

RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN AD LITEM ADELAIDA GONZALEZ, PLAINTIFF AND APPELLEE, VS. THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, DEFENDANT AND APPELLANT.*G.R. No. 27619, February 04, 1928*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by Raul Rogerio Gonzalez, through his guardian ad litem, Adelaida Gonzalez, against the Roman Catholic Archbishop of Manila, a corporation sole, represented by His Grace, M. J. O'Doherty, Apostolic Archbishop, for the purpose of obtaining a writ of mandamus requiring the respondent to appoint the plaintiff to a vacant chaplaincy, to enforce an accounting for the income of the chaplaincy for the period during which has been vacant, and to secure other relief. Upon hearing the cause the trial court entered judgment which, as subsequently amended, embraces three features, namely: First, ordering the defendant, the Roman Catholic Archbishop of Manila, as a corporation sole, and His Grace, Michael J. O'Doherty, Roman Catholic Apostolic Archbishop of Manila, its sole representative, forthwith to appoint plaintiff, Raul Rogerio Gonzalez, as chaplain of the said chaplaincy founded by Doña Petronila de Guzman; secondly, ordering the defendant to pay to the plaintiff, through his guardian ad litem, the sum of one hundred seventy-three thousand, seven hundred and twenty-five pesos (P173,725) as the rents and income of the property of said chaplaincy from January 1, 1911, to December 31, 1925, plus the rents and income accrued since December 31, 1925, from the total of which should be deducted the expenses allowed by the court as legitimate charges against the fund, and requiring the defendant, furthermore, to pay to the plaintiff, through his guardian or guardian ad litem, from the date of plaintiff's appointment as chaplain, the net income of said property from time to time as collected; thirdly, reserving to plaintiff any legal rights that he may have with reference to the cancellation of the transfer certificate of title No. 17603 in a proper proceeding before the fourth branch of this court, which branch has exclusive jurisdiction of all cases relative to the registration of real estate in the City of Manila (Act No. 2347, sec. 11). From this judgment the defendant appealed.

On March 13, 1816, Doña Petronila de Guzman, a resident of what is now the district of Binondo, in the City of Manila, executed a will in which she instructed her executor to take the steps necessary to the foundation of a collative chaplaincy upon certain real property adjacent to her residence in Binondo. The part of the will pertinent to the foundation is found in three paragraphs of the will which read as follows:

"Ninth Item: I declare and dispose that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vicenta de Guzman we have constructed with our own money, at a cost of one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, choosing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan mestizo, native of this said town, and I request the father chaplain to celebrate sixty masses annually,

which should be said in the churches of the City of Manila or in those outside of its walls, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and of my brothers and sisters, and for me, the testatrix, after my days.

"Tenth Item: It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item: I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

The property thus intended as the foundation of the chaplaincy consists of the lots now known as Nos. 210-212, and 214, Rosario Street, Manila, with the improvements thereon.

After the death of the testatrix her executor, Don Jose Telesforo de Guzman, on April 24, 1820, addressed a petition to the Archbishop, informing him of the wishes of the testatrix and praying that the property be declared sufficient and that the chaplaincy be created, with the petitioner's son as chaplain and the petitioner himself as administrator of the property during the minority of the son. This petition, addressed by the executor to the Archbishop, in the part material to be here considered, reads as follows:

"Most Illustrious and Most Reverend Sir—Don Jose Telesforo de Guzman resident of the town of Binondo with all due respect, before Your Illustrious Grace in the best legal form, I present myself and say,—That the annexed testimony which with due solemnity I enclose shows that my deceased great grandmother Da. Petronila de Guzman provided in her last will the institution of a collative chaplaincy for one son of mine named Esteban Sixto de Guzman, student of the Royal College of San Juan de Letran, for the patronage of which the Most Reverend Father President of said college has been named, with a house of lime and stone situated at Calle Rosario as capital, which, according to the certificate hereto attached, nets a rent of one hundred eighty pesos annually, it being located on the Calle Real del Rosario; and I, being her testamentary executor and appointed administrator of my above-mentioned son, present myself before Your Most Illustrious Grace, praying that you declare the living sufficient and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority."

In support of this petition the executor of the will of the foundress executed, on April 26, 1820, a formal document of endowment, setting aside for pious uses the property intended for the foundation and transferring it to the spiritual properties of the archbishopric. This document, omitting formal parts at the end, reads as follows:

"In the City of Manila on the 26th day of April one thousand eight hundred and twenty, before me the Clerk of Court and the undersigned witnesses, (appeared) D. Jose Telesforo, resident of the town of Binondo, and testamentary executor of the deceased Da. Petronila de Guzman, as shown by the certificate which was shown me and which appears to have been sealed and signed by the Public Clerk Dn. Francisco Castro de Reyes, to me known, and said—

"That whereas the said Petronila de Guzman, deceased, has ordered in the ninth clause of her will that after her death a house of lime and stone belonging to her be constituted into a chaplaincy, which house had been constructed by her and her deceased sister Doña Vicenta de Guzman who died single, at a cost of one thousand six hundred pesos without including the value of the lot whereon said house is erected, in said town of Binondo, being bounded towards the right of its exit by the house in which the said testatrix formerly lived, which was her own; and to accomplish the foundation of said chaplaincy in accordance with law, the said executor appeared before the most Illustrious and Most Reverend Metropolitan Archbishop, stating that (the chaplaincy) was subject to the charge that the incumbent was required to say sixty masses annually, either in the churches of this City or in those without its walls, and in privileged altars, for the benefit of the souls of her deceased parents, Don Tomas de Guzman and Doña Sebastiana de Jesus, of the testatrix and of her brothers and sisters, electing as chaplain her great grandson Don Esteban de Guzman, a student of the Royal College of

San Juan de Letran, and as administrator during the minority of the said chaplain, the executor himself, upon whom she has conferred power to appoint as Patron of the chaplaincy the Father President of the said Royal College of San Juan de Letran, asking that the said living (congrua), the rents of the property of which amount at present to P180 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son (i. e., of the executor); and as a consequence whereof he (i. e., the executor) segregates said property from temporal properties and transfers it to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other estate for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents, and the said executor affirms and ratifies said conditions before me and the witnesses hereinbelow named, so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain. And for its stability and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions, so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute ad perpetuam rei memoriam amen."

The two documents from which we have just quoted appear to have been passed to the procurator fiscal for comment; and this official made indorsement to the effect that no reason occurred to him for opposing the project and that he accordingly recommended that the establishment be effected. The matter was then brought to the attention of the Archbishop who gave the necessary formal approval to the foundation and an appropriate decree to this effect was entered. According to the note of this decree, His Grace declared that "concurring entirely with what had been expressed by the promotor fiscal, he was approving and approved the foundation of said chaplaincy, with all the circumstances and conditions specified in said clause (of the will) and the deed of foundation, as also the charge of P1,700 upon said house, erecting said sum into spiritual property and making it, as he makes it, by perpetual title, to be of the ecclesiastical forum and jurisdiction."

Since the foundation of this chaplaincy, five chaplains have been appointed thereto by the Archbishop of Manila. The first and second chaplains were great grandsons of the foundress, the third was a great great grandson, and the fourth and fifth great great great grandsons. At the time of their appointments they were respectively more than 13, 21, 22, 27 and 19 years old.

The fifth and last chaplain or beneficiary of the chaplaincy in question was Angel Gonzalez, father of the present plaintiff. This individual resigned the office of chaplain, effective December 6, 1910, since which date the chaplaincy has remained vacant. Though not of decisive importance in the case, the document by which Angel Gonzalez was appointed to the chaplaincy on August 21, 1901, is perhaps instructive as indicating the nature of the rights appurtenant to the office. Omitting the formal conclusion, this document reads as follows:

"Whereas, the Chaplaincy founded by Da. Petronila de Guzman, the capital of which consists of a building of brick and mortar erected on its own lot located on the Calle de Kosario, District of Binondo, is now vacant because of the renunciation by its last possessor D. Fernando Maniquis y Guzman; now, therefore, the necessary requisites and qualifications according to law being found concurring in D. Angel Gonzalez y Guzman, tonsured, a boarding student in the College of San Juan de Letran of this City, we order to issue and do issue this present title by virtue of which we elect and appoint the above-named D. Angel Gonzalez y Guzman, as chaplain of the benefice above referred to, and by the manner and form which we best can do, we hereby give him collation, canonical institution and real possession vel quasi of the above-mentioned chaplaincy, which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, so that, as such chaplain he may possess and enjoy it as an ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress, and with the understanding that every year

he has to show to our Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses, without which requisite the rent which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant, placing upon his conscience the duty of complying with the annexed conditions and relieving us thereof."

The function of administering the property pertaining to the foundation appears to have been exercised, at least since about 1863, by the Archbishop; and for this service a commission has been charged against the incumbent whenever a chaplain has been in office. In September, 1914, a Torrens title in fee simple was issued for the property in the name of the Archbishop. During vacancies the duty of causing sixty masses to be said per annum, as provided in the will, devolves upon the Archbishop; and this obligation has been performed by the present respondent, at an expense of not more than P300 per year.

The trial judge found that, from January 1, 1911, to December 31, 1925, the administrator had obtained, in the way of rents of the property, a total of P153,600. In addition to this there was collected, in the year 1912, the sum of P20,125, as insurance, upon occasion of the destruction by fire of the house belonging to the chaplaincy. The expenses of rebuilding and repairs, over the same period, is stated to have been P24,503.34. All of the income thus received, less the expenses of administration and cost of the masses, has been applied to the purposes of education, beneficence, and charity, under the directions of the Archbishop, with the approval of His Holiness, the Pope.

