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THE JURISDICTIONAL POWER OF A CONFESSOR ON A SEA VOYAGE

PARS DISSERTATIONIS AD LAUREAM
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PREFACE

«For just as the first help for those who cross the sea is to be safeguarded in a whole ship», writes St. Thomas, « while the second help, when the ship is wrecked is to cling to a plank, so too the first help in this life's ocean is that man safeguard his integrity, while the second help is, if he lose his integrity through sin, that he regain it by penance » A

Extending the metaphor used by St. Thomas, we may be permitted to add that since all men in their voyage through life's ocean are continually exposed to storm and shipwreck, it is very much in harmony with the merciful designs of Divine Prowidence that the second plank of man's salvation, — the sacrament of penance, — should be ever at hand and wi thin arm's reach, even when man is in those material circumstances of place from which St. Thomas drew and so fittingly applied his metaphor.

The title of this dissertation is « *The jurisdictional power of a confessor on a sea voyage* ». We have chosen this subject for a variety of reasons. Firstly, because to our knowledge no dissertation has yet been published on this aspect of penitential jurisdiction. Secondly, because the subject presents a number of questions, which with the increase of travel facilities within recent years, have become topics* of practical importance and of more general interest.

We have divided this dessertation into two parts. In the first part we propose to examine the evolution and historical development of penitential jursidiction on sea voyages down to the promulgation of the Code of Canon Law, while in the second part we propose to exa-

1 Cfr. Thomas. St., *Summa Theologica,* pars tertia, questio LXXXIV,, articulus VI, in corpore. The English version given above is taken from the *Summa Theologica* as translated by Fathers of the English Dominican Province : 22 volumes, London, 1911-1917.

mine the current legislation on a confessor's jurisdictional powers on a sea voyage.

In our examination of current legislation we will be concerned for the most part with canon 883 of the Code of Canon Law which deals « *ex professo* » with penitential jurisdiction on sea voyages. But our examination will not be restricted to that canon, for reference must be made to those other sources from which a priest may receive jurisdiction for the hearing of confessions on sea voyages. And since it is our purpose to examine all the jurisdictional powers of a confessor on a sea voyage, it will be necessary for us in the final chapter of this work to state and make relevant commentary upon those various other powers which a priest receives when he is vested with jurisdiction for the administration of the sacrament of penance.

It only reamains to place on record my debt of gratitude to the Dean and Professors of the Faculty of Canon Law in te « *Angelicum* » Institute, Rome. A special word of thanks is due to Fr. Mark Said, O. P., under whose kindly guidance and wise direction the present, work was written.... «Retribuere, Domine, omnibus nobis bona facientibus .... vitam aeternam ».

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OUTLINE OF HISTORICAL SECTION OF DISSERTATION

Preliminary Question

A) Ecclesiastical Jurisdiction.
B) **Ecclesiastical Jurisdiction at sea in general.**

Chapter I. — Penitential Jurisdiction on Sea Voyages in the period prior to 1869.

Article I. The period prior to the Council of Trent.
Article II. The period betwen the Council of Trent and 1869.

Chapter II. — The Period between 1869 and the Promulgation of the Code of Canon Law.

a) **The decree of 1869.**
b) **The decree of 1900.**
c) The decree of 1905.
d) **The decree of 1906.**

Conclusion of historical section.

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OUTLINE OF SECOND PART OF DISSERTATION

JURISDICTION FOR THE HEARING OF CONFESSIONS ON SEA VOYAGES

Chapter I.

THE DELEGATION OF JURISDICTION FOR CONFESSIONS ON SEA VOYAGES

Since in the majority of cases the jurisdiction used to absolve penitents on a sea voyage will be delegated jurisdiction, we will examine in the present chapter the question of the *delegation* of jurisdiction for confessions on sea voyages. We say "the majority of cases" for it must be borne in mind that those who possess ordinary jurisdiction in the internal forum may absolve their subjects wherever they may be[1]. Hence in accordance with the terms of canon 873 of the Code of Canon Law the following persons have no need of *delegated* jurisdiction to hear the confessions of their *subjects* while on a sea voyage: 1) local Ordinaries; 2) parish priests and those who have the status equivalent to parish priests; 3) canons penitentiary; 4) exempt religious superiors, according to the norms of the Constitutions. Cardinals, as is stated in the same canon, enjoy ordinary jurisdiction for the hearing of the confessions of all the faithful throughout the entire world.

Apart from the persons just mentioned, all other priests need delegated jurisdiction to administer the sacrament of penance on a sea voyage. Canon 883 treats of the question of the delegation of jurisdiction for the hearing of confessions on sea voyages. The first paragraph of this canon reads as follows:

> «All priests who are on a sea voyage, provided they have duly obtained the faculty of hearing confessions from their own ordinary or from the ordinary of the port where they embark or from the ordinary of any intervening port at which they stop in the course of their voyage, can, throughout the entire voyage, hear aboard ship the confessions of all the faithful who are mak-

1 Can. 881, § 2.

ing the voyage with them, even though the ship should, in the course of the voyage, pass through or even stop awhile at various places subject to the jurisdiction of several Ordinaries » [1].

Article I.

The nature of the jurisdiction of canon 883

Although the words *ipso jure delegatur* are not found in canon 883, it is clear from a reading of it that there is question of jurisdiction delegated by law. To prove this assertion we appeal to canon 874, § 1, where it is stated that delegated jurisdiction to hear confessions is conferred by the Ordinary of that place where the confession is heard. But since a priest, as we shall see, who has been approved by at least one of three Ordinaries mentioned in canon 883 may, when the voyage has begun, hear confessions both in territorial waters of *any* diocese through which the ship passes in the course of its journey and in *any* port of call without having to approach the local Ordinaries of these places, it follows that the jurisdiction to do so must be delegated by law.

The jurisdiction of canon 883 *and diocesan jurisdiction.*

That the jurisdiction of canon 883 is delegated by law is certain and admitted by almost all authors[2].

But it is not stated in canon 883 whether the jurisdiction conferred for sea voyages is an extension of diocesan jurisdiction already

1 Unless otherwise stated, we have taken the English translation of the canons of the Code from the work of Abbo, J.-Hannan, J. *The Sacred Canons,* St. Louis, 1952. The English translation of the replies of the Code Commission are taken from the work of Bouscaren T. (S. J.), *The Canon Law Digest,* Milwaukee, 1934-1954.

1 Cfr. Blat A. (O. P.), *Commentarium textus Codicis Juris Canonici,* (Romae, 1921-1927, editio prima), Vol. III, p. 236 ; Wernz, F. Vidal, P. (S. J.), *Jus canonicum ad Codicis normam exactum,* Romae, 1923-1927), Tom. IV, vol. I, p. 165 ; Berutti, C. (O. P.), *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1934) 62; Cappello, F., *De poenitentia,* p. 268, n. 300.

Ubach J. (S. J.), is the only author we have found to say explicitly that the jurisdiction of canon 883 is not conferred ' a jure *. See his work entitled *Theologia Moralis,* Buenos Aires, 1935, vol. II, p. 261 «(sacerdos navigans) absolvit... jurisdic-

possessed by a voyaging priest, or whether it is completely distinct from, though for its acquisition dependent on, the possession of diocesan jurisdiction.

We are of the opinion that the jurisdiction conferred by canon 883 is not a mere extension of diocesan jurisdiction, but that the possession of diocesan jurisdiction is a *condition* for the obtaining of the jurisdiction delegated by the Supreme Legislator in canon 883. And in support of our opinion we appeal to the use of the particle *dummodo* in the first paragraph; for the particle *dummodo* invariably denotes the presence of a condition [2] Furthermore, in the decree of 1869 on the subject of penitential jurisdiction, on sea voyages the Holy See would seem to have merely extended the diocesan jurisdiction of the port from which the ship set out, for, according to that decree, a voyaging confessor on reaching a port of another diocese had to obtain the faculties of that diocese if he wished to continue to hear confessions while on the voyage [3]. But according to the decree of 1900 the voyaging confessor was no longer obliged to obtain the jurisdiction of each diocese at which the ship called in the course of its voyage [4]. No longer was there question of *extending* diocesan jurisdiction, but of *conferring* jurisdiction for the entire voyage, provided that the voyaging priest had been approved by certain designated Ordinaries. And it is noteworthy that particle ' *dummodo* ' is found in the decrees of 1900 and 1905 but not in that of 1869. Hence since canon 883, § 1, reproduces with some slight but clear changes the decree of 1905, we hold that the jurisdiction of canon 883 is not an extension of diocesan jurisdiction [5]. *The jurisdiction confer-*

tione delegata ab Ordinario non a jure: jus nihil aliud facit nisi ipsam Ordinnrii jurisdictionem extendere, eadcm illi servata natura ». But we think that this statement is inexact, for ' *dato non concesso* ' that canon 883 merely extends diocesan jurisdiction, — that extension of diocesan jurisdiction is ' a jure *, and therefore the jurisdiction should no longer be spoken of as being delegated by an Ordinary, but rather by law.

1 Jorio, T. (S. J.), in his *Theologia Moralis,* (Neapoli, 1054), vol. III, p. 260, n. 430 while admitting that the delegation of jurisdiction in canon 883 is ' a jure *, contends that it is an extension of diocesan jurisdiction. The same opinion is also held by Rcgatillo E. (S. J.), in his *Jus Sacramentarium* (Santander, 1040, editio secunda), p. 364, n. 455.

2 Cfr. can. 30.

9 Cfr. *Codicis Juris Canonici Fontes,* (cura P. Card. Gasparri et J. Card. Scrcdi editi, - Romae, 1023-1030), Vol. IV, p. 314, n. 1000.

4 Cfr. *Fontes,* Vol. IV, p. 524, n. 1238.

* Cfr. can. 6, n. 8.

red by this canon is distinct from, though for its acquisition is dependent on, the possession of diocesan jurisdiction.

The cessation of diocesan faculties during the voyage.

Since in order to enjoy the jurisdiction conferred by canon 883 a voyaging priest must have received the jurisdiction of one of the local Ordinaries mentioned in the canon, the question arises whether the possession of diocesan faculties is required during the entire voyage. And in proposing a solution to this question it is necessary to distin-. guish the various hypotheses.

Should there be question of the lapse of diocesan faculties in the course of the actual voyage, we think that the voyaging priest will continue to enjoy the delegated jurisdiction of canon 883, — the reason being that the condition of possessing diocesan faculties was verified at the commencement of the voyage1.

Carrol maintains the view that the possession of diocesan .faculties throughout the entire voyage is necessary2. He argues from the fact that the possession of faculties granted by one of the Ordinaries mentioned in canon 883 is evidently meant to be a test of fitness- of a priest to receive the faculties of the canon. The logical assumption, according to Carrol, is that this test of fitness should persist during the entire voyage, for otherwise the anomaly could obtain that a proper Ordinary might withdraw a priest's faculties while the voyage was in progress on account of some unworthiness, and the priest in question could continue to retain the faculties of canon 883.

While agreeing with Carroll on the question of the purpose of the requirement that a priest be possessed of diocesan faculties, we think that significance should be attached to a small change in the wording of canon 883 from the wording of the decrees of 1900 and 1905. In the decree of 1900 the legislator used the phrase *dummodo... confession*

1 **Cfr. Cappello F., *De Poenitentia,* p. 268, n. 300 ; De Clerq, C., *Des sacraments^* p. *155,* note *5.***

3 **Cfr. Carrol J., *Faculties to hear confessions at sea,* art. in *The Australian Catholic Record,* vol. XXV (1948) 226. The same view is also held by Kinane, J. Cfr. *Queries concerning canon* 883 art. in *The Irish Ecclesiastical Record,* vol. XLI (1033) 419-320.**

nes excipiendi facultatem habeant[1]; and in the decree of 1905 the phrase *dummodo... sacramentales confessiones excipiendi facultatem habeant vel obtineant* [2]. In the Code, however, the tense of the verb is changed from the present (used in the decrees of 1900 and 1905) to the perfect subjunctive, so that we read *dummodo facultatem rite acceperint confessiones audiendi.* It is true, as Conway observes, that it is unlikely that the legislator intends to give faculties on board ship to any priest who, at some time or other, has had faculties from his local Ordinary, even though that may have been many years ago, and even though the faculties may have been punitively withdrawn in the meantime[3]. But the slight change in the tense of the verb sustains, we think, the more common opinion, that the faculties of canon 883 are available for the priest whose diocesan faculties lapse in the course of the voyage [4].

The cessation of diocesan faculties at the commencement of the voyage.

But what of the case in which diocesan faculties lapse at the *commencement* of the voyage ? For frequently it happens that diocesan faculties are granted *usque ad discessum a dioecesi*[5]. Again it is necessary to distinguish the various hypotheses.

Should there be question of the departure of a priest from a port in the diocese where he has enjoyed jurisdiction, no difficulty exists. For when such a priest begins his voyage, he will be, for some time at least, within the territorial waters of the diocese, and therefore still enjoying diocesan faculties. But when the ship eventually leaves territorial waters and the diocesan faculties lapse, the voyaging priest, since the voyage has already begun, will be in possession of the faculties of canon 883.

1 Cfr., *Fontes,* vol. IV, p. 524, n. 1238.

2 Cfr., *Fontes,* vol. IV, p. 544, n. 1275.

3 Cfr. Conway W., *Confessions on board ship,* art. in *The Irish Ecclesiastical Record,* vol. LXXXIII (1955) 453.

4 Some authors use phrases from which it is a little difficult to determine whether they hold that the possession of diocesan faculties is necessary for the entire voyage or merely at its commencement. Thus, Chretien in his work, *De Poenitentia,* p. 35 writes ; « ... sacerdos debet esse jam facultate donatus et nunc gaudens ». And Berutti in the article entitled *De jurisdictione quae ipso jure delegatur ad audiendas confessiones,* in *Jus Pontificium,* vol. XIV (1934) 05 writes «... dummodo utique (sacerdotes) aliqua jurisdictione audiendarum confessionum, actu potiantur».

5 It is clear that by departure a definitive departure is intended and not a temporary one.

It is not quite so easy to determine whether a priest, commencing his journey from an inland diocese where he enjoys jurisdiction from his proper Ordinary until his departure, qualifies for the faculties of canon 883, — 'without having to make recourse to the Ordinary of the port of embarkation or the Ordinary of a port of call. A number of authors incline to the view that such a priest should be considered as being still in possession of diocesan faculties and therefore qualified to receive the jurisdiction of canon 883[1]. Cappello asserts that the opinion is uncertain, but concedes probability to it on the ground that there is question of a simple condition which has already been verified[2]. To our mind, however, the reason advanced by Cappello would seem to be a ' *petitio principii* ', for the whole question is precisely concerned with the verification or not of the condition required by canon 883. Consequently we hold the view that a priest resident in an inland diocese who has received jurisdiction in that diocese until his departure from it, should be considered as no longer possessing diocesan faculties when he reaches the port of embarkation, and therefore would be obliged to obtain jurisdiction from the Ordinary of the port of embarkation or from the Ordinary of the port of call, if he wishes to hear confessions during the voyage.

