CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1929.

GONZALEZ *v.* ROMAN CATHOLIC ARCHBISHOP OF MANILA.

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 6. Argued April 8, 9, 1929.—Decided October 14, 1929.

1. A judgment of the Supreme Court of the Philippine Islands in a case in which the amount in controversy exceeds $25,000, is reviewable by this Court on certiorari. P. 11.
2. The Roman Catholic Archbishop of Manila is a juristic person amenable to the jurisdiction of the Philippine courts for the enforcement of any legal right; and a right claimed under a will to be appointed to, and receive the income from, a chaplaincy founded by the will is a subject-matter within the jurisdiction of those courts. P. 15.
3. The facts that the chaplaincy is a collative one and that its property was transferred to the spiritual properties of the Archbishopric, subject to ecclesiastical jurisdiction and control, affect the terms of the trust but do not deprive civil courts of jurisdiction to adjudicate legal rights arising therefrom. P. 16.
4. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. P. 16.

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5. Pursuant to the will of its foundress, a perpetual collative chaplaincy was established in 1820. Such a chaplaincy is subject to ecclesiastical control, and intervention by the proper spiritual authority to appoint and ordain the chaplain is essential. The ecclesiastical law also prescribes the qualifications of the chaplain. *Held*, in accordance with the implied intention of the parties, that the Canon Law in force at the time of the presentation of an applicant for appointment, rather than that in force in 1820, governs his fitness, and he cannot complain of an amendment adopted at a time when he was ineligible under either law and was enjoying no right of which the amendment deprived him. P. 17.
6. The intention of the foundress of a collative chaplaincy, so far as expressed, was that the income should be applied to the celebration of masses and to the living of the chaplain, who should preferably be the nearest male relative in the line of descent from herself, or her grandson, the first incumbent. Four others of her descendants successively held the chaplaincy, the last of whom renounced it and was still living. During the resulting vacancy, the masses were duly celebrated and the Archbishop applied the surplus income currently to pious educational uses, supporting this by a custom of the archdiocese and provisions of Canon Law. *Held*, without deciding whether such disposition of the surplus was proper or what should be its disposition in the future, that a son of the last incumbent, who was properly refused appointment as chaplain because he had not the qualifications prescribed by the Canon Law, was not entitled, as the nearest relative, to the accrued surplus. P. 18.
7. Suit was brought by an individual to enforce his claimed right as sole beneficiary under a will to the appointment to, and accrued surplus income from, a collative chaplaincy. *Held*, that, on appeal, the action cannot be treated as a suit by him as representative of the heirs of the testatrix as a class to recover the surplus income during a vacancy. P. 19.

Affirmed.

CERTIORARI, 278 U. S. 588, to review a judgment of the Supreme Court of the Philippine Islands, which reversed a judgment recovered by Gonzalez directing the Archbishop of Manila to appoint him to a chaplaincy and to pay to him the income thereof accrued during its vacancy.

Mr. Howard Thayer Kingsbury, with whom *Messrs. Frederic R. Coudert* and *Allison D. Gibbs* were on the brief, for petitioner.

The decision below defeats the testamentary intentions of the foundress.

The registration should have been in the name of the "*Capellania*" itself as a juristic person. See *Capellania de Tombobong* v. *Antonio,* 8 Phil. Rep. 683; *Capellania de Tombobong* v. *Cruz,* 9 *id.* 145.

At no stage of the cause has the lawful character of the Foundation, under the applicable local law, been questioned. It was assumed, as obviously not subject to controversy, in *Gonzalez* v. *Harty,* 32 Phil. Rep. 328. See *Manila* v. *Archbishop,* 36 *id.* 145.

The same practice was there followed on this subject in the Philippines as prevails under English Ecclesiastical Law, namely, that the income of a benefice during a vacancy goes to the next incumbent. See Burn, Ecclesiastical Law, Vol. 4, p. 1, *et seq.*

The Canon (§ 1481) providing for a different disposition of the income of a vacant benefice appears to be an innovation of 1918, and it would, moreover, be inappropriate to apply it to a "*Capellania colativa familiar,*" limited to a particular family, such as this.

The inviolability of lawful testamentary intentions has been repeatedly declared and sustained by this Court. *Gray* v. *Noholoa,* 214 U. S. 108; *Kenaday* v. *Sinnott,* 179 U. S. 606. Spanish law recognized the same rule as applicable to the testamentary foundation of a Chaplaincy.

