

**CANONICAL PROCEDURE
IN DISCIPLINARY AND
CRIMINAL CASES OF
CLERICS**

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Canonical procedure in disciplinary and criminal cases of clerics by Francis Droste & Sebastian G. Messmer

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FRANCIS DROSTE & SEBASTIAN G. MESSMER

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CANONICAL PROCEDURE

IN

DISCIPLINARY AND CRIMINAL
CASES OF CLERICS.

*A Systematic Commentary on the "Instructio
S. C. Epp. et Reg., 1880."*

BY THE

REV. FRANCIS DROSTE.

LL

EDITED BY THE

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EDITOR'S PREFACE.

WHEN in the year 1880 the S. Congregation of Bishops and Regulars sent to the Bishops of Italy the now famous Instruction on the summary procedure in disciplinary and criminal causes of clerics, it soon became evident that the reform thus initiated would not remain confined to Italy, but would gradually find its way to other countries. Anticipating this, the Rev. FRANCIS DROSTE, a priest of the diocese of Paderborn, wrote a short and simple commentary on the new procedure, which he designed more for practical use than legal speculation. In order, however, that the laws themselves on which the several articles of the Instruction are based, may be sufficiently understood, the author gives in the first part a short exposition of ecclesiastical jurisdiction and its judicial organs, while in the Introduction he determines the place occupied by the Instruction in the public and historical law of the Church.

The Third Plenary Council of Baltimore in 1884, complying with the request of the S. C. de Prop. Fide, adopted the same Instruction¹ with a few slight modifications (which may be seen at a glance in the *Appendix*). It is a mere question of time when these same provisions shall be extended to all English-speaking missionary countries; and as an English commentary on the Instruction was desired, a German priest of the diocese of Covington, Ky., translated Father DROSTE's little book. To be of greater service, however, the work needed adaptation to conditions for which it was not originally intended. This labor was intrusted to the present writer, who confesses to having taken very great liberty with the translation as well as with the original work. DROSTE wrote for readers who had gone through a regular course of Canon law and were, moreover, acquainted with the practice of canonical pro-

¹ Where this American Instruction differs from the Italian, we refer to it by its initial words, *Cum Magnopere*; to the other by *L'Ordinario*; and where they agree, simply by *Instr. 1880*. To the Instr. S. C. de Prop. Fide on the Committee of Investigation (see *Appendix*) we refer by *Instr. 1878*. Finally to that on the Tridentine suspension (see *Appendix*) by *Instr. 1884*.

cedure. The editor hopes to reach a much larger class of readers. Hence explanatory notes have been added and a number of paragraphs of new matter inserted in the text (these being indicated by an asterisk, thus: 97*) to supply more of what he considers useful or even necessary information; again, for sections dealing with matters of only local interest, others of a more general bearing have been substituted (thus in pt. I. sec. 3), and subjects too lightly touched upon by the author have been more fully developed (as, e.g., that of judicial evidence). Besides, more system and perspicuity were to be obtained by placing what seemed logically allied subjects under one head, instead of leaving them, as originally, scattered in different places (thus were formed chap. 1, 3. in pt. II. sec. 1). In a word, the original has been so radically changed that the author will hardly recognize his German offspring in this "naturalized" American edition.

DROSTE did not consider it necessary to insert copies of judicial formulas or documents, since they can easily be found in *Bouix* and *Monacelli*.

With regard to legal phraseology the editor has tried to use English rather than Latin, notwithstanding his very imperfect knowledge of the former language. Not being a student of Common law he experienced great difficulty in finding the proper English equivalent for the Latin technical terms and phrases of which Canon law possesses such an abundance. Yet with an English legal vocabulary at hand it did not seem proper to retain the Latin terminology in a branch of Catholic science that must become ere long an essential part of theological learning in all English-speaking lands. The editor is fully sensible that he has not given a perfect rendering; still a beginning had to be made. *Vivat sequens.*