Nor do we think that the argument drawn from the tense of the verb ' *acceperint* ' and adduced in support of the view that should a priest's faculties lapse *in the course* of the voyage, he could still continue to enjoy the faculties of canon 883, be valid in the present case. For in the former hypothesis the voyage has already begun when the diocesan faculties lapse, but in the present hypothesis the faculties have already lapsed before the voyage has begun.

The nature of the jurisdiction conferred by the Ordinaries of canon 883.

Although the jurisdiction by which a priest absolves penitents in the course of a sea voyage is not an extension of diocesan jurisdiction,

1 Cfr. Noldin H.-Schmitt A., *De sacramentis* (Barcelona, 1945, editio vigesima), p. 350, n. 344; Sirna J., *De confessione in itinere aereo,* art. in *Revista Espanola de Derecho canonico,* vol. III (1948) 645; Jone H., *Commentarium,* vol. II, p. 123 ; Jorio T., *Theologia Moralis,* vol. III, p. 270; Conway W., *art. cit.,* pp. 452-454.

2 Cappello, F., *De poenitentia,* p. 268, n. 300 where «... cum agatur de simplici conditione, caque prius jam verificata ».

the *facultas conjessiones audiendi* mentioned in the canon and conferred by one of the Ordinaries designated in the canon, should be considered as true diocesan jurisdiction, and therefore can be exercised in the diocese of the Ordinary who granted it, unless otherwise expressly stated. Hence an Ordinary of a port cannot be said to give jurisdiction to a priest for the voyage and at the same time withold diocesan jurisdiction. The jurisdiction which any of the Ordinaries mentioned in canon 883 confers is diocesan jurisdiction, valid for the territory of a particular diocese. The jurisdiction for the hearing of confessions on a voyage is derived not from any particular local Ordinary, but from the law, which requires as a condition for its concession that jurisdiction should have been received from at least one of the Ordinaries designated in canon 883 1.

Article II.

The term « iter maritimum »

In examining the question of the jurisdiction conferred by law •on voyaging priests, obviously one of the cardinal points of the investigation must be the determination of what properly constitutes a sea voyage. Nor is this the least important point requiring determination, for on it may depend the possession or not of the faculties conferred by the canon. But, of course, it should also be remembered that in the face of positive and probable doubt on the point, jurisdiction will be supplied by the Church2. Of modern authors who comment on the term ' *iter maritimum* ' few offer any *positive* criterion for its determination in practice.

The term ' *iter maritimum* ' would seem to indicate a journey by sea from one precise point to another precise and predetermined point, and thus being distinct from what many authors describe as a ' *deambulatio maritima'* and which may perhaps be best translated by the word cruise 3. Not all cruises, however, should be excluded from coming

1 Cfr. Bosquet, F.-Bayon G., *Thesaurus confessarii seu brevis et accurata summula totius doctrinae* (Madrid, 1034, editio nona, secunda post Codicem), p. 5G0 ; Jorio, T., o. c., p. 270.

2 Can. 209.

3 Cance A., *Le Code de Droit Canonique,* (Paris, 1028), vol. II, p. 326 «... Ils agit d* un vrai voyage... et non d'une promenade, d* une partie de plaisir etc. » ;

within the scope of canon 883 ; those only which are made without *any* definite destination in view should be excluded. As Berutti observes, an ' *iter maritimum,* can be said to be a journey between point A and. point B with a halt at the latter point[1]. Thus, according to Berutti, the fact that a ship spent several days at sea might not necessarily mean that there was question of an ' *iter maritimum* '. Clearly, however, the fact that the destination of the voyage was changed either from necessity or choice in the course of the voyage would not prevent the voyage from being described as a true ' *iter maritimum* '[2].

Various criteria.

The question then may be asked : should any and every sea voyage be considered as coming within the scope of canon 883 ?

It might be argued that since the legislator does not qualify in any way the term ' *iter maritimum* ', then any voyage, no matter how short in distance or brief in duration, is comprehended by the canon» This view, however, has found no supporters, — chiefly for the reason, we think, that the faculties of canon 883 must be regarded as being granted for special circumstances in which the ordinary laws governing the concession of sacramental jurisdiction cannot, — or only with great difficulty, — be applied. To determine when these special circumstances are verified and consequently when the faculties of canon 883 are available for voyaging confessors, various criteria have been put forward by commentators.

Regatillo, E., *Jus sacramentarium,* p. 264, n. 455, «Iter maritimum... plus dicit quam meram deambulationem maritimam per aliquot horas sola recreationis aut piscationis causa»; Jombart E. (S. J.), *Manuel de Droit Canon* (Paris, 1940), p. 520, « Une simple promenade en mer n'est pas un voyage » ; Vermeersch-Creusen, *Epitome,* vol. II (editio septima, 1054), p. 104, n. 153, «Maritimum iter dicit plus quam maritimam quandam ambulationem qua recreationis vel piscationis causa quispiam per aliquot horas a portu solvit».

1 Cfr. Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1034) 05.

3 *Ibid., p.* 05. It should be observed that a voyage by submarine would also come within the scope of canon 883. Cfr. Cappello F., *De poenitentiae,* p. 208,. n. 300.

Motive.

Many authors exclude from the scope of canon 883 sea voyages undertaken for motives of pleasure[1]. Admittedly by voyages undertaken for motives of pleasure these authors seemingly intend to designate short sea voyages. But since long sea voyages can equally be undertaken for motives of pleasure, we think that the criterion of motive should not be invoked at all in the interpretation of the present canon.

A priest voyaging across the entire ocean would not be excluded from enjoying the faculties of canon 883 simply because he had undertaken the voyage for a motive of pleasure. Hence we think that no reference to the motive for which a voyage is undertaken should be made in the interpretation of this canon.

Time and distance.

The most commonly accepted opinion among authors is that the faculties of canon 883 are only available for priests undertaking voyages of at least one day's duration[2]. While recognising the authority of the authors who advance this criterion, we think that a more accurate

1 **Chretien, P., *De Poenitentia,* p. 35, «... sane non sufficit ambulatio in lintre facta recreationis vel piscationis causa »; Busquet-Bayon, *o. c.,* p. 560, « Iter maritimum non est navigatio qua recreationis causa, solvit quis a portu post aliquas horas reversurus ». Cfr. also Cance, A., *o. c.,* p. 326; Rcgatillo E., *o.* c., p. 204, n. 455 ; Vermecrsch-Creuscn, *o.* c., p. 104, n. 153.**

* **Gury J.-Ferreres, J. (S. J.), *Casus conscientiae* (Barcelona, 1021, editio quarta), pp. 375-370, «Facultates valent pro quocumque itinere maritimo, etiamsi unius dici sit»; Kelly J., *The jurisdiction of the confessor according to the Code of Canon Law* (New York, 1020), p. 182 «It is our opinion. i. that whenever several days, or one full day, or even several hours are spent in travelling on the water, e. g. over night or when it is necessary to take one's meals aboard the boat... a true * iter maritimum ' in the wide sense is present and a priest may avail himself of the faculty granted by the canon »; De Varccno G.-Loiano S. (O. M. Cap.), *Institutiones Theologiae Moralis* (Taurini, 1040), vol. IV, p. 303, «... requiri videtur ut saltem per unum diem navigare debeat sacerdos, licet forsan ex aliquo accidente iter sit interruptum : unde excludi videtur qui consulto per duas vel tres horas iter aggreditur n; Cappello F., *o. c., p.* 208, n. 300, «Ncccsse est ut sacerdotes iter maritimum revera arripiant, etiam per paucos dies, imo per unum vel alterum dumtaxat» ; Jone H., *Commentarium,* vol. II, p. 122, « Non requiritur ut iter maritimum per longum temporis spatium protrahatur, sufficit ut protrahatur per unum vel alterum dumtaxat diem ».**

criterion can be arrived at by distinguishing between voyages which are made, on the *high seas* and those which are made *entirely within territorial waters.* Hence we propose the following two-fold criterion:

(A) *Voyages on the high seas*

Since no local Ordinary is empowered to confer delegated jurisdiction for the hearing of confessions on the high seas, it is reasonable to suppose that it was the legislator's intention to provide by canon 883 the requisite faculties for the hearing of confessions on the high seas. Therefore, we hold that whenever there is question of any voyage in the course of which the ship must leave territorial waters and pass on to the high seas, then the faculties of canon 883 are available for all properly approved priests during the entire voyage.

(B) *Voyages within territorial waters*

That the faculties of canon 883 are available for priests making voyages entirely within territorial waters is certain. It is to be noted that the word '*transmarinum*' used in the decrees of 1869 and 1900 was replaced by the word '*maritimwru*' in the decree of 1905, and Vermeersch, who commented on the 1905 decree after its publication observed that the change in the wording indicated that a less protracted voyage and one not necessarily on the high seas was now intended[1]. As regards, therefore, voyages made entirely within territorial waters — we accept, — since we have no cogent reason for departing from, — the common opinion requiring that there be question of a voyage of one day's duration before the faculties of canon 883 are available for such voyaging priests.

Voyages on rivers and canals.

Having put forward what we consider to be the true meaning of the term '*iter maritimum*' in the text and context of canon 883, the question arises whether the faculties of this canon are available also for voyages on rivers and canals. In proposing a solution to this question the various hypotheses should be clearly distinguished.

Firstly, whenever the navigation of a river or canal has preceeded

1 Cfr. Vermeersch A., *Commentarium,* art. in *Periodica de re canonica et nio-rali,* vol. III (1907) 43.

or followed a true ' *iter maritimum* ' then there can be little doubt that the faculties of canon 883 can be used by all properly approved priests aboard the ship, — even though the ship has left or has not yet reached the open sea. This opinion is based on the words ' *toto itinere* ' used in the canon which would bear the interpretation we have given above. And moreover, it is noteworthy that in the decree of 1905 the corresponding phrase used was ' *toto itinere maritimo* ' so that with the omission of the adjective ' *maritimo* ' in canon 883, the opinion that the faculties are available not only when the ship is on the actual sea, but also before or after leaving the open sea, would seem to be confirmed.

Nor do we think that the length of the voyage on a river or canal enters into the question, — provided the navigation of the river or canal can be considered as morally part of a true ' *iter maritimum* '. If, however, a priest should board a sea-bound vessel intending to disembark before the ship reached the open sea, such a priest would not in our opinion enjoy the faculties of canon. For although the ship itself was starting out on a true ' *iter maritimum* ', the priest could not be considered as doing so. And the faculties of the canon are given to priests undertaking a sea voyage, and not to priests in a ship which is undertaking a sea voyage.

We do not therefore consider the faculties of canon 883 as being valid for river voyages which are independent of and unrelated to sea voyages. And this opinion is held by the majority of commentators [1].

Voyages on lakes.

The question whether the faculties of canon 883 are valid for voyages on lakes is a little more difficult to resolve. It should be said

1 **Cfr. De Varceno-Loiano, *Institutiones,* vol. IV, p. 363; Crnica A., *Commentarium theoretico-praticum Codicis Juris Canonici* (Sibcnik, 1941) vol. II, p. 78 ; Heylen V., *Tractatus de poenitentia,* (Mcchliniae, 1946, editio octava) p. 252, nota ; Regatillo, E., *Jus sacramentarium,* p. 264, n. 455 ; Merkclbach, B. (O. P.), *Summa Theologiae Moralis* (Bruges, 1949, editio octava), p. 540 ; Berutti, C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1934) 65; Hannan J., *River trips,* art. in *The Jurist,* vol. VIII (1948) 73.**

Conte a Coronata M. (O.F.M. Cap.), *De sacramentis* (Taurini, 1948-1951, editio secunda), vol. I, p. 360 holds that the faculties of canon 883 are valid for river voyages. The same opinion is also held by Tummolo R.-Jorio, T. (S. J.), *Theologia Moralis* (Neapoli, 1935, editio quinta), vol. II, pars 2», p. 354, n. 545.

at once that if the faculties of canon 883 are valid for voyages on lakes, it is only through analogy. For since the term *maritimum* is used in canon 883, fresh-water lakes could not be said to fall immediately under the scope of the canon. Many authors, however, hold that a true analogy exists between a voyage on a lake and a voyage on the sea, and that therefore the faculties of canon 883 are valid for lake voyages [1].

We favour the view that canon 883 cannot be availed of by priests making voyages (which are independent of a true sea voyage) on lakes, however large. Granted that a certain analogy exists between a voyage on the sea and a voyage on a lake, but to hold that by analogy the faculties of canon 883 are extended to voyages on inland lakes is tantamount to holding that a lacuna in the law exists regarding penitential jurisdiction on lake voyages[2]. That conclusion seems to us inadmissible, for an inland lake will form part of some diocese or dioceses, even though in this latter case the lines of demarcation may not be clear. Therefore, with Berutti and others, we hold that until an authentic interpretation declares otherwise, the faculties of canon 883 are not available for priests voyaging on inland lakes [3].

The phrase 'toto itinere'

Canon 883 states explicitly that the jurisdiction granted by virtue of this canon is available for the duration of the entire journey. We have already observed that a priest approved for confessions in accordance with the prescriptions of canon 883 could hear confessions on board a ship bound for or returning from a proper sea voyage, even though the ship had not yet reached or had already left the open sea. The reason is that the ship is already '*in itinere*. But does it follow, therefore, that the ship must have already weighed anchor before a priest can avail of the faculties of canon 883 ?

Clearly a priest who does not enjoy the faculties of the diocese where the port is situated and where he begins his voyage, could not hear confessions in the port *before* he boards the ship. For the sea voyage could not be said to have begun, and all authors are agreed that

[1] Cfr. Tummolo-Jorio, *o. c.,* p. 354, n. 545; De Varceno-Loiano, o. c., p. 363 ; Conte a Coronata, M., *o. c.,* p. 368, n. 361; Cappello F., *De poenitentia,* p. 268, n. 300.

[2] Cfr. can. 20.

[3] Cfr. Berutti, C., *art. cit.,* p. 65; Merkelbach, B., *o. c.,* p. 540; Anon. *Adnotationes,* art. in *Jus Pontificium,* vol. IV (1024) 66.

the voyage must have at least morally begun before a priest can avail •of the faculties of canon 883 \ On the other hand, it would not seem to be necessary that the ship should have actually weighed anchor before the priest could use the faculties of canon 883. And the common and probable view considers the voyage as morally begun as soon as the priest has boarded the ship, — and therefore the faculties of canon 883, •can be used from that moment onwards, even though the ship may remain a considerable time in the port before departing. Likewise, the voyage is not considered to have terminated until the priest has finally ■disembarked at his destination 2.

