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THE HISTORY AND STATUS OF THE SAN JOSÉ COLLEGE CASE.

The issues in the San José College Case are made up; the evidence is in; and I am now in a position to comply with my promise to send to the YALE LAW JOURNAL a statement covering the history and status of this litigation.

This is a controversy between the United States and the Roman Catholic Church for the control and administration of the old College of San José, an institution older than Yale or Harvard, having been founded in 1601.

The case was presented to the United States Philippine Commission for hearing and determination soon after its arrival in Manila. The hearing was begun in July, 1900, and continued from time to time until October of the same year. Dr. T. H. Pardo de Tavera, now a member of the United States Philippine Commission, appeared at that time as party complainant, representing the Philippine Medical Association and those of the Filipino people who were interested in secularizing the control of the College of San José. The Church was represented by Archbishop Nozalada, of Manila, and Archbishop Chappelle, of New Orleans, Apostolic Delegate.

After hearing the case the Commission decided that it was a legislative body, and not a court, and, hence, not a tribunal com-

petent to decide the issues involved in the controversy. It would have been necessary for it to consider and settle some nice questions of Canonical Law, and to investigate and discuss the legal relations of the Crown of Spain and the head of the Catholic Church and other questions of a similar character.

The Commission further held that its expressly delegated function in such matters was to provide a means for the just and peaceable decision of the issues arising therein. To that end it passed a law appointing a Board of Trustees to conduct the College as a School of Medicine and Pharmacy and to institute proceedings in the case, and vested the Supreme Court of the Philippine Islands with jurisdiction to hear and determine the controversy. Pursuant to the provisions of this law the case is now in the Supreme Court of the Philippine Islands for hearing and determination. The Property is in the possession of Senor Raymundo Velasquez, Rector of the University of Santo Tomás.

The facts in the case are as follows:

On the 25th day of August, 1601, the Provisor and Vicar General of the Archbishopric of Manila, upon the application of the Jesuit Father, Luis Gomez, granted permission to the petitioner and his Order to found and establish the College of San José, for the purpose of bringing up the young people of the City of Manila and rearing them according to good manners and learning, and for the further purpose of creating such ministers of the Holy Gospel as might be needed in the land and to perform masses in the College. The Governor and Captain General granted a similar request to these applicants on the same day. As a result of this permission and license the Society of Jesus in Manila founded the College of San José and appointed Father Luis Gomez the first Rector thereof.

On the 16th day of March, 1596, Esteban Rodriguez de Figueroa, Governor of the Island of Mindanao—the second island of the archipelago in point of size—executed the following will:

“In the name of God. Amen. Know all whom this will may see, that I, Esteban Rodriguez de Figueroa, Governor and Captain General of Mindanao and of its District, now a resident of the village of Arevalo, legitimate son of Duarte Rodriguez de Figueroa and Da. Isabel Gonzales, my parents, formerly residents of the city of Jerez de la Frontera in the Kingdom of Castile, being in good bodily health and in my natural understanding

and memory, such as pleased our Lord to give me, and believing, as I truly and firmly believe, in the Most Holy Trinity, Father Son and Holy Ghost, three persons and only one true God, who lives and reigns, without beginning and without end. And taking as I do the Holy Virgin Mary as my Lady Advocate in all my actions, and desiring to place my soul in course of salvation, and naturally fearing death, I execute, acknowledge by these presents, and order this my last and ultimate will, in the manner and form as follows:

And so that God, our Lord, should not allow any of my said children to die before they become of age, competent to make a will, I, as their father and legal administrator, am competent to make a will for them in such case, and, by virtue of said power, I order and command that if the aforementioned happens, their mother, Ana de Oseguera, if surviving, inherit the estate of the deceased and of both, the third and the remainder of the fifth being devoted to what is hereinafter declared, and if said Da. Ana de Oseguera and my children, or either of them, die without leaving heirs in the descending line, then, in such case, their estate and their legal paternal or maternal portion, together with the rents and profits therefrom, shall be devoted to the foundation of a college in the manner hereinafter stated, the same being done, if the said Da. Ana de Oseguera survives with the third and remaining fifth; in either one or the other event, a house must be constructed near the Society of Jesus of Manila, sufficient to serve as a college and seminary for boys, where all those be admitted who should desire to enter the primary classes of said seminary; I pray and request whoever may be the Provincial of said Society to furnish such boys with sufficient teachers for that purpose, the remaining part of said building, not used for that purpose, to be rented for the purpose of maintaining such children and boys; the said Father Provincial to be the Patron and Administrator of said College, and no one can enter therein without his permission and authority; to visit and to correct and arrange all of its things, to order said sale, buy the possession and the building, and to appoint a collecting agent and other officials and ministers with the power and authority necessary to such ministry, without

said college, nor any judge, nor any secular nor ecclesiastical administration of justice taking part therein; notwithstanding any pretensions that may be advanced. And if any rent remains after payment of maintenance for said boys and of clothing for those who are poor, the said Patron may dispose of it at his will for the benefit of said college and of the Society or of any other pious work, as he may deem best, without at any time asking or taking any account therefor from him, for any cause or reason.