The decision below permits the Canon of 1918 to be applied retroactively to defeat and divest property rights and allows the ecclesiastical authorities to be both legislators and judges in their own cause.

The Chaplaincy here involved is a *Capellania colativa familiar,* being "instituted with the intervention of the ecclesiastical authority" and calling "for relatives of the founder or of the persons whom he designed as trunk, to enjoy the Chaplaincy."

Such chaplaincies appear to have been a frequent form of pious foundation, both in the Islands and in Spain, where, however, they were disamortized by a series of legislative acts, beginning in or about 1820 and continuing until 1867. See Alcubilla, Diccionario, Vol. 2, p. 118, *et seq.* In the Philippines they have been undisturbed by legislation, and are recognized as having juristic entity. Their purpose appears to have been to provide a source of support for a succession of members of the founder's family and at the same time to secure the saying of masses for the benefit of the family. The ecclesiastical character of the incumbent from time to time appears to have been a minor consideration.

The plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual. When property rights are affected, the law of the land must prevail. *Free Church* v. *Overtoun,* [1904] A. C., 515.

When the similar chaplaincies in Spain were disamortized by legislation, the property rights pertaining thereto were preserved for the "nearest relative of the preferred line," and conflicting claims were determined by the civil courts. See 8 Jurisprudencia Civil, 372, May 30, 1863; Alcubilla, Diccionario, Vol. 2, pp. 259, 261. This disamortization, however, was not extended to the Philippines. *Catholic Church* v. *Municipality,* 10 Phil. Rep. 659.

Under the Will and Deed of Foundation it was sufficient that the candidate should be qualified ultimately to become a priest. He was not required to be already a "clerical."

It is contrary to the underlying conceptions of American jurisprudence, which now protect the sanctity of property and contract rights in the Philippines (*Cariño* v. *Insular Government,* 212 U. S. 449; *Vilas* v. *Manila,* 220 U. S. 345), that any ecclesiastical power, however exalted, should first, as legislator, change its own laws or canons to the prejudice of outstanding property rights, and then, as judge or administrative functionary exercising discretionary power, interpret and enforce them to the impoverishment of the individual or individuals in whom the property rights subsist and to the enrichment of its own coffers for use in other directions.

This suit is in name against the Archbishop of Manila, but he stands as the representative of the Church (*Harty* v. *Sandin,* 11 Phil. Rep. 451), which, in the territories acquired by the Treaty of 1898 with Spain, is a solidary juristic entity capable of holding and owning property, and therefore of incurring and performing obligations attached to such ownership. *Ponce* v. *Church,* 210 U. S. 296; *Santos* v. *Church,* 212 U. S. 463; *Barlin* v. *Ramirez,* 7 Phil. Rep. 41; *Evangelista* v. *Ver,* 8 Phil. Rep. 653.

The Spanish Law fully recognized the obligations growing out of a fiduciary relation and was rigid in forbidding a fiduciary "to create in himself an interest in opposition" to that of the beneficiary. *Severino* v. *Severino,* 44 Phil. Rep. 343; *Orden de Predicadores* v. *Water District,* 44 Phil. Rep. 292.

The Canon Law itself, both before and in the revision of 1918, recognizes the lack of power in the ecclesiastical authorities to vary the terms of a testamentary foundation. Pitonius, De Controversiis Patronorum, 1719, Allegatio XXXIII, n. 37 (Tom. 1, p. 275).

The revision of 1918 in like manner recognizes the sanctity of conditions and limitations attached to benefices, once they have been duly approved and accepted

by the competent ecclesiastical authorities. See Canon 1417, §§ 1, 2.

Appeal to the Pope was not a necessary condition precedent to recourse to the civil courts.

If a class suit be deemed necessary, this suit can and should be so treated. See *Williams' Administrator* v. *Newman,* 93 Va. 719; *Neeley* v. *Jones,* 16 W. Va. 625; *Smith* v. *Swormstedt,* 16 How. 288; *Stewart* v. *Dunham,* 115 U. S. 61; *Supreme Tribe* v. *Cauble,* 255 U. S. 356; *Bismorte* v. *Aldecoa & Co.,* 17 Phil. Rep. 480; *Harty* v. *Macabuhay,* 39 Phil. Rep. 495.