Since the Council of Trent it has been the law of the Roman Catholic Apostolic Church that no person who has received the first tonsure or who has already been ordained in minority is eligible to a benefice before his 14th year (Council of Trent, Chap. 6, sec. 23, July, 1563), that is to say, he must be at least 13 years and 1 day old. With this exception there seems to have been no ecclesiastical law or ordinance of the Church in force at the time the chaplaincy in question was founded, prescribing ecclesiastical qualifications for incumbents of the office of chaplain. However, in the year 1918 a new canon law was promulgated by the Catholic Church to the effect that "the chaplaincies, or simple benefices, are conferred on clericals of the secular clergy;" and in order to be a clerical, one must have received the first tonsure. Also in order to take the first tonsure, one must have begun the study of theology, and in order to study theology, one must be a bachelor.

Raul Rogerio Gonzalez, the plaintiff in this action, was born on September 16, 1912. He was therefore nearly 12 years of age when this action was instituted on July 31, 1924. He is a son of Angel Gonzalez, the last incumbent of the chaplaincy in question. At the trial the young man testified that he was then a student in the sixth grade of the public school and that his inclinations and desires are towards an ecclesiastical career. More than two years prior to the institution of this action he was presented to the Archbishop of Manila, with the request that he be appointed to the chaplaincy in question, he being at that time 10 years of age. The application was turned down by the Archbishop in a letter, addressed to the boy's father, and dated March 20, 1922, on the ground that the youth did not have the necessary qualifications under existing canon law. His Grace, the Archbishop of Manila, testified that although he could not appoint plaintiff as chaplain of the chaplaincy in question, he had made an offer at his expense to educate the plaintiff so that he might obtain the necessary preparations to qualify himself as a cleric and might later be appointed as chaplain. He added, however, that although he did not consider himself in duty bound to make such an offer, the same was made for equitable motives in view of the claim of the child as the nearest relative of the foundress of the said chaplaincy.

In the deed of foundation of April 26, 1820, the Presiding Father of the Royal College of San Juan de Letran is designated as patron of the chaplaincy; and before this action was instituted, Father Calixto Prieto, then rector of

San Juan de Letran College, addressed a letter to the Archbishop, presenting the plaintiff as candidate for the chaplaincy. Father Prieto stated that, prior to presenting the plaintiff for the chaplaincy, he satisfied himself that the applicant was the heir to the chaplaincy, but did not take account of his moral or intellectual qualifications, leaving these matters to be passed upon by his superior. The application of the plaintiff was also indorsed by other priests of the church.

We now pass to the consideration of the nature of the chaplaincy, or office of chaplain, as understood in Spanish and ecclesiastical law. In the first place, it is to be noted that the collative chaplaincy is a form of ecclesiastical benefice, in which the incumbent is appointed and canonically installed by the Bishop, or Archbishop, and given a living, constituting a charge upon specified property, subject to the duty of saying masses and performing other pious or religious duties. The collative chaplaincy is said to be a simple benefice. In the second place, the term "collative chaplaincy" is used in contradistinction to "lay chaplaincy"; and the difference is that the collative chaplaincy can be constituted only upon the intervention of ecclesiastical authority, while the lay chaplaincy does not require such intervention.

In the case before us it is undeniable, and admitted, that the chaplaincy in question is of the sort known as the collative chaplaincy. The documents of foundation expressly provide that this chaplaincy shall be of a collative character; and to this end the property which was to serve as the foundation of the chaplaincy was segregated by the executor of Doña Petronila de Guzman from other property pertaining to her estate and transferred to the Church, with the effect of its being converted into spiritual property for the pious use intended. Furthermore, in accepting the transfer, the Archbishop declared, that said property was raised to the status of spiritual property and that it thereby passed to the ecclesiastical forum and jurisdiction. Speaking broadly, the substantial effect of the conveyance of the property to the Church and the acceptance of the transfer by the Archbishop in the manner above stated was that the legal title of the property became vested in the Archbishop, subject to the ecclesiastical charge intended in the creation of the chaplaincy.

The trial judge found that the plaintiff is next kin (*pariente mas cercano*) to the foundress of the chaplaincy, in the sense intended in the Ninth Item of the will, and, therefore, that he is qualified for the chaplaincy in point of relationship. Exception is taken to this finding by the appellant, who maintains that there is no evidence in the record to support it. We are of the opinion, however, that the proof on this point is sufficient, and we shall assume in what is to follow that the necessary relationship on the part of the plaintiff to the foundress exists.

As has been already stated, this action was instituted shortly before the plaintiff had reached the age of 12 years; and upon this fact the appellant plants the proposition that the plaintiff is not qualified for the chaplaincy on point of his age. The appellee has attempted to meet this criticism by the filing of an amended complaint on April 5, 1926, when the plaintiff was in his 15th year. We shall therefore assume, for the purposes of this decision, that the immaturity of the plaintiff in point of age is not a fatal obstacle to the maintenance of the action; and at any rate in the view we take of the case this question may be ignored.

Upon turning our attention more directly to the legal aspects of the controversy, we discover that the case of the plaintiff proceeds upon a train of reasoning which may be expressed as follows, namely, that the Archbishop, as representative of the Church, is the holder of the empty legal title to the property on which the chaplaincy is founded; that the beneficial interest thereto is vested exclusively in the heirs of the foundress; that the plaintiff, as her next of kin, has an unqualified right to be appointed to the chaplaincy, without regard to his lack of ecclesiastical qualifications; that the plaintiff, having title to the chaplaincy, is entitled to demand of the defendant the entire net income received by the latter as administrator of the property during the pending vacancy, as well as the right to be paid the income that may hereafter be produced by the property so long as the plaintiff shall occupy the post of chaplain. In a word, it is the contention of the plaintiff that the foundation in question is a perfected

trust, enforceable in a court of equity, that the Archbishop is a mere trustee, and that the plaintiff is the present rightful beneficiary of the entire property.

On the other hand, the attorneys for the Archbishop challenge practically every phase of the plaintiff's presentation of the case; and in this connection various propositions are submitted by them, which may perhaps be fairly condensed as follows: That the transfer made by the executor of the foundress of the property with which we are here concerned had the effect of conveying it to the Archbishop, as representative of the Church, in whom, upon his acceptance of the same, the entire property became vested, for the purpose of maintaining the chaplaincy in question, and subject to all the circumstances and conditions specified in the documents; that the collative chaplaincy thus constituted is an ecclesiastical benefice, the right of appointment to which is vested exclusively in the Archbishop; that the Church, by lawful ordinance, effective in 1918, has required that, in order to be eligible to the office of chaplain, the candidate must possess ecclesiastical qualifications, of the sufficiency of which the Archbishop is constituted judge; that the plaintiff in this action does not possess the qualifications for chaplain which have thus been prescribed, and the Archbishop has so found and declared; that, by the laws of the Church, the plaintiff, if aggrieved by the decision of the Archbishop, has a right of appeal to His Holiness, the Pope, of which right the plaintiff has not availed himself; that, as the owner of the property which is the subject of this foundation, the Archbishop has the free disposition, for charitable, educational, and religious purposes, of the income derived from the property during a vacancy in the office of chaplain, subject only to the obligation of causing masses to be said as required in the documents of foundation; that the incumbent of the office of chaplain is entitled, from the bounty of the Archbishop, to receive the income derived from the property during his incumbency in the office to the extent necessary to secure a suitable living only, and that, as to the residue, it is the duty of the chaplain to apply it to charitable and religious purposes; that the subject matter of this suit is not a proper matter of cognizance in any civil court; and, finally, that the court of origin was without jurisdiction to compel the Archbishop to perform a canonical function, to wit, to appoint the plaintiff to an ecclesiastical office.

While the field of controversy thus laid out is extensive, it will be found, upon a careful survey of the ground, that the decision must in the end turn upon one or two vital points, which are concerned with the right of the plaintiff to the chaplaincy and the right of the court to compel the Archbishop to appoint the plaintiff to said office.

At the outset of the discussion we may state that we see no reason to question the jurisdiction of the court over the subject matter of the action. The complaint alleges that the plaintiff is beneficiary of a trust, and that the defendant, as trustee, has refused to recognize the plaintiff's right to the office of chaplain and is diverting the income of the foundation to unlawful uses. As was observed by Mr. Justice Miller, of the Supreme Court of the United States, in the leading case of *Watson vs. Jones* (13 Wallace, 679, 723; 20 Law. ed., 666), it seems hardly to admit of rational doubt that an individual may dedicate property by way of trust to the purpose of sustaining religious doctrines, provided that in so doing he violates no law of morality and gives to the instrument by which his purpose is to be accomplished the formalities which the law requires. It also seems to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use; and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that he can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters (23 R. C. L., p. 451). But while it may be, and is, the duty of the court to inquire into a case of the character stated in this complaint, the rule to be applied in determining the right to relief is to be sought in the principles governing the courts in dealing with rights derived from ecclesiastical sources.

The rule that appears to offer most assistance in the solution of the case before us is that formulated by the Court of Appeals of South Carolina in the case of *Harmon vs. Dreher* (Speers Eq., 87), to the effect that: Where a civil

right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction. The proposition thus stated in *Harmon vs. Dreher* has subsequently been considered from different points of view by many able courts, and it has uniformly been looked upon as a sound and correct statement of the law in cases where it is of proper application. Among decisions in which said rule has been quoted with approval are *Watson vs. Jones* (13 Wall., 679; 20' Law. ed., 666); *Lamb vs. Cain* (129 Ind., 486; 14 L. R. A., 518; 29 N. E., 13); and *White Lick Quarterly Meeting of Friends vs. White Lick Quarterly Meeting of Friends* (89 Ind., 136).

Upon examination of the decisions it will be readily apparent that cases involving questions relative to ecclesiastical rights have always received the profoundest attention from the courts, not only because of their inherent interest, but because of the far reaching effects of the decisions in human society. Moreover, courts have learned the lesson of conservatism in dealing with such matters, it having been found that, in a form of government where the complete separation of civil and ecclesiastical authority is insisted upon, the civil courts must not allow themselves to intrude unduly in matters of an ecclesiastical nature.