A word as to the references. The required series of the *Analecta J. P.* not being at hand, it was impossible to verify the references thereto made by the author. With the exception of these, however, and those to the *Corpus J. Can.* and the *Acta S. S.* (which were all verified), the rest are made by the editor to suit those readers who desire a fuller treatment of the subject or some authority for the opinion stated. Frequent reference

is made to the *Commentators*, that is to those canonists who have written regular commentaries to the Decretals of Gregory IX., the most important part of the *Corpus J. C.* and "the backbone of authentic Church legislation."¹ These commentaries follow exactly the order of the Decretals as to book, title, and chapter.² Yet other, especially Roman, writers on Canon law are not neglected. No apology is deemed necessary for referring more frequently to recent than to ancient canonists. Law and discipline must change even in God's Church. Other times demand other laws, and new conditions require new provisions. From the older commentators we may learn the spirit of Canon law, the principles and traditional norms to be observed in its application and execution; but the laws of our own time and the actual practice must be learned from modern teachers. In this connection the *Irish Ecclesiastical Record*, l. c., very appropriately remarks: "We need new books on Canon law for two reasons. In the first place each fresh effort helps to push forward the scientific treatment of ecclesiastical legislation beyond the old lines in one or more directions. Secondly, the law itself, by reason of its daily expansions, requires further explanation where additions have been made or changes introduced, in order that we may know what it really implies in our own times and surroundings."

This leads to another observation, here offered with due deference to learned *jurisperitis*.

The Instruction of 1880 appears like a new creation. It is not a mere furbishing up of old material or putting together of what had once been parts of various canonical processes. It is a new legislation in spirit, character, and form. Although the matter is gathered from older forms of trials, yet there is evidently a new substantial form to unite them into a new canonical procedure that has no like in all the former laws. Roman teachers have already admitted that although being called a summary and economical procedure, yet the old rules on summary trials cannot be applied to the new process without further discrimina-

¹ *Irish Eccl. Record*, 1886, vol. vii. p. 658.

² *De Angelis* made an exception by reserving book II., on trials, for the last volume in connection with book V., on crime and punishment.

tion; that although following on the lines of the older inquisition, it is yet of an altogether different nature. Hence the lengthy, detailed, and subtile disquisitions of older writers on the various forms of canonical procedure and the rules which they establish cannot be simply transferred to the new form, although they may throw great light on the nature and purpose of its several provisions and tell us in what spirit they must be carried out. It is, therefore, quite probable that not only will writers differ in opinion, but also that those whom it concerns will differ in practice. Until Rome, however, shall have decided such doubtful points, as it is anticipated she will (*Instr.*, art. 44), it may be wise to remember that errors in the proceeding will not interfere with the course of law nor render a trial void as long as the *substantial rules of justice* are observed, and that as to this the law is in favor of the judge. A defendant or advocate who should, with Schmalzgruber on his right and Reiffenstuel on his left, enter a plea of nullity on the ground of irregular proceeding would probably discover too late that those learned counsellors referred to "another case."

The present Instruction applies not to mere administrative measures or civil matters, but only to criminal and disciplinary causes. Discipline¹ here means correction, castigation, and even punishment. This is evident from arts. 1, 2 of the Instruction, as well as from the answer of the S. C. de Prop. F., when it says that the Instruction of 1878 was meant for such cases "*in quibus ecclesiastica poena seu censura sit infligenda, aut gravi disciplinari coercitioni sit locus.*" Hence the interesting question arises: How are the bishops to proceed in purely civil cases, as for instance, of a congregation against the rector or *vice versa*, or of cleric against cleric, when the matter cannot be settled amicably between the parties? May they proceed on the lines of the present Instruction? If not, why not?

In conclusion, mindful of the leading title of this work, the editor is tempted to hope (with the permission of the publishers) that the book may never be needed, but may rather remain "on the shelf."

SETON HALL COLLEGE,
SOUTH ORANGE, N. J., May 1887.

¹ See *Du Cange*, Glossarium, s. v. *Disciplina*.

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