

THE VICAR DELEGATE OF MISSION ORDINARIES

An Historical Introduction
and Canonical Commentary

A Thesis

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of Ottawa in Partial Fulfilment of the Requirements for
the Degree of Doctor of Canon Law.

by

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F O R E W A R D

Mission Law, which is a branch of Missiology, the science of the missions, is concerned with the exposition of the norms of canon law for missions. It may be defined as the legislation by which the work of the missions is regulated, and it embraces the precepts of divine and ecclesiastical law, the universal law of the Church as well as the particular laws of a determined mission region, the general laws binding all the faithful as well as special laws for particular classes of persons, the common law of the Code as well as exceptional law contained in indults, privileges, and faculties. While there are various sources of Mission Law such as the Code of Canon Law, documents issued by the Roman Pontiffs, statutes of provincial Councils, etc. the laws, decrees, ordinances, and decisions of the Sacred Congregation of Propaganda take the principal place. Because of conditions and circumstances peculiar to missions this Sacred Congregation has made particular legislation on different matters for these regions which requires special consideration. An attempt will be made in this thesis to consider a piece of such legislation, namely, regarding the Vicar Delegate of Mission Ordinaries.

When the New Code of Canon Law appeared it enumerated local Ordinaries, and in that enumeration included the Vicars General of residential Bishops, abbots and prelates nullius but made no mention of Vicars General of Vicars and Prefects

Apostolic. (1). However, some thought that Vicars and Prefects Apostolic could appoint their own Vicars General. But in its Letter of Dec. 8th, 1919, the Sacred Congregation stated that the Code of Canon Law did not concede to them the right to choose a Vicar General as is possessed by residential Bishops. (2). It also stated that the Holy Father, Benedict XV on Nov. 6th, 1919 had granted a sanation for the invalid acts placed by those missionaries who had acted as Vicars General. Moreover, the Holy Father gave to Mission Ordinaries the right to appoint a Vicar Delegate, if they needed one, who was to have practically the same jurisdiction in spiritual and temporal matters as the Vicar General in a diocese. The Letter also added instructions regarding the faculties, number and office of Vicars Delegate.

After a brief historical introduction we will consider this new legislation regarding Vicars Delegate, and explain his constitution, powers, duties, etc. Because the institution of the Vicars Delegate is so recent, the historical aspect of the matter will be concerned with a brief consideration of the origin of the Vicar General, and Mission legislation regarding that official on the missions, before the New Code, and up to the Letter of the Sacred Congregation of Propaganda. The canonical commentary will necessarily form the major part of the thesis.

(1). Can. 198, p.1.

(2). S. C. de P.F. Dec. 8th, 1919, -- A.A.S. XII (1919), p.120, For the complete text of this important Letter see Appendix I.

HISTORICAL INTRODUCTION

Article I. Regarding the origin of the Vicar General.

I. In the administration of his diocese a Bishop has need of various officials who form his curia and aid him in the fulfillment of his office. Among these officials is the Vicar General. (3). We will consider the origin of the office of the Vicar General briefly because of the similarity between his office and that of the Vicar Delegate who is to the Vicar Apostolic what the Vicar General is to the Bishop. Since the term is so frequently used we must note that a vicar is commonly defined as one who takes the place of or acts in the name of another. (4).

2. a). The Archpriest. In the early church the clerics who lived with the Bishop aided him in the discharge of his various duties. They formed, as it were, his vicars, co-operators or auxiliaries. Priests especially were engaged in duties relating to things spiritual while deacons were entrusted with what referred to temporal administration. The priest who was senior by virtue of his ordination came to be known as the Archpriest or Protopriest. Sometimes, however, the appointment of the Archpriest was due to his merit rather than precedence in ordination, in which case he was known as the "grand vicaire",

(3). Can. 363, p.2.

(4). Reiffenstuel, Jus Canonicum Universum, Bk. I, Pt.IV, Tit. XXVIII, n.2; Gilbert, Corpus Juris Canonici, Bk. II, Tit. VII, pt. V, p.111; Andre, Dictionnaire de Droit Canonique, III, p.680; Ayrinhac, Constitution of the Church in the New Code of Canon Law, n.894.

that is, the great vicar, and often became the Bishop's successor. The Archpriest principally had charge of things concerning divine worship in the episcopal church and supervised the duties of the ecclesiastical ministry. Also, he assisted the Bishop during liturgical ceremonies, often supplying for him in such matters as preaching, the administration of Sacraments and the celebration of divine services. Hence his position gradually assumed a special importance since he had a certain authority over the other clerics. (5). This was the Archpriest of the episcopal church, but there were also rural Archpriests who were representatives of the Bishop placed over several parishes. Later they were called the Vicar Forane or Dean. (6).

3. A vestige of the Archpriest is found in the Code where it states that the Bishop is to divide his territory into regions or districts, consisting of several parishes, and they shall be called foraneous vicariates, deaneries, archpresbyteries, etc. (7). While the Code does not define any dignities of the Cathedral Chapter particular legislation may do so and often the Archpriest is acknowledge as a dignitary of

(5). Thomassin, *Ancienne et Nouvelle Discipline de l'Eglise*, pt. 1, Bk. II, ch. III-VI and ch. XVII; *Catholic Encyclopedia*, I, p. 697 - 698; Fournier, *Les Origines du Vicaire General*, p.32; Funk, *Manual of Church History*, I, p.173.

(6). Ayrinhac, O.C. n.231.

(7). Can. 217, p. 1.

the Cathedral Chapter. (8).

4. b.) The Archdeacon. The widest powers of the early auxiliaries of the Bishop were held by the Archdeacon. He was the first in rank among the seven deacons who existed in many dioceses from the early Church. In the beginning he held his office not from priority of ordination but from the free appointment of the Bishop, in consideration of his ability. To the Archdeacon pertained the external, temporal administration of the diocese, matters relating to Church property, the care of sacred edifices, etc. He also had the care of the poor, the distribution of alms, the direction of the inferior clergy, and the right of visitation. There were rural Archdeacons, too, over different sections of the diocese, each of which included several deaneries. These rural Archdeacons existed in some places as early as the Sixth Century. (9).

5. The powers of the Archdeacon grew especially between the Eighth and Twelfth Centuries. During the latter century his jurisdiction which had been first considered as delegated came to be looked upon as ordinary and stable. Indeed, only for certain specified things did he need to seek the approval

- (8). Can. 393; Constitutions Synodales du Diocese de Montreal, Art. 45; Vermeersch-Creusen, Epitome Juris Canonici, I, n.491, 2.
- (9). Council of Orleans, 541, Can. 26, Mensi. IX, 117-118; Thomassin, O.C. pt.1, Bk. II, ch.III; Alzog, Universal Church History I, p. 456; Funk, O.C. I, p. 172; Ayrinhac, O.C. n. 232.

of the Bishop. (10).

6. Gradually, however, when their powers had reached their zenith the Archdeacons are found beginning to neglect their territories because of the other duties placed upon the, and they began to appoint assistants rather than personally seeing to their duties. These helpers of the Archdeacon were called "Officiales", that is officials, or vicars, and mention of them is found in early canonical legislation. (11). But measures were taken shortly to prevent Archdeacons from making such appointments, and Bishops nominated others as their own immediate and personal representatives. (12).

7. Naturally, such power on the part of Archdeacons led them into conflict with the Bishop of the diocese, and it was certainly obnoxious to the other members of the clergy that

- (10). c. 5, X, de officio archidiaconi, I, 23: "Archidiaconis non videtur de Ecclesiastica institutione licere (nisi auctoritas Episcoporum accesserit) in aliquos sententiam promulgare"; cfr. also, c 7, X, de officio archidiaconi, I, 23; c 3, X, de poenis, V, 37; Council of Noyon, 1280, Can. I - Mansi.XXIV, 373; Barbosa, Collect. Doct. tam vet.^{erum} recent., Tom. I, Tit XXIII, n.5; Thomassin, O.C. pt. 1, Bk. II, ch. XIX, n.12; Jus Canonicum Nova Methodo Explicatum, Bk. I, Tit.XXIII, n.5; Reiffenstuel, O.C., Bk. I, Tit. XXIII, n.6; Schmalzgrueber, Jus Ecclesiasticum Universum, Tom. I. pt. IV, Tit. XXIII, n.7.
- (11). c 3, X, de novi operis nunciacione, V, 32; Council of Oxford, 1222, Can. 27 - Mansi. XXII, 1159; Constitutiones Synodales Episcopi anonymi, 1237 sequitur de archidiaconis Mansi, XXIII, 474-475; Synod of Exeter, 1238, Can.42 - Mansi XXIV, 824; Council of Cognac, 1238, Can. 4 - Mansi, XXIII, 488;
- (12). Council of Chateau Gautier, 1231, Can. 12 - Mansi. XXIII, 236; Council of Tours, 1239, Can. 8 - Mansi, XXIII, 499; c 3, X, de institutionibus, III, 7.

they had such authority. Bishops and Councils sought to lessen their power, but only gradually, until the Council of Trent took from them jurisdiction in marriage cases and criminal cases of clerics, and no longer allowed them to make the diocesan visitation as their official duty, so that their position was little more than an honorary dignity. (13)

8. While mention of the Archdeacon is not to be found in the New Code of Canon Law, he is to be found existing in the particular legislation of some dioceses. Generally his chief duty now is concerned with financial matters. It is his function to study the financial reports sent in by the pastors to the Procurator of the diocese and make an account of them for the Bishop. Also, he has the duty of examining the parishes and reporting on them to the Bishop. (14).

9. c.) The Vicar General and the Officialis. The exact origin of the Vicar General is disputed. Some maintain that he grew out of the Bishops' efforts to diminish the power of the Archdeacons by constituting other officials, indiscriminately called Vicars General or Officials. (15). Others hold that Vicars General arose by virtue of Canon 10 of the Fourth Lateran Council, 1215, when the Bishops were ordered to prepare co-adjutors and co-operators who would be able to take charge of

(13). Sess. XXIV, de reform. ch.3 - Mansi, XXXIII, 158 - 159.

(14). Constitutions Synodales du Diocese de Montreal, Art.347; Constitutions Synodales du Diocese de Saint-Boniface, Art.260.

(15). Council of Turin, 1239, Can. 8, Coronata, Institutiones Juris Canonici, I, n.418; Wernz-Vidal, Jus Canonicum II, n. 634; Vermeersch-Creusen, O.C. I, n.476; Funk, O.C.I, p.364; Alzog, O.C., II, n.464.

souls in the diocese in case of necessity. (16). A third opinion also has been advanced to the effect that Vicars General find their origin in the early "procuratores generales", that is general procurators, instituted from necessity by Bishops when they were absent from dioceses, or too ill or too old, to carry on their office. To these procurators was committed the full administration of the diocese. Thus, for example, Demetrius, Patriarch of Constantinople left his diocese in the care of his Archpriest Dioscorus in 451 when he himself went to the Council of Chalcedon; and Gregory and Theologian supplied for a time in the place of his father; and St. John Chrysostom while only a deacon took charge of the diocese of Antioch during the absence of the Bishop Flavian. Hence, according to this opinion the office of Vicar General can be considered more or less to have always existed, and since the absences of Bishops were long and frequent the practice of having a general procurator developed into the custom of having a vicar substituted "ad universitatem causarum", that is for cases of every kind, and exercising power whether the Bishop was present in the diocese or not. (17).

10. The terms Vicar General and Officialis were more often used indiscriminately of the same officials, as in the Decretals and the Tridentine Decrees, although Benedict XIV states that

(16). Fourth Lateran Council, 1215, Can. 10, Mansi, X^VIII, 998; Thomassin, O.C. pt. 1, Bk. II, ch. XVII-XVIII.

(17). Fournier, Les Origines du Vicaire General, ch. V, p. 72-77; p. 129-130.

there was a distinction made in some regions as Gaul and Belgium, but none in Italy. (18). When the distinction was made the Vicar General obtained voluntary and administrative power, while the Officialis exercised contentious jurisdiction. This distinction was adopted by the New Code of Canon Law, when it states that every Bishop is bound to appoint an Officialis with ordinary power to judge, "cum potestate ordinaria iudicandi", distinct from the Vicar General, unless the smallness of the diocese or the small number of affairs make it advisable for the Vicar General to hold both offices. (19). The office of the Vicar General developed and by the beginning of the Fourteenth century became permanent and stable. He was the representative of the Bishop, aiding him in the exercise of jurisdiction, though whatever powers he did have were used in the name and place of the Bishop. He formed one person with the Bishop in the exercise of his office though in certain instances he needed a special mandate for the exercise of jurisdiction, as in the case of criminal matters. (20). When the offices of the Vicar General and the Officialis were distinguished, the powers of the former dealt with the administration

(18). C 3, X, de officio vicarii, I, 13^A ^{in VI^o} Council of Trent, XXIV, ch.12, de reform.; Benedict XIV, De Synodo Dioec., Bk.III, ch.3, n.2; Barbosa, De Off. et Pot. Episc. pt.III, Alleg. LIV, n.53: "Vicarius et Officialis idem significant, et in effectu nulla inter eos, nisi in nomine versantur differentia"; Catholic Encyc., XV, p.402.

(19). Can. 1573, p. 1.

(20). C 2, de offic. vic. I, 13 in VI^o; Barbosa, Collect. Tom. IV, Bk. I, Tit, IV, ch.III, n.4; Bouix, Tract.de Jud. I, 435, Q. 27; Esswein, ^{editio hinc} p. 43. ^{total power of the Vicar General}

of spiritual affairs, while those of the latter were concerned with temporal matters. (21).

The juridical personality of the Vicar General developed gradually and his position in the diocesan curia assumed a special importance. In an article devoted to the Vicar General the New Code of Canon Law summarized and fixed the notion of this official. (22).

Article 2. Mission legislation regarding the Vicar General before the New Code of Canon Law.

11. The question of the Vicar General in Mission territory was treated as early as Jan. 26th, 1753 by Pope Benedict XIV in his letter "Ex Sublimi" to the Vicars Apostolic of the East Indies. (23). It had been noted with concern that it often happened that some of the Vicars Apostolic of the East Indies, with episcopal character, but without a Coadjutor with future succession, had died leaving their territory with no one to exercise ordinary jurisdiction in their stead. This meant that the people of these districts were without a spiritual ruler, and obviously this was detrimental to their religious welfare. Hence, in his letter the Holy Father imposed on the

(21). C 3, de offic. vic. I, 13, in VI^o; C 3, de temporibus ordinationum, I, 9 in VI^o; Barbosa, De Off. et pot. Episc., pt. III, Alleg. LIV, n. 57.

(22). Canons 366 - 371.

(23). Jan. 26th, 1753 - Collectanea, S.C. de P. F. n. 161.

Vicars Apostolic of the East Indies, who were without a coadjutor or successor, the obligation of appointing a Vicar General to take charge of the vicariate in the event of vacancy. The obligation was imposed on each and every Vicar Apostolic who had neither a Bishop coadjutor, nor a Vicar General from the secular or regular clergy. They were to make the appointment immediately on receiving certain knowledge of the instructions of the Holy Father. The Vicar General could be either a secular or religious priest, providing he was capable and suitable for the office, "habilem tamquam idoneum", and he was to assume and carry on the government and rule of the Vicariate Apostolic, on the death of the Vicar Apostolic, as the Delegate to the Holy See. The rule of the vacant Vicariate was to last until the new Vicar Apostolic constituted by Rome took possession or until the Holy See made some other provision.

12. Two years later, on Aug. 8th, 1755, Benedict XIV by his letter "Quam ex Sublimi", extended this obligation of appointing a Vicar General to all Vicars Apostolic for the same reasons as moved him in imposing it on the Vicars Apostolic of the East Indies. (24).

13. Prefects Apostolic are not mentioned in these letters expressly because at the time they were written there were no Prefects Apostolic as such, but when they were instituted they were considered obliged by the above prescriptions. However, it may be said that Prefects Apostolic were implicitly included

(24). Aug., 8th, 1755 - Collectanea S.C.de P.F. n.162.

in these constitutions when the Holy Father speaks of Vicars Apostolic without episcopal character, or with sacerdotal dignity only, to whom he extended the same provisions and faculties, under the same mode and form, as were conceded for the East Indies.

14. Moreover, these letters of Benedict XIV gave to the Vicar General all the faculties which were acknowledged in and belonged to a Vicar Capitular of a Cathedral Church, Sede vacante, and they had the use of those faculties that the defunct Vicar Apostolic had enjoyed or used during his regime, excepting those requiring episcopal consecration for their exercise or could not be employed without the use of sacred oils. If necessity demanded he could even consecrate patens, chalices, and portable altars but only using oils previously consecrated by a Bishop. Also, it is to be noted that in these two letters the terms Vicar General and Pro-vicar are employed indiscriminately to designate the same official. (25). In fact, in the legislation for the Missions before the New Code, these terms were always so used.

15. Further prescriptions regarding the Vicar General on the Missions followed the letters of Benedict XIV, and we find the Sacred Congregation of Propaganda issuing a statement to the effect that the Pro-vicar, or Vicar General consequently sede vacante, could not confer the Sacrament of

(25). "Ex Sublimi" and "Quam ex Sublimi", as referred to above, p. 10, 11.

Confirmation nor could he delegate missionaries to do so. It also added that if some persons had been confirmed by missionaries acting only on the permission of the Pro-vicar the sacrament was to be repeated, scandal being removed. (26). However, Pope Gregory XIV later conceded that during the vacancy of the Vicariate the Vicar General, on whom, according to the constitution of Benedict XIV, "Ex Sublimi", jurisdiction devolved, or the Vicar Apostolic elected but not yet consecrated could administer the Sacrament of Confirmation and delegate the same faculty to one or other of the priests of the vacant vicariate or diocese.(27).

16. It was found, however, that the designation of one Vicar General by Vicars Apostolic to succeed in the government of the Mission did not take care of all the circumstances or cases that might arise because such a Vicar General or Pro-vicar sometimes died before the appointment of a new Vicar Apostolic had been made by the Holy See, and the district was without a superior for a time. Especially was this liable to happen in remote regions where communication with Rome was difficult. Hence, the sacred Congregation of Propaganda granted to Vicars Apostolic the faculty of choosing two Vicars General or Pro-vicars whenever they deemed it necessary. They had full power and jurisdiction in the case of the death or the absence of the Vicar Apostolic, so that if one of them departed before the Holy

(26). S.C. de P.F., Sept. 12th, 1821 - Collectanea, n. 669.

(27). S. C. de P. F., July 29th, 1841 - Collectanea, n. 670.

See had constituted a new Vicar Apostolic, then in the other was consolidated the jurisdiction and administration of the whole vicariate. (28). However, these two Vicars General did not succeed the Vicar Apostolic together but in the order of their deputation, that is the one who was first nominated first succeeded, and then in defect of him the second Vicar General was to undertake the administration. (29). If it happened that the Vicar Apostolic had actually appointed only one Pro-vicar, then this Pro-vicar could designate another to take his place in event of necessity, provided the Holy See had not yet constituted a new Vicar Apostolic for the vicariate. (30).

17. Moreover, while the Vicar Apostolic still lived, the Vicar General or Pro-vicar could assist him in the fulfilment of his office. To the Vicar General the Vicar Apostolic could delegate his own ordinary and extraordinary faculties, except those requiring episcopal consecration for their use. Further, the Vicars General were permitted to subdelegate their faculties to other missionaries. (31).

18. If the above appointments were not made by the Vicar

(28). S. C. de P. F., May 20th, 1786 - Collectanea, n. 164.

(29). S. C. de P. F., Sept. 19th, 1787 - Collectanea, n. 165.

(30). S. C. de P. F., May 20th, 1786 - Collectanea, n. 164.

(31). S. C. de P. F., Dec. 9th, 1822 - Collectanea, n. 166; Pugliese, Apoll., VI (1933) p. 200: "Insuper hic quia Vicarius Generalis Vicarii et Praefecti Apostolici, quia Vicario vel Praefecto Apostolico associatus erit in jurisdictione, poterat agere ut collega sui Ordinarii in causa per Romanum Pontificem 'Ordinario loci' specialiter delegata."

Apostolic or the Pro-vicar, and there was no one to assume the charge of the vacant vicariate, then the Senior missionary was to be considered as delegate of the Holy See to do so. The Senior was the priest from Europe who had been longest on the missions and had longest exercised the care of souls. (32).

The question was asked, whether, on the death of the Vicar Apostolic who had no coadjutor or Pro-vicar, the missionary who had been specially designated for one part of the mission with the faculties of a particular Pro-vicar was to be considered as the Superior of the vicariate by force of the Brief "Ex Sublimi", and whether he could and must undertake the government of the Mission. To this question the Sacred Congregation replied that the right of succeeding in the administration in such a case pertained to the older alumnus, that is the Senior Missionary. (33)

The Senior was to be from the Order or Congregation in whose charge the Mission had been placed. If the Senior was unable to exercise his right he could not cede it to another of himself but was to have recourse to the nearest Vicar Apostolic. In judging seniority priority in the priesthood was to be given consideration so that in the case where a deacon or subdeacon had been ahead of the priest in leaving the mission-boat for the shore, the priest was still to be acknowledged the Senior as regards succession in the event of vacancy of the vicariate. Also, if one missionary entered the mission territory

(32). S. C. de P. F. Sept. 19th, 1787 - Collectanea, n.165.

(33). S. C. de P. F. Sept. 29th, 1827 - Collectanea, n.168, I.

before another but because of sickness, negligence, or lack of ability he was unable to learn the language and exercise the ministry before the one he had preceded, he who had been engaged in the ministry of souls, for the longer time was to be considered the Senior. (34).

19. In the case of dispute about the rights of several missionaries to administer a vacant vicariate, and in the case of persecution raised against the appointed Pro-vicar by pagans, as also when it was dangerous to approach him, the necessary and opportune faculties were conceded to the nearest Vicar Apostolic to see to the administration of the vicariate. But this neighbouring Vicar Apostolic did not assume the title of Apostolic Delegate. (35).

20. When Prefects Apostolic were instituted they had the faculty from the Sacred Congregation of Propaganda of electing, on their own authority one or several Vice-prefects, who aided them in temporal matters and, perchance, in matters respecting regular discipline. But only the Prefects themselves were to communicate their faculties in whole or in part to other missionaries. Prefects needed a special faculty to communicate a special faculty to a Vice-prefect so that he could in turn communicate it to other missionaries. Moreover, Vice-prefects with faculties could only be instituted by Prefects Apostolic

(34). S. C. de P. F., Sept. 29th, 1827 - Collectanea, n. 168.

(35). S. C. de P. F., Sept. 22nd, 1827 - Collectanea, n. 167.

for the time of their death. (36).

21. Since the education of native priests was considered insufficient for them to competently govern a Mission, the Sacred Congregation of Propaganda provided that always some European missionary should undertake the government of the Mission. This was in force, says Pugliese, more or less up to the time of the Code. (37).

22. After the considerations above regarding the Vicar General of Vicars Apostolic we may make a brief comparison between this official and the Vicar General of residential Bishops before the Code.

Residential Bishops were free to appoint a Vicar General or not. The appointment depended on whether or not the Bishop could handle the administration of their diocese without the aid of a vicar. If necessary they could have several Vicars General and this was the custom in several places. On the other hand, there was no obligation on Vicars Apostolic to appoint a Vicar General, or two if necessary, but no more than two. (38).

A residential Bishop and his Vicar General formed one juridical person and one tribunal. Consequently, an appeal from a sentence of the Vicar General could not be lodged with

(36). S. C. de P. F. May 8th, 1847 - Collectanea, n.252: "ed i Prefetti possono istituite Vice-Prefetti con facoltà solo nel tempo della loro morte finche dalla S.C. si provisto".

(37). Apoll. VI, (1933) p. 199.

(38). Reiffenstuel, O.C. Bk.I, pt. IV, Tit. XVIII, n.64, 66, Ferraris, Prompta Bib. VII, Vic.-Gen. Art,I,5.; Wernz, Jus Decretalium II, n.804; "Ex Sublimi " and "Quem ex Sublimi", as noted above.

the Bishop, but recourse had to be made to a superior tribunal. On the contrary, the Vicar General of a Vicar Apostolic was considered only as a delegate of the Vicar Apostolic while that Superior lived and an appeal could be made from the sentence of the Vicar General to the Vicar Apostolic. (39).

The powers of the Vicar General of a residential Bishop were determined by law and commonly were regarded as ordinary. Still, Bishops could reserve certain cases that would have otherwise been within the competence of the Vicar General; or, they might extend the powers of their Vicar General by delegating to him some extraordinary faculties. But the faculties of the Vicar General of the Vicar Apostolic during the lifetime of the Mission Ordinary depended solely upon the will of the Vicar Apostolic in granting those faculties. On the death of a residential Bishop the faculties of their Vicar General ceased and the administration of the diocese passed to the Cathedral Chapter, and then to the Vicar Capitular. But on the death of the Vicar Apostolic his Vicar General assumed the entire rule of the vicariate until provision had been made by the Holy See either through the appointment of new Vicar Apostolic or some other arrangement for the administration. The Vicar General of the Vicar Apostolic, then, exercised the functions of Vicar Capitular, and, as Benedict XIV, stated, held his powers as delegate of the Holy See "nunc pro tunc", that

(39). Ferraris, Promp. Bib., VII, Vic. Gen., Art. II, 3; Gignac, De Personis, n. 456.

is, from the moment he was chosen for the time when he would have charge of the administration through the death of the Vicar Apostolic. (40). Besides, while religious could not be chosen as Vicars General of Residential Bishops there was no such restriction regarding the Vicars General of Vicars Apostolic. (41).

However, there was one point of resemblance between the Vicar General of a residential Bishop and the Vicar General of Vicar Apostolic in that they were both chosen "ad nutum", that is they were freely chosen by their Superior and could be removed according to the will of the same. (42).

Article 3. New Mission Legislation.

24. a). After the New Code of Canon Law, before the Letter of the Sacred Congregation of Propaganda, Dec. 8th, 1919.

Even after the New Code of Canon Law appeared and there was no mention made in it of the Vicars General of Vicars and Prefects Apostolic, there was still an opinion that these Mission Ordinaries could nominate their own Vicars

(40). Ferraris, Prompt. Bib. , VII, Vic. Gen., Art. III, 39; Vic. Ap. n.59; Benedict XIV, De Synodo Dioec., Bk.XIII, ch. XVI, n.12; Smith, Elements of Ecclesiastical Law, I, n.638; Biederlack, Jus Ecclesiasticum, p.215-216; Huguenin, Expositio Methodica Juris Canonici, I, n.259; American Eccles. Review, XXV, 1901, p.341; L'Ami du Clerge, No. 50, 1910, p. 1097.

(41). L'Ami du Clerge, l.c.

(42). L'Ami du Clerge, l. c.p. 1097.

General, (43). This was based upon the general principle enunciated in the Code, that Vicars and Prefects Apostolic enjoy the same rights and faculties in their territory, as belong to residential Bishops in their proper dioceses, unless the Holy See has made some reservation. (44). Among these was the right of residential Bishops to appoint a Vicar General, and so the conclusion was that Vicars and Prefects Apostolic could do the same. (45). Also, some Mission Ordinaries thought they could appoint a Vicar General even after the Code, in view of a declaration of Pope Leo XIII. In this declaration the Holy Father, on Feb. 20th, 1888, after a special meeting of the Supreme Congregation of the Holy Office, had stated that in the execution of dispensations under the term Ordinaries came "Bishops, Administrators, or Vicars Apostolic, Prelates or Prefects having jurisdiction with a separate territory, and their officials or Vicars General in things spiritual...". (46). In this declaration Vicars General seem to be ascribed to Mission Ordinaries while the Code in Canon 198, p. 1, only acknowledges a Vicar General for the Roman Pontiff, Bishops and Abbots or Prelates nullius.

25. A tacit reservation, however, excluding Vicars General

(43). Canon 198, p. 1.

(44). Canon 294, p. 1.

(45). Canon 366, p. 1.

(46). S. C. de S. offic., Feb. 20, 1888 -- Fontes IV, n. 1109.

of Vicars and Prefects Apostolic was gathered indeed from this Canon 198, p. 1. In it no mention was made of the Vicars General of Vicars and Prefects Apostolic, while it was clearly indicated that Pro-vicars and Pro-prefects as successors to Vicars and Prefects Apostolic were local Ordinaries when in power. (47). But those favouring the other opinion argued from the old law to the effect that then, as pointed out above, Vicars Apostolic were permitted to appoint their own Vicars General who after their death became Pro-vicars with all the faculties of the Vicar Apostolic, and while the Vicar Apostolic lived could participate, accordingly as he allowed, in the function and delegated faculties of the Vicar Apostolic with the power of subdelegating these faculties.

Finally the Holy See was compelled to make a pronouncement on the question, in the Letter of the Sacred Congregation of Propaganda, of Dec. 8th, 1919.

26. b). After the Letter of the Sacred Congregation of Propaganda, Dec. 8th, 1919. (48).

In the Letter the Sacred Congregation first of all denied that Vicars and Prefects Apostolic had the right to choose a Vicar General, as had residential Bishops according to Canon 198, p.1. But it did state that they had the power

(47). Can. 198, p.1 with Can. 309, p.2.

(48). See Appendix I for complete text of this Letter. Throughout the thesis this Letter of the Sacred Congregation will be referred to simply as the Letter of Propaganda, because used so frequently.

to nominate a delegate with functions determined in each case, and who could be someone other than the Pro-vicar of Canon 309. Then it granted Mission Ordinaries the power to nominate a Vicar Delegate who was to enjoy practically the same jurisdiction as the Code conceded to Vicars General, including the habitual power to execute pontifical rescripts and using the general faculties given to Mission Ordinaries by the Sacred Congregation of Propaganda. Moreover, the Holy Father Benedict XV conceded a sanation for the invalid acts placed by those Missionaries who had acted as Vicars General. To the Vicar Delegate was to belong all the faculties attributed to the Vicar General, according to the norm of Can. 368, p.1-2; and what is stated in the Code of the Vicars General as regards their number and office according to Can. 366 ss. are to be applied also to Vicars Delegate.

27. It is to be noted that the Sacred Congregation in this Letter made a definite change in the canonical terminology regarding this matter, in using the term "Vicar Delegate". No longer may one properly call the Vicar Delegate the Vicar General of the Vicar Apostolic, just as one to be correct should speak of the "Prefect Delegate" of Prefects Apostolic and the "Superior Delegate" of Superiors of Independent Missions, i.e. *missiones sui juris*. (49).

(49). Cfr. Private response of S.C.de P.F. Nov.7,1929--Bouscaren, Supplement, p.45-46. Some authors at times do retain the old terminology unfortunately ^{for} exactness, e.g. Prummer, *Manuale Juris Canonici*, q.112, p.156, ft.nt.56; Vromant, *Facult. Apost.* n.114, p.126, ft.nt.(3). Throughout this thesis however, we will use the term "Vicar Delegate" to include also "Prefects Delegate" and "Superiors Delegate" for convenience; and what is said of the Vicars Delegate will apply to the latter

CANONICAL COMMENTARY.

CHAPTER I

I. Constitution of the Vicar Delegate.

Article I. Necessity of the Vicar Delegate.

28. Although regular administration as in a diocese is not to be expected in a Prefecture or Vicariate Apostolic, yet Vicars and Prefects Apostolic are expected to develop their administration as far as possible along the lines of dioceses, into which they are to ultimately grow. That this is so is clearly indicated by the questionnaire for the quinquennial report to be made by Mission Ordinaries in which questions are asked about rural deans, synods, archives, etc. Hence, in order that their evolution into a diocese may be the easier and more rapid the discipline and administration of Vicariates and Prefectures should follow that of a diocese as far as possible in the circumstances. (50).

officials, unless otherwise noted. When Vicars Apostolic are referred to alone, or Mission Ordinaries are spoken of throughout the thesis, Prefects Apostolic and Superiors of Independent Missions (missiones sui juris) are also meant unless the context indicates otherwise.

(50). Letter of S. C. de P. F. regarding Mission reports - A.A.S. XIV (1922), p. 287 - 307; Schmiälin, Catholic Mission Theory, p. 163-170; Winslow, Vicars and Prefects Apostolic, p. 31. We may gather a parallel between diocesan and mission organization from comparing the officials governing each. Thus, at the head of the diocese is the Bishop to whom corresponds the Vicar or Prefect Apostolic or Superior of a Mission sui juris; to the diocesan Vicar General corresponds the Vicar Delegate, Prefect Delegate or Superior Delegate while to the Vicar Capitular of a diocese is to be compared the Pro-vicar, Pro-prefect or Pro-superior.

29. With due consideration for the conditions existing on the Missions Vicars and Prefects Apostolic should have their own curia to which will pertain the officialis, chancellor, promoter of justice, defender of the bond, consultors, etc. as Can. 363 provides for dioceses, with the Vicar Delegate taking the role ascribed to the Vicar General.

30. From the Letter of Propaganda, the necessity of constituting a Vicar Delegate is to be determined according to the norm of Canon 366, p. 1. Hence, as often as the right rule of the Vicariate demands it the Vicar Apostolic may constitute a Vicar Delegate who enjoys ordinary jurisdiction in the whole territory. The Letter itself adds that Mission Ordinaries are to appoint a Vicar Delegate "si eo indigeant", that is if they need one, which amounts to the same reason expressed in the Canon, because the Mission Ordinary will need a Vicar Delegate if the right rule of the Mission demands it. This is consonant with the principle expressed above, that a Vicariate is to follow the organization of a diocese as much as possible, and just as there is need of a Vicar General in a diocese, so also is a Vicar Delegate required ordinarily in a Vicariate.

31. The Mission Ordinary himself is to be the judge of the necessity urging him to appoint a Vicar Delegate.

He would certainly have reason to nominate a Vicar Delegate if he himself were ill, or away from the Mission a great deal, or the size of the territory was such that he required assistance in governing it, or bandits frequently forced him to go into hiding. Since there is an obligation of appointing a Vicar Delegate if the right rule of the Missions demands it, negligence in this matter would be supplied in the case of the Missions by the Sacred Congregation of Propaganda. However, the obligation on the Vicar Apostolic is not absolute but relative according to the circumstances existing in the region. (51)

Article 2. Appointment and Number of Vicars Delegate.

32. The power to nominate a Vicar Delegate was conceded to Mission superiors who could freely designate him and remove him at will. (52). Hence, just as a residential Bishop could remove his Vicar General, so also could a Vicar Apostolic remove his Vicar Delegate whom he had freely appointed and without stating the reasons for the

(51). Coronata, Institutiones Iuris Canonici, I, n.419, p. 498, ft.nt. (4);
Augustine, A Commentary on Cannon Law, II, p.396;
Wernz-Vidal, Ius Canonicum, II, n.636;
Ayrinhac, Constitution of the Church in the New Code of Canon Law, n. 168.

removal. He should have a reasonable cause for the removal, but such is not necessary for the validity of act of removal, nor is there required any formality of summary or solemn procedure in removing him. (53). Of course, a Mission Ordinary may appoint a Vicar Delegate only after having taken possession of the Mission.(54).

33. Although the Letter of Propaganda was addressed only to Vicars and Prefects Apostolic the concessions contained in it are for all Mission Ordinaries, that is all Mission Superiors whether or not they have the title of Vicar or Prefect Apostolic. That Superiors of Independent Missions, that is, autonomous missions or *missiones sui juris*, may appoint a Vicar Delegate, or properly speaking, a Superior Delegate, was made clear by a private response of the Sacred Congregation of Propaganda. (55). Since the faculty to appoint a Vicar Delegate had been explicitly granted only to Vicars and

(53). Ybanez, *Directorium Missionariorum*, n.48.

(54). Canon 293, p. 2;
Coronata, o.c., I, n. 419, p. 498, ft.nt. (7);
Augustine, o.c., II, p. 396.

(55). Bouscaren, *Supplement*, p. 45-46;
Sylloge, n. 146.

Prefects Apostolic, the Holy Father was petitioned to extend the faculty to ecclesiastical superiors of autonomous Missions or *missiones sui iuris* - that is missions that are directly subject to the Sacred Congregation of Propaganda. At the same time it was petitioned that the Canons of the Code which refer to the Vicars and Prefects Apostolic might be applied in general, *servatis servandis*, that is, observing what is required according to the particular circumstances, to these independent Missions. These requests were granted by the Holy Father. Moreover, in another private response the Sacred Congregation of Propaganda left no doubt about the Superior of an independent Mission being an Ordinary. It stated that, while the Code does not list this Superior among local Ordinaries, an independent Mission or Mission *sui iuris* as a juridical institution is not a creation posterior to the Code, although it was only after the promulgation of the Code that the practice was developed and became established of the Sacred Congregation erecting such Missions with a determined territory and a proper ecclesiastical Superior. (56).

34. The Pro-vicar, Pro-prefect, and Pro-superior of a mission *sui iuris* may also appoint a Vicar Delegate, a Prefect Delegate or a Superior Delegate respectively. The Letter

(56). *Primum Concilium Sinense*, Bk.2,Pt.I,Tit.IV,(2): "Nomine Vicarii Apostolici et Apostolici Vicariatus, nisi ex contextu aliud appareat, veniunt etiam Praefecti Apostolici et Praefecturae Apostolicae, necnon Superiores missionum sui iuris et territoria in missiones sui iuris erecta."

of Propaganda conceded the power to nominate a Vicar Delegate to Mission Ordinaries, and Pro-vicars, Pro-prefec's and Pro-superiors are Ordinaries according to Canon 198 because they succeed in the rule of the Mission "ex iuris praescripto", that is from a prescript of the Law. (57). Besides, they also have, from the express declaration of the law itself, all the ordinary and delegated faculties of Vicars and Prefects Apostolic, except those committed to the Vicars and Prefects apostolic for personal reasons, and hence, can nominate a Vicar Delegate when they succeed in the rule of the Mission. (58). Of course, it must be remembered that during the lifetime of their Superior, Pro-vicars and Pro-prefects, as such, have no special powers, unless some such were comitted to them. (59).

35. If it happened that the Vicar or Prefect Apostolic, or the Pro-vicar or Pro-prefect, had not designated someone to take their place in case of need, the Senior missionary is to assume charge of the Mission. (60). The question arises as to whether the Senior may appoint a Vicar Delegate. Some deny that he has this faculty for, according to Can. 309, p.4, the Senior is only to be considered as a delegate of the Holy See, does not enjoy ordinary power, and hence, not being an

(57). Can. 309, p.1,2; which also applies to Pro-superiors of *Missiones sui iuris*, cfr. above, n.33.

(58). Can.310, p.2; Vromant, *Ius Miss.*, II, n.121; *Periodica*, XII, 1923, p.(2); Pugliese, in *Apollinaris VI* (1923) p.203.

(59). Can. 309. p.2.

(60). Can. 309, p.4.

Ordinary, cannot nominate a Vicar Delegate. (61). However, it seems more correct to say that the Senior can make the appointment of a Vicar Delegate because as successor to the rule of the Mission he has all the ordinary and delegated faculties which the Vicar Apostolic or Prefect Apostolic enjoyed, unless they were given them for personal reasons.(62). In view of the power granted to Mission Superiors by the Letter of Propaganda it seems that the Senior may also use this power when in charge of the Mission and appoint a Vicar Delegate.

36. The nomination of the Vicar Delegate should be con- signed to writing in accordance with Canon 159 which simply states that the provision of any office should be made in writing. (63). This will provide authentic proof of appoint- ment of the office and there seems no reason for saying that a written document is necessary for the validity of the pro- vision because there is no invalidating clause in the Canon. Unless there is a particular law demanding, otherwise the writing of the appointment is only for liceity, and different Missions have different forms of letters of nomination. From a practical viewpoint, alone, a document should be drawn up demonstrating the conferring of an office, as well as the limits and conditions of the nomination. Then, especially

(61). Pugliese, in Apollinaris VI, (1933) p.203, (29).

(62). Can. 310, p.2; Vromat, Ius Miss., II, n.121; Periodica, XV, 1928, p.71*/

(63). Can. 364, p.1.

when it is a question of jurisdiction, many difficulties and uncertainties that might easily arise will be avoided. However, there is no necessity of a formal taking possession of office by the Vicar Delegate. (64).

A Vicar Delegate must also note the prescriptions of Canon 364, p.2. regarding those nominated to a curia about taking the oath of office and promising to faithfully discharge their functions regardless of persons, without allowing themselves to be influenced by any consideration not concerning the affair being treated. Moreover, he must be careful about handling the matters entrusted to them by their Superior and according to the prescriptions of law. He must realize that he is bound to secrecy within the limits and according to the mode determined by law and the Superior, and even under oath if the Code demands it or the Superior requires it.

37. Ordinarily only one Vicar Delegate is to be constituted unless the diversity of rites or the size of the Mission demands otherwise; but, if the Vicar Delegate is absent or impeded from performing his functions the Vicar Apostolic may constitute another to supply for him. (65).

The first reason mentioned for appointing more than one Vicar Delegate is "Diversitas rituum", that is diversity of rite which exists when there are both Latin and Oriental

(64). Bouuaert-Simonon, Manuale I.C., I, n.318; Blet, Commentarium C.J.C., II, n.101, 395; Ojetti, Commentarium in C.J.C., III, p.40; Pugliese, in Apollinaris, VI(1933), p.211.

(65). Can. 366, p.3.

Catholics subject to the same Mission Superior. But the more frequent cause, especially on the Missions, is "amplitudo" or the size of the Vicariate, for it refers not only to the great number of quasi-parishes or souls to be cared for, but also to the extent of the territory itself which may be aggravated by lack of means of communication, or the grave inconvenience that is experienced in using whatever means of travel that are available. (66). It could quite easily happen that a mission region would be of such a nature that one part of it is practically cut off from the other as far as communication between them is concerned, e.g. by mountains, and such a condition would justify the Ordinary appointing a Vicar Delegate for either part, or even more than two if this were demanded for the good of souls under his jurisdiction. Of course, in conformity with the principle enunciated in Canon 368, p.1, these Vicars Delegate each would have jurisdiction in the whole territory of the Vicariate.

Although the Code only mentions the two cases of diversity of rite and size for appointing more than one Vicar

(66). An interesting question regarding this matter was asked in the Irish Eccles. Review (October 1920, p.327) as to whether a diocese of a total population of 368,000 of which 115,000 were Catholics, all of the Latin rite, extending over 720 square miles with excellent railroads and roads would be of sufficient "amplitudo" to justify its having two Vicars General, ex aequo. The answer pointed out no hard and fast rule can be laid down and if the Bishop in this case considers the size of the diocese such that one Vicar General does not provide properly for the government of the diocese he need not hesitate in appointing another.

