

MANUAL OF MORAL THEOLOGY

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VOLUME II

On Ecclesiastical Penalties (Book IV)

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Book IV. On the Sanction of Christian Life, or on Ecclesiastical Penalties

(St. Alphonsus, *Theologia Moralis*, book VII, nn. 1-340; *Homo Apostolicus*, tract 19, nn. 1-71).¹

After in special moral theology we have treated of the due cultivation of virtues and of the principal means of obtaining the graces necessary for exercising this cultivation, there remains to be explained in what way the Church strives to sanction the observance of virtues and of means, or to coerce transgressions of precepts by established penalties. First and by way of preliminary, however, we will speak of those things which the Church punishes, or of delicts; then of the penalties by which she punishes delicts.

¹ Wernz, *Ius Decretalium*, VI; Hollweck, *Die kirchlichen Strafgesetze*; Chelodi, *Ius poenale*; Sole, *De delictis et poenis*; Lega, *De delictis et poenis*; Noldin-Schoenegger, *De poenis ecclesiasticis*; Vermeersch-Creusen, *Epitome Iuris Canonici*, III, n. 382 sq.

Treatise I. On Delicts

We will treat first of delict considered in itself; then of the juridic effects of delict; to these we will add a scholion on attempted delict.

Dissertation I. On Delict Considered in Itself

Part I. Summary Exposition

846 I. Nature. By the name of delict in ecclesiastical law is understood an external and morally imputable violation of law to which there has been added at least an indeterminate canonical sanction (canon 2195, § 1). By these words are indicated the three constitutive parts of a delict, namely: 1° violation of a canonically sanctioned law (the legal part); 2° external violation (the objective or social part); 3° morally imputable violation (the formal or subjective part).

1. Violation of law, that is, of a natural law or divine-positive law or ecclesiastical law. To the external and morally imputable violation of a canonically sanctioned precept the same things are applied which are said of delicts, unless something else appears from the circumstances (ibid., § 2). Moreover, violation of a canonically sanctioned law is required, because otherwise the Law does not speak of delict, but of mere transgression (cf. canon 2222, § 1).
2. External; for only an external sin violates, by reason of damage, as it is said, that is, either scandal or material damage, the social order of the Church, which alone merely ecclesiastical legislation regards. That an external but occult act, such as the secret utterance of heresy, is not perceived in the social order and therefore perhaps inflicts no damage on society, is incidental.
3. Morally imputable. What moral imputability is, see volume I, n. 58. By this property canonical delict differs from civil delict, which admits merely juridic fault. When and to what extent a delict is imputable will be said in Part II.

II. Quality and quantity. The quality of a delict is to be taken from the object of the law (canon 2196). Laws differ specifically according to the diverse formal motives from which they were issued; wherefore delicts differ specifically according to the diverse formal motive of the penal laws violated (cf. *Theologia Fundamentalis*, p. 299). The quantity of a delict must be measured not only from the diverse gravity of the law injured, but also from the greater or lesser imputability or damage inflicted (canon 2196), that is, from the three constitutive parts of the delict (cf. p. 703).

III. Division. From canon 2197 a delict is:

1. Public, if it has already been divulged, or happened or exists in such circumstances that it can and must prudently be judged that it will easily be divulged; that is, if it is such that it is about to become known, at least as an external fact, even if not as imputable, with the character and purpose of the persons who know the delict considered.
2. Notorious by notoriety of law, after the sentence of a competent judge which has passed into a judged matter,¹ or after the confession of the delinquent made in court according to the norm of canon 1750.²
3. Notorious by notoriety of fact, if it is publicly known and committed in such circumstances that it can be concealed by no tergiversation and excused by no suffrage of law.
4. Occult, which is not public; materially occult, if the delict itself is hidden; formally occult, if its imputability is hidden.

Note. A delict which injures only the law of the Church, by its nature only ecclesiastical authority prosecutes, with the help of the secular arm sometimes being required where the same authority has judged this necessary or opportune; a delict which injures only the law of civil society, by proper right

and with the prescription of canon 120 preserved, civil authority punishes, although the Church is also competent over it by reason of sin; a delict which injures the law of both societies can be punished by each power (canon 2198). But in delicts of mixed forum Ordinaries should regularly not proceed when the guilty person is a layman and the civil magistrate, taking action against the guilty person, provides sufficiently for the public good (canon 1933, § 3).

¹ From canon 1902, a matter is considered judged: 1° by a double conforming sentence; 2° by a sentence not appealed within the useful time, or which, although appealed before the judge *a quo*, was deserted before the judge *ad quem*; 3° by a single definitive sentence from which no appeal is given according to the norm of canon 1880.

² Canon 1750 declares: The assertion concerning some fact, in writing or orally, made by one party against himself and for the adversary before a judge, either spontaneously or when the judge interrogates, is called a judicial confession.

Part II. Fuller Exposition

A fuller exposition of delict consists in a fuller explanation of the principal element by which delict is constituted, namely, imputability.

847 I. The formal causes of imputability are: 1° the malice of the delinquent; 2° the fault of the delinquent, whether in ignorance of the law or in omission of the diligence required so that the law may be observed (canon 2199).

1. Malice here is the deliberate will of violating the law; to it is opposed, on the part of the intellect, defect of knowledge, and on the part of the will, defect of liberty. Once the external violation of law has been posited, malice is presumed in the external forum until the contrary is proved (canon 2200).

Corollary I. Those who actually lack the use of reason are incapable of delict (canon 2201, § 1). The reason is that deliberation is absent.

Corollary II. Those habitually insane, although at times they have lucid intervals or seem sane in certain reasonings or acts, are nevertheless presumed incapable of delict (canon 2201, § 2). The reason is that deliberation in them is presumed to be absent until it is proved to be present.

Corollary III. A delict committed in voluntary drunkenness does not lack some imputability (canon 2201, § 3). This is clear if drunkenness does not wholly take away the use of reason; but if it wholly takes it away, the delict is imputed if it was foreseen at least in some measure (vol. I, n. 60). Besides, the imputability of a delict committed in voluntary drunkenness is less than when the same delict is committed by one who is fully master of himself, unless, however, drunkenness was sought precisely for perpetrating or excusing the delict. But when law is violated in involuntary drunkenness, imputability is wholly absent if drunkenness wholly takes away the use of reason; it is diminished if it takes it away only in part. The same should be said of other similar disturbances of mind (canon 2201, § 3), for example from morphine.

Corollary IV. Weakness of mind diminishes the imputability of a delict, but does not wholly remove it (canon 2201, § 4).

2. Ignorance of the violated law influences the imputability of the transgression in this way:

a) Inculpable ignorance removes the imputability of the transgression and consequently the delict (canon 2201, § 1).

b) Culpable ignorance diminishes imputability more or less according to the culpability of the ignorance itself (cited canon). Nevertheless, concerning affected ignorance it is disputed whether it increases or diminishes imputability (vol. I, n. 32).

Note 1. Ignorance of the penalty alone does not remove the imputability of the delict, but diminishes it somewhat (canon 2202, § 2).

Note 2. Those things which are established concerning ignorance, whether of the law or of the penalty, also hold concerning inadvertence¹ and concerning error² (canon 2202, § 3); likewise concerning ignorance of fact, for instance if someone strikes a cleric whom he certainly or probably holds to be a layman.

Note 3. Ignorance, or inadvertence or error concerning law or penalty or fact, is generally not presumed (canon 16, § 2).

3. Omission of due diligence. If someone has violated the law from omission of due diligence, the imputability is diminished in the manner to be determined from the circumstances by a prudent judge; but if he foresaw the matter and nevertheless omitted the cautions for avoiding it which any diligent person would have used, the fault is proximate to malice (canon 2203, § 1). Moreover, a fortuitous case which cannot be foreseen, or which when foreseen cannot be met, exempts from any imputability (canon 2203, § 2).

¹ It is actual ignorance in one who enjoys habitual knowledge.

² It is positive ignorance, or ignorance joined with the admission of what is false.

848 II. The causes modifying imputability are enumerated by the Code:

1. Minority. Minor age, unless something else is established, diminishes the imputability of a delict, and the more so the closer it approaches infancy (canon 2204). Moreover, moral persons (canon 100, §§ 1 and 2) are equated with minors also as regards imputability (cited canon, § 3).
2. Physical force which takes away every faculty of acting altogether excludes delict (canon 2205, § 1).
3. Grave fear, even only relatively grave, necessity, and even grave inconvenience, usually wholly remove delict if there is question of merely ecclesiastical laws. The said causes indeed diminish the imputability of the delict but do not remove it if the act is intrinsically evil or tends toward contempt of the faith or ecclesiastical authority or toward damage of souls (canon 2205, §§ 2 and 3).
4. Just defense. The cause of legitimate defense against an unjust aggressor, if due moderation is observed, wholly removes delict; otherwise it only diminishes imputability, as also does the cause of provocation (canon 2205, § 4), namely, one who provokes the aggressor also exceeds the moderation of defense. Besides, in excess of defense, not so rarely all fault is lacking.
5. Passion, if it has been voluntarily and deliberately excited or nourished, rather increases imputability; otherwise it diminishes it more or less according to the diverse heat of passion; and it wholly removes imputability if it precedes and impedes every deliberation of mind and consent of will (canon 2206).
6. Besides other aggravating circumstances,¹ a delict is increased: 1° according to the greater dignity of the person who commits the delict or who is offended by the delict; 2° from abuse of authority or office for perpetrating the delict (canon 2207).
7. Falling again into delict. A recidivist in the sense of the law is one who, after condemnation, again commits a delict of the same kind and in such circumstances of matters and especially of time that his pertinacity in evil will can prudently be conjectured (canon 2208, § 1). Moreover, one who has offended several times, even in a different kind, increases his culpability (canon 2208, § 2).

¹ Therefore the enumeration is not taxative.

849 III. Imputability of cooperators. In order that cooperation be canonically imputed, some malice or fault and some external influence upon the external fact of the delict are required. Concerning malice and fault, let the things said above be applied; concerning external influence, it must be noted that this is physical or moral, necessary or non-necessary, principal or accessory, positive or negative. Moreover, according to the varying influence upon the delict, the imputability of cooperators is varied as follows:

1. Those who with a common plan of delinquency physically concur together in a delict are all held guilty in the same way, unless the circumstances increase or diminish the culpability of someone (canon 2209, § 1).
2. In a delict which by its nature demands an accomplice, as for example a duel, each party is culpable in the same way, unless something else appears from the circumstances (canon 2209, § 2).
3. Of themselves, both the one mandating, who is the principal author of the delict, and others who induce to the consummation of the delict by persuading, consenting, or morally influencing in some other way, or who concur in this in any way whatever, for instance by physically cooperating, contract imputability not less than the executor of the delict, if the delict would not have been committed without their work (canon 2209, § 3), that is, if their influence was necessary.
4. If the influence of the aforesaid persons was not necessary but only rendered the delict easier, as one which would have been committed even without their concurrence, it carries with it lesser imputability (canon 2209, § 4).
5. One who has fully withdrawn his influence in perpetrating the delict by an opportune retraction is freed from all imputability, even if the executor nevertheless perpetrated the delict for other causes proper to himself; if he has not withdrawn it fully, retraction diminishes culpability but does not remove it (canon 2209, § 5). It is said "by an opportune retraction," namely one which is made at an opportune time and in an efficacious way. It is disputed whether retraction reinforced by arguments sufficiently destroys the influence of clothed counsel. It is probably affirmed (vol. I, n. 1000); wherefore in the case the executor must be judged to offend for causes proper to himself. But if the influence cannot be withdrawn unexpectedly, nevertheless an inculpably inefficacious retraction removes culpable participation in the consummated delict and consequently the imputability of this; but the culpable attempt of the delict remains (cf. n. 851), and, if the case bears it, some imputability for the damage and scandal which followed (canons 2213, § 3; 2235).
6. One who concurs in a delict only by neglecting his office is held by imputability proportioned to the obligation by which he was bound to impede the delict by his office (canon 2209, § 6).
7. Praise of a perpetrated delict, participation in its fruits, concealment and harboring of the delinquent, or other acts following upon a delict already fully completed: 1° can constitute new delicts, if namely they are punished by a penalty in law; besides, 2° they carry with them the imputability of the perpetrated delict if agreement had been made with the delinquent concerning those acts before the delict (canon 2209, § 7).

Dissertation II. On the Juridic Effects of Delict

850 I. From delict, with canon 2210 considered, there arises:

1. A penal action for declaring or inflicting a penalty and for seeking satisfaction.
2. A civil action for repairing damages, if the delict has inflicted damage on anyone. The canonists treat of these matters more broadly according to canons 1552-1959, on trials; only let canon 2210, § 2 be noted: The same judge in a criminal trial can at the instance of the injured party call the civil action to examination and define it.

II. All who concur in a delict according to the norm of canon 2209, §§ 1-3 (n. 849, 1, 2, 3), are held by obligation in solidum of repairing the expenses and damages which have befallen any persons whatever from the delict, although they have been condemned by the judge pro rata (canon 2211).

Scholion. On Attempted Delict

851 I. Notion. Whoever posits or omits acts which by their nature lead to the execution of a delict, but does not consummate the delict, commits an attempt of delict, whether because he deserted his plan or because he could not complete the delict on account of insufficiency or ineptitude of the means (canon 2212, § 1). It is said "acts which by their nature lead"; wherefore merely preparatory acts, such as buying poison or removing impediments, are not an attempt of delict. For this, namely, there is required the execution of the delict itself begun, as is said in canon 2213, § 3. If, all acts having been posited or omitted which by their nature lead to the execution of the delict and suffice for completing the delict, the effect has not followed from another cause, apart from the will of the agent, the attempt of delict is called by its proper name a frustrated delict (canon 2212, § 2). Finally, to the attempt of delict there approaches, and is juridically equated, the action of one who has tried to induce another to commit a delict, but ineffectively (canon 2212, § 3). Moreover, an attempted delict is not always a delict, but only if the attempt of delict is fined by a particular penalty in the law (*ibid.*, § 4). Nevertheless, even a simple attempt of delict and a frustrated delict can be punished by force of canon 2235, as will be said below.

II. The imputability of attempt is less than that of the delict; however, it grows the more it approaches consummation (canon 2213, § 1). Likewise, a frustrated delict is more culpable than a simple attempt of delict (canon 2213, § 2). But one who spontaneously desists from the execution of the delict begun is freed from all imputability, if no damage or scandal has arisen from the attempt (canon 2213, § 3); otherwise this is imputed to him. Likewise, the execution of the delict begun, which by force of the legal sanction is a delict, is imputed also as such (canon 2212, § 4); wherefore, notwithstanding cessation from executing the deed, a penalty *latae sententiae* has already been contracted.

Treatise II. On the Penalties of Delict

We will treat first of penalties in general; then of penalties in species; then of penalties established for individual delicts.

Dissertation I. On Penalties in General

852 I. To the Church belongs the right, and that native and proper, and independent of any human authority, of coercing delinquents subject to her by penalties, both spiritual and even temporal (canon 2214, § 1). This is drawn from Sacred Scripture;¹ from the practice of the Apostles² and of the Church, even as regards temporal penalties;³ from the Council of Trent;⁴ from the nature of the Church, which is a perfect society and therefore enjoys legislative power. But legislative power carries with it coercive power, or the power of sanctioning laws, since without it legislative power would be unsuitable for securely attaining the end.

II. In the use of coercive power, the warning of the Council of Trent should be kept before one's eyes:⁵

"Let Bishops and other Ordinaries remember that they are pastors, not beaters, and that they ought so to preside over those subject to them that they do not dominate over them, but love them as sons and brothers, and labor by exhorting and warning to deter them from illicit things, lest, when they have offended, they be forced to coerce them with due penalties. Nevertheless, if it should happen that they sin in something through human frailty, that precept of the Apostle is to be observed by them, that they reprove, entreat, and rebuke them in all goodness and patience, since often benevolence does more toward correcting than austerity, exhortation more than threat, charity more than power. But if, on account of the gravity of the delict, the rod will be necessary, then rigor is to be used with meekness, judgment with mercy, severity with gentleness, so that discipline, salutary and necessary for the peoples, may be preserved without harshness, and those who have been corrected may be amended, or, if they are unwilling to come to their senses, others may be deterred from vices by the salutary example of action taken against them" (canon 2214, § 2).

With these things noted beforehand, we will speak first of the notion, division, imposition, and interpretation of penalties; then of the Superior having the power of punishing; then of the subject liable to the power of punishing; finally of the remission of penalties.

¹ Matthew 18:17-18.

² 1 Corinthians 5:3-5; 2 Thessalonians 3:14, etc.

³ Whether the Church can punish certain most grave delicts with death or mutilation is disputed. More commonly it is denied, nor in her own forum has she ever used this power.

⁴ Session 7, canon 14; session 14, canon 4; session 25, chapter 14, etc.

⁵ Session 13, chapter 1.

Part I. On the Notion, Division, Imposition, and Interpretation of Penalties

853 I. Notion. An ecclesiastical penalty is the privation of some good, inflicted by legitimate authority for the correction of the delinquent and the punishment of the delict (canon 2215). It is said:

1. Of some good, that is, either spiritual or temporal or mixed, as a benefice is.
2. For the correction of the delinquent and the punishment of the delict. The amendment of the delinquent is not always the primary end of an ecclesiastical penalty, although the Church always ultimately intends the salvation of souls, and consequently also the amendment of delinquents. But proximately, besides amendment, she intends: to repair the injured order by taking vengeance concerning the delict; to render the delinquent incapable of further damage; to effect that others may have fear.

II. Division. Penalties are distinguished:

1. By reason of the primary end, into medicinal penalties or censures, vindicative penalties, and penal remedies and penances (canon 2216). Medicinal penalties or censures primarily intend the amendment of the delinquent. Vindicative penalties primarily regard vengeance concerning the delict. Penal remedies intend to forestall true delicts or further delicts; hence they either suppose only a transgression which nevertheless does not reach the nature of a delict, or regard a delict perhaps to be perpetrated, but not one already perpetrated. Especially under this head they are not penalties in the proper sense.
2. By reason of determination, a penalty is called determinate if it is established taxatively in the law itself or precept; indeterminate if it is left to the prudent judgment of the judge or Superior, whether by preceptive or facultative words (canon 2217, § 1, 1°).
3. By reason of the mode by which it is inflicted, a penalty is called *latae sententiae* if a determinate penalty has been added to the law or precept in such a way that it is incurred by the very fact of the delict committed, that is, without a condemnatory sentence or a new precept of infliction; nevertheless, a declaratory sentence is sometimes added, as will be said below. It is *ferendae sententiae* if it must be inflicted by a judge or Superior (canon 2217, § 1, 2°), namely through a condemnatory sentence or in the manner of a particular precept. It is clear that an indeterminate penalty is always *ferendae sententiae*.
4. By reason of the author, a penalty is called *a iure*, by law, if a determinate penalty is established in the law itself, whether it is *latae sententiae* or *ferendae*; *ab homine*, by man, if it is issued in the manner of a particular precept or by a condemnatory judicial sentence, even if established in the law. Wherefore a determinate penalty *ferendae sententiae*, added to a law, before the condemnatory sentence is only *a iure*; afterward it is at once *a iure* and *ab homine*, but is considered as *ab homine* (canon 2217, § 1, 3°). On this consideration depends the competence of remitting the penalty, as will be explained. A penalty *latae sententiae* to which a declaratory sentence has been added remains *a iure*.

The question whether a penalty established neither by law nor in the manner of a particular precept, but by a general precept, is *a iure* or *ab homine* is not solved by the Code. The more common opinion holds that it is *a iure*; and this is therefore also preferable, because it is the more benign interpretation (cf. canon 2219, § 1).

Note. A penalty is always understood as *ferendae sententiae*, unless it is expressly said that it is *latae sententiae* or contracted *ipso facto* or *ipso iure*, or unless other similar words are used (canon 2217, § 2).

III. Imposition of penalty. 1. In decreeing penalties, an equitable proportion with the delict is to be observed, with account taken of imputability, scandal, and damage; wherefore there must be considered not only the object and gravity of the law, but also the age, knowledge, training, sex, condition, state of mind of the delinquent, the dignity of the person who is offended by the delict or who commits the delict, the intended end, the place and time in which the delict was committed, whether the delinquent acted from an impulse of passion or on account of grave fear, whether he repented of the delict and himself strove to avoid its evil effects, and other similar things (canon 2218, § 1).

2. Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from any penalty, both *latae* and *ferendae sententiae*, even in the external forum, if the excuse is established for the external forum (canon 2218, § 2), that is, proved.

3. A penalty should not be inflicted in the case of equal mutual injury; for, as canon 2218, § 3 has it: Mutual injury is compensated, unless one party must be condemned on account of the greater gravity of the injury inflicted by the same party, with the penalty diminished if the case bears it.

IV. Interpretation of penalty. In penalties the more benign interpretation is to be made (canon 2219, § 1). And canon 19 says: Laws which establish a penalty are subject to strict interpretation. Hence:

1. In a doubt of law concerning the existence of a penalty, namely, whether a certain penal law regards the fact perpetrated here and now, that penalty, if it is *latae sententiae*, is not incurred; if *ferendae*, it should not be inflicted. In a doubt of law concerning the quality of the penalty, namely, whether the law contains a penalty *latae* or *ferendae sententiae*, the penalty should be understood as *ferendae sententiae*; whether it is *a iure* or *ab homine*, it should be understood as *a iure*.¹ In a doubt of law concerning the quantity of one penalty, namely, whether the law prescribes a graver or a lighter penalty, the milder one should rather be decreed. In a doubt of law concerning the number of penalties, namely, whether one penalty or several penalties are to be applied, only one penalty is to be applied. But if it is doubted whether a penalty inflicted by a competent Superior is just or not, the penalty must be observed in each forum, except in the case of an appeal in suspensive. But a manifestly unjust penalty, as regards substance, and therefore manifestly invalid, is to be sustained in neither forum. On a doubt of fact, see n. 858.

¹ A doubt of law in this matter exists concerning a general penal precept, as was said above.

Part II. On the Superior Having the Power of Punishing

854 Ecclesiastical penal law treats only of a Superior who enjoys jurisdiction to be exercised in the external forum of the Church.¹ Moreover, insofar as this jurisdiction regards penalties, it is distinguished as twofold: non-judicial or voluntary, and judicial or necessary. The former in Penal Law confers the power of establishing penalties and applying them outside trial; the latter furnishes the power of applying, according to the norm of Law and indeed in trial, legitimately established penalties (cf. canon 2220, § 1).² With these things noted, we will speak first of the Superior having non-judicial jurisdiction, then of the Superior having judicial jurisdiction.

¹ In the internal forum the Church judges by a power not proper, but vicarious.

² Nevertheless you should not understand these things as if one who enjoys non-judicial jurisdiction of himself lacks judicial jurisdiction.