It will be noted that the first and principal relief sought by the plaintiff in the case before us is to obtain from the court an order, in the form of writ of mandamus or injunction, requiring the Roman Catholic Archbishop of Manila to appoint the plaintiff to an ecclesiastical office, for that the office of chaplain is of an ecclesiastical nature is undeniable. It is a sinister omen for the plaintiff's case that no decision of any civil court whatever can be pointed to as a precedent for such an exercise of judicial power, and the mere novelty of the proposition is an argument against the soundness of the plaintiff's case. It is true that there are decisions from the Supreme Court of Spain wherein the right to the possession of properties constituting the foundation of chaplaincies has been debated, and numerous cases are found in modern Spanish jurisprudence where actions have been maintained by heirs of the founders to recover property constituting the foundation of chaplaincies; but such actions had their basis in the Spanish legislation abolishing chaplaincies. But so far as our investigations go, and as far as the industry of counsel has revealed, no case has been discovered where Bishop or Archbishop has been compelled to appoint any person to the office of chaplain or other ecclesiastical benefice. It is also true that there are a few English and American decisions in which the rights of rectors, or ministers, after the title to the ecclesiastical office had once been acquired, have been sustained in the courts in the face of attempts to deprive them of their office. But so far as the American courts are concerned, these cases proceed exclusively on the idea of supplying redress for breach of contract; and neither American nor English jurisprudence supplies any precedent for compelling the ecclesiastical authorities to appoint a person to an ecclesiastical office.

In dealing with the subject of the conclusiveness of the decisions of church authorities in ecclesiastical matters the author of the monographic article on "Religious Societies," in *Ruling Case Law*, has this to say: * * * The judgment of the constituted church tribunal is absolutely conclusive upon the civil courts, whether, in the opinion of the judges of such courts, the decision appears to be right or wrong. Where a right of property turns upon such a decision, the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it. According to the rule broadly stated by some courts, when a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepts such decisions as matters adjudicated by another legally constituted jurisdiction.

In conformity with the ideas above set forth, it is insisted, for the appellant, that it was erroneous on the part of the trial court to order the defendant to perform the canonical act of appointing the plaintiff chaplain of the chaplaincy in question, and furthermore that the trial court erred in not accepting as conclusive the decision of the

Archbishop in regard to the question whether or not the plaintiff is ecclesiastically qualified to be appointed chaplain. The authorities, we think, strongly indicate that there is merit in this contention. But in our opinion there is another proposition, still more clear, upon which the decision can be safely rested, and this is, that as a matter of fact the plaintiff does not possess the qualifications necessary for appointment to the office of chaplain and consequently that the Archbishop was justified in refusing to appoint the plaintiff to that office. We shall therefore provisionally assume that it is proper for the court to inquire into these qualifications and state our conclusion with respect thereto.

Under the law of the Church as it stood when this chaplaincy was created, no ecclesiastical qualifications were required in a candidate for appointment to the office of chaplain; but as we have already stated, a new canon became effective in the Church in 1918 to the effect that, in order to be appointed chaplain, the candidate must be a clerical, and that in order to be a clerical, one must have taken the first tonsure, as a prerequisite to which he must also be a bachelor who has begun the study of theology. It is admitted that the plaintiff in this case does not possess these qualifications, and it is obvious that if the new canon is to be applied to the chaplaincy in question, the action of the Archbishop in refusing to appoint the plaintiff was correct and this court must recognize the validity of his exclusion from the chaplaincy.

That the new canon is valid and applicable to candidates for chaplaincies already created is, in our opinion, obvious, since it is general in terms and evidently intended to be applicable to all chaplains appointed in the future. There is no reason discernible why the court should read into it an exception in favor of candidates to chaplaincies already created. But it is said that, if interpreted in this sense, the ordinance will be retroactive. This is in our opinion a mistake. If the Church had attempted to make the ordinance applicable to chaplains already appointed, thereby depriving them of an office as to which title had been previously acquired, the effect would be to make the statute truly retroactive. But such is not the case now before us.

When the foundress caused this property to be originally conveyed to the Church as a foundation for the chaplaincy in question, no restriction was imposed with respect to the requirement of ecclesiastical qualifications for the chaplains to be appointed to the benefice; and in submitting the appointment of the chaplains to the ecclesiastical authority, as resulted from the creation of a collative chaplaincy, it must be considered as an implied term of the agreement that the ecclesiastical qualifications for the spiritual office should be such as might be required by the Church. As was said by Mr. Justice Miller in *Watson vs. Jones* (13 Wall., 679, 729), all who unite themselves to an ecclesiastical body do so with an implied consent to submit to the Church government and they are bound to submit to it.

The trial court appears to have been of the opinion that the new canon of 1918 cannot be given effect as regards the chaplaincy in question for the reason that to do so would impair the obligation of the trust involved in the acceptance by the Archbishop of the provisions for the establishment of the chaplaincy, with the result of impairing the obligation of a contract in violation of our Organic Act. This idea is in our opinion fallacious. It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation which could be changed under Spanish law has become immutable from the promulgation by Congress of the constitutional provision forbidding the impairment of contracts by legislative Acts. Under said constitutional provision obligations are to be respected as they stand, and it was not intended that, by virtue of this provision, obligations should be made more onerous to either party. If the proposition maintained by the plaintiff's attorneys be true, then we are confronted with the spectacle of a chaplaincy which is a perpetual sinecure for a chaplain without ecclesiastical qualifications. Perpetuities of any sort are objectionable, but one of this character would be intolerable. As is justly said by the attorney for the appellant, "It is unthinkable that qualifications for

chaplains should remain stagnant and the same forever." In passing upon a question of this character the court is not at liberty to ignore the effects upon human society which would result from adopting the proposition upon which the case for the plaintiff here rests.

It follows from what has been said that the plaintiff has not the requisite qualifications for the office of chaplain and the defendant, the Roman Catholic Archbishop of Manila, acted within the limits of his proper ecclesiastical authority in excluding the plaintiff from the chaplaincy in question. The trial court was therefore in error in ordering the said defendant to appoint the plaintiff as chaplain of the chaplaincy founded by Doña Petronila de Guzman. As corollary of this, there was also error on the part of the trial court in ordering the defendant to pay to the plaintiff, through his guardian ad litem, the amount awarded in paragraph (b) of the dispositive part of the appealed decision.

The appellant's brief contains an elaborate discussion of the rights of the respective parties to the income of the property during the vacancy in the office of chaplain, and of the extent of the rights of the plaintiff during the time that he might occupy the chaplaincy,—all on the supposition that the right of the plaintiff to the office might be upheld by this court. But in view of the fact that we are now to reverse the judgment in its principal features, with the result that the plaintiff will not be appointed chaplain, all discussion of his rights to the income, based on the supposition of his appointment to the chaplaincy, becomes in a measure academic. We shall therefore not enter into any discussion of this phase of the case, and shall content ourselves by observing that if those who are interested in conserving the income derived from the chaplaincy and in holding the defendant responsible for alleged improper diversion of funds should see fit to proceed judicially in an independent proceeding, the action should be brought as a class-suit in behalf of all the descendants of Doña Petronila de Guzman, since under the present decision the minor plaintiff in this action has no particular title to relief.

In paragraph (c) of the dispositive part of the appealed decision the trial court reserved to the plaintiff any legal rights that he may have with reference to the cancellation of transfer certificate of title No. 17603, in a proper proceeding before the fourth branch of the Court of First Instance of Manila. The plaintiff did not appeal from this disposition, and the appellant has not assigned error against said feature of the decision. We shall therefore not interfere with the decision on this point, but we should perhaps observe that if relief should be sought in the direction indicated the contention will probably in the end resolve itself into the question whether the Torrens certificate of title now held by the defendant should be annotated so as to show that the property covered by the certificate is held by the defendant subject to the conditions stated in the documents constituting the chaplaincy in question; and of course such proceeding ought also to be brought as a class-suit.

The judgment appealed from is therefore reversed and the defendant, the Roman Catholic Archbishop of Manila, is hereby absolved from the complaint, without prejudice to the right of proper persons in interest to proceed for independent relief in either of the directions above indicated. So ordered, without express pronouncement as to costs..

Villamor, Ostrand, and Villa-Real, JJ., concur.

CONCURRING

MALCOLM, J.:

This is a most unusual case without a parallel in American or Spanish jurisprudence. Involving as it does the relations which should exist between the State and the Church, and the status of the Church with reference to the Judiciary, the court should enter upon consideration of the questions involved reluctantly and cautiously. This

separate opinion is intended to expound the mental processes which have passed through the writer's mind in arriving at a definite decision.

The most logical method of approach is to write down those statements of fact and those propositions of law regarding which there can reasonably be no controversy. Then with these admitted facts and law as the basis, the issue will readily disclose itself, and can be decided.

There can be no dispute on any material fact. The will of Doña Petronila de Guzman executed on March 13, 1816, the document of endowment formulated by her executor in 1820, and the acceptance of the endowment by the Archbishop of Manila, established what is known in canon law as a collative chaplaincy. The great grandson of the testatrix was specifically named as the first chaplain. Thereafter, it has been assumed that the chaplaincy was to be occupied by the nearest relative in succession of the first chaplain, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan mestizo, native of Manila. Chaplains have presented themselves for the office, and have been approved by the church authorities without much trouble until the resignation of the last chaplain on December 6, 1910. Since that date, the chaplaincy has remained vacant. It is the purpose of this action of mandamus to require the Apostolic Archbishop to appoint Raul Rogerio Gonzalez, the son of the last chaplain, as chaplain, and to obtain an accounting of the income of the chaplaincy from 1910 until the present.