General, or Vicar Delegate, the contrary practice derived from custom of nominating more than one, is not reprov'd and may be retained, subject to the usual conditions. (67).

38. When more than one Vicar Delegate is appointed they are to have jurisdiction "in solidum", that is full jurisdiction resides in each of them, and not "per modum collegii", which would mean they were to exercise their power only together as a corporation in which affairs are expedited through a majority and decisive vote. (68). This seems more fitting and more in conformity with the function of a Vicar Delegate, although, in practice, if there are several Vicars Delegate, various matters of a certain kind may be allotted to each or their administration may be arranged according to territory for a more speedy execution. However, in these cases absolutely exclusive administration regarding a certain species of affairs or regarding a definite territory is not to be committed to a Vicar Delegate.

39. If the Vicar Delegate is absent from the Mission

(67). Cfr. Can.5; The following interesting note is found in Dec.114 of the Plenary Council of Quebec, 1909, regarding the number of Vicars General in Canada: "Jure communi, in regione quoque nostra vigente, unus in unaqueque dioecesi nominandus est Vicarius ad universalitatem causerum. Attemen, stante sicuti diuturna consuetudine, plures Vicarios nominandi (quam consuetudinem Sancte Sedes nunquam ut illegitimam reprobavit, sed e contra pluries in praxi agnovit), fas est Episcopo duos saltem, dummodo in negotiis expediendis collegialiter non procedant, Vicarios Generales sibi constituere, praesertim ubi magna sit locorum distantia."

(68). Wernz-Vidal, o.c. II, n.636; Oesterle, Praelectiones I.C., I, p. 187.

or impeded from performing his functions then the Superior can constitute another missionary as a substitute Vicar Delegate or Vicevicar to take the place of the regular Vicar Delegate.

(69). This substitute Vicar Delegate might be given even greater powers than the regular Vicar Delegate, especially in the case where the Mission Superior and the regular Vicar Delegate are both going to be away at the same time leaving the rule of the territory in the hands of the Vicevicar, for in such circumstances wider faculties might be required for the proper control of the Mission.

Article 3. Qualifications of Vicars Delegate.

40. From the Letter of the Sacred Congregation of Propaganda which declares that the same things stated in the Code, "Can. 366, seq.", of the Vicar General apply to the Vicar Delegate, it seems quite clear that the qualities required in the Vicar General are also demanded in the Vicar Delegate, (70). Hence, he should be a priest, which quality is required for validity, since his office concerns the care of souls, and so a cleric not a priest could not be validly appointed a Vicar Delegate. (71). Moreover, he should be a priest of the secular clergy, and not less than thirty years of age, that is, it

(69). Can. 366, p. 3.

(70). Can. 367, I; Vromant, Ius. Miss., n.121, Periodica, XV, 1928, p.71*; Coronets, o.c. I, n.377, p.456, ft.nt. 8, who says in the Vicar Delegate is not required all the qualities demanded in the Vicar General.

(71). Can. 154.

suffices that he has begun his thirtieth year. This quality of age is not demanded for validity, as the canon makes no mention of validity. (72). He should have a doctorate or licentiate in theology and Canon Law, or be well versed in these sciences. The Vicar Delegate must be a man commendable for his sound doctrine. There is no reason now for maintaining that a native priest who has all the canonical qualifications may not be chosen as Vicar Delegate. (73).

41. The Code requires that the Vicar General be of the secular clergy and the same applies to the Vicar Delegate. Hence, he should not belong to a religious Order or Congregation. (74). But if the Vicariate were committed to some religion then the Vicar Delegate could be an alumnus of the same religion. (75). This often is the case in Mission countries, but it must be noted that the Mission has to be committed to the religious Order or Congregation, and not that the

(72). Can. 367, I; Wernz-Vidal, o.c. II, n.638; Cappello, Summa I.C., n. 487, who says that this quality of thirty years in the Vicar General seems to be demanded for validity from analogy with Can. 434, p.1, but such extension does not seem justified as this Canon 367, I, would have demanded the age for validity if this quality were so important.

(73). Pugliese, in Apollinaris VI, (1933) p. 199.

(74). Can. 367, p.1; Coronata, o.c. II, n.420, p.499, ft.nt.6; Ayrinhac, o.c. n.169; against Augustine o.c. II, p.399, who holds that religious with simple vows may be appointed Vicar General without the necessity of having a papal indult, but this is not probable because such a one is not of the secular clergy.

(75). Can. 367, p.2.

Superior happens to be a religious. If the Superior were a religious but the territory was not committed to his religion he could not choose a member of his order or congregation as Vicar Delegate.

42. The office of Vicar Delegate is not to be committed to the blood-relations of the Vicar or Prefect Apostolic, or of the Superior of a Mission sui iuris, particularly relatives in the first or second degree mixed with the first, such as are brothers, uncles or nephews, lest there be undue influence. Quasi-pastors, as pastors, should not be appointed to the office of Vicar Delegate for this would interfere with the care of the souls under their charge as pastors. But the Vicar Delegate may be chosen from the Vicariate to which he belongs. The old law did not permit choosing the Vicar General from the diocese to which he belonged lest he should not sufficiently be independent, although this was licit in some countries and finally the Code declared the custom licit. (76).

Article 4. The Vicar Delegate when the See is Impeded.

43. As we have seen in the old law, Benedict XIV had provided against the missions being left without a head through the Constitution "Ex sublimi" and "Quam ex Sublimi" which imposed on Vicars Apostolic the obligation of appointing a

(76). Can. 367, p.3; Wernz-Vidal, o.c. II, n.804,11;
Ayrinhac, n.169, (d);

Vicar General or Pro-vicar with the right of succession,(77). Thus, the Pro-vicar had, as it were, a two-fold office, that of Vicar General while the Vicar Apostolic lived and that of Pro-vicar with the rights of Vicar Capitular when he succeeded. But the new Code of Canon Law changed the legislation in this regard, abolishing, in fact, the office of a mission Vicar General and retaining only that of the Pro-vicar or Pro-prefect. (78). It stated that Vicars and Prefects Apostolic were to appoint a Pro-vicar or Pro-prefect as soon as they entered their territory, unless they had been given a coadjutor with future succession by the Holy See. Unless some power were committed to them by the Mission Superiors they had no powers during the lifetime of the Vicars and Prefects Apostolic. But, lacking the Vicar or Prefect Apostolic, or when their jurisdiction was impeded according to the norm of Can. 429, p.I, the pro-vicar or Pro-prefect was to assume the whole rule of the Mission and continue in it until the Holy See provided otherwise. (79).

44. However, this was the legislation before the Letter of Propaganda by which Mission Ordinaries received the power to constitute Vicars Delegate. The question that is to be considered now is the position of the Vicar Delegate, "sede impedita", that is, when the see is impeded, in respect to

(77). Jan. 25th, 1753 and Aug. 8th, 1755 -- Collectanea, S.C. de P.F., n. 161, 162 respectively; see above p.8 - 9.

(78). Can. 198, p.1, 309.

(79). Can. 309, p.1, 2.

the Pro-vicar and Senior. The answer is not to be found in the Code in Can. 309 regarding succession in the Mission because this does not take into consideration the new Mission legislation, in the light of which the matter must be treated.

45. A Vicariate, Prefecture, or Mission sui iuris becomes impeded in the legal sense of the term when the Superior, while still holding legitimate title to the see, is prevented from exercising jurisdiction in it because of a physical or canonical obstacle, or from an intrinsic or extrinsic impediment. Hence, his office does not cease to exist but the exercise of his jurisdiction is prevented. (80). From Canon 429, p.1, it is seen that a see is physically impeded when the Superior is prevented from ruling it so that he cannot even communicate with his subjects through letter because of his captivity, relegation or exclusion, exile or inability.

46. Captivity causes the see to be impeded when through force the superior is deprived of his natural liberty. This can occur in one's own country or one's own residence if he is so under the power of another that he cannot communicate with his subjects, even by letter. It doesn't matter whether the

(80). Ayrinhac, o.c. n.215; Augustine, Rights and Duties of Ordinaries, p.164, where he calls the see being impeded a "vacancy de facto or quasi-vacancy", and then adds, "the actual incumbent still holds legitimate title to the see, but is momentarily prevented from exercising his jurisdiction, as happened at Cologne in 1837 and is happening under the Soviet government in Russia": Cance, Le Code de Droit Canonique, I, n.378 where he calls the see impeded equivalent or interpretative vacancy."

captivity is caused by heretics, schismatics, pagans or one's own countrymen. On the Missions it is easy to see how the Superior might be captured and held by bandits. Relegation or exclusion from the Mission occurs when the superior is detained outside the place of his residence in a territory clearly determined by public authority. Exile is expulsion from one's country, province, state or place of residence but confined to no determined limits as is the case in relegation. (81). Inability, which renders the administration of a Mission impossible, may be due to corporal or mental infirmity, as in the case especially of insanity; and it matters not whether the inability is culpable or inculpable.

47. According to Canon 429, p. 5, a Bishop becomes unable to rule his diocese and exercise jurisdiction if he falls under excommunication, interdict or suspension. This constitutes a canonical impediment that we will consider later in the question of the cessation of the office of the Vicar Delegate. (82).

48. When the Mission see is impeded according to the norm of Can. 429, 1, it is the Vicar Delegate who is to assume the rule, and not the Pro-vicar, Pro-prefect or Pro-superior. There are some authors who hold that in

(81). Cfr. Can. 2298, p. 7, 8.

(82). See Ch. V. Art. 4.

this case the Pro-vicar is to assume the rule of the Mission in virtue of Can. 209, p. 2. (83). While this opinion would have had to be admitted after the Code and before the Letter of Propaganda, because then Mission Ordinaries were unable to constitute a Vicar General or Vicar Delegate, it does not seem tenable since the power of constituting Vicars Delegate has been granted and of whom "eadem valent quae de Vicario Generali in Codice I. C. statuta sunt. (Can. 366 et seq.)", as the Letter itself states. But the Vicar General of a diocese assumes the rule when the Bishop is impeded from exercising the jurisdiction, and hence, the Vicar Delegate, likewise, is to assume the rule of the Vicariate when the Vicar Apostolic is impeded

(83). Ayrinhac, o.c. n.104; Sartori, Enchiridion Canon-icum, p. 60-61; Cance, o.c. I, n.301, who adds that it is not the Vicar Delegate who is to assume the rule "sede impedita"; Vromat, Ius Miss., II, n 223, 5, who says that "deficiente Praesule missionis" the Pro-vicar and Pro-prefect are to be preferred to the Vicar Delegate because they possess ordinary power, while the Vicar Delegate, he maintains, has only delegated power; Vermeersch, in the Periodica, XII (1923) (4) - (5) who holds also "deficiente Vicario vel Praefecto Apostolico" or when the see is impeded that the Pro-vicar or Pro-prefect is to assume the rule of the Mission, and can revoke the Vicar Delegate; but if they do not revoke him the Vicar Delegate will keep his general delegation. But in Epitome I. C. (edito sexta, 1937) the opinion regarding the question is different as we shall see in the next note, (84).

from exercising jurisdiction. (84).

49. While it is true that the Vicar Delegate may also be appointed Pro-vicar, yet when the see is impeded, and not vacant, he will succeed as Vicar Delegate, not as Pro-vicar. The Pro-vicar will not assume the rule unless the see is vacant. For these two offices are distinct and the Pro-vicar and Vicar Delegate are two distinct personalities, although the same person who has been nominated Vicar Delegate may also be appointed Pro-vicar, because when he could act as Pro-vicar his office as Vicar Delegate would already have ceased.

50. When the See is impeded and there is no Pro-vicar or Pro-vicar who has been appointed, the question might be raised as to whether there is any conflict between the rights of the Senior and Vicar Delegate. (85). Again, the same solution is to be followed. Because the see is only impeded and not vacant the Vicar Delegate will assume the rule of the Mission, as above in respect to the Pro-vicar.

(84). Coronate, o.c. I, n.376, p.455, ft.nt. 8; Winslow, p.68-69; Vermeersch-Creusen, Epitome, I, n. 429: "Sede impedita, i.e. Vicario vel Praefecto impedito, Vicarius Delegatus regimen assumere potest et debet, ut videtur. Non deficit enim Vicarius vel Praefectus neque plene impeditur sedes, quoad Vicarius delegatus jurisdictionem suam exercere potest. Quos ex analogia can. 429 confirmari possit. Si opponatur c.309, 2, responderi possit Codicem nominationem Vicarii Delegati non considerasse"; First Council of China, n.77 which states "Sede vacante, jurisdictio Vicarii Delegati expirat, et totum regimen assumit Pro-vicarius vel Pro-praefectus Apostolicus, nisi S.Sedes aliter providerit," but no mention of his jurisdiction expiring "sede impedita".

(85). Can. 309, p. 4.

CHAPTER II.

Powers of the Vicar Delegate.

Article I. Nature of the Power of the Vicar Delegate.

51. Before treating of the nature of the power of jurisdiction possessed by the Vicar Delegate we must consider briefly the notion of jurisdiction itself.

In general, jurisdiction may be defined as the public power of ruling subjects in order to lead them to the end of a perfect society, and it includes legislative, judiciary, administrative, and coercive power which the legitimate authority of a perfect society possesses to govern its subjects and direct them to their end. (1). Thus, ecclesiastical jurisdiction may be defined as the public power which was granted to the Church by Christ to rule the faithful for the attainment of eternal life. (2). Jurisdiction, civil or ecclesiastical, is said to be a public power because it tends to the good of the whole perfect society, as distinct from private or dominative power that pertains to an imperfect society such as is exercised by a father over his children,

- (1). Reiffenstuel, Jus Can. Universum, Bk. I, Ch. IV, Tit. XXIX, I, n. 1 sq.; Pirhing, Jus Can. Nova Methodo Explicatum, Bk. I, Tit. XXXI, Sec. I, n. 1; Coronata, Institutiones J. C. n. 276, p. 329; Cocchi, Commentarium in Codice J. C., II, n. 113; Tessier, Jurisdiction Delegue "Ab Homine", p. 1 - 2.
- (2). Can. 196; Coronata, o.c. I, n. 276, p. 329-330; Cocchi, o.c. II, n. 113; Vermeersch-Creusen, Epitome J. C. I, n. 312.

by a husband over his wife, by a teacher over his pupils, or by a master over his servants. (3). Jurisdictional power in the Church is of divine institution because it came from Christ Himself. (4). Since the power of jurisdiction is the power to govern by laws, judgments, and penalties, it is distinguished from the power of orders in the Church which pertains to the sanctification of the faithful, directly and immediately, through the confectio and administration of the sacraments and sacramentals. (5).

52. As regards the forum in which ecclesiastical jurisdiction may be exercised, it may be either of the external or internal forum. (6). Power in the external forum primarily and directly regulates the social actions of the faithful regarding the public or common good of the Church. Power in the internal forum primarily and directly pertains to the private actions of the faithful, and the private good or conscience of the individual is primarily concerned. Jurisdiction in the internal forum is further divided into sacramental and non-sacramental jurisdiction. The former is exercised in the tribunal of Penance while the latter is

(3). St. THOMAS, Summa, IIa, IIae, q.58, art. 7, ad 2,3; Schmalzgrueber, Jus Ecclesiasticum Universum, Bk.I, Tit, XXXI, n. 32 sq., Cocchi, o.c. II, n. 114; Miaskiewicz, Supplied Jurisdiction according to Can. 209, p. 89; Tessier, o.c., p. 2.

(4). Can. 196.

(5). Blat, Commentarium, II, n.40, p.57; Bouusert-Simonon, Manuale J.C., n. 265, 2; Coronata, o.c. I, n.168, p.199; Tessier, o.c. p.3.

(6). Can. 196.

exercised outside the sacramental forum. (7).

As regards the manner in which jurisdiction is exercised, it may be non-judicial and voluntary, or judicial and contentious. The former is that exercised without formal judicial process, while the latter is exercised with formal judicial process. (8).

Regarding the extension of its application, jurisdiction is either universal or particular. It is universal in character when it is unrestricted as to place, object, time or person and such is exercised only by the Holy Father and Oecumenical Councils. (9). It is particular when it is restricted in some way as to place, time, persons or object, as through reservations or exemptions. (10).

53. As regards the title upon which jurisdiction is possessed it is divided into ordinary and delegated jurisdiction and this is the principal division of ecclesiastical jurisdiction, (11). This division of jurisdiction is adequate and specific, embracing the whole genus of jurisdiction, dividing it completely and perfectly into the two species, ordinary and delegated.

(8). Cocchi, o.c. n. 116, (3); Tessier, o.c. p. 7.

(9). Canons 218; 228.

(10). Cfr. Canons 615, 893, 2245, 2246, 2247.

(11). Can. 197, p. 1: "Potestas jurisdictionis ordinaria ea est quae ipso jure adnexa est officio; delegata quae commissa est personae".

Ordinary power of jurisdiction, according to Canon 197, p. 1, is that which is attached to an office by the law itself. Hence, there are the two elements to be considered, that the power is attached to an ecclesiastical office, and that it is attached to the office by the disposition of the law itself. Ordinary power will be obtained, therefore, when an ecclesiastical office in the strict sense is obtained, and to which the law itself attaches such power in a stable manner. (12). Ordinary power is possessed by many persons in the Church, such as the Holy Father for the Universal Church, residential Bishops in their dioceses, etc. (13).

54. Ordinary power of jurisdiction may be either proper, or vicarious. (14). Proper ordinary power of jurisdiction is that which one exercises in virtue of one's office and in one's own name. Vicarious ordinary power is that exercised in virtue of one's office, not in one's own name, but in the name of another. They have a common element in that they are exercised in virtue of one's office but differ, in that the one with proper power exercises it in his own name while he with vicarious power exercises it only in the name of another, that is in the name of him whose vicar he is. Thus, a residential Bishop when he

(12). Can. 145, p. 1-2.

(13). Can. 218, p.1, 329, 334, p.1, 335, p.1.

(14). Can. 197, I.

exercises his ordinary power is acting with proper power of jurisdiction because he acts in his own name, while his Vicar General in exercising ordinary power is acting from vicarious power because he exercises it in the name of the Bishop whose Vicar he is.

55. Power of delegation is delegated when it is committed to a person, so that the power is not properly that of the one delegated but that of the one delegating. (14). Hence, as distinct from ordinary power of jurisdiction, delegated power is not attached to an office, or if the law does attach it to an office it is an office in the wide sense only. An example of this would be when the law concedes some power to a determined class of persons or to an office in the wide sense such as to missionaries, confessors, preachers, etc. for these do not possess an office properly so called. Power of jurisdiction is also delegated when it has not been attached to an office by the law, so the faculties even perpetual granted to Ordinaries by the Sacred Congregations or the Holy Father must be considered as delegated because they are not annexed by the law to the office of the Ordinary. But it must be remembered that power may be delegated by the law in which case it is immediately committed to a person by the authority of the law itself, and thus differs from ordinary power that is attached by law to an office and reaches a person through (14). Can. 197, I.

the intermediary of the office. (15).

56. Delegated jurisdiction may be either delegated "a jure" or "ab homine". Jurisdiction delegated "a jure" is that which one obtains by commission from the law itself, and which is granted to certain persons in virtue of a general mandate contained in the law, as, for example, by a delegation of the law all priests even though not approved to hear confessions can validly and licitly absolve in case of danger of death any penitent of any sin or any censure. (16). Jurisdiction "ab homine" is that which one obtains from a competent superior who has the faculty to communicate power to another.

57. Delegation may be special or universal according as it is for a particular case or for a determined number of cases, or according as it is conceded for the universality of cases, "ad universitatem causarum", when one receives delegation for all the affairs falling under ordinary jurisdiction or for a species of affairs without any particular cases being determined. (17).

Delegation may be personal or real, according as it has been conceded in consideration of the person himself who has been delegated or in view of a certain quality possessed by that person which led to his being delegated, so is said to be "electa industria personae", or according as it has been

(15). Tessier, p.18-24; Coronata, o.c. I n.295, p.341.

(16). Can. 882; 2252.

(17). Can. 199, p.3.

conceded in view of the office one holds. (18).

58. Finally, we must recall the general principles of delegation of jurisdiction as expressed by the Code itself. Anyone who has ordinary power of jurisdiction may delegate it either "ex toto", that is completely and without reservation, or "ex parte", that is only a part of the jurisdiction one possesses is delegated or the delegation is only for a certain number of cases, unless the law expressly declares otherwise. An example of the law declaring that ordinary power may not be delegated is the case of pastors who have ordinary power to absolve their subjects but cannot delegate this power. (19).

Power of jurisdiction delegated by the Holy See can be subdelegated either "ad actum" (that is, for one act), or "habitualiter", (that is without limit as to time, person, or matter) unless the delegation had been conceded "industria personae" or subdelegation was prohibited. (20). Power delegated "ad universitatem causarum" by one beneath the Roman Pontiff with ordinary power, can in individual cases be subdelegated. (21). Hence, if a Vicar Apostolic delegated a missionary for a universality of affairs that missionary could subdelegate his power, but only in individual cases, for one act.

(18). Can. 199, p.2.

(19). Can. 199, p.1; Can.873, 874, p.1, 875, 1, and Pont. Comm. for Interp. of Code, Oct. 16,1919 - A.A.S.,XI (1919), p. 477.

(20). Can. 199, p. 2; Augustine, Commentary, II, p.176.

(21). Can. 199, p.3.

In other cases delegated power of jurisdiction can only be subdelegated from express concession, but an act that is not jurisdictional e.g. to receive an oath from witnesses, may be subdelegated by delegated judges even without express commission. (22). But no subdelegated power may be again subdelegated unless this was expressly conceded, lest the process of subdelegation go on indefinitely. (23). Thus, a missionary to whom a Vicar Apostolic or Vicar Delegate subdelegated faculties granted to him by the Sacred Congregation of Propaganda cannot subdelegated) them unless this power were expressly conceded by the Sacred Congregation.

Moreover, power of jurisdiction that is ordinary or delegated "ad universitatem causarum" is to be interpreted widely; all other must be interpreted strictly; however, in delegated jurisdiction all those faculties are understood to be conceded without with the exercise of the jurisdiction would be impossible. (24).

59. From this consideration of the various species of jurisdiction it can be seen that the question of whether or not the Vicar Delegate has ordinary power of jurisdiction is of great importance, and not without practical importance as some authors seem to think. (25). On the answer to this

(22). Can. 199, p.4.

(23). Can. 199, p. 5.

(24). Can. 200, p. 1.

(25). Cappello, Summa I.C., I, n.350.

question will depend such consequences as whether the Vicar Delegate can delegate his power "ad actum" or "ad universitatem causarum", and whether once delegated it can be subdelegated.

60. As we have seen, ordinary power of jurisdiction may be delegated "ad actum" or "ad universitatem causarum", unless the law expressly forbids. (26). A question that might be raised is whether or not before the Letter of Propaganda Vicars Apostolic could designate some cleric as their delegate "ad universitatem causarum". Evidently, from the cited canon 199, p. 1, they could do so before the Letter and may still do so whether they appoint a Vicar Delegate or not. But it was clear that such a delegate could only subdelegate the power he had received in individual cases, and he was to have his "munus" or function specifically determined e.g. for granting dispensations over certain matrimonial impediments, for conferring jurisdiction on missionaries, etc. If the power these delegates received was "ad beneplacitum nostrum", that is to last during the reign of the one conceding it or until such time as the one conceding it revoked it, or some equivalent term was used in conceding it, then their jurisdiction ceased with the cessation of the power of the Mission Ordinary. (27).

(26). Can. 199, p. 1.

(27). Vermeersch, *Periodica*, XIII (1924), (2); Winslow, *Vicars and Prefects Apostolic*, p.72; Pugliese, *Apollinaris*, 1933, p.203.

61. There is considerable controversy as to whether or not the Vicar Delegate, who may be appointed by Mission Ordinaries in virtue of the Letter of Propaganda, has ordinary power of jurisdiction or only delegated power.

Some authors hold to the opinion that the Vicar Delegate has only delegated power. (28). We will sum up the arguments that they use in support of their opinion:

62. a). By the Letter of Propaganda the power to nominate a Vicar General was denied to Mission Ordinaries, and the power to nominate a "Vicar Delegate" was conceded. The very name Vicar Delegate, then, they say, confirms their opinion that his power is only delegated and not vicarious ordinary power as is that of Vicars and Prefects Apostolic. The Vicar Delegate then exercises by way of delegated power only jurisdictional faculties as the Vicar General in a diocese exercises by way of ordinary power.

63. b). Mission Ordinaries possess ordinary power of jurisdiction. However, their ordinary power is vicarious not proper because it is exercised not in their own name but in that of the Roman Pontiff. They are as the Vicars General

(28). Vromant, *Introd. et Norm. Generales*, N.148, p. 182, (2) *Jus. Miss.* II, n. 122; Vermeersch-Creusen, *Epitome*, I, n.405; Vermeersch, *Periodica*, XII (1923), (4); Sartori, *Enchiridion Canonicum*, p.61; Cappello, *Summa J.C.*, I, n.350; Oesterle, *Praelectiones, J.C.*, p.161; Cocchi, II, n.226, p.149, *Scholion*, II; Bouuaert-Simenon, *Manuale J.C.* I, n.454; Doheny p.52; *Directoire General des Missions (Cong.de Saint Esprit)* n.31; Payen, *De Matrimonio in Missionibus*, II, n.1761 his; Raus, *Institutiones Canonicae*, n.III, 11; Prince, *The Diocesan Chancellor*, p.94; Michiels, *Normae Generales*, II (1929), p.184.

of the Holy Father in Mission lands and he is the real Bishop of such territory. (29). Those who can constitute a Vicar General by virtue of the common law may do so because they have proper ordinary power, not vicarious ordinary power, for they exercise their power in their own name. Hence, the Vicar General appointed by them has vicarious ordinary power, that is power exercised in the name of the one who constituted them. He forms one tribunal with the Ordinary who appoints him and his power ceases when the Ordinary's power ceases. But if Mission Ordinaries, Vicars and Prefects Apostolic or Superiors of Independent Missions, could nominate a vicar with ordinary power, as the Vicar General of residential Bishops is appointed, then one with vicarious ordinary power would be nominating another with vicarious power in the same territory, based on the same title, and of the same nature and amplitude. This, they say, is repugnant, namely, that such "vicars" of Mission Ordinaries should be exercising the same ordinary power as the Mission Ordinaries themselves exercise "vie et nomine", in the place and name of, the Holy Father.

64. In support of this they quote Schmalzgrueber as stating that it is repugnant for one and the same jurisdiction to be possessed by two persons "in solidum", just as it is no less repugnant to natural reason that one and the same

(29). Can. 1350, 2.

thing he possessed by two "in solidum". (30). But he points out that it is not repugnant that the Bishop possess jurisdiction "principaliter et nomine proprio", (that is, principally and in his own name), and the Vicar General possess it "accessorie, secundario, et nomine ipsius Episcopi", (that is in an accessory, secondary way, and in the name of the Bishop). As an example, Schmalzgrueber gives that of a legate of the Pope who takes the place of the Holy Father, ("qui vices istius gerit") yet has ordinary power because he has it from a proper office. (31). From this, they argue, that it would be anomalous for a person to be the vicar of a vicar, and such would be the case if the Vicar Delegate possessed ordinary power, rather than being the delegate of the Mission Ordinary.

65. Other authors hold that the Vicar Delegate possesses ordinary power of jurisdiction, and not merely delegated power. (32).

(30). Schmalzgrueber, Jus Eccles. Universum, Bk.I,pt.IV, Tit.XXVIII, n.18; "...absurdum ut una, eademque jurisdictio penes duos in solidum sit; quod non minus pugnet rationi naturali, ac eidem pugnet, unius, ejusdemque rei possessionem penes duos in solidum esse".

(31). Schmalzgrueber, l, c.n. 20.

(32). Coronata, Institutiones, I, n.377, p.456; Winslow, Vicars and Prefects Apostolic, p.67-68; Pugliese, Appollinaris, 1933, p.209-214; Vercauteren, Jus Pontificium, 1931, p.75 seq.; Ybanez, Directorium Missionariorum, n.48; Kelly, Jurisdiction of the Confessor, p.43; Comyns, Papal and Episcopal Administration of Church Property, p.67-68; Harrigan, The Radical Sanation of Invalid Marriages, p.138-139; Edward M.Reilly, The General Norms of Dispensation, p.55, ft.nt.12; Donovan, The Pastor's Obligations in Pre-nuptial Investigation, p.66; Thomas Francis Reilly, Visitation of Religious, p.85.

The arguments that support this opinion may be summed up as follows:

a). The Vicar Delegate is not merely a delegate "ad universitatem causarum". This is clear from the Letter of Propaganda which states that the Mission Ordinaries had had the power to nominate a delegate with functions determined in individual cases. (33). Also, as indicated above, Mission Ordinaries since they had ordinary power could delegate it "ex toto" anyway from the common law of the Code in Can.199, p.1, so that the Letter did not concede power only to appoint someone with power delegated "ad universitatem causarum", for this would only be granting what they could do already. But the Vicar Delegate, whom the Mission Ordinaries were given the faculty to nominate, possesses an office and his jurisdiction is so connected with the office that it goes by right with appointment to that office for the Letter states: "De numero et de officio Vicariorum Delegatorum.....eadem valeant quae de Vicario Generali in Codice I.C. statuta sunt". What the Vicars Delegate as such do they do by reason of their office, as does the Vicar General, and not from mere commission, as would a delegate. Thus, their power is ordinary because it is attached to their office by the law itself, that is by the Letter of Propaganda conceding to Mission Ordinaries the power to constitute Vicars Delegate of whose office the

(33). Winslow, o.c. p.67; Pugliese, Apollinaris, 1933, p.209.

same things are to be said as are stated of the office of the Vicar General, in Can. 366 seq. In this first canon (Can.366) referred to explicitly by the Letter of Propaganda it is stated that the Vicar General has ordinary power.

66. b). If the power of the Vicar Delegate is not ordinary how can these words of the Letter of Propaganda be explained, namely, "cui practice concessa sit omnis jurisdictio in spiritualibus et temporalibus, qua ex Codice I.C. uti potest Vicarius Generalis in dioecesi"? The Letter, therefore, concedes to the Vicar Delegate practically all the jurisdiction in spiritual and temporal matters that the Vicar General of a diocese has from the Code of Canon Law. Obviously, then, the power of the Vicar Delegate is to be interpreted after the manner of the power of the Vicar General, since it is to be practically the same. As we have seen, the power of the Vicar General is ordinary, and consequently so is that of the Vicar Delegate. (34).

67. c). The words of the Letter stating that practically all jurisdiction in spiritual and temporal affairs which the Vicar General of a diocese has are conceded to the Vicar Delegate indicate that the latter has all the faculties practically of the former. But if the Vicar Delegate was merely a delegate then his powers and faculties would depend

(34). Pugliese, Apollinaris, 1933, p.209.

solely upon the will of the Mission Ordinary conceding to them what they wished. If this were so the words of the Letter of Propaganda by which there is granted "omnis jurisdictio in spiritualibus et temporalibus" would be quite pointless, for the Vicar Delegate would have nothing proper, and only what the Mission Ordinary was pleased to delegate to him. As the Vicar General in a diocese has ordinary power of jurisdiction "in spiritualibus ac temporalibus" in virtue of the office he holds, so also the Vicar Delegate.(35).

68. d). The power that the Vicar Delegate obtains "vi officii", that is by virtue of his office, and without any act of the Mission Superior other than appointment to the office being required, is of its nature ordinary power. Like the Vicar General the Vicar Delegate possesses an office in the strict sense and he obtains his power in virtue of that office.

69. An ecclesiastical office in the wide sense means any charge which is exercised for a spiritual end. An ecclesiastical office in the strict sense, however, means some charge or position stably constituted by divine or ecclesiastical law, to be conferred according to the norm of the sacred canons, and carrying with it at least some participation of ecclesiastical power, either of orders or of

(35). Can. 368, p.1; Can.366,p.1; Pugliese,Apollinaris, 1933, p.209.

jurisdiction. Moreover, in law an ecclesiastical office is always to be taken in the strict sense unless the context indicates otherwise. (36).

70. The office of the Vicar Delegate is similar to that of the Vicar General, and like the Vicar General has ordinary power attached to it. For no element is lacking in the office of the Vicar Delegate that is required in an ecclesiastical office in the strict sense. It is a charge, a "munus", that is a cumulus of rights and obligations, as the Letter of Propaganda clearly indicates, in stating that of it "eadem valeant quae de Vicario Generali in Codice, I.C." and a glance at the relative canons, e.g. Can. 367, p.3, 368, p.1, confirms. It has been instituted by ecclesiastical ordination, namely, the Letter of the Sacred Congregation of Propaganda expressing the will of the Supreme Legislator, the Holy Father. The office of the Vicar Delegate, moreover, is stable because created in perpetuum as is seen from the words of the Letter: "Ex hac concessione, omnibus Superioribus Missionum facta, nunc tu poteris Vicarium Delegatum nominare.....". Without any limitation of time Mission Ordinaries were granted the power to constitute Vicars Delegate. Because this concession was made for all time it is not included in the general faculties of Mission Ordinaries which the Congregation of Propaganda gives them, (37); and it will endure until

(36). Can. 145, p.1-2.

(37). See Appendix II.

a new law revokes it. The office of the Vicar Delegate is to be conferred "ad normam sacrorum canonum", namely, by the nomination of the Mission Superior. This nomination is made freely, and has the power of jurisdiction attached to it, which the person nominated to the office enjoys, as is indicated by the Letter, by the words, "omnis jurisdictio in spiritualibus et temporalibus". (38).

71. The manner of speaking used in the Letter confirms all this. It speaks at first of the power that mission Ordinaries have of nominating a delegate "cum muneribus in singulis casibus determinandis", while it later refers to the office of the Vicar Delegate, "de officio Vicariorum Delegatorum", clearly distinguishing the two which would not be necessary if the Vicar Delegate had only delegated power. Moreover, the power which the Vicar Delegate obtains comes to him by reason of his office without any further act of the Superior being required, so that there is nothing lacking for saying that his power is ordinary. In treating of the power of the Vicar General and why it is ordinary power Reiffenstuel offers as the principal foundation for the conclusion that it is ordinary, the fact that it comes to him by reason of his office from the law itself. Nor may it be objected that the Bishop constitutes the Vicar General for himself because it is the law that immediately gives him jurisdiction

(38). Pugliese, *Apollinaris*, 1933, p.210; Vercauteren, *Jus Pontificium*, 1931, p.75-76.

and the Bishop acts as medium only as the one nominating or constituting him, not as the one giving jurisdiction, (39). All of these things that Reiffenstuel points out as demonstrating that the Vicar General of a Bishop has ordinary power are verified also in the case of the Vicar Delegate of Mission Ordinaries, as the text of the Letter of Propaganda makes clear.

72. Therefore, we conclude from the arguments advanced in favour of the second opinion that the Vicar Delegate by virtue of his office obtains ordinary power of jurisdiction. Not only from the positive arguments themselves may we conclude this but also because the arguments of the negative opinion, namely that the Vicar Delegate has not ordinary power but only delegated power, cannot be sustained:

73. a). Regarding the term "Vicar Delegate": As we have seen, some argue that the very name Vicar Delegate is proof that he has only delegated power. But the name of the holder of an office does not always adequately correspond to

(39). Reiffenstuel, Bk. I, pt. IV, Tit.28, n.92: "...jurisdictione quae a lege, seu canone ratione officii, seu dignitatis cuiusdam conceditur, est ordinaria...Atqui Vicarius Generalis Episcopi habet jurisdictionem a canone, et ratione sui officii sibi commissam....: ergo. Nec obstat, quod Episcopus instituat seu constituat sibi vicarium generalem. Nam eo ipso, quod is constitutus fuit ab Episcopo, Jus tribuit ipsi jurisdictionem, et quidem immediate.....Etsi enim Episcopus mediet quasi nominans et instituens, non tamen mediat quasi dans jurisdictionem...."

the power or the office that the person holds. An example best demonstrates this. Representatives of the Holy Father are divided into three classes: Legates, *a latere*, Nuncios and Internuncios, and Apostolic Delegates. (40). If one were to argue from the name of an official to the nature of the power that he possesses one would say that Apostolic "Delegates" possess only delegated power. Actually, Apostolic Delegates possess ordinary power, as the Code explicitly states. (41). Hence, too, much significance must not be attached to a name for from it alone one may not always conclude that the name signifies the nature of an office or its power. (42). The term Apostolic Delegate is used to distinguish the type of representative of the Holy Father that this official is. For where the circumstances warrant it a Nuncio or Internuncio is sent to represent the Pope, otherwise an Apostolic Delegate. The terms are used to distinguish the way in which these officials represent the Holy Father, for while the Apostolic Delegates have the same ordinary and delegated powers as Nuncios or Internuncios, they do not deal officially with the civil authorities of the country. (43).

(40). Can. 265-267.

(41). Can. 267, p.2.

(42). Maroto, *Institutiones*, I.C.,n.704, p.828, ft.nt.I,
".....At ex solis nominibus non licet semper rem con-
cludere; nam etiam Vicarii et maxime Legati ex vi
nominis idem essent ac Delegati."

(43). Ayrinhac, *o.c.*,n. 73, p. 91.

Just as the term Apostolic Delegate does not indicate the nature of the power that he possesses neither does the name Vicar Delegate.

74. Other examples of the same kind may be easily found. In a private response of the Sacred Congregation of Propaganda as to whether or not Vicars Apostolic could appoint the officialis of the Curia, mentioned in Can. 1572, it was stated that the Holy Father granted, "ad cautelam" (that is, for the sake of safety) to Vicars Apostolic the power to appoint the "Officialis" of Can. 1572 and all the faculties that the Code gives to the Officialis of the diocesan curia were attributed to him. But as regards the name it was stated that he might be called the "Officialis Delegatus" or the "Pro-officialis". (24). Apparently, whether he was called Pro-official or Official Delegate in no way affected the powers he possessed because they were the same, and it seems that the name given the Mission Officialis was simply to distinguish him from the Officialis of a diocesan curia, for the same situation does not exist on the Missions as in the territory of a residential Bishop, yet the Mission Officialis has the same powers as the diocesan Officialis.

75. The Vicar Delegate is not called a Vicar General, although he has "practice" the same power, because the situation on the Missions differs from that of a diocese where

(44). Sylloge, n.127.

a well-established hierarchy exists, and the official on the Missions who performs functions similar to those of the diocesan Vicar General should be distinguished from the Vicar General of residential Bishops. When Rome designates a residential Bishop it grants to him the faculty to appoint a Vicar General who has the power and faculties that are attached to the office of Vicar General, and who has ordinary power in the whole diocese. (45). But it must be remembered that a residential Bishop rules his territory in his own name, while in a Vicariate, Prefecture or Mission sui juris, is a Mission Ordinary who rules the territory in the name of the Holy Father. In a Mission where the hierarchy has not yet been fully established and a diocese not yet formed, the Mission Superior is nevertheless "ad instar episcopi residentialis" (that is, corresponds to a residential Bishop) with due consideration for different circumstances), and he has ordinary though vicarious power. As the Mission Superior is "ad instar" of residential Bishops, so also will their helpers in the government of the Mission be "ad instar" of the helpers of a Bishop in a diocese. Hence, the comparison between the Vicar General of a residential Bishop and the Vicar Delegate of Mission Ordinary. But they should not be compared apart from their respective territories and offices.

(45). Can. 366.

The Vicar Delegate is to the Vicariate what the Vicar General is to the diocese. It was seen that Vicars Apostolic would need help in the rule of the Vicariate so a Vicar Delegate was granted to them, and he was to have "practice" the same power as the Vicar General in a diocese. For the same reasons that it is expedient for the Vicar General to have ordinary power, and we might say that in consideration of the difficulties peculiar to Missions, such as communication, size of territory, etc. often it seems even more expedient for the Vicar Delegate to possess ordinary power of jurisdiction. But to distinguish him from the Vicar General of a diocese a different name is given to this Mission official.

76. The word "practice" used in the Letter of Propaganda when it states that the Vicar Delegate has practically all the jurisdiction in spiritual and temporal things as has the Vicar General from the Code, creates no difficulty as to whether he has ordinary jurisdiction. As Vercauteren points out, we use the word "practice" in moral matters to signify "visis adjunctis", "omnibus perpensis", (that is considering all the circumstances), in opposition to the terms "theoretice", (theoretically), and "inspectis principiis", (in consideration of principles). So also in Canon Law and in the case here considered, "practice" means *inspecto jure*" (i.e. Can. 198) the Vicar whose nomination is conceded by the Letter of Propaganda is not a Vicar General, but "practice" or "in exercitio", (in the exercise of his office), and "viso

opportunitate", (seeing the opportuneness of such), is endowed with the same power. (46). Hence, the Vicar Delegate is considered equivalent to the Vicar General, e.g. as religious are considered equivalent to clerics as regards privileges, (47), or as societies living in common without vows in many things are considered equivalent to religious. (48).

77. Moreover, the term Vicar Delegate is to be considered, not separately, but in its text and context. Obviously, in the Letter of Propaganda it is used in apposition to a simple delegate whom the Mission Ordinaries could appoint with their functions determined in individual cases. If the Vicar Delegate possessed only delegated power this concession would be pointless. Besides, as Coronata remarks, too much emphasis should not be paid to the word "Delegate" in the term Vicar Delegate, because if it signifies delegated power, the word "Vicar" designates ordinary jurisdiction. (49).

78. b). Regarding the title on which the power of the Vicar Delegate is based: Those holding the opinion that the Vicar Delegate has only delegated power say that if he has ordinary power then his power is based on the same title as the power of the Mission Titular which is repugnant. But the power of the Titular of the Mission and his Vicar Delegate are not based

(46). Vercauteren, Jus Pontificium, 1931, p.77.

(47). Can. 592, 614.

(48). Can. 675.