The fact that a voyaging priest disembarked at several places in the course of his voyage and even spent a short space of time at these places would not necessarily mean that there was question of a new voyage each time he re-embarked on the ship. As a rule, several sea voyages undertaken for the same end or cause and separated by brief intervals of time can be considered as morally one sea voyage, and hence the approbation of a local Ordinary received at the outset would be •considered sufficient to allow a priest avail of the faculties of canon 883 on each particular voyage 3.

Article III.

The approbation of secular priests and priests pertaining to non-exempt religions and societies

We have already seen that the jurisdiction conferred on voyaging priests is delegated by law; and the possession of local or particular jurisdiction is a condition required by the legislator before the jurisdiction delegated by law can be enjoyed. For that reason we have used the word ' approbation ' in the title of the present and following article,

1 Cfr. Cance, A., *Le Code de Droil Canonique,* vol. II, p. 320 ; Merkelbach, B., *Summa Theologiae Moralis,* vol. III, 540 ; Cappello F., o. c., p. 268, n. 300.

2 Cfr. Kelly J., *The jurisdiction of the confessor,* p. 180 ; De Clercq C., *Des sa--crements,* p. 155; Regatillo E., *Jus sacramentarium,* p. 264, n. 455; Jombart E., *Manuel,* p. 250 ; Cappello F., *De poenitentia,* p. 268, n. 300 ; Conte a Coronata M., *De sacramentis,* vol. I, p. 368, n. 360.

3 Cfr. Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1034) 05.

although it should be remembered that approbation in the sense in which that word was used in pre-Code law is now no longer required.

In the present article we will consider the approbation of secular priests as well as priests pertaining to non-exempt Religions and societies, and in the following the approbation of priests pertaining to exempt Religions and societies. And since we are now considering the approbation of secular priests and priests pertaining to non-exempt Religions and societies, the Ordinaries in question will always be *local* Ordinaries, and these are enumerated in canon 198, § 1. They are, besides the Roman Pontiff, residential bishops, abbots and prelates '*nullius*' for their respective territories as well as their vicars general ; administrators, vicars and prefects apostolic as well as vicars delegate[1] ; lastly, all those who according to law or constitution succeed the above mentioned in the ruling of a particular territory.

It is not sufficient that a voyaging priest have received jurisdiction for the hearing of confessions from *any* local Ordinary in order to enjoy the faculties of canon 883. Three particular local Ordinaries are designated in the canon and the first of these is the proper Ordinary of the voyaging priest.

The proper Ordinary.

In determining the proper Ordinary of a secular priest'the vast majority of commentators mention three distinct Ordinaries : 1) the Ordinary of the place where the priest has a domicile ; 2) the Ordinary of the place where the priest has a quasi-domicile ; 3) the Ordinary of the diocese into which the priest has been incardinated[2].

Onclin, however, holds that the Ordinary of the diocese into which a priest has been incardinated may not necessarily be the proper Ordinary of the priest in question. For since the Code recognizes only one

1 Cfr. *A.A.S.,* vol. XII (1920) 120.

2 Cfr. Blat A., *Commentarium,* vol. III, p. 236, n. 206 ; Ubach J., *Theologia Moralis,* vol. II, p. 261, n. 1994 ; Berutti C., *art. cit.,* p. 63 ; Pujolras H., *Adnotationes,* art. in *Commentarium pro religiosis,* vol. XXVI (1948) 17 ; Rossi J., *Annotationes,* art. in *Apollinaris,* vol. XXII (1949) 33 ; Jombart E., *Confesseur,* art. in *Dictionnaire de droit canonique,* vol. IV, col. 14.

Since non-exempt priests will not be incardinated into a diocese, their proper Ordinary will be the Ordinary of the place where the house to which they are assigned is situated.

way of acquiring a proper Ordinary, namely by domicile or quasi-domicile there can be no foundation for the opinion which holds that a proper Ordinary is acquired by incardination [2]. It is true that in most cases a priest will have a domicile or quasi-domicile in the diocese into which he has been incardinated, and therefore no difficulty will arise, but Onchlin points out that frequently it happens that a diocesan priest spends a greater part of the year teaching in a school or university which is not situated in the diocese into which he has been incardinated. Hence such a priest, in Onclin's view, undertaking a sea voyage during his vacation and wishing to obtain faculties from his proper Ordinary with a view to enjoying the faculties of canon 883, should apply to the bishop of that place where he has a domicile or quasi-domicile, — and *not* to the bishop of the diocese into which he has been incardinated.[1]

But we think that this opinion is too narrow, for if incardination into a diocese is to mean anything, it must mean that a priest is subject to the bishop of that diocese as to his proper Ordinary. Otherwise the absurd situation could exist that a priest having acquired a domicile or quasi-domicile in a diocese other than that into which he had been incardinated could refuse to obey the bishop of this latter diocese on the grounds that he was not his proper Ordinary.

Some authors hold that a military chaplain who has the faculty of hearing confessions from a military Ordinary, will qualify to receive the faculties of canon 883 on a sea voyage [3]. We consider this view probable, for the reason that a military Ordinary is to be considered as the proper Ordinary of the faithful who have been entrusted to his spiritual care [4].

Parish priests and those equiparated to them.

If a priest is a pastor or canon penitentiary, he does not receive his jurisdiction directly from his Ordinary, but rather from his office

[1] Cfr. can. 94, § 1.

[2] Onclin W., *Législation canonique,* art. in *Ephemerides Theologicae Lovanienses,* vol. XXIV (1948) 464-465.

[3] Cfr. Busquet J.-Bayon G., *Thesaurus Confessorii,* p. 560; Jorio T., *Theologia Moralis,* vol. III, p. 269, n. 430.

[4] Cfr. Instructio, *De Vicariis Castrensibus,* in *A.A.S.,* vol. XLIII (1051) 562-565; also Puglicse A., *Adnotationes ad Instructionem de vicariis castrensibus,* art. in *Monitor Ecclesiasticus,* vol. LXXVI (1951) 587.

to which the law has attached this power[1]. But since he exercises this office dependently on his local Ordinary, there is no doubt that such a priest on a sea voyage enjoys the faculties of canon 883[2]. Those who are equiparated to parish priests and come under this title in law, namely, a quasi-parish priest[3], a "*vicarius curaius*"[4], a '*vicarius oeconomus*'[6] a '*vicarius cooperator*' or parish priest who assumes the ruling of a parish before the appointment of a '*vicarius oeconomus*'[6], a '*vicarius substitutus*'[7] and a "*vicarius adjutor*" who supplies in everything the place of a parish priest[8] — all these enjoy ordinary power to hear confessions; and since they exercise their office dependently on the local Ordinary, who in most cases will also be the proper Ordinary of these priests, they will enjoy the faculties of canon 883 on a sea voyage. Should it happen that the local Ordinary where these priests exercise their office is not the proper Ordinary for these priests, then such priests, though possessing ordinary jurisdiction in the internal forum, will not thereby enjoy the delegated jurisdiction of canon 883 for sea voyages.

The Ordinaries of the port of embarkation and of a port of call.

Besides the proper Ordinary of a voyaging priest two other Ordinaries are mentioned in canon 883 from whom faculties may be sought in order to qualify a priest to receive the jurisdiction delegated by law for sea voyages.

The first of these Ordinaries mentioned is the Ordinary of the port where a priest embarks on the voyage. The interpretation of these words in the canon offer little or no difficulty. It may be remarked, however, in passing that should there be question, as frequently happens, of embarking on a ship at a river-port where the river is the dividing line between two dioceses, it would not, we think, be sufficient for a priest to enjoy the faculties of either diocese — but it would be necessary to

1 Cfr. can. 873, § 1, and 401, § 1.
1 Cfr. Kelly J., *The Jurisdiction of the Confessor,* p. 181.
« Can. 216, § 3.
‹ Can. 471.
Can. 472, 1®.
• *Ibid.,* 2».
3 Can. 474.
• Can. 475, § 2.

be in the possession of the faculties of that diocese from the territory of which he actually boards the ship.

The second Ordinary mentioned in the canon is the Ordinary of a port of call. Since the canon uses the words *portus interjecti per quem in itinere transeunt,* it would not be sufficient merely to see the port *a longe,* but it would be necessary to enter or pass through the port, even though the ship does not stop to disembark passengers [1].

Corollaries,

Some observations may be made about the Ordinaries mentioned in the canon by way of conclusion to this article.

Firstly, the Ordinaries themselves mentioned in the canon undoubtedly enjoy the faculty of hearing confessions on sea voyages, although Merkelbach holds the negative opinion[2].

Secondly, it may be asked whether local Ordinaries who are actually voyaging on a ship can confer faculties on priests in the course of the voyage and so qualify them to receive the faculties of canon 883. Conway is the only author we have found to raise the question[3]. In giving a solution to the question Conway makes a distinction regarding the penitents to be absolved. A local Ordinary voyaging on a ship could confer jurisdiction on any priest to hear the confession of one of his subjects (i. e. one who had a domicile or quasi-domicile in the territory of the Ordinary). But the same local Ordinary could not confer any jurisdiction on a priest to hear the confession of a non-subject.

We are not altogether certain that a local Ordinary could delegate a priest to hear the confession of one of his subjects who is on a voyage outside the Ordinary's territory, for it is expressly stated in canon 874, § 1, that delegated jurisdiction to hear confessions is conferred

1 A secular priest who had not received any approbation from a local Ordinary could in the course of a voyage receive delegation from a superior in a clerical exempt Religion or society, empowering him to hear the confessions of the subjects of this religious superior. Cfr. can. 875, § 1.

2 Merkelbach B., *Summa Theologiae Moralis,* vol. III, p. 539, «Concessio respicit sacerdotes, non ipsos, ut videtur, Ordinaries».

We find it difficult to see any basis for this opinion. Opposing it, Jorio in his *Theologia Moralis,* vol. III, p. 270, n. 431 cites the *R,* J. 53 in VI: «Cui licet quod plus, licet utique quod est minus».

3 Conway W., *Confession on board ship,* art. in *The Irish Ecclesiastica Record,* vol. LXIX (1947) 51-52.

by the Ordinary of that place in which the confessions are to be heard. Canon 874, § 1, constitutes then, in our view, one of the exceptions — express though implicit — envisaged by the Legislator when in canon 199, § 1, he stipulates that ordinary power of jurisdiction may be delegated, unless otherwise expressly stated.

Since the high seas are not under the jurisdiction of any local Ordinary (apart from the Roman Pontiff) no local Ordinary is empowered to delegate jurisdiction for the hearing of confession while on the high seas, __ even for the confessions of his subjects. Since a local Ordinary enjoys ordinary power in the internal sacramental forum, it follows that he himself may hear the confessions of his subjects wherever they may bex. But he is not empowered to delegate others to hear his subjects confessions outside his territory.

The question proposed by Cpnway should we think, be solved rather from the relation existing between priest and Ordinary than from the relation existing between subject and Ordinary :

1) If the voyaging Ordinary is the proper Ordinary for any of the priests on board, then he may confer diocesan jurisdiction on *these* priests and so qualify them to receive the jurisdiction of canon 883.

2) If the voyaging Ordinary happens to be the Ordinary of a port at which the ship calls, he may confer diocesan jurisdiction on *all* priests on board and so qualify them to receive the faculties of canon 883.

3) If the voyaging Ordinary happens to be the Ordinary of the port whence the ship set out, he may confer diocesan jurisdiction on *all* priests who embarked on the ship at this port and so qualify them to receive the faculties of canon 883.

Outside these cases a local Ordinary who is actually on a voyage could confer diocesan jurisdiction on other voyaging priests, but such jurisdiction would not qualify them to enjoy the faculties of canon 883.

Lastly, it is stated in canon 883 that in order to obtain jurisdiction for the hearing of confessions on sea voyages, it is necessary that priests should have properly — '*rite*' — received jurisdiction from one of the Ordinaries mentioned in the canon. The local Ordinaries mentioned in the canon, therefore, should confer jurisdiction only on those priests who are fit subjects to receive it, — and this is established by examination, unless there is question of a priest whose theological

1 Can. 881, § 2.

learning is sufficiently attested to from other sources [1]. Further, the concession of jurisdiction should be given expressly (either explicitly or implicitly) by word or writing, and for its concession nothing by way of payment can be asked [2]. All the prescriptions recalled in this paragraph concern the liceity and not the validity of the concession of jurisdiction.

Article IV.

The approbation of priests pertaining to exempt clerical Religions and societies

Having considered how secular priests and non-exempt priests obtain jurisdiction for a sea voyage, we will now examine the question of how this same jurisdiction is obtained by priests pertaining to exempt clerical Religions and exempt societies.

At the outset it is necessary to remark that superiors in exempt clerical Religions enjoy, according to the Constitutions, jurisdiction to hear the confessions of their subjects [3]. Furthermore these same superiors are empowered to confer delegated jurisdiction on any priest for the hearing of the confessions of their subjects [4]. And since the jurisdiction of superiors is personal rather than territorial, such jurisdiction can be exercised or delegated by a religious superior for the confessions of his subjects anywhere in the world [5].

Delegation of a confessor by an itinerant religious.

Closely connected with the question of delegation of jurisdiction by a religious superior is the question of delegation of jurisdiction by an itinerant religious.

Before the Code members pertaining to an exempt clerical Religion enjoyed the faculty of confessing, while on a journey, to a * *socius idoneus* *, and authors usually attributed the jurisdiction of the confessor

1 Can. 877, § 1.
2 Can. 879, § 2.
3 Can. 873, § 2.
4 Can. 875, § 1.
5 It should be noted that superiors themselves should only hear the confessions of those subjects who approach them freely and of their own accord; and even then superiors should not hear their subjects confessions habitually without a grave reason. Cfr. can. 518, § 2.

thus selected by the itinerant religious to implicit or tacit delegation by the religious superiorThere is no special mention in the Code of this method of obtaining jurisdiction through being selected by a religious to hear his confession. Canon 879, § 1, requires as a condition for validity in all cases that jurisdiction be granted expressly either by word or by writing. Hence this canon excludes tacit delegation of jurisdiction by religious superiors, — which was formerly considered sufficient in the case [2]. However, although the Code requires that jurisdiction be conferred expressly, it does not demand that it be conferred directly by the person who enjoys the power of delegating jurisdiction. Hence we think that a clerical exempt superior can thus indirectly and validly confer delegated jurisdiction by commissioning his subject to choose any priest for confession, who will, by virtue of the superior's intention, receive the necessary jurisdiction[3].

Schaefer [4] and Fallon [5] both observe that in practice the value of this indirect delegation is greatly diminished by the prescription of canon 877, § 1, requiring the holding of an examination before the conferring of jurisdiction.

