

M. O'REILLY SANCTIONS IN THE CHURCH.
S.P.V. OTTAWA 1992-93

The Application of Penalties

86

first instance (cc. 1419 and 1427), there is a right to take an appeal, observing the proper formalities, to the competent tribunal of second instance, as determined by cc. 1438-1439 and even a possibility of appeal to the Roman Rota (cc. 1443-1444).

- ii) Where a penalty has been imposed or declared by a decree of a competent superior, there is the right of having recourse to the competent hierarchical authority against such a penalty. Against a decree of the bishop the competent authority to receive the recourse would be the Congregation in the Roman Curia which is competent in the matter under recourse. If the person having recourse is not satisfied with the decision of the Congregation in question, there is still the possibility of having recourse on a point of law: was the law violated in the procedure or in making the decision¹² and the Signatura considers not merely the positive ecclesiastical law but also the natural law on such matters as the right of defence and fairness (equity) in deciding. Where a canonical penalty has been imposed by a provincial superior in a clerical institute of pontifical right, recourse can be made to the superior general, and eventually to the Congregation for Consecrated Life and finally to the Signatura.
- iii) Whether there be question of an appeal or a recourse, the sentence or decree is suspended until the outcome of the appeal or recourse is finally settled. This is a big change from the 1917 Code, where appeal or recourse normally was not *in suspensivo* but only *in devolutivo*, that is the decision had to be carried out or the penalty observed in the meantime.

Appendix

There may be reason to remove a cleric from the exercise of the sacred ministry and the imposition of sanctions may not be possible, for one reason or another v.g. because a criminal or penal action is extinguished by prescription (cc. 1362-1363), the Ordinary could have recourse to administrative actions of a non-penal nature, such as prescribing that the priest only celebrate Mass privately, that is not scheduled regular Masses (cf. c. 903), withdraw his faculties to preach (c. 764), withdraw faculties to hear confessions (c. 974, §2), transfer or remove from office, according to the norms of law (cc. 190-195), providing however for the worthy sustenance according to c. 281.

¹² Ap. Const. *Pastor Bonus*, art. 123.