(49). Coronata, o.c., I, n.n. 377, p. 456;
Can. 197, p. 2.

on the same title, at all. The titular of a Mission is nominated by the Holy See itself, and his territory is committed to him by Rome. (50). Moreover, he must take possession of his see according to the norms of law. (51). On the contrary the Vicar Delegate is chosen by the Titular of the Mission and not by the Holy See, and he takes possession of his office without any formality of law being required. While it is true that the power of the Mission Ordinary and his Vicar Delegate is vicarious ordinary in the case of each, yet their power is wholly distinct in as much as the power of the Titular is principal and the power of the Vicar Delegate is accessory, and a quasi-exercise of the jurisdiction of dominion in the principal. (52). The power of the Vicar Delegate is not independent, but depends upon the power of the Mission Superior. The exercise of the accessory power of the Vicar Delegate always finds its origin in his nomination by the Titular of the Mission, and can always be restricted by a reservation, and at the will of the Superior can cease to exist at any time. (53). In all these things the power of the Vicar Delegate evidently differs from that of the Titular of the Mission. Moreover, there is a difference in the amplitude of their respective powers, for in certain cases

(50). Can. 293, p.1.

(51). Can. 293, p.2.

(52). Pugliese, Apollinaris, 1933, p.211.

(53). Canons 366, p.2, and 368, p.1.

determined the Vicar Delegate requires a special mandate from the Mission Superior before he can act, as the Vicar General requires a special mandate from the Bishop. (54).

79. The Vicar Delegate receives his office through the appointment by the Mission Ordinary, and then by virtue of the office he has all the jurisdiction in spiritual and temporal matters which pertains to the Vicar Apostolic by the common law, except what the Vicar Apostolic reserves to himself or what the law demands the Vicar Delegate to have a special mandate for, because he is a local Ordinary as is the Vicar General. Indeed, he falls under the category of local Ordinaries not by virtue of Canon 198, because he did not exist as such then, but by virtue of the Letter of Propaganda. (55). Nor is there any argument against this from the fact that Vicars Delegate are not mentioned by the Code for neither is the Superior of an Independent Mission (mission sui juris) and they are Ordinaries as is clear from a private of the Sacred Congregation of Propaganda. (56). This same reply states that they are not mentioned by the Code, because it was only after the Code that the practice developed and became established in the Sacred Congregation of Propaganda of erecting such Missions with a determined territory and a

(54). Can. 368, p.1.

(55). Vercauteren, Jus Pontificium, 1931, p.77.

(56). Bouscaren, Supplement, p. 64 - 65.

ecclesiastical Superior. But it does not hold true that if they are not listed in the Code that they are not Ordinaries. They, like Vicars Delegate, are Ordinaries in virtue of legislation following the Code.

80. By reason of his appointment the Vicar Delegate has the power that is attached to his office, determined in a certain manner by the common law, and the Mission Superior cannot change this at will. This is clear regarding Vicars General who receive nomination from the Bishop and have universal jurisdiction in the diocese as a consequence, and the same holds true of Vicars Delegate as the Letter of Propaganda makes clear. (57). The Bishop or the Mission Superior makes the nomination of their vicars but the power of these officials rests upon that which is given by the Code itself and not on the concession of the Bishop or Superior. (58).

Consequently, we must conclude that the Vicar Delegate enjoys ordinary power of jurisdiction and is an Ordinary.

Article 2. Limits of the Power of the Vicar Delegate.

81. In general. From the Letter of Propaganda it is clear that the prescriptions of Canon 368, p.1. apply to the Vicar Delegate as they apply to the Vicar General. Hence, to the Vicar Delegate, by virtue of his office, belongs jurisdiction in spiritual and temporal matters in the whole vicariate as

(57). Can. 368, p.1.

(58). Can. 366, p.1.

it pertains to the Vicar Apostolic by ordinary law, excepting these things which the Vicar Apostolic reserves to himself or for which the law requires a special mandate from the Vicar Apostolic. (59).

82. Before the Code it was disputed whether the Vicar General was invested with jurisdiction in both spiritual and temporal matters. Smith indicates this in saying that "by a vicarius generalis in temporalibus" we mean one whom the Bishop selects to manage the Church property of the diocese, as also his own income as a Bishop, by a vicarius generalis in spiritualibus one who is deputed to exercise ecclesiastical jurisdiction relative to other matters." (60). All power in things spiritual now signifies whatever pertains to the jurisdiction of the Mission Superior regarding worship, discipline of the missionaries, preaching, administration of the sacraments, etc. The Vicar Delegate may treat these matters in an administrative and non-judicial fashion or legislative manner, and if he is also the officialis he will have judicial power regarding them in as much as he is officialis. Power in temporal affairs signifies administration of ecclesiastical goods and the settling of disputes in an extra-judicial manner. (61). Those things which are of the episcopal order do not

(59). Can. 368, p.1.

(60). Smith, Elements of Ecclesiastical Law, I, n. 621, p.402-403.

(61). Bouuvert-Simenon, Manuale, I.C. I, n.504, 2.

come within the competence of the Vicar Delegate even if he had episcopal character, so that he needs a special mandate to consecrate churches, altars and chalices, confirm, confer orders, etc. Nor does the Vicar Delegate possess the faculties regarding blessings, indulgences, etc. as conceded to Vicars and Prefects Apostolic by the Code. (62).

83. The power of the Vicar Delegate is ordinary and universal in the whole Mission, but he is prohibited from exercising judicial jurisdiction unless he is at the same time the Officialis, as may often happen on the missions. (63). If it is a question of his exercising voluntary jurisdiction the Vicar Delegate may use it outside his territory on his own subjects, but not if it is a question of judicial power that he might exercise as Officialis. If an Officialis had been also constituted for the Mission the Vicar Delegate should not use judicial contentious jurisdiction but if he did he would still be acting validly, as would the Vicar General in like circumstances. (64). Since the jurisdiction of the Vicar Delegate is over the whole Mission it cannot be restricted to one part of the territory while another Vicar Delegate is appointed with exclusive jurisdiction for a second part. This would be against the nature of the office of the Vicar Delegate. However, more than one Vicar Delegate

(62). Canon 294, p.2.

(63). Canon 1573, p.1.

(64). Coronata, o.c. L, n.421, p.500, ft.nt.l.

may be appointed according to a practical division of the territory, in which case each Vicar Delegate will still have jurisdiction in the whole area of the Mission. But the Vicar Apostolic could not appoint one Vicar Delegate "in spiritualibus" and another to look after the temporal affairs exclusively, with no jurisdiction at all in spiritual matters. (65).

84. Although the power of the Vicar Delegate, as that of the Vicar General, is universal in the Vicariate it suffers two exceptions which are limitations "ab homine" and "a iure", as the Code indicates in the case of the Vicar General. (66). It is limited "ab homine" when the Vicar Apostolic reserves something to himself; and it is limited "a iure" when the law requires that the Vicar Delegate have a special mandate before he may perform a certain act.

85. a). Limitations "ab homine". As regards the limitations of the power of the Vicar Delegate "ab homine", or by a reservation of the Vicar Apostolic, it is to be noted that the Vicar Apostolic cannot so restrict the jurisdiction of the Vicar Delegate that it cannot be any longer called general in the territory. If such restrictions were made the nature of the office itself of the Vicar Delegate would be

(65). Ayrinhac, o.c., n.170; Coronata, o.c. I, n.421, p.500.
(66). Canon 368, p.1.

changed, and he would only be a delegate, as would be true also of similar restrictions regarding the office of the Vicar General. (67). When the Mission Superior makes reservations he should explicitly determine the cases that he withdraws from the competence of the Vicar Delegate. As Ayrinhac says of reservations "Ancient canonists apply here the rule: a general concession does not contain what the superior would likely not have granted in particular; but the reason for this application exists no longer now that the law specifies in detail the matters which remain reserved to the Bishop except for a declaration to the contrary on his part. We must not, then presume any further reservations unless they be expressed". (68).

86. b). Limitations "a iure" - special mandate. The law itself makes several restrictions of the power of the Vicar Delegate when it requires in determined cases that he have a special mandate from the Vicar Apostolic just as the Vicar General in these cases requires a special mandate from his Bishop. These are limitations "a iure". By a special mandate is meant a particular commission from the legitimate superior authorizing a person to perform a certain act. In this case it is a commission from the Vicar Apostolic authorizing the Vicar Delegate to perform those same acts for which the

(67). Wernz-Vidal, o.c. II, n.803; Coronata, o.c., n.421, p. 501; Ayrinhac, o.c. n.170; Cocchi, o.c. II, n.285, c).
(68). Ayrinhac, o.c., n.170.

Code requires the Vicar General to have a special mandate. The cases then in which the Vicar Delegate will require a special mandate are found scattered throughout the Code where it requires the Vicar General to have a special mandate. (69).

87. Whether these cases which require a special mandate are determined "taxative", (that is, completely so that there may be no extension to other cases by analogy), is disputed. It seems that the Code does determine the cases that require a special mandate "taxative" because the power of the Vicar Delegate is restricted by the necessity of having a mandate and any restrictions of power are odious, and hence, not to be multiplied, according to the principle "odiosae restringendae sunt". When the law does not distinguish neither must we distinguish, so that we are to presume that the Vicar Delegate can do all things that the Vicar Apostolic can do by his ordinary power unless there is a restriction placed upon his power by the law itself, by his Superior, or by the very nature of the matter in question. Consequently, cases requiring a special mandate are not to be extended arbitrarily to other cases by analogy. Of course, as indicated, there are some things that the Vicar Delegate, as the Vicar General, cannot do even with a special mandate, since the law

(69). Cfr. Appendix III for a complete list of those things for which the Vicar Delegate must have a special mandate.

positively excludes them. e.g. to found a religious congregation. (70).

88. The Vicar Apostolic may by a general mandate permit the Vicar Delegate to do all those things which require a special mandate. In this case the Vicar Apostolic concedes to the Vicar Delegate general deputation or a general mandate to do all those things that the Superior can do even though a special mandate is ordinarily required. (71). The superior may make this concession by adding to his letters of deputation that he is appointing the Vicar Delegate also for those things which require a special mandate. He might also make this general concession and yet state a few exceptions.

89. The question arises as to the nature of the power that the Vicar General or the Vicar Delegate exercises when they act with a special mandate. It seems more correct to say that the Vicar General or Vicar Delegate acting with a special mandate acts with ordinary power, for the special mandate determines the power of the office and is not conceded

- (70). Canon 492, p.1; Coronata, o.c.I,n.421, p.500; Pugliese, Apollanaris, 1933, p.217; Wernz-Vidal, o.c., II, n.640; against Vermeersch-Creusen, Epitome, I, n.479.
- (71). Vermeersch-Creusen, o.c. I, n.479; Ayrinhac, o.c. n.170; Cocchi, o.c. II, n.285; Cance, o.c. I, n. 337; against Oesterle, Praelectiones J. C., I, p. 187; Bouusert-Simenon, o.c. I, n.505, 2; Michel, *De Qui il y a de Pratique dans le Code*, n.96 who holds that the Superior cannot grant such a general mandate but admits that the invalidity of the acts placed in virtue of such a mandate could not be proved.

to the person as such, as it would be if it were delegated power. The power to perform what he does by special mandate is actually contained in the power of the office that he holds because he has universal jurisdiction in the territory as has the Superior by ordinary law, although sometimes the jurisdiction of the Vicar General or the Vicar Delegate may be subject to restriction either "ab homine" or "a jure". But when the restriction is relaxed by a special mandate the Vicar Delegate acts then from power contained in his office. The law may give full Ordinary power and yet require a special mandate before the power may be exercised. Hence, the special mandate is as a "conditio sine qua non" for the exercise of the power already contained in the office, that is, the special mandate is a necessary condition for the use of the power. When the reservation or restriction is removed the Vicar acts from the ordinary power annexed to his office, and it is the special mandate that effects the release of his power from the restriction. (72). Some authors, however, maintain that the Vicar General, or Vicar Delegate consequently, in acting with a special mandate acts only from a special commission and not in virtue of power contained in the office, so that he really acts from delegated power. (73). Still

(72). Coronata, o.c. I, n.421, p.500; Ayrinhac, o.c.,n.170; Cance, o.c., n.337; Maroto, Institutiones I.C., I, n.699, 9; Blat, II, n.402, p. 398; Cappello, Summa, I.C., I, n.397.

(73). Beste, Introductio in Dodicem, p.276-277; Regatillo Institutiones I.C.,I., n.506; Bouusert-Simenon, o.c.I, n. 505, 3.

others seek to establish a middle course between these opinions holding that the power of the Vicar General is acting with a special mandate is ordinary when this power is conferred for affairs demanding a special mandate by a general formula in the first conferring of the office, but it is delegated as often as it is granted separately and on a given occasion. (74).

90. Winslow adds a practical note when he says that "If the Vicar Delegate has occasion to act in any of the matters just mentioned", (that is, which require a special mandate according to the Code) "he must make special mention of the mandate given him by the vicar or the prefect." (75). However, neither the validity or the liceity of the mandate depends upon it being contained in a written document because if the law required such it would expressly indicate as much. Naturally, in practice, it is advisable to commit the mandate to writing to avoid the confusion and doubts that might arise.

Article 3. Extension of the Power of the Vicar Delegate.

91. The power of the Vicar Delegate, as that of the Vicar General receives its extension both "a iure" and "ab homine".

a). Extension "a iure". The extension of the Vicar Delegate's power "a iure" is found in Canon 368, p.2. which treats of the Vicar General in this regard. Accordingly,

(74). Wernz-Vidal, o.c. II, n.640.

(75). Winslow, o.c. p.71.

unless there is an express provision to the contrary, the Vicar Delegate can execute apostolic rescripts which were referred to the Vicar Apostolic or his predecessor; and, generally, to the Vicar Delegate also pertain the habitual faculties conceded to the Ordinary of the place by the Holy See, according to the norm of Can. 66.

92. (L) Rescripts. Regarding rescripts we must first note that a rescript is a response given in writing to the petition of a person. In ecclesiastical law a rescript may be granted either by the Holy Father or by an Ordinary, for whoever can create a law can grant a rescript regarding the same. Rescripts may be "rescripta iustitiae" or rescripta gratiae". The former tend to the administration of justice in the settling of disputes by conceding something to parties in judicial controversies, e.g. restitution "in integrum"; the latter contain extra-judicial favours, and frequently include dispensations, exemptions, honours, etc. In relation to laws, rescripts may be "secundum legem", when they urge the observance of the law through some favour, e.g. designating a special judge to handle a case; or they may be "praeter legem"; when they concede a favour which is neither contained nor prohibited in the law, e.g. an indulgence, permission to build a religious house; or they may be "contra legem", when they concede a favour contrary to the law, e.g. a dispensation. Moreover, rescripts may be granted "in forma gratiosa" or "in forma commissoria". In the former case, the

favour is conceded immediately by the author of the rescript without the necessity of an executor; But in the latter case, the execution of the favour granted is committed to a determined person distinct from the one making the petition. By reason of extension rescripts may be general, when they refer to all the cases of determined persons or all persons of a determined place, or they may be particular or special, when they refer to determined cases or persons only. (76).

93. Unless there is something to indicate the contrary, the Vicar Delegate, like the Vicar General, may execute rescripts whether they be "rescripta gratiae" or rescripta justitiae", for the Code makes no distinction. (77). The same is true whether the rescripts have been directed to the present Vicar Apostolic or his predecessor. An express provision to the contrary would exist if the execution of a rescript were committed to the Vicar Apostolic "industria personae", but this will be evident from the tenor of the rescript itself. If the rescript is simply addressed to the Vicar Apostolic the Vicar Delegate can execute it. But he could not execute it if it were committed to the Superior with some such expression as "te personaliter designamus", (that is, we designate you personally) or "de tua prudentia confisi", (that is, I have confided it to your prudence), which signifies clearly that the Superior himself

(76). Coronata, o.c.I, n.57-58; Vermeersch-Creusen, o.c.I, n.152; Michiels, Normae Generales, II, p.166-171.

(77). Canon 368, p.2.

is to personally see to the execution of the rescript. (78).

94. If a favour has been denied by the Vicar Delegate and afterwards is obtained from the Superior of the same Mission without mention being made of the denial by the Vicar Delegate, it is invalid. But if a favour has been denied by the Vicar Apostolic it cannot be validly granted by his Vicar Delegate even after mention has been made of the denial by the Vicar Apostolic. (79). Evidently here it is a case of Vicar Apostolic and the Vicar Delegate of the same Vicariate. If it were the case of a favour denied by the Vicar Apostolic or the Vicar Delegate of another Mission recourse can be had validly and licitly to the Superior of one's own Mission, in which case it is not even necessary to mention the denial by the Vicar Apostolic or Vicar Delegate of the other Mission. (80).

95. In the first case, in order that a Vicar Apostolic may validly grant a favour denied by his Vicar Delegate it is required and suffices that mention be made to the Vicar Apostolic of the denial by the Vicar Delegate. If mention of the denial is not made the concession would be invalid because of presumed defect of will in the Vicar Apostolic and not

(78). Cicogani, Canon Law, p.797; Bouuaert-Simonon, o.c. I, n.506; Vromat, Jus Missionariorum, II, n.126, Periodice, XV, 1928, p. 74*.

(79). Canon 44, p.2.

(80). Michiels, o.c., II, p. 182; Coronata, o.c. I, n.63, p. 78; Cappello, o.c. I, n.147.

because of the lack of power to concede what had been refused by the Vicar Delegate. The presumption of this lack of intention on the part of the Vicar Apostolic to concede what has been refused by his Vicar Delegate is only a "praesumptio juris", (a presumption of the law), and if it is proved that the intention of the Vicar Apostolic was not lacking, the concession of the Superior would be valid. The clause, "Motu Proprio" would prove the presence of such intention or will on the part of the Vicar Apostolic. (81). In the second case, when the Vicar Apostolic is the one who has denied the favour, then before the Vicar Delegate can concede the favour there is required both mention of the denial by the Superior and the consent of the Superior permitting the concession by the Vicar Delegate. Otherwise, the concession by the Vicar Delegate is invalid because of defect of power, which, in this case, the law presumes has been taken from the Vicar Delegate. This provision also indicates that the Vicar Delegate must use his power carefully so as not to conflict with the judgment and will of the Vicar Apostolic, with whom he forms one juridical personality

(81). Michiels, o.c., I, p. 182;
Coronati, o.c. I, n.63, p.78.

and constitutes the same tribunal. (82).

96. (ii) Habitual Faculties. Generally to the Vicar Delegate pertains the habitual faculties granted to the Vicar Apostolic by the Holy See. (83). A faculty may be defined as a power which an ecclesiastical superior, endowed with jurisdiction in the external forum, concedes to someone personally subject to him of doing something validly, licitly or at least, safely, either in the forum of conscience only or also in the external forum, which "per se", by its nature, or by positive reservation pertains to the superior. (84). A particular faculty is had when power is granted only for one or other cases, called "ad actum", as when the cases are individually determined or there is a restriction to determined persons, e.g. if the faculty is conceded to dispense John from the

(82). Letter of Propaganda; Canon 369, p.2; Cfr. Appendix II for text of faculties granted to Mission Ordinaries by the Sacred Congregation of Propaganda, Pugliese, Apollinaris, 1933, p. 216; Caronata, o.c. I, n.63, p. 78 holds that this Can.44, p.2, is not to be extended to the other Ordinaries as e.g. Vicars Apostolic and their Vicars, because it speaks only of the Bishop and his Vicar General. But more correctly it seems that this canon is to be applied to Vicars Apostolic and their Vicars Delegate since Can. 294, p.1, imposes on them the same obligations as residential Bishops and the Letter of Propaganda confirms this in regard to Vicars Delegate; Michiels, o.c. II, p. 184 - 185; Vromant, Introductio et Normae Generales, n. 149.

(83). Canon 368, p. 2.

(84). Canon 66, p. 1;

Michiels, o. c. II, p. 433;

Cicognani, o.c., p. 796;

Maroto, o.c., I, n. 294;

Caronata, o.c., I, n.86, p. 97.

from the impediment of consanguinity. A faculty is a habitual faculty when general power is conceded over several persons or for an undetermined number of cases, without any restriction of time, so "in perpetuum"; or, for an undetermined number of acts, that is, as often as the one possessing the faculty wishes to exercise it; or, if it is conceded for all the cases that may arise during a definite time, e.g. for two, three, five, seven or ten years; or, for a certain number of the same species of cases, e.g. the faculty to dispense twenty or thirty times from the impediment of affinity in the second degree.

97. Habitual faculties are jurisdictional when the jurisdictional power of some cleric is increased, e.g. to dispense or absolve; and, they are non-jurisdictional when the power to grant certain favours is conceded or permission to place determined acts legitimately or, at least safely is given, e.g. to read prohibited books, to binate, etc. They are apostolic or papal when they are conceded by the Holy Father, either personally, or through the Sacred Congregations, or various offices of the Holy See or Tribunals; and episcopal when they are conceded by Bishops in virtue of their ordinary power.

98. Faculties that are conceded either "in perpetuum", that is without any time limitation, or for a determined time or a certain number of cases are considered to be among

privileges beyond the law. (85). The effect of this principle is that such faculties are always to be interpreted widely, even though what is conceded in virtue of the faculty, or the object of the faculty, is against the law. The mode in which the faculty is conceded or the faculty as such is to be considered "praeter jus", that is, beyond the law. This principle is of great importance to Mission Ordinaries since extraordinary faculties are often granted to them for twenty or thirty cases, and "per se" it could be doubted whether such a faculty conceded for a certain number of cases were habitual or not. (86).

99. Unless they were conceded "industria personae" or unless the law provides otherwise, habitual faculties do not expire with the authority of the Ordinary to whom they were conceded, even though he may have begun to execute them, and faculties granted to the Vicar Apostolic are intended also for the Vicar Delegate, just as the faculties of the Bishop are intended for his Vicar General. (87). Habitual faculties may be subdelegated by the Vicar Delegate unless such subdelegation is prohibited. At the end of the faculties that it grants to Mission Ordinaries the Sacred Congregation of Propaganda states that only those faculties marked with

(85). Canon 66, p.1.

(86). Vermeersch-Creusen, Epitome I. C., I, n.182, p. 158.

(87). Cfr. Appendix II, Notificatio.

an asterisk may be subdelegated. (88). Hence the faculties without an asterisk may only be exercised by the Vicar Apostolic, and also the Vicar Delegate, with a few exceptions. When the Vicar Delegate can subdelegate a faculty he may do so for an individual case or habitually, but he cannot grant to a missionary the power to further subdelegate the faculty. (89).

100. Voluntary or non-judicial jurisdiction may be exercised in one's own favour and outside one's territory unless the nature of the case or the law forbids such use of jurisdiction. (90). One with faculties, therefore, could dispense himself from fasting, and could exercise voluntary jurisdiction in favour of a subject, even when the subject is outside the territory of the one possessing the faculty or even when both the subject and the superior are outside the territory of the superior. In the *Animadversiones* at the end of the faculties conceded by the Sacred Congregation of Propaganda it is observed that the Ordinary, and hence the Vicar Delegate as well as the Vicar Apostolic, can exercise the faculties validly, either himself or through others, only within the confines of his jurisdiction, ("intra fines sue jurisdictionis"). Consequently, faculties requiring judicial power may be exercised only within the territory of

(88). Appendix II, *Animadversio* I.

(89). Canon 199, p. 5.

(90). Canon 201, p. 3.

the Vicariate, excepting the cases mentioned in Canon 201, p.2, while faculties requiring voluntary jurisdiction may be exercised anywhere, unless the nature of the case or the law forbid this. (91).

101. Moreover, the Animadversions point out that faculties are to be exercised gratuitously, although it would not be forbidden to make a small charge to cover chancery and mailing expenses. Mention of the Apostolic delegation or the subdelegation by the Ordinary should be made. (92). These prescriptions, of course, are not for validity but only for liceity. If the Vicar Delegate through forgetfulness or inadvertence used the faculties beyond the time defined for their use the absolutions, dispensations or concessions he makes are still considered valid. The Code itself makes the same concession regarding the internal forum when it supplies jurisdiction for acts placed through inadvertence in excess of the stated number, cases or time. (93). But this is only for the internal forum, and the Animadversiones extend it to the external forum regarding the faculties of Mission

(91). Canon 201, p.2, which states that judicial power, ordinary or delegated, cannot be exercised in one's own favour or outside one's territory, excepting the prescripts of Canons 401, p.1, 881, p.2 and 1627; Appendix II, Animadversio II.

(92). Cfr. Appendix II, Animadversio II.
Re - "Pro ipso Ordinario". Cfr. Winslow and thesis p. 58, V.D. in general.

(93). Canon 207, p. 2.

Ordinaries. (94). Moreover, when petition for the renewal of or prorogation of faculties has been made by the Ordinary, these same faculties are considered to maintain their force until a reply has been received from the Holy See. If the Holy See renews the faculty there is no question of the validity of the use made of it while awaiting a response from Rome, but even if the Holy See should deny the renewal of the faculty its use was valid since the *Animadversio* explicitly states so. (95). Thus, the validity of the exercise of the faculty is provided for regardless of the response that Rome makes to the petition for the renewal or prorogation of the faculty.

102. When a faculty is conceded the concession includes all the powers necessary for its exercise; hence, in the faculty of dispensing is included also the power of absolving from ecclesiastical penalties, if necessary, but only for the purpose of obtaining the dispensation. (96). This provides that the faculty is not granted uselessly and inefficaciously, for whoever grants something to attain an end also concedes the means to attain the end. Canon 200, p. 1, expresses the

(94). Cfr. Appendix II, *Animadversio* III.

(95). Cfr. Appendix II, *Animadversio* II, "Insuper, detis ab Ordinario precibus pro renovatone seu prorogatione eandem facultatum, ipse in suo robore perseverare censeatur usque dum responsum S.C. ad eundem Ordinarium pervenerit".

(96). Canon 66, p. 3.

same idea when it states that when a power is delegated to someone, whatever is necessary for the exercise of the same is also considered granted. It is only reasonable that a faculty conceded for a determined object should extend also to what is connected and accessory, although these be not explicitly contained in the faculty. (97). But this is true only of those things what are really necessary for the use of the faculty in such a way that if they are not possessed the principal object of the faculty would become useless. Of course, it is limited also to those things that are within the power of the one conceding the faculty, for the one granting the faculty evidently cannot concede powers that he himself cannot exercise "per se". Thus, the one who receives the power, e.g. to absolve heretics automatically receives the power to accept his abjuration.

103. No formal acceptation is required in the communication or subdelegation of faculties, but if one wishes to use the faculty he must not refuse it. For if one refuses the faculty offered to him, he may not later make use of it later since in not accepting it in the first place when offered it, he thereby refuses all use of it. In the communication of or delegation of a faculty the use of the

(97). C 5, X, I, 29; Regula Juris. 35 in VI; 42 in VI; 53 in VI; 80 in VI.

telephone or telegraph is ordinarily permitted. The style of the curia ("stylus curiae") must be given due consideration because faculties for the internal forum cannot be used for the external forum, or vice versa; faculties to dispense from matrimonial impediments in order to contract marriage cannot be used for marriages already contracted, nor if for a marriage already contracted they cannot be used for a marriage to be contracted. (98).

104. b). Extension "ab homine". Extension of the power of the Vicar Delegate may come "ab homine", that is from the Vicar Apostolic himself increasing the power of the Vicar Delegate by granting him wider faculties, usually for certain circumstances. This will depend upon the will of the Vicar Apostolic who probably will such an extension when he himself is absent from the Vicariate and he foresees that the Vicar Delegate will have need of further power. The extension may be temporary only and designed to cover a period when it is advisable for the Vicar Delegate to have increased power as for example in times of persecution or war when contact with the Vicar Apostolic is more difficult and dangerous than usual.

(98). Coronata, o.c., I, n. 97, p. 107.

CHAPTER III.

Duties of the Vicar Delegate.

Article I. In relation to persons.

105. A. Regarding the Vicar Apostolic.

The Vicar Delegate, like the Vicar General in relation to his Bishop, is to refer the principal acts of the curia to the Vicar Apostolic, and to inform of what has been done or need be done to safeguard discipline among the clergy and the laity. (1). This prescription is enacted in order to obtain united action in the government of the Mission, and to protect the authority of the Vicar Apostolic. If the Vicar Delegate were wholly independent of the Vicar Apostolic difficulties could soon arise and discord set in which would be detrimental to the proper rule of the Vicariate and undermine the authority of the Superior.

105. In the exercise of his powers, then, the Vicar Delegate is to be careful not to use against the mind and will of the Vicar Apostolic, conforming to Canon 44, p.2, regarding his inability to grant a request denied by the Vicar Apostolic, as we saw above. (2). From the nature of his office the Vicar Delegate is bound to assist and aid the Vicar Apostolic in the government of the Mission. Accordingly he is bound not to use his power against the mind and

(1). Canon 369, p.1.

(2). Canon 369, p.2.

will of the Superior with whom he constitutes one and the same tribunal, and forms one juridical personality, as does the Vicar General with the Bishop. (3). Because of this legal relationship of the Vicar Delegate and the Vicar Apostolic the sentence of one is to be considered as the sentence of the other, so that in judicial matters no appeal may be made from the definitive sentence of the Vicar Delegate to the Vicar Apostolic. In administrative matters the Vicar Apostolic can change only those legitimate acts of the Vicar Delegate that he could change if he himself had performed them. While the superior of the Mission is not bound by the crimes and deeds of the Vicar Delegate committed outside the sphere of his office, yet, because of the unity of the tribunal that they form, he is bound to repair the damages arising from the unjust administration of the Vicar Delegate if he knowingly and willingly retains with culpable negligence such a Vicar Delegate. But the Vicar Apostolic could demand as a previous condition for the validity of a determined act, which the Vicar Delegate was to perform, that such an act was to be subject to his approbation. But if one wishes to have recourse from a decision given formally by the Vicar Delegate it must be made of the Holy See.

106. B. Regarding the Vicariate.

(1). Canonical Visitation. The Code does not state definitely

(2). Vercauteren, *Jus Pontificium*, 1951, p. 78; Pugliese, *Apollinaria*, 1933, p. 216; against Vromant, *Jus Missionariorum*, II, n. 1^o § 191.

when the Superior of a Mission is to make the canonical visitation of the Mission, but he must do so whenever necessary. On this visit he is to examine into all matters that concern faith and morals, the administration of the Sacraments, preaching, the observance of the feasts, divine worship, the education of youth, and ecclesiastical discipline. This visitation the Vicar Apostolic is to make personally unless he is legitimately impeded, in which case he can make it through another. (4). In the mission territory the visitor is especially to enquire into the state of the Christians there, and is to be informed of any scandals or superstitions to which the Christians may have become addicted. (5).

107. As stated the obligation to visit his territory is an obligation personal to the Superior of the Mission and may be fulfilled through another only when he is legitimately impeded from doing so himself. This prescription is advised since subjects generally prefer to be ruled by the Superior himself, but when some legitimate cause, moral or physical, prevents him from making the visit the Vicar Apostolic may send another. Excusing causes would be sickness, preoccupation with other duties, or engagements that demand immediate attention, difficulties in travelling to a certain part of the territory, etc. In Mission lands especially there may be

(4). Canon 301, p.2.

(5). Cfr. Primum Concilium Sinense, Dec.66.

many circumstances that allow this obligation to be fulfilled by another. The Vicar or Prefect Apostolic is to be the judge of the impeding cause. (6).

108. The question of whom the Superior of the Mission is to send when he is impeded from making the visitation concerns the Vicar Delegate, for he is the logical choice as a substitute. While the Code simply says that another may be sent in place of the Superior of the Mission (Can.301,p.2), it indicates in the matter of sending a substitution for the Bishop in the canonical visitation of the diocese that the Vicar General may be sent. (Can.344, p.1). Naturally the Vicar Delegate is not referred to in Canon 301, p. 2, because his office did not exist at the time the Code appeared, but since the Code suggests the sending of the Vicar General, from analogy we can say that the Vicar Delegate on the Missions is the one most apt to be substituted, for the Vicar Apostolic. However, the Superior is free to send someone other than the Vicar Delegate, for the Code in no way obliges the sending of the Vicar General as is clearly stated that he or another may be sent. The choice of the Vicar Delegate is especially to be recommended in view of the fact that he possesses ordinary

(6). IV National Council of Toledo, 633 - Mansi, X, 629:
T. F. Reilly, The Visitation of Religious, p.129;
Slafkosky, The Canonical Visitation of the
Diocese, p. 85.

jurisdiction in the Vicariate and is endowed with the qualities that would render him preferable for this duty, along with which he has a better knowledge of the affairs of the Mission and knows what requires special consideration. (7). But the advice of the First Council of China should be kept in mind in any case of substituting another, for it states that this office of visitation is not to be "facile" (easily) given to the Vicar Delegate, indicating that the Superior is not to use a substitute except when he really needs one and then not to use one all the time, for it is his own personal duty and the law obviously intends that he himself should have personal knowledge of his Mission. (8).

109. (11) Synods. The rules of the Code regarding diocesan synods apply also to Vicariates, but there is some doubt regarding Prefectures Apostolic in this matter (9). While

(7). Slafkosky, o.c. p.87.

(8). Primum Concilium Sinense, dec. 579.

(9). Canon 304, p. 2: "...quae de Synodo dioecesis can. 356-362, Synodo vicariatus apostolici"; Vermeersch-Creusen, Epitome I.C. who says that a formal synod may not be held in a prefecture; Winslow, Vicars and Prefects Apostolic, p.51, Vromant, o.c. II, n.200, Ayrinhac, Constitution of the Church in the New Code of Canon Law, n.101 who state that a synod may be held in a prefecture; Coronata, Institutiones I.C. n.375, p.453 who states that a synod may be imposed for a prefecture; and Decision 599 of the First Council of China, orders a synod to be held in each vicariate and prefecture every ten years; Cfr. also Ch.III, n.16, of the questionnaire sent to Bishops, Vicars, Prefects Apostolic and Superiors of Missions by the Sacred Congregation of Propaganda which states: "Utrum et quomodo synodum celebraverit, et quando novissima synodus congregata fuerit (C.304, 32)" A.A.S.XIV (1922) p.287, et seq.

there may be no obligation upon a prefecture from the Code itself to hold a Synod it seems that at least they may be held, and the same may be said of a Mission sui juris. When a Synod is held in a Vicariate or Prefecture the prescriptions of Canons 356-362 regarding diocesan Synods are to be followed, "congrua congruis referendo", (that is, in so far as they are applicable).

110. The one to convoke and preside over a Mission Synod is the Superior himself and this the Vicar Delegate cannot do without a special mandate. (10). When a Synod is held on the Missions the Vicar Delegate must be called and must attend. (11). If he is impeded from coming, e.g. by sickness, he cannot send a proxy but must notify the Superior of the impediment preventing his attendance. If the Vicar Delegate simply neglects to come the Mission Superior may compel his attendance by means of appropriate penalties for negligence in this matter. (12).

111. (iii) Archives. Making due allowance for the differences of places and persons, Vicars and Prefects Apostolic are likewise bound by the prescriptions of the Code regarding diocesan archives. (13). As Winslow points out "For

(10). Canon 304, p. 2; 357, p.1; Primum Concilium Sinense dec.600,I; Winslow, o.c. p.52; Vromant, o.c., II, n.202.

(11). Canon 358, p.1, n.1; Ybanez, Directorium Missionariorum, n.71; Winslow, o.c., p.52; Vromant, o.c., II, n.203; Primum Concilium Sinense, dec.600, I.

(12). Canon 359, p.2; Primum Concilium Sinense, dec.602.

their own convenience and certainly out of consideration for their successors vicars and prefects apostolic would do well to conform as closely as possible to the provisions laid down in the Code regarding diocesan archives." (14). Since the Vicar General has definite duties described by the Code in reference to diocesan archives, these same regulations must be applied to the Vicar Delegate in reference to Mission archives in as much as they are applicable in the changed circumstances of places and persons.

112. The obligation placed upon Ordinaries by the Code to make a careful search for any papers that have gone astray or have been mislaid, and to use all the necessary means to have them restored applies to the Vicar Delegate as well as to the Superior of the Mission. (15). This matter of restoring lost papers is so important that it is not left entirely in the hands of the chancellor but is entrusted to the Ordinary who may use more effective means to have the documents recovered.

113. There should be two archives for the Missions as for a diocese. In the general or common archives are kept, in

(14). Winslow, o.c., p.42; cfr. also, Vromant, o.c., II, n. 185; and the questionnaire sent to Mission Ordinaries by the Sacred Congregation of Propaganda, Ch. II, n.9. "au quae in C C 375, et seqq. de archivo dioeceseo habentur, habita ratione locorum et personarum, in Missione constituta sint ad normam C. 340, p.1". A.A.S. XIV (1922), p. 287, et seq.

(15). Canon 367, p. 2.

a safe and convenient place, the legal documents and various writings pertaining to the affairs of the Mission, whether regarding spiritual or temporal matters. They are to be properly arranged and classified, and carefully protected.(16). In the secret archives, which may be a special safe or chest carefully locked and immovable, are kept the papers that must remain secret, such as those concerning marriages of conscience, dispensations or absolutions in the internal non-sacramental forum, etc. Great care must be taken that these documents do not become public or lost. (17).

114. The public archives are to be kept locked and no one is to be allowed to enter them without having first obtained the proper permission. This permission can only be granted by the Vicar Apostolic or the Vicar Delegate and the chancellor. (18). It seems clear from the letter of the canon that the permission of the Mission Superior or the Vicar Delegate alone is not sufficient, just as the permission of the Bishop or the Vicar General alone does not suffice for the entering of the diocesan archives. (19). The chancellor is to care for the one key of the archives, but the key should be kept in a safe place in the office rather than on the person of the chancellor, for the conven-

(16). Canon 375.

(17). Canon 379, p.1.

(18). Canon 377, p.1.

(19). Canon 377, p.1; Louis Diocesan Archives, p.62-63; Ayrinhac, o.c. n.175.

ience of those who have permission to enter the archives or who may have to make use of them during the absence of the chancellor. This place should be known to the Vicar Delegate and the Vicar Apostolic. (20).

115. No one may take any documents from the Mission archives without the consent of the Vicar Apostolic or the Vicar Delegate, and they are to be returned after three days. To the Vicar Apostolic or the Vicar Delegate is reserved the faculty of extending the time that they may be kept out, but the law warns that this prerogation is not to be granted too freely. (21). Thus, while the Vicar Delegate may concede permission to remove documents from the archives, the chancellor's permission is neither required nor suffices. The Vicar Delegate may grant permission to a person to have the documents out for three days, which time is to be reckoned from the moment the documents were taken out. Although the Vicar Delegate may extend this period of time there should be some reason for the extension and the prerogation is not to be indefinite. Some authors believe that a moderate extension of the time is no more than three days but there is nothing in the Code to support this, and it seems rather that it is for the Vicar Delegate to determine the length of the prerogation from the circumstances. (22).

(20). Canon 377, p.2; Louis, Diocesan Archives, p.63.

(21). Canon 378, p.1.

(22). Louis o.c.,p.67; against Ayrinhac,o.c. n.219 and Blat, Commentarium,II,n.414 who hold that a moderate extension is but three days.

116. The secret archives or safe must be provided with two different keys both of which are required for opening them. One of these keys is to remain in the possession of the Mission Superior and the other in the hands of the Vicar Delegate or, when there is no Vicar Delegate, in the hands of the chancellor. (23). However, even if there were a Vicar General of a diocese, or a Vicar Delegate of a Mission, but one who was actually not present so that the Superior would find his own use of the archives greatly restricted through the absence of this official, the key could and should be placed in the care of the chancellor. (24). If there is more than one Vicar Delegate only one of them is to be placed in charge of the key, and naturally he will be the one who is nearest to the archives for the sake of convenience. Since the Code is so particular about the legislation regarding the archives it is obvious that the Vicar Delegate must be very careful in looking after the key in his possession. The place where the Vicar Delegate keeps his archive key should be known also to the Mission Superior in case of necessity.

117. Immediately after taking possession of the Mission, the Superior is to appoint a priest who, sede vacante or sede

(23). Canon 379, p.3.

(24). Louis, o.c., p.76; Blat, o.c. II, n.415.

impedita, shall have charge of the Superior's key for the secret archives. (25). When the see is impeded the Vicar Delegate shall assume the rule of the Mission and keep the key that he already has in his possession, and the priest appointed according to the norm of Canon 380 shall keep the one he has since it is the intention of the law that the two keys shall not be in the possession of the same person. When the see is vacant the priest appointed according to the norm of Canon 380 shall hand over his key to the Pro-vicar and the Vicar Delegate shall hand his over to the senior missionary of the Mission Council constituted according to Canon 302. This determination is from analogy with Canon 381, p.1, n.2 which states that the key of the Vicar General is to be given to the first dignity in the Chapter or the senior Diocesan Consultor. But before handing over the keys the Vicar Delegate and the priest mentioned above are to seal the archives with the seal of the curia. (26). Louis indicates how this is to be done when he states "This provision apparently means that wire and lead, sealing wax or some substance, stamped with the impression of the diocesan seals, must be affixed to the door of the archives that the door cannot be opened, without breaking the seal. The purpose is to inform the impeded bishop on his return, or the newly

(25). Canon 380.

(26). Canon 381, p.2.

appointed bishop on his arrival, of any possible actions committed contrary to the prohibition stated in the following canon, which prohibition forbids the opening of the archives during the whole time when the see is impeded or vacant". (27).

118. The Vicar Apostolic has the right to use the secret archives and, hence, the Vicar Delegate, we may conclude, cannot refuse to give him the key in his possession. (28). While the Superior alone has the right to open and inspect the documents of the secret without anyone else present, there seems nothing preventing him from conceding permission to others such as the Vicar Delegate to do likewise. Of course, in this case he will have to know that the person to whom he makes such a grant is worthy, can provide the necessary guarantees and has good reason for inspecting the documents.

119. C. Regarding Clerics.

(1). Incardination and excardination. In his relations to the secular clergy there are several points that the Vicar Delegate must keep before his mind. The first is concerning the incardination and excardination of clerics. Incardination is that legitimate act by which a cleric is attached to a diocese, an abbey or prelacy nullius, a Vicariate,

(27). Louis, *op. cit.*, p.80; Canon 382, p.1,2.

(28). Canon 379, p.4.