Mr. William D. Guthrie, with whom *Mr. George J. Gillespie* was on the brief, for respondent.

The petitioner's theory of a civil right enforcible in the secular courts is entirely contradictory to the clear and expressed intention of the testatrix herself; for it is indisputable that she was a devout member of the Roman Catholic Church, and intended to establish a "collative chaplaincy" with all that the term implied and to have it subject to the laws and jurisdiction of that Church. It is likewise indisputable that the deed of foundation executed by her executor expressly segregated and transferred the property of the chaplaincy "to the spiritual properties of this Archbishopric" in the broadest possible terms and "renounces with all solemnity the laws that may favor the said decedent," and equally indisputable that the decree of approval executed by the Metropolitan Archbishop accepted and approved the foundation of the chaplaincy in the will and deed of foundation and thereby expressly converted the agreed value of the property "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction." It would be difficult, if not impossible, to devise language more clearly evidencing the intention to remove the property entirely beyond the jurisdiction of the secular courts.

"The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States." *Ponce* v. *Roman Catholic Church,* 210 U. S. 296.

And the Treaty of Paris (30 Stat. 1754) expressly covenanted (Article VIII) that the rights of the Roman Catholic Church would be duly maintained. See *Gonzalez* v. *Harty,* 32 Phil. Rep. 328. *Evangelista* v. *Ver,* 8 Phil. Rep. 653; *Chase* v. *Cheney,* 58 Ill. 509; *Gibbs* v. *Gilead Ecclesiastical Society,* 38 Conn. 153; *United States* v. *Cañete,* 38 Phil. Rep. 253; *Watson* v. *Jones,* 13 Wall. 679; *Shepard* v. *Barkley,* 247 U. S. 1.

Watson v. *Jones, supra,* relies upon the "implied consent" of "all who unite themselves to such a body" to submit to the ecclesiastical government. In the case at bar, however, the consent to the ecclesiastical government, which was merely implicit in *Watson* v. *Jones,* is explicit, and there is neither room nor necessity for presumption.

An illustrative example of the propriety of applying the principles of Canon Law in a controversy growing out of ecclesiastical relations, is found in the case of *Jones* v. *The Registrar,* 18 Porto Rico 124.

See also for interesting and striking decisions as to the doctrine of noninterference with Church authorities, the following additional cases: *Baxter* v. *McDonnell,* 155 N. Y. 83; *Connitt* v. *Reformed Church,* 54 N. Y. 551; *Walker* v. *Wainwright,* 16 Barb. (N. Y.) 486; *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74; *Fussell* v. *Hail,* 233 Ill. 73; *Wehmer* v. *Fokenga,* 57 Neb. 510; *Holwerda* v. *Hoeksema,* 232 Mich. 648; *Chase* v. *Cheney,* 58 Ill. 509; *O'Donovan* v. *Chatard,* 97 Ind. 421; *White Lick Meeting* v. *White Lick Meeting,* 89 Ind. 136; *Hackney* v. *Vawter,* 39 Kan. 615.

The courts have likewise held, and the policy of our government of noninterference in religious matters requires, that in any event an appeal to the ecclesiastical authorities for redress must first be taken, if available, before a civil court will intervene. *State ex rel. McNeill* v. *Church,* 84 Ala. 23; *German Church* v. *Seibert,* 3 Pa. St. 282. Such a right of appeal is expressly given.

The will of the foundress in the plainest terms requires a collative chaplaincy, not the mere laical chaplaincy which is, in effect, the result sought for by petitioner; and her will, moreover, urged as "the supreme law to be observed," fails utterly to make any provision as to successors.

The Roman Catholic Archbishops of Manila, in their discretion, as vacancies arose naturally gave preference to the nearest qualified or acceptable relative of the testatrix; but this practice, considered by petitioner a binding practical construction, did not estop the duly constituted representatives and tribunals of the Church from exercising their discretion or applying the provisions of the Canon Law. An unauthorized construction of the will could not, no matter how long continued, materially change or supplant the provisions of the trust as established by the testatrix herself and accepted by the Church. *Attorney General* v. *Rochester,* 5 DeG. M. & G. 797; *Attorney General* v. *Beverly,* 6 DeG. M. & G. 256; *Drummond* v. *Attorney General,* 2 H. L. Cas. 837.

The petitioner was not qualified under the Codex Juris Canonici of 1917 [promulgated in 1918]. He was not shown to be qualified under the prior Canon Law.