It is well to repeat that the trust was provided for spiritual purposes. A collative chaplaincy was erected. A chaplaincy, it has been said, "is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative. * * * A collative chaplaincy is that instituted with the intervention of the ecclesiastical authority, and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it." (2 Alcubilla, Diccionario de la Administracion, p. 118 II Gutierrez, Codigos o Estudios Fundamentales sobre el Derecho Civil Español, pp. 341-344.) The will of the founder of the collative chaplaincy entailed the obligation on the part of "the father chaplain to celebrate sixty masses annually." The document of endowment contemplated that "the incumbent was required to say sixty masses annually." It transferred the parcel of land and building now 210, 212, and 214 Calle Rosario, Binondo, Manila, to "the spiritual properties of the Archbishopric." The trust was accepted by the Archbishop "as spiritual property * * * making it * * * to be of the ecclesiastic forum and jurisdiction." The Supreme Court of Spain has held that properties aggregated to a chaplaincy with the approval of the competent ecclesiastical authority become spiritualized, and form an integral part of its endowment (Sentencia del Tribunal Supremo, June 1, 1863; 8 Jurisprudencia Civil, p. 364).

When the endowment was created, there existed a unity of Church and State in the Philippines. The change to American sovereignty caused the complete separation of Church and State. All special privileges of the Roman Catholic Church were abolished. But the property of the Church was protected since in the Treaty of Paris it was declared that the relinquishment or cession of the Philippine Islands "cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of * * * ecclesiastical or civil bodies."

With the Church and State standing apart in the Philippines, the jurisdiction of the civil courts naturally does not extend to certain matters connected with the Church, but does extend to certain other matters which can be taken under their purview. It is well settled that the civil courts will take cognizance of cases involving property rights, and in so doing will enforce the canons of a church. (Evangelista vs. Ver [1907], 8 Phil., 653.) It is the duty of the courts to see that the property dedicated to a church is not diverted from the trust. (Watson vs. Jones [1871], 13 Wall., 679.)

The Catholic Church has obtained a fee simple Torrens title to the property, the source of income of the chaplaincy. It has also been using the revenue of the chaplaincy for educational purposes. Neither is permissible pursuant to the trust agreement. Nor can the Church keep the chaplaincy vacant indefinitely and in the meantime appropriate the rental of the property of the chaplaincy. To do any of these things would be to violate the will of the foundress, for the foundation prohibited the alienation or conversion of the property "into any other estate for any cause, even though it be of a more pious character," which would make the foundation null and without value or effect. (See in this connection *Government of the Philippine Islands vs. Avila* [1918], 38 Phil., 383.)

Up to this point, therefore, we find the following to be the situation: A trust founded for spiritual purposes; chaplains named in conformity with the foundation up to the year 1910; the will of the testatrix the supreme law which must govern; the Church without right to obtain title in its own name to the property or to divert the income from the purposes intended by the testatrix; and the courts with jurisdiction to enforce property rights. Under this admitted state of affairs, the plaintiff would have a clear right to ask the courts to assist him in getting into the chaplaincy and in securing the income of the chaplaincy for himself. But further facts, which will immediately be mentioned, alter the situation, and at once disclose the troublesome crux of the case.

When the trust was established, aside from the general provisions of the Council of Trent, there were no particular provisions applicable to chaplaincies. In 1918, the "Codex Juris Canonici" was promulgated by the Pope. According to this new canon law, "The chaplaincies or simple benefices are conferred on clericals of the secular clergy"; in order to be a "clerigo" one must have "prima tonsura"; in order to have "prima tonsura" one must have begun the study of theology; and in order to study theology one must be a "bachiller." Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the canon law of 1918 went into effect. After that law was provided, he did not meet the qualifications since he was not a "clerigo," since he did not have "prima tonsura," since he had not begun the study of theology, and since he was not a "bachiller."

It was after the canon law of 1918 was decreed that Raul Rogerio (Gonzalez) was presented for the chaplaincy by the Rector of San Juan de Letran College, the patron of the chaplaincy—to be exact on February 25, 1922. The Archbishop of Manila considered the matter, and in a letter to the father of the boy came to the conclusion "that the child, Raul Gonzalez, does not unite the qualifications of chaplain of the said chaplaincy." The basis of the conclusion was mentioned as the new Code of Canon Law, particularly canon 1442, in relation with canons 108 and 976. His Grace closed his letter with this statement: "By the canons above mentioned, as well as other reasons which could be advanced, I believe that the child Raul Gonzalez is not legally qualified to enjoy a chaplaincy." No appeal from what amounted to a decision by the Archbishop was taken to the Pope, but instead the authority of the civil courts was invoked. In this connection, it is the established doctrine that in matters purely ecclesiastical the decisions of proper church tribunals are conclusive upon the civil tribunals. (*U. S. vs. Cañete* [1918], 38 Phil., 253; *Fussell vs. Hail* [1908], 233 Phil., 73.)

The vital question, on the answer to which will depend a correct decision, then is if the church authorities in giving application of the canon law of 1918 to the spiritual trust, should be overruled by the civil courts.

The trial judge, in his learned decision, states the matter as forcefully and graphically as may be when he says: * * The canon which the defendant now invokes in support of the refusal to appoint plaintiff as chaplain was only promulgated in the year 1918. The will was executed in 1816 and the order of the Archbishop of Manila, approving the foundation of the chaplaincy in accordance with said will, was entered in the year 1820." His Honor continues, "The court is of the opinion that the new canon law of 1918 cannot in this case be given a retroactive effect, for to do so would impair the obligation of the trust involved in the acceptance of the provision of said will for the establishment of the chaplaincy, and it would impair the obligation of a contract in violation of the Organic Act, the Jones Law." Much can be said in support of that position. In the first place, the disposition of property in

a will is governed by the law existing at the time of execution—in this instance by the law as it was to be found in 1816. In the next place, the trust agreement was in the nature of a civil contract, and as to contracts, existing statutes enter into and become a part of them—in this instance the law as existing in 1820. But the last principle is here not literally true, for the executor of the will renounced the laws which might favor the foundress.

The portion of the Organic Act, the Act of Congress of August 29, 1916, section 3, paragraph 5, providing "That no law impairing the obligation of contracts shall be enacted" is not applicable since the "law" there mentioned is an Act of the Philippine Commission or Legislature or an ordinance or resolution of a municipal council, and does not include an ecclesiastical law promulgated by the Pope for the Catholic world. The legislative power of the state has not undertaken, as in the Dartmouth College Case, to remodel the charter of an institution in most important particulars without the consent of the incorporators. But following the theory pertaining to the impairment of the obligation of contracts, and by analogy applying the same principles to the canon law, it yet remains to be said that there are limitations on the application of the constitutional provision. Thus, as significant restrictions, the state cannot abridge or weaken any of the essential powers inherent in government; the state cannot abdicate its trust over property; and the Legislature cannot withdraw from its successors the power to take appropriate measures under the police power. Not only this, but charter contracts are subject to state regulation. A party operating under a charter must conform to such rules as the state may establish. Added conditions or duties may be imposed provided they do not amount to a change in the obligations or in the substantial rights of a party. Changes may be made in the general laws even though incidental injury may result.

Construing the canon law as we must if we are to determine if it has retroactive and destroying effect, it is apparent that the highest power in the Catholic Church provided a law universal in character operative on all chaplaincies after it went into effect. The Pope did no more than did the civil authorities of Spain when in 1841 they enacted a law regulating chaplaincies. As a matter of internal discipline, the Church was attempting to make certain that all persons filling chaplaincies had the necessary training to perform their duties. General regulations were prescribed to secure the ends for which chaplaincies were erected. In the particular case before us, the father chaplain, the incumbent of a collative chaplaincy was expected by the testatrix "to celebrate sixty masses annually," and it would not be at all unreasonable for the canon law to prescribe qualifications for the holder of the chaplaincy sufficient to permit him to say the masses personally. The will did not negative this in any manner when the property was turned over for spiritual uses. As far as the will went, it intended to create a collative rather than a laical chaplaincy, thus subjecting the institution to the authority and the laws of the Church, as every collative chaplaincy is so subjected.

The Supreme Court of Porto Rico has found perfectly applicable the principles of the canon law to a case brought in the secular courts, for the reason that the rights and relations in question "have been fixed by rules issued, in the exercise of its powers to govern its own institutions, by the Roman Catholic Church, the personality of which has been fully recognized by the Supreme Court of the United States and by the Supreme Court of Porto Rico, naturally within the constitutional limitations and principles of international law." (Jones, Catholic Bishop of Porto Rico, vs. Registrar of Property [1912], 18 Porto Rico, 124; Jones, Catholic Bishop of Porto Rico, vs. Registrar of Property [1911], 17 Porto Rico, 211.)

When the case between the father of the applicant and the Church was here before, this court took under view the provision of the trust agreement relating to the administration of the property. Mr. Justice Torres, speaking for the court, said: "This provision must be understood to be mandatory, except as otherwise provided by the canonical laws and as, pursuant therewith, the chief ecclesiastical authority may order for, after the latter had accepted the foundation of the chaplaincy, the administration of its property appertains to the authorities established by the Church, pursuant to the latter's own laws, and this rule has been observed since 1863." (Gonzalez vs. Harty and

Hartigan [1915], 32 Phil., 328.)

The parties seem much concerned with worldly considerations, with obtaining control of the tidy sum involved. Yet if we would place ourselves in the position of the elderly lady who conceived the foundation, it would be realized that what she desired was the saying of masses for pious purposes by a descendant, and so instituted a foundation to attain that purpose. The wishes of the foundress of the spiritual trust should govern and will rather be subserved than thwarted by the application of the canon law of 1918 to the trust.