I revoke, annul and declare as of no value and effect any will, order, or codicil which I may heretofore have made, so that they be of no value except this one which I desire to be valid as my last and ultimate will, in the course and form which is proper under the law.

In testimony of which I have executed it and signed it with my name at the village of Arevalo on the sixteenth day of the month of March, 1596."

In 1604, after Governor Figueroa had died, the pupillary substitution ordered in his will was effected—his daughter, Juana de Figueroa, having died at sea in that year. The Father Provincial of the Society of Jesus of Manila then laid claim to the endowment property provided for in the will of Figueroa and obtained Royal permission to bring from Mexico the proceeds of the estate forming a part of this property. The legacy was embodied in the College of San José, which had been founded in 1601, thus reorganizing that institution. The College, so reorganized, was inaugurated on the 28th day of February, 1610, at which time the license granted for the foundation of the College in 1601 was confirmed by the ecclesiastical authorities only.

On the 3rd day of May, 1722, Philip V., King of Spain, by Royal Edict, took the College of San José under his Royal protection, honoring it with the title of Royal *ad honorem*, on the condition that it should have no other patron and on the further condition that it should never cause prejudice or embarrassment to the Royal Treasury by reason of this title.

On the 2nd day of April, 1767, King Charles III., of Spain, issued what was called the Royal Pragmatic Sanction, the effect of which was to expel from the Philippine Islands all members of the Jesuit Order and confiscate their property to the Crown. The King of Spain then took charge of the College of San José and exercised

that control and management and administration which had theretofore been exercised by the Father Provincial of the Society of Jesus. A short time thereafter the Governor General of the Philippine Islands, with the approval of the Most Reverend Archbishop of Manila, converted the College into a seminary. The Royal Audiencia of Manila protested against this action in a complaint addressed to the King, and the Most Reverend Archbishop of Manila complained to the King of the action of the Audiencia. The King of Spain sent out certain Royal dispatches, bearing date of March 23, 1771, in which he determined the matter as follows: He disapproved the conversion made by the Governor General and the Archbishop of Manila and ordered that, as the College had been an institution under the direction and administration of the Jesuit Fathers, all things should be placed in the College in the same state and condition in which they were before the Jesuits were expelled from the islands, and that "the Archbishop should not meddle with anything appertaining to said College from that time."

The King of Spain was represented by the Governor General of the Philippine Islands, who appointed the Director and Administrator of the College of San José and exercised the sole control and management of the institution.

On the 6th day of December, 1870, the Spanish Government decreed the secularization of ecclesiastical institutions in the Philippine Islands, providing for the College of San José in the manner set out in this Royal Command. This decree of December 6th, 1870, was repealed by the decree of October 27th, 1875, in which the Government of Spain ordered that the College of San José should be destined as a School of Medicine and Pharmacy in the Philippine Islands. By virtue of this decree the College was converted into a School of Medicine and Pharmacy. The Rector of the University of Santo Tomás was charged with the direction of the College of San José by the King of Spain, who empowered him, as the head of the Department of Education in the Philippines, to appoint an administrator to collect the rents which accrued from the property owned by the College, and who should submit accounts of his administration to the Governor of the Archipelago. The Rector of the University of Santo Tomás, of course, is and always has been a minister of the Catholic Religion. This is true, also, of the Rectors and Administrators of the College of San José.

The evidence in this case is almost exclusively documentary; hence counsel have been able to agree upon a statement of facts which covers practically the entire history of the institution. There is a wide difference, however, in the deductions which are drawn from these facts.

In setting forth the issues raised in this case I can do no better than use the words contained in the comprehensive and lucid report of the Commission, written by Judge William H. Taft.

"Did the Government of the United States, as claimed by the complainants, acquire by the treaty of Paris the right and power to provide for the control and management of the foundation and properties of the College of San José, as an institution under the secular and civil control of Spain in the Philippine Islands, so that the United States should now by law give to the College a directory, non-sectarian in character, to maintain and conduct it as a School of Medicine and Pharmacy? Or—as claimed on behalf of the Catholic Church—have the foundation and properties of the College of San José, under the Canonical Law and the Civil Law of Spain, always been subject to the ultimate control of the Church for sectarian charitable purposes, a control exercised by the King of Spain only by virtue of a Concordat between him and the Pope, as head of the Catholic Church?"

The pivotal point in the case is, to determine whether or not the College of San José was an Ecclesiastical *Obra Pia* within the meaning of the Civil Law of Spain and the Canonical Law. Another question, only second in importance to the one above mentioned, is, to determine the legal effect upon this institution of the Royal Pragmatic Sanction issued by Charles III. in 1767, whereby he expelled the Jesuits from all parts of his dominions, including the Philippine Islands, and confiscated their property to the Crown.

The contention of the Church is, that the College was an Ecclesiastical pious work; and, hence, the legal title and right of ultimate control have always been, and are now, vested in the Holy See.