Omnia praesumunter rite et solemniter esse acta, may with particular propriety be applied to the present case.

Petitioner's right to receive any part of the income is contingent upon his right to be appointed as chaplain. The right of a minister to the temporal fruits of his office is dependent upon his continued "rightful incumbency."

State ex rel. Hynes v. *Catholic Church,* 183 Mo. App. 190; *Satterlee* v. *Williams,* 20 D. C. App. 393; *Chase* v. *Cheney,* 58 Ill. 509.

Prior to the codification in 1917, a collative chaplain would not have been entitled to appropriate the whole surplus income for his own purposes; it must be devoted to pious uses and good works.

But aside from the Canon Law and even if the plaintiff had established an heritable interest in the property of the testatrix, the fact that the increase of the income has produced a large surplus over the usual cost of the masses, would not establish any legal heritable right in the petitioner or in any of his family or class, to such surplus.

The rule obtaining in the secular courts is in this respect precisely the same as the Canon Law on the subject, viz., the surplus belongs to the Church, for its general pious purposes. *Mormon Church* v. *United States,* 136 U. S. 1; *Ponce* v. *Roman Catholic Church,* 210 U. S. 296; *Attorney General* v. *The Minister,* 36 N. Y. 452.

See also, *Attorney General* v. *Rector et al.,* 91 Mass. 422; *American Academy* v. *Harvard College,* 78 Mass. 582; *In re Campden Charities,* 18 L. R. Ch. Div. 310; *Bishop* v. *Adams,* 7 Ves. Jr. 324; *Attorney General* v. *Wansay,* 15 Ves. Jr. 230; *Attorney General* v. *Dixie,* 2 Myl. & K. 342.

See also *Sicles* v. *New Orleans,* 80 Fed. 868; *Associate Alumni* v. *Seminary,* 163 N. Y. 417; *Brigham* v. *Hospital,* 134 Fed. 513; *Goode* v. *McPherson,* 51 Mo. 126; *Bridgeport Library* v. *Burroughs Home,* 85 Conn. 309; *Strong* v. *Doty,* 32 Wis. 381; *Trustees* v. *Wilson,* 78 N. J. Eq. 1; *Sanderson* v. *White,* 18 Pick. (Mass.) 328.

If this proceeding be regarded as a suit in which the plaintiff is asking the court to change the present proceeding for a mandamus and accounting into a suit in equity for relief to a class of heirs as alleged beneficiaries of a trust, the class concerned must necessarily be, not the

heirs generally, but only such heirs as are qualified for appointment to the chaplaincy in question. A class suit cannot be successfully maintained by one who is not himself qualified to be a member of the class. *Watson* v. *Nat'l Life & Trust Co.*, 189 Fed. 872.

Mr. Justice Brandeis delivered the opinion of the Court.

This case is here on certiorari to the Supreme Court of the Philippine Islands. 278 U. S. 588. The subject matter is a collative chaplaincy in the Roman Catholic Archdiocese of Manila, which has been vacant since December 1910.[1] The main questions for decision are whether the petitioner is legally entitled to be appointed the chaplain and whether he shall recover the surplus income accrued during the vacancy.

Raul Rogerio Gonzalez, by his guardian *ad litem*, brought the suit against the Archbishop in the Court of

[1] A chaplaincy in the Roman Catholic Church is an institution founded by an individual for the purpose of celebrating or causing to be celebrated annually a certain number of masses conforming to the will of the founder. Chaplaincies are commonly divided into two classes—lay and ecclesiastical. A laical or mercenary chaplaincy is one instituted without the intervention of ecclesiastical authority; does not require a title in order to be ordained; and is not subject to ecclesiastical authority. The ecclesiastical or collative chaplaincy, although also founded by an individual, is one erected into a benefice by the proper spiritual authority; requires a title of ordination; and is thus subject to ecclesiastical control. When the foundation of an ecclesiastical or collative chaplaincy calls for relatives of the founder to enjoy the chaplaincy, it is called *colativa familiar*. When individuals of a certain family are not called to the possession but the patron is authorized to nominate, then the chaplaincy is called *colativa simple* or *gentilicia*. But whether the chaplaincy is *colativa familiar* or *colativa simple*, intervention of the proper spiritual authority to appoint and ordain is essential. Alcubilla, Diccionario de la Administracion Española, (5 Ed.) Vol. II, p. 259; The Catholic Encyclopedia, Vol. III, p. 580.