It is not for the courts to exercise control over the dignitaries of the Roman Catholic Church in the performance of their discretionary and* official duties. Rather is it for the applicant to conform to just church regulations. The courts should ponder long before compelling the defendant Archbishop of Manila to appoint a particular person to a chaplaincy, in contravention of the mandatory provisions of existing canon law.

The all controlling considerations in the disposition of this case are the intention of the foundress of the spiritual trust, which should be respected, and the impropriety of the courts invading the religious realm and their attempting to order things to be done, the performance of which appertain exclusively to the regularly constituted authorities of the Roman Catholic Church.

Premises conceded, the issue should be resolved by holding that the court will not sanction the expedition of a writ of mandamus, directed to the Roman Catholic Archbishop of Manila, reversing him in his decision to apply the canon law of 1918 to the foundation.

I concur in the disposition of the appeal.

DISSENTING

JOHNS, J.:

In 1816 the Archbishop of Manila had not only ecclesiastical but also civil and political powers in the Philippine Islands.

In 1816 Petronila de Guzman was a resident of the City of Manila and a devout Catholic and the owner therein of "a house of lime and stone situated at Calle Rosario," from which she received an annual net rental of P180. In accord with her religious belief, she wished to perpetuate her family name and to found a chaplaincy and provided for the saying of sixty masses annually by the Father chaplain "in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sisters, and for me, the testatrix after my days, and to that end and for that purpose, on March 13, 1816, she made and published her last will and testament in which are charged that the executor of her estate should "constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan mestizo, native of this town," in which it was further provided:

"Tenth Item: It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item: I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

After the death of Petronila de Guzman, and on April 24, 1820, her executor Jose Telesforo de Guzman, and under the provisions of the will, petitioned the Archbishop of Manila that the title to the chaplaincy be issued to his son Esteban de Guzman and to him as administrator during the minority of his son, which petition, among other things, recites:

"That the annexed testimony which with due solemnity I enclose shows that my deceased great grandmother Da. Petronila de Guzman provided in her last will the institution of a collative chaplaincy for one son of mine named Esteban Sixto de Guzman, student of the Royal College of San Juan de Letran, for the patronage of which the most Reverend Father President of said College has been named, with a house of lime and stone situated at Calle Rosario as capital, which, according to the Certificate hereto attached, nets a rent of One Hundred Eighty Pesos Annually, it being located on the Calle Real del Rosario; and I, being her testamentary executor and appointed administrator of my above mentioned son, present myself before Your Most Illustrious Grace, praying that you declare sufficient the income (congrua) referred to and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority. This is what I beseech of Your Illustrious Grace, and to secure it to Your Illustrious Grace I humbly ask and request that you so decree and order as I pray for. I swear according to form— further—the deed of ownership of the house which I also attach, I request that after this petition is terminated, said document be delivered to me as above requested—Jose Telesforo de Guzman. Manila, April 24, 1820—To the Promotor Fiscal—Subscribed and sealed before me, Doctor Rojas, Secretary."

April 26, 1820, the executor of the will, pursuant to such petition, executed a formal document for the endowment of the chaplaincy, which, among other things, recites:

"* * * And to accomplish the foundation of said chaplaincy in accordance with law, the said executor (Telesforo de Guzman) appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that he had the pension in consideration of which the chaplain had to say sixty masses annually in the churches of this City or in those of its vicinities and in privileged altars for the benefit of the souls of her deceased parents, Don Tomas de Guzman and Doña Sebastiana de Jesus, of the testatrix and of her brothers and sisters, electing as chaplain her great grandson Don Esteban de Guzman, a student of the Royal College of San Juan de Letran, and as administrator (to act) during the minority of the said chaplain, the executor himself, whom she has empowered to appoint as Patron of the chaplaincy the Father President of the said Royal College of San Juan de Letran, asking that the said 'congrua' (pension, living or maintenance) the rents of the property of which amount at present to P180 per year, be declared sufficient. * * * And for its firmness and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions, so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute ad perpetuum rei mee memoriam amen."

The "Promotor Fiscal" having first approved as legal under the canonical law the proposed endowment, the petition was granted by the Archbishop as follows:

"That in conformity with the representations of the Promotor Fiscal, he was disposed to approve and did approve the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction, etc."

The last chaplain, Angel Gonzalez, served until December 6, 1910, between whom and the defendant there was a full, complete and final settlement of all of the accounts arising from, and growing out of, the chaplaincy up to December 31, 1910. The defendant after December 6, 1910, declared the chaplaincy in question vacant, and at all

times since, it has remained and is now vacant. In this situation, the plaintiff minor, Raul Rogerio Gonzalez, claiming to be the eldest son of Angel Gonzalez, the last chaplain, and of his wife, Adelaida Gonzalez, and the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to the said chaplaincy, petitioned the defendant to be appointed chaplain, with all of the rights, powers and duties as such, which petition was denied.

The original complaint in this action and the one on which the evidence was taken in the lower court was filed on August 5, 1924. The answer of the defendant was filed on October 13, 1924. The testimony was completed on March 24, 1926, and on April 5, 1926, for the purpose of making his pleadings conform to his alleged proofs, the plaintiff filed an amended complaint, to which objection was made by the defendant and overruled by the trial court.

Upon such pleadings, including the amended complaint, the lower court in a learned, exhaustive and well written opinion of ninety-five printed pages, found all of the material facts for the plaintiff for whom it rendered judgment against the defendant as substantially prayed for in the original and amended complaints.

On appeal the defendant assigns the following errors:

"I. The trial court erred in ordering the defendant forthwith to appoint plaintiff as chaplain of the Chaplaincy in question notwithstanding the fact that plaintiff is only twelve (12) years old and is not a cleric.

"II. The trial court erred in declaring that the defendant was not duly and legally authorized to use the income of said Chaplaincy for analogous charitable and pious works during the time the Chaplaincy in question has been vacant.

"III. The trial court erred in declaring that it had jurisdiction to compel the defendant to do a canonical function, to wit: that of appointing plaintiff as chaplain of the Chaplaincy in question.

"IV. The trial court erred in not accepting as conclusive the decision of the ecclesiastical authority concerned, in regard to the question whether or not plaintiff is ecclesiastically qualified to be appointed as chaplain.

"V. The trial court erred in not holding that there is no evidence in record that plaintiff was the nearest relative of the foundress, and therefore that plaintiff has not shown that he is entitled to be appointed chaplain.

"VI. The trial court erred in sentencing the defendant to pay the plaintiff the sum of P173,720 less certain liquidated as well as unliquidated amounts referred to in the judgment."

In the final analysis, two important and decisive questions are presented. First, the construction which should be placed upon the will of the foundress and its legal force and effect, and, second, whether or not under the pleadings and upon the admitted facts, the judgment in favor of the plaintiff can legally be sustained.

In arriving at the solution of the first question, careful thought and consideration should be given to the purpose and intent with which Petronila de Guzman executed the will in question so far as it can be ascertained and determined from the instrument itself.

In truth and in fact the house in question was constructed for the sole and specific purpose of providing sufficient rental to insure the payment of the amount required to pay for the specified number of masses, and the will of the foundress recites that the property had a net annual rental of P180, and it specifically charged arid enjoined upon the executor to found a chaplaincy and to make all arrangements necessary for the saying of such perpetual masses. Upon her death such application was made to the Archbishop, and thj chaplaincy was founded and the chaplain appointed in compliance with the terms and provisions of the will. A chaplaincy having thus been founded, it is important to know the meaning of that word.

Alcubilla, in his work entitled "Diccionario de la Administracion," published in 1886, vol. 2, p. 118, says:

"A chaplaincy is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative.

"A laical chaplaincy is that instituted without the intervention of the ecclesiastical authority; it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or mercenary chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chaplaincies; * * *.

"A collative chaplaincy is that instituted with the intervention of the ecclesiastical authority and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar*; when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia*."

It is conceded that the purpose and intent of the deceased was to found a "collative chaplaincy," and the will provides that the position should be filled by certain specified relatives. It will be noted that the deed of endowment of the executor of April 26, 1820, recites that he "appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that he had the pension in consideration of which the chaplain had to say sixty masses annually in the churches of this City, etc.," and that "the rents of the property of which amount at present to P180 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son." That is to say, to found the chaplaincy and to insure the saying of the masses in question, the executor proposed to the Archbishop that the estate had property which had a rental value of P180 per annum, which he was ready and willing to pay for the founding of a chaplaincy and the saying of such masses, and to insure the payment of the P180 annually, he was ready, able and willing to convey the property in trust to the church for spiritual purposes. But it should be noted that his proposition specifically provided that the property should not be used for any other or different purpose, and that, "if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents." That must be construed as a specific limitation upon the rights, powers and duties of the trustee, which would prohibit the use of the property by the trustee for any other or different purpose than the one specified in the will.

It will also be noted that the proposition of the executor was accepted by the defendant upon the terms and conditions therein stated as provided for in the will of the foundress, and Esteban de Guzman, who was then not 14 years of age, was duly appointed by the defendant as the first chaplain in the chaplaincy as thus founded and entered upon the discharge of his duties.

The second chaplain was Vicente de Guzman, who was a brother of the first, and was appointed by the Archbishop on April 7, 1838.

The third chaplain was Mariano de Guzman, a nephew of the first, and he was appointed October 11, 1867.

The fourth chaplain was Fernando Maniquis, who was appointed May 23, 1890, and served until November 17, 1897.

The fifth and last chaplain was Angel Gonzalez, the plaintiff's father, and he was appointed on June 20, 1901, and served until December 6, 1910, and to whom the defendant accounted for all of the rentals of the property of the

chapelaincy from the date of the resignation of the preceding chaplain in November, 1897, and also the rentals of the property which were collected during his chapelaincy, and when paid to him, they were appropriated by Angel Gonzalez to his own use.