Section I. On the Superior Having Non-Judicial Jurisdiction

855 I. Superiors enjoying non-judicial jurisdiction are all and only those who possess the power of issuing laws or imposing precepts (canon 2220, § 1). Of this kind is, for example, the Ordinary of the place; but not the Vicar General without a special mandate. Whether or not a religious Superior also enjoys non-judicial jurisdiction depends on the question whether or not he can impose precepts by power of jurisdiction;¹ concerning this compare vol. I, n. 108.

II. Scope of non-judicial jurisdiction. 1. A Superior enjoying non-judicial jurisdiction can attach penalties to a law or precept issued by himself or by his predecessors (canon 2220, § 1). Besides, those who enjoy legislative power can furthermore, within the limits of their jurisdiction and on account of peculiar circumstances, fortify with a fitting penalty both divine law and ecclesiastical law issued by a higher power and in force in the territory, or aggravate the penalty established by law (canon 2221).

2. Even if no penalty has been annexed to a law, nevertheless a legitimate Superior enjoying non-judicial jurisdiction can, even without previous threat of a penalty, punish transgressions of the law with some just penalty if scandal perhaps given or the special gravity of the transgression bears this; otherwise the guilty person cannot be punished unless he has first been warned with the threat of a penalty *latae* or *ferendae sententiae* in the case of transgression and nevertheless, with grave fault according to canon 2218, § 2, has violated the law (canon 2222, § 1). The same must be said concerning inflicting a penalty graver than that indicated by statute or threat; namely, it cannot be inflicted except in a case of scandal or special gravity.
3. Even if it is only probable that a delict has been committed, or if the penal action for a certainly committed delict is prescribed (cf. canon 1703), nevertheless the same legitimate Superior has not only the right but also the office of not promoting a cleric concerning whose suitability there is no certainty, and, for avoiding scandal, of prohibiting the cleric the exercise of the sacred ministry or even of removing the same from office according to the norm of law. All these things in the case do not have the character of penalty (canon 2222, § 2). Otherwise, in the case of a merely probable delict (canon 2233, § 1) or of a prescribed penal action (canon 1703), he cannot inflict a penalty.

4. Finally, the same legitimate Superior can apply a penalty: either 1° outside trial by precept according to these words of canon 1933, § 4: Penance, penal remedy, excommunication, suspension, and interdict, provided the delict is certain, can also be inflicted in the manner of a precept outside trial; or 2° in trial by judicial sentence. Moreover, in order that a delict fall under criminal trial, it must be public (canon 1933, § 1); but when one must proceed against clerics according to canons 2168-2194, this is to be done outside trial, although the delicts are public (canon 2225).

Note. If a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225), that is, unless "suspension from informed conscience" is inflicted (cf. n. 888).

¹ He can do this without doubt by dominative power; to this power also belongs coercive or punitive power. But this power of punishing is not touched upon in ecclesiastical Penal Law.

Section II. On the Superior Having Judicial Jurisdiction

856 First recall that judicial jurisdiction must be exercised in trial. Moreover:

I. In applying penalties, the judge cannot increase a determinate penalty unless extraordinary aggravating circumstances demand this (canon 2223, § 1). Thus the general rule. More specifically:

II. If the penalty is *ferendae sententiae*, these things are to be observed:

1. If the law in establishing a penalty *ferendae sententiae* uses facultative words, it is committed to the prudence and conscience of the judge to inflict it or, if the penalty was determinate, to temper it (canon 2223, § 2).
2. But if the law uses preceptive words, ordinarily the penalty must be inflicted; but it is committed to the conscience and prudence of the judge or Superior: 1° to defer the application of the penalty to a more opportune time, if greater evils are foreseen to be going to come from too hasty punishment of the guilty person; 2° to abstain from inflicting the penalty if the guilty person has been perfectly amended and has repaired the scandal, or has been sufficiently punished or is foreseen to be going to be punished by penalties sanctioned by civil authority; 3° to temper the determinate penalty, or in its place to employ some penal remedy or enjoin some penance, if a circumstance is given which notably diminishes imputability, or if indeed amendment of the guilty person is had or chastisement has been inflicted by civil authority, but the judge or Superior besides judges some milder punishment opportune (canon 2223, § 3; cf. canon 2309, § 4).¹

Note. When a determinate vindictive penalty has been inflicted by condemnatory sentence, the judge can sometimes suspend its execution according to the norm of canon 2288 (n. 889). Hence in canon law the institution of "conditional condemnation" is assumed.

III. If the penalty is *latae sententiae*, it is indeed contracted at once; but sometimes there is given a sentence which is called declaratory, by which it is authoritatively declared that the delict has been perpetrated and consequently that the penalty has been contracted.² Moreover, to declare a penalty *latae sententiae* is generally committed to the prudence of the Superior; but whether at the instance of

the party whose interest it is, or when the common good so requires, a declaratory sentence must be given (canon 2223, § 4).

IV. Concerning the number of penalties the Code establishes:

1. Ordinarily there are as many penalties as delicts (canon 2224, § 1). Moreover, even with ecclesiastical Penal Law considered, one commits a multiple delict: 1° who violates diverse penal laws, whether by one act or by several; but not one who once violates a law issued by several Superiors; 2° who violates a penal law through morally distinct acts (vol. I, n. 253 sq.).

It is disputed: 1° concerning him who violates a penal law through one morally single act, physically multiple, toward diverse persons, for example, one who from the same purpose steals successively but without moral interruption from several persons; 2° concerning him who violates a penal law through one morally single act, physically multiple, several times perfectly consummating the delict itself, for example, one who from the same impulse of passion several times commits carnal sacrilege by copula with the same person;³ 3° concerning him who violates a penal law through one single physical act toward diverse persons, for example, one who by one physical act kills several clerics. But since, where there is question of penalties, the more benign side prevails, in disputed cases penalties are not to be multiplied.

2. If, however, on account of the number of delicts, there would be an excessive accumulation of penalties to be inflicted, it is left to the prudent judgment of the judge either to inflict the gravest penalty of all, with some penance or penal remedy added if the matter bears it, or to moderate the penalties within equitable bounds, with account taken of the number and gravity of the delicts (canon 2224, § 2).
3. Finally, if a penalty has been constituted both for an attempt of delict and for the consummated delict, when the latter has been admitted, only the penalty established for the consummated delict must be inflicted (canon 2224, § 3). It is said "inflicted"; for when, on account of the attempt, a penalty has already been contracted, and after a moral interruption the delict is consummated, the penalty established for this delict is also contracted. Otherwise, however, if the attempt and consummation coalesce into one.

Note. If a penalty is declared or inflicted by judicial sentence, the prescriptions of the canons concerning the pronouncing of a judicial sentence are to be observed; but if, as was already noted on p. 714, a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225).

¹ If the delinquent did not commit grave sin, procedure can be taken against him only through a penal remedy so that true delicts may be forestalled, or some penance can be imposed on him.

² The usefulness of this is well demonstrated by the illustrious Wernz (op. cit., n. 62): "First, in certain penalties an obligation is induced in others toward the guilty person," for example, not receiving the Sacraments from him, "or at least the guilty person is deprived of certain rights which have reference to others. This obligation toward the guilty person cannot be urged, nor must the exercise of his rights be denied or impeded, unless the penalty incurred by him is certainly established" in the external forum; besides, because it would not be equitable that an occult delinquent should have to betray himself by observance of the penalty, the obligation of observing this penalty often does not press without a declaratory sentence.

³ Sometimes one delict consists in a continuous stretch, for example concubinage, bigamy.

Part III. On the Subject Liable to the Power of Punishing

We shall see first who are subject to a penal law or precept, and to what extent; then what is required for someone actually to contract a penalty *latae sententiae*; next, what is required for someone to be able to be punished here and now with a penalty *ferendae sententiae*; finally, what, of what kind, and how great is the obligation of observing a penalty.

857 I. Subjects of a penal law or precept. One who is bound by a law or precept is liable to the penalty annexed to the law or precept, unless he is expressly exempted (canon 2226, § 1). To what extent someone is bound by a law or precept, especially a traveler and a vagrant, see vol. I, n. 126 sq. Nevertheless:

1. If after the perpetrated delict the penal law is changed, the law more favorable to the guilty person must be applied (ibid., § 2).
2. If after the perpetrated delict either the violated law or the attached penalty ceases through a later law, even a penalty inflicted or incurred ceases immediately; but a censure already contracted is excepted (ibid., § 3), because otherwise the end of the censure would not be attained.
3. A penalty, whether contracted or inflicted, binds the guilty person everywhere in the world, even when the right of the Superior has been resolved, unless something else is expressly provided (ibid., § 4); yet a penalty does not always extend itself to all places (cf. canons 2281, 2282). If, however, when the right of the Superior has been resolved, his precept also ceases, to which a penalty had been added, the penalty also must be said to cease, unless it is a censure already contracted.
4. Finally, certain persons are not wholly subject to penal law; namely, although they have committed a delict, a penalty can be inflicted or declared against those mentioned in canon 1557, § 1, only by the Roman Pontiff (canon 2227, § 1), that is:
 - a) "Against those who hold the supreme sovereignty of peoples and their sons and daughters, or those who have the right of immediately succeeding to the sovereignty." Physical persons are understood: monarchs, presidents of a republic, or others who exercise true sovereignty, and their spouses; not, however, moral persons, even though they have legislative power, nor Ministers of State.¹ Therefore the former do indeed contract a penalty *latae sententiae* of common law, as established by the Roman Pontiff, but against them it cannot be declared except by the Roman Pontiff.²
 - b) Against Cardinals; who furthermore, unless they are expressly named, are not comprehended under a penal law (canon 2227, § 2).
 - c) Against Legates of the Apostolic See, concerning whom what was said under a) is valid.
 - d) Against Bishops, even titular ones, who furthermore are excepted from penalties *latae sententiae* of suspension and interdict, unless they are expressly named. Therefore they do indeed contract an excommunication *latae sententiae* of common law, but the same applies as under a).

Note 1. Exempt religious are not bound by diocesan penal statutes unless, while illegitimately living outside the house, they have offended against a particular law of the diocese (canon 616, § 1); if they have offended while legitimately living outside the house, even if they have returned, they can

nevertheless be punished by the local Ordinary (canon 616, § 2); finally, they are subject to the coercive power of the local Ordinary in all things in which religious are subject to him (cf. canon 619 and canon 2269, § 2), unless special privileges stand in the way.

Note 2. By force of canon 1, this Penal Law does not regard the Oriental Church; judicial controversies to be handled in judicial order which concern it are, by force of canon 257, § 3, remitted by the Congregation for the Oriental Church to a tribunal assigned by that Congregation, unless there is question of delicts reserved to the Congregation of the Holy Office (canon 247, § 2).

¹ Cf. Noval, op. cit., p. 37.

² Nor do penalties *latae sententiae* of particular law bind them, because "to be inflicted" is also said of a penalty *latae sententiae* inflicted in the manner of a precept (cf. canon 2225).

858 II. Requisites for someone actually to contract a penalty *latae sententiae*.

1. Requisites on the part of the delict. A penalty established by law is not incurred unless the delict has been perfect in its own kind according to the property of the words of the law (canon 2228). This condition regards the external part of the delict (n. 846); when the attempt of a delict is punished in law, consummation in the genus of attempt is required. Finally it must be observed that the property of the words requires strict interpretation; for example, the delict of homicide, which is punished by law, is not present unless death has followed. In doubt, whether of the external fact or of imputability, the penalty is not incurred, because from a doubtful cause no one is deprived by a certain right (cf. canon 2232, § 1: "who is conscious to himself of the delict").

2. Requisites on the part of the delinquent regard the formal part of the delict, or imputability. Therefore first recall that grave imputability is required¹ (canon 2218, § 2), but does not always suffice, for someone to be liable to a penalty. With these things attended to, certain things are noted or even established by the Code, of which some are general and regard ignorance and similar things which influence imputability; others concern the impubescent and cooperators.

a) General matters. alpha) Affected ignorance either of the law or of the penalty alone excuses from no penalties *latae sententiae* (canon 2229, § 1).

beta) If the law has the words: has presumed, has dared, knowingly, studiously, rashly, has acted deliberately, or other similar words which require full knowledge and deliberation, any diminution of imputability, whether on the part of the intellect or on the part of the will, exempts from penalties *latae sententiae* (canon 2229, § 2). It is said any diminution of imputability; hence even ignorance of the penalty, unless it is affected (cf. canon 2202, § 2); likewise even light fear.

gamma) If the law does not have those words:

1° Crass or supine ignorance of the law, or even of the penalty alone, exempts from no penalty *latae sententiae*. Ignorance of the law, or even of the penalty alone, which was not crass or supine excuses from medicinal penalties *latae sententiae*; but if the imputability of the delict is grave, it does not excuse from vindictive penalties *latae sententiae* (canon 2229, § 3, 1°, compared with canon 2218, § 2).

2° Drunkenness, omission of due diligence, weakness of mind, or impulse of passion, if, notwithstanding the diminution of imputability, the action is still gravely culpable, do not excuse from penalties *latae sententiae* (canon 2229, § 3, 2°).

3° Grave fear, if the delict tends toward contempt of the faith or of ecclesiastical authority or toward public harm of souls, in no way exempts from penalties *latae sententiae* (canon 2229, § 3, 3°). With these things attended to, grave fear outside the enumerated cases excuses from penalties *latae sententiae*, at least on account of doubt; the doubt is introduced by canon 2218, § 2.

Note. Although the guilty person according to the norm of § 3, n. 1, is not bound by censures *latae sententiae*, nevertheless this does not prevent him, if the matter bears it, from being affected by another congruous penalty or penance (canon 2229, § 4).

b) Impubescent persons are excused from penalties *latae sententiae*, and are to be corrected rather by educational punishments than by censures or other graver vindicative penalties; but pubescent persons who have induced them to violate the law or have concurred with them in the delict according to the norm of canon 2209, §§ 1-3 (n. 849), themselves indeed incur the penalty established by law (canon 2230). Note that an irregularity from delict can nevertheless be contracted by impubescent persons (canon 985).

c) Cooperators. If several have concurred in perpetrating a delict, although only one is named in the law, those also who are mentioned in canon 2209, §§ 1-3, are bound, unless the law has expressly provided otherwise, by the same penalty; the others, however, are not likewise bound, but are to be punished with another just penalty according to the prudent judgment of the Superior, unless the law establishes a particular penalty against them (canon 2231).

Question. To what extent, if there is question of a penalty *latae sententiae*, is a declaratory sentence required?

Response. A penalty *latae sententiae*, whether medicinal or vindicative, binds the delinquent who is conscious to himself of the delict by the fact itself in both forums; nevertheless, before a declaratory sentence, the delinquent is excused from observing the penalty whenever he cannot observe it without infamy, and in the external forum no one can exact from him the observance of that same penalty, unless the delict is notorious, the prescription of canon 2223, § 4, remaining firm (canon 2232, § 1; n. 856).

A declaratory sentence carries the penalty back to the moment of the committed delict (canon 2232, § 2); this is practical, for example, in the case of restitution to be made of fruits received, which therefore must be computed from the moment of the perpetrated delict (cf. canon 2280).²

¹ At least insofar as the defect of grave imputability excuses from any penalty in the internal forum, and also in the external forum if the defect is proved for the external forum (cited canon).

² On the contrary, if someone incurs excommunication *latae sententiae* and before the sentence acquires an office, after the sentence the acquisition is not rendered invalid, as Cerato thinks, p. 20; for only acquisition after the sentence is invalid (cf. canons 2265, § 1, 2°; 2266; 2296, § 2).

859 III. Requisites for someone to be able to be punished here and now with a penalty *ferendae sententiae*. No penalty can be inflicted unless: 1° it is certainly established that the delict has been committed; 2° it is certainly established that the delict has not been legitimately prescribed; 3° the guilty person, if there is question of inflicting a censure, persists in contumacy (canon 2233). It is said:

1. It is certainly established that the delict has been committed; but by what method the fact and imputability of the delict must be judged, see in the Code, book IV, title XIX, on criminal trial.
2. It is certainly established that the delict has not been legitimately prescribed. How a delict is prescribed is explained by canon 1703, compared, however, with canon 1555, § 1.¹
3. If there is question of inflicting a censure, the guilty person is to be rebuked and warned to withdraw from contumacy, with a suitable time for repentance granted, if in the prudent judgment of the same judge or Superior the case bears this; if contumacy persists, the censure can be inflicted (canon 2233, § 2). What contumacy is, see n. 862. Formerly at least three warnings were prescribed, though for a just cause one sufficed (cf. now canons 649, 660). Under present law, however, it is left to the prudence of the Superior how many warnings he gives and also at what interval of time he gives them. Moreover, warnings are required for the validity of the censure; hence a censure *ferendae sententiae* cannot validly be applied to a delinquent unless after warnings he remains contumacious. On the canonical form cf. canon 2143.

Note 1. One who has committed several delicts must not only be punished more gravely, but also, if in the prudent judgment of the judge the matter bears it, must be subjected to vigilance or to another penal remedy (canon 2234).

Note 2. A frustrated delict or an attempt of delict, unless they are punished by law as distinct delicts, can be punished with a fitting penalty according to their gravity, unless the delinquent is freed from all imputability because he spontaneously desisted from the execution of the delict begun, and no harm or scandal followed from the attempt (canon 2235, compared with canon 2213, § 3).

¹ What the Superior can and must do in defect of this and of the prior condition, see n. 855; cf. canon 2222, § 2.

860 IV. Obligation of observing the penalty. A penalty seems to oblige from the motive of the law to which the sanction has been added. Moreover, the obligation is grave of its kind. Nevertheless, fear of extrinsic and proportionate harm excuses; hence, if the delict is not notorious, even infamy excuses from observing a penalty *latae sententiae*, for then infamy is an extrinsic inconvenience.

Part IV. On the Remission of Penalties

861 I. The act of remission. Medicinal penalties are remitted through absolution, vindicative penalties through dispensation (canon 2236, § 1).

II. Competent person. Remission of a penalty in general can be granted by him who issued the penalty, or by his competent Superior or successor, or by him to whom this power has been committed (canon 2236). It is said competent Superior, because superiority of precedence of itself does not include power over the jurisdiction of an inferior (cf. canon 271; canon 2236, § 1). Furthermore, the power of exempting from a law also carries with it the power of remitting a penalty annexed to the law (canon 2236, § 2). But a judge who by office applies a penalty constituted by a Superior cannot remit it once it has been applied (canon 2236, § 3). As to those to whom the power of remitting a penalty, whether as ordinary or as delegated, has been committed, we note from the Code:

1. The Ordinary can, by ordinary power, and hence also through one habitually delegated: 1° in public cases remit penalties *latae sententiae* established by common law, except: a) cases brought to the contentious forum; b) censures reserved to the Apostolic See; c) penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See (canon 2237, § 1); 2° in occult cases, remit the same penalties, except censures reserved to the Apostolic See in the most special or special manner (canon 2237, § 2).
2. What any confessor or even any priest can do by a power delegated by law, see n. 865.
3. Besides, delegated power by privilege strictly so called is often given to Nuncios and others for remitting penalties, but only medicinal penalties. Concerning the privilege broadly so called of Cardinals regarding reserved censures, it is stated in its place.

Finally, there are those who can absolve from penalties with this single effect: that toward those punished they can use some privilege of dispensing, according to canon 66, § 3: "In the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation" (cf. canon 200, § 1). This is called absolution for the effect.

III. Mode of remitting. 1. For validity it is required that remission of a penalty not be extorted by force or grave fear (canon 2238). Moreover, error renders the act invalid if it concerns that which constitutes the substance of the act or falls upon a condition *sine qua non* (canon 104).

2. A penalty can validly be remitted to one present or absent, absolutely or under condition, in the external forum or in the internal forum only (canon 2239, § 1). It is said:
 - a) To one present or absent; nevertheless remission made in the internal-sacramental forum requires the person to be absolved or dispensed to be present.
 - b) Absolutely or under condition; even under a suspensive condition, for example: I remit the penalty, which will have effect when you have made restitution. Remission can also be granted unto

reincidence, for example: if then you do not make restitution, you will fall again into the penalty which now I effectively remit.

c) In the external forum or in the internal forum only; concerning the effect of remission in the internal forum only, see canon 2251 (p. 730, V, 2).

3. Although a penalty can also be remitted orally, nevertheless if it was inflicted in writing, it is expedient that its remission also be granted in writing (canon 2239, § 3).

Note. A delinquent can not only be freed from a penalty through remission, but also can escape a penalty to be inflicted through prescription of the penal action, concerning which see canon 1703 (canon 2240).

Dissertation II. On Penalties in Species

According to the norm of the Code, here there will be discussion both of penalties taken in the proper sense, medicinal as well as vindictive, and of disciplinary means, or penal remedies and penances.

Part I. On Medicinal Penalties, or on Censures

We shall speak first of censures in general, then of censures in species.

Section I. On Censures in General

We shall treat first of the notion, multiplication, and division of censure; then of reservation; finally, of remission of censure.

Chapter I. On the Notion, Multiplication, and Division of Censure

862 I. Notion. Censure is a penalty by which a baptized man, delinquent and contumacious, is deprived of certain spiritual goods or goods annexed to spiritual things, until, withdrawing from contumacy, he is absolved (canon 2241, § 1). It is said:

1. Baptized, because the Church lacks jurisdiction over the non-baptized; against heretics and schismatics she can issue censures.
2. Delinquent and contumacious; these things will be explained more fully under II.
3. Until, withdrawing from contumacy, he is absolved. Namely, censure is a medicinal penalty, and therefore primarily intends the amendment of the guilty person; hence as soon as the delinquent withdraws from contumacy, he must be absolved (St. Alphonsus VII, 1).

Note. Censures, especially those *latae sententiae*, and most of all excommunication, are not to be inflicted except soberly and with great circumspection (canon 2241, § 2), "since, as the Council of Trent says,¹ experience teaches that if it is struck rashly or for light matters, it is rather despised than feared, and produces ruin rather than salvation."

II. A fuller exposition of the notion will show what things are required on the part both of the delict and of the delinquent, so that the penalty of censure may be decreed; and what things are required so that the delinquent may be absolved.