First Instance of Manila, on August 5, 1924. He prayed for judgment declaring the petitioner the lawful heir to the chaplaincy and its income; establishing the right of the petitioner and his successors to be appointed to and receive the income of the chaplaincy during their infancy whenever it may be vacant and, pending such appointment, to receive the income for their maintenance and support; declaring the trust character of the property and ordering it to be so recorded; directing the Archbishop to appoint the petitioner chaplain and to account to him for the income of the property from 1910 on; and directing the defendant to pay the petitioner 1,000 pesos a month pending the final determination of the case. The trial court directed the Archbishop to appoint the petitioner chaplain; and ordered payment to him of 173,725 pesos ($86,862.50), that sum being the aggregate net income of the chaplaincy during the vacancy, less the expense of having the prescribed masses celebrated in each year. It reserved to the petitioner any legal right he may have to proceed in the proper court for cancellation of the certificate of registration of the property in the name of the Archbishop. The Supreme Court of the Philippine Islands reversed the judgment on February 4, 1928, and absolved the Archbishop from the complaint, "without prejudice to the right of proper persons in interest to proceed for independent relief," in respect to the income accrued during the vacancy, or in respect to the reformation of the certificate of registration so as to show the fiduciary character of the title. As the amount in controversy exceeds $25,000, this Court has jurisdiction on certiorari, Act of February 13, 1925, c. 229, § 7, 43 Stat. 936, 940.

The chaplaincy was founded in 1820, under the will of Doña Petronila de Guzman. By it, she requested "the Father chaplain to celebrate sixty masses annually" in behalf of the souls of her parents, brothers, sisters and

herself. The deed of foundation, which was executed by the testamentary executor of Doña Petronila, provided that "said 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, . . . so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain." By appropriate proceedings an ecclesiastical decree approved "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."

The will provided that the foundation should effect the immediate appointment as chaplain of D. Esteban de Guzman, the great-grandson of the testatrix; 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 said town." It named the president of that college as the patron of the chaplaincy. Esteban was appointed chaplain in 1820. From time to time thereafter four other descendants of the testatrix were successively appointed. The latest of these renounced the chaplaincy in December, 1910; married soon thereafter; and in 1912 became the father of the petitioner, Raul Rogerio Gonzalez, who is a legitimate son of the fifth chaplain and claims to be the nearest relative in descent from the first chaplain and the foundress.

Raul was presented to the Archbishop for appointment in 1922. The Archbishop refused to appoint him, on the ground that he did not then have "the qualifications required for chaplain of the said chaplaincy." He added:

"The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442 which says: 'Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy,' in connection with canon 108, paragraph 1, 'Clergymen are those already initiated in the first tonsure' and canon 976, paragraph 1, 'No one can be promoted to first tonsure before he has begun the course in theology.' In view of the Canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy."

Ever since the Council of Trent (1545–1563), it has been the law of the church that no one can be appointed to a collative chaplaincy before his fourteenth year. When Raul was presented for appointment, he was in his tenth year. He was less than twelve when this suit was begun. He was fourteen when the trial court entered its judgment. It is also urged on behalf of the Archbishop that at no time since that Council could one be lawfully appointed who lacked elementary knowledge of Christian Doctrine.

The new Codex Juris Canonici, which was adopted in Rome in 1917 and was promulgated by the Church to become effective in 1918, provides that no one shall be appointed to a collative chaplaincy who is not a cleric, Can. 1442. It requires students for the priesthood to attend a seminary; and prescribes their studies, Can. 1354, 1364. It provides that in order to be a cleric one must have had "prima tonsura," Can. 108, par. 1; that in order to have "prima tonsura" one must have begun the study of theology, Can. 976, par. 1; and that in order to study theology one must be a "bachiller," that is, must have obtained the first degree in the sciences and liberal arts, Can. 1365. It also provides that no one may validly receive ordination unless in the opinion of the ordinary he

has the necessary qualifications, Can. 968, par. 1, 1464. Petitioner concedes that the chaplaincy here involved is a collative one; and that Raul lacked, at the time of his presentment and of the commencement of the suit, the age qualification required by the Canon Law in force when the chaplaincy was founded.[2] It is also conceded that he lacked, then, and at the time of the entry of the judgment, other qualifications of a candidate for a collative chaplaincy essential, if the new Codex was applicable.