Although the defendant held the title to the property in trust, yet, apparently prior to 1863, the different chaplains had the control and management of the property, and collected the rentals, when in that year for the first time the defendant took over the actual management of the property and the collection of the rentals.

As stated, Angel Gonzalez, the last chaplain, was appointed by the defendant on June 20, 1901, and served until December 6, 1910, and to whom the defendant not only accounted for all of the rentals of the property of the chapelaincy from November, 1897, the date of the resignation of the preceding chaplain, but also for the rentals received from June 20, 1901, to December 6, 1910, during the period of his own chapelaincy. There is nothing in the record tending to show what was done with the rentals collected from 1863 to 1897 or the amount of them, or to whom they were paid. But in view of the fact that an accounting was had and made to Angel Gonzalez for the rentals from the year 1897 to December 6, 1910, it is fair to assume that there must have been some kind of a settlement or accounting between the defendant' and the former chaplains of the rentals collected from 1863 to 1897. In any event, the record is conclusive that there was a full, final and complete settlement between the defendant and Angel Gonzalez, as chaplain, for the rentals collected from the year 1897 to December 6, 1910.

Upon this question, the recitals made in the original appointment of Angel Gonzalez, the last chaplain, are very important. After giving the history of the foundation of the chapelaincy founded by Da. Petronila de Guzman, his appointment recites:

This order was made on August 21, 1901, and remained in full force and effect until Angel Gonzalez resigned, and the final settlement was made with him on December 6, 1910, at which time the chapelaincy was declared vacant, and it has remained vacant ever since, and clause ten of the will provides:

"It is my will that for patron of said chapelaincy my executors name the Father President of the College of San Juan de Letran."

And clause eleven provides:

"I appoint my first executor as administrator of the chapelaincy which shall be founded on the house referred to, during the minority of said chaplain."

That is to say, "the Father President of the College of San Juan de Letran" was made Patron of the chapelaincy, and the executor under the will was made "administrator of the chapelaincy during the minority of said chaplain," D. Esteban de Guzman, who was then a minor less than 14 years of age.

Hence, we have this situation. On March 13, 1816, Petronila de Guzman made her last will and testament in which she sought to provide for the foundation of a chapelaincy and the celebration of "sixty masses annually" in behalf of her own soul and the souls of her father and mother and brothers and sisters, and in which she named the Father President of the College of San Juan de Letran as Patron of the chapelaincy, and appointed her executor as administrator of the chapelaincy during the minority of her son, D. Esteban de Guzman, whom she appointed the first chaplain, whom she charged and enjoined to carry out the terms and provisions of her will.

Pursuant to that charge and by the terms of the will, the executor made a formal application to the defendant to found the chapelaincy and to have D. Esteban de Guzman, the minor, who was the "legitimate son of my grandson Don Jose Telesforo de Guzman," appointed as first chaplain under the will, and to provide for the celebration of "sixty masses annually," and the application was formally granted and the chapelaincy was thus founded, and as provided in the will, the minor was appointed as the first chaplain under the chapelaincy, and to that end and for

such use and purpose, the property was then conveyed to the defendant in trust. From that date to 1901, four other chaplains have been appointed. In 1863, and for the first time, the defendant took over the actual control and management of the property and collected the rents, and the record is conclusive that from 1897 to December 6, 1910, the defendant accounted to Angel Gonzalez, the last chaplain, for all of such rents and profits, and that in the final settlement, the defendant actually paid to Angel Gonzalez the sum of P12,500 for and on account of such rentals and profits.

It will be noted that his order of appointment expressly recites that "he may possess and enjoy it as Ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress," for which he shall duly report, and "without which requisite the rent which for the purpose may be necessary shall be withheld from him," and that it was further ordered that he should be recognized and treated "as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant." This is an express recognition of the foundation of the chaplaincy and of its continued existence, and of the right of the chaplain to enjoy it as "ecclesiastical benefice and by perpetual title," and to collect and receive the rent and profits of the chaplaincy not only during its existence, but "while vacant."

Such are the actual facts evidenced by written documents, about which there is not and cannot be any dispute. In addition to which, His Grace Michael J. O'Doherty testified:

"Q. Without reference to your having seen the properties or not, your Grace acknowledges that these properties belong to the chaplaincy in question?—A. Yes, sir; there is no question about that."

And it appears that upon the foundation of the chaplaincy in the year 1820, it was expressly agreed with the executor of the foundress that any attempt to use the funds of the property in question for any other or different purpose than that provided in the will, no matter how pious it might be, should be considered null and void.

Upon such undisputed evidence, the trial court made an express finding of fact that the defendant held the title to the property in trust and as trustee under the terms and provisions of the will of the foundress, and that finding is well sustained by the evidence.

We are clearly of the opinion that by the terms and provisions of the will and what has been done under it and through its own actions and conduct covering a period of almost a century, the defendant is now estopped to claim or assert that it has a fee simple title to the property or that it does not hold the title as trustee under the will of the foundress.

The next and most serious question is whether or not the defendant should be required to account to the plaintiff and the judgment in his favor should be sustained.

As stated, the chaplaincy in question is a collative chaplaincy which required the title of ordination, and it is called ecclesiastical because it is in the form of an ecclesiastical benefice, and the foundation called for relatives of the foundress whom she designated as a trunk to enjoy the chaplaincy, and hence it is called "colativa familiar."

In the instant case, the trunk of the chaplaincy was D. Esteban de Guzman, the legitimate son of D. Jose Telesforo de Guzman, who was a grandson of the foundress, who was born on August 4, 1806, who was formally appointed chaplain by the ecclesiastical authorities under the provisions of the will on the 16th of June, 1820, and at the time of his appointment, he was less than 14 years of age.

The second chaplain was Vicente de Guzman, also a son of Jose Telesforo de Guzman, and a brother of the first chaplain, and he was born on November 22, 1816, and was appointed chaplain on April 7, 1838.

The third chaplain was Mariano de Guzman, a son of Juan Bautista de Guzman and the grandson of Jose Telesforo de Guzman, and he was born on January 20, 1845, and appointed on October 11, 1867.

The fourth chaplain was Fernando Maniquis, a son of Eugenia de Guzman and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and he was born on May 3, 1870, and was appointed on May 23, 1890.

The fifth and last chaplain was Angel Gonzalez, a son of Escolastica de Guzman and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and he was born on August 18, 1882, and was appointed on June 20, 1901.

It is stipulated that no one of the five chaplains above mentioned was a "clerigo" at the time of his appointment to the chaplaincy, and also:

"9. That according to the new canon law promulgated in the year 1918, 'las capellanias o beneficios simples se confieren a clerigos del clero secular'; that in order to be a 'clerigo' one must have 'prima tonsura'; that in order to have 'prima tonsura' one must have begun the study of theology; and that in order to study theology one must be a 'bachiller.'

"13. That the plaintiff Raul Rogerio Gonzalez is the legitimate son of said Angel Gonzalez and Adelaida Gonzalez, and was born on September 16, 1912."

It is not alleged, and plaintiff does not claim, that he is now a priest or that he has a "prima tonsura," but it is alleged in the amended complaint:

"I. That he is a minor residing in the municipality of Baliwag, Province of Bulacan; that he will be 14 years of age on the 16th day of September of the present year (1926); that Adelaida Gonzalez is his mother and duly appointed and authorized guardian ad litem for the purposes of this action and that the defendant is a corporation sole, domiciled in the City of Manila, P. I., and represented by His Grace, M. J. O'Doherty, apostolic archbishop.

"IV. That it is provided in the said will that said chaplaincy should be occupied by the nearest relative in succession of the first chaplain, Esteban de Guzman.

"VI. That plaintiff is the eldest son of the said Angel and Adelaida Gonzalez, and as such, the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to said chaplaincy; that plaintiff possesses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood; that the testimonials of various Roman Catholic priests as to plaintiff's aptitude and inclination for the priesthood marked Exhibits B, C, D and E for identification are hereto attached and made a part of this amended complaint, and that there is no other person who has or claims to have the right to said chaplaincy.

"IX. That subsequent to the settlement of accounts set forth in the seventh paragraph of this amended complaint, the defendant in the month of September, 1914, wrongfully obtained and caused to be registered in its own name in the registry of property of the City of Manila, a Torrens title in fee simple to said property free and clear of the trust imposed upon it and upon the defendant as its administrator for the maintenance of said chaplaincy. That a description of the property as thus wrongfully registered marked Exhibit F is hereto attached and made a part of this amended complaint.

"XII. That the plaintiff through his parents and attorneys has repeatedly made application to the defendant for appointment to said chaplaincy; that at first no objection was made to plaintiff's right to or fitness for said office, and defendant promised to appoint him, but later refused to do so, alleging at first that he was too young and later declining to state its reasons for such refusal; that the language of the will establishing said chaplaincy, and particularly the eleventh paragraph thereof, expressly discloses the intention of the foundress

to fill said chaplaincy with minors without limitation as to their youthfulness; that Esteban de Guzman, the first chaplain chosen by the foundress Petronila de Guzman, was less than 14 years of age on the date of his appointment by the defendant Archbishop of Manila."

By the stipulation of facts, paragraphs 1, 9 and 12 are admitted. Paragraph 4 is contested and disputed. As to paragraph 6, there is no claim or pretense that any other person has or claims to have a right to the chaplaincy. Neither is it claimed that the plaintiff is not the eldest son of Angel and Adelaida Gonzalez, and there is no dispute as to the contents of Exhibits B, C, D and E. But the defendant denies that the plaintiff is "the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to the said chaplaincy," or that he is now spiritually qualified for a career of priesthood.

After an exhaustive analysis of all of the evidence pro and con, the trial court made the following finding of fact:

"8. So far as the records show, plaintiff is the nearest relative of the first chaplain, Esteban de Guzman. The fourth chaplain, Fernando Maniquis, has a son who is of about the same age and in the same degree of relationship from the first chaplain as the plaintiff, but he is not a candidate for appointment to this chaplaincy, and his father expressly renounced such candidacy in open court while he was testifying as a witness for plaintiff in this case. According to the Archbishop of Manila himself, plaintiff is then only applicant for appointment to the chaplaincy in question. (Deposition, p. 14.)"