1. Requisites on the part of the delict. By censure there is punished only an external delict (n. 846), grave (n. 858), consummated (n. 858; St. Alphonsus VII, 31-34, 36; canon 2242, § 1). Note that a grave delict is required not only as to the external act, but also as to the internal act, so that whatever excuses from mortal sin also excuses from censure (n. 858), at least in the internal forum, because in the external forum malice is presumed.
2. The requisite on the part of the delinquent is contumacy (cited canon). Moreover:
 - a) If there is question of censures *ferendae sententiae*, one is contumacious who, notwithstanding the warnings mentioned in canon 2233, § 2 (n. 859), does not desist from the delict or refuses to do penance for the perpetrated delict with due reparation of damages and scandal (canon 2242, § 2).²
 - b) But to incur a censure *latae sententiae*, transgression of the law or precept to which the penalty *latae sententiae* is annexed suffices, unless the guilty person is excused from it by a legitimate cause (cited canon). It is disputed whether, in a case in which there is question of a censure which is not incurred unless the effect has followed, a transgression morally persisting until the effect has followed is required, so that the censure is not contracted by him who repents of the transgression before the

effect. St. Alphonsus (VII, 40) and others affirm this, because a censure does not seem to be contracted by one who, at the moment at which according to the law it is contracted, is already no longer contumacious.

Note. Censure can also be issued against unknown delinquents (canon 2242, § 1), provided, however, that they are somehow determined; as happens, for example, in establishing censures *latae sententiae*. But a censure issued against an uncertain or indeterminate person would be invalid, for example: "I excommunicate one of the three authors of this crime."

3. The requisite for a delinquent to be absolved is that contumacy has ceased. Moreover, contumacy must be said to have ceased when the guilty person has truly repented of the committed delict and at the same time has given congruous satisfaction for damages and scandal, or at least has seriously promised it; but to judge whether the repentance is true, the satisfaction congruous, or the promise of the same serious or not, belongs to him from whom absolution from the censure is sought (canon 2242, § 3). Therefore the one absolving can sometimes require cautions, so that he may be certain of the serious conversion of the penitent.

Question. When does censure produce its effect, and to what extent is appeal or recourse admitted concerning a censure inflicted or threatened?

Response 1. Censures inflicted by judicial sentence carry execution with them as soon as they have been issued, and from them there is no appeal except in devolutive effect; likewise from censures inflicted in the manner of a precept there is recourse, but in devolutive effect only³ (canon 2243, § 1).

Response 2. But appeal or recourse from a judicial sentence or precept threatening censures, even censures *latae sententiae* not yet contracted, suspends neither the sentence or precept nor the censures, if there is question of a matter in which law does not admit appeal or recourse even with suspensive effect; otherwise it suspends the censures, the obligation of observing what is commanded by the sentence or precept nevertheless remaining firm, unless the guilty person has lodged appeal or recourse not only from the penalty, but also from the sentence or precept itself (canon 2243, § 2).

III. Multiplication of censure. Since by several titles someone can be deprived of the same good, "not only diverse censures, but even a censure of the same species, can be multiplied in the same subject" (canon 2244, § 1). Moreover, according to the adage, as many penalties as delicts, the Code establishes:

1. A censure *latae sententiae* is multiplied: 1° if diverse delicts, each of which carries a censure with it, are committed by the same or by distinct action (p. 716, IV, 1, 1°); 2° if the same delict, punished with a censure, is repeated several times, so that there are several distinct delicts (p. 716, IV, 1, 2°); 3° if a delict, punished with diverse censures by distinct Superiors, is committed once or several times (canon 2244, § 2, 1°, 2°, 3°).
2. A censure *ab homine* (inflicted) is multiplied if several precepts, or several sentences, or several distinct parts of the same precept or sentence, each inflicts its own censure (canon 2244, § 3).

IV. Division. Censure, as was said of penalty in general (n. 853), is determinate or indeterminate, *latae* or *ferendae sententiae*, *a iure* or *ab homine*. Besides, censures are divided:

1. By reason of the deprivation of goods, into excommunication, suspension, and interdict; concerning these separately below.
2. By reason of the power of remitting, some are reserved, others non-reserved (canon 2245, § 1). We shall speak specifically of reservation.

¹ Session 25, chapter 3.

² An unknown delinquent must be warned by edict before a censure is inflicted, according to the norm of canon 1724, compared with canon 1720, 1 and 2 (cf. also canon 1717, 3).

³ Recourse extends more broadly than appeal, since the former can be extrajudicial, but the latter cannot in present Law.

Chapter II. On Reservation of Censure

863 I. Notion of reservation. Reservation of censure is its evocation to the judgment of the Superior; therefore it limits the inferior's power of absolving (canon 893, §§ 1 and 2).

II. Power of reserving. Those same persons can reserve censures who can issue them (cited canon). Nevertheless, "if a censure is reserved to the Apostolic See, the Ordinary cannot issue another censure reserved to himself for the same delict" (canon 2247, § 1). In addition, canon 2246, § 1, admonishes: "Let no censure be reserved unless with attention to the peculiar gravity of the delicts and to the necessity of providing more suitably for ecclesiastical discipline and of healing the consciences of the faithful."

III. Reserved censures. 1. A censure *ab homine* (inflicted)¹ is reserved, and indeed to him who inflicted the censure or issued the sentence, or to his competent superior, or successor, or delegate (canon 2245, § 2).

2. Censures *latae sententiae*, established by law or by precept, are reserved if this is expressly said in the law or precept (canon 2245, § 4). Moreover, among censures reserved by law, some are reserved to the Ordinary, others to the Apostolic See (canon 2245, § 2). Among those reserved to the Apostolic See, some are reserved simply, others in a special manner, others in a most special manner (canon 2245, § 3).

IV. Interpretation of reservation. Reservation receives strict interpretation (canon 2246, § 2). Therefore reservation is not had in doubt whether the requisites are present so that it must be applied.

V. Effect of reservation of censure with respect to sin. Reservation of a censure impeding reception of the sacraments (n. 864) imports the reservation of the sin to which the censure is annexed (canon 2246, § 3). But a sin of this kind is said to be reserved by reason of the censure, not by reason of itself; hence, "if someone is excused from the censure or has been absolved from it, the reservation of the sin ceases entirely" (cited canon).

VI. Limits of reservation. Reservation of a censure in a particular territory does not exert its force outside the boundaries of that territory, even if the censured person goes out of the territory to obtain absolution; but a censure *ab homine* is reserved everywhere, so that the censured person can nowhere be absolved without the due faculties (canon 2247, § 2).

¹ Inflicted; for a censure *latae sententiae* added to a particular precept is indeed *ab homine*, but is not always reserved, as is said under III, 2.

Chapter III. On Remission of Censure

864 I. The act of remitting. Any censure, once contracted, is removed only by legitimate absolution (canon 2248, § 1). Besides, note:

1. A censure removed through absolution does not revive except in the case in which a burden imposed under penalty of reincidence has not been fulfilled (canon 2248, § 3).
2. If someone is held by several censures, he can be absolved from one, the others in no way being absolved (canon 2249, § 1).
3. One seeking absolution must indicate all cases; otherwise the particular absolution is valid only for the case expressed. But if the absolution, although a particular petition had been made, was general, it is valid also for cases withheld in good faith, except for a censure reserved to the Apostolic See in the most special manner, but not for those withheld in bad faith (canon 2249, § 2).
4. Regarding the connection of remission of censure with sacramental absolution, observe:
 - a) If there is question of a censure which does not impede reception of the Sacraments, for example of suspension, the censured person, duly disposed and withdrawing from contumacy, can be absolved from sins, the censure remaining firm (canon 2250, § 1).
 - b) But if there is question of a censure which impedes reception of the Sacraments, the censured person cannot be absolved from sins unless he has first been absolved from the censure (canon 2250, § 2). It is said cannot be absolved, that is, cannot be absolved licitly; but he is absolved validly unless the penitent knows that he cannot be licitly absolved and therefore is indisposed. If the censure is reserved, the sin to which the censure is annexed is also reserved; nevertheless, since it is not reserved by reason of itself, the confessor does not lack jurisdiction over it; hence absolution, even granted in bad faith, directly absolves the penitent even from the reserved sin, unless again the penitent knows that he cannot be licitly absolved and therefore is indisposed (St. Alphonsus VII, 158, 159).

865 II. Power of absolving. 1. In ordinary circumstances absolution can be granted as follows:

- a) From a non-reserved censure, in the sacramental forum, any confessor can absolve; outside the sacramental forum, anyone who has jurisdiction over the guilty person in the external forum can absolve (canon 2253, n. 1).
- b) From a censure *ab homine*, he who inflicted the censure or issued the sentence, or his competent Superior, or successor, or delegate, can absolve; moreover, he can grant absolution even if the guilty person has transferred his domicile or quasi-domicile elsewhere (canon 2253, 2°).
- c) From a censure reserved by law, he who constituted the censure or to whom it is reserved can absolve, as can their successors or competent superiors or delegates. Therefore:
 - alpha) From a censure reserved to the Bishop or Ordinary, any Ordinary can absolve subjects; but the local Ordinary can absolve also travelers.¹

beta) From a censure reserved to the Apostolic See, both the Apostolic See itself can absolve, and others who have obtained from it the power of absolving, whether general if the censure is reserved simply,² or special if it is reserved in a special manner, or finally most special if it is reserved in a most special manner (canon 2253, n. 3).

Note. Cardinals, by force of privilege, validly absolve any penitents whatever throughout the world from all sins and censures, even reserved ones, except only censures reserved to the Apostolic See in the most special manner and those which are annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1° and 2°).³ - The canon penitentiary, both of a cathedral church and of a collegiate church, obtains by law ordinary power, which however he cannot delegate to others, of absolving even from sins and censures reserved to the Bishop, in the diocese even outsiders, and diocesan persons even outside the territory of the diocese (canon 401, § 1). - Finally, a priest chosen by a Cardinal as confessor for himself and his household can absolve them from the same sins and censures from which Cardinals can absolve (canon 239, § 1, 2°). The same must be said, also as concerns cases reserved to the local Ordinary, of the priest whom the Bishop has chosen as confessor for himself and his household (canon 349, § 1, 1°).

2. In more urgent cases any confessor in the sacramental forum can absolve from censures *latae sententiae* reserved in any manner whatever, with the burden imposed under penalty of reincidence of having recourse, the name withheld, to the Superior and of standing by his commands (canon 2254, § 1). It is said:

a) In more urgent cases. A case is urgent if censures *latae sententiae* cannot be observed externally without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide (cited canon).

b) From censures *latae sententiae* reserved in any manner whatever; therefore it is doubted whether the faculty extends itself to a censure *ab homine*, contracted by force of a particular precept, if it is *latae sententiae*. Now this seems to have to be denied; for if it extended itself to that censure, surely, just as in canon 2252, both it would be expressly named and mention would explicitly be made of it in the recourse to be instituted after absolution.

c) With the burden imposed, under penalty of reincidence, of having recourse. Moreover, recourse must be made within a month, at least by letter and through the confessor, if this can be done without grave inconvenience (cited canon).

d) To the Superior, that is, to the Sacred Penitentiary or to the Bishop or another superior endowed with the faculty (cited canon). But notice that recourse can then be made even to the Bishop only if he is endowed with the faculty.⁴ Recourse cannot be made to just any subdelegate.⁵

e) And of standing by his commands; this likewise seems imposed under penalty of reincidence.⁶

Note 1. Nothing prevents the penitent, even after absolution accepted as above, and after recourse also has been made to the Superior, from approaching another confessor endowed with the faculty, and from obtaining absolution from him after the confession at least of the delict with the censure has been repeated. Once that absolution has been obtained, he may receive commands from the same confessor, without being bound thereafter to stand by other commands subsequently arriving on the part of the Superior (canon 2254, § 2).

Note 2. But if in some extraordinary case this recourse is morally impossible, then the confessor himself, except in the case of a censure contracted from true or fictitious absolution of an accomplice, can grant absolution without the burden mentioned above, nevertheless imposing those things which must be imposed by law, and imposing a congruous penance and satisfaction for the censure, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the censure (canon 2254, § 3).

It is said: But if... this recourse is morally impossible. Moreover, it is morally impossible: 1° when "neither the confessor nor the penitent can send a letter to the Sacred Penitentiary and it is hard for the penitent to approach another confessor";⁷ indeed, 2° when only the confessor can write, but it is morally impossible for the penitent to return to him, and it is hard to approach another confessor.⁸

It is said: Except in the case of a censure contracted from absolution of an accomplice. Hence the confessor cannot grant absolution to a priest offending in this way without the burden of having recourse; therefore the obligation remains until it has been fulfilled. But if both the confessor and the penitent here and now cannot satisfy the obligation physically or morally - suppose on account of sickness or inability to write - the penitent is excused until the impediment has ceased (n. 414).

For the formula of having recourse, see n. 415.

3. In danger of death, from whatever cause it proceeds, all priests, although not approved for confessions, validly and licitly absolve any penitents whatever from any sins or censures, however reserved and notorious, even if an approved priest is present; except, only as to liceity, the case of absolution of an accomplice when another priest is present (canon 882). Nevertheless:

a) Those who, placed in danger of death, have received absolution from some censure *ab homine* or from a censure reserved to the Apostolic See in the most special manner from a priest lacking the special faculty, are bound by the obligation of having recourse (canon 2252).

b) Recourse must be made to him who issued the censure, if there is question of a censure *ab homine*; to the Sacred Penitentiary or to the Bishop or another endowed with the faculty, if there is question of a censure *a iure* (cited canon).

c) Recourse obliges under penalty of reincidence (cited canon); moreover, it seems to press from the time of recovered health. Finally, one must stand by the commands received in the recourse (cited canon), and indeed, as it seems, under penalty of reincidence.⁹

Note. If one absolved from a reserved censure *ab homine* should prefer after recovered health to seek absolution again, for example from a delegate (canon 2245, § 2), rather than to have recourse to him who issued the censure, this is certainly licit for him.

4. Finally, regarding absolution from censure, let these things be noted concerning supplied jurisdiction:

a) In common error or in a positive and probable doubt, whether of law or of fact, the Church supplies for both the external and internal forum (canon 209).

b) When the power of absolving for the internal forum has been granted, an act placed through inadvertence after the time has elapsed or the number of cases has been exhausted is valid (canon 207, § 2).

c) If a confessor, ignorant of the reservation, absolves a penitent from censure and sin, the absolution from the censure is valid, provided it is not a censure *ab homine* or a censure reserved to the Apostolic See in the most special manner (canon 2247, § 3).

¹ Regular confessors have this power, but delegated by force of privilege, even those who are not Ordinaries or local Ordinaries.

² Ordinaries have this ordinary power in occult cases, as was said in n. 861.

³ From canon 239, § 1, 2°, it seems to follow that Cardinals cannot delegate this power; otherwise this number 2° would be superfluous; indeed, because the privileges of canon 239 are to be judged personal (cf. *II Monitor ecclesiasticus* 1919, p. 308).

⁴ Pontifical Commission, November 12, 1922, to VIII (A.A.S. 1922, p. 663).

⁵ Cf. Holy Office, December 19, 1900.

⁶ Response of the Holy See, March 30, 1892, to 3 (A.S.S. XXIV, p. 746).

⁷ Holy Office, November 9, 1898 (*Collectanea*, n. 2023).

⁸ Holy Office, September 5, 1900, compared with June 7, 1899 (*Collectanea*, nn. 2095, 2052). The danger that letters may be opened does not excuse from recourse, since inconveniences are sufficiently forestalled by suppression of the name and pronoun.

⁹ Response of the Holy See, March 30, 1892, to 3 (A.S.S. XXIV, p. 746).

866 III. Obligation of absolving. Absolution cannot be denied as soon as the delinquent has withdrawn from contumacy according to the norm of canon 2242, § 3 (n. 862); moreover, the one absolving from a censure can, if the matter bears it, inflict a congruous vindictive penalty or penance for the perpetrated delict (canon 2248, § 2).

867 IV. Form of absolving. Absolution from censure in the sacramental forum is contained in the accustomed form of absolution from sins, prescribed in the ritual books;¹ in the non-sacramental forum it can be given in any manner whatever, but for absolution from excommunication it is regularly fitting to use the form handed down in the same books² (canon 2250, § 3).

¹ "May Our Lord Jesus Christ absolve you," etc.

² Roman Ritual, title III, chapter 3, n. 7: "May Our Lord Jesus Christ absolve you; and I, by His authority and by the authority committed to me by our most holy Lord the Pope (if he was delegated by the Pope), or: by the most reverend Bishop N., or by such-and-such Superior, absolve you from the bond of excommunication into which you have fallen (or: have been declared to have fallen), because of such-and-such deed (or: such-and-such cause, etc.); I restore you to the communion and union of the faithful, and to the holy Sacraments of the Church, in the name of the Father, and of the Son, + and of the Holy Spirit. Amen."

868 V. Effect of absolution in relation to the forum for which it is valid. 1. If absolution from censure is given in the external forum, it affects both forums (canon 2251).

2. If in the internal forum, the absolved person, scandal having been removed, can bear himself as such also in acts of the external forum; but unless the granting of absolution is proved or at least legitimately presumed in the external forum, the censure can be urged by Superiors of the external forum, whom the guilty person must obey, until absolution has been obtained in that same forum (cited canon).

Section II. On Censures in Species

869 Preliminary Note I. Censures are: 1° excommunication; 2° interdict; 3° suspension (canon 2255, § 1).

Preliminary Note II. Excommunication can affect only physical persons, and therefore, if at any time it is issued against a moral body, it is understood to affect the individuals who have concurred in the delict;¹ interdict and suspension can also affect a community as a moral person; excommunication and interdict can also affect lay persons; suspension, clerics only; interdict, also a place; excommunication is always a censure; interdict and suspension can be either censures or vindictive penalties, but in doubt they are presumed to be censures (canon 2255, § 2).

Preliminary Note III. In the canons which follow:

1° By the name divine offices are understood functions of the power of order which, by the institution of Christ or of the Church, are ordered to divine worship and can be performed by clerics alone (canon 2256, 1°). Mass, the chanting of the hours in choir, a public procession, solemn blessings and consecrations, Benediction with the Most Holy Sacrament, and other things of that kind are enumerated; a sermon also is a divine office, but no one is ever prohibited from assisting at it; cf. canon 2275, canon 2259, § 1.

2° By the name legitimate ecclesiastical acts are signified: to hold the office of administrator of ecclesiastical goods; to act as judge, auditor and relator, defender of the bond, promoter of justice and of the faith, notary and chancellor, messenger and apparitor, advocate and procurator in ecclesiastical causes; to hold the office of sponsor in the sacraments of baptism and confirmation; to cast a vote in ecclesiastical elections; to exercise the right of patronage (canon 2256, 2°).

¹ Concurrence according to the norm of canon 2231 seems to be intended.

Chapter I. On Excommunication

870 I. Notion. Excommunication is a censure by which someone is excluded from the communion of the faithful, with the effects which are enumerated in the canons which follow and which cannot be separated (canon 2257, § 1). That exclusion from ecclesiastical communion, that is, from participation in the goods whose dispensation has been committed to the Church, is among the greatest penalties, and is to be inflicted only with great circumspection (canon 2241, § 2); when it is inflicted or declared in judgment, it is reserved to a collegiate tribunal of three judges (canon 1576, § 1, 1°). It is also called anathema, especially if it is inflicted with the solemnities which are described in the Roman Pontifical¹ (canon 2257, § 2).

¹ Roman Pontifical, title *The Order of Excommunicating and Absolving*.

871 II. Division. Although on the one hand the effects of excommunication are inseparable from one another, and therefore cannot be separated at the judgment of the one inflicting the penalty, nevertheless by the law itself the effects of excommunication are increased after a condemnatory or declaratory sentence. Furthermore, for the benefit of the faithful the distinction between tolerated and to-be-avoided excommunicates has been introduced (cf. canon 2258, § 1).

1. Tolerated persons are those with whom it is permitted to the faithful to communicate fully in profane matters,¹ and in some sacred matters according to the rules to be handed down. This

toleration is for the benefit of the faithful, because exclusion from the communion of the faithful of itself also includes civil communication with them.

2. To-be-avoided persons are those whom the baptized are bound to avoid both in profane and in sacred matters within the limits established by law. But no one is to be avoided unless: a) he has laid violent hands on the person of the Roman Pontiff, and he is to be avoided by the fact itself (canon 2343, § 1, 1°); b) he has been excommunicated by name by the Apostolic See, the excommunication has been publicly denounced, and in the decree or sentence it is expressly said that he must be avoided (canon 2258, § 2).

¹ Saving the natural law, which commands that the danger of perversion be avoided.

872 III. Nine effects are enumerated; moreover, the following are prohibited according to the norm of law:

1. Assistance at divine offices. Assistance is twofold, active and passive. One actively assists who in some way participates in the celebration of divine offices; hence even an inferior minister or one reciting in public psalmody. But singers and organists are not judged to concelebrate. One passively assists who is present but does not participate in the celebration. Therefore:

a) Any excommunicated person lacks the right of assisting, whether actively or passively, at divine offices, but not at the preaching of the word of God (canon 2259, § 1). Nevertheless he himself cannot preach. Moreover, an occult tolerated person by any assistance of itself sins only venially, or even, according to many, not at all, if there is question of passive assistance. A tolerated person after sentence, or one otherwise notorious, sins lightly by passive assistance; gravely by active assistance, if the matter is grave. A to-be-avoided person sins gravely by any assistance, if the matter is grave (St. Alphonsus VII, 173, 175, 177).

b) Regarding the expulsion of an excommunicated person, note:

alpha) Not only a to-be-avoided person, but also anyone after declaratory or condemnatory sentence, or otherwise notoriously excommunicated, is to be repelled from active assistance (canon 2259, § 2).

beta) A tolerated person can be repelled from passive assistance, since he lacks the right of assisting, but he need not be repelled. A to-be-avoided person must be expelled, or, if he cannot be expelled, the office must cease, provided this can be done without grave inconvenience (cited canon). Hence St. Alphonsus (VII, 177), concerning the Sacrifice of the Mass, says: "If he (the to-be-avoided person) cannot be expelled, the office must be omitted, even on a feast day; and the celebrant, if the Canon has not yet begun, must break off the Mass; if he has begun the Canon, he can, the others departing, either proceed with the sacred action or break it off, on account of the probability of each opinion;¹ if he has consecrated, the minister alone remaining, he must proceed up to Communion inclusive and complete the rest in the sacristy or another decent place," connected with the church.

Corollary I. Ignorance which is not gravely culpable, grave fear, and in general a grave extrinsic inconvenience excuses from observing the things set forth.

Corollary II. Prohibited passive assistance contains for the excommunicated person a dispensation from the precepts of hearing Mass, going to choir, and paschal confession. The last of these, however, presses the obligation of seeking absolution from the censure. Nevertheless he is bound privately,

and if he is to be avoided, alone, to recite the canonical hours, if he is a cleric or a regular according to canon 610, § 3.

Corollary III. An excommunicated person is not prohibited from entering the Church at a time when the divine offices are not being celebrated, in order to pray privately (St. Alphonsus VII, 174).