Jurisdiction in an exempt clerical Religion and canon 883.

The jurisdiction possessed or conferred by a superior of a clerical exempt Religion for the confessions of his subjects anywhere in the world is independent of the jurisdiction conferred by canon 883. The former while being capable of being exercised on a sea voyage is limited to the personnel of an exempt clerical Religion or society ; the latter, as we shall see, may be exercised in favour of all the faithful. But since the delegated jurisdiction of canon 883 is intended to be available for all voyaging priests, (the phrase used in the canon is ' *sacerdotes omnes* ') provided they are properly approved by one of the Ordinaries mentioned in the canon, it follows that a priest pertaining to an exempt clerical

1 Cfr. Lehmkuhl A., *Theologia Moralis,* vol. II, p. 286, n. 394.

3 Cfr. Schaefer C., *De religiosis ad normam Codicis Juris Canonici* (Romae, 1947 editio quarta), p. 319, n. 617; Vermeersch A., *Theologia Moralis* (Romae, 1947-1954, editio quarta), pp. 279-280, n. 439; Cappello F., *De poenitentia,* p. 279, n. 307.

3 Cfr. Fanfani L., *De jure religiosorum* (Taurini, 1925, editio secunda), p. 140, n. 127.

4 Cfr. Schaefer C., o. *c.,* p. 319, n. 616.

5 Cfr. Fallon J., *Confession of itinerant religious,* art. in *The Irish Ecclesiastical Record,* vol. LVI (1940) 580.

Religion or society may also obtain the wider delegated jurisdiction of canon 888, provided he previously has obtained jurisdiction from one of the three Ordinaries mentioned in the canon.

The term 'proprius Ordinarius' of canon 883 *and exempt clerical Religions.*

When the words '*proprius Ordinarius*' are used in reference to an exempt clerical Religion they undoubtedly designate a major superior in that Religion or society[1]. Hence it is not surprising that with the promulgation of the Code there were many authors who held that since the term '*proprius Ordinarius*' was used in canon 883 without any qualification, major superiors in clerical exempt Religions and societies could confer the faculty of hearing confessions on their priest-subjects, and so qualify them to enjoy on sea voyages the faculties of canon 883[2]. Other authors appealing to the pre-Code decrees on the question of jurisdiction on sea voyages and to the text of canon 883 held that such major superiors were not included under the term '*proprius Ordinarius*' of can 883[3]. In support of both opinions strong arguments were advanced and the question was widely discussed[4]. In 1934, however, an end was put to the discussion by a reply of the Commission for the authentic interpretation of the canons of the Code declaring that under the designation of 'Ordinaries' in canon 883, § 1, major superiors in clerical exempt Religions were not included[6]. Thus it is now established that all the Ordinaries mentioned in canon 883 are local Ordinaries.

1 Cfr. can. 108.

1 Cfr. Martinez J., *BoUlin canonico,* art. in *Religion y cultura,* vol. II (1028) 114-118; Voltas P. *Consultationes,* art. in *Commentarium pro religiosis,* vol. II (1021) 373-375; Gennaro A. (S.S.), *Della giurisdizione sui naviganti,* art. in *Perfice Munus,* vol. VI (1031) 118-121; Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1034) 01.

8 Cfr. Blat A., *Commentarium,* vol. III, p. 236 ; Aertyns, I.-Damen C. (C.S.S.R.), *Theologia Moralis* (Taurinorum Augustae, 1028) vol. II, p. 262, n. 381; Kinane J., *Queries concerning canon* 883, art. in *The Irish Ecclesiastical Record,* vol. XLI (1033) 420-421.

4 A good summary of the arguments presented by both sides may be found in an article by Maroto P., entitled *De confessione navigantium,* in *Commentarium pro re Igiosis,* vol. XV (1034) 356-358.

8 *A.A.S.,* vol. XXVI (1034) 404, «D. An sub nomine Ordinarii, de quo in canone 883, § 1, veniant etiam Superiores maiores Religionis clericalis exemptae. R. Negative.

The proper local Ordinary for an exempt priest,

Who, then, is the proper local Ordinary for an exempt priest? Both authors who wrote before the promulgation of the Code as well as those who have written since its promulgation are almost unanimous in the opinion that the proper local Ordinary for an exempt priest is the Ordinary of the place, where the house to which such a priest is attached, is situated[1].

It would seem necessary that an exempt priestshould have received an official assignation to a particular house from his major superior before he could call the Ordinary of the place where the house is situated his ‘ *proprius Ordinarius* ’ for the purposes of obtaining penitential jurisdiction. Cappello interprets the phrase ‘ *proprius Ordinarius* ’ of canon 883 very widely, so that in his opinion an exempt priest could consider as his proper Ordinary any local Ordinary within whose territory he was staying[2]. But we would not be inclined to favour this view for two reasons: 1) it is not in harmony with the common interpretation given to the phrase by pre-Code commentators, and there is no reason for departing from such a traditional interpretation; 2) granted that delegated jurisdiction is conferred on an exempt priest by the Ordinary of the place where the confession is heard [3], it does not thereby follow that such a local Ordinary is always to be considered the proper local Ordinary of a particular exempt priest.

While, therefore, requiring that an exempt priest be formally attached to a particular house of his Order, Congregation or Society before he can claim a proper local Ordinary, it is clear that no consideration of the length of time which such an exempt priest has spent or will spend in the house enters into the question. Thus, an exempt priest who has been formally appointed to a religious house for a very brief space of time prior to setting out on a voyage may consider the Ordi- of that place as his proper Ordinary for the purposes of qualifying for the faculties of canon 883[4].

1 Cfr. Vermeersch A., *De domicilio Regularium,* art. iri *Periodica de re canonica et morali,* vol. IV (1908) 194-195; Blat A., *o. c.,* vol. III, p. 236 ; Kinane J.> *art. cit.,* p. 421 ; Cappello F., *De poenitentia,* p. 268, n. 300.

1 Cappello F., *o. c.,* p. 208, 300 «Nomine Ordinarii proprii intelligi debet Ordinarius loci qui pro religioso est Ordinarius loci conventus ad quem religiosus pertinet vel *ubi actu commoratur si agitur de religioso exempto* n.

* Can. 874, § 1.

‹ Cfr. Vermeersch A., *art. cit.,* pp. 194-195.

The Ordinaries of the port of embarkation and of a port of call.

The question of the approval of exempt priests by the Ordinaries of the port of embarkation and of a port of call gives rise to no special difficulty. What we have already written about these Ordinaries in reference to the approval of secular priests will find application here.

Corollaries.

Although, as we have seen, a major superior in a clerical exempt Religion is not included under the term '*proprius Ordinarius*' in canon 883, he may enjoy from the Ordinaries mentioned in the canon the faculty of sub-delegating diocesan or local jurisdiction to the priests of his Religion. It is clear that exempt priests who have received jurisdiction from their major superiors in this way will be qualifed to receive the jurisdiction of canon 883 [1].

Since there is question of local Ordinaries exclusively in canon 883, these Ordinaries should not habitually confer jurisdiction on exempt priests who are not presented to them by their proper superiors[2]. Moreover, they have the right and duty of submitting to examination those presented for the reception of jurisdiction, — and what we have already remarked on this point in the previous article holds good here also.

Exempt priests, for their part, should not use the jurisdiction received for sea voyages without the permission, at least presumed, of their superiors. It is true that according to the letter of canon 874, § 1, the need of the superior's permission is required only for the use of jurisdiction conferred by a local Ordinary, — and so, it might be argued that since a voyaging priest absolves by virtue of jurisdiction delegated by law and not by the jurisdiction of a local Ordinary, no permission from religious superiors is required. However, we think that as the reception of jurisdiction from a local Ordinary is a necessary condition for the receiving of the faculties of canon 883, it is reasonable to suppose that an exempt priest hearing confessions on a sea voyage should have at least the presumed consent of his superior. This prescrip-

1 Cfr. Noldin-Schmitt, *De sacramentis,* p. 350, n. 344.
1 Can. 874, § 2.

tion, however, affects the liceity and not the validity of the use of jurisdiction.

Article V.

Delegation of jurisdiction by virtue of privilege

From their promotion in consistory Cardinals enjoy the privilege of selecting any priest to hear their confessions and on the priest so selected is conferred ‘*ipso jure*’ the necessary jurisdiction, should he not already possess it[1]. And this privilege is also granted to bishops, both residential and titular[2]. It is to be noted that this privilege is enjoyed by bishops as soon as they receive authoritative notification of their appointment, — and therefore before they take canonical possession of their sees.

The privilege enjoyed by Cardinals and bishops of designating their confessors who thereby receive jurisdiction, should they not already possess it, may be exercised anywhere in the world, — on land, sea or in the air.

Cardinals and bishops are also empowered by law, to designate a priest to hear the confessions of their ‘*familiares*’. The priest so designated will receive ‘*ipso jure*’ the necessary jurisdiction, should he not already possess it[3].

Summary.

Jurisdiction for the administration of the sacrament of penance on a sea voyage is delegated by the Supreme Legislator in canon 883 of the Code of Canon Law.

We claim that this jurisdiction is distinct from, though dependent on the previous possession of, jurisdiction received from one of three Ordinaries mentioned in canon 883. These three Ordinaries are local

1 Can. 230, § 1, 2°.

3 Can. 340, § 1, 1°. Since according to canon 215, § 2, abbots and prelates ‘nullius’ come under the title of bishop in the Code, *nisi ex natura rei vel sermonis contextu aliud constet,* these dignitaries will also enjoy the same privilege..

3 Can. 230, §1,2° and can. 340, § 1, n. 1.

Ordinaries, and all priests, both secular and Religious, wishing to enjoy the faculties of canon 883 must have obtained from at least one of the three designated Ordinaries the faculty of hearing confessions.

The jurisdiction conferred by the canon may, in our opinion, be availed of by any properly approved priest who is making a true sea journey in which the ship must move out to the *high seas.* For priests making voyages entirely within *territorial waters* it would seem that the faculties of the canon may not be availed of by voyaging priests unless there is question of a voyage of at least one day's duration.

† Without an authentic declaration of the Holy See we think that the faculties of canon 888 are not available for priests undertaking such voyages on rivers, canals or lakes as are unrelated to a voyage on the open sea.

Independently and apart from canon 883:

***a)* all priests possessing ordinary power in the internal sacramental forum may absolve their subjects on a sea voyage.**

***b)* Superiors in exempt clerical Religions may, according to the Constitutions, delegate any priest, secular or religious, to hear the confessions of their subjects.**

***c)* Cardinals and bishops may designate any priest for the hearing of their own confessions or of those of their '*familiares*'. With such designation is conferred '*ipso jure*' the necessary jurisdiction, — should the designated priest not already possess it.**

Chapter II.

THE JURISDICTION OF A VOYAGING CONFESSOR IN ITS RELATION TO SUBJECTS .

Article I.

The voyaging confessor and the faithful in the ship

From what we have already set forth it may be seen that in the majority of cases when a priest absolves a penitent in the course of a sea voyage he will do so by virtue of the jurisdiction delegated by law in canon 883. We will now examine firstly the question of what persons may be considered the subjects of the jurisdiction conferred on

a priest by canon 888; and secondly we will examine the question of what persons may be considered the subjects of the jurisdiction which a voyaging confessor may enjoy independently of the jurisdiction conferred by canon 888.

(A) *The voyaging confessor who enjoys the jurisdiction of canon* 883.

A priest who enjoys the jurisdiction delegated by law in canon 883 may hear the confessions of *any* of the faithful who happen to be fellow-voyagers with him in the same ship. The phrase used in the canon is *quorumlibet fidelium,* which is very wide in its connotation, but it should be pointed out that the phrase is qualified by the words *secum navigantium... in navi.* Hence although a voyaging priest enjoys the faculties of canon 883 as soon as he goes on board the ship the jurisdiction conferred by the canon extends only over those who intend to journey with him in the ship and not over those who may casually come aboard the ship before its departure from the port[2].

Since the phrase '*quorumlibet fidelium*' is altogether general, it follows that, even though the voyaging confessor might not ordinarily enjoy when ashore jurisdiction for the hearing of the confessions of women, he will not be prevented from validly absolving women penitents in the course of the voyage. In this connection it is opportune to recall that the jurisdiction conferred by canon 883 is delegated by law and not by a local Ordinary, and hence the jurisdiction will not be limited by any condition or restriction placed by a local Ordinary[3].

[1] By the phrase '*voyaging confessor*' we intend to designate a priest who possesses jurisdiction for the hearing of confessions on the actual voyage.

[2] According to Merkelbach the words 'secum navigantium' of canon 883, § I, may be interpreted as including also persons voyaging in the same convoy as the priest. Cfr. *Summa Theologiae Moralis,* vol. III, p. 540.

[3] Cfr. De Varceno-Loiano, *Institutiones Theologiae Moralis,* vol. IV, p. 363; Conte a Coronata, M., *De Sacramentis,* vol. 1, pp. 368-369; Vermeersch-Creusen, *Epitome,* vol. II, p. 104, n. 153; MacCarthy J,, *Faculties on a sea voyage,* art. in *Thie Irish Ecclesiastical Record,* vol. LXXIII (1950) 353.

Blat, however, considers that if a voyaging priest had previously received jurisdiction for the confessions of the faithful of one sex only, such a priest would be limited by the same restriction on a sea voyage. Cfr. *Commentarium,* vol. III, p. 236. Cfr. also Ubach J., *Theologia Moralis,* vol. II, p. 261, n. 1994.

The jurisdiction of canon 888 *and the confessions of Religious women.*

The use of the words ' *quorumlibet fidelium* ' in canon 888 justify us in holding that Religious women while on a sea voyage may be absolved by any priest who possesses the faculties of canon 883 [1]. We have already noted in the historical section of the present work that the word ' *quorumcumque* ' was seemingly inserted in the decree of 1905 precisely to indicate that the jurisdiction conferred for voyages was valid also for the confessions of Religious women. And in the interpretation of the word ' *quorumlibet* ' in canon 888 there is no reason for departing from the interpretation which commentators commonly gave to the corresponding word in the decree of 1905 [2].

Canon 883 *and canon* 876.

It may be asked what relation exists between canon 883 and canon 876 which requires that a priest be endowed with special jurisdiction for the hearing of the confessions of Religious women [3]. We are of the opinion that canon 883 should be considered as an *exception* to canon 876 [4]. The special jurisdiction required for the confessions of Religious women must, in accordance with the terms of canon 876, § 2, be conferred by the Ordinary of the place where the house of the Religious women is situated. Since the high seas do not come under the jurisdiction of any local Ordinary and since a local Ordinary cannot delegate jurisdiction for the hear-

1 Cfr. Vermeersch-Creusen, *o. c.t* p. 104, n. 153 ; De Varceno-Loiano, *o.* c.» vol. IV, p. 808 ; Abbo J.-Hannan, *The Sacred Canons,* vol. II, p. 18 ; McCarthy J., *art. cit.,* p. 358.