Raul's contention, in effect, is that the nearest male relative in descent from the foundress and the first chaplain, willing to be appointed chaplain, is entitled to enjoy the revenues of the foundation, subject only to the duty of saying himself the sixty masses in each year, if he is qualified so to do, or of causing them to be said by a qualified priest and paying the customary charge therefor out of the income. He claims that the provisions of the new Codex are not applicable and that his rights are to be determined by the Canon Law in force at the time the chaplaincy was founded; and that the judgment of the trial court should be reinstated, because he possessed at the time of the entry of the judgment all the qualifications required by the Canon Law in force in 1820. Raul argues that contemporaneous construction and long usage have removed any doubt as to what these qualifications were; that when the foundation was established, and for a long time thereafter, the ecclesiastical character of the incumbent was a minor consideration; that this is shown by the administration of this chaplaincy; and that his own ecclesiastical qualifications, at the time of the entry of the

[2] In order to overcome this obstacle, petitioner filed an amended complaint in the trial court, without objection, when he was in his fourteenth year. The Supreme Court assumed "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."

judgment in the trial court, were not inferior to those of the prior incumbents. He asserts that, although chaplaincies were disamortized in Spain prior to 1867, Alcubilla, Diccionario, Vol. II, p. 118, they had in the Philippines remained undisturbed by any legislation of Spain; and that the rights of the church were preserved by Article VIII of the Treaty of Paris. 30 Stat. 1754, 1758. *Ponce* v. *Roman Catholic Church,* 210 U. S. 296, 315–322. He contends that to deprive him of his alleged right to the chaplaincy because of a change made in 1918 in the Canon Law would violate the Constitution of the United States, the Treaty with Spain of 1898, and the Organic Act of the Philippine Islands.

The trial court rested its judgment for Raul largely on the ground that he possessed, at the time of its entry, the qualifications required by the Canon Law in force when the chaplaincy was founded; and that, hence, he was entitled both to be appointed chaplain and to recover the income accrued during the vacancy, even though he did not possess the qualifications prescribed by the new Codex then otherwise in force. The Supreme Court held that to give effect to the provisions of the new Codex would not impair the obligation of the contract made in 1820, as it was an implied term of the deed of foundation that the qualifications of a chaplain should be such as the church authorities might prescribe from time to time; and that, since Raul confessedly did not possess the qualifications prescribed by the new Codex which had been promulgated before he was presented, he could not be appointed.

First. The Archbishop interposes here, as he did below, an objection to the jurisdiction of the Philippine courts. He insists that, since the chaplaincy is confessedly a collative one, its property became spiritual property of a perpetual character subject to the jurisdiction of the ec-

clesiastical forum; and that thereby every controversy concerning either the right to appointment or the right to the income was removed from the jurisdiction of secular courts. The objection is not sound. The courts have jurisdiction of the parties. For the Archbishop is a juristic person amenable to the Philippine courts for the enforcement of any legal right; and the petitioner asserts such a right. There is jurisdiction of the subject matter. For the petitioner's claim is, in substance, that he is entitled to the relief sought as the beneficiary of a trust.

The fact that the property of the chaplaincy was transferred to the spiritual properties of the Archbishopric affects not the jurisdiction of the court, but the terms of the trust. *Watson* v. *Jones,* 13 Wall. 679, 714, 729. The Archbishop's claim in this respect is that by an implied term of the gift, the property, which was to be held by the church, should be administered in such manner and by such persons as may be prescribed by the church from time to time. Among the church's laws which are thus claimed to be applicable are those creating tribunals for the determination of ecclesiastical controversies. Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.[3] Under like circumstances, effect is given in the courts to the determinations

[3] *Watson* v. *Jones,* 13 Wall. 679, 727, 733; *Shepard* v. *Barkley,* 247 U. S. 1; s. c. *Barkley* v. *Hayes,* 208 Fed. 319, 327, aff'd *sub. nom. Duvall* v. *Synod of Kansas,* 222 Fed. 669; *Brundage* v. *Deardorf,* 92 Fed. 214, 228; *Connitt* v. *Reformed Protestant Dutch Church,* 54 N. Y. 551, 562.

of the judicatory bodies established by clubs and civil associations.[4]