Prefecture, or Mission sui juris and becomes subject to its Ordinary. (29). By the reception of first tonsure a cleric is affiliated or incardinated in the vicariate for whose services he was promoted, and when he has been ordained for a vicariate he cannot pass to another, that is, become affiliated in another, until he has been excardinated from the first and incardinated in the second. (30). As far as the power of the Vicar Delegate is concerned in regard to incardination and excardination it is clear that he, like the Vicar General, cannot concede excardination or incardination without a special mandate from the Vicar Apostolic. (31). Even with a special mandate the Vicar Delegate could not concede excardination or incardination validly to a cleric whose petition the Mission Superior has already refused, although the Superior may validly do this even though the Vicar Delegate, having a special mandate, had refused, provided that in his petition the cleric makes mention of the refusal by the Vicar Delegate. (32). McBride, in treating of the question of incardination and excardination in quasi-dioceses or missions, makes the following observation that the Vicar Delegate should note well, particularly when they assume the rule of an impeded vicariate: "Many of the priests

(29). Coronata, o.c.I, n.173, p.203; Vermeersch-Creusen, o.c.I, n.236; McBride, Incardination and Excardination of Clerics, p.11.

(30). Canons 111 and 112.

(31). Canon 113.

(32). Canon 44, p.2.

labouring in quasi-dioceses are sent there by the Holy See through the Sacred Congregation for the Propagation of the faith. They take the strict oath of the Mission title not to desert their mission, even to enter religion, and a fortiori not to desert it for another territory, without express permission from the Holy See. Hence, the excommunicatory power, not only of those who rule the quasi-diocese *sede vacante vel impedita*, but also Vicars and Prefects Apostolic themselves, are limited by Canon 307, 1. They must first consult the Holy See and obtain its approval before any action is taken that leads to excommunication." (33).

120. (11). Clerical obligations. In the matter of the obligations by which clerics are bound the Vicar Delegate has special powers conceded by the Sacred Congregation of Propaganda to Mission Ordinaries and the use of which the Vicar Delegate has.

Unless legitimately excepted, clerics in major orders are bound to recite integrally and daily the canonical hours. (34). However, the Vicar Delegate has the faculty to permit the private recitation of Matins and Lauds immediately after midday. (35). There is nothing stated in the faculty that

(33). McBride, o.c., p.398 - 399; cfr. also, p.407-408.

(34). Canon 135.

(35). Cfr. General Faculties conceded to Mission Ordinaries, in Appendix II.-- Faculty n. 44. Hereafter in referring to these faculties we will refer simply to Faculty n.--.

requires the office of the day to have been said the anticipation may be made, so this as a condition is not demanded. Nor is there any cause required for conceding this permission, but the faculty is restricted to the private recitation of the Office, and may not be used for those bound to the public recitation of the Breviary. In determining midday or noon local time, true or mean, or legal time, regional or extraordinary, may be used. (36). This faculty is not able to be delegated so the Vicar Delegate himself must grant the permission.

121. Moreover, for a legitimate and grave cause, of which his own conscience is to be the judge, the Vicar Delegate may permit his missionaries to recite the Rosary or other prayers in place of the divine office. (37). A Mission Ordinary, in virtue of the common law, cannot dispense from the divine office even in a particular case, unless according to the norm of Canon 81. This faculty does not concede a dispensation but permits the substitution of a lesser work for a grave and legitimate cause. Such causes would be, e.g. long hours in the confessional, severe headaches, poor sight, a long journey undertaken for the utility of the mission, etc. The Vicar Delegate is to be the judge of the cause which must be grave since the obligation of saying the Office is grave. (38). It is clear from the faculty that the entire

(36). Canon 33, p.1.

(37). Faculty n.45.

(38). Winslow, Vicars and Prefects Apostolic, p.128;
Vromant, Facultates Apostolicae, n.108.

Rosary is to be said when it is substituted. The Vicar Delegate may determine what other prayers might be substituted in place of the Rosary. This faculty, also, may not be subdelegated by the Vicar Delegate.

122. All clerics are to wear becoming clerical clothes according to legitimate customs and the rules of the Ordinary. (39). However, Vicars Delegate have the faculty to permit their missionaries, even religious, to wear lay clothes in travelling about their missions or in their residence when they cannot conveniently do otherwise. (40). Difficulties permitting the use of this faculty, that is, causing inconvenience, would be fear of persecution, the "miratio" (wonder) of the people at seeing the clerics not in lay clothes, lack of money, etc. The permission that the Vicar Delegate may grant is restricted to the locality and circumstances where the inconvenience is actually found, and is not to be extended further. This faculty may not be subdelegated.

123. By the common law of the Code clerics are forbidden to practise medicine or surgery without an apostolic indult. (41). But Vicars Delegate have the faculty to permit their missionaries to practise medicine and surgery to aid in the spread of the faith under certain conditions. It is

(39). Canons 136, p.1, 596, 2379.

(40). Faculty n.46.

(41). Canon 139, p.2.

required that the missionaries in question are skilled in medicine and surgery, although they need not be professional doctors and surgeons. At least, they must have enough proficiency so as not to place the life of a patient in danger. In giving medical or surgical care to women everything must be diligently avoided that might be unfitting to the religious or the priest, and there may be no charge for the work. This faculty may not be subdelegated. (42).

124. (iii). Quasi-parishes. Where it can be done conveniently Vicariates are to be divided into distinct territorial sections, each with its own church, its own determined people and its proper rector who is called a quasi-pastor. Such a division is called a quasi-parish although it may be called simply a mission. (43). Parishes and quasi-parishes are fundamentally the same institution and "the distinction between them depends upon the status of the Hierarchical unit of which they are a part, and upon certain juridical effects touching the incumbent priest". (44). According to the Code, (Can. 451,p.2) quasi-pastors are equivalent to pastors and have all the parochial rights and obligations,

(42). Faculty, n.47; Winslow, o.c. p.120.

(43). Canon 216; S.C. Consist. declar., Aug. I, 1919, n. I - A.A.S., XI, (1919), p.346-347; Instruct. S.Cong. de P.F., July 25, XII (1920), p.331-333; Primum Concilium Sinense dec. 92.

(44). Connolly, The Canonical Erection of Parishes, p.6.

and in law come under the name of pastors.

125. The nomination and institution of quasi-pastors belong by law to the Vicar or Prefect Apostolic or the Superior of a Mission sui juris. (45). In ordinary circumstances the Vicar Delegate can do nothing regarding the nomination and institution of quasi-pastors unless he has a special mandate. However, when the see is impeded according to the norm of Can. 429m p. 1, the Vicar Delegate, like the Vicar General, without a special mandate, has the same powers as the Vicar Capitular of a diocese, namely: 1) he can constitute quasi-parochial vicars, according to the norms expressed in Canons 472-476; 2) he can confirm elections and accept presentations to vacant quasi-parishes and grant canonical institution to the one elected or presented; 3) he can confer quasi-parishes "liberae collationis", if the vacancy has lasted one year. (46).

D. Regarding religious, men and women.

126. (i). Erection of religious congregations. As far as the erection of religious congregations is concerned the Vicar Delegate has no authority to erect such, just as the Vicar General lacks all power in this regard. (47).

(45). Canon 455, p.1.

(46). Canon 455, p.23; Augustine II, p.525 suggests the form of the mandate which may be given to the Vicar General to appoint a pastor to a vacant parish and a similar form may be used for the Vicar Delegate, by inserting the latter's name ~~may be used~~: "I hereby authorize you to appoint to the vacant parish of N.whom you think worthy,etc.

(47). Canon 492, p.1.

Because the Code makes no mention of a special mandate it appears that the Vicar General and, consequently, the Vicar Delegate even if endowed with a special mandate could not make such foundations. (48). These officials lack this power because the introduction of a new religious congregation into a territory notably effects the state of the diocese or the Mission. An affair of such importance is, therefore, reserved to the highest authority in the territory. This is also true of societies without vows. (49). However, to erect any religious house, exempt or not, in territories subject to the Sacred Congregation of Propaganda there is required a papal indult and the written consent of the local Ordinary, (50). Here it is not a case of the first house being opened for this would be equivalent to the establishment of a congregation and would be governed by the rules and formalities demanded for the establishment of the institution itself. (51). It seems that the Vicar Delegate may give this written consent that is required for the establishment of a religious house in the Mission for the Code in treating the question simply requires the consent of the

(49). Canon 674; Coronata, o.c. I, n.510, p.624, ft.nt.4.

(50). Canon 497, p.1.

(51). Farrell, The Rights and Duties of the Local Ordinary Regarding Congregations of Women Religious of Pontifical Approval, p.60.

"Ordinary" which term includes Vicars General and Vicars Delegate. (52).

127. (ii). Authority over religious. As far as the authority of the Vicar Delegate over religious is concerned all religious of the Mission are subject to him in as much as he is a local Ordinary, excepting those who have obtained the privilege of exemption from the Holy See, and even then the law gives the local Ordinary power over these in certain cases.(53). Members of a religion "juris pontificii" are subject to the Vicar Apostolic and his Vicar Delegate in as much as they are clerics and faithful, not as religious; members of a religion "juris dioecesani" are subject to the local Ordinary as much as they are religious, and obliged by the vow of obedience to obey him, if they took a vow of obedience. If they did not take such a vow the power of the local Ordinary over them will be jurisdictional and this jurisdiction pertains to the Vicar General in the case of a diocese (54), and to the Vicar Delegate in the case of the Missions.

128. (iii). Confessors of religious. It is within the power of the Vicar Delegate as an Ordinary to appoint the ordinary

(52). Coronata, o.c. I, n. 523, p. 635.
Fanfani, Le Droiti des Religieuses, n. 22.

(53). Canon 500, p. 1.

(54). Vermeersch-Creusen, Epitome I. C.,
I, n.614.

confessor for each house of Nuns or Sisters. Moreover, if any Sister in order to quiet her conscience or make greater progress in holiness should ask for a special confessor or spiritual director the Vicar Delegate may and should grant the request, but at the same time see to it that no abuses arise. If such abuses do creep in he must cautiously and prudently eradicate them, duly safeguarding the liberty of conscience. (55). The Vicar Delegate may also approve the extraordinary confessor who is to go at least four times a year to the religious house and to whom all the Sisters must present themselves to receive his blessing even though they do not wish to confess. Besides, the Vicar Delegate may designate the supplementary confessors for the houses of women religious on whom the Sisters may easily call for confession in particular cases. (56). But the Vicar Delegate himself should not be an ordinary or extraordinary confessor for the Sisters in his territory because such confessors should have no power in the external forum over the religious. (57). The reason for this is, of course, to safeguard the seal of confession and give confessors a few hands to do whatever prudence, duty or conditions demand. For this reason, Vicars Delegate like Vicars General may not be chosen as ordinary or extraordinary confessors for women religious. (58).

(55). Canon 520, p.1-2.

(56). Canon 521, p.1-2.

(57). Canon 524, p.1.

(58). Geser, Canon Law Governing Communities of Sisters, Q.424; Creusen, Religieux et Religieuses, n.98; Pejska, Jus Canonicum Religiosorum, p.301; Thevenot, Le Nouveau Droit Canonique des Religieuses, p.59.

129. The Vicar Delegate may appoint ordinary or extraordinary confessors for houses of religious whether they are immediately subject to the Holy See or to the Vicar Apostolic. (59). The ordinary confessor of Sisters shall not hold office for more than three years, but the Vicar Delegate may permit him to stay in office for three and even six years longer if there is no other priest suitable for the place is available, or if the majority of the religious votes, by secret ballot, for the confirmation in office of the confessor. (60).

130. The Vicar Delegate may for a grave reason remove the confessor of Sisters, whether he be the ordinary or extraordinary, and even if the convent be subject to regulars and the priest himself is a regular. The Vicar Delegate in this case is not bound to state the reason for the removal to anyone except the Holy See, but he must notify the regular superior to whom the nuns are subject. (61). The grave reason must refer to the office of the confessor, and he may not remove all the confessors of a religious house at the same time because such would be detrimental to the spiritual welfare of the religious involved as well as injurious to the reputation of the priests concerned.

(59). Canon 525.

(60). Canon 526.

(61). Canon 527, 880.

131. In lay institutions of men the Vicar Delegate may appoint an ordinary or extraordinary confessor, from the secular or religious clergy, provided the religious confessor has at least the presumed permission of his Superior. If it is an exempt lay institute the Superior may propose the confessor and the Vicar Delegate may approve him. (62). In non-exempt lay institutes the Vicar Delegate may appoint a priest for saying Mass and preaching; while, in exempt lay institutes the regular Superior designates these priests, though if he neglects to do so the Vicar Delegate may supply the negligence. (63).

132. (iv). Obligations and privileges. In treating of the obligations and privileges of religious the Code states that a religious cannot be promoted to dignities, offices, or benefices that cannot be adjusted to the religious state without the authority of the Holy See. (64). The office of the Vicar Delegate like that of the Vicar General may be considered as an office incompatible with the religious state unless the government of the Mission belongs to religious of whom the Vicar Delegate is a member. This is clear when we consider the various duties and obligations the Vicar Delegate which would not be compatible with his obligations as a religious. (65).

(62). Canons 528, 874, p. 1, 875, p.2.

(63). Canon 529.

(64). Canon 626, p.1.

(65). Goyeneche, Juris Canonici Summa Principia, Bk. II, pt. II, n.88; Augustine, o.c. , III, p.355.

E. Regarding Associations of the Faithful.

132. An association of the faithful is a free union or a voluntary society of the faithful constituted at least with the approbation of ecclesiastical authority to promote a more perfect life among the members, or to perform some works of charity or piety, or for the increase of public worship, but excluding common life of members. (66). Such societies are the Society of St. Vincent de Paul, the Association for Christian Doctrine, the Peter Claver Society and many others. To erect or approve societies of the faithful belongs, aside from the Holy Father, to the Ordinary of the place excepting those societies whose institution is reserved to others by Apostolic privilege. But the Vicar Delegate, like the Vicar General, has need of a special mandate before he can erect such societies. (67). This is from the common law of the Code. However, Mission Ordinaries have from the faculties conceded by the Sacred Congregation of Propaganda special powers in regard to these associations. The Ordinary of the Mission may, in virtue of these faculties, erect those confraternities approved by the Holy See whose institution is reserved to others by apostolic privilege, except the confraternity of the Holy Rosary, and inscribe the faithful in them. (68).

(66). Coronata, Institutione I.C., I, n.667, p.897; Canon 685.

(67). Canon 686, p. 2,4; Vromant, De Fidelium Associationibus, n.10.

(68). Faculty n.42.

The Vicar Delegate has not the use of this faculty as far as erecting these associations is concerned for the faculty must be interpreted in the light of the common law which demands that he have a special mandate. (69). However, he may inscribe the faithful in the societies that the Vicar Apostolic has erected, in virtue of this faculty.

133. The Vicar Delegate may also, in virtue of another faculty granted by the Sacred Congregation of Propaganda subdelegate to his missionaries the faculty of inscribing the faithful in confraternities, including the confraternity of the Holy Rosary, and blessing with the rites prescribed by the Church all the scapulars approved by the Holy See and imposing them without the necessity of inscription. (70).

Article 2. In relation to ecclesiastical things.

134. A. Regarding the Sacraments. (71).

I. Baptism.

- (1). Minister. The ordinary minister of solemn Baptism

(69). Vromant, Facultates Apostolicæ, n.119, p.136, ft.nt.(I).

(70). Faculty, n. 43.

(71). Cfr. Canon 734, p. 1, which requires that the holy oils used in the administration of the Sacraments must have been blessed by the Bishop on the preceding Holy Thursday, and that the old oils are not to be used except in case of necessity. Faculty n. 2. permits Mission Bishops, and so Vicars Delegate, if they are bishops, to consecrate the oils with the number of ministers at hand and if there is urgent necessity, outside Holy Thursday. The faculty, therefore, dispenses from the time and number of ministers required by liturgical law; cfr. Winslow, Vicars and Prefects Apostolic, p.136.

is a priest but the conferring of it is reserved to the pastor or another priest acting with the permission of the pastor or the local Ordinary, which permission may be legitimately presumed in case of necessity. (72). Hence, the Vicar Delegate may baptize all who have their domicile or quasi-domicile in his territory, and may baptize anywhere in the Mission or grant permission to any priest to do so. But outside his territory he must have permission of the Ordinary or pastor of that territory. (73). The Vicar Delegate also may permit a deacon to solemnly baptize. (74). The deacon is the extraordinary minister of Baptism, but the Code forbids him to solemnly baptize without permission from the Ordinary or the pastor. This permission is to be granted for a just but not necessarily a grave cause and which could be such as the sickness of the pastor, the great number of confessions that he has to hear, many Baptisms to administer, etc. In the matter of the Baptism of adults the Code prescribes that all such cases are to be referred to the local Ordinary, and so may be referred on the Missions to the Vicar Delegate, whenever convenient, and he may personally through his delegate perform the ceremony. (75). Here it is the question of baptizing absolutely, not conditionally which may often be done secretly.

(72). Can. 738, p.1.

(73). Canon 739.

(74). Canon 741.

(75). Canon 744.

135. (ii) Administration. Baptism should be conferred solemnly in all cases except those expressly mentioned by the Code, and it is to be administered with water, specially blessed. (76). The reason for this legislation is that the Church does not wish the subject of Baptism to be unduly deprived of the spiritual benefits that accompany the additional ceremonies found in solemn Baptism. (77). For a grave and reasonable cause the Vicar Delegate may give permission that the ceremonies prescribed in the Baptism of infants may be used in the Baptism of adults. (78). The form for the Baptism of infants is shorter than that used in the Baptism of adults, as is found from observing the *Rituale Romanum*. (79). Ordinarily the one form should not be used for the other but there may be circumstances especially arising in Mission countries that make it permissible to do so, such as lack of time, fatigue after a long journey, etc.

136. In the administration of solemn Baptism, the use of baptismal water specially blessed for that purpose is prescribed by the Church. (80). This is water blessed with special ceremonies on Holy Saturday and the Vigil of Pentecost, with

(76). Canons 755, p.1, 757, p.1, 759.

(77). Sacred Cong. de Prop. Fide, instruct., Aug. 30th, 1775 - *Fontes*, VII, n.4569; Waldron, *The Minister of Baptism*, p.130.

(78). Canon 755, p. 2.

(79). Cfr. *Rituale Romanum*, Tit, II, Ch. II, IV.

(80). Canon 757, p.1.

the oils blessed the previous Holy Thursday if possible. If the baptismal water has become putrid or run out of the font, or been exhausted for any reason, the pastor or quasi-pastor is to pour water into the font that he has cleaned, and bless it with the proper rite as prescribed in liturgical books. (81). However, the Vicar Delegate in virtue of the general faculties granted to Mission Ordinaries by the Sacred Congregation of Propaganda may permit all the missionaries engaged in mission work in his territory to use the shorter form for the blessing of baptismal water as it is found in the Appendix of the Roman Ritual. (82). A person who is in danger of death may be privately baptized, without any ceremonies, but outside the danger of death Baptism should be administered in the solemn manner. But the Code does allow the Ordinary, and so the Vicar Delegate, to permit private Baptism of adult converts from heresy who are baptized conditionally. (83). This may not be allowed in the case of the baptism of children, or adult converts who are baptized absolutely.

137. While private baptism may be administered, in case of necessity in any place and at any time, the place for solemn Baptism is the baptistery or the baptismal font in a

(81). Canon 757, p. 3.

(82). Faculty n. I; Rituale Romanum, Appendix, p.I: "Benedictio Fontis Fontis seu Aquae Baptismalis".

(83). Canon 759, p.1,3.

church or public oratory. (84). However, the Vicar Delegate may for a just and reasonable cause, permit Baptism in private houses, if he considers that this should be done in some extraordinary case. (85). The cause need not be grave but must be just and reasonable, such as the absolute refusal of the father to permit the child being taken to the church yet allowing the Baptism in the house, or if the person, to be baptized were unable to go to the church because of some ailment and this condition was lasting, or as might easily happen in the Missions, the distance to the Church were too far for the person to be taken there for Baptism. The Sacred Congregation of the Sacraments was stated, further, that a child who cannot be taken to the church without danger of death, though it is not actually in danger of death, may be baptized at home solemnly with the permission of the Ordinary.(86)

138. 2. Confirmation.

The ordinary minister of Confirmation is a Bishop while the extraordinary minister is a priest to whom the faculty has been conceded either by the common law or by indult of the Holy See. This faculty is possessed by Vicars and Prefects Apostolic from the law itself, even though they have not episcopal character. But they may use it only within the limits of their own territory and during their term of office.(87).

(84). Canons 771, 773.

(85). Canon 776, pI, n.2.

(86). Sacred Cong. de Sac., July 22, 1925-AAS, XVII (1925) p.452; *sfr.* also, Primum Concilium Sinense, dec.267.

(87). Canon 782, p.1,2,3.

By virtue of the quinquennial faculties that the Sacred Congregation gives to Mission Ordinaries Vicars Delegate may concede the faculty of administering the Sacrament of Confirmation to one or other of his priests, that is to no more than a few so that in the same station only one priest has this faculty, when no Bishop is present. They are to observe the instruction "De Sacramento Confirmationis", to be found in the Appendix to the Roman Ritual. (88). Since this faculty is conceded to Mission Ordinaries, and there is no reason for excepting Vicars Delegate, they themselves may confer the Sacrament or permit others to do so according to the conditions of the faculty. A reason for granting this faculty to missionaries would be when they are far distant from the residence of the Ordinary. The distance may be adjudged great from the distance itself, the difficulty in getting there, the frequency of the journeys that would have to be made if the missionary did not have this faculty, the lack of travelling facilities, etc. All of these make it advisable to permit a missionary to confer the Sacrament. (89). Another condition for the use of this faculty is that there be no other Bishop present who may confer the Sacrament for a Bishop is the ordinary minister. When such a Bishop is present, willing and able, he should be called upon to confirm. If a Bishop were present but was

(88). Faculty n.3; Rituale Romane, Appendix, De Sacramento Confirmationis; Sacred Cong. Sacr., Instruction, May 20th, 1934 -AAS, XXVII (1935) p.11-22, regarding the administration of confirmation by a simple priest by delegation of the Holy See.

(89). Winslow, o.c., p.83-84; Vromant, Fac. Apost., n.35.

unwilling or unable to do the confirming then the priest conceded the faculty may use it lawfully. It is quite possible that a neighbouring Bishop would be passing through a Mission in which case he should be asked to administer the Sacrament if the occasion is present. But none of these conditions are required for the valid use of the faculty so that the priest with the faculty granted to him or the Vicar Delegate himself may validly confirm even though these conditions are not fulfilled. (90).

139. Like the Vicar Apostolic the Vicar Delegate who has the faculty to Confirm is found to administer the Sacrament to those subjects for whose sake the faculty has been granted, and who reasonably ask for it and are prepared for it. (91). This is a matter of a true and proper obligation so that if a Vicar Delegate were to neglect his duty in this respect for a long time he would be guilty of serious sin. The length of time of neglect that would be accounted grave is now considered by authors as five years, and not as formerly when eight or ten years were considered a grave delay. (92). The obligation imposed by the Code is when Confirmation is "rite et rationabiliter" sought. Thus, when it can be conveniently administered

(90). Vromant, *Pae. Apost.*, n.36; Winslow, *o.c.*, p.84.

(91). Canon 785, p.2.

(92). Vermeersch-Creusen, *Epitome Iuris Canonici*, (editio 5, 1934), II, n.64; Cappello, *Tractatus Canonico-Moralis de Sacramentis*, I, n.207; St. Alphonsus, *Theologia Moralis*, Bk.VI, tract. II, ch.II, n.175; Bouix, *De Episcopo*, II, pt.V, ch.XVIII, q.5, p.213; Lehmkuhl, *Theologia Moralis*, pt.II, L.I, tract.III, n.96.

now and may not be deferred to the next time that there will be confirmation, the obligation to confirm on the occasion presented is, "sue levi". (93). The question of whether one with the faculty and duty to confirm is bound to administer the Sacrament to a person suffering from a contagious disease, as might frequently happen on the Missions, is disputed. Benedict XIV states that it would be difficult to prove such an obligation because this Sacrament is not necessary for salvation. (94).

140. The Vicar Delegate is also to keep in mind the prescription of Canon 784 that he may administer the Sacrament of Confirmation within his territory to strangers who are within the limits of his territory, unless their Ordinary has expressly forbidden it. But he may confirm validly only the faithful of his own rite, that is the Latin rite, unless he has received greater powers than are contained in the quinquennial faculties granted to his Vicar Apostolic. (95). We are presuming that the Vicar Delegate is a priest of the Latin rite.

3. The Holy Eucharist.

141. Priests may say only one Mass each day, outside of the Feasts of Christmas and All Souls, unless they have an apostolic indult or permission from the Ordinary. (96). Since the Vicar

(93). Cappello, De Sacram., I, n.207.

(94). Benedict XIV, De Synodo Dioecesano, XIII, 19, n.6,12; Cappello, o.c., n.207 holds that there is no doubt of the obligation existing when scandal or disturbance would arise if the Sacrament were not administered.

(95). Canon 782, p.4.

(96). Canon 806, p.1.

Delegate may grant permission to his priests to binate, since he is an Ordinary we must consider more fully the conditions required before he may concede such permission. They are three in number: (1) lack of priests; (2) necessity of the people; (3) a Holy day of obligation. The lack of priests must be such that there is no other priest available who can conveniently say the second Mass. There may be priests who are travelling through the territory at the time but of uncertain standing and physical condition, so that they may be considered as not present. But if a priest is present who is still fasting and able to say Mass the Vicar Delegate may compel him to prevent bination. (97). When the necessity of binating is removed, the permission to binate cannot be granted. (98). But if the Vicar Delegate has to compel a priest to say Mass to prevent bination the quasi-pastor, the people, or the Ordinary must provide him with a stipend. (99). The necessity of the people will be a condition permitting bination when a notable part of the faithful will be unable to have Mass unless the priest says two Masses. The circumstances of time and place are to be considered in determining the number of the faithful who would be

(97). Augustine, Commentary, IV. p.136.

(98). Noldin-Schmidt, Summa Theologiae Moralis, III, n.208.

(99). Benedict XIV, "Declaresti", March 16th, 1746 - Fontes, II, n. 365.

Sacred Congregation de P. F. May 24th, 1870, n. 9 -
Fontes, VII, n. 4877.

deprived of Mass. Hence, if there were not sufficient room for all the people to assemble at one Mass, or if the priest has to attend two missions that are some miles apart, or if all the people of the same parish cannot assist at the same Mass because of the distance they must come, etc. the Vicar Delegate can permit a missionary to say two Masses. (100). As to what constitutes numerically a "notabilis fidelium pars" cannot be definitely stated, although some authors favour twenty or thirty as being a notable part. (101). However, the Code makes no determination and the prudent judgment of the Vicar Delegate in the circumstances will suffice. Holy days of obligation or Sundays are occasions when permission to say two masses may be granted by the Vicar Delegate. But it may not be conceded on suppressed feasts or feasts of particular devotion, such as the First Friday, etc. (102).

142. A priest may not say Mass unless he has a minister to serve him and make the responses. (103). Vicars Delegate in virtue of the general faculties they have as Mission Ordinaries may permit in case of necessity Mass to be celebrated on a portable altar, even without a server, and "dub dio", et in navi",

- (100). Primum Concilium Sinense, dec. 286: "Ordinerii Sinarum, existente rationabili causa, non difficiles se praebeant in impertienda facultate binandi, habita tamen locorum et temporum ratione;" Sacred Cong. de P.F., May 24th, 1870, n.14, ft.nt. 10-Fontes, VII, n.4877; Cappello, o.c., I, n.732; Augustine, o.c., IV, p.137.
- (101). Cappello, o.c. I, n.732; Vermeersch-Creusen, o.c., II, n.78; Durieux Dolphin, The Eucharist, Law and Practice, n.110, p. 89, ft.nt. 145.
- (102). Sacred Cong. de P.F. May 24th, 1870, n.5 -Fontes, VII, n.4877; Augustine o.c., IV, p. 138.
- (103). Canon 813, p.1.

(that is, in the open or on the sea), provided the necessary precautions are taken so that there is no danger of irreverence, and that the place is decent. (104). The Vicar Delegate may grant this faculty to any priest who is present in his territory and even outside his own territory may use it, in favour of those priests who are his subjects. The faculty points out that the permission may be granted in case of necessity and indicates that this necessity will exist when the priest would not otherwise, be able to celebrate, that is when the priest would have to omit Mass. When all the ordinary requisites for Mass are present it is obvious that this faculty cannot be used. Reason for using the faculty would also consist in the convenience of the people to assist. Regarding this question of Mass without a server, Augustine has this to say: "But where missionary conditions still prevail we believe that priests need not scruple to say Mass without a server, especially where there are some frequent communicants... all authors agree that Mass may be said without a server if the Viaticum has to be consecrated, or on holidays of obligation for the people as well as the priest, or if the server should leave after Mass is considerably advanced." (105). Use of this faculty might be found many times on the missions especially when so many of them have been ravaged by war and normal conditions badly upset. If the permission is

{104}. Faculty, n.4.

{105}. Augustine, o.c., IV, p.151; Lehmkuhl, o.c., pt. II, L. I, tract. IV, n.244; St. Alphonsus, o.c., Bk. IV, Tract, III, ch. III, n. 382; Cappello, o.c. I, n.741 who gives other cases.

granted for the Mass to be said on the sea, it must be provided that there is no danger of spilling the Sacred Species. Thus, it may not be used when the sea is rough, or there is a storm coming up, etc. but only when, according to prudent judgment, the sea is considered calm and liable to stay that way during the time required for the saying of Mass. The question as to whether a stateroom would constitute a decent place for saying Mass was proposed more than once. The Sacred Congregation of Propaganda in treating the matter at first stated that private cabins were not to be used for the celebration of the Holy Sacrifice, but later added that it wished to eradicate any abuses that might arise from Mass being said in private staterooms and did not intend to absolutely forbid Mass being celebrated there if all danger of irreverence were excluded. (106).

143. While the Code demands that Mass be celebrated on a consecrated altar, and in a church or oratory that has been blessed or consecrated the faculty we are considering conceded the power to Vicars Delegate to permit Mass on a portable altar. (107). Moreover, an altar loses its consecration by the removal of its relics, or by a considerable break in the stone, but this faculty allows Vicars Delegate to permit Mass on an altar that is broken or without relics. (108). Even if heretics,

(106). Sacred Cong. de P.F. March 11th, 1902--AAS, XXXV, p.48 and Aug. 13th, 1902 --AAS, XXXV, p.612-613; cfr. also Can. 822, p.4.

(107). Canon 822, p.1; and the second paragraph of the same canon states that the privilege of a portable altar is conceded only by law or indult of the Holy See.

(108). Canon 1200.

schismatics, or excommunicated persons will be present the Vicar Delegate may permit the celebration of Mass, in virtue of this faculty. Ordinarily Mass should not be commenced earlier than one hour before daybreak, or later than one hour after noon, but the Vicar Delegate himself may or he may permit other priests, begin Mass at one hour after midnight. (109). A reason for granting such permission would be the necessity of an early start on a journey, especially in Mission lands where the early morning is often required for travelling because of the heat during the day, etc.

144. In saying Mass a priest must observe the rubrics prescribed by liturgical books and avoid the arbitrary addition of other ceremonies or prayers. (110). In this connection the several powers of the Vicar Delegate in virtue of the general faculties granted to Mission Ordinaries must be noted.

(1). Vicars Delegate may permit Mass to be celebrated with one light of any substance, provided there is no beeswax available. He can even permit Mass without any candles in a case of true necessity with his own conscience to determine the gravity of the necessity urging this permission. (111). The general rubrics of the Mass prescribe the use of two beeswax candles to be kept burning during the mass, and it would be a grave sin to say Mass without any lighted candles, except in

(109). Canon 821, p.1.

(110). Canon 818.

(111). Faculty, n.5; Vromant, Fac.Apost., n.39 holds that an electric light will satisfy the obligation for a light of any substance when none other is available.

the case of grave necessity such as for the administration of Viaticum. (112). This faculty then may be used by the Vicar Delegate when it is morally impossible to obtain beeswax candles. Such would be the case when the cost of these candles was too much or they were too difficult to obtain, as in time of war when the shipments and the making of such may be greatly restricted. The Vicar Delegate himself is to determine when the circumstances are grave enough to warrant the use of this faculty.

(ii). The Vicar Delegate may permit that water alone be used in both purifications of the chalice at Mass providing there is an extreme shortage of wine though the rubrics prescribe that wine only be taken after the first ablution, and both wine and water for the second, (113) is to be noted that the faculty refers only to the deficiency of wine and it does not require the necessity of saying Mass as a condition for its use. Thus, the Vicar Delegate could permit Mass to be said in virtue of this faculty, by reason of devotion alone when there was a shortage of wine and regardless of any other reason.

(iii). The Vicar Delegate may permit incensation in Masses chanted by one priest only without ministers, provided there are at least two clerics in surplice to serve the Mass. (114). In this case, then, no subdeacon or deacon is required, but only two altar boys who know how to serve Mass for the servers

(112). Rubricae Gen. missae, n. XX; Noldin-Schmidt, o. c., III, n. 213; Cappello, o. c., I, n. 775.

(113). Faculty n. 6; Missale Romanum: Ritus servandus, X, n. 5.

(114). Faculty, n. 7.

need not be clerics in the strict sense. (115).

(iv). Vicars Delegate may permit their missionaries who are making a journey to use vestments of any liturgical colour when they say Mass. (116).

(v). According to the Code, one Mass at Midnight on Christmas may be celebrated in parochial and quasi-parochial, churches as well as conventual churches, but no other masses, without apostolic indult. (117). But the Vicar Delegate may permit three Masses at Midnight on Christmas in any church or public oratory in his territory, which has not the privilege by the common law, at Christmas, providing everything is performed with due reverence. (118). Also, at midnight Mass Holy Communion may be distributed when in the judgment of the Vicar Delegate there is reason for doing so. (119).

(vi). The Vicar Delegate has the faculty to permit that the functions of Holy Week may be carried out according to the particular rite prescribed by Benedict XIII for minor parochial churches, that is, without chant and in the manner laid down as to the number of ministers when the functions cannot be held in detail. However, in granting this permission it is

(115). Winslow, p.88.

(116). Faculty n.8.

(117). Canon 821, p.2.

(118). Faculty n. 9; Canon 821, p.3.

(119). Bouscaren, The Canon Law Digest, I, p.410, re. Can.867:

Private Response of Code Commission, July 10, 1919;

Prummer, Manuale Theologiae Moralis, III, n.221.

necessary to see to it that the due reverence is given to the sacred mysteries and that there is no occasion of abuse. The Vicar Delegate may even permit a low Mass to be said on Holy Thursday in place of the customary solemn Mass. (120).

(vii). Permission can be granted by the Vicar Delegate for the celebration of three requiem Masses during the week in all the churches of the Mission, outside of Lent, even on days that are "ritus duplicis majoris et minoris". However, this may not be permitted on Sundays or on privileged octaves, vigils or ferials. (121). The privileged ferials are those of Ash Wednesday, and Monday, Tuesday and Wednesday of Holy Week; the privileged vigils are those of Christmas, Pentecost and the Epiphany; the privileged octaves are those of Easter, Pentecost, Epiphany, Corpus Christi, Christmas and the Ascension and the Feast of the Sacred Heart.(122). Another restriction to the use of this faculty is that the days on which requiems are permitted by the rubrics must be counted or computed also. Thus, if three semi-doubles occur during a week, a requiem cannot be celebrated on the three remaining days which are doubles. If on the other hand, there is only one semi-double that week, then two doubles may be selected for the second and third requiem, for this is a local indult. (123).

(120). Faculty n.10.

(121). Faculty n.11.

(122). Hebert, Lecons de Liturgie, II, p.160, ft.nt.(1)

(123). American Ecclesiastical Review, XL, 1909, p.230.

(viii). The Vicar Delegate may also permit, those who cannot read the Masses prescribed for each day according to the rubrics of the Roman Missal, because of a defect of their eyes or some other infirmity, to say a votive Mass of the Blessed Virgin Mary on feast days and Sundays and a requiem Mass on ferials. (124). The Vicar Delegate may use this faculty in favour of any priest who is not able to say the Mass occurring that day according to the Missal because of lack of sight, or some defect of his sight, or any other infirmity which, as will be evident from the circumstances, requires the use of this power. It does not mean that the priest whom the Vicar Delegate permits to use the faculty must always say a votive mass of the Blessed Virgin or a requiem, for if his infirmity allows him on occasion to say the Mass of the day he may do so. (125).

145. It belongs to the Ordinary to fix the amount of a manual Mass stipend, and if possible, he is to do this by Synodal decree. (126). In this canon the term "Ordinarii loci" is used for the one who may fix the amount of the stipend but it is questioned whether or not the term here includes the Vicar General, and as regards the Missions, the Vicar Delegate. Probably it does not include the Vicar Delegate or the Vicar General, for the Code points out that the sum for the manual stipend is to be fixed as far as possible by Synodal decree, and the only one

(124). Faculty n. 12.

(125). Sacred Cong. Rituum, Instruc., Jan. 12th, 1921-AAS, XIII(1921)
p. 154.

(126). Canon 831, p. 1.

who has the right to preside over a Synod in a diocese is the Bishop and in a Vicariate the Vicar Apostolic, and they alone are the sole legislators in the Synod. (127). Only when they have a special mandate may a Vicar General or a Vicar Delegate preside over a Synod, so we may conclude that neither in or outside a Synod may the Vicar Delegate determine the amount of the stipend. (128).

146. The Code prescribes that Holy Communion shall be brought publicly to the sick unless a just and reasonable cause advises otherwise. (129). The Ordinary of the place alone which term includes the Vicar Delegate, is the judge of the just and reasonable cause spoken of in this canon. (130). Vicars Delegate have the faculty, however, to permit their missionaries to carry and administer the Blessed Sacrament to Christians who are ill, without wearing surplice and stole, and without anyone accompanying them, provided that it is evident they will be exposed to danger if they wear surplice and stole. (131).

147. The sick who have been in bed for a month and have no

(127). Canon 304, p. 2; 362.

(128). Canon 357, p.1; Durieux-Dophon, o.c., n.47, p.55, ft.nt.75; Cance, Le Code de Droit Canonique, II, n.168; Cappello, o.c. I, n.671; Primum Concilium Sinense, dec.299; "Taxam stipendii seu eleemosynae Missarum statuunt Ordinarii in suo quisque territorio, audito Consilio Missionis et habita ratione locorum et circumstantiarum".

(129). Canon 847.

(130). Sacred Congregation Sacrament, Jan.5th, 1928--AAS XX, (1928) p. 81.

(131). Faculty n.17.

hope of speedy recovery may, on the prudent advice of the confessor, receive Holy Communion once or twice a week, even though they have taken medicine or something by way of drink. (132): An amplification of this is found in the faculty that Vicars Delegate may use to permit the sick who have no hope of speedy recovery to receive Holy Communion two or three times a week(and daily if it is a question of priests or religious), even though they have had to take some medicine or something "per modum potus" before receiving. (133). The faculty then does not require that the sick person has been in bed for a month as does the canon. The judgment regarding the lack of certain hope of speedy recovery means moral certitude of such, so that the judgment of a doctor or other prudent person will suffice. No hope of immediate or speedy recovery may be interpreted to mean within three or four days. (134). Moreover, while the faculty permits Holy Communion twice or three times a week, and even daily to priests and religious (men or women), the canon only allows it once or twice a week. Holy Communion is permitted to these persons even though they have taken some medicine or something "per modum potus". As far as the medicine is concerned there is no restriction or determination that requires it to be a liquid. It may then, be either a solid or a liquid, and may be taken as often as necessary for there is nothing regarding the number of

(132). Canon 858, p.2.

(133). Faculty n^o 18.

(134). Vermeersch-Creusen, o.c., II,n.124; Anglin, The Eucharistic Fast, p.136,143; Cappello,o.c.,I,n.506.

times either. (135). What is to be considered taken "per modum potus", (that is, as a drink", would include broth, coffee, and other liquids, to which meal, or ground toast might be added as long as the mixture does not lose the nature of liquid food. Probably also an egg-nogg could be taken, and even a raw egg or one slightly boiled. (136). The faculty does not require the necessity of ~~breaking~~ one's fast as a condition for its use, so that even if a person would fast with slight inconvenience they could still be permitted to use it provided the conditions are fulfilled. Being marked with an asterisk, this faculty may be subdelegated by the Vicar Delegate.

4. Penance.

148. Jurisdiction. Vicars Delegate have ordinary jurisdiction to hear confessions anywhere in the Vicariate. (137). Also they may absolve their own subjects, that is those who have a domicile or quasi-domicile in the Vicariate, anywhere in the world. (138). But Vicars Delegate like Vicars General have need of a special mandate before they could reserve sins, although they have the power to absolve from any sin that the

(136). Winslow, o.c., p.98-99; Vermeersch-Creusen, o.c., II, n.124, p. 87; Davis o.c., III, p.217; Cappelle, o.c., I, n. 506; Augustine, o.c., p.235.

(137). Canon 873, p. 1.

(138). Canon 881, p.2; cfr. Vromant, Jus Missionariorum, II, n. 131, 8 and Periodica, XV, 1928, p. 78* who holds that the Vicar Delegate cannot hear the confessions of subjects of the Vicariate outside the Vicariate since he maintains that the Vicar Delegate has only delegated power of jurisdiction.

Superior has reserved. (139).

149. Indulgences. In the matter of indulgences it must be recalled that, except for the Holy Father to whom the dispensation of the whole spiritual treasury of the Church has been committed, those only have ordinary power to grant indulgences to whom it has been conceded expressly by the law. (140). Moreover, inferiors to the Roman Pontiff cannot delegate to others authority to grant indulgences, except by express permission of the Holy See; nor may they concede indulgences applicable to the souls in purgatory; and they may not attach indulgences to an object, act of piety, or an association to which the Holy See or someone else has already attached indulgences, unless they prescribe new conditions to be fulfilled. (141).

150. In virtue of power from the common law Vicars and Prefects Apostolic, even though not raised to the episcopal dignity, can impart the papal blessing, with a plenary indulgence, in their own territories but only once a year on one of the more solemn feasts. To do so they do not have to celebrate solemn Mass themselves but must assist at and use the prescribed formula. (142). However, they have further power from the general faculties granted to them by the Sacred Congregation of Propaganda whereby they may impart the papal blessing, aside from the concession of Canon 914, three times a year on the more

(139). Canon 898, p. 1, 899, p.3.

(140). Canon 912.

(141). Canon 918.