1 Cfr. Ferretes J., *De la aprobación y la jurisdición de los confesores navegantes,* art. in *Razón y Fe,* vol. XVIII (1907) 106; Vermeersch A., *Commentarium,* art. in *Periodica de re canonica et morali,* vol. III (1907) 42.

' Canon 876 reads as follows:

« § 1. Revocata qualibet contraria particulari legi seu privilegio, sacerdotes tum saeculares ttim religiosi, cujusvis gradus aut officii ad confessiones quarumcunque religiosarum ac novitiarum valide et licite recipiendas peculiari jurisdictione indigent, salvo praescripto can* 239, § 1, n. 1, 522, 523.

§ 2. Hanc jurisdictionem confert loci Ordinarius, ubi religiosarum domus sita est, ad normam can. 525 ».

4 Cfr. Sobradillo O., *Tractatus de Religiosarum confessariis* (Torino, 1932), p. 239; Berutti C., *Institutiones Juris Canonici* (Taurini, 1936), vol. III, pp. 83-84, n. 41.

ing of confessions outside his diocese, it follows that the law of canon 876 will not be applicable on sea voyages. Therefore, one must either admit that the confessions of Religious women may be heard on a sea voyage by virtue of the jurisdiction conferred by canon 883 *or* deny to all Religious women the benefit of absolution oh a sea voyage, — apart from the case where the danger of death exists. The latter alternative would be an unduly narrow and, we think, a false interpretation of the words ' *quorumlibet fidelium* ' of canon 883, § 1.

A difficulty is created by the fact that in canon 876 no reference is made to the exception of canon 883, although three other canons are-mentioned by way of exception. We think that the omission of any reference to canon 883 in canon 876 can only be accounted for by the fact that the legislator considered the jurisdiction of canon 883 as granted for confessions in extraordinary circumstances, in the same way as canon 882 grants jurisdiction to all priests for the absolution of those in danger of death. And so neither to this latter canon is reference made in canon 876

Canon 888 *and canon* 522.

Canon 522 permits a confessor who does not enjoy the special jurisdiction of canon 876 to hear the confessions of a Religious woman in certain circumstances[2]. Canon 522 is, therefore, an exception to

[1] Cfr. Berutti C., o. c., pp. 83-84, n. 41, « --- Ratio cur in can. 876, § 1, expresse non excipiuntur praescripta can. 882 et 883 ea esse videtur quia ad casus prorsus extraordinarios attinent, et insuper in eodem titulo ' De minstro sacramento poenitentiae ' ita referunt ut ex textu et contextu manifeste appareat quod generaliter et absolute praescripta ipsa statuuntur pro omnibus fidelibus, sive clericis sive Religiosis sive laicis. Merito autem in praefato can. 876, § 1, expresse excipiuntur praescripta cc. 239, § 1, n. 1 ; 522 ; 523 ; utpote quae in priore libro II Codicis statuuntur et ad casus attinent qui frequentius, imo et crebro contingere solent n. Cfr. also Sobradillo O., o. c., p. 239.

[1] Incorporating the several replies given by the Code Commission canon 522 may now be said to read as follows:

[a] Si, non obstante praescripto can. 520, 521, aliqua religiosa, ad suae conscientiae tranquillitatem, confessarium adeat vel advocet ab Ordinario loci pro mulieribus approbatum, confessio in qualibet ecclesia vel oratorio etiam semi-publico, vel etiam in loco per modum actus designato vel ad normam canonis 910, § 1, eledto, peracta, valida et licita est, ita ut extra haec loca, revocato quolibet contrario privilegio, confessio non tantum sit illicita sed etiam invalida. Neque Antistita id prohibere

•canon 876, § 1. But since we have proved that canon 883 is itself an exception to canon 876, it follows that a voyaging priest who enjoys the jurisdiction of canon 883 will not have to make any reference to •canon *522,* should he wish to absolve a nun or Religious sister in the •course of a sea voyage.

One very important consequence follows from this fact, — namely, that the proper place for the confession of a Religious woman, which in the context of canon 522 is required for the validity of the •confession, will, in the context of canon 883, be a question of liceity •only, and not of validity. For the various replies of the Code Commission which we have already referred to below were all given in reference to canon 522 and *not* in reference to other canons concerning the •confessions of Religious women.

As regards the proper place, therefore, for the hearing of the confessions of Religious women who are on a sea voyage, — the only pre-■scriptions to be observed are those which are laid down in the Code for the confessions of the common faithful. And these prescriptions affect the liceity and *not* the validity of the absolution imparted.

The proper place for the hearing of confessions during a sea voyage.

If a fixed oratory has been set up within a ship, then this oratory is to be considered as the proper place for the hearing of confessions on board[2]. The word ‡ proper ‡ should not be interpreted as meaning that a ship's oratory is the only place in which confessions should be heard during a voyage, but rather that such a place should be preferred to all others, in as much as it is a ‘ *locus sacer* ’ and therefore more suitable than all others for the administration of a sacrament [3].

The confessions of men may be heard anywhere on the ship, but the confessions of women should not be heard outside a confessional, unless illness or real necessity demand otherwise [4].

potest aut de ea re inquirere, ne indirecte quidem; et religiosae niliil Antistitae referre tenentur».

Cfr. *A.A.S.,* vol. XX (1028) 61 ; vol. XII (1020) 575 ; vol. XX (1028) 61 ; wol. XXVII (1035) 02.

1 Cfr. Sobradillo O., *Tractatus de Religiosarum confessoriis,* p. 230.

1 Can. 008.

3 Cfr. Regatillo E., *Jus Sacramentarium,* p. 384, n. 085; Conte a Coronata M.» *De Sacramentis,* vol. I, p. 506, n. 462.

4 Can. 010.

But more often than not a ship will be without a proper confessional. In such cases when a voyaging confessor is approached for confession by a woman in the course of a sea journey, we think that he may lawfully hear the confession in any fitting place on the ship. For it is scarcely possible that the legislator could have been unaware of the nonexistence of confessionals on the vast majority of ships, yet it is abundantly clear from the wording of canon 883 that it is the intention of the legislator that women penitents should not be deprived of the benefit of absolution in the course of a voyage, merely because no proper confessional could be found. Hence we think that the lack of a proper confessional aboard a ship should be considered as of itself constituting a case of ' true necessity ' when it is lawful to hear the confession of a woman, Religious or secular, outside a confessionalThe choice of somesuitable and fitting place for the confessions of women on board the ship in such circumstances is left to the prudent judgement of the voyaging confessor.

B) *The voyaging confessor who enioys jurisdiction independently of canon* 883.

Local Ordinaries, canons penitentiary, parish priests and superiors in exempt clerical religions enjoy ordinary jurisdiction in the internal sacramental forum and may absolve their subjects wherever they may be found2. The first three categories of ecclesiastics mentioned will, as we have seen earlier, enjoy the faculties of canon 883, but superiors in exempt clerical Religions not necessarily so.

Hence the question arises; what persons may superiors in exempt clerical Religions consider as their subjects, and whom, therefore, they may absolve in the course of a sea voyage, without reference to canon 888 ? 3.

The subjects of a superior in an exempt clerical Religion.

In listing the persons who may be considered as subjects of a superior in an exempt clerical Religion, commentators generally cite canon

1 Cfr. Jombart E., *Confession en mer,* art. in *Revue des Communautés Religieuses,* vol. VII (1931) 34*36.

3 Cfr. can. 873 and can. 881, § 2.

3 The Constitutions of each exempt clerical Religion or society will determine what superiors in particular enjoy the ordinary jurisdiction of canon 873, § 2, as is» indicated by the phrase « ad normam Constitutionum » used in this canon.

875, § 1, which details the persons for whose confessions these superiors may confer delegated jurisdiction [1]. These persons are: the professed members and novices of the Religion; all those who for reasons of service, education, hospitality or ill-health live day and night in the Religious house[2].

May a superior in an exempt clerical Religion absolve or confer delegated jurisdiction on another priest to absolve the above-mentioned persons even when they are outside the Religious house ? The affirmative opinion is supported by the majority of commentators[3]. Larraona alone makes an exception with regard to those who are guests or infirm; when these persons are outside the Religious house, they may only be absolved, according to Larraona, by the jurisdiction of a local Ordinary [4].

In the case of students who reside day and night in a house of an exempt clerical Religion it would seem that when at the end of the academic year they return to their own homes for vacation, they should no longer be considered as in any way subject to the superior of the-

1 Cfr. Toso A., *Ad Codicem Juris Canonici Commentaria Minora* (Komae, 1921-1927), vol. IV, p. 60 ; Claeys-Bouuaert J.-Simenon G., *Manuale Juris Canonici* (Gandae et Leodii, 1930-1931), vol. II, p. 110, n. 122; Wemz-Vidal, *Jus Canonicum,* Tom. IV, vol. I, p. 146, n. 121; Cappello F., *De Poenitentia,* p. 249, n. 282 ; Jone IL, *Commentarium,* vol. II, p. 113; Larraona A. (C.M.F.), *Commentarium Codicis,* art. in *Commentarium pro Religiosis,* vol. X (1929) 250-257.

2 Cfr. canon 875, § 1, and canon 514, § 1.

3 Cfr. Goyeneche S. (C.M.F.), *Quaestiones de jure Religiosorum* (Neapoli, 1954-1955), vol. II, p. 263 ; Tabera A., *Derecho de los Religiosos* (Madrid 1952), n. 129, 4° (quoted by Goyneche); Cappello, F., *o. c.,* p. 281, n. 308.

Goyeneche in the reference just quoted reveals the following interesting fact which he drew from the pre-Code *Animadversiones Episcoporum et Superiorum Regularium in Lib. III Codicis* (ineditae): a... Profecto, ad canonem 148, § 2, L. III schematis an. 1013 qui doctrinam can. 875, § 1, Codicis, referebat, Episcopus Conversanensis proponebat ut declaretur, ' an qui talem facultatem acceperint eas audire (confessiones) valeant in domo regulari exempta vel etiam alibi loco nempe quo< nullam habent facultatem*. Commissio vero hanc declarationem noluit facere evidenter quia, data natura jurisdictionis Superiorum religiosorum et generalitate dictionis canonis, non erat necessaria: imo Card. Bisleti, codificatricis Commissionis membrum, ad marginem animadversionis Praesulis Conversanensis propria manu rescribit ' da per tutto '...».

4 Cfr. Larraona A., *art. cit.,* p. 256, nota 36, where a Exciperemus hospites et infirmos in quibus respectus territorialis praeponderat, adeo ut potestas Superiorum, quoad hos prorsus videatur aequiparata illi qua fruuntur alii superiores domorum. hospitalium exemptarum quae certe est territorialis ».

Religious house during the time of vacation, even though they may have the intention of returning to the Religious house again [1].

Application to sea voyages.

Applying the conclusions outlined above to the question of confessions on sea voyages, we may say that a superior in an exempt clerical Religion can hear or delegate other priests to hear while on a sea voyage the confessions of 1) the professed members and novices of the Religion; 2) all those who for reasons of service, education, hospitality or ill-health reside day and night in the Religious house where the superior exercises his authority. Postulants, although not explicitly mentioned in canon 875, § 1, would undoubtedly be included in the latter general category of persons[2].

The 'familiares' of Cardinals and Bishops.

We have already observed that Cardinals and Bishops enjoy the privilege of designating any priest to hear the confessions of their '*familiares*'; and should the priest not already possess the necessary jurisdiction, he will receive it '*ipso jure*' on such designation[3].

What persons are considered as coming under the term '*familiares*' The Code does not say; but according to the general view of commentators, a '*familiaris*' in the canonical sense of the term is one who, living in the same house as the Cardinal or Bishop, renders a service to him in an habitual capacity, and is rewarded for that service by some temporal emolument[4].

1 Cfr. Goyeneche S., *o. c.*, vol. II, p. 204; Larraona A., *art. cit.*, p. 256, nota 134. Cappello holds that, provided a student has the intention of returning to the Religious house after the vacation, he may still be considered as subject to the superior of that house, even in the months of vacation spent at home. Cfr. *De poenitentia*, p. 281, n. 308.

2 Of the nature of the jurisdiction we have been discussing Jombart observes: a... cette jurisdiction n'est pas territoriale, mais personelle; comme elle n'est pas territoriale, d'autres personnes ne pourraient en bénéficier même à l'intérieur du convent; comme elle est personelle, les habitants du couvent, pourront être absous même au dehors et même hors du diocèse». Cfr. *Confesseur*, art. in *Dictionnaire de droit canonique*, vol. IV, col. 18. Also Regatillo E., *Jus Sacramentarium*, p. 272, n. 469.

3 Cfr. p. 24.

4 Cfr. Toso A., *Commentaria Minora*, vol. II, pp. 86-37; Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones*, art. in *Jus Pontificium*, vol. XIV (1934) 58.

Article II.

The voyaging confessor and those who approach him for confession at a port of call

The jurisdiction which is granted to a voyaging confessor by virtue of canon 883 may be exercised not only on the ship but also, with certain limitations, in a port at which the ship may call in the course of the voyage. The second paragraph of canon 883 which deals with this contingency reads as follows:

> «Moreover, as often as the ship, in the course of the voyage, puts in at a port, the voyaging confessors (mentioned in paragraph I) may hear the confessions both of the faithful who for any reason board the ship and also of those who seek to confess to them when they incidentally go ashore, and they can validly and licitly absolve them even in cases reserved to the local Ordinary».

It will be noted that the provision of this second paragraph of canon 883 is considerably broader than the decree of 1906 which was the first general decree permitting voyaging confessors to hear confessions at a port of call The decree of 1906 permitted a properly approved voyaging confessor to hear the confessions of those who came aboard the ship at a port of call, and also of those who approached the voyaging confessor for confession while ashore, but in this latter case, only when there was no other or only one confessor in the locality, and the local Ordinary could not easily be reached. The present law of the Code permits a voyaging priest who enjoys the faculties of canon 883 to hear the confessions both of those who for any reason come aboard the ship at a port of call and of those who approach him for confession while he is making a brief visit ashore, — and that irrespective of the number of priests in the locality and of the fact that the local Ordinary may be easily accessible. The change brought in by the Code is manifestly an excellent one, for it relieves the voyaging confessor of the onerous responsibility of enquiring at each port of call how many priests are already in the locality and whether the local Ordinary may be easily reached.