2. Reception of sacraments and sacramentals.

a) Any excommunicated person cannot licitly receive the sacraments (canon 2260, § 1); but generally he receives them validly. I have said generally, for regarding the sacrament of Penance the things said in n. 864 are valid.

b) An excommunicated person after declaratory or condemnatory sentence² cannot licitly receive sacramentals. An occult tolerated person and one notorious by fact are not prohibited; but sacramentals do not profit these persons either, at least from the impetration of the Church, in whose prayer they do not participate. But exorcism can be performed licitly and validly by legitimate ministers upon any excommunicates (canon 1152). Likewise they seem always validly to receive constitutive sacramentals; for minor orders this follows from canon 968, § 1.

3. Ecclesiastical burial. This consists in the transfer of the body to the church, obsequies celebrated over it in the same church, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). Now this ecclesiastical burial must be denied only to an excommunicated person after condemnatory or declaratory sentence, unless before death he has given some signs of penitence (canon 1240, § 1, 2°). Furthermore, to one excluded from ecclesiastical burial there must be denied both any funeral Mass, even an anniversary one, and other public funeral offices (canon 1241); concerning a private Mass to be celebrated for him, cf. n. 208. If the body of an excommunicated person after sentence, or of a to-be-avoided person, contrary to the statutes of the canons, has obtained burial in a church or cemetery, it must be exhumed by permission of the Ordinary, if this can be done without grave inconvenience and the body can certainly be distinguished from other bodies (canons 1172, § 1, 4°; 1175; 1207; 1242).

But if prohibited ecclesiastical burial is stubbornly demanded by others, even with grave threats, nevertheless "care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the pastor, neither by himself nor through other priests, is to concur in any way in the funeral rites and burial."³

4. Confection and administration of sacraments and sacramentals. An excommunicated person is prohibited from licitly confecting and administering the Sacraments and Sacramentals, saving the exceptions which follow (canon 2261, § 1):

a) The faithful can, for any just cause, seek Sacraments and Sacramentals from an excommunicated person, especially if other ministers are lacking; and then the excommunicated person who is requested can minister them and is held by no obligation of inquiring into the cause from the one requesting (canon 2261, § 2).

b) But from excommunicated persons to be avoided, and also from other excommunicated persons after a condemnatory or declaratory sentence has intervened, the faithful can seek, in danger of death alone, both sacramental absolution according to the norm of canon 882 (n. 370) and 2252 (p. 729), and also, if other ministers are lacking, the other Sacraments and Sacramentals (canon 2261, § 3).

As regards validity: Sacraments are always validly ministered by any persons possessing the required power of order, unless special jurisdiction is required for this; likewise Sacramentals, unless a special faculty is required for them. But an excommunicated person cannot enjoy this faculty, as will be said below at canon 2263, although he validly uses it.

5. Participation in indulgences, etc. An excommunicated person does not become a participant in indulgences, suffrages, and public prayers of the Church (canon 2262, § 1). It is said:

a) Indulgences, whether those which are applied to the living by an act of jurisdiction, or those which are granted to the dead by way of suffrage.

b) Suffrages; by this name here there seem to be understood prayers and liturgical rites which are performed by sacred ministers, either alone or together with the faithful, for a deceased person or for all the departed.

c) Public prayers of the Church, that is, those which are poured forth by sacred ministers, either alone or together with the faithful, in the name of the Church, such as canonical recitations of the divine office, Litanies, etc.

Nevertheless, the following are not prohibited: 1° the faithful praying privately for an excommunicated person; 2° priests applying Mass privately and with scandal removed for him; but, if he is to be avoided, only for his conversion (canon 2262, § 2). Besides, by way of exception, the Church prays for these persons on Feria VI in Parasceve, in the prayer for heretics and schismatics.

6. The exercise of some acts, functions, and privileges, namely by force of canon 2263:

a) An excommunicated person is removed from legitimate ecclesiastical acts within the limits defined by law in their proper places (cf. canon 2256, n. 2; n. 869, prelim. III, 2°).

b) He cannot act in ecclesiastical causes except according to the norm of canon 1654.

c) He is prohibited from discharging ecclesiastical offices or functions, strictly so called, canon 145, and from enjoying privileges previously granted by the Church. Therefore he does not lose functions, unless he is to be avoided, cf. below canon 2266, and privileges. Privileges are understood as personal privileges, strictly or broadly so called, granted to a physical person, or to a religious institute or generally to a moral person for the benefit of physical persons; not, however, privileges of the clerical state (canon 123) or others granted principally for the benefit of the religious institute itself or of the moral person, for example the privilege of exemption; and indeed granted by any ecclesiastical law or Superior. Moreover, besides rights, habitual faculties are numbered with privileges, which are granted either in perpetuity or for a predefined time or a certain number of cases (canon 66, § 1); for example, the faculty of dispensing in matrimonial impediments, or the special faculty of attaching indulgences to sacred things by a blessing. An excommunicated person would indeed use these faculties validly, but illicitly.

7. Exercise of jurisdiction of the internal and external forum. An excommunicated person before sentence exercises jurisdiction validly but illicitly, unless he is requested by the faithful for a just cause. After sentence he exercises it invalidly and illicitly, unless he is requested according to the norm of canon 2261, § 3 (p. 734); then he acts validly and licitly. Therefore excommunicated persons who have not been requested illicitly or invalidly issue laws, delegate others, etc. (St. Alphonsus VII, 185). Nevertheless note that sometimes the invalidity of the act of jurisdiction

does not prevent the validity of the external act placed, for example in the distribution of Sacraments.

8. Exercise and acquisition of some special rights. By force of canons 2265 and 2266:

a) An excommunicated person before sentence:

alpha) Validly, but illicitly, exercises the right of electing, presenting, and nominating.

beta) Validly, but illicitly, acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure (canons 950; 968, § 1).

b) An excommunicated person after sentence:

alpha) Illicitly and invalidly exercises the right of electing, presenting, and nominating.

beta) Illicitly and invalidly acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure.

delta) He cannot validly obtain any pontifical grace,⁴ unless mention of the excommunication is made in the pontifical rescript.

epsilon) He remains deprived of the fruits of the dignity, office, benefice, pension, or function, if he has any in the Church.

c) A to-be-avoided person suffers the same effects as an excommunicated person after sentence; but in addition he remains deprived of the dignity itself, office, benefice, pension, or function.

9. Communion in profane matters. The faithful must avoid communion in profane matters with an excommunicated person to be avoided, unless there is question of a spouse, parents, children, servants, subjects, and generally unless a reasonable cause excuses (canon 2267). From the latter words it follows that the prohibition presses only under light sin. Nevertheless note canon 2338, § 2: those rendering any assistance or favor to an excommunicated person to be avoided in the delict on account of which he was excommunicated incur by the fact itself an excommunication simply reserved to the Apostolic See.⁵

¹ See, nevertheless, how the parallel case is resolved in canon 1173, § 2.

² The things which are valid concerning an excommunicated person after sentence must also be understood concerning a to-be-avoided person, although condemned by decree of the Apostolic See, but not concerning one notorious by fact.

³ Sacred Penitentiary, December 10, 1860 (A.S.S. I, p. 563, question 21).

⁴ There are also dispensations and privileges, according to canon 36, § 2; cf. the Order to be observed in the Sacred Congregations, September 20, 1908, Part II, chapter III, n. 6. If mention of the penalty is made, absolution for the effect is added.

⁵ One gives favor who, although he becomes in no way a participant in the continued delict, nevertheless procures for the delinquent some material or moral advantage on account of it (Chelodi, op. cit., p. 80, 2).

873 IV. Violation of excommunication is a grave or light sin according as the excommunicated person places an act excluded by excommunication of grave or light importance. In addition, a cleric excommunicated in sacred orders, who places an act of order reserved to clerics constituted in sacred order, is irregular (canon 985, 7°). Finally, if someone, with hardened spirit, has wallowed for a year in the censure of excommunication, he is suspected of heresy (canon 2340, § 1).

Chapter II. On Interdict

874 I. Notion. Interdict is a censure by which the faithful, remaining in the communion of the Church, are prohibited from the sacred things which are enumerated in the canons which follow (canon 2268, § 1). It is said censure, but it can besides be inflicted as a vindictive penalty (n. 890). It is said sacred things; these are divine offices, Sacraments and Sacramentals, or ecclesiastical burial. Furthermore, those personally interdicted sometimes cannot exercise certain rights. The effects of interdict can be separated, so that it is left to the judgment of the Superior which privations he commands, unless it is an interdict established by common law.

875 II. Division. Interdict is: 1° personal or local;¹ 2° general or particular, according as the subjects of the penalty differ.

1. Interdict is personal when the use of sacred things is directly interdicted to the persons themselves; local, when the use of sacred things is indirectly interdicted to persons, because in certain places the dispensation or reception of sacred things is forbidden (cf. canon 2268, § 2).
2. It is general when it is issued against a group of persons, and is a general personal interdict; or against some territory, whose sacred and profane places it affects, and is a general local interdict. It is particular when it is issued against particular persons expressly designated, and is a particular personal interdict; or against particular sacred places, namely churches, altars, cemeteries, and is a particular local interdict.

Finally, a personal interdict can be issued at the same time both against a community as such and against the individual delinquent persons of some community, so that the interdict is at once general and particular.

¹ Formerly there existed a mixed or ambulatory interdict, which held any place during the presence of the interdicted person; now it has been abolished.

876 III. Author. 1. A general interdict against a diocese, whether against the territory or against the people, can be issued only by the Apostolic See or at its mandate (canon 2269, § 1).

2. A general interdict against a parish, and also any particular interdict against subject persons or places, can be issued by a Bishop (cited canon). A religious Superior cannot issue a local interdict, because his jurisdiction is only personal.

877 IV. Interpretation. 1. When a city is interdicted, accessory places, even exempt ones, and the cathedral church itself also remain interdicted; when a church is interdicted, contiguous chapels are interdicted, but not the cemetery; when a chapel is interdicted, the whole church is not interdicted, nor, when a cemetery is interdicted, is the church contiguous to it interdicted, but all oratories erected in the cemetery are interdicted (canon 2273).

2. A personal interdict follows the persons who are held by the interdict everywhere, so that in whatever place they suffer the effects of the penalty (canon 2269, § 2); but a general personal interdict does not hold infants and others not liable to penal law, nor arriving persons, travelers, and vagrants; but it does hold the innocent, and even the absent, who, for example by domicile, are members of the community. Furthermore, from the common and more benign interpretation, when the people are interdicted, the clergy are not of themselves judged interdicted; and also conversely, so that when the clergy are interdicted, the non-interdicted people can call other clerics. Likewise, when the clergy are interdicted, religious are not judged interdicted unless they have a secular benefice (St. Alphonsus VII, 331).
3. A local interdict does not press outside the interdicted place; but in the interdicted place all, even outsiders or exempt persons, a special privilege excluded, must observe it (cited canon). The reason is that it directly affects the territory, but indirectly the persons; nevertheless for the innocent and travelers, or even for infants, such an interdict does not have the character of a penalty, but of a disciplinary privation. The same is valid concerning the innocent in a personal interdict.

878 V. Effects of a local interdict. A local interdict, whether general or particular, prohibits in the place any divine office or sacred rite, with the following exceptions (canon 2270, § 1):

1. In every local interdict: 1° All sacraments and sacramentals can be ministered to the dying, with the things to be observed being observed; the chief of these are that the ministers not be impeded and solemnities be omitted (canon 2270, § 1, compared with canon 2271, 2°). 2° A local interdict is suspended on the day of the Nativity of the Lord, Easter, Pentecost, the Most Holy Body of Christ, and the Assumption of the Blessed Virgin Mary into heaven,¹ and only the conferral of orders and the solemn nuptial blessing are prohibited (canon 2270, § 2). It is said on the day, so that the octave is excluded.
2. In a general local interdict, unless the decree expressly provides something else:
 - a) Clerics, provided they themselves are not personally interdicted, are permitted to perform privately all divine offices and sacred rites in any church or oratory, with closed doors, in a subdued voice, and without bells being rung (canon 2271, 1°).
 - b) But in the cathedral church, parochial churches, or in the church which is the only one in the town, and in those alone, there are permitted: the celebration of one Mass, reservation of the Most Holy Sacrament, administration of baptism, Eucharist, and penance, assistance at marriages, with the nuptial blessing excluded, funeral obsequies of the dead, any solemnity nevertheless being forbidden, the blessing of baptismal water and of sacred oils, and the preaching of the word of God. In these sacred functions, however, chant and pomp in sacred furnishings and the sound of bells, organs, or other musical instruments are prohibited; and sacred Viaticum is to be carried privately to the sick (canon 2271, 2°).
3. In a particular local interdict:
 - a) If the altar or chapel of some church has been interdicted, no sacred office or sacred rite is to be celebrated in them (canon 2272, § 1).

b) If the cemetery has been interdicted, the bodies of the faithful can indeed be buried there, but without any ecclesiastical rite (canon 2272, § 2).

c) If the church or oratory of some Chapter has been interdicted, and the Chapter has not been interdicted, because then nothing is permitted to it, the Chapter is permitted to perform all divine offices and sacred rites of its function privately, according to canon 2271, 1°, in any church or oratory, even in its own interdicted church or oratory, unless the decree of interdict commands that in another church or oratory the conventual Mass be celebrated and the canonical hours be publicly recited (canon 2272, § 3, 1°).

d) If the parochial church has been interdicted, it is permitted to perform in it all the things which above, canon 2271, 2°, were said concerning the cathedral church and other parochial churches under a general interdict, unless the decree of interdict substitutes another church for it during the time of the interdict (canon 2272, § 3, 2°).

¹ Furthermore in Spain on the day of the Immaculate Conception of the Blessed Virgin Mary by privilege of Leo X.

879 VI. Effects of personal interdict. Those personally interdicted by force of canon 2275:

a) Cannot celebrate divine offices or assist at them, except the preaching of the word of God; those passively assisting need not be expelled; but interdicted persons after a condemnatory or declaratory sentence has been issued, or otherwise notoriously interdicted, are to be repelled from active assistance which carries with it some participation in celebrating divine offices (cited canon, 1°).

b) They are prohibited from ministering and confecting Sacraments and Sacramentals, unless the interdicted person before sentence has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or unless after sentence he has been requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other ministers are lacking.

c) They are prohibited from receiving the Sacraments; and after sentence they also receive Sacramentals illicitly, except exorcism (canon 1152); but an interdicted person also receives Sacramentals validly, because he communicates with the prayer of the Church.

d) They are also held by the prescription of canon 2265; therefore the things said on p. 735, 8, a) and b), alpha-delta, are to be applied to them.

e) After sentence they are deprived of ecclesiastical burial (cf. canon 1204), unless before death they have given some signs of penitence; and under the same restriction there must be denied to them both any funeral Mass, even an anniversary one, and other public funeral offices.

f) Finally, after sentence, a pastor or local Ordinary assists at marriage invalidly, whether by himself or through another (canon 1095). Before sentence he assists even licitly.

880 VII. Effects of an interdict issued because a community or college has perpetrated a delict. An interdict of this kind can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2274, § 1). Now:

1. If the interdict has been issued against the individual delinquent persons, those persons, but not the innocent, are personally interdicted, and therefore are held by the things set forth under VI (canon 2274, § 2).

2. If the interdict has been issued against the community as such, the community or college cannot exercise any spiritual right which belongs to it (canon 2274, § 3). Spiritual rights are judged to be: the right of electing, presenting, conferring benefices, celebrating the divine office by office,¹ etc.; but not the right of administering goods and similar things.

3. If the interdict has been issued against the delinquents and against the community, the effects assigned under 1 and 2 are cumulated (canon 2274, § 4).

¹ For example, celebrating the conventual Mass and reciting the canonical hours in common, if there is question of a Chapter interdicted as such (canon 2272, § 3, 1°).

881 Question 1. To what extent does interdict redound upon the innocent?

Response 1. One who is subject to a local interdict, without having given cause for it and without being prohibited by another censure, can, if he is duly disposed, receive the Sacraments without absolution from the interdict or any other satisfaction; and indeed, in the interdicted place itself, those sacraments which are licitly administered there (canon 2276; cf. canon 2271, n. 878), or in another non-interdicted place, the other sacraments. Likewise he can freely go to other places so that he may assist at divine offices and be freed from the other privations of the local interdict.

Response 2. An innocent person, if an interdict is issued against the individual delinquents of the community of which he is a member, undergoes the effects of those personally interdicted only indirectly, because he cannot receive sacraments or other things from them. He himself is free in all things, and not even for the external forum does he need absolution in order to receive the Sacraments (canon 2276).

Response 3. An innocent person, being subject to an interdict against a community as such, cannot exercise the common rights of the community; but because he is not held by the censure, since it supposes a delict, he does not need absolution in order to receive the Sacraments (canon 2276).

Response 4. If the things placed under responses 2 and 3 are cumulated, the things said there are to be observed (cited canon).

Note. Those who have given cause for a local interdict or for an interdict against a community or college are by the fact itself personally interdicted (canon 2338, § 4).

Question 2. What does interdict from entrance into the church import?

Response. Interdict from entrance into the church, which is a certain part of a special personal interdict, does not deprive one of those goods which we indicated under VI, but from canon 2277 it carries with it the prohibition that one celebrate divine offices in church or assist at them, except preaching, or have ecclesiastical burial. Therefore he can, provided he is duly disposed, receive the Sacraments, even in church, when divine offices are not being celebrated; or celebrate divine offices or assist at them outside the church, taken in the strict sense according to canon 1161. But if he assists, actively or passively, in church, he need not be expelled; nor if he is buried in a sacred place is it necessary that the body be removed.

In present Law it is established in only three cases (canon 2329; canon 2338, § 3; canon 2339); it can be issued as a vindictive penalty.

882 VIII. Cessation of interdict. It is proper to interdict that, besides the modes common to all penalties, it also ceases when the interdicted place has been destroyed or the interdicted community extinguished. But it is clear of itself that absolution given in the internal forum never touches the local interdict itself, or a general personal interdict as such. One who without fault is subject to an interdict against a community is freed by the fact itself from this interdict when he ceases to be a member of the community; nor does he need absolution.

883 IX. Violation of interdict is a grave or light sin according as the act excluded by interdict is of grave or light importance (cf. St. Alphonsus VII, 336).

Chapter III. On Suspension

884 I. Notion. Suspension is a censure by which a cleric is prohibited from office or benefice, or from both (canon 2278, § 1). It is said:

1. Censure; but it can be inflicted as a vindictive penalty (canon 2255, § 2).
2. Cleric, because he alone is the subject of suspension; and indeed suspension can be issued against a community and members at the same time.
3. Office; this is understood strictly so called (canon 145, § 2), and is defined: a function constituted stably by divine or ecclesiastical ordination, to be conferred according to the norm of the sacred canons, carrying with it at least some participation in ecclesiastical power, whether of order or of jurisdiction (canon 145, § 1). But because the effects of suspension are maximally divisible (canon 2278), a cleric can by suspension be prohibited even from only part of the power either of order or of jurisdiction, as will be explained.
4. Benefice; moreover, an ecclesiastical benefice is defined as a juridic entity constituted or erected in perpetuity by competent ecclesiastical authority, consisting of a sacred office and the right of receiving revenues from the endowment annexed to the office (canon 1409). But in the penalty of suspension from benefice only the right of receiving revenues is considered, insofar as it is distinguished from the annexed office, as will also be clear below.

885 II. Division. Suspension can be distinguished into total and partial, according as it comprehends all or not all the effects of suspension. Partial suspension is chiefly divided into suspension from office alone and from benefice alone. Suspension from office is either from office simply or from some part of the office, for instance from jurisdiction, from divine things, etc.; these things will be clearer from what will be said concerning the effects of suspension.

886 III. Effects. The effects of suspension can be separated, but unless something else is established, suspension generally issued comprehends all the effects which are enumerated in the article on suspension; otherwise one must speak of suspension from office or from benefice, which comprehends only the effects of one or the other species. Regarding the effects in species, these things are established:

1. Suspension from office simply,¹ no limitation having been added, forbids every act both of the power of order and of jurisdiction, and also of mere administration belonging by office, except the administration of the goods of one's own benefice (canon 2279, § 1). For the administration of the goods of a benefice can be taken away only by an express clause, as is noted in canon 2280.

By force of canon 1095, a pastor or local Ordinary suspended from office, after sentence, assists at marriage invalidly, whether by himself or through another; before sentence he certainly assists validly, but perhaps illicitly by himself, because it seems to be an act of administration belonging by office. For the same reason other acts seem to be prohibited, such as the administration of Viaticum, solemn Baptism, etc. Preaching is not an act of jurisdiction strictly so called, nor, as it seems, of administration; but perhaps it is prohibited to one suspended from office as the exercise of the magisterium which belongs to him from granted jurisdiction.

2. Suspension from office partially carries these things with it:

- a) Suspension from jurisdiction generally forbids every act of the power of jurisdiction for both forums, ordinary as well as delegated (canon 2279, § 2, 1°).² Jurisdiction is to be taken in the strict sense, so that it does not comprehend acts which require only mission or permission (canons 1328, 848, 748); likewise assistance at the contracting of marriage is not an act of true jurisdiction.
- b) Suspension from divine things forbids every act of the power of order which someone obtains either through sacred ordination or through privilege (canon 2279, § 2, 2°). It is said through privilege, for instance the privilege of ministering Confirmation (canon 782, § 3).³
- c) Suspension from orders forbids every act of the power of order received through ordination (cited canon, 3°), whether major or minor. "One thus suspended can exercise all acts of jurisdiction which do not require the actual use of order; therefore a Bishop suspended from orders only can approve Confessors, although he himself cannot absolve from sins";⁴ namely, he acts illicitly or invalidly according to canon 2284.
- d) Suspension from sacred orders forbids every act of the power of order received through ordination in sacred orders (cited canon, 4°); the same applies as under c).
- e) Suspension from exercising a certain and definite order forbids every act of the designated order; moreover the suspended person is also prohibited from conferring the same order and from receiving a higher order and exercising it after it has been received after suspension (cited canon, 5°).
- f) Suspension from conferring a certain and definite order forbids conferring that order, but not an inferior or higher one (cited canon, 6°).
- g) Suspension from a certain and definite ministry, for example hearing confessions, or office, for example one with care of souls, forbids every act of that same ministry or office (cited canon, 7°).
- h) Suspension from pontifical order forbids every act of the power of episcopal order (cited canon, 8°), for example the blessing of holy oils, conferral of Orders, even Tonsure, consecration of a church, Confirmation, etc.; but a Pontifical Mass is permitted.
- i) Suspension from pontificals forbids the exercise of pontifical acts (cited canon, 9°), namely of those sacred functions which by liturgical laws require the pontifical insignia, that is, the staff and miter (canon 337, § 2). One suspended in such a way is indirectly prohibited from exercising acts of order which cannot be exercised without pontificals. Therefore this suspension directly or indirectly prohibits: Pontifical Mass and Vespers, solemn assistance at Mass, conferral of Orders, Tonsure excepted, which probably can be conferred without staff and miter, consecration of a Bishop, blessing of an Abbot, solemn blessing and consecration of virgins, blessing and coronation of kings, blessing

or consecration of a church bell, consecration of a church, altar, sacred vessels, solemn blessing of the cornerstone and cemetery, solemn reconciliation of a church and cemetery, solemn Confirmation.⁵

3. Suspension from benefice deprives one of the fruits of the benefice, except habitation in the benefice buildings, but not of the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away from the suspended person the power itself of administering and assigns it to another (canon 2280, § 1). Fruits are understood as all temporal revenues which remain after the necessary expenses of the benefice have been deducted, namely for Mass obligations, taxes, etc. What things are comprehended in the fruits of the benefice depends on its very erection, according to canon 1410; therefore the question cannot generally be solved, as several authors today have retained from the old law, whether, for example, daily distributions are comprehended in the fruits; rather, what the law is will have to be gathered from the custom of places and from the express will of the one issuing the penalty.⁶ See also canon 1412.

