direct or indirect interest which, in any excavation, may be due to the modern fisc.

2. The answer can be given, in a few words, with Emperor Justinian [...]. While making a new law on the emphyteusis, he contemplated the case of a ruined house being granted in emphyteusis. In such a case, he declared that the emphyteuta had no right other than to make use of the materials of the old house: “Utator ergo hujusmodi emphyteuta et illic inventa de depositis habitationibus materia.” This much he stated after having declared that the possession [dominio] of the property always rested with the grantor [...]. Secondly, we will say that Justinian completely decided the question when he clearly established [...] that the emphyteuta had no other right in the property except for the rights over the property’s improvements [...] that such improvements he could not alienate without the consent of the direct owner; and that he was the temporary possessor of the property if he regularly paid the agreed rent.

3. These statements of the legislator would be more than sufficient to settle the question. But it will be good to examine the matter in light of the opinions and legal principles which are current today, however improper [abusivi] they may be. [...]

4. Since 1612, after a decision of the Roman Rota before Monsignor Manzanedo confirmed in 1785 by two other decisions before Monsignor Resta, a belief and a practice have become common—the belief that [...] the whole belongs to the emphyteuta.
5. We shall not mind that before our century the legislation concerning the antiquities has been ignored or neglected in its true spirit, and that the present question has been treated like any other question of the forum, with the ordinary theories applicable to any matter whatsoever. But today we can do that no longer. Since the beginning of the century, by studying the subject of the antiquities in every genre and the history of what was decided about them by the Supreme Pontiffs, and by considering this matter not so much as a question of competing interests among private persons but as an absolutely public question, I have been able to show that since many centuries this matter has been treated by the Supreme Pontiffs as a branch of public law for the honor of the mother city, queen and master of the antiquities, and of the government itself, and as a matter of extreme importance for both the public and private interest.

6. The research and care which I have devoted to this cause since 1800—to gather and put in order the various laws not well understood, or vague, or not observed, or not well in accord with each other—are now for the most part published: the laws have finally been reduced and arranged [ridotte e osservate] into a convincing system, to general applause.

7. There still persists, however, that practical maxim which is directly opposed to the fundamental principles of such public law. This maxim, which I intend to examine, is founded upon the above-mentioned decision before Monsignor Manzanedo, confirmed by two other.

8. The first deals only, in principle, with the so-called treasures in gold and monetized silver, considered as metallic value. [...]
26. Here we may pause. I have tried, with the analysis of many laws and facts, to demolish any direct or indirect pretended legal principle, and to show that such principles have been badly interpreted and applied in the decision of Monsignor Manzanedo. [...] Let’s repeat it for the last time: the emphyteuta is not the owner, even if he claims to be. [...] 

Consequence of the Reasoning on the Primary Question.

27. The decision of Monsignor Manzanedo and the following two by Monsignor Resta should no longer be invoked as precedent, since they are founded on data inadmissible in point of law and fact [...]. The currently applicable laws, which form our veritable common and public law for the antiquities and the excavations, should instead be given full force, under the sole power [supremazia privativa] of His Eminence Cardinal Camerlengo, in accordance with the Pope’s autograph document [chirografo] transcribed in the appendix below.

28. The substance of the public law concerning the antiquities is stated in this autograph document and in the edict of April 7th, 1820 issued by His Eminence Pacca Camerlengo [...]. In conclusion: nothing is due to the emphyteuta; by himself, he can do nothing on the property and cannot take possession of anything, except for the part resulting from an accidental find and for the compensation for damages [refezione di danni]. The veritable treasure belongs to the direct owner, to be divided for a third with the fisc, or in half, as regalia, barring the right of His Excellence Camerlengo to send such part, as an antiquity, to the museum (viz., to the Vatican Library) and the right of pre-emption for the purchase of the other part. [...] 


[...] We forbid the removal from public churches and annexed buildings, including simple oratories, of any ancient marble, whether sculpted, plain, or of any other sort, as well as the removal of any inscription, mosaic, urn, terracotta, or other ornament or monument of any sort, whether exposed to the public sight or hidden and buried. The same sanction applies to whomever may sell, buy or cooperate to the commerce of these objects. [...] 

To make sure that the utmost vigilance is observed in everything that concerns the fine arts, We want You to have, as supreme and independent magistrate, an absolute jurisdiction over the antiquities both sacred and profane; over the fine arts and those who practice them; over the art objects which are in Rome and in the ecclesiastical state; over the churches, the academies not belonging [addette] to foreign nations, and the other societies devoted to the fine arts, with no exception. [...] We also grant You the power to renew the edicts and issue new ones, and to take all those measures that from time to time you will think appropriate, so that the fine arts may flourish and the lovers of the arts may be encouraged to cultivate them. [...] 

1 Emphyteuta is a tenant of land which was subject to a fixed perpetual rent (Oxford English Dictionary).