1 Cfr. *Fontes,* vol. IV, p. 548, n. 1281.

The word 'obiter'

The term '*obiter*' used in the text of canon 888, § 2, denotes a call of brief duration made at a port in the course of a voyage. A more precise determination of the space of time intended by the legislator could give rise to a good deal of discussion, had not an authentic interpretation been given by the Code Commission in 1924. The Code Commission was asked:

1. « Whether the adverb '*obiter*' in canon 883, § 2, is so to be understood that a priest duly provided with faculties for confessions according to § 1 of the same canon, can, as long as the ship remains in port, go ashore, and there, in a church or chapel, hear the confessions of those who come to confession, and absolve them validly and licitly even from the cases reserved to the Ordinary of the place, for a whole day, or for two or three whole days if the ship remains that long in port.

2. Whether he could do the same for a whole day or for two or three days, when in order to continue the same journey he has to leave one vessel and take another, and has to wait at the latter port for that length of time.

8. Whether in these two cases he could do so beyond three days.

Reply To 1 and 2, in the affrmative; to 3, in the negative if the Ordinary of the place can be easily reached » [2].

The limit of three days.

It is important to observe that the limit of three days determined by the Code Commission refers to the exercise of jurisdiction by the voyaging confessor while *ashore.* A voyaging confessor who hears confessions on *board* the ship at a port of call will not be restricted by any time-limit[3].

Further, it would seem to be irrelevant that a voyaging confessor knows from the time his ship puts into port that it will be delayed there beyond three days ; he may use, while ashore for a period of three days, the faculties which he already possesses [4].

[2] Cfr. *A.A.S.,* vol. XVI (1924) 114.

[3] Cfr. Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1934) 65.

[4] Conte a Coronata M., *De Sacramentis,* vol. I, p. 368, n. 362; Abbö-Hannan, *The Sacred Canons,* vol. II, p. 13, note 44.

In reckoning the period of three days, the day of arrival in the port will not be counted, unless the arrival took place precisely at midnight[1].

Beyond three days.

In accordance with the authentic interpretation given by the Code Commission a voyaging confessor may hear confessions at a port of call for a period longer than three days, should the local Ordinary not be easily accessible. If the only means of communicating with the local Ordinary be by telephone or telegram, then recourse to him may be considered difficult[2]. And in positive and probable doubt on the question whether the local Ordinary may be easily reached, the voyaging confessor may hear confessions for a period beyond three days in the port of call [3].

Both Cappello and Coronata observe that should the ship be *unexpectedly* delayed in a port of call beyond three days, the faculties of canon 883 may be considered as being still valid for the hearing of confessions ashore [4]. But we do not think that the unexpected delay of the ship in a port of call will *of itself* prolong the faculties granted by canon 883. It will be necessary that the condition mentioned in the authentic interpretation of the Code Commission be also present, — namely, that the local Ordinary cannot be easily reached.

If a voyaging confessor, intending to remain at a port of call for a period longer than three days before continuing his voyage, makes application to the local Ordinary for faculties, but receives no reply from him, we think that such a confessor may hear confessions in the port even though the period of three days has elapsed [6]. For in such a

1 Can. 34, § 3, n. 2 and n. 3.

1 Cfr. Creusen J., *Commission d'interpretation,* art. in *Nouvelle Revue Theologique,* vol. LI (1924) 3G9; Conte a Coronata M., *o. c.,* p. 307, n. 360.

3 Can. 209.

4 Cappello F., in *De Poenitentia,* p. 268, n. 300, writes: «In dubio de facili aditu ad Ordinarium necne, sacerdos valide et licite audit confessiones; item si ex causa inopinata navis ultra tres dies in portu manere debeat aut sacerdos aliam expectare cogatur».

And Coronata, in *De Sacramentis,* vol. I, pp. 367-3G8, n. 360, writes: ‹ Si tempus permanentiae in portu inopinate ultra tres dies protrahatur, protrahitur etiam facultas a Codice concessa ».

6 Cfr. Ubach J., *Theologia Moralis,* vol. II, p. 262, n. 1995.

case the presumption that the local Ordinary could not easily be reached within three days stands in favour of the voyaging confessor, who therefore may continue to hear confessions in the port of call by virtue of the jurisdiction of canon 888.

The confessions of Religious women by a voyaging confessor in a port of call.

We have already seen that a priest who enjoys the faculties of canon 883, § 1, may hear the confession of any Religious woman who approaches him for confession in the course of the voyage ; and further, that thé faculties of canon 888, § 1, should be considered as independent of the prescriptions of canons 876 and 522 \ Do these same conclusions hold good for the confessions of Religious women by a voyaging confessor at a port of call ? Comparatively few authors raise the question, and among those who do discuss the problem, opinion is divided.

De Clercq contends that Religious women who approach a voyaging confessor for confession at a port of call may only be absolved if all the circumstances of canon 522 have been verified [2]. In other words the jurisdiction of canon 883, § 2, according to De Clercq, is granted for the confessions of secular persons and does not include the special jurisdiction necessary for the confessions of Religious women. De Clercq in support of his opinion draws attention to a difference in the wording of the two paragraphs of canon 883 ; in the first paragraph the phrase used by the legislator is ' *quorumlibet fidelium* ', while in the second,, the word ' *fidelium* ' is left unqualified.

Three other authors hold that the confessions of Religious women may be heard at a port of call by virtue of the jurisdiction of canon 888 *alone* [3]. We incline to favour this latter view, for the reason that the second paragraph of canon 883 should be considered as accessory to the first.

[1] Cfr. pp. 27-29.

[2] Cfr. De Clercq C., *Des sacraments,* p. 155.

[3] Cfr. Sobradillo A., *Tractatus de Religiosarum confessoriis,* p. 240 ; Marc C., Gestermann X. (C. SS. R.), *Institutiones Morales Alphonsianae* (Lugduni, 1946, editio vigesima), vol. II, p. 293, n. 1758 : Berutti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1934) 66.

Summary.

A voyaging priest who enjoys the faculties of canon 883 may hear the confessions of any of the faithful who may be voyaging with him. in the same ship.

In our view a priest who possesses the faculties of canon 883 may, without reference to canons 876 or 522, hear the confessions of Religious women voyaging with him on the ship.

A superior in an exempt clerical Religion may absolve or delegate other priests to absolve his subjects while on a sea voyage. The subjects of such a superior are : the professed members and novices of the Religion ; all those who for reasons of service, education, hospitality or ill-health live night and day in the house where the superior in question exercises his authority.

A voyaging priest who has been approved for confessions in accordance with the first paragraph of canon 883, and who has not yet reached the final destination of his voyage, may hear the confessions of all those who for any cause come aboard the ship at a port of call. The same confessor may at a port of call hear confessions ashore for a period of three days without having to apply for faculties to the local Ordinary. To hear confessions ashore at a port of call for a period exceeding three days, the voyaging confessor will need the faculties of the local Ordinary, unless thè latter cannot be easily reached.

It would seem probable that a voyaging confessor who possesses the faculties of canon 883 may, without reference to canons 876 or 522, absolve Religious women who may approach him for confession at a port of call.

Chapter III

THE EXTENT OF THE JURISDICTION OF A VOYAGING CONFESSOR

The question of the extent of the jurisdiction of a voyaging confessor will resolve itself into an examination of the powers which such a voyaging priest enjoys. We may classify these powers under three general headings : 1) powers of absolving ; 2) powers of dispensing ;

3) other powers proper to a priest who enjoys jurisdiction in the internal forum. It will not be our purpose to comment on these various powers in their entirety. We propose rather to state the powers, and then to add such commentary as we think to be particularly relevant to the exercise of these powers by a confessor on a sea voyage.

Article I.

The powers of absolving possessed by a voyaging confessor

In the internal sacramental forum a confessor may absolve from all sins and censures which have not been reserved by a competent superior. A sin or censure is said to be reserved when the jurisdiction to absolve from it has been "withheld or withdrawn by a competent superior[1]. Since the reservation of a sin or censure, then, consists in the witholding or withdrawal of jurisdiction, we will consider the question of the reservation of cases in relation to the sources of jurisdiction for the hearing of confessions on sea voyages. We will, therefore, examine firstly the question of what Reservations exist for a confessor who uses the faculties of canon 883; secondly, what reservations exist for a confessor who absolves a penitent on a sea voyage by virtue of jurisdiction possessed or delegated by a superior in an exempt clerical Religion; thirdly what Reservations exist for a priest who absolves a penitent by virtue of jurisdiction received through delegation by privilege[2].

1 Cfr. can. 803.

1 Canon 882 states that when there is danger of death, all priests, even though they are not approved for confessions, can validly and licitly absolve any penitent from any sin or censure, no matter how reserved and no matter how notorious it may be, even in the presence of a duly authorized priest, without prejudice to the prescriptions of canon 884 and cann 2252.

Canon 884 states that even in danger of death it is unlawful for a priest ' extra casum necessitatis ' to absolve one who has been his acomplice in a sin of impurity.

Canon 2252 states that when a penitent has been absolved by a simple confessor by virtue of canon 882, from a censure ' *ab homine* ' or a censure ' *specialissimo modo* ' reserved to the Holy See, he is obliged, under pain of re-incurring the censure, to have recourse to the authority who inflicted the censure, if it is question of an ' *ab homine* ' censure. If it is question of a censure ' *specialissimo modo* ' reserved to the Holy See recourse must be made to the Sacred Penitentiary or to a bishop or other authority competent to deal with the case. In all cases, the ' *mandata* ' given must be obeyed.

1. *Canon* 883 *and reserved cases,*

A) *Cases reserved BY a local Ordinary.*

The jurisdiction of canon 883 is delegated by law; it is altogether distinct from the jurisdiction conferred by any of the three local Ordinaries mentioned in the canon, though the previous possession of this latter jurisdiction is, as we have seen, required to qualify a priest to receive the jurisdiction delegated by law in canon 883. Bearing this fact in mind and also the nature of a Reservation, which is, as we have already noted, a *witholding* of jurisdiction, it becomes clear that whatever reserved cases exist for the confessor of canon 883 will have been set up by the Holy See and not by the local Ordinaries mentioned in the canon. For, since the Ordinaries mentioned in the canon do not confer the jurisdiction for the hearing of confessions on the voyage, they cannot limit or restrict that jurisdiction in any way. Hence it follows that once a voyage has begun, a priest who enjoys the jurisdiction of canon 883 may absolve from all reserved cases which have been set up by any local Ordinary, — even from those set up by the local Ordinary within whose territorial waters the ship may be[2].

This conclusion leads us to differ with those authors who, discussing the question of reserved cases in reference to canon 883, § 1, emphasize the fact that outside the territory of an Ordinary who has set up a Reservation, the Reservation does not exist [3]. We do not question the general

[1] The priest who enjoys the faculties of canon 883 may on a sea voyage absolve from all cases reserved in a Religion. Cfr. canon 519.

A voyaging confessor cannot, of course, absolve from an ' *ab homine* ' censure unless he possesses the necessary faculties. Cfr. canon 2247, § 2. A ' *latae sententiae* ' censure incurred through the violation of a particular precept may, in practice, be regarded as not reserved, unless it was otherwise stated by the superior who imposed the precept and attached the censure to the violation of it. For a discussion on this very disputed point see Roberti F., *De delictis et poenis* (Romae, 1944, editio altera), pp. 270-274 and 338-344; also Gomez S., *De censuris in genere* (folia lithographica, Romae, 1952), pp. 33-35.

[1] Cfr. Ubach J., *Theologia Moralis,* vol. II, p. 268, n. 2012 ; Vermeersch A., *Theologia Moralis* (Roma, 1948, editio quarta), vol. III, p. 267, n. 420 ; Cappello F., *De poenitentia,* p. 269, n. 300 ; Jombart E., *Confesseur* art. in *Dictionnaire de droit canonique,* vol. IV, col. 15; O' Neill P., *Absolution al sea,* art. in *The Irish Ecclesiastical Becord,* vol. XXXIX (1932) 531.

rule that a case reserved by a local Ordinary ceases to be reserved outside his territory[1], but we prefer to say that the principal reason why the voyaging confessor of canon 883 will not be affected by diocesan Reservations is not merely because he may be outside the territory of any diocese, but because his jurisdiction is not diocesan jurisdiction› and therefore at *no* time during the voyage will he be affected by reserved cases which a local Ordinary may have set up. We think it important to emphasize the point we have just made, for otherwise it cannot be satisfactorily explained why cases reserved BY a local Ordinary would not exist for a confessor who hears confessions when the ship is within the territorial waters of that Ordinary. For the principle ' *extra territorium reservantis reservatio non urget* ' would not then apply.

It is explicitly stated in the second paragraph of canon 883 that the voyaging confessor may at a port of call absolve from all cases reserved to the local Ordinary of that place. Considering the source of the voyaging confessor's jurisdiction, this statement should be regarded,, we think, as merely declaratory.

B) Cases reserved by a military Ordinary.

It may be asked whether on a sea voyage a naval military chaplain could absolve his subjects from reserved cases which the military Ordinary might have set up. We think that he may do so. For earlier we gave it as our opinion that a priest who is approved for the hearing of confessions of military personnel by a military Ordinary will qualify for the reception of the faculties of canon 883 on a sea voyage. It would follow then that when such a chaplain is on a sea voyage with other military personnel, he will enjoy jurisdiction for the hearing of the confessions of the aforesaid personnel from two sources : 1) from the jurisdiction granted him by the military Ordinary; 2) from the jurisdiction delegated by law in canon 883. Consequently, on the actual voyage and at a port called at during the voyage the military chaplain will not be affected by the Reservations set up by the military Ordinary. In a word, whenever a naval military chaplain may use the faculties of canon 883, he will be unrestricted by the Reservations which the military Ordinary may have set up.

1 Cfr. can. 900.

C) Cases reserved TO Ordinaries by the Code of Canon Law I.

Some authors contend that when a ship is on the *high seas* cases reserved by law to Ordinaries are no longer reserved 2. The opinion as thus stated does not seem to us to be quite correct. For among the censures reserved by law to Ordinaries there are three whose Reservations would not, we think, cease when the ship is on the high seas. They are: 1) the censure incurred by one who lays violent hands on a priest, cleric or Religious person of either sex; for it is expressly stated that this censure is reserved to the delinquent's *proper* Ordinary 3; 2) the ' *latae sententiae* ' censure incurred by a member of an exempt clerical Religion who is a ' *Religiosus apostata* ' this censure is reserved to the delinquent's major superior 4; 3) the ' *latae sententiae* ' censure incurred by a ' *Religiosus fugitivus* ' is likewise reserved to the delinquent's major superior 5.

Apart from these three cases, we agree with the opinion that cases reserved by law to Ordinaries are no longer reserved when the ship is on the high seas. For, as Roberti points out, these cases cannot be said to be reserved in such circumstances to the Roman Pontiff, because a penal reservation is subject to a strict interpretation and should not be extended by analogies®.