That finding is sustained by the evidence and is also accepted by the majority opinion.

The evidence is also conclusive that the plaintiff in all things and respects has the intellectual qualifications of a chaplain which specially appears from Exhibits B, C, D and E, and the evidence is also conclusive that the plaintiff possesses even more learning and intelligence than any previous chaplain at the time of his appointment and that he was personally recommended for the appointment by the Father President of the College of San Juan de Letran, who, under the terms of the will, was the "Patron of said chaplaincy," and that exclusive of the canonical law above quoted, the plaintiff has all of the requisite qualifications of a chaplain, and that if it was not for that law, his appointment would have been simply a matter of form and not of substance. Hence, the question is squarely presented whether the promulgation of the canonical law in question in 1918 is a bar and can now be urged against his appointment as chaplain.

It must be conceded that prior to 1918, there was no law of the church which would prohibit the appointment of the plaintiff as chaplain, and that upon the showing made prior to the promulgation of the law in question, the plaintiff would have been appointed chaplain as a matter of course. It must also be conceded that under the provisions of the existing canonical law, plaintiff does not have the requisite qualifications to be appointed chaplain. The question is thus squarely presented whether after the defendant has accepted and approved the will of the foundress and appointed five different chaplains under its provisions and the conditions then existing, to the last of whom it has accounted for the rents and profits during his chaplaincy, can it now ex parte and of its own volition promulgate and enforce a canonical law which imposes new and different terms and conditions and in legal effect nullifies the will of the foundress, which it has recognized and enforced for nearly a century? Whatever may have been the rights, privileges and prerogatives of the church while this country was under the dominion of Spain, it was held by this court in *United States vs. Balcorta* (25 Phil., 273, 276), that:

"The change of sovereignty and the enactment of the fourteenth paragraph of section 5 of the Philippine Bill caused the complete separation of church and state, and the abolition of all special privileges and all restrictions theretofore conferred or imposed upon any particular religious sect."

The Constitution of the United States prohibits the passing of an ex post facto law or of any law impairing the obligation of contracts.

In the celebrated case of *Trustees of Dartmouth College vs. Woodward* (4 Law. ed. [U. S.], p. 629), in an opinion written by Chief Justice Marshall, the Supreme Court of the United States held:

"The charter granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the Constitution of the United States, art. 1, s. 10, which declares that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the revolution.

"An act of the state legislature of New Hampshire, altering the charter, without the consent of the corporation, in a material respect, is an act impairing the obligation of the charter, and is unconstitutional and void.

"Under its charter, Dartmouth College was a private and not a public corporation. That a corporation is established for purposes of general charity, or for education generally, does not, per se, make it a public corporation, liable to the control of the legislature."

Commenting on this decision, Chancellor Kent, vol. 1, p. 418, said:

"The argument of the Supreme Court in this celebrated case contains one of the most full and elaborate expositions of the constitutional sanctity of contracts to be met with in any of the reports. The decision in this case did more than any other single act, proceeding from the authority of the United States, to throw an impregnable barrier around all rights and franchises derived from the grant of the government; and to give solidity and inviolability to the literary, charitable, religious and commercial institutions of our country."

Since the rendition of that decision, no court of last resort, under the jurisdiction of the United States Flag, has ever declared any law valid, either legislative or canonical, that impaired the obligation of a contract.

In substance, both of those provisions in the Constitution of the United States are incorporated, and made a part of, the Organic Law of the Philippine Islands.

Upon this question, the majority opinion says:

"It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation which could be changed under Spanish law has become immutable from the promulgation by congress of the constitutional provision forbidding the impairment of contracts by legislative Acts."

That is to say, because in 1918 there was no law in Spain against impairing the obligation of a contract, the defendant then had the legal right to promulgate a canonical law which did impair the obligation of a contract. Therein lies the fallacy of the majority opinion. It overlooks the underlying, fundamental fact that in 1918, and for a long time previous, this country was no longer under the dominion of Spain, and that it was then under the laws of the United States in which neither the church nor state can enact a law which will impair the obligation of a contract.

That statement is not good law, and is in direct conflict with, and overlooks the provision of, article 3 of the Civil Code which says that:

"Laws shall not have a retroactive effect unless therein otherwise provided."

That is to say, the Federal Constitution prohibits the law-making power from passing any law which impairs the obligation of a contract, and the Spanish code expressly provides that no law shall have a retroactive effect "unless therein otherwise provided." If the Legislature cannot enact a law which would impair the obligation of a contract, how, in what manner and by what authority can the defendant promulgate a canonical law which in legal

effect impairs the obligation of a contract? Even under the Spanish code, how and in what manner and by what authority can a canonical law be made retroactive unless the canonical law also provides that it shall be retroactive? Upon what legal principle is the defendant church exempt from the express language of the Constitution, or the plain provisions of the statute? It must be conceded that such provisions are binding upon private persons and the legislative bodies of the government; hence, why are not they binding upon the defendant? And why is it exempt? The execution of the will by the foundress and the acceptance of its terms and conditions by the defendant and the conveyance to it of the property and the appointment of the chaplain specified in the will and of four other chaplains in accord with its terms and provisions, covering almost a century of time, and the admitted accounting to the last chaplain, makes a valid, binding, executed contract between the foundress and the defendant. Otherwise, the whole transaction from its inception was null and void and of no legal force or effect.

The deed of endowment recites that the expense of the construction of the "house of lime and stone" was P1,600, exclusive of the value of the lot on which it was situated, and that the rental value of the house on April 26, 1820, was P180 per annum. It appears that its rental value at present is P1,000 per month, and that the amount of the rents and profits from December 6, 1910, to the rendition of the judgment on December 20, 1926, is P173,725, less certain enumerated costs and expenses, from which the importance of this case becomes very apparent

The defendant vigorously contends that the property in question became and is now spiritual property, and that as such it is beyond the jurisdiction of the courts. Here, again, we must look to the purpose and intent of the foundress and what has been done by the defendant under the terms and provisions of the will. The building was constructed at a cost of P1,600, and at the time of the execution of the will, it had a rental value of P180 per annum. The chaplaincy was founded and provision was made for the saying of sixty masses annually, for which the P180 annual rent was then deemed sufficient. In its acceptance of 1820, the defendant approved "the foundation of the chaplaincy, etc., as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character, etc.," and it was to that extent, and to that extent only, that the property was spiritualized. It was never the purpose or intent of the foundress that it should be spiritualized above and beyond the amount of the specified rental value at the time of the execution of the will. By the acceptance of the deed of endowment upon the terms and conditions stated, and the founding of the chaplaincy, the defendant declared itself satisfied with the P180 per annum as a full and complete compensation for the saying of the sixty annual masses, and for nearly a century, it has taken and accepted that compensation in full for those services, and it accounted to the last chaplain for the amount of such rents and profits, less costs and expenses, and the amount of such annual masses. Those facts alone are conclusive evidence that the defendant by its own actions and conduct is now estopped to claim or assert that the property in question was spiritualized above and beyond the original amount of P180 per annum. Such a construction is also in accord with, and gives full force and effect to, the deed of the foundation in which it is said that:

"Property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric, without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents," which immediately follow the words "the rents of the property of which amount at present to P180 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son."

It is conceded that in September, 1914, the defendant made an application to have the property registered in its own name and to obtain a Torrens title, and that in truth and in fact it did obtain and now holds a Torrens title in fee simple in its own name, and for aught that appears upon the official record, the defendant is the sole and exclusive owner of the property in its own right and name.

It is also conceded that at all times since December 6, 1910, the chaplaincy has been and is now vacant, and that the defendant has refused to appoint the plaintiff as chaplain or to account to him for the rents and profits, and that, if the canonical law of 1918 is to be applied and should be enforced, the plaintiff does not have the requisite qualifications under the existing laws of the church to be appointed chaplain.

Among other things, the purpose of this action is to compel the defendant to appoint the plaintiff to the vacant chaplaincy, and upon that point the lower court sustained the plaintiff's contention. We frankly concede that the court should not interfere with the internal affairs of the church upon any question of religion or any matter of spiritual nature. That is a constitutional right which is expressly reserved to the church. Even so, when a church enters into a valid and binding contract which involves temporal and property rights, the construction and legal force of such a contract devolves exclusively upon the courts, and while they do not claim or exercise the power to interfere with the spiritual matters of the church, they do claim and exercise the power over the property rights of the church and any right arising from, or growing out of, a valid and binding contract over property to which the church is a party.

We frankly concede that the courts do not exercise or claim the power to say to the church whom it should or should not appoint chaplain, to perform any spiritual right or duty, or in the least to interfere with the spiritual affairs of the church, its creed or religious belief, or the spiritual duties of any officer or member of the church. But the question involved in this case is one of a property right founded upon a contract made between the church and the foundress, and the purpose of this action is not to procure the appointment of a chaplain with authority under the laws of the church to say the masses, for which the will provides, or in any manner to interfere with the spiritual affairs of the church. The sole purpose is to have a chaplain appointed with legal authority to receive and receipt for the net income of the property.

If, as the defendant contends, it has the sole and exclusive right at its option and in its discretion to change, modify or enlarge the requisite qualifications for a chaplain, and the sole and exclusive power in its own discretion to appoint a chaplain, it is fair to assume that in the instant case, no chaplain would ever be appointed and that no accounting would ever be made, for the simple reason that in no circumstances would any church or any other person want to appoint a chaplain to whom, when appointed, it would be required to make an accounting of the rents and profits of the property, as in the instant case, covering a period of seventeen years, the rental value of which is now P1,000 per month, and that would be especially true where the chaplaincy has been vacant seventeen years. If that is the law, the defendant would have the power at its option and in its own discretion to impose new terms and conditions for the appointment of a chaplain, with which no member of the Guzman family could ever comply, and thus defeat and prevent the appointment of any chaplain at any time in the future. That is not the law; neither should the original contract be so construed.