The Government denies that the College was an *obra pia*, and contends that it was a work of philanthropy and secular charity; and further holds that the legal title to the property is in the foundation itself, which, under the Civil Law of Spain, is a legal entity, and that the King of Spain, as *parens patriae*, assumed the right of administration and control of said property when the trus-

teeship provided for by the will failed as a result of the expulsion of the Jesuits in 1767.

According to the most celebrated canonists and law writers the essentials of an Ecclesiastical *obra pia*, under the law as it existed at the beginning of the seventeenth century, were as follows:

1st. It shall be founded with the license and authority of the Diocesan Bishop.

2nd. It shall be founded with the license and authority of the King.

3rd. Its foundation must be made through motives of charity or religion, or, what is equivalent, that they be made with the idea of promoting Holy Religion.

4th. It shall possess a judicial personality and a foundation out of which it evolves and maintains its own life.

It will be impossible to enter upon a technical discussion of this point within the limits of this article, and I shall not undertake it. Suffice it to say, however, the Government claims that the College, as founded by Figueroa, never fulfilled the second and third of the above-mentioned essentials; that is, it did not receive the license and authority of the King, and the purpose of Figueroa was to found a school for the education of the boys of the Philippine Islands without reference to race, class or condition. On the other hand, the Church contends that the College was originally founded with the authority and license of the Diocesan Bishop, and, although it never received the authority directly from the King, yet it was recognized by him as an ecclesiastical institution, and since the College was placed in the hands of the Father Provincial of the Society of Jesus of Manila, to be administered, and that it has always been administered by members of the Roman Catholic Church, and masses have been said therein, it is fair to assume that it has fulfilled in spirit, if not in substance, all the above named requirements of the law.

The Government does not attach much importance to the fact that the College was placed in the hands of the Father Provincial of the Society of Jesus for administration and control, and the further fact that it has always been officered by members of the Catholic Church, for the reason that the members of the Order of the Society of Jesus have always been celebrated as teachers and scholars, and it would have been practically impossible to have secured the services of any competent teachers who were not Catholics at any time during the history of the institution. This is especially true, when it is remembered that under the Spanish

law, as it existed in these islands for many years prior to the American occupation, it was a crime for any other religious denomination to own property here.

Upon the expulsion of the Jesuits from the Philippine Islands, in pursuance of the Pragmatic Sanction of Charles III., dated April 2, 1767, the King of Spain took under his charge the College of San José and exercised that control, direction and administration over it and its properties which had hitherto been exercised by the Father Provincial of the Society of Jesus.

The position taken by the Church on this point is, that it is true the King of Spain took charge of the properties of San José upon the expulsion of the Jesuits and administered them, but that he did it in the capacity of Royal Patron and as agent of the Holy See.

The Government's position is, that the King of Spain administered this property in his sovereign capacity and not as agent of the Church; hence, when the Treaty of Paris was signed, he conveyed his right, title and interest in the same to the Government of the United States.

In all of the documents relating to this transaction the expression "Royal Patron" is used, which gives rise to the controversy as to the origin, nature and scope of this office; the Church contending that it originates in certain bulls of the popes and is a power and right conferred upon the King by said bulls; in reply to this, the Government says that this right of patronage, administration and control was based upon discovery, conquest and sovereignty, and that the bulls of the popes were mere recognitions of a title thus established; and that since the Royal Pragmatic Sanction operated to deprive the College of the trustee appointed under the will of Figueroa, it placed the burden of providing for a trustee upon the sovereign, who was the Protector of the College, and, as *parens patriae*, was authorized to provide trustees for all trusts of this character when the persons or trustees named in the instruments of foundation were, for any reason, incapacitated for executing the trust.

The result of this case will be determined by the manner in which the Court resolves the question of the Ecclesiastical *Obra Pía* and the question of the Vice-Royal Patronage.

The value of the College property in controversy is about \$500,000.00 gold.

The case is an interesting one, and it will be watched by all the elements of the community here and a large part of the public

in the United States, on account of the subject-matter of the controversy, the character of the parties to the suit, and the peculiar and far-reaching effect of the decision of the Court.

For three centuries this has been a leading institution of learning in these islands. It has its alumni, traditions and associations, just as the great institutions of learning have in the United States. Its alumni and friends are anxiously awaiting the solution of the issue which will revolutionize and modernize it or return it to its former status.

Furthermore, the fate of several other institutions of a similar character in the Philippine Islands will be materially affected by the decision in this case.

The law of the Commission under which we are proceeding provides that the decree of the Supreme Court in this case (which it is hoped will be entered within six months from this date), shall be executed immediately, but that it shall not be so final in its character as to prevent Congress on or before March 3, 1903, from making provision for an appeal from the decree entered by our Supreme Court here to the Supreme Court of the United States or any other court thereof.

I will take pleasure in sending a copy of the decision of the court to the Yale Law Journal as soon as it is handed down.

Lebbeus R. Wilfley.