But what is to be said about these cases when the confessor of canon 883 hears confessions while the ship is within *territorial waters* or while he is *ashore* at a port of call ?

The phrase *a casibus Ordinario loci reservatis* used in canon 883, § 2, in reference to the voyaging confessor's power of absolving from reserved cases at a port of call is a generic expression. Consequently a number of authors have held that when hearing confessions at a port of call a voyaging confessor may absolve not only from cases reserved *BY* the local Ordinary, but also from those reserved *TO* him by the Code

1 In this section, therefore, we will be dealing with Reservations wliich have been set up by the Holy See.

3 Cfr. Roberti F., *De delictis et poenis,* p. 330, n. 203 ; Cappello F., *De censuris,* (Taurini, 1950, editio quarta), p. 60, n. 66.

3 Cfr. can. 2343, § 4.

4 Cfr. can. 2385.

3 Cfr. can. 2386.

• Roberti F., *o. c.,* p. 337, n. 293.

of Canon Law [2]. Other authors hold that only cases reserved *BY* the local Ordinary are intended[2]. Were it not for certain documents promulgated by the Holy See in recent years, we would favour the first view, for the reason that no distinction is made by the legislator in canon 883, § 2, as regards the reserved cases, — whether they are reserved by the Ordinary himself or by the Code of Canon Law.

But certain recent documents emanating from the Holy See prove, we think, incontestably that the latter view, — namely that the phrase *a casibus Ordinario loci reservatis* used in canon 883, § 2, refers only to cases reserved by the Ordinary himself and not to those reserved to him by law, — is the correct one. For in the «*Normae pro spirituali emigrantium cura gerenda*» promulgated by the Holy See in 1952 it is stated that chaplains on emigrant ships will be given special faculties by the Sacred Consistorial Congregation [3]. In 1954 these special faculties were promulgated and among them is found the following:

> «9°. (Chaplains and their Directors possess) the faculty of absolving ‡ *servatis de jure servandis* ' during a sea voyage any penitent from the censure which those incur who, according to the terms of canon 2350, § 1, procure abortion» [4].

1 Cfr. Kelly J., *The jurisdiction of the confessor,* p. 183; Jombart E., *Confesses,* art. in *Diclionnaire de droit canonique,* vol. IV, col. 15; Vermeersch A., *De canone seu jurisdictione in mari,* in *Periodica de re canonica et morali,* vol. XIX (1930) 119-120 ; Lodos F. (S. J.), in *Sal terrae,* vol. XXXVI (1948) 309-310.

a Cfr. Jone H., *Commentarium,* vol. II, p. 123; Berruti C., *De jurisdictione quae ipso jure delegatur ad audiendas fidelium confessiones,* art. in *Jus Pontificium,* vol. XIV (1934) 06.

3 Cfr. *A.A.S.,* vol. XLIV (1952) 698, n. 25, a Capellani, *firmo praescripto can.* 883 *C.I.C.,* peculiaribus normis ac *facultatibus* a Sacra Congregatione Consistoriali instruentur».

4 Cfr. *A.A.S.,* vol. XLVI (1954) 417, where «9°. Facultas absolvendi, itinere maritimo perdurante, poenitentes quoslibet a censura quam ad tramitem can. 2350, § 1, C.I.C. abortum procurantes incurrunt, servatis de jure servandis».

This same faculty is found among the *Normae et facultates pro sacerdotibus . in spiritualem maritimorum curam incumbentibus.* Cfr. *A.A.S.,* vol. XLVI (1954) 251, n. 9.

In both sets of faculties already referred to we also find the following : « Facultas absolvendi, maritimo itinere perdurante, servatis de jure servandis necnon ceteris quae a Sacra Poenitentiaria huiusmodi in adjunctis imponi solent, et in casibus in quibus, iuxta normas in Codice Juris Canonici can. 2314, § 2, statutas, Ordinarius ipse absolvere posset, quoslibet poenitentes, quavis ratione in navi versantes, a cen-

Now if the power of absolving from this censure (which is one reserved by law to Ordinaries) is given to chaplains on emigrant ships as one of their *special* faculties, we must conclude that ordinarily a priest possessing the faculties of canon 883 does not enjoy the power to absolve from censures reserved by law to Ordinaries, — at least when the ship is within territorial waters or the confessor hears confessions ashore at a port of call[1].

In what circumstances may the confessor of canon 883, while ashore or within territorial waters, absolve from cases reserved by law to the local Ordinary ?

In accordance with the terms of canon 2254 a confessor may absolve from ' *latae sententiae* ' censures in more urgent cases, that is, if the censure cannot be observed without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the length of time necessary in order that the local Ordinary or other competent authority be approached. The confessor who uses the faculty of this canon must impose on the penitent the obligation of making recourse to a bishop or other competent superior endowed with the faculty of absolving from the censure, and of obeying the ' *mandata* ' given. Unless grave inconvenience excuses, this recourse must, under pain of re-incurring the censure, be made within a month, at least by letter and through the confessor.

Ordinarily a confessor should make the recourse to the competent authority on behalf of his penitent who will, in many cases, be able to return to the confessor to receive the ' *mandata* '. The confessor of canon 883 will often find himself in circumstances when he will not see

suris et poenis quibus detinentur ob apostasiam, haeresim vel schisma, exceptis tamen haereticis haereses inter fideles e proposito disseminantibus, tam nemine audiente vel advertente quam coram aliis extematas, eorumque abiurationem, iuridice peractam, recipiendi». Cfr. *A.A.S.,* vol. XLVI (1954), pp. 251 and. 417.

[1] Fcrretto J., in an article entitled *In normas et facultates pro sacerdotibus in spiritualem navigantium maritimarum et emigrantium curam incumbentibus adnotationes,* in *Apollinaris,* vol. XXVIII (1955) 75-103, asserts that the reason why the chaplain confessor is empowered to absolve from the censure of canon 2350, § 1, is that on a sea voyage the Ordinary will generally not be accessible. We are not inclined to accept this reason, for does not the same difficulty exist when there is question of the other censures reserved by law to an Ordinary, and yet the legislator did not give special faculties to absolve from these cases ? We rather think that the reason is that the crime mentioned in canon 2350, § 1, is of more frequent occurence than those others to which the law has attached a penalty reserved to an Ordinary.

his penitent again. He should, therefore, either obtain the address of his penitent to whom he may forward the '*mandata*', or if this be not convenient, he should instruct the penitent how to make recourse himself. Should it be morally impossible for both confessor and penitent to make the necessary recourse, then the confessor may dispense from the obligation of making recourse. He should, however, impose on the penitent whatever obligations the law may demand in the particular case. He should also impose a proportionate penance together with the obligation of making adequate satisfaction, in such a way that if the penitent fails to comply •with these injunctions within a space of time determined by the confessor, he will incur the same censure once more [1].

In conclusion it may be observed that very often on a sea voyage it will be difficult to ascertain whether the ship is within territorial waters or on the high seas. In cases of doubt the Reservation is to be considered as no longer existing[2].

D) Cases reserved to the Holy Sec.

The Code of Canon Law reserves one sin *'ratione sui'* to the Holy See, -namely, the false accusation by which an innocent priest is accused before ecclesiastical judges of the crime of sollicitation[3]. Hence even though the censure of canon 2363 which is attached to this sin were not incurred, the sin itself would still be reserved. When this sin is submitted to the confessor of canon 883, he may only absolve from it, if in accordance with the terms of canon 900, the reservation has ceased [4].

1 Cfr. can. 2251, § 3.

2 Can. 2245, § 4. Regular confessors may by virtue of their privileges absolve from all cases reserved *by law to local Ordinaries.* Cfr. Schaefer, T., *De religiosis,* p. 707, n. 1334.

3 Can. 804.

4 Canon 000 reads as follows:

«Quaevis reservatio omni vi caret: 1° Cum confessionem peragunt sive aegroti qui domo egredi non valent, sive sponsi matrimonii ineundi causa ; 2° Quoties vel legitimus Superior petitam pro aliquo determinato casu absolvendi facultatem denegaverit, vel, prudenti confessarii judicio, absolvendi facultas a legitimo Superiore peti nequeat sine gravi poenitentis incommodo aut sine periculo violationis sigilli sacramentalis; 3° Extra territorium reservantis, etiamsi dumtaxat ad absolutionem obtinendam pocnitens ex eo discesserit».

In 1925 the Code Commission was asked:

Censures which are reserved to the Holy See admit of varying degrees of reservation according as they are '*simpliciter* \ ' *speciali* ' or '*specialissimo modo'* reserved. The confessor of canon 883 may absolve from these censures, even those ' *specialissimo modo* ' reserved, within the terms of canon 2254. Hence what we have already written apropos of this canon in the previous section of this article will find application here. Two special observations, however, must be added. Firstly, the voyaging confessor may not absolve, by virtue of canon 2254, from the censure incurred by an attempted marriage (even a civil one) on the part of a priest who, though he is disposed for absolution, is unable to give up residence with the woman involved[1]. Secondly, in the case of absolution from the censure of canon 2367 (that is, the censure incurred by a priest who absolves or pretends to absolve his accomplice '*in peccato turpi* '), recourse is never considered as morally impossible for the priest penitent concerned[2].

2. *Powers of absolving possessed or delegated by a superior in an exempt clerical Religion,*

A superior in an exempt clerical Religion may in the course of a voyage hear the confessions of his subjects or delegate another priest to do so. For purposes of our question we will assume that neither the •superior nor the priest delegated by the superior enjoy the faculties of canon 883. What power does such a confessor possess ?

Firstly, he may not absolve from cases reserved by the Superior General (or the Abbot, if there is question of a member of a monastery '*sui juris* '), unless he possesses the requisite faculties. Secondly, he may absolve from all cases reserved *BY* a local Ordinary, the reason

«1°. Utrum ' *quaevis reservation,* de qua can. 930, sit tantum ratione peccati an etiam ratione censurae.

2°. Utrum canon 930 agat de reservatione casuum ab Ordinariis tantum an •etiam a Sancta Sede statuta.

Responsum: Ad Ium Affirmative ad primam partem, negative ad secundam. Ad 2um Negative ad primam partem, affirmative ad secundam». Cfr. *A.A.S.,* vol. XVII (1925) 583. It should be observed, however, that the third part of canon *900 will never be applicable to Papal reserved cases.

1 Cfr. *A.A.S.,* vol. XXIX (1937) 283.

a Cfr. can. 2254, § 3.

being that the jurisdiction used by the confessor is independent of that conferred by a local Ordinary, and therefore cannot be restricted by the latter. Thirdly, he may not absolve from cases reserved by law to an Ordinary, unless he has the requisite faculties or the case comes within the terms of canon 2254. Since the jurisdiction possessed or delegated by a Religious superior for the confessions of his subjects is personal jurisdiction, we think that these Reservations will exist for the confessor even when the ship is on the high seas. Fourthly, unless the confessor enjoys special faculties, he may not absolve from cases reserved to the Holy See, and therefore what we already have written apropos of these cases will hold good here also.

3. *Power of absolving delegated by virtue of privilege.*

Cardinals may absolve from all sins and censures with the exception of those censures which are '*spedalissimo modo*' reserved to the Holy See and those which are annexed to the revelation of a secret of the Holy Office x. A priest chosen by a Cardinal or Bishop as a confessor for himself or for his '*familiares*' receives '*ipso jure*' the same wide faculties, which, however, are subject to the exception already mentioned 2.

Article II.

Powers of dispensing by a voyaging confessor

(1) *Power of dispensing from irregularities.*

The priest who on a sea voyage enjoys jurisdiction for the hearing of confessions is empowered to dispense from all irregularities arising from an occult crime, with the exception of those arising from the crime of perpetrating or co-operating in the perpetration of voluntary homicide, or procuring abortion, when the effect has followed, or from any other crime when the case has already been brought to the judicial forum. The confessor, however, can use this power only in more urgent cases in which the Ordinary cannot be approached, and there is otherwise danger of grave damage or infamy for the delinquent. Even in this case

1 Can. 239, § 1, n. 1.
3 *Ibid.*, n. 2.

the confessor can dispense only for the licit use of Orders already received, but not for the further reception of Orders

In order to exercise this power of dispensation the confessor must enjoy jurisdiction to hear the confession of the cleric or priest who seeks the dispensation [2]. Very many authors hold that this power of dispensation may be exercised by the confessor in the *extrsL-sacramental* forum [3]. But since both the words '*confessor*' and '*poenitens*' are used in the same paragraph, we favour the view that the faculty of dispensing from irregularities should be exercised by the confessor in the *sacramental forum* [4].

On a sea voyage the case of a priest who, having incurred an irregularity arising from an occult crime, cannot omit the celebration of Mass without danger to his reputation, could be described as an urgent case when a confessor on the boat could give the necessary dispensation. Nor does any subsequent recourse to an Ordinary exist, since no mention of such recourse is made in canon 990, § 2.

Lastly, Regular confessors and confessors in those exempt clerical Religions which enjoy the privileges of Regulars may dispense in the internal forum *all* irregularities arising from occult crimes [5].

(2) *The power of dispensing from the juridical form of matrimony and from matrimonial impediments.*

The Code of Canon Law confers on all confessors powers of dispensing in special circumstances from the juridical form of matrimony and from certain matrimonial impediments. The circumstances when a confessor may exercise these powers of dispensation may be classified

[1] can. 990, § 2.

[2] Cfr. Wouters L. (C.SS.R.), *Manuals Theologias Moralis,* Brugis, 1932-1933), vol. II, p. 485, n. 644; Regatillo E., *Jus sacramentarium,* p. 537, n. 977; Conte A Coronata, *De sacramentis,* vol. II, p. 213, n. 165; Abbo-Hannan, *The Sacred Canons,* vol. II, p. 142.

[3] Cfr. Wouters L., *0. c.,* p. 485, n. 644; Conte A Coronata M., *0. c.,* p. 213,. n. 165; Regatillo E., *o. c.,* p. 537, n. 977; Vermeersch-Creusen, *Epitome,* vol. II, (editio séptima, 1954), p. 182, n. 261.

[4] Cfr. Blat. A., *Commentarium,* vol. III, p. 449, n. 366; Ubach J., *Thsologia Moralis,* vol. II, p. 416, n. 2360. Cappello requires that the exercise of the faculty of dispensation from an occult irregularity by a confessor should have *aliquem nerum... cum confessions.* Cfr. *De Sacra Ordinatione* (Taurini, 1951, editio tertia),. p. 390, n. 514.

[5] Cfr. Prummer D., *Manuals Thsologias Moralis,* Friburgi Brisgoviae, 1923, editio altera et tertia), vol. II, p. 351, n. 426; Abbo-Hannan, *The Sacred Canons,*. vol. II, p. 142, nota 113.

under two headings according as the dispensation is given in danger of death or outside the danger of death.