(142). Canon 914: Prelates with the use of the Pontificalia are to use the formula given in the Caeremoniale Episcoporum; while those without the use of the Pontificalia should use the formula to be found in Rituale Romanum, Tit. VII, Ch. 32.

solemn feasts. In doing so they must observe the prescribed formula. For the faithful who are present for the blessing to obtain the plenary indulgence it is required that they have been to confession and received Holy Communion, and offer prayers to God for the spread of the faith and for the intention of the Holy Father. (143). Although Vicars and Prefects Apostolic are only referred to in Canon 914 as being able to bestow the papal blessing with the plenary indulgence attached, the general faculties are conceded to the Vicar Delegate, and so the Vicar Apostolic could commit the blessing to the Vicar Delegate, as would be necessary in cases when the Mission Superior himself was away or impeded from bestowing the blessing. Under similar conditions the Vicar Delegate could make use of the other faculties regarding indulgences, which are conceded to Mission Ordinaries. In brief, these faculties are as follows:

(1). The faculty of conceding, on the observance of the usual conditions, a plenary indulgence to the faithful on the solemn reception of their First Holy Communion and on the occasion of their Confirmation. (144). Since the faculty speaks of the "solemn" reception of Holy Communion it indicates that it is to be received with or attended by some special ceremony. But children or adults even though they receive their First Communion privately

(143). Faculty n.33.

(144). Faculty n.34.

or on a sick bed can be given the papal blessing when there is some special ceremony marking the reception. The faculty also requires, of course, that the recipients must be in the state of grace, free from censure, etc. ("rite accedentes").

(ii). The faculty of conceding a plenary indulgence to converts from heresy - "primo conversis ab haeresi" - under the usual conditions. This faculty may be subdelegated by the Vicar Delegate to the priests of the Mission since it is marked by an asterisk. (145). The indulgence may be conceded "primo conversis" from heresy, which means those who were baptized in a heretical set, reared in it, but have abjured their heresy in the external forum. The word "primo" indicates that the faculty may not be used in favour of those who were once converted from heresy but lapsed back into it and not return to the faith. Also it is clear that it does not refer to converts from paganism or infidelity, or converts from Protestantism who were ^{not} validly baptized. The reason for the exemption of these from the faculty is because in receiving valid Baptism on their entrance into the Church they have everything remitted and have no need of the indulgence; (146).

(145). Faculty n *35.

(146). Winslow, o.c., p. 122; Konings-Putzer, Commentarium in Facultates Apostolicas, n.147, p.253; Vromant, Fac. Apost., n.97; Blat, Commentarium Textus Codicis Juris Canonici, III, p.294.

(iii). The faculty of conceiving a plenary indulgence to each of the clerics who take part in the spiritual exercises of a retreat that lasts at least five days, who celebrate Mass or receive Holy Communion, and recite the usual prayers for the gaining of the plenary indulgence. (147). The retreat mentioned in this faculty must be one that lasts at least five days. It may begin on the evening of the first day and conclude the morning of the fifth day, for the faculty does not require five full days. (148). The clerics are to be present at the spiritual exercises that should be held in common. Since the term used here is only cleric, it includes those who have received first tonsure, whether they be secular or religious, for no distinction is made;

(iv). The faculty of imparting the apostolic blessing with a plenary indulgence to all the faithful who have attended more than half the exercises of the Mission, which is demanded, at least every ten years in a quasi-parish or parish by Canon 1349, p.1. The recipients must be present for the blessing which is given after the last sermon, and have been to confession and Holy Communion. Also they must, on the occasion of a visit to the church

(147). Faculty n. 36.

(148). Vromant, Fac. Apost., n.98.

where the Mission was being held, and have prayed for the propagation of the faith and the intentions of the Holy Father. (149). This faculty may be subdelegated by the Vicar Delegate. We will refer to it again in treating of the teaching authority of the Church and the Vicar Delegate;

(v). The faculty of conceding once, in the act of visitation of parishes, quasi-parishes and missions, as well as secular or religious communities, a plenary indulgence to the faithful concerned who have been to confession, received Holy Communion and visited the Church or oratory to offer the usual prayers for the spread of the faith and the intentions of the Holy Father. (150). As we have seen the Code imposes the obligation on Mission Superiors to make a canonical visitation of their territory when necessary, either personally or by another if they are legitimately impeded. (151). If the Vicar Delegate makes this visitation he too will be able to grant this indulgence. The indulgence may be granted only once during the visitation of parishes, quasi-parishes, mission stations, communities of religious or seculars, such as hospitals, orphanages, convents, etc. There is no exception either here of

(149). Faculty n *37.
(150). Faculty n *38.
(151) Canon 301, p.2.

exempt religious so they too may benefit by the faculty;

(vi). The faculty of conceding that all the faithful who make a monthly confession may gain all the indulgences for which a bi-monthly confession is ordinarily required. (152). The Code states that the faithful who are in the habit of confessing at least twice a month, unless legitimately impeded, or who receive Holy Communion daily in the state of grace may gain all the indulgences without the actual confession which would otherwise be a necessary condition, except in the case of an ordinary or extraordinary jubilee. (153). The faculty that Vicars Delegate may make use of changes the requirements of the canon in such a way that they may permit a monthly confession to suffice for the gaining of the indulgences which would otherwise require a bi-monthly confession. But the jubilee indulgences would still be an exception to the faculty. The faculty speaks of a legitimate impediment preventing the bi-monthly confession, and such an impediment would be found in the lack of priests, the distance to be travelled to go to confession, and like reasons, which may be many in mission territory. Winslow notes that the powers conceded by this faculty are not restricted to individual cases

(152). Faculty n.*39.

(153). Canon, 931, p.3.

(154). Winslow, o.c.c., p. 125.

but may be extended to all the faithful by general indult. (154).
151. One of the faculties granted "pro ipso Ordinario", (that is for the Ordinary himself) is the faculty of obtaining the indulgences that he may concede to others provided that he fulfills the usual conditions. (155). This faculty belongs also to the Vicar Delegate. (156).

5. Extreme Unction.

152. Little need be said in particular regarding this Sacrament and the Vicar Delegate. The ordinary minister of Extreme Unction is the pastor of the place where the sick person lives. However, in case of necessity, or with at least the reasonably presumed consent of the pastor or the Ordinary, any priest may administer this Sacrament. (157). The Vicar Delegate has the right as an Ordinary of the Place to administer Extreme Unction in the Mission.

6. Holy Orders.

153. The Code points out that the ordinary minister of ordination is a consecrated Bishop, while the extraordinary minister is one, who, although he lacks the episcopal character, has received the power of conferring some orders either by law or by particular indult of the Holy See. (158). As regards the Ordinaries of Missions, the law states that the Vicar and Prefect Apostolic, if they enjoy episcopal character, are

(155). Faculty n.51.

(156). Vromant, Fac. Apost., n. 114, p. 126, ft.nt.(2).

(157). Canon 938, p.2.

(158). Canon 951.

equivalent to the diocesan Bishop as regards ordination. Even if they lack episcopal consecration they can, nevertheless, in their own territory and during the term of their office only, confer first tonsure and minor orders, both on their own secular subjects according to the norm of Canon 956 and on others who have the dimissorial letters required by law. Ordination outside these limits would be invalid. (159). Thus, they must not ordain either outside the limits of their own territory or after going out of office. Evidently unless the Vicar Delegate is also a Bishop he can do nothing as regards the actual ordaining of subjects. Moreover, he may not even grant dimissorial letters pertaining another Bishop to ordain subjects of his Mission territory, as the Code indicates when it requires the Vicar General to have a special mandate before he can concede dimissorial letters, which prescription also is to be applied to the Vicar Delegate. (160). The dimissorial letters are a written document by which an Ordinary authorizes another Bishop to give orders in his place. Vicars and Prefects Apostolic can grant dimissorial letters for major orders even though they themselves lack episcopal consecration and so lack the power to confer the Orders. (161).

154. The Code requires that neither a secular nor a religious may be promoted to first tonsure unless they have begun their theological course, but makes no determination regarding

(159). Canon 957.

(160). Canon 958, p.1 n.2.

(161). Canon 958, p.1, n.4.

age. (162). Subdiaconate is not to be conferred before the candidate has completed his twenty-first year; diaconate is not to be conferred before the twenty-second complete year; and the priesthood is not to be conferred before the completion of one's twenty-fourth year. (163). However, in virtue of their general faculties Mission Ordinaries may dispense deacons from the age required by law for the priesthood to the extent of eighteen months. (164). Thus, the deacon is to have reached the age of twenty-two years and six months complete. The faculty is to be used in view of the promotion of the deacon to the priesthood and it in no way dispenses from the age required for the subdeaconship or the deaconship. It demands that the deacon is suitable for promotion to the higher order and also that he has completed a half of the fourth year of his theological course. This is in conformity with Canon 976, p. 2 which requires that the priesthood is not to be conferred until after the middle of the fourth year of theology. This same canon, it is to be noted, in the third paragraph, demands that the theological course be ~~made~~ made privately but in class and according to the plan prescribed by Canon 1365. The faculty, however, may be used in favour not only of secular clerics but also religious even exempt. A grave cause is necessary for its use, and this will consist not merely in the desire of the deacon to be ordained but some cause such as the real need of

(162). Canon 976, p.1.

(163). Canon 975.

(164). Faculty n.20.

priests in the territory. While the Vicar Delegate may not ordain, unless he has episcopal consecration, yet he may make use of this faculty and dispense according to the conditions of the faculty when a Bishop is in the territory of the Vicar Delegate to do the ordaining providing the Vicar Apostolic has already conceded the diocessal letters or given the Vicar Delegate a special mandate to so do. In this case the Vicar Delegate is not exercising power of orders, or attempting to, but is utilizing the faculties granted to Mission Ordinaries to dispense from an impediment.

155. The law of the Code states that between the reception of the first tonsure and the first Minor Orders some time should regularly elapse, although no definite time is determined by the legislator. Also between the different Minor Orders some time should elapse, though no time is stated here either. Between the last Minor Order of the acolyte and the subdeaconship a full year should elapse, but between the subdeaconship and the deaconship three months should have elapsed as also between the deaconship and the priesthood, unless the necessity or utility of the Church postulates otherwise. Moreover, unless, he has special permission, a Mission Ordinary may never confer Minor Orders along with the subdeaconship on the same candidate or two sacred Orders on the same day. Nor may first tonsure be conferred on the same day. (165). However, Mission Ordinaries have the faculty to confer, for a reasonable cause, all the (165). Canon 978.

Minor Orders together, even along with first tonsure. (166). It is to be noted that there is to be a reasonable cause for the use of this faculty, such as the convenience of the one ordaining, to avoid a delay in the studies of the candidates, etc. But a reasonable cause will suffice since it is not required to be a grave cause. Again, while the Vicar Delegate himself, unless he is a Bishop may not confer either first tonsure or Minor Orders, he may grant a dispensation to permit all the Minor Orders, alone or with first tonsure, being given together, when there is another Bishop in his territory to do the ordaining. This presupposes of course, that the dimissorial letters have already been conceded by the Superior of the Mission or that he has given the Vicar Delegate a special mandate to concede the same.(167)

156. Major Orders should be conferred during Mass on the Ember Saturdays, the Saturday before Passion Sunday or on Holy Saturday. But for a grave reason the Bishop may confer Major Orders on any Sunday or Holy day of obligation, and this probably includes days formerly of obligation though now suppressed. First tonsure may be conferred on any day and any hour, while minor Orders may be given on Sundays or doubles but in the morning only. (168). The intervals of time that should elapse between the reception of the various Orders have already been referred to above. Mission Ordinaries have the faculty of conferring,

(166). Faculty n.19.

(167). Vromant, Jus Missionariorum, II, n.127, p.117, ft.nt. (1).

(168). Canon 1206, p.2,3,4; Ayrinhac, Legislation on the Sacraments, n.335, p. 395.

for a just cause, all the sacred Orders, including the priesthood, on ferials, even successively. (169). In virtue of this faculty, then, they may dispense from the law regarding the days on which Orders may be conferred and also from the intervals that should elapse between the reception of the different Orders. For the use of this power any just cause suffices, and hence it need not be a grave cause, nor does it have to be the necessity or utility of the Church which are canonical causes for lessening the space of time between the various Orders. (170). Causes, then allowing the use of the faculty would be the difficulty of the journey that the one ordaining would have to make to return in the time ordinarily required by law for the next ordination, the inconvenience of sending subjects to another Bishop to be ordained, a notable interruption of their studies, etc. The subjects of the faculty are clerics incardinated into the Vicariate even if they make their studies elsewhere and religious from the moment they are attached to a house of the Mission even though they are studying in Europe. (171). Here again the Vicar Delegate, if the Vicar Apostolic has granted the dimissorial letters or if he has given the Vicar Delegate a special mandate to concede them, may make use of the faculty and dispense according as it permits when there is a visiting Bishop present

(169). Faculty n.20.

(170). Canon 978, p.2.

(171). Vromant, Fac. Apost., n.21,54.

to do the ordaining. (172). Of course, if the Vicar Delegate were a Bishop and the dimissorial letters had been granted or he had been empowered to concede them he could not only use the faculty for the dispensation regarding the days and intervals that should elapse but he could also confer the Orders.

157. It is to be noted that the Vicar Delegate, as an Ordinary, may personally or through another, dispense their subjects from all irregularities arising from occult crime, except irregularities from voluntary homicide or abortion and except those that have been brought to the judicial forum. (173). In order that a person may receive Orders licitly it is necessary that he be endowed with the qualities as demanded by the Sacred Canons, and not be subject to any irregularity or impediment. Anyone who is suffering from irregularity or impediment, even though they have incurred them after ordination and without any fault of their own, are prohibited from exercising the Orders they have received. (174). Irregularities are perpetual impediments, arising either from defect or crime, and are incompatible with the clerical office. Hence, they need to be dispensed from unless they cease to exist through the abrogation of the law which established them. (175). The Vicar Delegate, by virtue of the common law, as pointed out above, may dispense only from irregularities arising from an occult crime, with two exceptions.

(172). Vromant, *Jus Missionariorum*, II, n. 127, p. 117, ft. nt. (1).

(173). Canon 990, p. 1; 985, n. 4.

(174). Canon 968, p. 1, 2.

(175). Canon 983; Ayrinhac, *Legislation on the Sacraments*, n. 321, p. 378.

Irregularities arising from crime are found listed in Canon 985. An occult crime is one not known or known only to a few and not likely to become known. (176). The first exception is voluntary homicide or abortion, while the second is those which, although occult, have been brought before an ecclesiastical, or probably also before a civil court, for a formal trial and not simply for administrative measures or for penal sanctions. (177).

7. Matrimony.

158. Marriage cases are certainly among the more frequent problems with which the Vicar Delegate on the Missions has to deal. For that reason we will consider more in detail, not only the power that the Vicar Delegate has in virtue of the common law but also his special faculties as a Mission Ordinary.

159. (i). Regarding the promises of marriage. A promise of marriage whether unilateral or bilateral and sponsalitial, is null in both forums unless it has been made in writing, signed by both parties, and by either the pastor or the Ordinary of the place, or at least by two witnesses. If either or both parties are unable to write, mention of that fact must be made in the document, for the validity of the act, and another witness must be added to sign the document, together with the parish priest or the local Ordinary or the two witnesses spoken of above. But a promise of marriage though it may be valid and there

(176). Canon 2197.

(177). Ayrinhac, o.c., n.322, p.379.

(178). Canon 1017.

be no just cause to excuse from fulfillment, does not furnish grounds for an action to demand the celebration of the marriage. However, it will permit one to bring suit for damages if any be due. (178). The Vicar Delegate is to take note of this canon because he is included under the term local Ordinary, and especially is he to note the prescriptions laid down by the law when a person cannot write for in Mission territory such persons may be found quite often. Payen points out that in China, for example, there are many who do not know how to write. (179).

60. The contract of the promises must be made in writing in order that it be valid. It is not necessary that the contract be written by the parties themselves, but anyone can draw it up or it may be typed provided it contains what is necessary for the substance of the contract. Any conditions that affect the validity of the contract must also be expressed. If it be a unilateral contract the promise of the one party is to be noted, and "ad cautelam" the acceptance of the other party without promise. It is also necessary for validity that the date on which the contract has been signed should be noted, that is, the day, month and year. (180). Certainly it is more advisable that it be so signed and the place mentioned in case of later questions which may easily arise. For the validity of the promises it is required that the persons mentioned in the canon

(178) Canon 1017.

(179) Payen, *De Matrimonio in Missionibus*, I, n. 258, p. 201.

(180) Cappello, *De Sacramentis*, (editio quarta emendata et aucta 1929) Vermeersch-Creusen, *Epitome*, II, n. 281; Ayrinhac, *Marriage Legislation*, n. 26; Boury, *Directorium Theologiam Pastoralem Complectens ad usum Missionariorum*, n. 724; *Sac. Cong. Conc.*, July 27, 1908, ad II-Fontes, VI, n. 4350.

sign the document. The pastor or the Ordinary may not delegate another priest to take their place for they themselves alone have the quality of official witness in this matter. (181). No special qualifications are demanded in the other witnesses except that they can write and have the use of reason, in order to be able to testify to what they have witnessed. Women, non-catholics, pagans, etc. may thus be used as valid witnesses.

161. As stated above, if one or both of the parties entering the premises cannot write this fact is to be noted in the document and another witness added. One extra witness will suffice even if both parties cannot write. A sign for one's name does not suffice, for this obviously does not constitute a signature. Probably a procurator could be used provided he has a special mandate and the parties at the time of the signing of the contract have not ^{lost} the use of reason nor revoked the mandate. In many Mission countries and as Payen notes especially in China, where there may more easily be fraud, it is best that a procurator is not used. Besides, in these places since marriage promises, even merely civil, are broken only with great difficulty and parents can easily force their children into a marriage, there seems to be no just cause for a missionary to urge Christians to enter the canonical

(181). Sacred Congregation Conc., March 28th, 1908, ad VI-
Fontes, VI, n. 4349;
Ayrinhac, o.c., n. 26

promises of marriage. (182).

162. The following are some points that the Vicar Delegate should keep before his mind whenever the question of the promises of marriage arises, namely:

a). To demand the proper and absolutely free consent of the parties who are to enter the contract;

b). To avoid permitting promises which are made at an early age or which are to be made a long time before the marriage is to take place;

c). To seriously advise children not to enter the contract of marriage itself without the parents' knowing of it or

(182). Payen o.c., I, n.258, p.201-202. In an appendix (I, p. 255-257) Payen points out certain prescriptions of the civil law of China in regard to the promises of marriage that give a good idea how they are considered in a Mission country where the mass of the people are pagans. He draws these points from the Civil Code of China (In Codice Civili R.S., libro IV de familia, capite II de Matrimonio, titulo I de contractu sponsalicio, ab art. 972 ad art. 980 exclusive.), and they should be kept in mind by a Vicar Delegate or any Ordinary working in China, as well as pastors or quasi-pastors. According to these prescriptions of the Chinese Civil Code, the parties entering a promise of marriage must give proper consent and have a certain age, namely, seventeen years complete for the man and fifteen years complete for the woman. According to Chinese law a minor is one who has not yet completed his twentieth year, and before a minor may enter a promise of marriage he or she must have the assent of their legal guardian, who will be the parents if they are alive. Moreover, a sentence cannot be sought from a tribunal force the execution of a promise of marriage. The various causes for rescinding the contract of the promise of marriage may be reduced to violation of sponsalitical faith or to a notable mutation as when one of the parties after the promise has been put in prison. The law also considers the question of the right to and duty of payment even by pecuniary compensation, in reparation for damages.

when the parents are reasonably unwilling, until a settlement has been arranged, ((Canon 1034).

d). To instruct the parties about to enter the promises that neither in the ecclesiastical forum, and perhaps, neither in the civil forum as in China, is there granted action for the petition of the celebration of marriage, (Canon 1017,p.3);

e). To point out that the contract of the promises can be rescinded for a grave cause in virtue of natural or ecclesiastical law, and maybe also from civil law;

f). To explain within what limits action for reparation of damages is legitimate from canon law (Canon 1017, p.3), and also from the civil law of the particular region.

163. The First Council of China has issued some instructions that Vicars Delegate of any country might well keep in mind. It points out that the Church has always reprovved and detested pacts entered into by parents regarding the future marriage of their children whether the children be infants or have reached the age of puberty, but lack sufficient knowledge, for these pacts are really pernicious. Hence, the faithful are to be seriously advised to abandon the unjust custom of espousing children in the age of infancy, and to abide by the rules of the Church. Moreover, parents are prohibited by the Council from presuming to enter the promises of marriage for their children who have reached the age of puberty without the consent of the children, and this under pain of nullity in either forum.

Missionaries are warned not to mix unduly in the matters of promises of marriage and marriage, and when they do concern themselves with them they are to have no other interest than that the laws of the Church will be fulfilled. Especially are they warned not to advise girls indiscriminately, who were promised by valid and ratified "sponsalia" to another of the faithful, to break off the promises on the pretext that they wish to preserve their virginity. Many and grave difficulties often occur for the missionary and the Christians admitting the dissolution of the sponsalia when the promises are broken. It is preferable that each party, in this case, wholly relinquish their liberty. Nor are missionaries to readily listen to girls who, already espoused according to the custom of their country, contend that they, as they wish and without any onus, can rescind their promises from the fact they are not entered into according to the norm of Canon Law. (Can.1017). Thus, these girls and their parents are to be warned that, although there is no action granted to petition marriage from "sponsalia" of this kind, there is conceded action for reparation of damages, accordingly as is due and according to the legitimate customs of the region. (183).

164. ¶110 Regarding the banns of marriage. The Vicar Delegate may, according to his own prudent judgment, dispense from the publication of the banns in the case of his subjects for a

(183). Primum Concilium Sinense, dec. 381.

legitimate cause. This he may do even if the banns were to be published in another diocese or Mission. (184). A legitimate cause is necessary for the validity of the dispensation, and a more grave cause would be required to dispense from all the publications than when only one is dispensed. (185). But if it is certainly known to the Vicar Delegate that there is no impediment to the marriage then a grave cause is not always and necessarily required for a dispensation from two or even three of the banns, and any reasonable cause will suffice, including the petition alone of the parties, for the end of the law has ceased and by that fact there is a just cause for dispensing. (186). Causes for dispensing from the banns will be such as danger of scandal or infamy, spiritual harm if the marriage is delayed or danger of this, danger of serious temporal harm, etc. In some Mission countries the practice may or may not be in force of publishing the banns because of particular customs of the people there.(187). In this case the particular law of the region is to be followed, but the law of the Code is to be introduced as soon as possible.

(184). Canon 1028, p.1.

(185). Canon 81; Ayrinhac, o.c., n.56.

(186). Alphonsus, Theologia Moralis, Bk. VI, tract. VI, ch.III, Dub. I, n. 1004-1006; Payen, o.c., I, n.471; Cappello, o.c.III, n.168.

(187). Cfr. Primum Concilium Sinense, dec. 386 where it states that the canons regarding the banns are to be observed in those places where it is the practice of publishing them, while in other regions where this is not the practice it is to be introduced as far as possible.

165. If a prudent doubt exists in the mind of the pastor or quasi-pastor about an impediment to a marriage about to be contracted he shall investigate the matter carefully and shall not assist at the marriage as long as the doubt remains until he has consulted the Ordinary, who may be the Vicar Delegate on the Missions. (188). The investigation that the Vicar Delegate will then conduct is a purely administrative process. The Sacred Congregation of the Holy Office has issued a detailed instruction on the manner in which this investigation shall take place. (189). In an administrative process judicial acts and solemnities are not required, and aside from the special prescriptions laid down by the legislator only those acts and solemnities are needed which natural law and right reason require for a proper investigation and just decision in the case. (190). In this process then, a speedy solution of the problem for the good of souls may be obtained but if serious doubt still remains after the provisions of the Instruction have been fulfilled the case should be submitted to the Sacred Congregation of the Sacraments for its decision.

166. The Vicar Delegate may also be called upon for permission to marry "vagi" and may grant such permission when he sees

(188). Canon 1031, p.1, n.1,3; cfr. also the latest instruction regarding pre-nuptial investigation issued by the Sacred Cong. de Disc., Sac. June 29th, 1941, to be found in the Jurist, II, Jan. 1942, Supplement, with a commentary; also to be found in the Homiletical and Pastoral XLII, Jan. 1942, p. 374-391.

(189). Sac. Cong. S. Offic. May 13, 1868, -Fontes IV, n. 1002; Doheny, Canonical Procedure in Matrimonial Cases, p. 437.

(190). Rice, Proof of Death in Pre-Nuptial Investigation, p. 47.

fit according to his prudent judgment. (191). Likewise, the advice of the Vicar Delegate may be sought in the case of a marriage without the knowledge and against the reasonable opposition of the parents of the parties. (192). After due consideration of the case the Vicar Delegate may or may not grant permission for the marriage to be performed by the pastor or quasi-pastor. The Vicar Delegate may even forbid marriages to all persons in their territory and to their subjects outside their territory, but only in a particular case, temporarily and as long as a just cause lasts. (193).

167. (iv). Regarding matrimonial impediments. This question of the Vicar Delegate and matrimonial impediments is of great importance because of the frequent use that he must make of his powers in regards to impediments. The Code itself grants certain powers that the Vicar Delegate may use, and he has others in virtue of the general faculties conceded by the Sacred Congregation of Propaganda to Mission Ordinaries. We will consider first what he may do from the Code and then what power he has from the faculties of Mission Ordinaries.

168. Powers from the Code.

a). In danger of death Vicars Delegate may, for the relief of conscience, and if the case demands it, for the legitimation of children, grant a dispensation, both from the form of marriage,

(191). Canon 1032.

(192). Canon 1034.

(193). Canon 1039, p.1.

and from each and all the ecclesiastical impediments, whether occult or public, even if there are several, excepting the impediment of priestly Orders and affinity in the direct line arising from consummated marriage, to their subjects wherever they may be, and to all persons actually in their territory, provided that care is taken to remove scandal and, if the dispensation is granted from the impediment of disparity of cult, that the usual guarantees are given. (194)

169. The conditions for the use of this power must be treated in detail. The first condition is that there be danger of death, but this does not mean that the person be in imminent danger of "in articulo mortis" (that is, on the point of death). It is sufficient that there be probable danger of death, which means that it is reasonably certain. The danger can come from either an intrinsic cause, like sickness, difficult childbirth, etc., or from an extrinsic cause, like imminent battle, storms, earthquakes, floods, capital punishment, surgical operations, etc. All that is required is that there be danger of death according to the prudent judgment of men. It is not demanded that the one who is in danger of death need be the one directly effected by the impediment, so that it suffices that either of the parties is in danger of dying, e.g. a
(194). Canon 1043.

woman living with a subdeacon when she is in danger of death, though he is the directly effected by the impediment, may receive the benefit of the dispensation. (195).

170. From the common opinion of authors either of the two causes mentioned in the canon suffices for the use of the power it grants, namely, either that the dispensation is for the relief of conscience or for the legitimation of children; but one of them at least is demanded for the validity of the dispensation. (196). Relief of conscience will be found as a cause whenever it is a case of removing sin, or a proximate occasion of sin, or great temptation or scandal; or when it is to restore a good name, to repair more fully damage done or to prevent future injury. It does not matter whether the cause arises from hate, luxury, or any other reason, as the Sacred Congregation of the Sacraments made clear when it stated that this cause may be found not only when it is a case of those living in concubinage but also if there is another cause for the relief of conscience. (197). The other condition mentioned in the canon is the legitimation of children, if the case requires it. While it seems certain that it may be used when it is

(195). Payen, o.c., I, n. 646, p. 480; Cappello, o.c., III, n. 231; Vermeersch-Creusen, o.c., II, n. 306.

(196). Vermeersch-Creusen, o.c., II, n. 306; Cappello, o.c., III, n. 231; Ayrinhac, Marriage Legislation, n. 84; Payen, o.c., I, n. 646, p. 480.

(197). Sacred Cong. of Sacram. Aug. 16, 1909 - ASS, I (1909) p. 656.

a question of natural or incestuous children, there is some dispute in the case of children born in adultery or sacrilege. However, it may be used at least probably in favour of the latter. (198).

171. The dispensation can be concerning the form of marriage as prescribed by Canon 1094. Hence, the Vicar Delegate could dispense from the presence of the pastor, the delegated priest, or the two witnesses. It may be from all the impediments of the ecclesiastical law, with two exceptions. The dispensation can be granted in the internal or external forum. It does not matter, whether the impediments are public or occult. However, if they are public, the dispensation, in order to avoid scandal, should be given publicly and before witnesses, unless it is from the form and be noted in the marriage register. If the impediments are occult the dispensation should be given in the internal forum, sacramental or non-sacramental. If it is granted in the non-sacramental forum it should be noted in the secret register of the Mission curia. The dispensation can be conceded even in the case of multiplicity of impediments, which may occur when the same impediment, e.g. of consanguinity or affinity, arises from a manifold source, or when several species of the same impediment occur, e.g.

(198). Cappello, o.c., II, o.c., n.231; Vermeersch-Creusen, o.c., II, n.306, b); Payen, o.c. I, n.646, p.481; Vromant, Jus Missionariorum, V, n.97; Davis, Moral and Pastoral Theology, IV, p.170.

the impediment of crime on a double or triple score. But if different impediments concur multiplicity specifically considered does not exist. (199). The dispensation may be either for the convalidation or the contracting of marriage, as the text itself indicates.

172. There are two impediments excluded from the power granted by this canon. They are the impediments coming from priestly Orders and affinity in the direct line when marriage has been consummated. But the Vicar Delegate may use this canon in favour of his subjects wherever they may be, as well as for all persons who are actually within the territorial limits of the Mission. One of the conditions that the canon lays down but that is required, for the liceity, not validity, of the dispensation is that scandal is to be removed when the power is used. It might be removed by divulging, if necessary and with the consent of the parties, the fact of the concession of the dispensation, when it has been granted in the external forum, and the fact of the celebration of the marriage. (200). Special care must be taken to remove scandal if the dispensation is conceded to a deacon, subdeacon, or professed religious and there is hope of recovery from the danger of death. In this case, a promise should be made by the parties that they will, if possible,

(199). Cappello, o.c., III, n.230, p. 281, ft. nt. (1).
(200). Payen, o.c., I, n. 646, p.481.

depart to a distant place, or at least, if they remain, live a fervent Christian life to correct the evils that might arise from such a marriage. (201).

173. If the dispensation is granted from the impediment of disparity of cult or mixed religion, the usual guarantees or promises are to be exacted. The non-Catholic party must promise that the danger of perversion for the Catholic party will be removed, and both parties must promise that the children will be baptized and brought up only in the Catholic faith. To obtain moral certitude that the promises will be kept they should regularly be made in writing. (202). These promises are necessary for the validity of the dispensation. (203). When he grants the dispensation the Vicar Delegate is to have moral certitude that the promises will be kept but the fact that the promises are not sincere does not invalidate the dispensation because there is only demanded moral certitude on the part of the one conceding the dispensation.

(201). Sac. Cong.S.Offic.,Feb.20th,1888-Fontes,IV, n1009.

(202). Canon 1061, 1071.

(203). Decr. of Sac. Cong.S.Offic.,Jan.14th,1932 - AAS,XXIV (1932) p.25; Cappello, o.c. III, n. 231, Doheny, Canonical Procedure, p.449; Vermeersch-Creusen, o.c.II, n.306, c); Vromant, o.c., V, n.99; Payen o.c., I, n.646, p.48^s who quotes J. Creusen as saying, "Nihilominus, justa nonnullos auctores, qui tamen ante a.1932 scribebant, si pars a-catholica debitas cautiones praestare renuat, pars autem catholica in periculo mortis constituta;...promittat se si convoluerit, universae proli catholice educandae pro viribus, esse provisuram, in eis adjunctis videtur posse concedi dispensatio...modo remotum sit a conjuge catholico perversionis periculum". In Sinis ex P.C.S. n.405, certe haec sufficiunt ut valide et licita sit dispensatio, ad convalidandum matrimonium concessa super disparitate cultus. Alibi non-nulli auctores, qui excludunt dispensationem recurrunt, ut matrimonium permittent, ad epeikiam.

External signs of sincerity are to be followed, and external motives, because the Church or the one acting in the name of the Church cannot judge regarding the intention withheld in the mind and not externally manifested. (204).

174. The Vicar Delegate can make use of the power granted by this canon even if recourse to the Holy See is possible, for not mention of such recourse is made, otherwise, than in Canon 1045. The reason is obvious for in danger of death recourse to Rome is at the least difficult, and in the most cases it is impossible to have it in time. The powers conceded by this canon are ordinary and the Vicar Delegate may delegate them, even habitually; and they may be exercised in either the internal or external forum as pointed out above. (205). But a sanatio in radice cannot be granted in virtue of this canon. (206).

175. b). Outside danger of death, in the case called the "casus perplexus", a case of necessity, the Vicar Delegate has certain powers to dispense in virtue of Canon 1045. This canon states that local Ordinaries, under the conditions at the end of Canon 1043, can dispense from all the impediments mentioned in the same canon, every time the impediment is

(204). Dec. S.R.Rota, II, Aug.1921,AAS XIV (1922), p. 516;
Irish Eccles. Record, XVIII, 1921,p.411-418;
Vromant, o.c., V, n. 99.

(205). Canon 199, p.1, 200 p. 1., 208.

(206). Canon 1138 - 1141.

discovered when everything is ready for the wedding, ("cum jam omnia sunt parata ad nuptias"), and the marriage cannot, without probable danger of grave inconvenience, be delayed until a dispensation can be obtained from the Holy See.

176. The conditions for the use of this power, aside from these at the end of Canon 1043, which we have just considered, we will treat in detail. The first is "cum jam omnia sunt parata ad nuptias". There is a diversity of opinion as to the interpretation of this phrase. Some believe that these words signify a "conditio sine qua non" for the use of the power granted by the canon. (207). But the better opinion seems to be that these words represent a peculiar circumstance of fact, and not a "conditio sine qua non". They have, then, not an exclusive sense, but an indicative sense, after the manner of an example, by indicating or designating the ordinary circumstances in which a case of grave and urgent necessity usually arises, outside the case of danger of death. The reason for the dispensation is the grave difficulty of deferring the marriage during the time necessary to communicate with the Holy See through letter and receive a dispensation from Rome. Hence, not only "cum jam omnia parata sunt ad nuptias", e.g. the morning of the wedding, or when invitations have been sent, or banns have begun to be published, and the like, but, also when other circumstances

(207). Merklebach, Summa Theologiae Moralis, III, n.921, p.917, nota 1.

exist that cause grave and urgent necessity for the marriage to be performed without delay, a dispensation may be granted by the Vicar Delegate in virtue of this canon. (208).

177. The phrase "every time the impediment is discovered" ("quoties impedimentum detegatur"), is not to be so strictly interpreted as to mean that the impediment was formerly wholly unknown and just discovered when everything is ready for the wedding. But it is necessary and suffices that the impediment, even though already known to the parties, or others, is brought to the attention or knowledge of the Vicar Delegate when everything is prepared for the marriage. (209). Even if the impediment is concealed in bad faith by the parties until "omnia iam sunt parata ad nuptias" the Vicar Delegate may still make use of the canon and grant the dispensation, since the end of the law is not only the good of the parties themselves but also the avoiding of scandal and the promotion of the public good. Likewise if the Vicar Delegate did know of an impediment, e.g., the impediment of age, before the marriage but did not advert to it as an impediment, he can

- (208). Cappello, o.c., III, p. 232-233; Payen, o.c. I, n. 650, p.484; Vromant, o.c. V, n.101; Vermeersch-Creusen, o.c., II, n. 308, Payen, l. c. adds that in China where, if the day of the wedding has once been stated, the date can hardly if ever be changed without grave inconvenience, it can be said that everything is ready for the marriage when the day of the wedding has been determined and made know to relative and friends. This is the opinion of some Vicars Apostolic.
- (209). Reply of Pont. Comm. for Interp. of Code, March 1st, 1921, -AAS, XII (1921), p. 178.

nevertheless concede the dispensation when everything is ready for the marriage. (210).

178. The condition that the marriage cannot be deferred without probable danger of great harm until a dispensation is obtained from the Holy See can refer to either spiritual or temporal harm, concerning the parties themselves or others, providing that it is grave, e.g., scandal, the danger of concubinage, infamy, serious disputes, etc. A person is not bound to have recourse to the Holy See personally, but ordinary means are sufficient, i.e. by letter, and if these would take too much time and cause grave danger of harm the canon may be used. In this connection it is to be noted that telephone and telegraph are considered as extraordinary means of communication with Rome and need not be used. (211). Automobile, trains, motor-cycle, aeroplane, and in fact, any means other than letter may be considered as extraordinary. As Reilly expresses it: "there is no indication that the Holy See considers 'ordinary' any means of communication other than that of correspondence by letter, even though one could conceive of another method of communication which would in general, as well as in particular, not be extremely inconvenient". (212). Thus, as far as commun-

(210). Vromant, o.c.V, n, 102; Payen, o.c.I, n. 650, p. 484-485, Capello, o.c. III, n. 224; Vermeersch-Creusen, o.c., II, n.

(211). Sac. Cong. S. Offic, Aug. 14, 1892-Fontes, IV, n. 1159; Pont. Comm. for the Interp. of Code, Nov. 12, 1928-ed V-AAS, XIV (1922), p. 622-663.

(212). E.M. Reilly, The General Norms of Dispensation, p. 74; cfr. also, d'Angelo: Apollinaris, 1928, p. 245.

ication with Rome is concerned in most Mission countries, if not at all, the condition of probable danger of grave harm through delay due to the length of time required to contact the Holy See is always verified, and when the other conditions are present the Vicar Delegate can use the power the canon bestows on him. As is clear from the canon, the danger need only be probable and there is no demand that it be certain or imminent.

179. No mention is made in the canon of dispensing from the form of marriage and the question as to whether or not the local Ordinary could grant a dispensation from the form in virtue of this canon is disputed. However, the extrinsic probability of the opinion that claims the Ordinary may also dispense from the form through the powers he has from this canon is sufficiently strong to warrant its use in this way. (213). The other conditions as explained above for Canon 1043 regarding the guarantees if it is a dispensation from the impediment of disparity of cult, etc. are likewise here to be fulfilled.

180. The second paragraph of Canon 1045 states that the same faculties (as contained in the previous paragraph) hold good for the revalidation of a marriage already contracted,

(213). Holding that the form is included under the power of this canon are Vromant, o.c., V, n.107; Vermeersch, Periodica, XIV, 1926, p.(122); Arendt; Periodica, XVI, 1927, p.I, ss.; d'Angelo, Apollinaris, 1938, p. 254; De Smet, De Sponsalibus et Matrimonio, n.764, p.646, ft.nt.4; against whom are Cappello, o.c.III, n.234; Vermeersch-Creusen, o.c., II, n.309.

if there is the same danger in delay and there is no time to have recourse to the Holy See. Hence, it is sufficient for using this faculty for the convalidation of a marriage that the marriage cannot be delayed without grave danger of harm and especially of incontinence, until recourse is made to the Holy See. (214).

181. c). In case of doubtful impediments, the principle of Canon 15 must be applied, namely, that laws which are nullifying and inhabilitating do not oblige in case of doubt which affects the law; and if there is a case of doubt about a fact the Ordinary may dispense, providing the law is one of those from which the Roman Pontiff is wont to dispense. The Vicar Delegate should keep this canon well in mind particularly in reference to impediments to marriage about which he may be consulted. A doubt, which is a state of mind caused by equally strong reasons which render a decision difficult, may concern the law itself, that is whether the law exists or whether a certain case comes under the law; or it may concern a fact, that is whether a fact exists to which the law is to be applied.

182. In the matter of doubt of an ecclesiastical law regarding impediments the Vicar Delegate may declare that the law in this case does not oblige. But the Church cannot

(214). Cappello, o.c.III, n.234; Vromant, o.c. V.n.104; Payen, o.c. I, n.651, who adds that this condition of danger of incontinence is seldom not found, and in China is always found.

dispense from those impediments which are of divine or ecclesiastical law, not even in doubt of law. Such impediments are impotency, bond from a marriage "ratum et consummatum", and consanguinity in the first degree of the direct line. (215). Neither will the Church dispense from those impediments about which it is doubted whether they are of divine or human law, namely, all degrees of the direct line of consanguinity exceeding the first and the first degree of consanguinity in the collateral line; and probably also defect from "vis et metus gravis". (216).

163. In doubt of fact the Vicar Delegate can dispense from all laws provided that the law in question is one from which the Holy See is wont to dispense. Doubt of fact exists, as already indicated, when it is not certain whether an act or a person has the conditions that are demanded for the application of the law. (217). The doubt must be positive, not merely negative, and so must have some objective foundation, with arguments both denying and affirming the fact in doubt. The impediments from which the Church is accustomed to dispense are; simple vow (Can.1048), mixed religion (Can.1060 ss.), age (Can.1067), disparity of cult (Can.1070) sacred Orders, that is deaconship and subdiaconate (Can.1072), solemn vow (Can. 1073), raptus (Can.1074), crime (Can.1075), consanguinity in the collateral line in the second degree,

(215). Canons 1068, p.1; 1069, p.1; 1076, p.1.

(216). Canons 1076, p.1; 1087, p.1; Vromant, o.co, V, n.90.

(217). E.M.Reilly, o.c. p.67; Bouusert-Simenon, Manuale Juris Canonici, I, n.95; Cicognani, Canon Law, p.585.

even touching the first, and in the third degree (Can. 1076), affinity in the collateral line and in the direct line, provided in the last case, the marriage was not consummated (Can.1077) public honesty (Can.1078), spiritual relationship (Can.1079), legal relationship (Can. 1059, 1080). (218). In doubt of fact, then, the Vicar Delegate may dispense from all the ecclesiastical impediments, except those coming from priestly Orders and affinity in the direct line, whether the impediment be public or occult.