One suspended in such a way retains the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away the administration itself from the suspended person and assigns it to another (canon 2280, § 1). But if the suspended person truly needs it, he can retain those things which are necessary for his sustenance, if his penalty is vindictive; for this seems to be the benign mind of the Superior (cf. the parallel case, canon 2303, § 2); but not if the penalty is a censure, because its duration depends on the conversion of the delinquent (cf. St. Alphonsus VII, 316, doubt 1).

The suspended person must restore fruits illicitly received (cf. canon 2232, §§ 1 and 2); and, if need be, he can also be compelled to this restitution by canonical sanctions (canon 2280, § 2).

4. Suspension generally issued, or suspension from office or from benefice:

a) If it has been issued by the local Ordinary, it affects all offices or benefices which the cleric has in the diocese of the suspending Superior, unless something else appears (canon 2281); but the local Ordinary cannot suspend a cleric from a determinate office or benefice which is found in another diocese (canon 2282). It is expressly said: from a determinate office or benefice, because special suspensions, for example from orders, bind the guilty person everywhere (canon 2226, § 4); but if there is question of suspension from jurisdiction, only insofar as this depends on the Superior who inflicted the penalty.

b) If it is *latae sententiae*, imposed by common law, it affects all offices or benefices in whatever diocese they are possessed (canon 2282).

Note. The things which canon 2265 establishes concerning excommunication are also applicable to suspension (canon 2283). Hence to anyone suspended there are to be applied the things said on p. 735, n. 8, a) and b), alpha-delta.

5. If the censure of suspension which forbids administration of Sacraments and Sacramentals has been incurred, this prohibition does not press when, before sentence, he has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or when, after sentence, he is requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other

ministers are lacking. Besides, the things said on p. 734, 4, are to be applied, except the last clause, which is added from canon 2263 (canon 2284).

If the censure of suspension which prohibits an act of jurisdiction in the internal or external forum has been incurred, the things said under 6 are valid; nevertheless an act of jurisdiction is sometimes also invalid, namely if a declaratory or condemnatory sentence has been issued, or if the Superior declares that he revokes the jurisdiction itself; and when this last has taken place, even in danger of death only the faithful can seek from the suspended person an act of jurisdiction, which then is valid and licit, always saving canon 884 on absolution of an accomplice (canon 2284).

6. If a community or college of clerics has committed a delict, suspension can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2285, § 1). Moreover:

a) If the first, the canons of this article are to be observed (canon 2285, § 2), that is, the canons explained in this chapter.

b) If the second, the community is prohibited from the exercise of the spiritual rights which belong to it as a community (canon 2285, § 3). One who ceases to be a member of the suspended community is freed from suspension by the fact itself, and does not need absolution.

c) If the third, the effects are cumulated (canon 2285, § 4).

¹ Sometimes the prohibition does not press, namely when the suspended person is requested according to canon 2284, concerning which see below pp. 768-769, note 3.

² What happens if the suspended person is requested by the faithful will be said below; in the same place there will be discussion of the validity of prohibited acts (canon 2284).

³ See again the limits of canon 2284.

⁴ Aertnys-Damen, *op. cit.*, II, 1023.

⁵ Solemn is rather often added, because a simple priest can sometimes be delegated to perform several functions in a simpler manner without pontificals (canons 1156; 1163; 1170, § 2; 1205, § 1; 1207). Cf. also canon 294, § 2, as to which functions it is not licit for a Bishop to perform without pontificals, except Confirmation and Tonsure.

⁶ Chelodi, *op. cit.*, p. 51.

887 IV. Violation of suspension is a grave or light sin according as the suspended person places an act excluded by suspension of grave or light importance. In addition, a suspended person prohibited from the exercise of Sacred Order, who places an act of Order reserved to clerics constituted in Sacred Order, is irregular (canon 985, 7°).

Scholion. On Suspension from Informed Conscience

888 I. Notion. Suspension from informed conscience is suspension from office, whether total or partial, which is inflicted by the Ordinary by simple decree, by an extrajudicial way and without prior canonical warnings (cf. canons 2186, § 1; 2187). It is not licit to use this extraordinary remedy if the Ordinary can, without grave inconvenience, proceed against the subject according to the norm of law (canon 2186, § 2).

II. Mode of proceeding. A decree of this kind is to be given in writing, unless circumstances demand otherwise, with the day, month, and year designated; and in it:

1. It must be expressly said that the suspension is issued from informed conscience, or from causes known to the Ordinary himself;
2. The time of duration of the penalty must be indicated; moreover, the Ordinary should abstain from inflicting it in perpetuity. But it can be inflicted even as a censure, provided that in this case the cause for which the suspension is imposed is made known to the cleric;
3. The acts which are prohibited must be clearly indicated, if the suspension is inflicted not in whole but in part (canon 2188).

Note. If a cleric is suspended from an office in which another must be substituted in his place, for example, an administrator in the care of souls, the one who is substituted is to receive a wage from the fruits of the benefice to be determined according to the prudent judgment of the Ordinary (canon 2189, § 1). A suspended cleric, if he feels burdened, can seek diminution of the pension from the immediate Superior who in the judicial way would be the judge of appeal (canon 2189, § 2).

III. The cause for proceeding in this way is a delict of the cleric: 1° so grave that it must be coerced by a penalty of this kind; 2° morally certain; that is, from investigations conducted the Ordinary must have gathered proofs of such a kind as make him certain that the cleric truly perpetrated the delict (canon 2190). Moreover, concerning the delict observe:

1. A just and legitimate cause is an occult delict (canon 2191, § 1; n. 846).
2. On account of a notorious delict, suspension from informed conscience can never be issued (canon 2191, § 2); but suspension from informed conscience is valid if from several delicts only one was occult (canon 2192).
3. In order that a public delict (n. 846) can be punished by suspension from informed conscience, it is necessary that some one of the following circumstances occur: 1° if upright and serious witnesses indeed disclose the delict to the Ordinary, but can by no means be induced to give testimony about it in trial, nor can the delict be proved in judicial process by other proofs; 2° if the cleric himself prevents, by threats or other means used, a judicial process from being instituted or, once begun, from being completed; 3° if impediments to carrying out the judicial process and issuing the sentence arise from adverse civil laws or from grave danger of scandal (canon 2191, § 3).

IV. Disclosure of the cause to the guilty person. 1. In the case of a censure, that is, of a medicinal penalty, the cause for which this suspension is imposed is to be made known to the cleric, so that he may know in what matter he is to be corrected and, once corrected, can seek absolution.

2. In the case of a vindictive penalty, it is left to the prudent judgment of the Ordinary whether to disclose or withhold from the cleric the cause of the suspension, or the delict, pastoral solicitude and charity nevertheless being used, so that, if he has judged that the delict should be made known to the cleric, the penalty, from the paternal admonitions which he has interposed, may serve not only for the expiation of guilt, but also for the amendment of the delinquent and the removal of the occasion of sin (canon 2193).

V. Recourse from a censure is given only in devolutive effect (canon 2243, § 1), but from a vindictive penalty also in suspensive effect (canon 2287).

If a cleric lodges recourse from a suspension inflicted on him, the Ordinary must send to the Apostolic See the proofs by which it is established that the cleric truly perpetrated the delict which can be punished by this extraordinary penalty (canon 2194).

Part II. On Vindictive Penalties

Section I. On Vindictive Penalties in General

889 I. Notion. Vindictive penalties are those which tend directly to the expiation of the delict, so that their remission does not depend on the cessation of the delinquent's contumacy (canon 2286).

II. Division. A vindictive penalty is distinguished:

1. By reason of the privation, into spiritual or mixed, or even merely temporal, because sometimes it deprives one of merely temporal goods; otherwise than a censure (n. 862).
2. By reason of the subject, into one common to all the faithful or special to clerics.
3. Finally, just as censure, so also a vindictive penalty is *latae* or *ferendae sententiae*, *a iure* or *ab homine*, determinate or indeterminate.

Note 1. From inflicted vindictive penalties there is given appeal or recourse in suspensive effect, unless something else is expressly provided in law (canon 2287).

Note 2. In canon law the so-called conditional condemnation is assumed; for canon 2288 establishes: if the guilty person is such that for the first time after a life laudably passed he has offended, it is remitted to the prudence of the judge to suspend the execution of the ordinary penalty inflicted by condemnatory sentence; yet on this condition, that if the guilty person within the next three years commits another delict of the same or another kind, he undergo the penalty due to each delict (canon 2288). With the three years having passed without crime, the guilty person is free from the effect of the condemnation. Nevertheless this conditional condemnation is not admitted: 1° in penalties of degradation, deposition, deprivation of office or benefice; 2° if the necessity of repairing scandal presses (cited canon).

III. Cessation. A vindictive penalty is ended:

1. By its expiation (canon 2289), and this mode corresponds to its nature.
2. By dispensation (cited canon); for this there is required a cause proportionate to the gravity of the penal law, because dispensation in a vindictive penalty is against the intention of the law; it is certainly also required that the guilty person be amended and that he have repaired damages and scandal according to his powers. Nor, when the dispensation sought has been denied, can the guilty person appeal, but only for a grave cause have extrajudicial recourse to the Superior.

Dispensation can be granted by: 1° him who issued the penal law or penalty; 2° his competent Superior or successor; 3° the person to whom the power of dispensing from the penalty or from the penal law has been committed (canons 2236; 2237; 2290). Moreover, this power has been committed as follows:

a) The Ordinary, by force of canon 2237, can by ordinary power: 1° in public cases remit vindictive penalties *latae sententiae* established by common law, except cases brought to the contentious forum, and penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See; 2° in occult cases remit vindictive penalties *latae sententiae* established by common law and reserved in any manner whatever.

b) Any confessor can in the sacramental forum, in more urgent occult cases, namely, if from observance of a vindictive penalty *latae sententiae* the guilty person would betray himself with infamy and scandal: 1° suspend the obligation of observing the penalty, with the burden imposed of having recourse at least within a month by letter and through the confessor, if this can be done without grave inconvenience, the name withheld, to the Sacred Penitentiary or to the Bishop endowed with the faculty, and of standing by his commands; 2° dispense, if in some extraordinary case the aforesaid recourse is impossible, nevertheless imposing those things which by law must be imposed and imposing congruous penance and satisfaction for the penalty, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the penalty (canon 2290, § 2, compared with canon 2254, § 3); that is, reincidence, although by its own nature it regards censures, nevertheless of itself does not prevent a Prelate from dispensing from a penalty under the condition that the dispensed person, if he does not perform something, is again bound by the bond of the same penalty.¹

¹ Lega, op. cit., n. 135.

Section II. On Common Vindictive Penalties

890 From canon 2291, the vindictive penalties which can affect all the faithful according to the gravity of delicts, in the Church, especially,¹ are:

I. A local interdict and an interdict against a community or college, in perpetuity or for a predefined time or at the good pleasure of the Superior.

II. An interdict from entrance into the church, in perpetuity or for a predefined time or at the good pleasure of the Superior.

III. Penal transfer or suppression of an episcopal or parochial see; concerning this notice: 1° penal suppression or transfer of an episcopal see is reserved to the Roman Pontiff; 2° but that of a parochial see cannot be decreed by local Ordinaries except with the counsel of the Chapter (cf. canons 248, § 3; 1421; 1428).

IV. Infamy of law; concerning this note:

1. Infamy is either of law or of fact (canon 2293, § 1). Infamy of law is that which is established in cases expressed by common law (canon 2293, § 2). Infamy of fact is contracted when someone, on account of a perpetrated delict or on account of depraved morals, has lost good reputation among upright and serious faithful, the judgment concerning which belongs to the Ordinary (canon 2293, § 3).² Neither affects the delinquent's blood-relatives or affines; nevertheless infamy of fact arising from the deed of household members or blood-relatives with whom an irremovable pastor lives can be for him a canonical cause of removal (canon 2293, § 4).

2. One who labors under infamy of law is not only irregular from defect, but besides is incapable of obtaining benefices, pensions, offices, and ecclesiastical dignities, of performing legitimate ecclesiastical acts,³ of exercising an ecclesiastical right or function, and finally must be barred from exercising ministry in sacred functions (canon 2294, § 1). One who labors under infamy of fact, as long as it endures in the judgment of the Ordinary, is simply impeded from receiving orders, and must also be repelled from ecclesiastical dignities, benefices, and offices strictly so

called, from exercising sacred ministry, and from legitimate ecclesiastical acts (canon 2294, § 2); nevertheless he is not incapable, and therefore he validly acquires and acts.

3. Infamy of law ceases only by dispensation granted by the Apostolic See; infamy of fact ceases when, all circumstances having been weighed and especially by long amendment of the guilty person, good reputation among upright and serious faithful has been recovered in the prudent judgment of the Ordinary (canon 2295).

V. Deprivation of burial; concerning this observe:

1. What both ecclesiastical burial and deprivation of it import was said on p. 733.
2. All baptized persons are to be granted ecclesiastical burial unless they are expressly deprived of it by law (canon 1239, § 3). Catechumens who without any fault of their own die without baptism are to be numbered with the baptized (canon 1239, § 2).
3. Those who have died without baptism are not to be admitted to ecclesiastical burial (canon 1239, § 1); yet in them this does not have the character of a penalty. But by way of penalty, from canon 1240, § 1, the following are deprived of ecclesiastical burial, unless before death they have given some signs of penitence:⁴
 - a) Notorious apostates from the Christian faith, or those notoriously attached to a heretical or schismatic sect, or to a Masonic sect or other societies of the same kind.
 - b) Excommunicated or interdicted persons after condemnatory or declaratory sentence; from this it is clear that deprivation of ecclesiastical burial depends not only on common law, but also on particular law, for the Ordinary can establish these penalties.
 - c) Those who have killed themselves by deliberate plan; this plan is presumed in doubt, according to canon 2200, § 2.
 - d) Those who died in a duel or from a wound received from it.
 - e) Those who have commanded their body to be handed over to cremation.
 - f) Other public and manifest sinners, for example those who for a long time have contemned reception of the Sacraments.

Note. If some doubt occurs in the aforesaid cases, the Ordinary should be consulted if time permits; if the doubt remains, the body is to be handed over to ecclesiastical burial, yet in such a way that scandal is removed (canon 1240, § 2); cf. also the decision of the Sacred Penitentiary handed down on p. 734.

VI. Deprivation of Sacramentals.

VII. Deprivation or suspension for a time of a pension which is paid by the Church or from the goods of the Church, or of another ecclesiastical right or privilege (cf. canons 1429; 2161; 2299, § 3).

VIII. Removal from exercising legitimate ecclesiastical acts.

IX. Incapacity for ecclesiastical graces or functions in the Church which do not require the clerical state, or for obtaining academic degrees by ecclesiastical authority; concerning this notice:

1. If there is question of things for obtaining which capacity is established by common law,⁵ the Apostolic See alone can inflict the penalty of incapacity (canon 2296, § 1).
2. Rights already acquired are not lost on account of supervening incapacity, unless the penalty of deprivation is added to this (canon 2296, § 2).

Note. The things said under 1 and 2 are said generally, and therefore are to be applied to incapacity, whether as it is an effect of infamy of law, or as it is a penalty common to the faithful under IX, or peculiar to clerics (canon 2298, 5°).

X. Deprivation or suspension for a time of a function, faculty, or grace already obtained.

XI. Deprivation of the right of precedence (canon 106), or of active and passive voice, or of the right of bearing titles of honor, vesture, or insignia which the Church has granted.

XII. Pecuniary fine. Pecuniary fines inflicted by common law, the expenditure of which is not predefined by the same law, and other fines established or to be established by particular law, local Ordinaries must expend for pious uses, not for the benefit of the episcopal or capitular table (canon 2297).

¹ Whence it is drawn that the enumeration is not taxative; therefore the Superior, the things to be observed being observed, can inflict a congruous penalty not contained in this series.

² Infamy of law alone is a true penalty, but not infamy of fact, as is also clear from the mode of cessation.

³ "According to the norm of law" is understood (cf. canon 2263), because, for example, before sentence one infamous with infamy of law would be only illicitly a sponsor in the Sacraments, but after it invalidly (cf. canons 765, 766, 795, 796); concerning the right of patronage see canon 1470, § 4.

⁴ It is not enough that one deprived of the senses has received absolution under condition, since this can be given although signs of penitence do not appear.

⁵ For example, capacity for acquiring graces (canon 36).

Section III. On Vindictive Penalties Peculiar to Clerics

891 From canon 2298, the vindictive penalties which are applied to clerics alone are:

I. Prohibition of exercising the sacred ministry except in a certain church.

II. Suspension in perpetuity, or for a predefined time, or at the good pleasure of the Superior.

III. Penal transfer from an office or benefice obtained to a lower one; concerning this note: if a cleric obtains an irremovable benefice, he can be deprived of it as a penalty only in cases expressed by law; if it is removable, also for other reasonable causes (canon 2299, § 1).

IV. Deprivation of some right joined with a benefice or office; concerning this canon 2299, § 2, establishes: clerics obtaining benefices, offices, and dignities can also be prohibited for a certain time only from some ministry joined with them, for example the ministry of preaching, hearing confessions, etc.

V. Incapacity for all or for some dignities, offices, benefices, or other functions proper to clerics (cf. canon 2296).

VI. Penal deprivation of a benefice or office with or without pension; concerning this observe canon 2299, § 1, cited under III.

Note. Regarding numbers III, IV, and VI, note canon 2299, § 3: A cleric cannot be deprived of a benefice or pension by title of which he was ordained, unless provision is made from elsewhere for his honorable sustenance, saving the prescription of canons 2303, 2304.

VII. Prohibition of dwelling in a certain place or territory. The Ordinary can command as a penalty that a subject cleric remain outside a certain place or territory and dwell in a certain place or territory of his diocese; but he cannot prescribe that a cleric dwell in a certain place outside the boundaries of his diocese, unless the consent of the Ordinary of that place is added, or there is question of a house of penance or correction destined not only for diocesan clerics but also for outsiders, or of an exempt religious house, with the consent of its Superior (canon 2301). Nevertheless, both prescription and prohibition of dwelling in a certain place and placement in a house of penance or in a religious house, especially if they are going to endure for a long time, are to be imposed only in grave cases in which, in the prudent judgment of the Ordinary, these penalties are necessary for the amendment of the cleric or the repair of scandal (canon 2302).

VIII. Prescription of dwelling in a certain place or territory. See the things said under VII.

IX. Deprivation for a time of ecclesiastical habit. If a cleric gives grave scandals and, having been warned with threat of penalty, does not come to his senses, nor can the scandal be removed otherwise, he can meanwhile be deprived of the right of wearing ecclesiastical habit; this deprivation, while it endures, carries with it the prohibition of exercising any ecclesiastical ministries and deprivation of clerical privileges (canon 2300).

X. Deposition; concerning this we note:

1. Deposition, the obligations arising from the order received and clerical privileges remaining firm, carries with it both suspension from office and incapacity for any offices, dignities, benefices, pensions, functions in the Church, and also deprivation of those things which the guilty person has,¹ although he was ordained by title of them (canon 2303, § 1). But in this last case, if the cleric truly needs it, the Ordinary, according to his charity, should take care to provide for him in the better way possible, lest he be forced to beg with dishonor to the clerical state (canon 2303, § 2).
2. The penalty of deposition cannot be inflicted except in cases expressed by law (canon 2303, § 3); moreover, it must be inflicted before a tribunal of five judges (canon 1576, § 1, 2°).

The penalty of deposition is always *ferendae sententiae*; therefore a deposed person is subjected to the effects of suspension after sentence as regards the validity of acts of office.

XI. Perpetual deprivation of ecclesiastical habit is a special penalty of a deposed cleric; for if a deposed cleric does not give signs of amendment, and especially if he continues to give scandal and, having been warned, does not come to his senses, the Ordinary can perpetually deprive him of the right of wearing ecclesiastical habit (canon 2304, § 1); but only before a tribunal of five judges (canon 1576, § 1, 2°). This deprivation (canon 2304, § 2) carries with it deprivation of clerical privileges and cessation of the prescription by which the Ordinary according to his charity should take care to provide for him, if the cleric truly needs it. Nevertheless he is bound by the obligation of observing celibacy and the canonical hours.

XII. Degradation; concerning this the Code establishes:

1. Degradation contains in itself deposition, perpetual deprivation of ecclesiastical habit, and reduction of the cleric to the lay state (canon 2305, § 1). A degraded cleric in major orders is not bound to recite the canonical hours, but he is bound to observe celibacy (canons 135; 213, § 2); every degraded cleric besides is prohibited from wearing the tonsure (canon 213, § 1).
2. This penalty can be issued only because of a delict expressed in law, or if a cleric, already deposed and deprived of clerical habit, still continues to give grave scandal for a year (canon 2305, § 2). But there is not an obligation of proceeding in this way immediately after a year.² Besides, it must be inflicted in the same way as deposition and perpetual deprivation of ecclesiastical habit.
3. Degradation is either verbal or edictal, which is imposed by sentence alone, yet in such a way that it immediately has all its juridic effects without any execution; or real, if the solemnities prescribed in the Roman Pontifical are observed (canon 2305, § 3). But this real degradation adds no juridic effect to the penalty already inflicted.
4. Dispensation from the penalty of degradation inflicted on a cleric in major orders is reserved to the Holy See (canon 212, § 2); as regards dispensation from the penalty of deposition, the same is not established.

¹ Wherever, for it is a penalty of common law (cited canon, § 3).

² Against clerics in minor orders the Ordinary can proceed in an easier way, namely by decree; cf. canon 211, § 2, where the penalty of degradation is not even mentioned (cf. § 1). A cleric in minor orders dismissed in this way can be admitted again by the Ordinary according to canon 212, § 1, otherwise than a cleric in major orders (canon 212, § 2).