Second. The Archbishop contended that Raul lacked even the minimum of training and knowledge of Christian Doctrine made indispensable by the Canon Law in force in 1820; that his confessed lack of the essential age at the time of the presentment and also at the time of the institution of the suit were unsurmountable obstacles to the granting of the prayer for appointment to the chaplaincy; and, moreover, that the failure to take an appeal to the Pope from the decision of the Archbishop, as provided by the Canon Law, precluded resort to legal proceedings. We have no occasion to consider the soundness of these contentions. For we are of opinion that the Canon Law in force at the time of the presentation governs, and the lack of the qualification prescribed by it is admitted. Neither the foundress, nor the church authorities, can have intended that the perpetual chaplaincy created in 1820 should, in respect to the qualifications of an incumbent, be forever administered according to the canons of the church which happened to be in force at that date. The parties to the foundation clearly contemplated that the Archbishop would, before ordination, exercise his judgment as to the fitness of the applicant; and they must have contemplated that, in the course of the centuries, the standard of fitness would be modified.

When the new Codex was promulgated in 1918 Raul was only six years old and had not yet been presented. If he had been presented, he obviously could not have been appointed. No right was then being enjoyed by him

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[4] *Commonwealth* v. *Union League,* 135 Pa. 301, 327; *Engel* v. *Walsh,* 258 Ill. 98, 103; *Richards* v. *Morison,* 229 Mass. 458, 461; *People ex rel. Johnson* v. *New York Produce Exchange,* 149 N. Y. 401, 409–10, 413–14; *Van Poucke* v. *Netherland St. Vincent De Paul Society,* 63 Mich. 378.

of which the promulgation of the new Codex deprived him. When he was presented later, he was ineligible under the then existing Canon Law. In concluding that Raul lacked the qualifications essential for a chaplain the Archbishop appears to have followed the controlling Canon Law. There is not even a suggestion that he exercised his authority arbitrarily.

Third. Raul urges that, even though he is not entitled to be appointed chaplain, he is entitled to recover the surplus net income earned during the vacancy. Indeed, it is the property rights involved that appear to be his main consideration. The value of the property in 1820 was about 1,700 pesos. The annual net income was then 180 pesos, a sum sufficient only to defray the annual expense of sixty masses. The annual net income has grown to about 12,000 pesos; and the annual expense of the sixty masses does not now exceed 300 pesos. In each year during the vacancy the masses have been duly celebrated. The surplus income accruing during the vacancy has been used by the Archbishop currently for pious purposes, namely, education. By canon 1481 of the new Codex the surplus income of a chaplaincy, after deducting expenses of the acting chaplain, must one-half be added to the endowment or capital and one-half to the repair of the church, unless there is a custom of using the whole for some common good to the diocese. The use made of the surplus of this chaplaincy was in accordance with what was claimed to be the long established custom of the Archdiocese. Both the custom and the specific application made of this surplus have been approved by the Holy See. The Supreme Court held that since Raul had sought the income only as an incident of the chaplaincy, he could not recover anything.

Raul's claim, which is made even in respect to income accrued prior to his birth, is rested upon some alleged right by inheritance, although his father is still living.

The intention of the foundress, so far as expressed, was that the income should be applied to the celebration of masses and to the living of the chaplain, who should preferably be the nearest male relative in the line of descent from herself or the first chaplain. The claim that Raul individually is entitled as nearest relative to the surplus by inheritance is unsupported by anything in the deed of gift or the applicable law. Since Raul is not entitled to be appointed chaplain, he is not entitled to a living from the income of the chaplaincy.

Raul urges also an alleged right as representative of the heirs of the testatrix as a class. This suggestion was, we think, properly met by the ruling of the Supreme Court that the suit was not brought as a class suit. Whether the surplus income earned during the vacancy has been properly disposed of by the Archbishop and what disposition shall be made of it in the future we have no occasion to enquire. The entry of the judgment without prejudice "to the right of proper persons in interest to proceed for independent relief" leaves any existing right of that nature unaffected.

Affirmed.

FEDERAL TRADE COMMISSION *v.* KLESNER.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 8. Argued April 10, 1929.—Decided October 14, 1929.

1. Section 5 of the Federal Trade Commission Act, unlike the Interstate Commerce Act, does not provide private persons with an administrative remedy for private wrongs. P. 25.
2. A complaint may be filed under § 5 only "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public," and this requirement is not satisfied merely by proof that there has been misapprehension and confusion on the part of purchasers, or even that they have been deceived.