184. d). Canon 81. From this canon it is seen that the Vicar Delegate as an Ordinary cannot dispense from the general laws of the Church, not even in a particular case, unless he has received this power either explicitly or implicitly, or it is a case where recourse to the Holy See is difficult and there is at the same time grave danger in delay, and the dispensation requested is one that the Holy See is wont to grant. The question raised is whether this canon can be applied to matrimonial impediments or not. Some maintain that Canon 1045 is an all-exclusive application and determination of what is conceded in general by Canon 81 in its last section, and so the power to dispense from matrimonial impediments cannot be extended beyond the limits of Canon 1045. They hold that Canon 1045 determines what constitutes an urgent case outside of the danger of death, and in the case of danger of death Canon 1043 is to be applied. As far as canonical impediments (218). Vromant, o.c. V, n.95.

are concerned, they say, Canon 81 has no application, other than that made of it in Canon 1045. (219). But it seems, on the contrary that Canon 81 can be applied to matrimonial impediments because it is general in character and no cases are expected from it. Hence, when it is not a case of "cum omnia jam sunt parata ad mystias", but there is grave danger in delaying the marriage and the impediment is one from which the Holy See is wont to dispense the Vicar Delegate may make use of Canon 81. (220). The practical value of this opinion is clear in the case when there is true necessity of marriage but it is not a case of danger of death, (Can. 1043) nor a case of all things being prepared for the wedding (Can.1045). By using Canon 81 the Vicar Delegate could dispense from an ecclesiastical impediment in such cases provided the conditions of the canon were fulfilled regarding difficult recourse, etc.

185. Powers from General Faculties. The Vicar Delegate has special powers in regard to dispensing from matrimonial impediments by reason of the general faculties conceded to Mission Ordinaries by the Sacred Congregation of Propaganda.

- (219). Wernz-Vidal, Jus Canonica, V.N.413, p.499, ft.nt.61; Fournieret, Marriage Chretien, p.304-305; De Smet, o.c., n.763, p. 546 and Ephem. theol. Louvain, II, 1925, p.58-59.
- (220). Cappello, o.c. III, n.235; Vromant, o.c. V, n.109; E.N. Reilly, o.c., p.80-83; Vermeersch-Creusen, o.c., II, n.306; Payen, o.c. I, n.652; d'Angelo, Apollinaris, 1928, p.257-261; Bouscaren, The Canon Law Digest, II, p.18-19, where is to be found a decision of the Rota regarding the nullity of a marriage in which the Rota declared that the power given to Ordinaries by Canon 81 extends also to matrimonial impediments, of the ecclesiastical law. (Rota, Aug.10th, 1926).

He has the faculty to dispense, when the canonical causes exist, from matrimonial impediments of minor or major degree, public as well as occult, even multiple of ecclesiastical law, except those coming from priestly Orders, from affinity in the direct line when marriage has been consummated, and from defect of the prescribed age when the spouses have not yet attained the age determined by the old law, namely, fourteen years complete for men and twelve years complete for women. In conceding these dispensations the Vicar Delegate is to have before his eyes the rules stated in the Code from Canon 1035 to Canon 1080 regarding impediments in general and particular. In the case of dispensations from the impediments of mixed religion and disparity of cult the conditions prescribed by the Church are to be observed, namely, about removing from the Catholic spouse danger of perversion, and about the children being baptized and educated only in the Catholic religion. The Catholic party is to be warned of their obligation to prudently work for the conversion of the non-Catholic spouse. Also, they are to be warned that they are not to go before a minister of a false religion to give or renew marital consent either before or after the marriage contracted before the Church. If it is a question of a marriage with Hebrews or Mohammedans, then in a special way it is to be ascertained that the infidel party is free to marry in order to remove the danger of polygamy to provide that

and there will be no danger of the circumcision of the children, and if a civil act must be performed that it is to be strictly a civil ceremony and no invocation of Mohammed or any other form of superstition is to be had. Since the faculty is marked with an asterisk so may be subdelegated by the Vicar General. (221).

186. This faculty, therefore, allows the Vicar Delegate to dispense from all the impediments of ecclesiastical law, whether major or minor, diriment or impeding, even if multiple, except the three mentioned in the faculty. The impeding impediments comprehended by this faculty are: the impediments coming from:

- i. simple vow of virginity, of perfect chastity, of not marrying, of receiving sacred Orders or of embracing the religious state; this includes private simple vows and public simple vows in as much as they impede a licit marriage; (221)
- ii. legal relationship that arises from adoption in those regions where civil law renders marriage illicit because of adoption; (222)
- iii. mixed religion which exists between two baptized persons, one of whom is a Catholic, the other belonging to an heretical or schismatical sect; but this faculty does

(221). Canon 1058; Vromant, o.c., V,n.124, 1).

(222). Canon 1059; Vromant, o.c., V,n.124, 2).

(223). Vromant, o.c., V,n.124, 3); Payen, o.c., II, n.2223, p. 545; Vermeersch-Creusen, o.c., II, n.427, 2.

not include a dispensation from mixed religion if it is to be applied to a "neo-convert" who used the privilege of the faith. (223).

The diriment impediments comprehended by this faculty are:

i. The major diriment impediments of:

a. disparity of cult, except if it is to be applied to a "neo-convert" who used the privilege of the faith; (Can.1071-1072); (24).

b. sacred Orders of subdiaconate and diaconate, (Can. 1072);

c. solemn vow of chastity taken in a religious Order, (Can. 1073);

d. raptus, (Can.1074);

e. crime, (Can. 1075);

f. consanguinity in the second and third degree of the collateral line (Can.1076), not excluding the second mixed

(223). Vromant, o.c., V., n.124, 3); Payen, oc.c.,II, n.2223, p. 545; Vermeersch-Creusen, o.c.,II,n.433,2.

(224). Canons 1070 - 1071; Sac. Cong. S. Offic., July 4th, 1855 - Fontes, IV, n.931, Nov.22nd,1871 - Fontes IV, n. 1019; Payen, oc. II, n.2224, p.546; Vromant, o.c., V, n. 125 and Periodica, XIV, 1925, p.114-115; De Lery, Le Privilege de la Foi, n. 102, p. 132; Vermeersch-Creusen, o.c., II, n. 433, 2: "In adjunctis ordinariis, Missionarii, facultate sua dispensandi super impedimento mixtæ religionis vel disparitatis cultus ut neo-conversus cum acatholico contrahere possit uti non possunt. In periculo mortis vel casu perplexo facultatibus in cc. 1043 ss. concessis ad animæ salutem uti poterunt."

with the first. (225).

g. affinity, (Can. 1077);

h. public honesty, (Can. 1078);

i. legal relationship, in as much as it is constituted a diriment impediment by civil law, (Can.1080);(226)

1. The minor diriment impediments of:

a. consanguinity in the third degree of the collateral line, (Can. 1076);

b. affinity in the second degree of the collateral line, (Can. 97, 1077);

c. public honesty in the second degree, (Can.1078);

(225). Vromant, o.c. V. n. 125; Cappello, o.c., III, n. 269; Instruc. Sac. Cong. of Sacraments, Aug.1st,1931 - AAS, XXIII (1931), p.413-415.

(226). Payen, o.c. I, n. 848, bis. p. 637 in referring to Art. 1077 of the Bk.IV of the Civil Code of China states: "Adoptionis effectus. - Nisi lege aliter cautum fuerit, filius adoptivus, quod attinet ad conjunctionem cum parentibus adoptivis, filio ex matrimonio nato equiparatur"; and then (o.c. n.849, p. 638) after explaining that he believes that legal relationship is a diriment impediment in the eyes of Chinese Civil law, acknowledges that there is some doubt on the question and advises a dispensation "ad cautelam" in this matter.

As to the question whether infidels are bound by this impediment of legal relationship a distinction must be made. Before Baptism certainly infidels are not bound by the canonical impediment, but they may be prohibited from marrying by the civil law, in which case it is evident that the impediment is mere civil not canonical. After Baptism they are bound by the canonical impediment if the adoption remains. (Cfr. Capello, o.c., III, n.328; Payen, o.c., I, n. 849, p. 638 - 639).

d. spiritual relationship, arising from Baptism,
(Can. 1079, 768);

e. crime from adultery with the promise of or
attempt at marriage even through a civil contract, (Can.1075,
p. 1). (227).

187. The impediments excepted from this faculty are:

i. By divine law -- a. impotency;

b. bond;

c. consanguinity in practically the
whole direct line and in the first
degree of the collateral line.(228)

ii. By ecclesiastical law -- that is, expressly mentioned
in the faculty:

a. priestly Orders, (Can. 1072);

b. defect of required age, which is four-
teen years complete for men and twelve
years complete for women according to
the power conceded by the faculty,
though the common law demands sixteen
years and fourteen years complete for
men and women respectively. This imp-
ediment today is numbered among those
from which the Holy See is wont to dis-
pense, so the Vicar Delegate may make

(227). Canon 1042, p.2 where these impediments of minor degree are
listed; cfr. also, Canon 1037, which states that an
impediment is considered public if it can be proved in
the external forum; otherwise it is occult.

(228). Vromant, o.c., V., n.128.

use of Canon 15 and 81 when the conditions required for the use of these canons are satisfied. (229);

- c. affinity in the direct line when the marriage from which the impediment arises has been consummated; if the marriage had not been consummated the Vicar Delegate can still use the faculty to dispense from affinity in the direct line; but it is to be noted that when parties have lived together after contracting a marriage the presumption is that the marriage has been consummated until the contrary has been proved.(230)

188. Force, fear, error and ignorance are not considered as impediments but are causes that vitiate matrimonial consent. Likewise lack of form is not longer considered an impediment, even though clandestinity was so viewed under the old law of the

(229). Vromant, o.c., V. n. 129, 2); and n.93: "Ad impedimentum aetatis quod attinet, notandum est quod petentibus Ordinariis, facultas dispensandi super hoc impedimento a S. Sede hodie conceditur ad certum numerum casuum. Insuper potestas super hoc impedimento dispensandi continentur Facultatibus (n.30) quae Nuntiis, Internuntiis et Delegatis Apostolicis impertiuntur." In his Fac. Apost. Supplem. p.11 the same author points out that although Mission Ordinaries can delegate these powers to missionaries the Holy See wills that, especially in dispensing from doubt of age, they are to proceed cautiously and the dispensation is not to be conceded unless the doubt remains morally insoluble. Hence, it is to be advised that Ordinaries reserve these powers to themselves, or, at least, delegate them only to a few very prudent missionaries.

(230). Canon. 1015, p.2; Vromant, o.c., V.n.129, 3).

Decree Tametsi of the Council of Trent. (231). The value, too of the distinction between minor and major impediments from the fact that a minor impediment is not vitiated by the suppression of the truth (subreptio) or by the assertion of falsehood ("obreptio"). (232).

189. The faculty warns that there is to be a canonical cause for granting the dispensation ("canonicis existentibus causis"), for there must be a just and reasonable cause proportionate to the gravity of the impediment. (233). However, in doubt about the sufficiency of the cause the dispensation may always be licitly and validly conceded. (234). The canonical causes that are the more common and forceful are drawn from an instruction of the Sacred Congregation of Propaganda and are to be found in Appendix IV. The other requirements mentioned in the faculty regarding the "cautiones" or promises, and the effort that the Catholic party is to make to obtain the conversion of the non-Catholic party, as well as the conditions regarding marriages with Jews or Mohammedans must likewise be carefully observed. It is interesting to note the special legislation that the First Council of China contains for that country in the matter of the "cautiones". (235). It first of all declares that the decree of the Sacred Congregation of

(231). Vromant, o.c., V., n. 130; Doheny, Canonical Procedure, p. 397.

(232). Canon 1054.

(233). Canon 84, p. 1.

(234). Canon 84, p. 2.

(235). Primum Concilium Sinense, dec. 404.

the Holy Office is to be kept in mind, for in this decree it was declared that there was to be no dispensation from disparity of cult when the promises had not been required or had been denied. (236). As regards the practical execution of this decree the same Sacred Congregation made special provision for China and prescribed that Ordinaries of China were to observe the decree of June 12th, 1912, as far as possible, but if the "cautiones" could not be obtained in writing from an infidel woman, at least they were to be made orally. Moreover, Ordinaries were to decide, according to their prudence and conscience, when this could not be done whether in each case the promises were equivalently contained either in the serious promise of the woman to embrace the Catholic faith, or in her enrolment among the catechumens, or in the laws and customs of the people allowing the woman no power over the religious education of the children but which depends upon the will of her husband. However, in all these cases the "cautiones" were required of the Catholic party and the Ordinaries were not to concede the dispensation unless they had moral certitude that they would be fulfilled.

190. (★). Regarding marriage by proxy and interpreter. The Vicar Delegate as Ordinary may be called upon to intervene in a case of a marriage by proxy or through an interpreter

(236). Decr. of Sacred Congregation, S.Offic. June 12th, 1912 - AAS, IV (1912) p. 448.

so he should have the following points in mind. Besides what the particular statutes of the vicariate may prescribe for a marriage by proxy it is necessary for validity to have a special mandate for contracting marriage with a specified person, signed by the one giving the mandate, and either by the parish priest or the ordinary of the place in which the mandate has been given or by a priest delegated by either of these, or by two witnesses. If the principal is not able to write this fact is to be noted in the document and an additional witness is to sign it; otherwise the mandate is null. If, before the proxy makes the contract in the name of the principal, the latter has revoked the mandate, or become insane, the marriage is invalid, even though the proxy must discharge his office personally. (237). While it will probably be, but rarely, that a Vicar Delegate will be called upon concerning a marriage by proxy it is quite possible that a case of marriage by interpreter will arise on the Missions. The Code states in general that marriage can be contracted through an interpreter. (238). But it also prescribes that the pastor shall not assist at a marriage by proxy or through an interpreter unless there be a just cause for it and the authenticity of the commission and the trustworthiness of the interpreter are beyond all possible doubt, and, if time

(237). Canon 1089.

(238). Canon 1090.

permits, the permission of the Ordinary is to be sought, (239). The Vicar Delegate may be asked to concede such permission, in which case he is to determine the points indicated regarding the mandate and the reliability of the interpreter.

191. (vi). Regarding assistance of Marriage. The Vicar Delegate may validly assist at the marriage of their subjects or others anywhere within the limits of the Vicariate. They may also grant permission to another priest to assist validly within the territory of the Vicariate. They may do this, as soon as they have entered upon their office. (240). The code prescribes that pastors shall take care that the spouses receive the solemn nuptial blessing, which may be given after they have lived a long time in married life, but may be given only during Mass, observing the rubrical prescriptions. But it may not be given the first Sunday of Advent to the Christmas inclusively, nor from Ash Wednesday to Easter Sunday inclusively. (241). However, the Vicar Delegate has the faculty

(239). Canon 1091.

(240). Canon 1095; Vromant, Fac. Apost., Supplement, p.14: "Indultum pontificium Sinarum Ordinariis fuit concessum a S. Congr. de Prop. Fide, die 13 Augusti 1908. circa dispensationem a Forma Substantiali Matrimonii, scilicet: 'Conceditur facultas dispensandi a forma substantiali matrimonii pro casibus tantum verae necessitatis, cum protestate hanc facultatem etiam habitualiter subdelegandi missionum rectoribus. Attento Can. 4 Codicis J.C., Nonen n.13 laudati Primi Concilii Sinensis, haec facultas summam regorem integrum servat";cfr. also, Payen, oc., II, n.1845-1846.

(241). Canon 1101, p.1, 1108. p.2.

in virtue of the general faculties granted to Mission Ordinaries by the Sacred Congregation of Propaganda of imparting the nuptial blessing outside of Mass of reciting the prayers according to the formula contained in the Appendix to the Roman Ritual. (242). He may also sub-delegate this faculty. We may permit the nuptial blessing during Mass even in the forbidden time, provided that there is a just cause and the parties abstain from too much pomp. (243). Vicars Delegate may permit the celebration of marriage in a private house in some extraordinary case, but only for a just and reasonable cause. Except in a case of necessity and when all proper precautions have been taken, they shall not permit marriage in the churches or chapels or Seminaries or convents. Marriages between Catholic and non-Catholic parties are to be celebrated outside of a church and only may the Vicar Delegate dispense from this when greater evils would follow from its observance. (244). But even if the Vicar Delegate does dispense in this matter all sacred rites must be excluded. (245). Like the Vicar General in a diocese

(242). Faculty n. *28; Ritual Romane, Appendix, De Matrimonio, I, II.

(243). Canon II08, p.3.

(244). Canon II09; Payen, o.c., II, n. 1959 bis., p. 328: "In Missionibus, si aleibus non sit ecclesia seu oratorium publicum vel semi-publicum, missionarius non indiget peculiari licentia aut in aedibus privatis matrimonium celebret. Imo, si, vi suarum facultatum, possit in aedibus privatis Sacrum facere, nihil obstat qominus in aedibus privatis sollempnem benedictionem impertiatur".

(245). Canon II02, p.2.

The Vicar Delegate of the Missions Needs a special mandate before he may permit a "matrimonium conscientiae" (a marriage of conscience), and then only for the most grave and urgent causes, Such a marriage is one contracted without the publication of the banns and secretly, according to the prescriptions of the Code. (246).

192. (vii). Regarding the Pauline Privilege. Because of the particular value that the Pauline Privilege has on the Missions we will consider more in detail the powers of the Vicar Delegate in this question. A valid marriage, ratified and consummated (ratum et consummatum) cannot be dissolved by any human power and by no other cause than death. (247). But a marriage only ratified between two baptized persons, or between one baptized person and another unbaptized person is dissolved by the very fact of solemn religious profession as also by a dispensation of the Holy See, granted for a just cause at the request of both parties or even one of them, although against the wish of the other. (248).

193. a. Law of the Code. After stating the above principles the Code then declares in Canon 1120 that a legitimate marriage between unbaptized persons, even if consummated, is dissolved in favour of the faith by the Pauline Privilege.

(246). Canon 1104.

(247). Canon 1118.

(248). Canon 1119.

This privilege is not applicable to a marriage contracted between a baptized person and an unbaptized person entered with a dispensation from the impediment of disparity of cult. Besides, before the party converted and baptized may contract another marriage validly he must, except in the cases provided for in Canon II25, interpellate the unbaptized person and ask whether he is willing to be converted and receive Baptism, or, at least whether he is willing to live peaceably without contumely to the Creator. These interpellations must always be made, unless the Holy See directs otherwise. (249).

[94. The interpellation is the legitimate act by which the spouse, converted to the Christian faith and baptized, questions the unbaptized party as to whether he or she, as the cause may be, is willing to become a convert and be baptized, or at least to live peaceably without blasphemy to the Creator. The principal end, and a fundamental condition, which concerns the converted party is that the "discessus" or separation physical or moral, of the unbaptized party be established. This cannot be presumed but must be demonstrated. The other condition is that the unbaptized person knows what conditions under which he or she can live with the other spouse even after the Baptism.

(249). Canon II2I.

(250). DeLery, o.c., n.53, p.7I; Payen, o.c., II, n. 234I, p.663; Burton, A Commentary on Canon II25, p.9I.

If the non-Catholic party, knowingly and willingly, rejects these conditions his "discessus" is certainly and legitimately evident. (250).

195. As to the form of the interpellations the Code states that regularly they should be made in at least the summary and extra-judicial form by the authority of the Ordinary of the converted party who likewise grants time for deliberation if the infidel party asks for it. But he is to warn that when the time has elapsed and no answer has been received silence will be taken as a negative reply. The interpellations may also be made privately by the converted party, and this even licitly if the summary judicial form cannot be used. In this case, however, it must be possible to prove that it has been made by the testimony of at least two witnesses or by any other legitimate evidence. (251). The Vicar Delegate of the converted party in a case of the Pauline Privilege may conduct the summary and extrajudicial, or administrative, form of the interpellations or he may delegate someone else to do this. Besides this form, a summary judiciary form might be employed for the interpellations, but in this case

(250). De Lery, o.c., n.53, p.71; Payen, o.c.,II, n.2341, p.663; Burton, A Commentary on Canon 1125,p.91.

(251). Canon 1122; cfr. Canon 1125 which states that what refers to marriage in the constitutions "Altitudo" of Paul III, "Romani Pontificis" of St.Pius V, and "Populis" of Gregory XIII and decreed for some particular places is to be extended to other countries in the same conditions. These constitutions are to be found in the supplement to the Code under Documenta VI, VII, VIII. For a more complete treatment of them cfr. Burton, o.c.; De Lery o.c., ch.VI; Vromant,o.c.,V,n. 354-367; Payen,o.c., II,n.2405-2411; Woods,The Constitution of Canon 1125, ch.III-V inclusively.

the Vicar Apostolic, unless he delegates another is to conduct it. This form will rarely be used on the missions. (252).

196. b). Power from faculties. In the general faculties conceded by the Sacred Congregation of Propaganda to Mission Ordinaries and which the Vicar Delegate may use, some concern the Pauline Privilege.

1. Faculty *25 which permits the Vicar Delegate to dispense from the interpellation of the party remaining in infidelity for all ordinary cases, namely, when after all diligent means, even public papers, have been used to find the place where the infidel party lives and have proved useless, it is evident from a process at least summary and extra-judicial that the absent spouse cannot be legitimately warned or having been warned has not signified his or her will within the time fixed in the monition. For dispensing infidels having several wives, so that after Baptism they may then retain the wife they wish, if she becomes a Christian, unless the first wife wishes to be converted, the faculty refers to Canon 1125. (253).

197. Regarding Canon 1125, the fact is to be noted that the Constitution "Romani Pontificis" of St. Pius V, as well as "Altitudo" of Paul III apply only to polygamist converts. "By polygamist is meant both the man who before his baptism lived with more than one woman, in either simultaneous or successive polygyny, and the woman who before her baptism lived with

(252). De Lery, o.c., n. 69, p. 89.

(253). Faculty, n. *25.

more than one man, in either simultaneous or successive polyandry. The concession applies with equal force to a polygynist or a polyandrist, and whatever is said of the polygynist is true also of the polyandrist in the same circumstances".(254)

In general, these constitutions made the following concessions regarding polygamist converts: The Constitution "Altitudo" of Paul III conceded that those who before their conversion had, according to custom, several wives and are unable to recall whom they married first shall, on their conversion, take from among them the one with whom they wish and contract marriage with her, wording the contract in the present tense, as is the custom. However, those who remember whom they did marry first shall retain her and dismiss the others. The concession was also made of permitting marriage among such persons even though they be related in the third degree, whether of consanguinity or affinity. The Constitution "Romani Pontificis" of Pius V conceded to polygamist converts that they might remain with the wife who has been or will be baptized with them, and this even though they know who was the first and legitimate wife, that is, the one first taken in polygamy.

198. Faculty *25 is really a practical application of the Constitution "Populis" of Gregory XIII. It refers to "ordinary cases" since the Holy Office distinguished between "ordinary" and "extraordinary" cases. The ordinary case is

(254). Burton, o.c., p.152.

when the interpellation is impossible or useless - Faculty *25, and the extraordinary case is when the interpellation is dangerous - Faculty *26. (255). Regarding the case of impossibility which is the one referred to in the present faculty the Vicar Delegate will find such impossibility existing, e.g. when the place of residence of the infidel remains unknown even after diligent enquiry, or when messengers could not be sent into a hostile country where the absent spouse lives because of wars, uprisings, etc., or when the length of the journey presents great difficulty. The impossibility is to be reckoned morally. (256). The interpellation is useless when, without it, it is certainly evident, from words or deeds, about the physical or moral "discessus" of the infidel spouse, before or after the Baptism of the converted party. (257) Interpellations are both useless and impossible when the infidel

(255). Cfr. Sacr. Cong. S. Offic., Nov. 22nd, 1922-Fontes, IV, n. 1075; De Lery, o.c., n. 93, p. 121.

(256). The words "moneri legitime non posse" (also used in former faculties) have given rise to some discussion. Some authors hold that moral impossibility is not sufficient, cfr. Woods, o.c., p. 66; but it seems more correct to maintain that moral impossibility does suffice to make use of the power granted by this faculty, cfr. Burton, o.c., p. 168-169; De Lery, o.c., n. 89, p. 118; Payen, o.c., II, n. 2409, p. 746 - 747, who may not be quoted in favour of the other opinion as De Lery, o.c., n. 89, p. 118, ft. nt. 3 points out against Woods, o.c., p. 66; Vromant, Periodica, XX, 1931, p. 116*

(257). Payen, o.c., II, n. 2413, p. 751; De Lery, n. 95, p. 122.

party is incapable of placing a human act because of insanity, etc. (258). Circumstances which make the interpellations useless but not impossible are sufficient to permit the use of the faculty. The way in which it will be clear that the interpellations cannot be made or are useless is indicated by the faculty when it speaks of all diligent means being used, even newspapers, to find the place of residence of the infidel party, but in vain.

199. The Vicar Delegate should use at least a summary or extrajudicial process to make it clear that the infidel party could not be interpellated, or that having been warned has failed to signify their will within the prescribed time. This summary process is to be a written statement as to the necessity of the dispensation and this is to be made in each case. (259). However, this process is not required for the validity of the dispensation when it is evident that the interpellations could not be made or when no answer has been received within the prescribed time. The written process should be placed in the archives of the Vicariate for future record. (260). Finally, because this faculty is marked with an asterisk the Vicar Delegate may subdelegate it.

200. 2. Faculty *26, By virtue of this faculty the Vicar Delegate may dispense from the interpellation of the

(258). *Analects Ecclesiastica*, 1904, p. 191; De Lery, o.c., n. 95, p.123.

(259). *Sac. Cong. S. Offic.*, June 11, 1760 - *Fontes* n.811; *Burton*, o.c., p.171, ft. nt. 26.

(260). *Payen*, o.c., II, n.2409, p.746-747; *Burton*, o.c., p.171-172.

party in infidelity, when it is certainly evident from a process at least summary and extrajudicial that the interpellation cannot be made evident danger of grave harm either to the party already converted to the faith (although not yet baptized) or to Christians in general. (261). As pointed out above, this is the faculty conceded for extra-ordinary cases, when the interpellation is dangerous. The danger may be regarding spiritual or temporal harm, or regarding the goods of life, liberty or fortune, and also must be grave. The danger may be regarding the party already converted to the faith, the party who makes the interpellation or the Christians of the community in general liable to suffer a persecution in consequence, or even one or two Christians in danger will suffice, such as might be well the case in respect to children concerned. Evidently the danger must arise from the interpellation, either from the ill will of the infidel spouse or other pagans connected with him or her. A presumption alone or simple fear of danger does not suffice, but there must be some grounds for believing there is danger, which cannot be removed with the necessary caution and care. (262). As in the case of the preceding faculty a summary process is to be drawn up in writing and stating the evident danger of the damage. This is to be kept in the archives. Moreover, the Vicar Delegate may sub-delegate this faculty.

(261). Faculty n. *26.

(262). Vromant, o.c., V,n.376-377; Payen, o.c.,II,n.2414, p.751-754; De Lery, o.c., n.95, p.123-125.

201. 3. Faculty *27. The Vicar Delegate may, through the power received from this faculty, permit the interpellation of the infidel spouse, for a grave cause, before the Baptism of the party converted to the faith; and, moreover, may dispense, for a grave cause, from the same interpellation even before the Baptism of the converted party, provided in this case it is evident from a summary and extrajudicial process that the interpellation cannot be made or would be useless. (263). According to Canon 1121 the interpellations are to be made after the Baptism of the convert party, although they would still be valid if made before Baptism was received. Hence, this faculty dispenses from the circumstance of time, permitting the interpellations before the Baptism, and if they are clearly impossible or useless, they may be dispensed with altogether. The only condition required, for permitting the interpellation before Baptism, is that there be a grave cause, which would be such as spiritual danger to the party wishing to be converted, but not disposed to cohabit with the other party even if that party has answered in the affirmative, to the interpellations. (264). Another cause sufficiently grave would be if by the interpellation before Baptism the conversion of the party would be the more easily provided for through removing the inconveniences which would result from

(263). Faculty n. *27.

(264). Sac. Cong. S. Offic. Nov.21,1883 - Collectanea S.C. de P.F., n.1359; Payen, o.c., II, n.2415, p.754-755.

separation after Baptism. (265). While these are the more common causes they are not the only ones and the Vicar Delegate will be able to tell from the circumstances when there is a sufficiently grave cause for him to use the power he has from the faculty to permit the interpellation before the Baptism of the converted party. As for dispensing from the interpellation altogether even before Baptism, when it is impossible or useless, the Vicar Delegate must use at least a summary or extrajudicial process to determine the impossibility or uselessness. The certitide about the impossibility or uselessness is necessary for validity, but the process is only for liceity. (266). This faculty, too, may be subdelegated by the Vicar Delegate.

202. (Viii) Regarding a "sanatio in radice". The general law of the Code states that a "sanatio in radice" can only be conceded by the Holy See. (267). But the Vicar Delegate has special power in regard to "sanatio in radice" from the general faculties conceded to Mission Ordinaries by the Sacred Congregation of Propaganda. However, before considering his powers we must recall the general principles prescribed by the Code in reference to a sanatio in radice and a grasp of which the Vicar Delegate must have to properly understand

(265). Payen, o.c., II, n.2415, p.755; De Lery, o.c., n.99, p.126.

(266). Vromant, o.c., V, n.379, 1); Payen, o.c., II, n.2415, p.755; De Lery, o.c., n.100, p.126-127.

(267). Canon 1141.

and use the faculties that he has. A *sanatio in radice* of a marriage is a revalidation that entails, besides a dispensation from or cessation of an impediment, a dispensation from the law of renewing consent, and has by a fiction of the law a retroactive force which gives the marriage the same canonical effects as though it had been valid from the beginning. The revalidation of the marriage takes place at the moment of the concession of the favour; the retroactive effect, however, is understood to reach back to the beginning of the marriage unless it is expressly stated otherwise. The dispensation from the law of renewing consent can be given without the knowledge of one or both parties. (268). Any marriage contracted with the consent of both parties which would suffice naturally, but which consent is juridically ineffective on account of a diriment impediment of the ecclesiastical law or on account of want of the prescribed form, can be revalidated by a *sanatio in radice*, provided the consent perseveres. If the marriage was contracted with an impediment of the natural or the divine law, although afterwards the impediment ceased, it is not revalidated by the Church by means of a *sanatio in radice*, even from the moment of cessation of the impediment. (269).

204. Although, as has been pointed out, the Holy See alone from the common law may grant a *sanatio in radice*, the

(268). Canon 1138.

(269). Canon 1139, p. 12.

Vicar Delegate, as a Mission Ordinary, has the use of two faculties concerning the sanation of marriages.

1. Faculty *23 which concedes to him the faculty of sanating in radice, according to the rules contained in the Code from Canon 1138 to Canon 1141, marriages null on account of some impediment considered above in regard to Faculty n.*22. Concerning the legitimation of the children the Vicar Delegate is to keep before his mind the prescriptions of Canons 1051, 1138. This faculty of sanating in radice does not extend to the case in which one or other of the parties fell into insanity, for in such cases recourse is to be had to the Holy See. (270).

202. Before the Vicar Delegate may grant a sanatio in virtue of this faculty he must determine the following: that the marriage is null on account of an impediment; as mentioned above, from which he can grant a dispensation (Faculty n.*22); and the consent of each party from the beginning was truly marital, and hence, naturally sufficient; and that the consent perseveres on both sides at the time the sanatio is being conceded; and that there be a good and urgent legitimate cause for the concession of the sanation. The Code demands this fourth condition from the fact that it distinguishes a sanatio in radice from a simple revalidation. The first three (270). Faculty n. *23; regarding the impediments considered under Faculty n.*22, cfr. above n.186-187.

conditions mentioned are necessary for the validity of the sanation, while the fourth is required for its liceity. (271). The Vicar Delegate should also note the differences between the simple convalidation of a marriage and a sanatio in radice, for this will enable him to discern when a sanatio is required. (272). "Considered from the angle of their respective modes of operation it can be noted that the essential difference between simple convalidation and radical sanation is centered around the question of renewal of consent. In simple convalidation the renewal of consent is always required, whether the marriage is invalid because of defect of form or because of a diriment impediment. In radical sanation this renewal of consent is entirely dispensed with whenever a perfect radical sanation is granted, and at least one party will be dispensed from renewing consent whenever there is a question of an imperfect sanation". (273). The other points of difference are to be seen from a consideration of the canons of the Code referring to the respective forms of convalidation.

205. The faculty permits the Vicar Delegate to grant a sanation for marriages invalid from any of the ecclesiastical impediments, except three, namely, the ones coming from priestly Order, from affinity in the direct line when the

(271). Gasparri, Tractatus de Matrimonio, II, n. 1211-1212; Payen, o.c., II, n. 2609, p. 907; Cappello, o.c., III, n. 853.

(272). Cfr. Canons 1133-1137 regarding the simple convalidation of a marriage.

(273). Harrigan, The Radical Sanation of Invalid Marriages, p. 12 and Appendix I.

marriage has been consummated, and from defect of canonical age. In all other cases of marriages invalid from an impediment of the ecclesiastical law, whether occult or public, of major or minor degree, even multiple, the Vicar Delegate may grant the sanation. But the faculty does not concede the power to sanate a marriage invalid because of defect of form alone for the faculty speaks of marriages invalid from some impediment, only, and defect of form is not an impediment in the strict sense. (274). Payen holds that if a marriage is invalid because of one of the impediments not excluded from this faculty and also from defect of form, the Ordinaries can grant a sanation for such a marriage. The reason is that the marriage is invalid because of one of the impediments coming within their power and unless the Ordinaries can grant the sanation there would be a restriction on their power that is not evident from the faculty itself, and moreover, the law permits broad interpretation in respect to habitual faculties. (275). The Vicar Delegate may also subdelegate this faculty.

206. 2. Faculty *24. By virtue of this faculty the Vicar Delegate can sanate mixed marriages attempted before a civil magistrate or a non-Catholic minister, provided it is morally certain that the non-Catholic party will not impede the Catholic education of the children born or to be born. (276). This

(274). Harrigan, o.c., p.161; Payen, o.c., II, n.2619, p.916; Vromant, o.c., V, n.256.

(275). Payen, o.c., II, n.2619, p.916; also, Harrigan, o.c., p.161-162; against Winslow, o.c., p.109, Vromant, o.c., V, n.264.

(276). Faculty n. *24.

faculty then pertains to marriages that are invalid because of defect of the necessary form, as prescribed by the Code, in Canon 1094. Here, the term mixed marriages is to be taken in its broad sense to mean the marriages of a Catholic with a baptized non-Catholic, or of a Catholic and an unbaptized person. It was in this sense that the Pontifical Commission for the Interpretation of the Code understood the term in two of its responses. (277). The faculty speaks of the marriages as being "attempted", so that in the eyes of the Church they have not even the species of marriage. But for a sanction it is necessary that naturally sufficient or real matrimonial consent was given at the time of the attempted marriage and was never later revoked. The Vicar Delegate is, therefore, to determine that true marital consent was given and has not been retracted. However, even if the Catholic party realized that the attempted marriage was not a valid marriage it does not mean that real matrimonial consent was lacking, for knowledge or opinion of nullity of a marriage does not necessarily exclude matrimonial consent as the Code itself declares. (278). "An objective fact like the nullity of the marriage cannot depend upon the knowledge of or opinion of the contracting parties. It is necessary to emphasize that a marriage is valid or invalid in

(277). Pontif. Comm. for Interp. of Code., AAS, XVIII (1925), p. 583, ad IX, XX (1928), p. 120, ad 11; Payen, o.c., II, n. 2619, p. 917 also includes marriages that have been attempted according to the custom of the country.

(278). Canon 1085.

so far as it objectively fulfills or fails to fulfill the requirements governing a valid marriage. Hence, a marriage is either valid or invalid independently of the knowledge or ignorance of the contracting parties, about the legal requirements of marriage. (279). After careful questioning the Vicar Delegate will be able to determine whether true matrimonial consent was given or not. Especially in Mission territory where persons may not have been able to receive complete instruction or may have erroneous ideas, true matrimonial consent could quite easily have been given, although the marriage itself was invalid, because of lack of due form.

207. In order to sanate these mixed marriages the faculty requires that the Ordinary have moral certitude about the Catholic baptism and education of the children, already born or who will be born. The faculty does not demand per se that the formal promises, given orally or in writing, but it requires that the Vicar Delegate have moral certitude about the non-Catholic's attitude concerning the future education of the children. This fact is clear from a declaration of the Sacred Congregation of Propaganda in which it was explicitly stated that Mission Ordinaries should not grant a sanation in radice unless they have moral certitude

(279). Doheny, Canonical Procedure, p.561.

the the non-Catholic party will not impede the Catholic Baptism and education of the children born already or to be born. (280). Hence, if the Vicar Delegate has such moral certitude, which can be drawn from the signs and circumstances of the case, even though there be no formal written promises in the matter, he may use the faculty to sanate a marriage although the non-Catholic party refuses to renew consent or is not asked to renew it in the prescribed form.

208. The Vicar Delegate may subdelegate this faculty. While there can be no dispute whether this faculty may be used to sanate marriages, invalid because of the lack of due form, the question of its relation with the preceding faculty may be raised. As pointed out above, we believe that the preceding faculty may be used for marriages that

(280). Harrigan, o.c., p. 162, ft. nt. 75, refers to Sac. Cong. of Prop., July 2nd, 1930 Australasian Catholic Record, VIII (131), 10; Boyle, The Juridical Effects of Moral Certitude on Pre-nuptial Guarantees, p. 160-161: "On the other hand the refusal of the non-Catholic to furnish the cautions may be a matter of merely negative import. Should he go further, however, and positively oppose the baptism and Catholic education of the children already born, or indicate such contrary intention with regard to children, who may be born in the future, no sanatio may be given; "Payen, o.c., I, n. 894, p. 671: " Si conjux scatholicus obstinato animo recuset cautiones, quas praestat conjux catholicus, at proximum preversionis periculum sit a conjuge catholico satis remotum, et moraliter certum sit partem scatholicam non esse impedturam universae prolis catholicam educationem, potest rursus convalidari matrimonium. Verbo requisitis a parti catholica solitis cautionibus, concedenda est sanatio in radice, saltem imperfecta". De Sonet, o.c., n. 508, p. 445, n. 515, p. 451.

are invalid by reason of defect of form as well as a diriment impediment. (281). But a Vicar Delegate may not grant a sanatio in radice in virtue of Canons 81, 104~~4~~ or 1045. (282).

209. B. Regarding the Sacramentals.

(1). Consecrations. No one without episcopal character can validly perform consecrations, unless the faculty to do so is conceded to him by law or by apostolic indult.(283). Thus, unless the Vicar Delegate is a bishop or has a special faculty from the Holy See he cannot consecrate. Actually, he has one such faculty from the Sacred Congregation of the Propaganda through the general faculties conceded to Mission Ordinaries. In virtue of this faculty, the Vicar Delegate may himself consecrate, or he may grant the faculty to a few of his priests in case of necessity, according to the form prescribed in the Roman Pontifical, chalices and patens, and altar stones according to the more brief formula, providing, however, that oils blessed by a Catholic Bishop are used. (284). Per se this faculty is not conceded to the Vicar Delegate, since the power to consecrate chalices, patens and portable altars is conceded by the Code to Vicars and Prefects Apostolic, even though they lack episcopal consecration. (285). However, since the faculty pertains to

(281). Cfr.n.205.

(282). Harrigan, o.c., p.166-177; Vouuaert-Simenon, Manuale Juris Canonici, III, n.245; Vromant, o.c., V, n.98, Ayrinhac, Marriage Legislation, n.72, 317; Wernz-Vidal, Jus Canonicum, V, v.417; Cappello, o.c., III, n.251.

(283). Canon 1147, p.10.

(284). Faculty n. 72.

(285). Canon 294, p.2.

the Vicar Delegate to delegate another priest to perform these consecrations, it must be admitted that he also is endowed with the faculty to consecrate the things mentioned. (286). By virtue of the faculty the Vicar Delegate may permit a few, so more than two, to consecrate chalices, patens, and altar stones, but whether he, himself or the priests he delegates do the consecrating they must use oil previously blessed by a Catholic Bishop, who, however, may be of another rite. A case of necessity might frequently arise on the Missions where contact with the Vicar Apostolic may be very difficult at times. As for the use of the Pontificalis, Winslow points out that the Roman Pontifical made no provisions for such a faculty, as it supposes the consecrations will be made by a bishop. Hence, the Vicar Delegate, who is not a Bishop, or the priest he delegates, will wear a surplice and white stole. The form for the consecration of chalices and patens remains unchanged, but the shorter form for the consecration of altar stones is to be used. (287). The Vicar Delegate himself may or he may delegate another priest to consecrate altars even moveable, when they have lost their consecration, using the shorter rite and formula. (288).

(285). Canon 294, p.2.

(286). Vromant, Fac. Apopt., n.93.

(287). Winslow, p.117; Pontificale Romanum, tit. De patensae et clicis condecrations; Sac. Cong. Rituum, Sept. 9th, 1920- AAS, XII (1920), p.449 ss for the shorter formula for the consecration of altar stones.

(288). Canon 1200, p.1.

Care must be taken that the formula prescribed by the Church is used or the consecration will be invalid, (289).

210. (ii). Blessings. Vicars Delegate have two special faculties as Mission Ordinaries that are to be noted here:

a). Faculty *40. By virtue of this faculty the Vicar Delegate may bless crucifixes with a plenary indulgence attached which can be gained by any of the faithful in danger of death by kissing it or by invoking the Holy Name of Jesus, if not orally, at least in one's heart. (290). This faculty the Vicar Delegate may delegate to other priests of his territory. To gain the indulgence the sick person need only be in danger of death, not "in articulo mortis".

b). Faculty *41. By virtue of this faculty the Vicar Delegate has the faculty himself or through another of erecting the stations of the Way of the Cross, according to the rites prescribed by the Church and with all the indulgences which the Roman Pontiffs concede to those making this pious exercise. They can also apply the same indulgences to crosses and crucifixes, for the infirm and others who are legitimately impeded, provided (according to the norm of the decrees Orbis et Orbis, Sept. 16th, 1859; the Sacred Penitentiary, Dec. 14th, 1917, March 25th, 1931, Oct. 20th, 1931, and March 12th, 1938) they hold in their hands a crucifix "ad hoc benedictum" and recite at least with contrite heart in pious memory of the

(289). Canon 1148, p.2.

(290). Faculty, n. *40.

Passion of Our Lord twenty Paters, Aves and Glorias, namely, one for each station, five in memory of the Sacred Wounds of Our Lord and one for the intention of the Holy Father. If it is a question of sick persons who, because of the nature or gravity of their infirmity, cannot say the twenty Paters, Aves and Glorias without great inconvenience or difficulty they may kiss a blessed crucifix with a contrite heart or even only look at the crucifix, at the same time if possible reciting some brief prayer or ejaculatory prayer in memory of the Passion of Our Lord. (291). This faculty also may be subdelegated by the Vicar Delegate. Of course, in using these faculties the Vicar Delegate must observe all the other formalities and prescriptions that are demanded, by liturgical laws.