Part III. On Penal Remedies and Penances

These are disciplinary means of coercing delicts, which do not attain the character of penalty in the proper sense.

Section I. On Penal Remedies

892 I. Notion. A penal remedy is a canonical means of forestalling true delicts or further delicts. Because they import some penalty, they suppose some transgression of law which nevertheless does not reach the character of a delict, and some fault, although not grave. The case is when a transgression for the transgressor is the occasion or danger of committing a true delict, or contains suspicion of that delict and thence scandal of the faithful, for example visits or familiarities of a cleric with persons of diverse sex.¹ Furthermore, sometimes a penal remedy is substituted for or added to a penalty, so that further delicts may be forestalled (canons 2223, § 3, 3°; 2224, § 2; 2234).

II. Penal remedies from canon 2306 are: 1° warning; 2° correction; 3° precept; 4° vigilance; this enumeration seems to be taxative.

1. Warning. Him who is in the proximate occasion of committing a delict, or upon whom, from an inquiry conducted, there falls grave suspicion of a committed delict, the Ordinary is to warn by himself or through an interposed person (canon 2307).
2. Correction. If from someone's conduct scandal or grave disturbance of order arises, there is place for correction, to be made by the Ordinary by himself or through an interposed person, even by letter, adapted to the particular conditions of the person and of the fact in question (canon 2308).

Regarding the mode of making warning and correction, the Code establishes:

- a) Both warning and correction can be either public or secret (canon 2309, § 1).
 - b) Public correction or warning is to be made either before a notary or two witnesses, or by letter, yet in such a way that the reception and tenor of the letter are established from some document (canon 2309, § 2; cf. canon 2143, § 3).
 - c) Public correction can be made only against a guilty person convicted of or confessing a delict; and it is judicial if it is made by a judge sitting for tribunal or by the Ordinary before criminal process; extrajudicial if it is made in the manner of a precept outside judgment (canons 2309, § 3; 1933, § 4). The latter admits recourse; the former, appeal.
 - d) Judicial correction² either is had in place of a penalty, or is made to increase the penalty, especially if there is question of a recidivist (canon 2309, § 4).
 - e) Warning and correction, even if they were made secretly, must be established from some document to be preserved in the secret archive of the Curia (canon 2309, § 5).
 - f) Both correction and warning can be made once or several times, according to the judgment and prudence of the Superior (canon 2309, § 6).
3. A precept must accurately indicate, and this with threat of penalty in case of transgression, what the person forestalled must do or avoid. It is to be given after warnings and corrections have been

made in vain, or if it is not licit to hope for effect from them (canon 2310); therefore if there is no hope of fruit, warnings or corrections can be omitted.

4. Vigilance. If the gravity of the case bears it, and especially if there is question of one who is in danger of relapsing into the same crime, the Ordinary is to subject him to vigilance (canon 2311, § 1). Vigilance can also be prescribed to increase a penalty, especially against recidivists (canon 2311, § 2; cf. canons 2234; 2224, § 2).

¹ Wernz, *op. cit.*, n. 253.

² Cf. canons 1947-1953, which we leave to canonists to explain. Judicial correction cannot be made a third time against the same guilty person (canon 1949, § 1); when it must be omitted, see canon 1948.

Section II. On Penances

893 I. Notion. Penances in the external forum are imposed so that the delinquent may either escape a penalty or receive absolution or dispensation from a contracted penalty (canon 2312, § 1). In order that a penance can be imposed, grave imputability of a committed delict is nowhere required; nor is it required that there be a delict in the proper sense. That a transgression which does not reach the character of a delict suffices is clear first from the same canon, § 2, where this is insinuated by the words delict or transgression; then from canon 1313, § 2, according to which a penance can be joined by the Ordinary to a warning; but this does not prerequisite a delict. Hence by reason of scandal given or danger of delict, and in other cases where amendment, for example of a cleric, is desired, the Ordinary can oblige him especially to make spiritual exercises, since these also have the character of a preventive remedy.¹

II. Division. Penances are public or secret insofar as they must be fulfilled in a way easily knowable by others, for example an unusual pilgrimage, or can be fulfilled secretly, for example prayers to be recited. Moreover, on account of an occult delict or transgression, a public penance is never to be imposed (canon 2312, § 2).

III. Application. Penances are to be moderated not so much according to the quantity of the delict as according to the contrition of the penitent, with the qualities of persons and the circumstances of delicts weighed (canon 2312, § 3); for just as a penalty in the proper sense regards more the delict to be coerced or vindicated, so disciplinary penance regards more the disposition of the penitent, whether to be corrected or to be confirmed.

IV. The principal penances from canon 2313, § 1, are precepts:

1. Of reciting determinate prayers.
2. Of making some pious pilgrimage or other works of piety.
3. Of observing a particular fast.
4. Of expending alms for pious uses.
5. Of making spiritual exercises in a pious or religious house for some days.

The Ordinary, according to his prudence, can add these or other penances to the penal remedy of warning and correction (canon 2313, § 2), namely so that the guilty person may show his amendment by their fulfillment.

¹ Wernz, op. cit., n. 251.

Dissertation III. On Penalties Established for Individual Delicts

I note beforehand canon 6, n. 5: As regards penalties of which no mention is made in the Code, whether they are spiritual or temporal, medicinal or, as they say, vindicative, *latae* or *ferendae sententiae*, they are to be held as abrogated.

With these things noted, we shall speak chiefly of medicinal penalties, or censures, and of those *latae sententiae*; the others come less into use for confessors. Therefore one must treat first of excommunications, then of interdicts, finally of suspensions.

Part I. On Excommunications

Section I. Excommunications Reserved to the Roman Pontiff in the Most Special Manner

The following contract this excommunication:

I. One who has thrown away the consecrated species, or has taken them away or retained them for an evil end (canon 2320). It is said:

1. Consecrated species, whether of bread or wine, whether several or one, or consecrated particles.
2. Has thrown away, suppose by throwing the species onto the ground; but one who places the consecrated species upon the pall in order to remove the pyx does not incur the excommunication.
3. Has taken away or retained for an evil end, suppose to profane them. It also suffices that someone retain species taken away by another for an evil end. But one is not excommunicated who takes away or retains the species, for example, in order to adore them at home.

Note. The delinquent is suspected of heresy, infamous by the fact itself, and if a cleric, besides, is to be deposed (canon 2320).

II. One who has laid violent hands on the person of the Roman Pontiff (canon 2343). This canon must be interpreted broadly, since it regards the privilege of the canon, as it is called, insofar as it belongs to the Roman Pontiff; see the interpretation on p. 766.

Note. The delinquent is infamous by the fact itself, and if a cleric, besides, must be degraded (canon 2343).

894 III. One absolving, or pretending to absolve, an accomplice in a base sin incurs by the fact itself an excommunication reserved to the Apostolic See in the most special manner; and this even at the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal going to arise, except in the case in which the dying person refuses to confess to another. One absolving or pretending to absolve an accomplice who indeed does not confess the sin of complicity, from which he has not yet been absolved, does not escape the same excommunication if he behaves in this way because he was induced to do so by the accomplice-confessor, whether directly or indirectly (canon 2367); see the interpretation of this canon in n. 412 sq.

IV. A confessor who has presumed to violate the sacramental seal directly (canon 2369, § 1). A few judge that this censure is *ferendae sententiae*, because the word has presumed seems to remain ambiguous; moreover, in penalties the more benign interpretation must be made (canon 2219, § 1; p. 712). But the contrary seems altogether to have to be admitted, both because censures reserved to the Supreme Pontiff were always *latae sententiae*, and because, if the contrary opinion were admitted, the Bishop could issue the censure of which we speak, but could not absolve from it, as reserved to the Supreme Pontiff; which cannot be admitted according to the things said on p. 727, 1, c.

What a direct violation of the sacramental seal is, see n. 428.

Note 1. A confessor who has presumed to violate the sacramental seal only indirectly (n. 418) is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even,

according to the gravity of the delict, is to be declared incapable of receiving them, and in graver cases is also to be subjected to degradation (canon 2369, § 1).

Note 2. Whoever has rashly violated the prescription of canon 889, § 2,¹ is to be punished according to the gravity of the guilt with a salutary penalty, which can even be excommunication (canon 2369, § 2).

V. To this place can be referred:

1. Excommunications established for delicts which can be committed in electing the Supreme Pontiff, and which are contained in the Constitution of Pius X *Vacante Sede Apostolica*, December 25, 1904. Namely, those perpetrating delicts of this kind "can be absolved by no one, not even by the Major Penitentiary by force of any faculty, except by the Roman Pontiff, unless at the article of death" (cited Constitution, § 51).
2. The excommunication annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1°, compared with canon 243). Moreover, from the decree of the Sacred Consistorial Congregation, April 25, 1917, it follows that the same secret must be observed by those from whom information is requested concerning those to be promoted to the Episcopate.²

¹ That is, the interpreter and all others to whom knowledge of a confession has come in any way whatever, who by word or sign or in any other way and for any cause betray the sinner in any manner.

² A.A.S. 1917, p. 232; Aertnys-Damen, op. cit., II, n. 1044, note 2.

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner

895 This excommunication is contracted by:

I. All apostates from the Christian faith, and all and each heretics or schismatics (canon 2314, § 1, 1°, and § 2). This excommunication is reserved to the Apostolic See in a special manner only insofar as absolution is to be imparted in the forum of conscience (cited canon, § 3; cf. 3, b). Who come under the name of apostates, heretics, and schismatics, see canon 1325, § 2 and volume I, n. 492. Note, however, that it is required that apostasy, heresy, or schism be externally manifested. For the rest, observe:

1. As to apostates. Here belong both those who reject every religion, such as atheists, pantheists, naturalists, and so-called free-thinkers; and those who pass over, for example, to Judaism, Mohammedanism, or paganism; but not those who are only practically indifferent.
2. As to heretics. It is not required that someone be enrolled in some heretical sect. Those enrolled in a sect, however, are deemed, for the external forum, to have contracted the censure, although perhaps internally they are not formal heretics and therefore have not in fact contracted the censure (n. 862).
3. Schismatics. It is not required that someone be enrolled in a schismatic body; but neither is it enough that someone, even habitually, transgress special commands of the Supreme Pontiff. For the rest, note:

a) Unless they, namely apostates, heretics, or schismatics, having been warned, come to their senses, they are to be deprived of benefice, dignity, pension, office, or other function, if they have any in the Church; they are to be declared infamous; and clerics, after a repeated warning, are to be deposed

(canon 2314, § 1, 2°). If they have given their name to a non-Catholic sect or publicly adhered to it, they are *ipso facto* infamous, and clerics *ipso facto* and without any declaration lose any offices whatever, and, after a warning has been given in vain, are to be degraded (canon 2314, § 1, 3°).

b) As to absolution from the excommunication set forth, observe:

alpha) Absolution to be imparted in the forum of conscience is reserved to the Apostolic See in a special manner (canon 2314, § 2). The faculty of absolving any penitents whatever, except heretics who purposely disseminate heresy among the faithful, from any censures and ecclesiastical penalties incurred on account of heresies externalized either with no one hearing or noticing, or before others, is customarily granted through the Sheet of the Sacred Penitentiary. Nevertheless it cannot be exercised except in the act of sacramental confession and for the forum of conscience only, after a secret abjuration has first been made before the confessor. Moreover, a salutary penance is to be imposed, together with frequency of the sacraments and the obligation of repairing the scandals caused. For the forum of conscience no form of abjuration seems prescribed; hence, for example, these words of the Profession of Faith at the end suffice: "I likewise condemn and reject any heresies whatever condemned by the Church."

beta) If the delict of apostasy, heresy, or schism has in any way been brought to the external forum of the local Ordinary, even by voluntary confession, that same Ordinary, but not the Vicar General without a special mandate, can by his ordinary authority absolve in the external forum the one who has come to his senses, after an abjuration juridically performed and with the other things to be observed by law observed; and one thus absolved can then be absolved from sin by any confessor in the forum of conscience. Abjuration is held to have been juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses (canon 2314, § 2). As to the form of abjuration, in practice the Profession of Faith which is placed at the beginning of the Code suffices.

Question: whether those doubtfully baptized or doubtfully validly baptized, who are guilty of apostasy, heresy, or schism, are subject to excommunication.

Response: They are or are not subject to the excommunication according as in fact they were validly or not validly baptized. Since this here and now is doubtful, absolution is to be granted as a precaution if they are converted to the Church. If you object that those doubtfully baptized or doubtfully validly baptized are not subject to the laws of the Church, I answer: if it concerns laws which deprive someone of some good, they are subject or not subject to them according as valid baptism did or did not take place; if the discussion is of laws which regard an act, see volume I, n. 130.

II. One suspected of heresy who, having been warned and punished according to the norm of canon 2315, has not completely amended himself within six months from the penalty contracted (canon 2315). Moreover, the following are suspected of heresy:

1. Whoever in any way willingly and knowingly helps the propagation of heresy (canon 2316).
2. Whoever communicates in divine things with heretics by actively assisting at their rites (canon 2316; p. 732).

3. Those who enter marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church (canon 2319, § 1, n. 2, § 2).
4. Those who knowingly presume to offer their children to non-Catholic ministers for baptism (ibid., n. 3).
5. Parents, or those holding their place, who knowingly hand over their children to be educated or instructed in a non-Catholic religion (ibid., n. 4).
6. Whoever has thrown away consecrated species or has taken them away or retained them for an evil purpose (canon 2320).
7. Those appealing from the laws or mandates and decrees of the Roman Pontiff to a Universal Council (canon 2332).
8. Whoever, with hardened spirit, has wallowed for a year in excommunication (canon 2340, § 1).
9. All, even those of episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments (canon 2371).

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner (continued)

III. After the work has been made public, publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism; likewise those defending these same books or others prohibited by name through apostolic letters, or knowingly reading or retaining them without due permission (canon 2318, § 1). First, note that it is required that the work have been made public, in other words, that it have been multiplied for fairly common use, not merely for the use of a few, say only of students; a fortiori a manuscript is excluded. For the rest, it does not matter whether the work was multiplied by type, by polygraph, or by lithograph. Next it is required that the work made public constitute a book. The word "book" is to be taken as it was formerly taken (cf. canon 6, nn. 2-4), that is, for a literary work of a certain bulk and a certain unity. It is said to be of a certain bulk, for example, to choose a middle point among the different opinions, about eighty pages in octavo. Therefore a separately published letter or sermon, small pamphlets, newspapers or periodicals,¹ are excluded; but not periodical publications, whether taken separately, provided they are of sufficient bulk, or bound in fascicles,² and thus constituting the required unity. Moreover, the following are excommunicated:

1. Publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism. It is said:
 - a) Publishers, namely those properly so called, so that the author of the book as such is not included, but he is included insofar as he procures the publication (canon 2209, § 3). Nor are the owner of the workshop, the typesetters, or those turning the press excommunicated; for they do not concur in the publication formally taken, that is, in the multiplication insofar as this is ordered to fairly common use, or at least they are not such that without their work the publication would not have taken place (cf. canon 2209, § 3).
 - b) Of apostates, etc. Thus books of infidels or Catholics are not included, even though perhaps they defend apostasy, etc. Yet one who defends apostasy, etc., is presumed to be an apostate, etc.; nor is it

required that the author of the book be enrolled in an apostate sect, etc.

c) They defend, that is, with added arguments they defend or recommend; nevertheless it is not required that the book treat professedly of religion.

2. Those defending, or knowingly and without due permission reading or retaining, either the books mentioned under 1, or others prohibited by name through apostolic letters. As to the latter, some require that the apostolic letters have prohibited them under penalty of excommunication reserved to the Holy See. But neither the Constitution *Apostolicae Sedis*, which first established that censure, nor the cited and clear canon permits that condition to be added.

a) Defenders are, for example, those who prevent a book from being destroyed or denounced, one who praises the doctrine contained in the book, or who disapproves its condemnation; but not one who praises the style or genius of the author, or the good doctrine which is found in the book (St. Alphonsus, VII, 297).

b) Knowingly (n. 858) and without due permission reading; concerning this, observe: 1° formal reading is required, so that one who merely hears another reading is not included (St. Alphonsus, VII, 292), nor one who recites from memory what he formerly read, nor one who reads through a book while ignorant of the language; but a blind person who perceives the type with his fingers is included. 2° Reading of notable matter is required, considered either by quantity alone, as if you read two or three pages, or by quality, that is, by danger; in this case even a few lines can suffice, because in them there can be a danger of perversion (St. Alphonsus, VII, 284, 292).

c) Those retaining, namely knowingly and without due permission; moreover, for a notable time, say for three or four days (St. Alphonsus, VII, 295). For the rest, observe: it is all the same whether one retains his own book or another's; whether he retains the book with himself or with another who does not have the faculty; whether he understands the retained book or not. But one is excused who deposits the book with another who has the faculty, and does this with an agreement not to reclaim it except after permission has been obtained; likewise one who retains the book because he is awaiting either the required permission or an occasion of handing it over to the Superior (St. Alphonsus, VII, 295-298).

A bookbinder is indeed counted among those retaining, but is easily excused if he binds books for one having the faculty to read them, or has another just cause. Likewise the custodian of another's library escapes excommunication, unless he retains the books in his own room or house. Finally, where, as in religious houses, there is a common library, it is licit to keep prohibited books in a locked cabinet.

IV. One not promoted to the priestly order, if he simulates the celebration of Mass or hears a sacramental confession (canon 2322, 1°). It is said:

1. One not promoted to the priestly order. Thus the censure regards both a layman and a cleric who has not yet been raised to the priesthood, but not a priest, even though suspended or degraded.
2. If he simulates the celebration of Mass; that is, if he conducts himself in such a way that others judge that the Sacred Rite is being celebrated.
3. Or hears a sacramental confession. What sacramental confession is, see n. 430. It suffices to have heard a sacramental confession, even if absolution is omitted.

Note. If the delinquent mentioned under IV is a layman, he is to be deprived of a pension or function, if he has any in the Church, and is to be punished with other penalties according to the gravity of the fault; but a cleric is to be deposed (cited canon); each, if he has usurped other priestly functions, is to be punished by the Ordinary according to the gravity of the fault (canon 2322, § 2).

¹ Holy Office, April 21, 1880 (*Collectanea*, n. 1533).

² Holy Office, January 13, 1892 (*Collectanea*, n. 1777).

V. All and each, of whatever status, grade, or condition they may be, even royal, episcopal, or cardinalitial, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council (canon 2332).

1. All and each. The excommunication regards only physical persons, not moral persons.
2. From the laws, etc., of the Roman Pontiff for the time being, but not from the laws, etc., of a Sacred Congregation, unless the ordinance was issued by the express or special mandate of the Supreme Pontiff or approved by him in specific form; nor is an appeal from the laws, etc., of a deceased Supreme Pontiff sufficient.
3. To a Universal Council, whether present or future; but an appeal to a Provincial Council or to a future Pontiff is not sufficient.

Note. Those about whom the discussion is under V are also suspected of heresy. But Universities, Colleges, Chapters, or other moral persons, by whatever name they are called, incur an interdict likewise reserved to the Apostolic See in a special manner (canon 2332).

VI. Those having recourse to lay power in order to impede letters or any acts proceeding from the Apostolic See or from its Legates, or directly or indirectly prohibiting their promulgation or execution, or on account of them injuring or terrifying either those to whom the letters or acts pertain or others (canon 2333). Under the name of the Apostolic See also come the Congregations, Tribunals, and Offices through which the Roman Pontiff is accustomed to transact the business of the universal Church (canon 7). Under the name of Legates of the Holy See are included Legates *a latere* (cf. canon 266), Nuncios and Internuncios (cf. canon 267), and Apostolic Delegates (cf. canon 267). Moreover, the following are excommunicated:

1. Those having recourse to lay power in order to impede any letters or acts proceeding from the aforesaid. It is all the same whether someone has recourse by himself or through another, in writing or by living voice. As to the lay power to which recourse is had, certainly those who enjoy power of jurisdiction are understood, such as the Government, magistrates, and judges. The same seems to be said of those having recourse to persons who possess only administrative power, such as prefects of cities; for the law does not distinguish. Finally, it is required that it concern letters or acts already issued, so that one is not excommunicated who impedes them from being issued.
2. Those directly or indirectly prohibiting the promulgation or execution of the said letters or acts. Those prohibiting are understood to be those who enjoy public authority.¹ Promulgation, however, is taken in the proper sense; hence it is carefully to be distinguished from dissemination. Execution regards all things necessary for the letters or acts to have effect, such as the preparation of instruments by notaries and their notification to the parties.

3. Those injuring or terrifying, on account of the said letters or acts, either those to whom they are directed or others, that is, those to whom their promulgation or execution pertains. It is said injuring, namely gravely, and indeed in the goods of the body. It is disputed whether those injuring in goods of fortune or of the soul, or in honor or reputation, are included. Those denying this rely on the fact that injury properly taken regards the body. Given the controversy, we follow the negative part. Those are called terrifying who inflict very grave fear on someone.

It is more commonly taught that those terrifying are not excommunicated unless the effect has followed, that is, unless the letters or acts have in fact been impeded. It is disputed concerning those injuring; but without reason is a distinction admitted between those injuring and those terrifying.

VII. Those who issue laws, mandates, or decrees against the liberty or rights of the Church (canon 2334, § 1).

1. Those issuing laws, etc.; by this expression are included those who effectively concur in making laws, etc., such as ministers who propose laws, deputies who vote for them, the prince who confirms or promulgates them; likewise rulers of provinces or cities who issue a decree, and counselors who assent to it. The censure is contracted when the law has been promulgated, the decree issued, the mandate intimated. Neither notaries who enter laws, etc., into the acts, nor judges who see that they are observed, incur the excommunication.
2. Against the liberty or rights of the Church; these words must be taken in the broadest sense. Therefore those are excommunicated who issue laws, etc., against the right, for example, of teaching evangelical doctrine (canon 1322, § 2), of educating those who desire to devote themselves to ecclesiastical ministries (canon 1352), of founding schools of any discipline whatever, not only elementary, but also middle and higher schools (canon 1375), of requiring that the faithful not publish books which it has not beforehand reviewed by its own judgment, and of prohibiting, for a just cause, books published by anyone whatever (canon 1384, § 1), of freely and independently of civil power acquiring, retaining, and administering temporal goods for pursuing its own proper ends (canon 1495, § 1), which right also belongs to individual churches and other moral persons which have been erected as juridical persons by ecclesiastical authority (canon 1495, § 2), of requiring from the faithful those things which are necessary for divine worship, for the fitting support of clerics and other ministers, and for its remaining proper ends (canon 1496), of possessing its own cemeteries (canon 1206, § 1), of coercing delinquent subjects with penalties both spiritual and temporal (canon 2214, § 1), etc.