A) *In danger of death.*

When the danger of death is imminent and when the local Ordinary cannot be approached, a confessor, for the peace of conscience of one of the parties, or if the case warrants it, for the legitimization of offspring, may dispense 1) from the juridical form of matrimony, 2) from all impediments of ecclesiastical law, with the exception of the impediment arising from the sacred Order of Priesthood and of the impediment arising from affinity in the direct line, if the marriage has been consummated. The power of dispensation here mentioned holds good for the internal forum, and can only be exercised by the confessor in the act of sacramental confession

When the ship is on the *high seas,* and therefore outside thé territory of any local Ordinary, the question of difficulty in approaching a local Ordinary does not arise, and recourse to the Holy See will in such circumstances be virtually impossible. Should the confessor foresee that within a short time the ship, which at the moment is on the high seas, will reach a port where the local Ordinary may be approached, we do not think that in this case he is obliged to wait until the port is reached. For at the moment when the confession is heard, the penitent is in danger of death, and no local Ordinary can be approached.

When the ship is within *territorial waters,* then the confessor must form a prudent judgment on the question of difficulty of approach to the local Ordinary[2].

1 Cfr. Can. 1044. According to the more probable opinion, the confessor may dispense from the impediments mentioned whether they be public or occult. Cfr. Vlaming T.-Bender L. *Praelectiones juris matrimonii* (Bussum 1950, editio quarta), pp. 309-310.

3 In 1922 the Code Commission was asked:

a Utrum in casibus, de quibus in canonibus 1044 et 1045, § 3, censendum sit Ordinarium adiri non posse, cum nec per litteras, nec per telegraphum sec per telephonum ad cum recurri potest; an etiam cum solum per litteras impossibile est, licet per telegraphum vel telephonum id fieri possit.

Responsum: Negative ad Iam partem, affirmative ad 2am, seu ad effectum, de quo in cann. 1044, et 1045, § 3, censendum esse Ordinarium adiri non posse, si nonnisi per telegraphum vel telephonum ad eum recurri possit». Cfr. *A.A.S.*, vol. XIV (1922) 602.

B) *Outside the danger of death,*

A voyaging confessor may, even outside the danger of death, dispense from all matrimonial impediments of ecclesiastical law, with the exception of the impediments mentioned above, if the impediment has been discovered when everything is prepared for the marriage, and the marriage cannot be deferred until the local Ordinary is approached without probable danger of grave harm or of the violation of a secret. The confessor may use this power only in the act of sacramental confession, and the dispensation is valid only for occult cases[1]. The same faculty of dispensation, with the same restrictions already mentioned, may be availed of by a confessor, if there is question of the convalidation of a marriage, for which there is not sufficient time to approach the competent authority for the necessary dispensation, and there is danger in delay[2].

According to the more probable opinion power to dispense from the juridical form is not included in this faculty[3].

As we have already remarked, the confessor's power of dispensing from matrimonial impediments outside the danger of death is restricted to occult cases. And by an occult case may be understood an impediment, whether public or occult, which has not been divulged and whose divulgation in the future will, considering the circumstances, not easily take place [4].

Both in danger of death and in urgent cases outside the danger of death, the confessor must exercise his power of dispensation in the act of sacramental confession. The person desiring the dispensation, therefore, must make a confession to the priest with a view to obtaining

[1] Can. 1045, § 3.

[2] Can. 1045, § 2.

[3] Cfr. Gasparri P., *Tractatus canonicus de matrimonio,* (Romae, 1932, editio nova ad mentem Codicis Juris Canonici), voi. I, p. 234, n. 399; Vlaming-Bender, o. c., pp. 306-307; Vermeersch-Creusen, *Epitome,* voi. II, p. 218, n. 309.

[4] Cfr. Vlaming-Bender, *Praelectiones juris matrimonii,* pp. 120-123 and, p. 307. In 1927 thè Code Commission was asked:

« An verba *pro casibus occultis* canonis 1945, § 3, intelligenda sint tantum de impedimentis matrimonialibus natura sua et facto occultis, an etiam natura sua publicis et facto occultis.

Responsum: *Negative* ad primam partem, *affirmative* ad secundam. Cfr. *A.A.S.,* voi. XX (1920) 61.

absolution. The fact, however, that the confessor may have to deny absolution will not mean that he cannot grant a dispensation by virtue of canon 1044 or canon 1045, § 81.

Article III.

Other powers proper to a voyaging confessor

(1) *The power of commuting the conditions for gaining an Indulgence.*

A voyaging confessor enjoys the faculty of commuting the works enjoined for the gaining of an Indulgence into others, in the case of the faithful who, because of some legitimate impediment cannot perform the works prescribed2.

Authors are agreed that this faculty may be exercised both in the internal sacramental forum as well as in the extra-sacramental forum. But there is not universal agreement on the question as to whether it is necessary that the priest should actually have jurisdiction to hear the confession of the person who seeks the commutation 3. Since there is question of granting a '*commutatio*', we think that it is necessary' that the priest should actually possess jurisdiction to hear the confession of the person concerned.

This faculty does not permit the confessor to dispense from the pious work itself to which the indulgence is attached, but merely from the *conditions* which have been added as a requisite for the gaining of the Indulgence.

1 Cfr. Vlaming-Bender, *o. c.*, p. 303.

1 Cfr. can. 935.

3 The affirmative opinion is defended by Gougnard A., *Tractatus de Indulgentiis* (Mechliniae, 1938, editio quinta), p. 47, and also by Conte a Coronata M., *De sacramentis,* vol. I, p. 580, n. 538. The negative opinion is supported by Abbo-Hannan, *The Sacred Canons,* vol. II, p. 57.

4 In 1940 the Code Commission was asked: a Whether confessors, in virtue of canon 935, can commute the visit to a particular church, even for the gaining of the indulgences known as '*toties quoties*' and of the *Portiuncula. REPLY.* In the affirmative. Cfr. *A.A.S.,* vol. XXXII (1940) 62.

(2) *The power of suspending the obligation of observing a vindictive penalty.*

A voyaging confessor in the sacramental forum may suspend for a penitent the obligation of observing a '*latae sententiae*' vindictive penalty already incurred. There must, however, be question of an urgent occult case, in which the penitent cannot observe the penalty without bringing infamy on himself or giving scandal to others. In suspending the obligation of observing the penalty the confessor must impose on the penitent the onus of having recourse to and accepting the '*mandata*' of the Sacred Penitentiary or of a bishop who has the faculty to dispense from the vindictive penalty. This recourse must be made within a month. When the recourse is morally impossible, the confessor has the power of dispensing completely from the penalty, according to the norm set down in canon 2254 and about which we have already commented[1].

Summary.

The priest who on a sea voyage enjoys the faculties of canon 883 may, as soon as he commences his voyage and until he has reached his destination, absolve, even at a port of call, from all cases *reserved BY a local Ordinary.*

At no time during the voyage may he absolve from cases reserved *io the Holy See,* unless he has received from the law or the competent authority power to do so.

When the ship is on the *high seas* the same confessor may in our opinion absolve from cases (with three exceptions however) *reserved by law TO Ordinaries.* When the ship is within territorial waters, he may only do so if he possesses the requisite faculties from the law or from the competent authority.

Besides powers of absolution, the voyaging confessor enjoys also the *power of dispensing* from irregularities according to the terms of canon 990, § 2 ; the power of dispensing from the juridical form of matrimony and from certain matrimonial impediments according to the terms of canon 1044 and canon 1045, § 3. He enjoys the power of commuting to other works the conditions for gaining an Indulgence according to the terms of canon 935. And lastly, he may, according to the terms of canon 2290, suspend the obligation of observing a '*latae sententiae*' vindictive penalty.

1 Cfr. can. 2290.

CONCLUSION

A priest on a sea voyage may perhaps already enjoy by virtue of his office, special delegation or privilege, jurisdiction to hear the confessions of certain of his fellow-voyagers. But to facilitate still further the hearing of confessions on sea voyages the Supreme Legislator in canon 883 provides all voyaging priests with the necessary jurisdiction, on the condition that they have already received the faculty of hearing confessions from at least one of three local Ordinaries designated in the canon.

In our view, the jurisdiction conferred by canon 883 is distinct from, though for its acquisition is dependent on, the previous possession of local or diocesan jurisdiction.

Possessing the jurisdiction of canon 883 a voyaging confessor may hear the confessions of any of the faithful voyaging with him in the same ship, — and of those who may approach him for confession when he goes ashore for a short period at a port of call. And since the jurisdiction of canon 883 is not delegated by a local Ordinary, but rather by the Holy See, it follows that in the exercise of it the voyaging confessor will be affected only by those Reservations which the Holy See has established.

«Qui descenderant navibus in mare... hi viderunt opera Domini et mirabilia ejus in pelago» (Ps. CVI).

APPENDIX

THE FACULTIES TO HEAR CONFESSIONS ON AIR JOURNEYS

History of the question.

When the Code of Canon Law was being drafted, the question of jurisdiction for the hearing of confessions on air journeys was not considered one of sufficiently general importance to merit special mention in the new legislation. But as years and science advanced, and air travel became more common, the question of the source of jurisdiction for the hearing of confessions on air journeys came up for discussion. Cappello, for instance, in earlier editions of '*De poenitentia*' suggested that confessions could be heard on an air journey by virtue of canon 882 which grants to all priests jurisdiction to absolve those in danger of death[1].

[1] Cappello F., *De poenitentia* (Romae 1029, editio altera), p. 326, n. 413.

Certainly in the early years of air travel recourse to canon 882 may have been justified, but when air travel became relatively safe, it could no longer be said that all air journeys constituted danger of death for those undertaking them.

Since a certain analogy exists between a journey by air and a journey by sea, authors began to look to canon 883 as a source from which jurisdiction for the hearing of confessions on air journeys might be obtained [1]. Yet however perfect may be the analogy between an air journey and a sea voyage, the opinion that confessions could be heard on an air journey by virtue of canon 883 was merely a *private* opinion. And so in the years proceeding 1947 many local Ordinaries petitioned the Holy See that the provisions of canon 883 be officially extended to air journeys. Yielding to these requests Pius XII in a «*Moiu Proprio*» dated 16 December 1947 extended the provisions of canon 883 to air journeys.

The 'Motu Proprio' of 1947.

The text of the *Motu Proprio* issued in 1947 reads as follows: «As some Ordinaries of places have indicated to this Apostolic See that it would be opportune that the provisions of canon 883 of the Code of Canon Law, giving to priests who undertake a sea journey the faculty to hear confessions, be extended to journeys by air. We in our zeal for souls, realizing that these journeys are to-day daily growing in frequency, and desiring that the faithful have the benefit which would accrue for the sanctification of their souls from granting the said wish of the Ordinaries, receive their petition with great sastisfaction to Our own heart, and do of our own motion, from certain knowledge and with mature deliberation, out of the fulness of Apostolic power, establish and decree that the provisions of canon 883 of the Code of Canon Law regarding the faculty of hearing confessions on the part of priests taking a sea journey, shall apply and be extended, with the appropriate adjustment of the clauses to fit the case, to priests who make a voyage by air.

1 Cfr. Regatillo E., *Jus sacramentarium* (2 voi. Santander, 1945), voi. I, p. 246, n. 438; Bertrams W., *De facilitate audiendi confessiones in ilinere aereo,* art. in *Periodica de re canonica et morali,* voi. XXXIV (1945) 32-41.

What We have decreed by this Our Apostolic Letter given of Our own motion, We desire to remain firm and valid forever, all things to he contrary notwithstanding; and moreover We order that these provisions shall *go* into effect at the same time that this Apostolic Letter is placed in the Official Commentary called the ʻ*Acta Apostolicae Sedis* '.

Given at Rome, from Saint Peter's, the 16th day of December in the year nineteen hundred and forty-seven, the ninth of Our Pontificate »

Interpretation of the Motu Proprio.

The ʻ *Motu Proprio* ', then, extends to air journeys with appropriate adjustments to fit the case the provisions of canon 883. It may be asked what are the appropriate adjustments (in the Latin text *consentaneis quidem clausulis)* contemplated by the legislator. The interpretation commonly given to this phrase by commentators is that the jurisdiction granted for confessions on air journeys is subject to the same conditions and limitations mentioned in canon 883 2. Consequently what we have already written concerning the delegation, exercise and extent of the jurisdiction of a confessor on a sea voyage will hold good also for priests who wish to hear confessions in the course of an air journey.

The term ʻ iter aerium '

Wat is the meaning of the term ʻ *iter aerium*ʼ in the text of the *Motu Proprio ?* Firstly, there must be question of a real *iter,* and consequently a flight made with the object of circling over the airport or neighbouring city and then returning to the airport whence the plane took off could not be described as a true ʻ *iter aerium 3* '.

1 Cfr. *A.A.S.,* vol. XL (1948) 17. The English translation given above is taken from Bouscaren's, *The Canon Law Digest,* vol. III, pp. 376-377. In his translation-Bouscaren uses the expression ʻ ocean journey ' as a rendering for the Latin ʻ *iter maritimum* '. We think that ʻ sea journey ʻ is a more faithful translation of the Latin expression, and so have adopted it.

1 Cfr. Rossi J., *Annotations,* art. in *Apollinaris,* vol. XXII (1949) 31 ; Pujol, ras H., *Adnotations,* art. in *Commentarium pro Religios* , vol. XXVII (1948) 16.

• Cfr. Lodos F., in *Sal Terrae,* vol. XXXVI (1948) 309-310; Delchard A., in *Nouvelle Revue Theologique,* vol. LXX (1948) 530.

Granted that there must always be question of a true '*iter aerium*' before the faculties of canon 888 may be availed of, it may be asked whether the faculties are valid for *any* air journey, however short. It is certain that the opinion of those authors who require that there be question of a journey of one day's duration in order that the faculties of canon 883 be available for voyaging priests is not applicable to air journeys. For such an opinion would unduly restrict the use of the concession of the *Motu Proprio*. Indeed commentators would seem to be agreed that the time-duration of the air journey is not a factor that need be considered at all in the present question[1]. Lodos, while admitting that the time-duration of the air journey is irrelevant to the question, requires that the journey be one in which a great distance is covered[2].

For our own part we think that consideration of time and distance are not relevant to the interpretation of the term '*iter aerium*' in the *Motu Proprio*; and hence with the sole proviso that there be question of a true *iter aerium* and not of a flight made merely to circle over the area of the airport or neighbouring city, we think that the faculties of canon 888 may be availed of by any priest who is travelling in a plane and who has been approved for the hearing of confessions in accordance with the terms of that canon.

Richard Mc Cullen

1 Cfr. Delchard A., *I. c.t* p. 530.
2 Cfr. Lodos F., *I. c.*, p. 810.