211. (iii) Exorcisms. Because cases of, possession by the devil are not uncommon in many Mission countries the Vicar Delegate must keep in mind the prescriptions of the Code regarding exorcism. No one, although endowed with the power of exorcism, can legitimately exercise that power on possessed persons, unless they have the particular and express permission of the Ordinary. (292). The Vicar Delegate may grant this permission since he is an Ordinary. But he is to concede this permission only to a priest noted for the piety, prudence and integrity of his life. This priest is not to

(291). Faculty n. *41; cfr. Sac.Poenit., March 12th, 1938 - AAS, XXX (1938, p.111-112.

(292). Canon 1151, p.1.

proceede with the exorcism until he has found from diligent and prudent investigation that the person is really possessed by the devil. (293) : Exorcisms may be performed not only on the faithful and catechumens, but also on non-Catholics and excommunicated persons. In any case of possession with which he has to deal it is evident that the Vicar Delegate is to act with the greatest caution and follow the prescriptions of the Code.

212. C. Regarding sacred places and sacred times.

a). Sacred Places.

Sacred places are those that are set apart for divine worship or for the burial of the faithful by consecration or blessing as prescribed by the approved liturgical books. (294). The consecration of a place belongs to the Ordinary of the place where the place is situated, but the Vicar Delegate, like the Vicar General, although an Ordinary, needs a special mandate before he could consecrate a place, provided of course that he were a Bishop. (295). The right to bless a place that belongs to the secular clergy or to non-exempt religious or to a lay order even though exempt pertains to the Vicar Delegate as it pertains to the Vicar General, and he has no need of a special mandate to exercise this right. (296).

(293). Canon 1151, p.2.

(294). Canon 1154.

(295). Canon 1155, p.1.

(296). Canon 1156; Ayrinhac, Administrative Legislation in the New Code of Canon Law, n.3; Cance, Le Code de Droit Canonique, III, n.2p.7, ft.nt.3; Vermeersch-Creusen, Epitome J.C., II, n.471, p.326.

213. Churches. In the matter of building a Church it is to be noted that no church may be built without the express permission of the local Ordinary given in writing. This permission cannot be given by the Vicar Delegate unless he has a special mandate to that effect. (297). Were the Vicar Delegate to attempt to grant such permission without a special mandate it would be juridically inefficacious. A church loses its consecration or blessing when it is reduced to profane uses by the authority of the local Ordinary, as well as when it has been totally destroyed and when the major part of the walls have fallen. (298). If a church is so dilapidated that it cannot possibly be used for divine worship and if all the means are lacking to repair it, then the Vicar Delegate may convert it into some decent profane use. The obligations of the church so converted along with the revenues attached are to be transferred to another church, as well as the title, if it were a parochial or quasi-parochial church. (299).

214. Oratories. Public oratories are ruled by the same law as Churches so what has been prescribed for the building of churches, etc. applies likewise to public oratories. (300). However, although semi-public oratories are not to be erected without the permission of the local Ordinary there is nothing to indicate that the Vicar General, and so also the Vicar

(297). Canon 1162, p.1.

(298). Canon 1170.

(299). Canon 1187.

(300). Canon 1182, p.2, n.1, 1191, p.1.

Delegate, may not concede this permission. (301). Hence, the Vicar Delegate has no need of a special mandate to permit the erection of semi-public oratories such as are the chapels of colleges, seminaries, hospitals, prisons, and the like. However, he is not to grant this permission until he has inspected wither in person or through another ecclesiastic the place where the semi-public oratory is to be built and has ascertained the fitness of the place. Once the permission has been granted the oratory cannot be turned to profane uses without authority of the same Vicar Delegate or his Superior, the Vicar Apostolic. (302). Besides the principal oratory erected in colleges, boarding-schools, military barracks, hospitals, asylums, and such institutions the Vicar Delegate may authorize the erection of secondary or minor oratories if necessity or great utility warrants this permission. (303).

215. b). Sacred Times.

Vicars Delegate may, for a just cause and in individual cases dispense subjects or individual families, even outside their territory, and peregrini within their territory, from the common law of the observance of feasts and holy days of obligation, and of fast or abstinence, or from both. Moreover, the Vicar Delegate may grant a general dispensation for

(301). Canon 1192, p.1.

(302). Canon 1192, p.2,3; Ayrinhac, o.c., n.37; Woywood, A Practical Commentary on the Code of Canon Law, II, n.1227.

(303). Canon 1192, p.3.

the whole territory or for part of it from the law of fast and abstinence, or from both at the same time, in either of two cases - on the occasion of some large gathering or for reasons of public health. (304). This latter concession, it is to be noted, is not regarding the observance of Sundays or Feast days. To grant this general dispensation from fast and abstinence a particular cause, namely, the great concourse of people or the public health is required, and the Code in stating these causes indicates that the dispensation is not to be too frequent. (305).

216. But Vicars Delegate have special power from the general faculties of Mission Ordinaries, and that is the faculty of dispensing poor Catholics so that they may do servile work on Sundays and holy days of obligation, except Easter and Pentecost, after they have heard Mass, if they are able to go; and if they cannot get to Mass they are to recite substituted prayers. (306). The Vicar Delegate may also subdelegate this faculty. The faculty permits Vicars Delegate to dispense from the obligation of the servile work forbidden on Sundays and holy days of obligation, and they may even dispense habitually. The Vicar Delegate is to determine that the people concerned are poor and that is easily enough verified in many Mission

(304) Canon 1245, p.1, 2.

(305). Herrera, Legislacion Ecclesiastica Sobre El Ayuno Y La Abstinencia, p.172; Vermeersch-Creusen, o.c., II, n.554, p.390; Ayrinhac, o.c., n. 82, (b).

(306). Faculty n *48.

countries. Those dispensed are to go to Mass before work if possible, but if not they are to recite certain prayers that the Vicar Delegate will prescribe such as the Rosary.

217.

D. Regarding divine worship.

a). The Belssed Sacrament.

For the reservation of the Blessed Sacrament in the places determined by the Code, by local indult or by permission of the Ordinary there is required the presence in the place of a person, lay or cleric, to act as guardian and also that a priest, celebrate Mass there at least once a week. Moreover, according to the common law, no one is allowed to keep the Blessed Sacrament in his home or carry it with him on a journey. (307). The Blessed Sacrament is to be kept in an irremovable tabernacle placed in the middle of the altar. For a grave reason and with permission, which the Vicar Delegate may grant, it is allowed to keep the Blessed Sacrament outside the tabernacle overnight, in a safer and decent place, on a corporal, with a light burning before it. (308). The Vicar Delegate may concede such permission especially when there is danger of profanation if the Blessed Sacrament is kept in the Church.

i. Faculty 13. This faculty allows the Vicar Delegate to permit the exposition of the Blessed Sacrament with two

(307). Canon 1265; Sac. Cong. de P.F., Feb. 25th, 1859 - Fontes, VII, n. 4846; Sac. Cong. Rit., Feb. 17th, 1881 - Fontes, VIII, n. 6127.

(308). Canon 1269, p. 1, 3; 1271.

candles of any substance, when there is a just cause, but excluding perpetual exposition and the Forty Hours. (309).

Liturgical laws require that six candles be burning when there is private exposition and twelve when there is public exposition. (310). As indicated from the power of this faculty is exposition and the Forty Hours devotion, and it is evidently not intended for the celebration of Mass or the reservation of the Blessed Sacrament. A just cause is demanded for the use of the faculty and such a cause will be found in the price of beeswax, the difficulty in obtaining it, etc.

ii. Faculty 14. The Vicar Delegate may permit that, in a place where there is no substance available for the ~~sanctuary~~ lamp, the Blessed Sacrament can be reserved without any light, when it is a case of true necessity and "graviter onerata conscientia", which indicate how careful he must be in using this faculty. (311). The faculty refers to an

(309). Faculty, n.13.

(310). Sac. Cong. Rituum, Feb.1st,1879 - Decreta Congreg. Sac. Rituum, Vol.III, Dec. 3480; Augustine, Liturgical Law, p.328 - 330; Coronato, Institutiones Juris Canonici, II, n.853, p.174.

(311). Faculty n.14; Canon 1271 provides that before the tabernacle in which the Blessed Sacrament is kept there should burn at least one lamp, day and night, fed either with olive oil or beeswax. Where olive oil is not easily obtained the Ordinary, so also the Vicar Delegate may, according to his prudent judgment, allow the use of other oils which should be as far as possible vegetable oils; cfr. Sac. Cong. Rituum, Nov.27,1908 - AAS, I,(1909), p.159; regarding the use of electric light, cfr. Sac. Cong. Rituum, Feb.23rd,1916 - AAS, VIII (1916), p.72 - 73, which power Ordinaries might still use today if conditions warrant. (Ayrinhac, o.ç.,n. 120)

instruction of the Sacred Congregation of the Sacraments on the careful custody of the Blessed Sacrament, which the Vicar Delegate should consult before making use of the faculty. (312). A case of true necessity would exist when there was necessity of administering Viaticum, or the deprivation of spiritual comfort that the people would otherwise suffer, etc. (313).

iii. Faculty 15. In virtue of this faculty the Vicar Delegate may permit, if there is danger of sacrilege, that the Blessed Sacrament be retained for the sick without a light but in a decent place. (314). Such danger may often exist in Mission countries where there is opposition to and persecution of the Church from the pagans. The purpose of the reservation in this way is that the sick will not be without Viaticum. It is required that a decent place be the one used for reservation. An instruction of the Sacred Congregation of the Sacraments indicates that this place is usually the sacristy provided it really is a safe and suitable place, or a strong and well-locked safe set in the wall of the Church if that is preferred. But if neither the Church nor the sacristy affords the required security another place, even private, may be chosen if that care is taken to see the Blessed Sacrament is guarded with due reverence and honour. (315). As long as

(312). Sac. Cong. of Sacram. May 26th, 1938 -AAS,XXX(1978) p. 198 ss; cfr. Bouscaren, Supplement, p.157-1 63.

(313). Winslow, p.94.

(314). Faculty n. 15.

(315). Sac. Cong. of Sacram. May 26, 1938, AAS,XXX,(1978)p.198 ss.

the danger exists the faculty may be used, but when it passes the Blessed Sacrament should be restored to its customary place, so that if the danger is only at night it should be taken back to the Church in the morning; and when possible a light should be kept burning before it even though the place is outside the Church. (316). (None of these three faculties may be sub-delegated).

219. b). Relics. Only those relics may be exposed for public veneration in any church, even exempt, which are authenticated by a document for a Cardinal, local Ordinary, or another ecclesiastic who has the faculty by apostolic indult to authenticate relics. Although this power is possessed by local Ordinaries, the Vicar Delegate, like the Vicar General, may not authenticate relics unless he has a special mandate for his Superior. (317). Moreover, when the documents of authentication of the relics have been lost through civil disturbances or other causes, the relics shall not be exposed for public veneration without the decision of the local Ordinary permitting this in spite of the loss of the document. Again the Vicar Delegate has need of a special mandate if he is to

(316). Winslow, p.95; Vromant, Fac. Apost. n. 48;
Konings-Putzer, Commentarium in Fac. Apost., n.165, p.288;
Faculty n.50 does not pertain to Vicars Delegate but
is personal to the Superior (Vromant Fac.Apost., n.114).

(317). Canon 1883.

do this. (318).

220. c). Sacred Furnishings. While the local Ordinary may permit the demanding of a small fee from those saying Mass in a poor Church, the Vicar Delegate has need of a special mandate to determine such a fee. (319). Vicars Delegate may bless those sacred furnishing that require blessing, according to liturgical laws, for the churches and oratories of their territory. (320). There is a special blessing required for the tabernacle, corporal, pall, altar cloths, amice, stole, maniple, chasuble, and probably the cincture. The ciborium, lunula, ostensorium, tunic, dalmatic, cope, surplice and purificator may be blessed but liturgical law does not demand it. (320). Clerics in major Orders are to do the first washing of palls, corporals and purificators that have been used at Mass, but the Vicar Delegate can, in virtue of the general faculties of Mission Ordinaries, permit Sisters do this first washing. (321) (This faculty may be subdelegated).

221. d). Vows. For a good reason Vicars Delegate may dispense their subjects and peregrini from vows that are not reserved, provided the dispensation does not violate the acquired rights of a third party. (322). This is from power

(318). Canon 1285; p.1.; cfr. Pont. Comm. for Interp. of Code, July 17th, 1933- AAS, XXV (1933), p.345, in which response it declared that the Vicar General cannot without a special mandate of the Bishop authenticate a part of a sacred relic or draw up a new document of authenticity or affix a new seal on a sacred relic, by force of Canon 1285, p.1. The same would apply to the Vicar Delegate.

(319). Canon 1313, p.2,3.

(320). Ayrinhac, o.c., n.147.

(321). Canon 1306, p.2; Faculty, n *16.

(322). Canon 1313, n1.

conceded by the common law but they have still further power from their general faculties by which they can dispense or commute, for a just cause, even private vows reserved to the Holy See, namely, the vow of perfect and perpetual chastity, and the vow to enter a religious Order in which solemn vows are taken, provided these vows have been taken absolutely and after the completion the eighteenth year of age. (323). If these voew were taken before the prescribed age they would not be reserved to the Holy See. The Vicar Delegate may subdelegate the power he has from this faculty.

222. E. Regarding the teaching office of the Church.

a). Sacred preaching. The Vicar Delegate may concede the faculty of preaching within the territory of the Mission to secular priests and non-exempt religious. (324). He may also grant this permission to exempt religious, unless it is a case of their preaching to exempt religious or others sharing their privileges as students, servants, quests or patients who have their board and lodging in the house, in which case the superior of the exempt religious will grant the permission. (325). But in conceding permission to preachers the Vicar Delegate is to ascertain that the preachers have the proper fitness both regarding morals and doctrine. He is to determine this by means of an examination as prescribed for confessors, unless he knows them already as being qualified.

(323). Faculty n. *31.

(324). Canon 1337.

(325). Canon 1338, p.1-2; 514.

The Vicar Delegate may, after the examination, grant permission for general preaching or only for preaching of a particular kind, indefinitely or for a limited time and by way of experiment, or he may refuse it altogether. (326). Vicars Delegate are obliged to see that the quasi-pastors in their territory have a mission for their people every ten years, and they have the faculty, as pointed out above, of granting a plenary indulgence to the faithful who make the Mission. (327).

b). Censorship and the prohibition of books. Canons 1385, p.1 gives a list of books that require ecclesiastical censure whether they are published by laymen or clerics. Permission to publish the books mentioned in this list may be given by the Vicar Delegate as by the Vicar General. (328). What Augustine says of a local Ordinary, namely, that he does not need an "imprimatur" if he himself publishes a book even though it is published and printed outside his territory applies also to the Vicar Delegate. (329). Moreover, the Vicar Delegate is not bound by the ecclesiastical prohibition of books, provided they use the necessary precautions, especially

- (326). Canon 1340; Instruct.of Sac.Cong.Consist. June 28th, 1917 - AAS, IX (1917), p.328, ss.
(327). Canon 1349, p.1; Faculty n.*37, above n.151,(iv).
(328). Canon 1385, p.2; Ayrinhac, o.c.,n.272; Augustine, A Commentary on the New Code, VI, p.439.
(329). Augustine, o.c., VI, p.438.

regarding the retention of such books. (330). The Vicar Delegate may give permission to read books that have been condemned by the local Ordinary, and also books that have been condemned "ipso jure" or by indult of the Holy See, but only to their own subjects, in individual cases and for urgent reasons. If they have more extensive faculties from the Holy See they can give general permission to their subjects, but they should do this only with discretion and only for just and reasonable causes using discrimination as regards the persons to whom and the books for which they grant them. (331).

224. Indeed, Vicars Delegate have special faculties from the Holy See in regard to this question of prohibited books. They may concede to their individual subjects permission, for a period not longer than three years, to read and retain under custody lest they fall into the hands of others, prohibited books and pamphlets. However, they cannot grant permission through this faculty for the reading or retaining of works which "ex professo" defend heresy or schism, or seek to overthrow the foundations of religion, or works that "ex professo" treat of impure things. When they do grant

(330). Canon 1401; against Vromant, *Periodica*, XV, 1928, p. 78 who holds that the Vicar Delegate is bound by this prohibition because he is not an Ordinary in his opinion.

(331). Canon 1402, p. 1, 2; Vromant, *Jus Missionariorum* II, n. 131, 9), states that the Vicar Delegate can concede this permission since he has all the power of the Ordinary of the place.

permission through this faculty they must do so only with discretion and for a reasonable cause, namely, to those who truly need the permission to attack these works to exercise some legitimate duty in their regard or use them on a curriculum of studies. (332). But the Vicar Delegate cannot subdelegate this faculty.

225. c). Profession of Faith. Vicars Delegate like Vicars General are obliged to make the Profession of Faith, according to the formula approved by the Holy See. (333). The same is to be said of the Oath against Modernism, which must be taken even though no mention of it is found in the Code. (334).

226. F. Regarding temporal goods.

Because the Vicar Delegate has "omnis potestas in temporalibus" as well as in things spiritual, he will be concerned with the temporal goods of the Mission.

a). Donations and last wills. Vicars Delegate as Ordinaries are executors of all pious donations and bequests. Consequently, they can and must watch over these and see to it, even through visitation, that these pious wills are fulfilled. Other delegated executors must render

(332). Faculty n.*49.

(333). Ybanez, Directorium Missionariorum, n.78; Vromant, Jus Missionariorum, II, n.128; cfr. also Motu Proprio "Sacrorum Antistitum" of Pius X. Sept. 1st, 1910-AAS, II, (1910) p.655-680; the formula of the Profession of Faith is to be found in the beginning of the Code immediately before the canons.

(334). Ybanez, o.c., n.78; Vromant, o.c., II, n.128; the Oath against Modernism is to be found in the Acta Apostolicae Sedis, II, 1910, p.669-672.

to them an account of their management of the business.(335). Moreover, if the founder has made an express concession to this effect, the Vicar Delegate, as Ordinary, may concede a reduction, moderation or commutation of last wills. Also, if the onera of the last wills becomes too great, Vicars General may lessen them. (336).

227. b). Administration of temporal goods. The Vicar Delegate is obliged as an Ordinary to watch carefully over the administration of all ecclesiastical goods in their territory, in so far as these goods are not withdrawn from their jurisdiction, and to safeguard the greater rights that some may have from legitimate prescription. (337). Right administration brings benefits to ecclesiastical goods, just as proper government brings benefits to persons. Hence, the comparison between administration of goods and the government of persons. (338). As the Vicar Delegate can do much regarding the spiritual rule of persons he also has power regarding the temporal administration of goods, because he has, like the Vicar General, "jurisdictio in spiritualibus ac temporalibus" (Canon 368, p.1), and is also the "alter ego" of the Mission Superior in things temporal.

228. Because of the difficult nature of administration of church property each Mission should have a board of administration over which the Mission Superior is to preside,

(335). Canon 1515, p.1, 2; Pugliese, Apollinaris, 1933, p.214.
(336). Canon 1517, p.1, 2.
(337). Canon 1519, p.1.
(338). Vromant, De Bonis Ecclesiae Temporalibus, n.172, p.184;
Pugliese, Apollinaris, 1933, p.214-215.

with two or more other members, clerics or laymen, who are experts in canon law, and if possible, in civil law. The members are to be chosen after the Superior has consulted his Mission Council, unless custom or special decrees have provided another legitimate and equivalent mode. (339).

If possible on this board there should be both foreign and native priests, and members of the Mission Council are eligible for it. (340). If the Vicar Delegate has to deal with an administrative act of major importance he should consult this board of administration. However, the members of it only have a consultive or advisory vote, except in cases expressly mentioned in the common law or in the stipulation of its foundation, when the consent of the members would be necessary for validity. (341)

We may here also note that the Vicar Delegate cannot be elected to either the board of discipline or the board of administration of the quasi-diocesan Seminary.(342)

229. c). Alienation of church property. The Vicar Delegate is to ascertain civil law in respect to any contracts that he may enter. (343). In the matter of the Superior who may grant the consent necessary for alienations as treated in Canon 1532 the Code merely refers to the Ordinary of the place. In acting in such matters the Vicar Delegate is to

(339). Canon 1520, p.1.

(340). Epist. Sac. Cong. de P.F., de relationibus missionum, n.85-
AAS, XIV, (1922) p.300; Vromant, o.c., n.186.

(341). Canon 1520, p.3.

(342). Canon 1359, p.1, 2.

(343). Canon 1529.

follow the particular prescriptions of the Mission that may determine his powers as being restricted by the Vicar Apostolic, or by particular law for those regions not wholly subject to the common law. Since it will be a case regarding Mission property there may be circumstances that warrant special legislation that the Vicar Delegate has to follow. (344).

230. Article 3. In relation to proceedings and punishments.

I. Proceedings.

Although Vicars and Prefects Apostolic have judiciary power it is probable that, because of the circumstances on the Missions, they will not be able to establish a stable tribunal with all the formalities of a diocesan tribunal.(345). Hence, there need be but a few points to be considered regarding the relation of the Vicar Delegate to processes, the offices he may hold, the appointments he may make. etc.

The judge of first instance in Mission territory will be the Superior of the Mission, obviously from Canon 1572,p.1.

- (344). Pugliese, Apollinaris, 1933, p.215; The Code does not compute the standard of value to be followed in computing money, but the commonly accepted view is that the gold coin is the true unit of value. Before he engages in any transactions that involve money the Vicar Delegate will have to determine the equivalent value of paper and other currencies in his country in comparison to the gold dollar. Cfr. Primum Concilium Sinense, Vota et Postulata, n.19; Doheny, Practical Problems in Church Finance, p.40 and The Jurist, I, 1941, p.101; Heston, The Alienation of Church Property in the United States, p.110-111.
- (345). Coronata, Institutiones, J.C.III, n.1115; Roberti, De Processibus, I, n.82, 124.

Although there is not a strict obligation of appointing a stable Officialis in Mission territory because of conditions there, where possible this should be done. This Officialis should be distinct from the Vicar Delegate unless the smallness of the Mission or the small number of affairs make it advisable for this office to be committed to the Vicar Delegate. (346). Very often then when an Officialis has to be appointed on the Missions he will be the Vicar Delegate, since there will probably not be many others available for the position. If the Vicar Delegate is at the same time Officialis it is to be noted that his office as Vicar Delegate ceases with the vacancy of the See but his office as Officialis will continue. (347).

231. In every Mission, as far as possible there is to be appointed a Defensor Vinculi (Defender of the Bond) and a Promotor Justitiae (Promoter of Justice). (348). Again, on the Missions these officials may not be able to stably be constituted but if the need arise they may be appointed when a cause arises. Canon 1589 simply states that the Ordinary may appoint these officials. Some authors deny that the Vicar General can appoint the Defensor Vinculi or the Promotor Justitiae, but they do not give a sound reason for their opinion and from the wording of the Code it seems that the

(346). Canon 1573, p.1; Roberti, o.c., n.98.

(347). Canon 1073, p.6.

(348). Canon 1586.

appointments may be made by the Vicar General and consequently by the Vicar Delegate. (349).

232. In regard to marriage trials that may be held on the Missions and special instructions that may be given for a particular territory are, of course, to be followed in reference to the officials who are competent, their duties, etc. (350). From the general law of the Code, However, it is seen that the judge of first instance is the judge of the place in which the marriage is celebrated, or of the place in which the defendant, or in the case of a Catholic and non-Catholic, of the place in which the Catholic has a domicile or quasi-domicile. (351). The competent judge, then, is the Ordinary of the place as determined but this does not mean the Vicar Delegate, unless he is to handle the case as Officialis. (352).

- (349). Roberti, o.c., I, n.199, Coronata, o.c., III, n.1124, Wernz-Vidol, Jus Canonicum, VI, n.114, ft. nt. 75 deny this power to the Vicar General;
Blat, Commentarium Textus Codicis J.C., IV, n.49,
Pocock, The Defender of the Matrimonial Bond, p.14-15,
Glynn, The Promotor of Justice, p.65-66, Doheny, Canonical Procedure, p. 49, 52 who affirm that the Vicar General may take these appointments. However, Glynn, o.c., p.66-67, and Doheny, o.c., p.52 deny that the Vicar Delegate can make these appointments because they hold that he is not an Ordinary.
- (350). Cfr. Primum Concilium Sinense, Instructio pro Causis Matrimonialibus ex Indulto, in Sinis servanda.
- (351). Canon 1964.
- (352). Instruc. of Sac. Cong. of Sacram. Aug. 15, 1936 - AAS, XXVIII (1936) p.313 ss., art. 3 p.2.

233. In the canons of the Code regarding Beatification and Canonization whenever the term Ordinary is used it does not mean the Vicar Delegate, just as it does not mean the Vicar General, unless he has a special mandate. (353). Also, in regard to the manner of proceeding "in nonnullis expediendis vel sanctionibus poenalibus applicandis" (that is, in the manner of proceeding in certain affairs, e.g. the removal of pastors, in the transfer of pastors, etc. and in applying penal sanctions) the Vicar Delegate will not be able to act unless he has special authority from the Vicar Apostolic because of the nature of these affairs which require the personal attention of the Superior. (354).

234. 2. Punishments.

The first point that is to be noted and kept in mind is that the Vicar Delegate, like the Vicar General, has no power of inflicting penalties, without a special mandate. (355). Hence, the Vicar Delegate is not able to attach a penalty to any law or precept and cannot subject a delinquent to any penalty without first having received a special mandate from his Superior. (356). According to the common law,

(353). Canon 2002.

(354). Canons 2142 - 2194.

(355). Canon 2220, p.2.

(356). Blat, Commenterium, V, n.38; Chelodi, Jus Poenale, n.24, p.28, ft.nt.4; Coronata, Institutiones, IV, n.1694; Ayrinhac, Penal Legislation, n.38; Roberti De Delictis et Poenis, n.56, p.79, ft.nt. (2); Woywood, A Practical Commentary, n.2055; Esswein, The Extrajudicial Coercive of Ecclesiastical Superiors, p.71; Wernz-Vidal, Jus Canonicum, VII, n.165 -- all of these consider the matter in reference to the Vicar General but what they say applies also the Vicar Delegate.

remission of a penalty, whether through absolution in the case of a censure or through dispensation in the case of vindictive penalties, can be granted only by the one who inflicted the penalty, by his competent superior or successor, or by him to whom the faculty has been conceded. (357). Probably, the Vicar Delegate, like the Vicar General, can by his ordinary power remove penalties stated by the Superior of the Mission. (358). However, from the common law of the Code Vicars Delegate have certain power in regard to the absolution from penalties. In public cases they may release from penalties "latae sententiae" stated by the common law except: cases brought to the contentious forum; censures reserved to the Holy See; and penalties concerning ineligibility to office, benefices, dignities, functions in the Church, active and passive vote, or the privation of these, and perpetual suspension, infamy of law, privation of the right of patronage, privilege or favour granted by the Holy See. In occult cases the Vicar Delegate can release from all penalties "latae sententiae" of the common law, either themselves or through another to whom they have delegated the power, except censures "specialissimo vel speciali modo" reserved to the Holy See. The faculties of Canons 2254 and 2290 remain intact, regardless of this power in occult cases. (359).

{357}. Canon 2236, p.1.

{358}. Coronata, o.c., n. 1736, p. 133.

{359}. Canon 2237, p.1, 2.

235. In the matter of absolution from the excommunication incurred by those who fall into heresy, schism or apostasy the following is to be noted. Absolution from this excommunication in the internal forum ("in foro conscientiae") is reserved "speciali modo" to the Holy See. If, however, the crime of heresy, apostasy or schism is brought in any way to the external forum of the local Ordinary, even through voluntary confession, the same Ordinary (but not the Vicar General nor the Vicar Delegate consequently, without a special mandate) may impart absolution in the external forum if the delinquent is repentant and he abjures his error in the juridical form and complies with the other prescribed conditions. After being absolved in the external forum the penitent can be absolved from his sin by any confessor in the forum of conscience. The abjuration is made in the juridical form when it is made before the local Ordinary or his delegate and two witnesses. (360). While the Vicar Delegate requires a special mandate to concede the absolution as the Code indicates, the Vicar Apostolic can absolve by ordinary power and it is quite possible that he will delegate the Vicar Delegate, so that they may absolve converts and receive them into the Church without having to ask for faculties in every case. Of course, if the convert were never baptized, as is the case most often on the Missions, there is no abjuration (360). Canon 1314, p.2.

of heresy nor absolution from censure but he is baptized absolutely after the usual acts of faith, sorrow, etc. But the convert may have been baptized doubtfully in some sect and then there is to be abjuration of heresy or Profession of Faith, followed by conditional Baptism, confession and conditional absolution from sin. A doubtfully baptized person does not incur the censure. If the convert were baptized validly in some non-Catholic sect, as often happens in Mission countries, there is required the Profession of Faith in the presence of the priest, and then absolution from the censure, followed by confession. (361).

236. From their general faculties as Mission Ordinaries Vicars Delegate have the power to absolve from all censures, whether "simpliciter sive speciali modo" reserved to the Holy Father. (362). They may also subdelegate this faculty. If the absolution is given in the sacramental forum it is contained in the usual form of absolution given in ritual books. If it is given in the non-sacramental forum absolution from the censure may be given in any form, but for absolution from excommunication the form found in these books is usually used. (363). The faculty may be used for all censures, whether suspensions or interdicts, except those "specialissimo modo" reserved to the Holy See. No special conditions are laid down

(361). Ayrinhac, o.c., n.203; Formula for the abjuration, cfr. Rituale Romanum, tit.III, ch.3.

(362). Faculty n. *29.

(363). Canon 2250, p.3.; cfr. Rituale Romanum, tit.III, Ch.2, 3, 4, 5; Cappello, De Censuris, n.99.

by the faculty but the offender should have needed from his contumacy, repented of his offence, and at the same time have made proper satisfaction for damages done and scandal caused, or at least seriously promised to do so. (364).

(364). Canons 2248, p.2; 2242, p.3.

CHAPTER IV.

The Rights and Privileges of the Vicar Delegate and
the Cessation of his Office.

237. Article I. The Rights and Privileges of the Vicar Delegate.

a). Precedence.

The Code states in the case of the Vicar General, that even in the presence of the Bishop, he takes precedence over the whole clergy of the diocese both at private and public functions, and over all the dignitaries and cathedral canons in choir as well as in chapter meetings, unless there is someone present with episcopal character and the Vicar General lacks that character. (1). This precedence is possessed by the Vicar General in choir or in the chapter whether he is dressed in the habit of a canon or of a Vicar General; and also, even if he is not a canon, precedence is to be given to him in choir and in the capitular acts. (2). The Vicar Delegate will have precedence to the Vicar General though he may lack the honorary privileges of the same. The precedence of the Vicar Delegate like that of the Vicar General is based on a two-fold title, as indicated by the Code itself. (3). Whoever takes the place of another ("qui aliam personam gerit") obtains precedence from the same, and whoever

(1). Canon 370, p.1.

(2). Sac. Cong. Conc., May 17th, 1919 - AAS,XI (1919) Dec.15th, p. 349, 1923 - AAS (1924), p.371.

(3). Canon 106.

has authority over persons, whether they be physical or moral persons, has the right of precedence over them. These principles obviously are applicable in the case of the Vicar Delegate as they are in the case of the Vicar General and for the same reasons. He takes the place of the Vicar Apostolic whose vicar he is and he has jurisdiction over the other members of the clergy in the vicariate, both in spiritual and temporal matters. (4). Hence, in meetings of Mission Councils, of consultors of the Vicar Apostolic as well as in liturgical functions in which he takes part the Vicar Delegate has the right of precedence over the other members of the clergy of the vicariate by virtue of the office that he holds.

328. b). Liturgical Honours and Privileges.

The Vicar General, if he is a Bishop, has all the honourific privileges of titular Bishops; otherwise, if he is not a Bishop, during the term of his office he has only the privileges and insignia of a titular Protonotary apostolic. (5). Augustine, in referring to Vicars General without episcopal character states: "Vicars-General enjoy the title and privileges of this class of prelates by right during the whole tenure of their office as vicars, and are, therefore, called monsignori. Their dress is a black cassock which may have a trail (but not unfolded) with a silk

(4). LeVavasseur-Haegy, Manuel de Liturgie et Ceremonial, I. n.116, p.116, ft.nt.(1) where he speaks of the reasons for the precedence of the Vicar General, which we may equally apply to the Vicar Delegate.

(5). Canon 370, p.2.

belt and two pendants (flocculi) on the left, a rochet, mantelet, and biretta, all black. They do not genuflect but only bow to the Bishop or the cross; and are incensed duplici ductu; they say Mass as ordinary priests, but have the right to use the bugia or hand-light. Over their daily dress, on solemn occasions, including audiences with the Pope, they may wear a silken belt with a black fringe, a hat with a band and tassels of black color. On their coat-of-arms they may place a hat of black color with ribbons or strings and six tassels on each side, all black (not purple or red). (6).

329. However, it seems to be the general opinion of the authors that the Vicar Delegate who is not a Bishop does not enjoy the honorary privileges of the Vicar General.(7). This is logical because the Letter of Propaganda constituting the Vicar Delegate states that he has practically the same jurisdiction in things spiritual and temporal as the Vicar General but makes no mention of their obtaining any of the honorary privileges. But the Vicar Delegate is a prelate in virtue the position he holds as the "alter ego" of the

- (6). Augustine, A Commentary on Canon Lw, II, p.404; Le Vavasseur-Haegy, o.c., n.116; Ayrinhac, Constitution of the Church, n.171,7.
- (7). Vromant, Jus Missionariorum, II, n.130 and Periodica, XV, 1928, p.*78; Vercauteren, Jus Pontificium, 1931, p.78; Coronata, Institutiones, I, n.377, p.456, Ft.Nt. 8; Garnier, Periodica, XIII, 1923, p. (109);

Vicar Apostolic and the authority that he has over persons, although he enjoys no honorific privileges as such. (8).

If the Vicar Delegate is also a Bishop he has all the honours and privileges due to every titular Bishop as such, and when in choir can always wear their episcopal dress. (9). However, in as much as he is a Vicar Delegate a titular Bishop does not enjoy the privileges due to a Vicar General who is a titular Bishop and has certain privileges in as much as he is a Vicar General, for as we said, honorary privileges due to the Vicar General as such do not belong to the Vicar Delegate. The Vicar Delegate even though he is a Bishop does not enjoy the special faculties conceded to Mission Ordinaries of reserving the Blessed Sacrament in a chapel in his own residence, or of using the throne with the baldachino and the "Cappa magna in Pontificalibus", and his name in the preces feriales or the canon of the Mass because these are "pro ipso Ordinario" and are restricted to the Vicar Apostolic himself. (10).

330. In the course of exercising his office the Vicar Delegate will have to do a considerable amount of travelling on official business and will encounter other similar expenses.

(8). Canon 106, n.1,2; Vercauteren, Jus Pontificium, 1931, p.78.

(9). Canon 349, p. 1, n.1; 409, p.1.

(10). Faculty n.50, 53;

Vromant, Fac. Apost., n.114, Jus Missionariorum, II, n.130, Periodica, XV, 1928, p.*78;
Winslow, Vicars and Prefects Apostolic, p.136-137.

Provision should be made whereby these expenses are cared for by the Vicariate as the burden of them is not to be placed on the Vicar Delegate personally. Moreover, since his office is not a benefice he should be given a suitable salary which will care for his honest sustenance and befit his position.

Article 2. Cessation of the Office of the Vicar Delegate.

331. Like the office of the Vicar General the office of the Vicar Delegate ceases and his jurisdiction expires through resignation, or revocation intimated to him by the Vicar Apostolic, or through the vacancy of the see; and it is suspended on the suspension of the jurisdiction of the Vicar Apostolic. (11). We will consider each of these in particular.

a). Resignation. Resignation is the free relinquishing of an office made by the one possessing the office for a just cause and accepted by the legitimate Superior. A resignation is express when it is made through the verbal or written manifestation of one's will in a legitimate way to the competent superior, and it is tacit when it arises from some free fact, whether honest or gravely culpable, which by its nature or from a determination of the law brings about the cessation of an office. (12). The Vicar Delegate who is in full possession of his mental faculties ("sui compos")

(11). Canon 371.

(12). Vermeersch-Creusen, *Epidome*, J.C., I, n.302;
Coronata, o.c., I, n.259.

may resign his office for a just cause, since the law permits him to resign providing he does so in the way prescribed by the Code. (13). For the liceity of the resignation there is to be a just cause, and this is required both on the part of the Vicar Delegate and of the superior accepting the resignation. (14). However, the same cause that is advanced by the one resigning, when just and proportionate is sufficient for the superior, since it is not required to be a distinct cause. Among the causes that would be proportionate and just to permit the resignation of the Vicar Delegate are advanced age, sickness, which prevents him from performing his duties of his position, etc. (15).

352. In order that the resignation of the Vicar Delegate will be valid it is necessary that it be made entirely free, so that if it were made from grave fear unjustly brought to bear upon him, or from fraud or substantial error, or simoniacally his resignation would be invalid. (16). Also, required for the validity of the resignation is that it be made in writing or orally before two witnesses, or through a procurator endowed with a special mandate. The document of the resignation should be placed in the archives of the vicariate. (17). Regularly the resignation of the Vicar Delegate has to be accepted by the Vicar Apostolic to be

(13). Canon 184, 371.

(14). Canon 184, 189, p.1.

(15). Pius V, Const. *Quantum* Ecclesie, April 1st, 1568 - Fontes, I, n.125.

(16). Canon 185.

(17). Canon 186.

valid, for it is the Vicar Apostolic who has appointed him, to his office. (18). The law admits several cases of tacit resignation which effect the vacancy of an office ipso facto and without any declaration of the cleric. Thus, no formality is required and provided the fact that induces the resignation is present, tacit resignation is had by a "praesumptio juris et de jure", without any further declaration, decree or sentence of the Superior being needed. Tacit resignation in the case of the Vicar Delegate will exist if (a) he makes religious profession; (b) he neglects to take possession of his office within the time determined by the Vicar Apostolic; (c) he accepts an office incompatible with that of the Vicar Delegate and obtains possession of it without any dispute; (d) he publicly gives up the Catholic faith; (e) he attempts marriage, even by a civil act only; (f) he enlists in the army (against the prescription of Canon 141, p.1; (g). he takes off ecclesiastical dress by his own authority and without a just cause, and does not put it on again within a month from the warning of the Vicar Apostolic; (h) he illicitly deserts the residence, by which he is bound, and does not obey or reply to the warning of the Vicar Apostolic within the appropriate time fixed by the Vicar Apostolic, unless he is legitimately impeded. (19).

(18). Canon 187, p.1.

(19). Canon 188; Coronata, O.c., I, n.263, p.316-317;
Augustine, o.c.. II, p.160-161.

333. As already indicated the Superior is not to accept the resignation unless there is a just and proportionate cause, though this is not required for validity. Moreover, the Vicar Apostolic is to admit or accept the resignation within a month, in order to prevent too long vacancies.(20) As soon as resignation has been legitimately made and accepted the office becomes vacant when the Vicar Delegate has been informed of the acceptance of his resignation. But he remains in office until he receives certain knowledge of the acceptance by the Vicar Apostolic, so up until such a time he is still obliged by the duties of the office and retains the rights, spiritual and temporal, attached to it. (21). However, once he has given his resignation the Vicar Delegate cannot render it invalid by changing his mind about it or regretting his move. Later he could again be given the same office, but this second appointment would constitute a new title. (22).

334. b). Revocation.

The Vicar Delegate loses his office by revocation intimated to him by the Vicar Apostolic, and this is evident too from the fact that, like the Vicar General, he is appointed "ad nutum" of the Vicar Apostolic. (23). However, while the the Vicar Delegate is removable according to the will of the Vicar Apostolic, it seems that there should be a just cause

(20). Canon 189, p.1,2.

(21). Canon 190, p.1,2; Augustine, o.c., II, p.162.

(22). Canon 191, p.1.

(23). Canon 371, 366, p.2.

for the Vicar Apostolic revoking his office. Due regard should be taken for the position of the Vicar Delegate. (24). However, if the Vicar Apostolic removes the Vicar Delegate even without reason, it would still be valid. But tacit revocation does not suffice. The Vicar Delegate must be informed that the Vicar Apostolic has revoked his office, and until he receives official knowledge of this the acts he places as Vicar Delegate will still be valid. Obviously the best way of informing of revocation is by letter, although this is not strictly demanded since intimation can be made by messenger or any other official that informs the Vicar Delegate of his removal. If it is made by letter there is less danger of difficulty later arising **about** this matter.(25)

335. c). Vacancy of the see.

We have seen that in the old law the Vicar General of the Vicar Apostolic was also the Pro-vicar of the same. While the Vicar Apostolic was living the Vicar General or the Pro-vicar might have the use of all the faculties of the Vicar Apostolic though delegation "ad universitatem causarum". On the death of the Vicar Apostolic, the Vicar General or Pro-vicar, as he was indiscriminately called, assumed the entire

(24). Cfr. Vermeersch-Creusen, o.c., I, n.483; Wernz-Vidal, Jus Canonicum, II, n.643; Coronata, o.c., I, n.424, p.502, ft.nt. 6 regarding the removal of the Vicar General; also Augustine, o.c., II, p.405, who see more severe as to the position of the Vicar General as also is Bouuaert-Simenon, Manuale Juris Canonici, I, n.509.

(25). Cfr. Augustine, o.c., II, p.405 regarding the Vicar General.

rule of the Mission as does the Vicar Capitular in a diocese. Hence, he had as it were a two-fold office, of Vicar General while the Mission Superior lived, and of Pro-vicar when he died. He had the right of succession even while he was still Vicar General so the same person could hold the two offices.(26)

336. However, on the promulgation of the New Code the legislation in this matter was changed. Vicars and Prefects Apostolic did not have the right to appoint a Vicar General. Moreover it stated that, as soon as they enter their territory, Vicars and Prefects Apostolic were to appoint one of their clergy as Pro-vicar or Pro-prefect, unless they had a Co-adjutor with the right of succession. While the Vicar or Prefect Apostolic lived the Pro-vicar or Pro-prefect has no power other than what the Mission Superior may commit to him. However, lacking the Vicar or the Prefect Apostolic, or when their jurisdiction is impeded according to the norm of Canon 429,p.1. the Pro-vicar or Pro-prefect is to assume the whole rule of the Mission and remain in it until the Holy See has provided otherwise. (27). We have explained above how the Vicar Delegate now is to assume the rule of an impeded vicariate, since the change effected in this matter by the Letter of Propaganda constituting the Vicar Delegate, after the mode of a Vicar General. (28). We must now consider the position of the Vicar Delegate when the see of the vicariate is vacant.