Note. Clerics who commit the delict just described are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, are punished with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions (canon 2336, § 1).

VIII. Those who directly or indirectly impede the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, by having recourse for this to any lay power (canon 2334, § 2). For this excommunication to be incurred, it is required:

1. That the exercise of ecclesiastical jurisdiction be impeded. It is not enough to impede the exercise either of the power of order alone, or of merely administrative power, or of natural right. But it is all the same whether the exercise of jurisdiction of the internal forum or the external forum is

impeded, whether it is impeded directly, say by acting, for example, against the Bishop, or indirectly, say by vexing officials.

2. That the exercise of ecclesiastical jurisdiction be impeded by means of recourse to any lay power. Therefore this excommunication does not affect a private person who impedes without recourse, nor a Superior or judge who executes or applies the law; but it does affect a Superior who impedes by means of recourse to a higher lay power. For the rest, it does not matter whether recourse is had to legislative power or only to judicial or executive power.
3. That the effect has followed; this is indicated by the very word "impeding."²

Note. Clerics who commit the delict discussed are punished with the penalty of suspension or privation of the benefice, office, dignity, or pension itself according to the norm of the constitutions (canon 2336, § 1).

¹ Formerly it was disputed whether those incurred excommunication who, by private authority, prohibited promulgation or execution. But since the legislator, aware of the controversy, did not change the wording of the law, the more benign, that is, the negative opinion, seems to be followed.

² Pontifical Commission, July 25, 1926 (A.A.S. 1926, p. 394).

IX. Whoever against the prescription of canon 120 has dared to drag before a lay judge any one of the Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be kept before the eyes, establishes that Cardinals of the Holy Roman Church, Bishops, even titular ones, Legates of the Apostolic See, and major Officials of the Roman Curia cannot be summoned before a lay judge for affairs pertaining to their function without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum (cf. volume I, n. 1153). For the rest, observe:

1. What the words "has dared" signify, see n. 858.
2. Under the name of those dragging do not come judges and other subordinate officials, but private persons who cause the persons mentioned to appear before a lay judge. Moreover, it is required that they be summoned as defendants, or that they be convened; it is not enough that they be summoned as witnesses. Finally, the major Officials of the Roman Curia, not others, must be summoned for affairs pertaining to their function.
3. Legates of the Apostolic See are Nuncios, Internuncios, and Apostolic Delegates. The major Officials of the Roman Curia are: a) the Assessor and Commissary of the Sacred Congregation of the Holy Office; b) the Assessor and Substitute of the Sacred Consistorial Congregation; c) the Prelate Secretary and Substitute of the Sacred Congregation of Rites; d) the Prelate Secretary and Substitute of the Sacred Congregation of Seminaries and Universities; e) the Regent of the Sacred Penitentiary; f) the Prelate Secretary of the Apostolic Signatura or Auditor of the Most Holy One; g) the Prelate Auditors of the Sacred Roman Rota; h) the Regent and Substitute of the Apostolic Chancery; i) the Vice-Camerlengo of the Holy Roman Church and the Auditor General of the Reverend Apostolic Camera; k) the Substitute of the Secretariat of State; l) the Chancellor of Apostolic Briefs; m) all Prelate Secretaries and Undersecretaries of the other Congregations.

4. Under the name of Ordinary, since it is not said "local Ordinary," there also seems to be included the major Superior of an exempt clerical religious institute (canon 198, § 1).

In view of the word "dragging" and canons 2228 and 2242, § 1, it seems to be required that the summoned person actually appear before the judge.

X. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff, Patriarch, Archbishop, Bishop, even only a titular one (canon 2343, § 2, 1° and § 3). Violent laying on of hands imports an external injury, contained in deed and gravely sinful, whether against the body, or against liberty, say by imprisoning, or against dignity, say by tearing garments (St. Alphonsus, VII, 273). Moreover, it is required that one know the person on whom he inflicts injury to be a Cardinal, etc.

Note. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff is moreover *ipso facto* infamous and is deprived of benefices, offices, dignities, pensions, and any function whatever, if he has one in the Church (canon 2343, § 2, 2° and 3°).

XI. Those usurping or detaining, by themselves or through others, goods or rights pertaining to the Roman Church (canon 2345). Usurpers are those who occupy another's thing as due to themselves. Hence thieves and robbers are not included.¹ Those detaining are those who unjustly retain a thing usurped, or received from a usurper. This excommunication, however, does not affect those who usurp or detain goods or rights pertaining to churches other than the Roman Church.

Note. If the delinquents are clerics, they are moreover to be deprived of dignities, benefices, offices, and pensions, and declared incapable of them (canon 2345).

XII. All fabricators or falsifiers of letters, decrees, or rescripts of the Apostolic See, or those knowingly using the same letters, decrees, or rescripts (canon 2360, § 1). The following are excommunicated: 1° fabricators, that is, those who compose false letters, decrees, or rescripts; 2° falsifiers, that is, those who so adulterate letters, decrees, or rescripts of the Holy See that the sense is substantially changed; 3° those using such fabricated or adulterated letters, etc., even if they do not obtain the intended effect.

Note. Clerics committing the delict mentioned under XII are moreover to be coerced by other penalties, which can extend even to privation of benefice, office, dignity, and ecclesiastical pension; religious, however, are to be deprived of all offices which they have in religion and of active and passive voice, besides the other penalties established in the proper constitutions of each (canon 2360, § 2).

XIII. Whoever by himself or through others falsely denounces a confessor for the crime of solicitation before Superiors (canon 2363). It is said:

1. By himself or through others, namely "by wickedly procuring that this be done by others."²
2. For the crime of solicitation; concerning this see n. 416 sq.
3. Before Superiors, that is, before those to whom the denunciation must be made, namely before the local Ordinary or the Congregation of the Holy Office (n. 427).

Note 1. The delinquent cannot in any case be absolved from the contracted censure unless he has formally retracted the false denunciation and, as far as he can, repaired the damages, if any followed from it, with a grave and long-lasting penance moreover imposed (canon 2363). Thus before absolution there is required both formal retraction before those to whom the denunciation was made, and reparation of damages, insofar as this can be provided here and now; damages, I say, which followed, for example, from the confessor's suspension. In danger of death a retraction suffices, even one drawn up by the confessor, signed by the delinquent, and afterward to be handed over to the local Ordinary or the Congregation of the Holy Office; or, if necessity does not permit that, an oral retraction before two witnesses, for example, the confessor and another person, who can afterward communicate it to the judge. Finally, in a case in which absolution cannot be deferred without danger of infamy, a written retraction left with the confessor suffices; or, if even that cannot be provided, a serious promise of satisfying the obligation as soon as possible.

Note 2. Canon 2363 cited in note 1 is closed with these words: with the prescription of canon 894 remaining firm. Moreover, in view of the cited canon, the sin of false denunciation is the single sin reserved by reason of itself; therefore it is reserved and remains reserved, even if the censure has not been contracted, say because of ignorance, or has been remitted.

¹ Holy Office, March 9, 1870.

² Constitution *Sacramentum Poenitentiae*.

Section III. Excommunications Simply Reserved to the Roman Pontiff

896 This excommunication is contracted by:

I. Those making gain from indulgences (canon 2327). By force of this canon, those are excommunicated who, after receiving a price, gain profit either by granting, publishing, or causing indulgences to be published. It is required that the price have been accepted, but not that a simoniacal intention was present; it does not matter whether the price is expended on pious works. By force of this canon those are also excommunicated who, because of indulgences, sell for more objects enriched with indulgences.

Bishops also can contract this censure.

II. Those giving their name to a Masonic sect or to other associations of the same kind which machinate against the Church or legitimate civil powers (canon 2335). For the penalty to regard a certain association, it is required that it machinate against the Church or legitimate civil powers. It is disputed whether there are also required, as obtains in the Masonic sect, a strict bond by which members are united and a hidden organization. Some deny this, because they take the words "which machinate..." as merely explanatory of "of the same kind." Others affirm it, because they judge the words "of the same kind" to be taken in a broader sense, so that they also include the hidden organization which obtains in the Masonic sect. Given the doubt, we follow the milder opinion, the more so because if it were enough that an association machinated against the Church or legitimate civil powers, the legislator would certainly have omitted from the new Code the words "of the same kind," which gave occasion to the dispute. Hence canon 2335 certainly regards, besides the sect of Masons, the societies of the Carbonari,¹ Fenians,² Anarchists, Nihilists, and Internationalists; but not, although they are prohibited, socialist,³ biblical,⁴ clerico-liberal societies; nor the workers'

societies called Odd Fellows,⁵ Sons of Temperance, Knights of Pythias, Independent Order of Good Templars (*Guttempler-Orden*)⁶ and societies which promote the cremation of human corpses.⁷ Moreover:

1. Clerics who have committed the delict discussed under II are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions. In addition, clerics and religious giving their name to a Masonic sect and other similar associations must be denounced to the Sacred Congregation of the Holy Office (canon 2336).
2. The confessor to whom the faculty is granted of absolving from the censure set forth should require from the delinquent those things which the Holy See is accustomed to require: that they separate themselves entirely from the prohibited society and abjure it. But in a case in which great damage would flow from this for them, they can materially sustain the enrollment, but they are bound formally to renounce the society; and therefore: 1° let them promise that never again will it be the case that they involve themselves in any act of those societies, whether secret or public, and especially that they will never again pay the required contribution; 2° let scandal be removed in the best way that can be done; 3° let them be disposed in mind to withdraw their name if and when they can do this without grave damage.⁸

In the faculties of the Sacred Penitentiary it is established: 1° let them separate themselves entirely from the prohibited society and abjure it; 2° let them denounce ecclesiastical and religious persons, if they know any enrolled in it; 3° books, manuscripts, and signs pertaining to the same, if they retain any, let them hand over into your hands, to be cautiously transmitted to the Holy Office as soon as possible, or at least, if just and grave causes demand it, to be destroyed; 4° with a grave salutary penance joined according to the measure of the faults, together with frequency of sacramental confession and the obligation of repairing the scandals caused.

III. Those presuming, without due faculty, to absolve from an excommunication *latae sententiae* reserved to the Apostolic See in a most special or special manner (canon 2338, § 1). As to the word "presuming," see what was said in n. 858. For the rest, it is required that they actually absolve from the censure; it is not enough that they merely hear the delinquent or pretend to absolve him.

IV. Those furnishing any help or favor whatever to an excommunicated person to be avoided in the delict for which he was excommunicated; likewise clerics knowingly and spontaneously communicating with the same in divine things and receiving him in divine offices (canon 2338, § 2).

1. As to the former, it should be noted that it concerns a delict already committed, and therefore help or favor furnished by which someone can persist in the delict for which he was excommunicated.
2. As to the latter, observe: 1° since the law is to be interpreted strictly, religious do not come under the name of clerics unless they have received first tonsure (canon 108); 2° those communicating in divine offices are those who perform divine things with one to be avoided; 3° those receiving in divine offices are understood to be those who, enjoying the right or office of admitting to divine offices, admit an excommunicated person to be avoided to them.

V. If anyone against the prescription of canon 120 has dared to drag before a lay judge another, that is, not his own, Bishop, even merely titular, or an Abbot or Prelate *nullius*, or one of the supreme Superiors of religions of pontifical right (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that Bishops, even titular ones, Abbots or Prelates *nullius*, and supreme Superiors of religions of pontifical right cannot be summoned before a lay judge without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum.

On the phrase "has dared," see n. 858; on the phrase "those dragging," p. 766.

Note. A cleric who, without having obtained permission from the local Ordinary, has dared to drag before a lay judge another person enjoying the privilege of forum, apart from those enumerated here and on p. 766 under IX, incurs *ipso facto* suspension from office reserved to the Ordinary; but a layman is to be punished by his own Ordinary with suitable penalties according to the gravity of the fault (canon 2341).

¹ Cf. Constitution of Pius VII, *Ecclesiam*, September 25, 1821, and Leo XII, *Graviora*, March 13, 1825.

² Cf. Holy Office, January 12, 1870.

³ Encyclical of Leo XII, *Quod Apostolici*, December 28, 1878.

⁴ Constitution of Pius IX, *Qui pluribus*, 1846.

⁵ *Syllabus*, § 178.

⁶ Holy Office, August 20, 1894.

⁷ Holy Office, August 9, 1893; Holy Office, May 19, 1886.

⁸ Holy Office, March 7, 1883 (*Collectanea*, n. 1593).

Section III. Excommunications Simply Reserved to the Roman Pontiff (continued)

VI. Those violating cloister, as follows; namely, the following are excommunicated:

1. Those violating the cloister of nuns, of whatever kind or condition or sex they may be, by entering their monasteries without legitimate permission, and likewise those introducing or admitting them (canon 2342, 1°). It concerns papal cloister. The following are excommunicated: 1° those entering without legitimate permission, that is, with the whole body, not with one foot only or one step; 2° those introducing those who violate cloister by entering without legitimate permission. Those also are included who introduce impuberes, since they too can violate cloister, although they do not contract the censure. There is doubt about those introducing persons lacking the use of reason, since these, strictly speaking, do not violate cloister. Given the doubt, we follow the milder opinion; 3° those admitting. They are understood to be those who, performing the office of guarding cloister, such as the prioress and the portress, receive those who violate cloister by entering without permission; for the rest, what has just been said about those introducing applies.

Note. If clerics violate the cloister of nuns, they are moreover to be suspended for a time to be defined by the Ordinary according to the gravity of the fault (canon 2342, 1°).

2. Women violating the cloister of male regulars; likewise Superiors and others, whoever they may be, introducing or admitting them of whatever age (canon 2342, 2°). It concerns the cloister of men who have pronounced solemn vows (cf. canon 488, 2° and 7°). The following are excommunicated: 1° women violating the cloister of male regulars; 2° those introducing, or 3° admitting, those who violate cloister by entering; also those introducing or admitting impuberes. There is doubt about those introducing or admitting persons lacking the use of reason, since these, strictly speaking, do not violate cloister; but it seems that it must be affirmed, since the canon says: of whatever age.

Note. Religious who introduce or admit are to be deprived of office, if they have one, and of active and passive voice (canon 2342, 2°).

3. Nuns illegitimately leaving the cloister against the prescriptions of canon 601 (canon 2342, 3°). The discussion is of papal cloister; it is required, however, that the nun leave with the whole body, not with one foot only or one step (St. Alphonsus, VII, 229).

VII. If anyone has presumed, by himself or through others, to convert and usurp for his own uses ecclesiastical goods of any kind, whether movable or immovable, corporeal or incorporeal, or to impede the fruits or revenues of the same from being received by those to whom they belong by law (canon 2346).

1. The disposition regards ecclesiastical goods belonging either to the universal Church or the Apostolic See, or to an ecclesiastical moral person.¹
2. It is required either that someone, by himself or through another, usurp the said goods and convert them to his own uses, or that he impede their fruits from being received by those to whom they belong by law.

An usurper is one who occupies another's thing as due to himself.² Some now doubt concerning those who buy or lease goods already usurped. But "a change of the prior law is seriously doubtful, both because of the practice of the Holy See, which seems to be confirmed in the Constitution *Si unquam* of Pius XI, July 15, 1924, ad V,³ and because of the nearly unanimous opinion of writers."⁴ Hence one should not depart from the old law.

3. The excommunication persists as long as the one who has incurred the censure has not fully restored the goods themselves, removed the aforesaid impediment, and then obtained absolution from the Apostolic See (canon 2346).

Note. But if the delinquent was the patron of the same church or goods, he also exists *ipso iure* deprived of the right of patronage; but a cleric committing this delict or consenting to it is moreover deprived of any benefices whatever, is rendered incapable of any others whatever, and is suspended from the execution of his orders, even after full satisfaction and absolution, at the discretion of his Ordinary (cited canon).

VIII. Those perpetrating a duel, or simply provoking to it or accepting it, or furnishing any cooperation or favor whatever; and likewise those deliberately watching it and permitting it, or, as far as lies in them, not prohibiting it, of whatever dignity they may be (canon 2351, § 1). What a duel canonically accepted is, see volume I, n. 747. The following are excommunicated:

1. Those dueling; likewise those provoking and accepting, even if the duel did not follow.

2. Those furnishing cooperation or favor, provided the duel followed. It is required, however, that the favor or cooperation be sufficiently proximate and efficacious; hence, for example, those commanding and counseling are excommunicated; those who deliver or post the challenge; those who accompany the duelists and thus add courage to them; physicians and confessors assisting, even with the intention of giving help to the duelists if there is need; likewise if by agreement they remain with the same intention in a nearby place or house;⁵ masters of arms who instruct those about to fight in order for the duel about which agreement has been made. But not sellers of weapons, nor public drivers who lead the duelists to the agreed place.
3. Those watching deliberately are understood to be those who approach the place of the duel in order to watch, so that they intensify the fight or add splendor to it; but not those who, arriving by chance, stop, or look from afar or from a hidden place.
4. Those permitting, or not prohibiting as far as lies in them, are understood to be those who enjoy authority, whether civil or military, but not private persons.

Note. The duelists themselves and those called their seconds are moreover *ipso facto* infamous (canon 2351, § 2). Those who die in a duel or from a wound received from it are deprived of ecclesiastical burial, unless before death they gave some signs of repentance (canon 1240, § 1, 4°).

IX. Clerics constituted in sacred orders or regulars or nuns after a solemn vow of chastity, and likewise all who presume to contract marriage, even only civilly, with any one of the aforesaid persons (canon 2388, § 1).

1. Concerning the word "presuming," compare what was said in n. 858. Knowledge in the act of contracting marriage is required; hence those who contracted ignorantly remain immune from the excommunication, even if afterward the ignorance ceases and they persist in the attempted marriage.
2. The excommunication is incurred even if the marriage is invalid also because of another impediment, say consanguinity;⁶ likewise through civil marriage, even though invalid because of defect of form.⁷

Note. Delinquent clerics, moreover, if warned and if they do not come to their senses within a time predetermined by the Ordinary according to the diversity of circumstances, are to be degraded (canon 2388, § 1). In addition, because of tacit renunciation admitted by the law itself, any offices whatever of the cleric are vacant *ipso facto* and without any declaration (cited canon, canon 188, 5°).

X. Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities whatever (canon 2392, 1°). What simony is and how many kinds there are, see volume I, n. 620 sq.

1. Since the law does not distinguish, the excommunication affects simony of both divine and ecclesiastical law, both conventional and real and confidential (cf. canon 728), but not mental or merely internal simony.
2. It is disputed whether the law includes only offices strictly so called or also those broadly so called. For the rest, Bishops also, but not Cardinals, are liable to the penalty (canon 2227, § 2).

Note 1. Delinquents remain *ipso facto* deprived forever of the right of electing, presenting, and nominating, if they have any. If they are clerics, they are moreover suspended (canon 2393, 2° and

3°).

Note 2. The simoniacal contract itself and, if simony is committed concerning benefices, offices, or dignities, the subsequent provision lack all force, although the simony was committed by a third person, even without the knowledge of the one provided, provided this is not done in fraud of the same provided person or with him contradicting it. Therefore: 1° before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and reverence due to the spiritual thing does not stand in the way, must be restored, and the benefice, office, or dignity must be resigned; 2° one simoniacally provided does not make the fruits his own; but if he has received them in good faith, it is permitted to the prudence of the judge or Ordinary to condone the fruits received to him wholly or in part (canon 729, 1° and 2°).

XI. A Vicar Capitular and all others, both of the Chapter and outsiders, who by themselves or through another have removed, destroyed, concealed, or substantially altered any document pertaining to the episcopal Curia (canon 2405). Under the name of document do not come books, precious things, and writings of lesser importance. For the rest, it is all the same whether the document was composed by the episcopal Curia or directed to it. But for the excommunication to be contracted, it is required that some damage follow from the removal, etc., of the document, or that prejudice be brought to the diocese or episcopal rights (cf. canon 435, § 3).

Note. Delinquents can also be punished by the Ordinary with privation of office or benefice (canon 2405).

¹ Those, however, who usurp or detain ecclesiastical goods pertaining to the Roman Church incur an excommunication reserved to the Roman Pontiff in a special manner (p. 767).

² Holy Office, March 9, 1870.

³ A.A.S. 1924, p. 311.

⁴ Creusen, *Epitome*, n. 546.

⁵ Holy Office, May 28, 1884.

⁶ Holy Office, January 13, 1892.

⁷ Holy Office, December 22, 1880.

Section IV. Excommunications Reserved to Ordinaries

First recall these words of canon 198, § 1: In law, by the name of Ordinary are understood, unless someone is expressly excepted, besides the Roman Pontiff, for his own territory each residential Bishop, Abbot or Prelate *nullius* and their Vicar General, Administrator, Vicar and Prefect Apostolic, and likewise those who, when the aforesaid are lacking, meanwhile succeed to governance by prescription of law or from approved constitutions; but for their own subjects, major Superiors in exempt clerical religious institutes.

897 Moreover, the following contract an excommunication reserved to the Ordinary:

I. Catholics: 1° who enter marriage before a non-Catholic minister against the prescription of canon 1063, § 1; 2° who are united in marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church; 3° who knowingly presume to offer their children to non-Catholic ministers for baptism; 4° parents or those holding the place of parents who

knowingly hand over children to be educated or instructed in a non-Catholic religion (canon 2319, § 1).

1. The prescription of canon 1063, § 1 is this: "Even if a dispensation has been obtained from the Church over the impediment of mixed religion, the spouses cannot, either before or after the marriage entered before the Church, also approach, whether by themselves or by proxy, a non-Catholic minister as one dedicated to sacred rites, in order to give or renew matrimonial consent." Hence it is not prohibited, indeed as § 2 has it, "it is not disapproved that, when civil law commands it, the spouses present themselves, even before a non-Catholic minister, performing only the function of a civil official, and that only for accomplishing the civil act, for the sake of civil effects." The censure is contracted, however, whether matrimonial consent is entered or renewed before a non-Catholic minister as one dedicated to sacred rites.
2. An implicit agreement is had, for example, when the Catholic party obliges himself to fulfill all the wishes of the non-Catholic party concerning religious education. The excommunication is incurred at the moment at which the marriage is contracted with the agreement, whether previously entered and not retracted or now entered.
3. On the word "knowingly" see what was said in n. 858. Since it is said "their children," for example, a midwife who offered another's offspring to a non-Catholic minister for baptism would be immune from the excommunication. For the rest, the excommunication is incurred also in a case in which baptism would probably be conferred invalidly.
4. Those holding the place of parents can be tutors or even others who are endowed with the right and office of looking after education or instruction.

Note. Those mentioned under 2, 3, and 4 are moreover suspected of heresy (canon 2319, § 2).