The chaplaincy has been vacant for the last seventeen years, and if, under the existing canonical law, the defendant has the sole and exclusive power to appoint and the appointee must be a "clerigo" with all of the necessary qualifications, the question naturally arises who, if any one, will ever be appointed chaplain, and when, if ever, would he be appointed? The stubborn fact remains that it has been vacant for the last seventeen years, and that under the existing canonical law, no member of the Guzman family would ever be appointed chaplain.

Upon this question, in its brief, appellant says:

"For argument's sake, we shall admit that plaintiff has a right to the income of the chaplaincy and that the same is a civil right. Such a right, however, would depend on whether plaintiff is appointed chaplain of the said chaplaincy."

In response to which, respondent says:

"I admit that you are the owner of the sum of over P150,000 which I have collected as rents of the property of the chaplaincy, but you can only take and enjoy it if I give you the key, which I do not propose to do."

And

"That its refusal to give the plaintiff that key is a judicial decision final and conclusive against plaintiff's right to recover that money."

That is a statement of the whole case in a nutshell.

Previous to the promulgation of the canon law of 1918, any male descendant of the first chaplain over 13 years of age was eligible to the position, and the will provides that for the failure of such descendant, a student of San Juan de Letran School should be appointed. Yet, that is nothing more than a high school, or one of secondary education, and there is no claim or pretense that any of its students is a "clerigo" or possesses the necessary qualifications to be appointed chaplain under the canon law of 1918. That is to say, if that law is to be enforced, the provisions of the will for the appointment of a chaplain, which were then valid under the laws of the church, are wholly nullified, and for such reason, the chaplaincy would remain forever vacant, against the clear intention and the express will of the foundress. By that construction and defendant's course of conduct, there is no longer any beneficiary under the will of the foundress, for the simple reason that there is no person to whom the defendant should account. It is elementary that you cannot have a trust without a beneficiary. Under all of the definitions of an express trust, there must be a trustee who holds the legal title to the property for the use and benefit of some third person; otherwise, it is not a trust. Having accepted the trust and having recognized it and performed the duties of trustee for nearly a century, the defendant cannot now defeat or impair the trust by neglecting or refusing to appoint a beneficiary to whom it should account for the net income of the property.

It appears by its own evidence that the defendant has been using the funds arising from the rents and profits "for religious purposes, education, benefices, charity, etc.," and "I have done nothing more than follow the custom which I found had been followed by my predecessor Mons. Harty." In addition to which, under the Torrens System, it has applied for and obtained a title in fee simple in its own name. If the will is to be so construed, then by and through the actions and conduct of the defendant, it becomes void for want of a beneficiary.

That question was squarely decided in an exhaustive opinion by the Supreme Court of New Hampshire, April 6, 1926, 45 A. L. R., p. 1433, in which, among other things, the syllabus says:

"Wills, Sec. 201—requisites of bequest.

"2. To create a valid bequest there must be a beneficiary, or class of beneficiaries, indicated in the will, capable of coming into court and claiming the benefit of the bequest.

"(See 28 R. C. L., 339; 3 R. C. L. Sup., 1572.)

"Trusts, Sec. 21—necessity of definite beneficiary.

"3. To effect an enforceable private trust by will there must be a beneficiary, or class of beneficiaries, indicated in the will, capable of coming into court and claiming the benefit of the bequest.

"(See 26 R. C. L., 1189; 4 R. C. L. Sup., 1701; 5 R. C. L. Sup., 1444.)

Trusts, Sec. 20—indefiniteness—effect

"5. A gift to trustees to dispose of the same as they think fit is too uncertain to be carried out by the courts.

"(See 26 R. C. L., 1184.)

"Wills, Sec. 198—ascertainment of beneficiaries.

"9. The identity of a beneficiary in a will is a question of fact to be found from the language of the will, construed in the light of all the competent evidence, rather than by the application of arbitrary rules of law.

"Trusts, Sec. 21—designation of beneficiaries.

"10. Beneficiaries under a trust may be designated by class.

"Trusts, Sec. 44—failure—effect.

"12. Where a gift is impressed with a trust, ineffectively declared, and incapable of taking effect because of the indefiniteness of the cestui que trust, the donee will hold the property in trust for the next taker under the will, or for the next of kin by way of a resulting trust.

"(See 26 R. C. L., 1216; 5 R. C. L. Sup., 1446.)"

That same legal principle is laid down by the Supreme Court of Alabama in *Festorazzi vs. St. Joseph Roman Catholic Church* (25 L. R. A., 360, 362 and 363), and by the Supreme Court of Wisconsin in *McHugh vs. McCole* (72 N. W., 630, 632, 634-637). In legal effect, those decisions support the contention of the plaintiff that, if the appointment of a chaplain is a matter which is left to the sole discretion of the defendant, it must follow that in the instant case, the beneficiary is not made definite and certain, and that the foundation is void for want of any person who is qualified to enforce it, and, for such reason, the legal title to the property must revert to, and become vested in, the heirs of the foundress.

If the contention of the defendant is to prevail in the instant case, the very fact that the chaplaincy has been vacant for the last seventeen years, and that no member of the Guzman family or student of the San Juan de Letran College is qualified to fill the position under the canonical law of 1918, and that under such conditions, a chaplain may never be appointed under the provisions of the will in the future, would leave the whole question in the realm of doubt, uncertainty and speculation as to when if ever there would be a beneficiary under the will of the foundress. If there ever was any doubt as to how the deed of the foundation should be construed, it has been forever removed by the course of conduct and the long, continuous construction which has been placed upon it by all of the parties in interest, including the legal descendants of the foundress and the defendant, in particular, in the appointment of the five previous chaplains, the manner of their appointment, and the terms and conditions upon which they were appointed, the conduct of the defendant, and the accounting which it made to the last chaplain. All of such parties by their actions and conduct, having approved and followed that construction for nearly a century, cannot at this time contend for any other or different construction, in particular, where the contention would defeat and destroy the will of the foundress.

This case is one of first impression in this court, and we doubt very much whether a similar case has ever been decided by any court. On page 17, the majority opinion says:

"* * * It is a sinister omen for the plaintiff's case that no decision of any civil court whatever can be pointed to as a precedent for such an exercise of judicial power, and the mere novelty of the proposition is an argument against the soundness of the plaintiff's case. * * *"

Our answer is that each case is decided upon its own facts, and that no case will ever be found with the same peculiar facts shown to exist in the record, and it is for that reason that no case can be found either pro or con upon this particular question.

Be that as it may, the primary purpose of this action is to obtain an accounting, for which the appointment of a chaplain is only an incident and not one of substance, and, as stated, it is not sought to have a chaplain appointed for the saying of masses. We frankly concede that is a matter peculiarly within the province of the defendant and over which this court does not have any control. The purpose here is confined and limited to the appointment of a

chaplain for administrative purposes only, to whom the defendant should account for the net income of the property. Therein lies the distinction. In other words, the plaintiff seeks to have a chaplain appointed for the sole and specific purpose of carrying out the will of the foundress and to comply with the legal obligation arising out of the original contract.

The majority opinion suggests that the proper remedy, if any, would be an independent action "brought as a class suit in behalf of all the descendants of Doña Petronila de Guzman, since under the present decision the minor plaintiff in this action has no particular title to relief."

The plaintiff here is a son of the last chaplain, Angel Gonzalez, who is a son of Escolastica de Guzman, and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and this action is prosecuted by Adelaida Gonzalez, who is the wife of Angel Gonzalez, the former chaplain and the mother of the plaintiff. It also appears that Fernando Maniquis, who was the fourth chaplain, is a son of Eugenia de Guzman and the grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and who appeared and testified as a witness for the plaintiff, and in open court waived any right that his minor son might have to be appointed chaplain. In other words, it appears from the record that a number of the immediate descendants of the foundress appeared in court and testified as witnesses on behalf of the plaintiff, and not one of them appeared to contest his claim from the date of the filing of the original complaint on August 5, 1924, and there is no claim or pretense that any descendant of the foundress is contesting plaintiff's right to prosecute this action or to be appointed chaplain.

Even from that point of view, under the allegations of the amended complaint and its broad prayer for relief, there is much force in the contention that the instant case could be construed as "a class-suit in behalf of all of the descendants of Doña Petronila de Guzman."

There is no dispute about any material fact, and in the final analysis, the only questions involved are those of law and as to how they should be construed and applied to the undisputed facts, and those questions are of vast importance to both the litigants, the profession and the public in general, and in the orderly administration of justice, they should be squarely met and decided as they now appear, in this record.

If, under the law, the defendant should be required to make an accounting, it would not make any legal difference to it whether such an accounting should be made in this action or in the so-called "class-suit." This proceeding being equitable in its nature, if the judgment of the lower court in favor of the plaintiff should be affirmed, it would have full and ample power to protect the legal rights of all parties having or claiming an interest in the fund, by reason of which and upon the facts in the record, the judgment would be a legal bar to any other action against the defendant. In that situation and in the interest of justice, it is the duty of this court to decide this case on its merits.

We are clearly of the opinion that the defendant holds the legal title to the property in trust, and that under the terms and provisions of the will of the foundress, it should make an accounting of the net income from its rents and profits, the receipt of which it admits, and that whether this action should be construed as prosecuted by the plaintiff under his right to be appointed chaplain for administrative purposes or in the nature of a "class-suit," the judgment of the lower court should be affirmed, and for such reasons, I dissent from the learned and well written majority opinion.

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