(26). Benedict XIV, "Ex Sublimi", Jan.26th,1753 -Collectanea, S.C. de P.F.,n.161, "Quam ex Sublimi", Aug.8th,1755-Collectanea, n.162.

(27). Canon 309, p.1,2.

(28). Cfr. above n.48.

337. The see of the vicariate will become vacant through the death of the Vicar Apostolic, his resignation accepted by the Holy See, his transfer, or the privation of his office. (29). When the see becomes vacant the office of the Vicar Delegate, like that of the Vicar General, ceases. It ceases because the Vicar Delegate forms with the Vicar Apostolic one consistorium and one tribunal. When the office of the Vicar Apostolic ceases as it does through the vacancy of the see, the office of the Vicar Delegate likewise ceases, and the Pro-vicar or Pro-prefect assumes the rule of the Mission. (30). If there has been no Pro-vicar or Pro-prefect appointed the Senior will assume the rule of the Mission, because the law clearly requires

(29). Canon 420, p.1.

(30). Winslow, Vicars and Prefects Apostolic, p.69, Comyns, The Papal and Episcopal Administration of Church Property, p.68, Vercauteren, Jus Pontificium, 1931, p. 75 - 78; Sartori, Enchiridion Canonicum, p.60-61; Vermeersch, also holds that in the case of vacancy the Pro-vicar is to assume the rule of the vicariate though his arguments follow from his opinion that the power of the Vicar Delegate is only delegated and that he does not form the same tribunal with the Vicar Apostolic. Thus, in Epitome, J.C., I, n.429, 3 he says: "sede vacante si Pro-vicarius vel Pro-praefectus adest, non est cur Vicarius delegatus (nisi una persona, ut patet) regimen assumat. Iuri Pro-titularis favet clarus Codicis textus. Dein Vicarius delegatus ad auxilium Vicario vel Praefecto praestandum electus etc, Pro-titularis ad regimen assumendum. Tandem argumentum aliquid e diversa jurisdictionis natura desumi potest, est enim in Pro-titulari ordinaria vicaria, in Vicario delegato probabilius delegata tantum", also, Vermeersch, Periodica, XII, 1923, p.(4) - (5); Primum Concilium Sinense, Dec.77 "Sede vacante, jurisdictio Vicarii Delegati expirat, et totum regimen assumit Pro-vicarius vel Pro-praefectus Apostolicus, nisi S.Sedes aliter providerit".

this and the Vicar Delegate has lost his office through the cessation of the Vicar Apostolic. (31).

But the acts of the Vicar Delegate are valid until he has received official notice of the vacancy of the see, as Canon 430, p.2 indicates in the parallel case of the Vicar General.

338. d). Suspension.

Like that of the Vicar General the jurisdiction of the Vicar Delegate is suspended if that of his Superior is suspended. (32). This would occur if the Vicar Apostolic were suspended from jurisdiction, or if he were excommunicated or placed under personal interdict. However, a "suspensio a divinis" placed on the Vicar Apostolic would not suspend the jurisdiction of the Vicar Delegate. (33).

- (31). Canon 309, p.4; cfr. Vermeersch-Creusen, o.c., I, n. 429, 3: "Quid autem, si deficit clericus a Vicario vel Praefectus designatus? Estne Vicarius delegatus seniori sacerdote praefendus? Si potestas ei delegata sibi jure particulari sive concessionis modo exspiravit, seniori praeferi non potest contra clara legis verba. In casu contrario, haberi potest tamquam electus a Vicario vel Praefecto ad regimen assumendum. Id saltem dicimus donec contrarium a S.Sedis responsum non prodierit".
Vromant, Jus Missionariorum, II, n.223, 5): "Vicario Delegato constituto, si Pro-vicarius vel Pro-praefectus ab Ordinario-missionis non fuerit designatus, opinamur, deficiente, uti supradictum est, Ordinario missionis, Vicarium Delegatum praefendum ----est seniori";
cfr. also, Vromant, o.c., II, n.128, p.119, ft.nt.2.
- (32). Canon 371.
- (33). Augustine, o.c., II, p.405;
Ayrinhac, Constitution of the Code, n.171, p.215.

CONCLUSIONS.

- I. According to the legislation existing before the new code of Canon Law, Vicars and Prefects Apostolic could appoint a Vicar General. During the lifetime of the Vicar or Prefect Apostolic the Vicar General had only those powers which were delegated to him by the Mission Superior. On the death of the Vicar or Prefect Apostolic the Vicar General, or the Pro-vicar, as either of these terms was used indiscriminately for the same official, assumed the full rule of the Mission.
2. When the New Code of Canon Law appeared it determined who were local Ordinaries, and, although it referred to the vicars General of residential Bishops, it made no mention of the Vicars General of Vicars and Prefects Apostolic. Consequently a dispute arose as to whether Vicars and Prefects Apostolic could appoint their own Vicar General, since they had the same rights and duties as residential Bishops, according to Canon 294, p.1.
3. The matter was definitely settled by the Letter of the Sacred Congregation of Propaganda, Dec. 8th., 1919, which denied that Vicars and Prefects Apostolic had the right to appoint a Vicar General. However, the same Letter granted to Mission Superiors the power to appoint a vicar Delegate to whom was conceded practically the same power in things spiritual and temporal as the Vicar General of a residential Bishop had from the common law of the Code.
4. The power of the Vicar Delegate, like that of the Vicar General, is ordinary power of jurisdiction. What is said of the vicar

General in the Code applies, mutatis mutandis, to the Vicar Delegate, who is to the Mission Superior what the vicar general is to the residential Bishop. To the Vicar Delegate also pertain the habitual faculties that the Vicars and Prefects Apostolic have from the Sacred Congregation of Propaganda, exceptis ~~ex~~ ex ce pi en dis.

5. The Vicar Delegate ~~forma~~ with the Mission Superior one tribunal and one consistorium, ~~and~~ the jurisdiction of the Vicar Delegate ceases with that of the vicar or Prefects Apostolic.

6. The Vicar Delegate is a local Ordinary, not in virtue of the Code of Canon Law, but in virtue of the Letter of Propaganda constituting his office.

APPENDIX I.

The following is the complete text of the Letter of the Sacred Congregation of Propaganda to Vicars and Prefects Apostolic granting to them the power to nominate a Vicar Delegate. It is to be found in the Acta Apostolicae Sedis, XII, (1920), p. 120:

Sacra Congregatio de Propaganda Fide.

Epistola.

Ad Vicarios et Praefectos Apostolicos, Quae Potestas Ipsis Fit Nominandi Vicarium Delegatum.

Reverendissime Domine.

Iuxta can. 198 Codicis I.C., Vicariis et Praefectis Apostolicis ius non competit sibi eligendi vicarium Generalem sicut fas est Episcopis residentialibus; sed ipsis potestas tantum est nominandi, cum muneribus in singulis casibus determinandis, delegatum qui etiam alius esse potest quem provicarius, de quo in can. 309.

Sed cum ex alia parte opportunum videatur Superiores Missionum auctoritate pollere sibi deligendi aliquem vicarium, qui practice eadem gaudeat jurisdictione quam ius canonicum Vicariis Generalibus tribuit, non exclusae habituali potestate executioni mandandi rescripta pontificia atque utendi iisdem peculiaribus facultatibus quas haec S. C. Ordinariis locorum communicat, SS.D. N. Benedictus divinae Prov. PP.XV, in audientia habita ab infrascripto Cardinali Praefecto S. C. de Propaganda

Fide, die 6 novembris anni 1919, haec in bonum Missionum sua benignitate concessit: I. Sanavit nullitatem actuum jurisdictionis positorem ab illis missionariis qui forsitan ut vere Vicarios Generales se gesserunt. II. Elargitus est Ordinariis Missionum potestatem nominandi Vicarium Delegatum, si eo indigeant, cui practice concessa sit omnis iurisdictio - in spiritualibus et temporalibus, qua ex Codice I. C. uti potest Vicarius Generalis in dioecesi.

Ex haec concessione, omnibus Superioribus Missionum facta, nunc tu poteris Vicarium Delegatum nominare, qui gaudeat omnibus facultatibus Vicario Generali tributis, ad normam can. 368, I, 2.

De numero autem et de officio Vicariorum Delegatorum in unaquaque missione eadem valeant quae de Vicario Generali in Codice I. C. statuta sunt (can. 366 et seq.). - Quae dum tibi communico, Deum precor ut te sospitem incolumenque servet.

Romae, die 8 decembris 1919.

Adiunctissimus

G. M. Card. van Rossum, Praefectus,

C. Laurenti, Secretarius.

APPENDIX II.

The following is a copy of the general faculties conceded by the Sacred Congregation of Propaganda to Mission Ordinaries:

SACRA CONGREGATIO DE PROPAGANDA FIDE

Prot. N. (478*41)

NOTIFICATIO.

Facultatum generalium, quae Missionum Ordinariis concedi solent, novas formulas hoc S. Consilium Christiano Nomini Propaganda nuper edendas censuit, atque singulis Ordinariis mittit.

Quapropter iidem Ordinarii monentur Facultatibus quae in vetere Formula continebantur, a die quo receperint Formulam novam hic adnexam, Facultates novas in hac contentas substitutas esse; Rescripta autem, quae usque ad expirationem Facultatum generalium ab hac S. Congregatione concessa fuerint, usque ad cessationem harum novarum Facultatum valitura habenda esse.

Quae Facultates generales ad decennium conceduntur. Eae autem non cessabunt per Apostolicae Sedis aut Diocesis vacationem (Ven. 61); neque evanescent resolute jure Ordinarii cui concessae sunt, etiamsi ipse eas exsequi coeperit, sed ad Ordinarios qui ipsi in regimine successerint transibunt; atque competent quoque Vicario Generali dioecesis et Praelaturae nullius (Can. 66,2) ac Vicario Delegato in Missionibus, exceptis excipiendis.

Romae, ex Aedibus S. Congregationis Christiano
Nomini Propaganda die I Ian. A.D. 1941.

PETRUS CARD. FUMASONI BIONDI

Praefectus

Celsus Costantini, Arch. Tit. Theodosiop.
Secretarius.

si aliter celebrari non possit; atque ut Missa inchoari queat una hora post mediam noctem.

5. Permittendi ut Missa celebrari possit cum uno lumine cujusvis generis, dummodo cera spum desit; necnon permittendi ut Missa absque luminibus celebrari possit, in casu tamen verae necessitatis, et graviter onerata conscientia ipsius Ordinarii.

6. Permittendi ut in utraque purificatione calicis aqua tantum adhiberi possit dummodo tamen extrema sit vini penuria.

7. Permittendi Thurificationem in Missis cantatis a solo celebrante absque ministris, dummodo duo saltem clerici super pelliceo induti Missae inserviant.

8. Concedendi suis missionariis iter facientibus ut in celebrando S. Sacrificio uti possint paramentis cujusvis coloris liturgici.

9. Permittendi ut in ecclesiis et oratoriis publicis, quae privilegio juris communis (Can. 821, 2-3-), haud gaudent, tres Missae statim post mediam noctem Nativitatis Domini celebrari possint, cauto tamen ut omnia cum debita reverentia fiant.

10. Permittendi ut in ecclesiis dissitis functiones Majoris Hebdomadae celebrari queant juxta peculiarem Ritum a S.M. Benedicto Pp. XIII, concessum pro ecclesiis minoribus parocchialibus, in quibus ministrorum numerus vel copias cantorum ad praedictas sacras functiones solemniter peragendas haberi nequeat; dummodo tamen constet ibidem satis esse consultum

reverentiae sacris mysteriis debitae, nullamque exinde abusu patere occasionem; quatenus neque praedictus Ritus serveri possit, permittendi ut in iisdem ecclesiis unica Missa lecta, loco sollemnis celebrari possit Feria V in Coena Domini.

11. Permittendi ut in ecclesiis ter in hebdomada, extra Quadragesimam, Missa privata de Requie celebrari possit, etiam diebus ritus duplicis majoris et minoris exceptis dominicis, necnon feriis, vigiliis atque octavis privilegiatis, diebus tamen quibus eadem Missa a Rubrica permittitur, computatis. (P.S.S. p. 330).

12. Permittendi etiam in omnibus diebus festis et dominicis Missam votivam de B.V.M., diebus autem feriis etiam Missam Defunctorum, iis qui, ob defectum oculorum, aliamve infirmitatem, legere nequeant Missas singulis diebus occurrentes **justa** Missalis Romani rubricas. (cfr. A.A.S. 1921 P. 154 et suivantes).

13. Permittendi ut **justa de causa**, Ssimum Sacramentum cum duobus luminibus cumjuevis generis exponi possit, exclusa tamen expositione perpetua et XL horarum.

14. Permittendi ut, in locis ubi nulla materia ad lampades nutriendas haberi potest, Ssimum Sacramentum etiam sine lumine asserveri possit, in casu tamen verae necessitatis et graviter onerata conscientia ipsius Ordinerii (A.A.S. 1938, p. 198).

15. Permittendi, si sit periculum sacrilegii, ut Ssimum Sacramentum pro infirmis sine lumine in loco tamen decenti retineri possit.

*16. Permittendi religiosis sororibus ut pallas, corporalia et purificatoria primo abluere valeant.

17. Permittendi suis missionariis ut deferre et administrare valeant christianis aegrotantibus S. Eucharistiam sine super-pelliceo et stola ac sine comite, dummodo constet de periculo cui exponerentur si induerent superpelliceum et stolum.

*18. Concedendi infirmis, de quibus certa spes non adsit ut cito conualescant, ut S. Communionem sumere possint bis vel ter in hebdomada (et si agatur de sacerdotibus vel religiosis, etiam quotidie) etsi aliquam medicinam vel aliquid per modum potus antes sumpserint.

19. Conferendi, rationabili de causa, Ordines minores omnes simul, etiam cum prima tonsura.

20. Conferendi, justa de causa, omnes, sacros Ordines, etiam Presbyteratum, diebus ferialibus etsi continuis.

21. Dispensandi, gravi tamen de causa, cum suis utriusque cleri diaconis super defectu aetatis decem et octo mensium, ut ad s. Presbyteratus ordinem promoveri possint, dummodo, idonei sint, et dividiam partem quarti anni cursus theologici rite (Can. 976, 3) absolverint.

*22. Dispensandi, canonicis existentibus causis, super impedimentis matrimonialibus sive minoris sive majoris gradus (Can. 1042) tam publicis quam occultis, etiam multiplicibus, juris tamen ecclesiastici, exceptis impedimentis provenientius

ex sacro Presbyteratus ordine, ex affinitate in linea recta, consummato matrimonio, et ex defectu praescriptae aetatis, quando sponsi ad aetatem ab antiquo jure praefixam nondum pervenerint (i.e. ad annum 14 completum pro viris et ad 12 completum pro mulieribus).

Concedendo tamen has dispensationes, Ordinarius praec oculis habeat regulas statutas in Codice, a Can. 1035 ad Can. 1080 circa impedimenta in genere et in specie, et, in impedimentis mixtae religionis et disparitatis cultus, servatis conditionibus ab ecclesia praescriptis: videlicet de amovendo a catholico conjugis perversionis periculo, ac de universa prole utriusque sexus in catholicae religionis sanctitate tantum baptisanda et educanda (cf Syllogen ad usum missionarium Romae, 1939, p. 561), monita parte catholica de obligatione, qua tenetur, conversionem conjugis acatholici prudenter curandi; eaque lege ut, neque ante neque post matrimonium coram Ecclesia initum partes habeant ministri falsi cultus ad matrimonialem consensum praestandum vel renovandum. Si agatur vero de matrimonio cum hebraeis vel mahumetanis, peculiari ratione oportet ut; constet de status libertate partis infidelis, ad removendum periculum polygamiae; absit periculum circumcissionis prolis; et si civilis actus sit inendus, sit tantum caeremonia civilis nullaque Mahumetis invocatio aut aliud superstitionis genus interveniat.

*23. Sanandi in radice, justa regulas in Codice a Can. 1128 ad Can. 1141 statutas, matrimonia ob aliquod impedimentum de quo

supra (N.22) nulliter contracta. Quod vero attinet ad proles legitimationem, Ordinarius prae oculis habeat canones 1051, 1138.

Facultates sanandi in radice non extenditur ad casus in quibus super venerit amentia unius vel utriusque partis in singulis hisce casibus igitur ad Sedem S. recurrendum erit.

*24. Sanandi periter in radice matrimonia mixta attentata oram magistratu civili vel ministro acatholico, dummodo meraliter certum sit partem acatholicam universae proles tam natae quam nasciturae Catholicam educationem non esse impedituram.

*25. Dispensandi super interpellatione conjugum in infidelitate relictorum (pro dispensandis infidelibus plures uxores habentibus ut post baptismum quam ex illis meluerint, si etiam ipsa fidelis fiat, retinere possint nisi prima voluerit converti cfr. Can. 1125) pro omnibus casibus ordinariis, quando scilicet adhibitis antea omnibus diligentis, etiam per publicas ephemerides ad reperiendum locum ubi conjux infidelis habitat, iisque in irritum cessis, constet ex processu saltem summario et extra judicialiter conjugem absentem moneri legitime non posse aut monitum intra tempus in monitione praefixum suam voluntatem non significasse.

*26. Itemque dispensandi super interpellatione conjugis in infidelitate relictis, siquidem certo constiterit ex processu saltem summario et extra judicialiter, interpellationem fieri non posse sine evidenti gravis damni aut conjugis jam ad fidem converso (etsi nondum baptizato), aut Christianis inferendi periculo.

*27. Permittendi ut, accedente gravi causa, interpellatio conjugis infidelis ante baptismum partis quae ad fidem convertitur fieri possit; nec non, gravi pariter de causa, ab eadem interpellatione, ante baptismum partis quae convertitur, dispensandi dummodo hoc in casu ex processu saltem summario et extra iudiciali constet interpellationem fieri non posse, vel fore inutilem.

*28. Impertiendi benedictionem nuptialem extra Missam aut preces recitandi iuxta formulas quae in Appendice Ritualis Romani continentur.

B - CIRCA ABSOLUTIONES, BENEDICTIONES, INDULGENTIAS ET
INDULTA VARIA

*29. Absolvendi ab omnibus censuris, sive simpliciter sive speciali modo Romano Pontifici reservatis iuxta Can. 2250, 3.

*30. Dispensandi vel commutandi, iuxta de causa, vota privata, Sedi ap. reservata de quibus in Can. 1209.

*31. Benedicendi solo crucis signo cum omnibus indulgentiis a S. Sede concedi solitis, coronas precatorias, cruces, parvas statuas et sacra numismata, et adnectendi coronis indulgentiis, quae ss. Brigide et quae a Patribus Crucigeris nuncupantur.

32. Conferendi uni alterive i.e. paucis ex suis sacerdotibus in casu necessitatis facultatem consecrandi, iuxta formam in Pontificali Romano praescriptam, calices, petenas,

et iuxta formulam breviorum altarum lapides, adhibitis
tamen oleis ab Episcopo catholico benedictis.

33. Impertendi, praeter concessionem de qua in Can.
914, ter in anno in solemnioribus festis benedictionem Papalem
iuxta praescriptam formulam cum indulgentia plenaria ab his
lucranda, qui vere poenitentes, confessi et S. communione
refecti eidem Benedictione inter fuerint, Deumque pro sanctae
Fidei propagatione et iuxta mentem Summi Pontificis oraverint.
34. Concedendi ut, servatis consuetis conditionibus,
Indulgentiam plenariam in primae communionis solemnibus distribu-
tione et in S. Confirmationis administratione, Christifideles
ad S. Communionem vel Confirmationem rite accedentes lucrari
possint.
- *35. Concedendi indulgentiam plenariam primo conversis
ab haeresi, servatis consuetis conditionibus.
36. Concedendi Indulgentiam plenariam singulis ex clero,
qui per quinque saltem dies spiritualibus Exercitiis interfuerint
ac, sacrosanctum Missae sacrificium celebrantes vel saltem
ad S. Synaxim accedentes, pias preces fuderint ut supra (n.33).
- *37. Impertendi benedictionem apostolicam Cum indulgentia
Plenaria omnibus Christifidelibus qui spiritualibus exercitiis
seu Sacris Missionibus de quibus in Can. 1349, I, ultra med-
ietatem interfuerint, benedictioni cum cruce in fine postremae
concionis impertiendae vere poenitentes confessi ac sacra
Communione refecti adstiterint, atque ecclesiam, in qua conciones

hujusmodi habebuntur devote visitaverint, ibique pias ad Deum preces fuderint ut supra (n.33).

- *38. Concedendi in actu visitationis paroeciarum, quasi-paroeciarum et missiononum nec non communitatum tam saecularium quam religiosorum ut Indulgentiam Plenariam una vice tantum lucrari possint Christifideles, dummodo contriti, confessi ac s. Communionem refecti ecclesiam vel oratorium visitaverint et pias ad Deum preces fuderint ut supra (n.33).
- *39. Concedendi Christifidelibus ut Indulgentias, propter quas confessio saltem bis in mense requiritur lucrari possint, etsi ob legitimum impedimentum semel in mense ad poenitentiae sacramentum accesserint.
- *40. Benedicendi Christicrucifixi imagines sculptas cum Indulgentia plenaria a quocumque ex fidelibus in mortis periculo constitutis lucranda eas deosculando vel Summum Jesu nomen corde saltem si ore non potuerint invocando.
- *41. Subdelegandi suis missionariis facultatem erigendi, ritibus ob Ecclesiam praescriptis, stationes Vise Crucis, cum omnibus Indulgentiis, quae hujusmodi pium exercitium peregrinantibus a Summis Pontificibus impertitae sunt; et supplicandi easdem indulgentias crucibus et crucifixis, pro infirmis aliisque legitime, dummodo iidem, ad normam decretorum Urbis et Orbis diei 16 Septembris 1859, et Sacrae Poenitentiarum diei 14 Decembris 1917, 25 Martii 1931, 20 Octobris 1931 et 12 Martii 1938, crucifixum ad hoc benedictum manu tenentes

recitent, saltem corde contrito cum oia recordatione Passionis Domini, viginti Pater, Ave et Gloria unum nempe pro quolibet statione quinque in memoriam sacrorum vulnerum D.N.I.C. ac unum justa mentem S. Pontificis; aut si agatur de infirmis qui ob suae infirmitatis seu naturam seu gravitatem nec horum viginti Pater, Ave, Gloria, recitationem absque gravi incommodo aut difficultate peragere valeant, crucifixum benedictum cum affectu et animo contrito osculentur vel etiam tantum intueantur brevem insimul, si possint, aliquam orationem vel precem jaculatoriam in memoriam Passionis et Mortis Domini recitantes.

42. Erigendi illas etiam confraternitates a S. Sede approbatas quarum instituendarum jus apostolica ex privilegio aliis reservatum est (Can. 686, 2) (una excepta confraternitate Ssmi Rosarii) iisque adscribendi.

43. Subdelegandi suis missionariis facultatem Christi-fideles adscribendi confraternitatibus (inclusa confraternitate Ssmi Rosarii) etque benedicendi, ritibus ab Ecclesia praescriptis omnia scapularia a Sede Apostolica probata eaque imponendi sine onere inscriptionis.

44. Concedendi ut privatim recitari possit mattutinum cum laudibus diei sequentis statim post meridiem.

45. Concedendi suis missionariis ut ob legitimam grave-mque rationem de qua Ordinarii conscientia oneratus, loco Divini Officii, Rosarium integrum aut alias preces recitare possint.

46. Permittendi suis missionariis ut vestes laicales induere possint, si aliter vel transire ad loca eorum curae commissa, vel in eis commode permanere nequeant.

47. Permittendi suis missionariis ut ad finem Regni Christi- amplius dilatandi, medicinam et chirurgiam exercere valeant dummodo in istis artibus periti sint, in curandis infirmis alterius sexus omnia quae religiosum et sacerdotem dedecent, vel scandalo esse possint, diligenter vitent easque artes omnino gratis exerceant.

*48. Dispensandi cum catholicis pauperioribus ut serviliter laborare valeant diebus dominicis vel festis de precepto, exceptis Paschate et Pentecoste, post tamen auditionem Missae, si possit audiri; si vero non possit, recitatis precibus suppletivis.

49. Concedendi, non ultra triennium, licentiam legendi ac retinendi sub custodia tamen ne aliorum manus perveniant, libros prohibitos et ephemerides, exceptis operibus haeresim vel schisma ex professo propugnantibus, vel etiam ipsa religionis fundamenta evertere nitentibus necnon operibus de abscoenis ex professibus tractantibus, singulis Christifideles sibi subditis nonnisi tamen cum delectu ac rationabili de causa (cfr. 1402, 2) iis scilicet tantum, qui eorundem librorum et ephemeridum

lectione sive ad ea impugnandum, *aut ad proprium legitimum munus exercendum, vel iustum studiorum curriculum peragendum, vere indigeant.*

C. PRO IPSO ORDINARIO.....

50. Asservandi in sacello domus stabilis suae

residentiae actualis Ssum Eucharistiae Sacrementum.

51. Lucrandi Indulgentias, quas aliis vi facultatum sibi concessarum impertire valet, impletis tamen consuetis conditionibus.
52. Utendi ipse personaliter, in iisdem tamen adjunctis, facultatibus seu permissionibus quas, intra limites praecedentibus articulis expressos concedere potest.
53. Utendi throno cum baldachino et cappa magna in Pontificalibus; necnon permittendi presbyteris in ecclesiis suae jurisdictionis celebratibus ut sui nominis tamquam Antistitis sive in precibus ferialibus sive in canone Missae mentio fiat; quatenus haec jure concessa non fuerint.

Remarque, differences avec la Facultas Minor.

Cfr. n. 2

n. 41

n. 43 dividitur in duabus partibus in hac Facultate.

n. 50 Fruendi indulto personali alteris privilegiati quotidiani, dummodo nihil praeter consultam elemosynam intuitu hujus privilegii, ipsi a can. 308 concessis, etiam extra proprium territorium; praehabito, quoad Pontificalia, consensu Ordinarii Locii.

ANIMADVERSIONES.

- I. Praedictae facultates ea lege conceduntur, ut non omnes indiscriminatim subdelegari possint, sed illae

tantumquae asterisco * notantur, seu quae habentur sub n. 16, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 35, 37, 38, 39, 40, 48.

II. Ordinarius insuper supradictis facultatibus sive per se sivi per alios uti tantum valeat intra fines suae jurisdictionis; easque gratis et sine ulla mercede exercest (praeterquam pro expensis Cancellariae et cursus postalibus ab iis qui pares sunt ad eas solvendas exigenda) et facta mentione apostolicae delegationis (vel subdelegationis ab Ordinario).

III. Quod si forte ex oblivione et inadvertantia ultra tempus supra praefinitum, hisce facultatibus Ordinarium, vel ejus delegatum, uti contingat, absolutiones, dispensationes, concessionem omnes exinde impertitae uti ratae atque validae habeantur. Insuper datis ob Ordinario precibus pro renovatione seu prorogatione earumdem facultatum, ipsae in suo robore perseverare censeantur, usque dum responsum S.C. ad eundem Ordinarium pervenerit.

Datum Romae, ex Aedibus Sacrae Congregationis de Propaganda Fide, die 1 mensis ianuarii anno D. 1941.

P. S.

APPENDIX III.

The following is a list of the affairs for which the Vicar General requires a special mandate, according to the Code of Canon Law, and to be applied to the Vicar Delegate accordingly:

a) Regarding Clerics:

- 1). Canon 113 - to incardinate or excardinate clerics;
- 2). Canon 152 - to grant ecclesiastical offices;
- 3). Canon 357, p.1 - to convoke and preside at a synod,
(cfr. also, Can. 704, p. 2);
- 4). Canon 455 - to select and institute pastors or quasi-pastors, to constitute parochial or quasi-parochial vicars, to confirm election to or accept presentation to a vacant parish or quasi-parish, if someone has the right of patronage, election, or presentation recognized by the Church unless the see in the last mentioned case is impeded according to Can. 429, p.1, in which case he can do all these things without a special mandate because he must assume the whole rule of the territory;
- 5). Canon 477 - to remove parochial or quasi-parochial vicars according to Canon 472 - 476.

b) Regarding associations of the faithful:

Canon 686, p.4. - to erect associations or give consent
for their erection or aggregation.

c) Regarding the Sacraments:

1).Canon 893, p.1 - to reserve sins;

2).Canon 958, p.1, n.2 - to grant dimissorial letters;

3).Canon 1104 -to permit marriages of conscience;

d) Regarding sacred places:

1).Canon 1155,p.1 - to consecrate altars and Churches,
even if he is a titular Bishop.

2).Canon 1162,p.1 - to grant the necessary consent for
building a church;

e) Regarding divine worship:

1).Canon 1283,p.2 - to declare relics of the saints or
the Beatified to be authentic;

2).Canon 1285,p.1 - to give judgment about the authenticity
of sacred relics whose documents have perished;

3).Canon 1303,p.3 - to define the moderate sum that may be
demanded of priests celebrating Mass in a
poor Church.

f) Regarding benefices:

1).Canon 1414,p.3 - to canonically erect benefices;

2).Canon 1423, 1 - to unite ecclesiastical benefices;

3).Canon 1432,p.2 - to confer ecclesiastical benefices;

4).Canon 1466,p.2 - to concede canonical institution to one
legitimately presented and found suitable.

5) Canon 1487, p.1 - to give consent to the permutation of ecclesiastical benefices.

g) Regarding Canonization and Beatification:

Canon 2002 - to do anything as Ordinary in cases of Canonization and Beatification.

h) Regarding crimes and penalties:

1). Canon 2220, p.2 - to inflict ecclesiastical penalties;

2). Canon 2276, p.3 - to remit a penalty inflicted by himself as judge;

3). Canon 2314, p.2 - to absolve from excommunication reserved "speciali modo" to the Holy See on account of apostasy, heresy, or schism, if the delictum was in any way brought to the external forum.

APPENDIX IV.

The following is the instruction of the Sacred Congregation of Propaganda containing the more common and more forceful ("communiores potioresque") canonical causes for matrimonial dispensations: (Cfr. S. Cong. de Propaganda Fide, May 9th, 1877 - Collectanea n - 1482)

Cum dispensatio sit iuris communis relaxatio cum causae cognitione, ab eo facta qui habet potestatem, exploratum omnibus est dispensationes ab impedimentis matrimonialibus non esse indulgendas, nisi legitima et gravis causa interveniat. Quin imo facile quisque intelligit, tanto graviorem causam requiri, quanto gravius est impedimentum, quod nuptiis celebrandis opponitur. Verum haud raro ad S. Sedem perveniunt supplices literae pro impetranda aliqua huiusmodi dispensatione, quae nulla canonica ratione fulciuntur. Accidit etiam quandoque, ut in huiusmodi supplicationibus ea omittantur quae necessario exprimi debent, ne dispensatio nullitatis vitio laboret. Ideirco opportunum visum est in praesenti instructione paucis perstringere praecipuas illas causas, quae ad matrimoniales dispensationes obtinendas iuxta canonicas sanctiones, et prudens ecclesiasticae provisionis arbitrium, pro sufficientibus haberi consueverant; deinde ea indicare, quae in ipsa dispensatione petenda exprimere oportet.

Atque ut a causis dispensationum exordium ducatur, operae pretium erit imprimis animadvertere, unam aliquando

causam seorsim acceptam insufficientem esse, sed alteri adiunctam sufficientem existimari; nam quae non prosunt singula, multa iuvent, (arg. l. 5. C. de probat) Huiusmodi autem causae sunt quae sequuntur:

1^o Angustia loci sive absoluta sive relativa (ratione tantum oratrici), cum scilicet in loco originis, vel etiam domicilii, cognatio foeminae ita sit propagata, ut alium paris conditionis, cui nubat, invenire nequeat, nisi consanguineum vel affinem, patriam vero deserere sit ei durum.

2^o Aetas foeminae superadulta, si scilicet 24um aetatis annum iam egressa hacenus virum paris conditionis, cui nubere possit, non invenit. Haec vero causa haud suffragatur viduae, quae ad alias nuptias convolare cupiat.

3^o Deficientia aut incompetencia dotis, si nempe foemina non habeat actu tantam dotem, ut extraneo aequalis conditionis, qui neque consanguineus neque affinis sit, nubere possit in proprio loco, in quo commoratur. Quae causa magis urget, si mulier penitus indotata existat, et consanguineus vel affinis eam in uxorem ducere, aut etiam convenienter ex integro dotare paratus sit.

4^o Lites super successione bonorum iam exortae, vel earundem grave aut imminens periculum. Si mulier gravem litem super successione bonorum magni momenti sustineat, neque adest alius, qui litem huiusmodi in se suscipiat, propriisque expensis prosequatur, praeter illum qui ipsam in uxorem ducere cupit, dispensatio concedi solet; interest enim Reipublicae, ut lites

extinguantur. Huic proxime accedit alia causa, scilicet dos litibus involuta, cum nimirum mulier alio est destituta viro, cuius ope bona sua recuperare vult. Verum huiusmodi causa non nisi pro remotioribus gradibus sufficit.

5^o Paupertas viduae, quae numerosa prole sit onerata, et vir eam alere polliceatur. Sed quandoque remedio dispensationis succurritur viduae ea tantum de causa, quod iunior sit, atque in periculo incontinentiae versetur.

6^o Bonum pacis, quo nomine veniunt nedum foedera inter regna, et Principes, sed etiam extinctio gravium inimicitiarum, rixarum, et odiorum civilium. Haec causa adducitur vel ad extinguendas graves inimicitias, quae inter contractuum consanguineos vel affines ortae sint, quaeque matrimonii celebratione omnino componerentur; vel quando inter contractuum consanguineos et affines inimicitiae graves viguerint, et, licet pax inter ipsos inita iam sit, celebratio tamen matrimonii ad ipsius pacis firmationem maxime conducere.

7^o Nimia, suspecta, periculosa familiaritas, nec non cohabitatio sub eodem tecto, quae facile impediri non possit.

8^o Copula cum consanguineo vel affine vel alia persona impedimento laborante praehabita, et praegnantia, ideoque legitimatio prolis, ut nempe consulatur bono prolis ipsius, et honori mulieris, quae secus innupta maneret. Haec profecto una est ex urgentioribus causis, ob quam etiam plebeis dari solet dispensatio, dummodo copula contracta non fuerint sub spe facilioris dispensationis: quae circumstantia in supplicatione foret exprimenda.

9^o Infamia mulieris, ex suspitione orta, quod ille suo consanguineo aut affini nimis familiaris, cognita sit ab eodem, licet suspicio sit falsa, cum nempe nisi matrimonium contrahatur, mulier graviter diffamata, vel innupta, remaneret, vel disparis conditionis viro nubere deberet, aut gravia damna orientur.

10^o Revalidatio matrimonii, quod bona fide et publice, servata Tridentini forma, contractum ets: quia eius dissolutio vix fieri potest sine publico scandalo, et gravi damno, praesertim foeminae (c. 7 de consanguin). At si mala fide sponsi nuptias inierunt, gratiam dispensationis minime merentur, sic dispomente Conc. Trid.

11^o Periculum matrimonii mixti, vel coram acatholico ministro celebrandi. Quando periculum adest, quod volentes matrimonium in aliquo etiam ex maioribus gradibus contrahere, ex denegatione dispensationis ad ministrum acatholicum accedant pro nuptiis celebrandis, sprete Ecclesiae auctoritate, iusta inveniter dispensandi cause, quia adest non modo gravissimum fidelium scandalum, sed etiam timor perversionis, et defectionis a fide taliter agentium, et matrimonii impedimenta contemnentium, maxime in regionibus ubi haereses impune grassantur. Id docuit haec S. Congregatio in instructione die 17 Apr. 1820 ad Archiepiscopum Quebecensem data. Pariter cum Vicarius Apostolicus Bosniae postulasset, utrum dispensationem elargiti posset iis Catholicis, qui nullum aliud praetexunt motivum, quam vesanum amorem, et simul providetur, dispensat-

ione denegata, eos coram iudice infideli coniugium fore inituros, S. Congregatio S. Officii in fer. IV, 14 Aug. 1822 decrevit: (respondendum oratori, quod in exposito casu utatur facultatibus sibi in form. II commissis, prout in Domino expedire iudicaverit.) Tantundem dicendum de periculo, quod pars catholica cum acatholico Matrimonium celebrare audeat.

12^o Periculum incestuosi concubinatus. Ex superius memorata instructione ann. 1822 elucet, dispensationis remedium, ne quis in concubinato insordescat cum publico scandalo, atque evidenti aeternae salutis discrimine, adhibendum esse.

13^o Periculum matrimonii civilis. Ex dictis consequitur, probabile periculum quod illi, qui dispensationem petunt, ea non obtenta, matrimonium dumtaxat civile, ut aiunt, celebraturi sint, esse legitimam dispensandi causam.

14^o Remotio gravium scandalorum.

15^o Cessatio publici concubinatus.

16^o Excellentia meritorum, cum aliquis aut contra fidei catholicae hostes dimicatione, aut liberalitate erga Ecclesiam, aut doctrina, virtute, aliove modo de Religione sit optime meritus.

Haec sunt communiores, potioresque causae, quae ad matrimoniales dispensationes impetrandas adduci solent; de quibus copiose agunt theologi, ac sacrorum canonum interpretes.

Sed iam se convertit Instructio ad ea, quae praeter causas in literis supplicibus pro dispensatione obtinenda, de iure vel consuetudine, aut stylo Curiae exprimenda sunt, ita ut si etiam ignoranter taceatur veritas aut narretur falsitas,

dispensatio nulla efficiatur. Haec autem sunt:

1^o Nomen et cognomen oratorum utrumque distincte, ac nitide ac sine ulla literarum abbreviatione scribendum.

2^o Dioecesis originis vel actualis domicilii. Quando oratores habent domicilium extra dioecesim originis, possunt, si velint, petere ut dispensatio mittatur ad Ordinarium dioecesis, in qua nunc habitant.

3^o Species etiam infima impedimenti, an sit consanguinitas, vel affinitas, orta ex copula licite vel illicita; publica honestas originem ducens ex sponsalibus, vel matrimonio rato; in impedimento criminis, utrum provenerit ex coniugicidio cum promissione matrimonii, aut ex coniugicidio cum adulterio, vel ex solo adulterio cum promissione matrimonii: in cognatione spirituali, utrum sit inter levantem et levantum, vel inter levantem et levati parentem.

4^o Gradus consanguinitatis, vel affinitatis, aut honestatis ex matrimonio rato, et an sit simplex, vel mixtus, non tantum remotior, sed etiam propinquior, uti et linea, an sit recta aut transversa; item an oratores sint coninoti ex duplici vinculo consanguinitatis, tam ex parte patris, quam ex parte matris.

5^o Numerus impedimentorum e. gr. si adsit duplex aut multiplex consanguinitas vel affinitas, vel si praeter cognationem adsit etiam affinitas, aut aliud quodcumque impedimentum sive dirimens sive impediens.....

6^o Variarum circumstantiarum, scilicet an matrimonium sit contrahendum, vel contractum; si iam contractum, aperiri debet, an bona fide, saltem ex parte unius, vel cum scientia impedimenti; idem an praemissis denuntiationibus, et iuxta formam Tridentini; vel an spe facilius dispensationem obtinendi; demum an sit consummatum, et, si sit consummatum, an mala fide, saltem unius partis, seu cum scientia impedimenti.

7^o Copula incestuosa habita inter sponsores ante dispensationis executionem, sive ante, sive post eius impetrationem, sive intentione facilius dispensationem obtinendi, sive etiam seclusa tali intentione, et sive copula publice nota sit, sive etiam occulta. Si haec reticeantur, subreptitias esse et nullibi ac nullo modo valere dispensationes super quibuscumque gradibus prohibitis consanguinitatis, affinitatis, cognationis spiritualis, et legalis, nec non et publicae honestatis declaravit S. Congregatio S. Officii fer. IV, 1 Augusti 1866. In petenda vero digradus lineae collateralis, si impedimentum nectum ex matrimonio consummato cum defuncto coniuge oratoris vel oratricis, sed etiam ex copula antematrimoniali seu fornicaria cum eodem defuncto ante initum cum ipso matrimonium patrata oriatur, necesse non est, ut mentio fiat huiusmodi illicitae coeulae, quemadmodum patet ex responso S. Poenitentiarum diei 20 Martii 1842, probante s. m. Greg. XVI ad Episcopum Namurcensem, quod generale esse, idem Tribunal literis diei 10 Decembris 1874 edixit.

Haec praee oculis habere debent non modo qui ad S. Sedem pro obtinenda aliqua matrimoniali dispensatione recurrunt,

sed etiam qui ex pontificia delegatione dispensare per se ipsi valent, ut facultatibus, quibus pollent, rite, ut par est, utantur.

Datum ex Aedibus S. C. de Prop. Fide, die 9
Maii 1877.

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List of Abbreviations

AAS - Acta Apostolicae Sedis.

ASS - Acta Sanctae Sedis.

bk. - book (liber- lib.)

Can. - Canon (with it p- paragraph,n- number).

ch. = chapter (caput- cap.)

Collect.,or Collect. S.C. de P.F.,- Collectanea Sacrae Congregationis
de Propaganda Fide.

Dec. - Decretum.

Fontes - Codicis Juris Canonici Fontes.

l.c. - locus citatus,same place in same author to whom reference was
last made.

Letter of Propaganda,The,- The Letter of the Sacred Congregation of
Propaganda,of Dec. 8th.,1919 constituting Vicars Delegate.

Mansi - Sacrorum Conciliorum Nova et Amplissima Collectio,by
Joannes Mansi.

n. - number.

o.c. - opus citatum,same work by the same author to which reference
was last made.

p. - page.

S.C., or Sac. Cong. - Sacred Congregation (Sacra Congregatio).

Sylloge - Sylloge,Urbaniana,1, Praecipuorum Documentorum Recentio-
rum Summorum Pontificum et S. Congregationis de Propaganda
Fide.

tit. - title (titulum).

tom. - tome (tomus).