II. Whoever makes false relics, or knowingly sells, distributes, or exposes them to the public veneration of the faithful (canon 2326). The word "knowingly" refers to the acts of selling, distributing, and exposing to public veneration. Since it concerns false relics, one does not incur the excommunication who distributes or exposes for veneration relics whose document of authenticity has perished, or concerning whose genuineness he doubts (cf. canon 1285).

III. Whoever has laid violent hands on the person of other clerics, that is, clerics inferior to Bishops, or of religious of either sex (canon 2343, § 4). What violent laying on of hands imports, see p. 766 under X. For the excommunication to be incurred, it is required that the delinquent lay hands on the person of another, not on his own person, and that he know that person to be a cleric, religious, etc. The persons whose violent handling is punished with excommunication are:

1. Clerics, that is, those who by at least first tonsure have been assigned to divine ministries (canon 108, § 1), and have not been deprived of the privileges of clerics; hence even excommunicated, suspended, interdicted, and deposed clerics (cf. canon 2303, § 1), but not those perpetually deprived of the right of wearing ecclesiastical habit (canon 2304, § 2), the degraded (canon 2305, § 1), and all who have legitimately been reduced or have returned from the clerical state to the lay state (canon 213, § 1).
2. Religious of either sex, that is, those who have pronounced vows, whether solemn or simple, perpetual or temporary, in some religion (canon 488, 7°).

3. Male and female novices (cf. canon 614), but not postulants.
4. Members of either sex without public vows, living in common under the governance of Superiors according to approved constitutions (canon 680).

Note. The Ordinary should moreover punish the delinquent with other penalties, if the matter requires it, according to his prudent judgment (canon 2343, § 4).

IV. Those procuring abortion, the mother not excepted, the effect having followed (canon 2350, § 1).

1. Abortion is to be taken in the strict sense, that is, for the ejection of a fetus not yet viable (volume I, n. 733). Therefore the so-called acceleration of birth, the ejection of a dead fetus or a mere mole, and the expulsion of received semen, likewise embryotomy and similar illicit operations, are excluded. But no distinction is to be made between an animated and an unanimated fetus.
2. Those procuring abortion are understood to be the mother and others, whether female or male, who intend abortion and either physically cause it, or by command or by fear induced cause another to cause it. It is said, who intend abortion; hence one is immune from excommunication who, not intending abortion, for example, strikes his wife from anger, even if he foresees abortion. It is said, either by command or etc.; but if you were to deny that those commanding and those inducing fear come under the name of procurers, nevertheless one commanding, as the principal author of the delict, and one inducing fear, as inducing to the delict, are subject to the excommunication. Counselors and others concurring proximately are not counted among procurers, although as cooperators they contract the excommunication if the delict would not have been committed without their work (canon 2209, § 3). Those selling means do not ordinarily incur excommunication, both because ordinarily even without their work, namely with another selling the means, the delict would have been perpetrated, and because the concurrence is remote.
3. The effect having followed, that is, certainly followed; hence in doubt whether a fetus or a mere mole, whether a living or dead fetus, was ejected, the excommunication does not hold.

Whether one whom it repents of the committed crime before the effect follows incurs the excommunication, see p. 723.

Note 1. If the delinquent is a cleric, he is moreover to be deposed (canon 2350, § 1).

Note 2. Those who have procured the abortion of a human fetus, the effect having followed, and all cooperators, are irregular from delict (canon 985, 4°).

V. A religious, apostate from religion, incurs by the law itself an excommunication reserved to his own major Superior, or, if the religion is lay or non-exempt, to the Ordinary of the place in which he is staying (canon 2385).

1. One is called an apostate from religion who is professed from perpetual vows, whether solemn or simple, and who illegitimately leaves the religious house with the intention of not returning, or who, though having left legitimately, does not return with the intention of withdrawing himself from religious obedience (canon 644, § 1). The malicious intention mentioned in § 1 is presumed

by law if the religious within a month has neither returned nor manifested to the Superior his intention of returning (canon 644, § 2).

2. The excommunication is reserved to his own major Superior if the religion is clerical exempt; if the religion is lay or non-exempt, it is reserved to the Ordinary of the place in which the delinquent is staying (canon 2385), that is, actually staying, even if he has domicile or quasi-domicile elsewhere.

Note. A religious apostate from religion is excluded from legitimate ecclesiastical acts and deprived of all privileges of his religion; and if he returns, he perpetually lacks active and passive voice, and moreover must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2385).

VI. Professed members of perpetual simple vows, both in Orders and in religious Congregations, who presume to contract marriage even only civilly, both they themselves and all who contract with them (canon 2388, § 2). Note that the excommunication does not affect professed members of temporary vows. For the rest, see p. 772 under IX.

Section V. Excommunications Not Reserved

898 The following incur an excommunication not reserved:

I. Authors and publishers who, without due permission, arrange for the books of Sacred Scripture, or notes or commentaries on them, to be printed (canon 2318, § 2).

1. The excommunication regards both the books of Sacred Scripture themselves and notes or commentaries on them. The printing of one book suffices, but not of only a part; likewise the printing of notes or of a commentary on one book, even if they present entirely correct doctrine.
2. The excommunication affects both authors and publishers who, without due permission, arrange for either books or notes or commentaries to be printed; but not the owner of the workshop, typesetters, and those who distribute what has been printed.

II. Those who have dared to command or compel that infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, be handed over to ecclesiastical burial against the prescription of canon 1240, § 1, 2° (canon 2339). Excommunicated and interdicted persons are understood after a declaratory or condemnatory sentence (canon 1240, § 1, 2°). Canon 1240, § 1, however, establishes that the persons enumerated in the cited canon are to be deprived of ecclesiastical burial, unless before death they gave some signs of repentance. For the rest, note:

1. On the phrase "have dared," see what was said in n. 858.
2. The excommunication regards the handing over of the enumerated persons to ecclesiastical burial. Ecclesiastical burial consists in the transfer of the corpse to the church, the funeral rites celebrated over it in the same place, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). A place legitimately deputed for this is understood not only as a cemetery (canon 1205, § 1), but also a blessed tomb in an unblessed cemetery (canon 1206, § 3). Moreover, for incurring the censure, deposition, even if performed with a sacred rite, in a profane place does not suffice. It is disputed: 1° whether it is enough that the deceased be placed in a sacred place without a sacred rite; 2° whether it is enough that he be placed in a sacred place

and with a sacred rite, or whether it is required that all the elements contained in canon 1204 be present. Those who deny that all these are required rely on the explanations of old authors, by which they think one must stand. But the obvious sense of the law so favors the more benign opinion that in practice we admit the opinion which requires all the elements contained in canon 1204 for excommunication.

3. The excommunication affects those commanding and compelling the enumerated persons to be handed over to ecclesiastical burial. Those commanding are those who order it by authority, whether public or private. Thus those burying or assisting at burial are not excommunicated.

Note. Those who spontaneously give burial to the persons enumerated above contract an interdict from entrance into a church reserved to the Ordinary (canon 2339).

III. All those in any way guilty, whether by giving, receiving, or furnishing consent, when the apostolic beneplacitum required in alienating ecclesiastical goods has knowingly been omitted (canon 2347, 3°).

1. The word "knowingly" refers both to those giving and to those receiving and furnishing consent.
2. The excommunication regards the perfected alienation of ecclesiastical goods for which the apostolic beneplacitum is required. Moreover:

a) Alienation now, as before, seems to be taken not only for alienation properly so called, by which bare or useful ownership of a thing is transferred to another, but also for alienation in a broader sense, by which ownership of a thing, whether bare or useful, is burdened (cf. canon 6). Alienations are: donation, sale, exchange, pledge, mortgage, imposition of a passive servitude, remission of an active servitude, compromise, settlement, lease. Perfect alienation, however, is required; hence, if in some place ownership of a sold thing is not transferred except by delivery, this must have been done for the excommunication to be incurred.

b) Ecclesiastical goods are temporal goods, whether corporeal, both immovable and movable, or incorporeal, which belong either to the universal Church and to the Apostolic See or to another moral person in the Church (canon 1497, § 1); the Sacred Congregation of the Council declared that public securities are not excluded.¹

c) The apostolic beneplacitum is required: 1° Generally for alienating ecclesiastical goods which are either precious or exceed the value of thirty thousand lire or francs² (canon 1532, § 1, 1° and 2°), according to what was said and explained in volume I, n. 974. Nevertheless, bearer bonds, as they are called, can be exchanged for other bonds more safe, or at least equally safe and fruitful, with any kind of trade or negotiation excluded, and with the consent of the Ordinary, the diocesan Council of administration, and others whose interest it is (canon 1539, § 2). 2° The apostolic beneplacitum is required for leasing, if the value of the lease, considering, as it seems, the whole time for which the lease is established, exceeds thirty thousand lire or francs, and the lease is beyond nine years (canon 1541, § 2, 1°). A lease made under the condition, "If the apostolic beneplacitum is obtained," is in no way affected by the excommunication, because such a lease is not perfected before the condition is fulfilled, that is, before the beneplacitum is obtained.

3. The excommunication affects those giving, those receiving, and those furnishing consent. Those giving are understood to be those who by themselves or through others alienate goods, but not

agents of those alienating, nor those who destroy or steal goods.³ Those receiving are those for whose benefit the contract is entered. Those furnishing consent are excommunicated if their consent must be sought, which also applies to lay persons.

IV. All, shining with any dignity whatever, who in any way coerce either a man to embrace the clerical state, or a man or woman to enter religion or to emit religious profession, whether solemn or simple, whether perpetual or temporary (canon 2352).

1. The excommunication regards coercion:

a) Either to embracing the clerical state. The clerical state is embraced through reception of first tonsure (canon 108, § 1). Likewise he seems liable to the censure who would coerce someone to receive major orders (cf. canon 971).

b) Or to entering religion. Religion is a society approved by legitimate ecclesiastical authority, in which members, according to the proper laws of that same society, pronounce public vows, perpetual or temporary, though to be renewed after the time has elapsed, and thus tend to evangelical perfection (canon 488, 1°). It is all the same whether it concerns an Order or a Congregation, a clerical or lay religion, a religion of pontifical right or diocesan right. Entrance into religion is now made, as it seems to many, by admission to postulancy, and, where there is no postulancy, by admission to the novitiate. That admission to postulancy suffices seems to be drawn from the fact that the ancient law distinguished entrance into a monastery and reception of the habit, or entrance into the novitiate, and that it also punished with excommunication one who coerced someone to enter a monastery or to begin postulancy.

c) Or to emitting religious profession. One who would coerce someone both to enter religion and to emit profession would incur a twofold excommunication.

2. The excommunication affects all, even Bishops but not Cardinals (canon 2227, § 2), all, I say, coercing in any way, whether directly or indirectly, say by acting upon parents, whether by grave fear, importunate entreaties, or other means without which the effect would not have followed.

3. The excommunication is not incurred unless the effect has followed.

V. A faithful person who knowingly has omitted to denounce within a month the one by whom he was solicited, against the prescription of canon 904 (canon 2368, § 2). Canon 904 sets forth the obligation of denouncing in these words: According to the norm of the apostolic constitutions and especially of the Constitution of Benedict XIV *Sacramentum poenitentiae*, June 1, 1741, the penitent must denounce, within a month, to the local Ordinary or to the Sacred Congregation of the Holy Office, the priest guilty of the delict of solicitation in confession; and the confessor must, with his conscience gravely burdened, warn the penitent of this burden. Moreover:

1. The excommunication regards omission of the denunciation to be made by the solicited person; concerning this denunciation, see n. 416 sq.

2. The excommunication affects only the solicited persons themselves, but not those who know that another has been solicited. Moreover, it is required that the solicited person knowingly omitted the denunciation; from this it follows that there can be a cause excusing from excommunication which does not excuse from the obligation of denouncing; namely, any cause diminishing imputability excuses from this excommunication (n. 858). An impubes is indeed bound by the

obligation of denouncing, but not by the excommunication, unless after attaining puberty he omits the obligation.

3. The delinquent is not to be absolved unless after he has satisfied, or has seriously promised that he will satisfy (canon 2368, § 2). One absolved who seriously promised that he would satisfy the obligation, but afterward, with his will changed, does not satisfy, does not fall back into the excommunication, although the obligation of denouncing persists.

¹ January 17, 1906.

² Lest the value fluctuate too much, the value of gold money is safely attended to.

³ Holy Office, March 2, 1870.

Part II. On Interdicts

899 Four interdicts *latae sententiae* are enumerated, namely:

I. Universities, colleges, chapters, or other moral persons, by whatever name they are called, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council, incur an interdict reserved to the Apostolic See in a special manner (canon 2332). This interdict affects the moral persons appealing; physical persons appealing in this way contract excommunication (p. 763). What an interdict issued against a moral person imports, however, see p. 740, VII and question 1.

II. They contract by the law itself an interdict from entrance into a church, until, at the judgment of the one whose sentence they have despised, they have made congruous satisfaction: those knowingly celebrating divine things or causing divine things to be celebrated in interdicted places; or admitting to the celebration of divine offices, which are forbidden by censure, clerics excommunicated, interdicted, or suspended after a declaratory or condemnatory sentence (canon 2338, § 3).¹

1. The word "knowingly" refers to those celebrating, to those causing divine offices to be celebrated, and to those admitting. Therefore the interdict affects:

a) Those knowingly celebrating or causing divine things to be celebrated (p. 731) in interdicted places, excepting, however, those divine things which can be done according to the norm of canons 2270-2272 (n. 878).

b) Those knowingly admitting, to the celebration of divine offices forbidden by censure, clerics excommunicated, interdicted, or suspended, against whom a declaratory or condemnatory sentence has been issued. Those admitting are understood to be those who have the office and right of admitting or repelling, such as a pastor or rector.

2. The interdict is to be removed, or rather seems to cease *ipso facto*, as soon as the delinquents have made congruous satisfaction at the judgment of the one whose sentence they have despised.² Thus judgment concerning congruous satisfaction belongs to him who interdicted the place or issued the declaratory or condemnatory sentence against the clerics who are admitted to divine offices.

III. Those who spontaneously give burial to infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, against the prescription of canon 1240, § 1 (canon 2339), contract an interdict from entrance into a church reserved to the Ordinary. What canon 1240, § 1 prescribes, see p. 750. For the rest:

1. On the word "spontaneously," compare what was said in n. 858.

2. In what sense ecclesiastical burial is taken, see p. 778.

3. Those giving burial are understood to be clerics only, namely those whose role it is to perform all those things which pertain to ecclesiastical burial.

IV. Those who gave cause for a local interdict or an interdict against a community or college contract a personal interdict reserved to no one (canon 2338, § 4). But to what penalties persons personally interdicted are liable, see n. 879.

¹ This interdict, since it is neither perpetual, nor for a predefined time, nor at the pleasure of the Superior, seems to be a medicinal penalty, not a vindictive one (cf. canon 2291, 2°).

² Cf. Holy Office, February 1, 1871.

Part III. On Suspensions

Of suspensions now in force by law, some are medicinal penalties or censures, others are vindictive penalties (n. 2255, § 2).

Section I. On Suspensions which Are Censures or Medicinal Penalties

900 I. Clerics, even those raised to episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments, incur a suspension reserved to the Apostolic See (canon 2371).

1. The discussion is of a generally issued suspension (p. 742).
2. Simony is taken as explained on p. 773.
3. Under the name of order here also come first tonsure and episcopate (canon 950).
4. The word "knowingly" refers not only to the first part, but also to "have administered or received."

Note. Delinquents, even laymen, are moreover suspected of heresy (canon 2371).

II. Those who presume to receive orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, contract *ipso facto* suspension *a divinis*, reserved to the Apostolic See (canon 2372). Under the name of order here does not come first tonsure, since it confers no power from which someone can be suspended (cf. canon 950).

Note. One who in good faith has been ordained by one of those enumerated above lacks the exercise of the order thus received until he is dispensed (canon 2372). Here it is not a question of a penalty, since delict is absent, but of mere privation. The dispensation, however, in view of general principles, belongs to the proper Ordinary of the one ordained.

III. Until he obtains absolution from the Holy See, a religious dismissed for delicts less than those mentioned in canon 670 remains *ipso facto* suspended (canon 671, 1°).

IV. A cleric who, against the prescription of canon 120, has dared to drag before a lay judge another person enjoying the privilege of forum, namely apart from Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary, or another Bishop, even merely titular, or an Abbot or Prelate *nullius*, or major Superiors of religions of pontifical right, contracts *ipso facto* suspension from office reserved to the Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that another person besides the enumerated persons cannot be summoned before a lay judge without the permission of the local Ordinary, namely of the place in which the case is being conducted.

On the word "dragging," see p. 766.

The Ordinary to whom the suspension is reserved is the proper Ordinary of the suspended person, not the local Ordinary whose permission had to be obtained.

Note. If the delinquent is a layman, he must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2341).

V. A fugitive religious, if he is in sacred orders, contracts *ipso facto* a suspension reserved to his own major Superior (canon 2386), that is, a priest, deacon, or subdeacon. Under the name of religious here also come members in societies of men who imitate the manner of life of religious, living in common under the governance of Superiors according to approved constitutions, but are not bound by the three customary public vows, nor are they properly designated by the name religious¹ (cf. canon 673, § 1).

The discussion is of a generally issued suspension (p. 742).

Note. The whole canon 2386 establishes the following: A fugitive religious incurs *ipso facto* privation of office, if he has any in religion, and suspension reserved to his own major Superior, if he is in sacred orders; but when he returns, he is to be punished according to the constitutions, and if the constitutions make no provision concerning this, the major Superior is to inflict penalties according to the gravity of the fault.

VI. The following contract a suspension reserved to no one:

1. A priest who without necessary jurisdiction has presumed to hear sacramental confessions is *ipso facto* suspended *a divinis* (canon 2366). Without necessary jurisdiction, that is, without at least probable jurisdiction (cf. canon 209). What sacramental confession is, see n. 430. It is enough, however, that someone hear a confession of this kind, even if he does not absolve the penitent.
2. A priest who without necessary jurisdiction has presumed to absolve from reserved sins is *ipso facto* suspended from hearing confessions (canon 2366). The pronouncement of the form of absolution is required, however, and mere hearing of confession or fictitious absolution is not enough.
3. Whoever maliciously approaches orders without letters or with false dimissorial letters, or before canonical age, or by a leap, is *ipso facto* suspended from the order received (canon 2374). Under the name of order here does not come first tonsure, because it confers no power from which someone can be suspended (cf. canon 950).² "Maliciously" is equated with the words "has presumed," etc., about which see p. 718.
4. A cleric who has presumed to resign an ecclesiastical office, benefice, or dignity into the hands of laymen incurs *ipso facto* suspension *a divinis* (canon 2400).
5. An Abbot or Prelate *nullius* who, against the prescription of canon 322, § 2, has not received the blessing, is *ipso facto* suspended from jurisdiction (canon 2402). Canon 322, § 2 establishes: Abbots or Prelates *nullius* who, by apostolic prescription or from the constitutions of their own religion, must be blessed, should receive the blessing, within three months from receiving the apostolic letters and with legitimate impediment ceasing, from the Bishop whom they prefer.
6. A Vicar Capitular who grants dimissorial letters for ordination against the prescription of canon 958, § 1, n. 3, is *ipso facto* subject to suspension *a divinis* (canon 2409). From canon 958, § 1, n. 3, the Vicar Capitular can give dimissorial letters for seculars only with the consent of the Chapter after a year from the vacant see; but within the year only to those constrained by reason of a benefice received or to be received, or by reason of some certain office for which, because of the necessity of the diocese, provision must be made without delay.

¹ Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 347).

² Whether the Episcopate is included, cf. Cerato, op. cit., p. 195.

Section II. On Suspensions which Are Vindictive Penalties

901 I. Until the Holy See has dispensed them, the following are suspended by the law itself: the Bishop consecrating someone as Bishop, the assisting Bishops or, in place of Bishops, the assisting priests, and the one who receives consecration without an apostolic mandate against the prescription of canon 953 (canon 2370). Canon 953 prescribes: Episcopal consecration is reserved to the Roman Pontiff, so that no Bishop may consecrate anyone as Bishop unless the pontifical mandate has first been established.

It concerns a generally issued suspension (p. 742), and one inflicted by way of vindictive penalty; this is clear from the fact that a censure or medicinal penalty is removed by absolution, but this suspension by dispensation of the Holy See (cf. canon 2236, § 1 and 2289).

The suspension among assisting priests affects only those who assist in place of Bishops, not others.

II. From canon 2373, the following *ipso facto* incur suspension for one year from the conferral of orders, reserved to the Apostolic See:

1. Those who, against the prescription of canon 955, have ordained another's subject without dimissorial letters of his own Ordinary. As to the prescription of canon 955, cf. n. 601. The suspension also affects one who confers first tonsure (cf. canon 950).
2. Those who, against the prescription of canon 993, n. 4, and canon 994, have ordained their own subject who had stayed elsewhere for so long a time that he could have contracted a canonical impediment there. Concerning the cited canons, see n. 650. The suspension also includes first tonsure (cf. canon 950).
3. Those who, against the prescription of canon 974, § 1, n. 7, have promoted someone to major orders without a canonical title (cf. n. 618).
4. Those who, without prejudice to legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining Bishop, even with dimissorial letters of the proper Superior, unless it has been legitimately proved that some one of the cases occurs which are mentioned in canon 966 (cf. treatise on Order, n. 602).

Delinquents are suspended from the conferral of orders, with no order, indeed not even first tonsure and episcopal consecration, excepted (cf. canon 950).

III. A clerical religious whose profession has been declared null because of deceit committed by him, if he is constituted in major orders, remains *ipso facto* suspended until the Apostolic See has seen otherwise (canon 2387). Under the name of religious also comes a member of a society of clerical men living in common without vows; likewise under the name of profession comes the profession improperly so called, or that emitted by a member of the said society.¹

Note. If the delinquent is constituted in minor orders, he is to be cast out from the clerical state (canon 2387).

IV. Chapters, convents, and all others to whom it pertains, admitting such elected, presented, or nominated persons before the exhibition of the letters, remain *ipso facto* suspended from the right of electing, nominating, or presenting at the pleasure of the Apostolic See (canon 2394, 3°). It concerns those who admit persons elected, presented, or nominated to an ecclesiastical benefice, office, or dignity, into possession or governance or administration of the same, before the elected, presented, or nominated persons have exhibited the necessary letters.

V. Religious Superiors who, against the prescription of canons 965-967, have presumed to send their subjects to another Bishop to be ordained are *ipso facto* suspended from the celebration of Mass for a month (canon 2410; cf. treatise on Order, n. 632). Under the name of religious Superiors also come Superiors of a society of men living in common without vows, if the society enjoys the right of granting dimissorial letters to its members.² Major Superiors are understood, and those exempt, to whom, namely, belongs the right of giving dimissorial letters.

The suspension is reserved to no one.

¹ Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 347).

² Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 347).