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THE SETTLEMENT OF THE CHURCH PROPERTY  
CASES IN PUERTO RICO

During the eighteenth and early nineteenth centuries, the Dominican and Franciscan orders in Puerto Rico came into possession of considerable property. In 1838, the government of Spain suppressed these religious orders and seized their holdings under the so-called laws of secularization of church property. This act led to controversies between Spain and the Holy See and a satisfactory settlement was not reached until 1851 when the government of Spain agreed to assume financial responsibility for the Church in Puerto Rico. The terms of the concordat of 1851 were ratified and extended by another convention between Spain and the Holy See in 1859. In accordance with these agreements, annual payments for the clergy were regularly made by the government until October 18, 1898, when, as a result of the Spanish American War, the sovereignty of the island was transferred to the United States.<sup>1</sup>

Following the war the position of the Church was difficult. Many persons were unwilling or unable to help support their former established religion and the withdrawal of government aid imposed a severe strain upon the Church's finances. Religious activities practically ceased in some places and the lot of the unpaid clergy was hard indeed. Representatives of the Church requested the United States to continue the payments previously made by Spain, but this government was legally barred from making such payments. Deprived of its income, it was only natural that the Church should demand the restoration of the properties confiscated by Spain which were now being held and occupied by United States and insular governments.

The following properties were claimed by the Bishop of Puerto Rico as the representative of the Pope and the Catholics of the island: The Santo Domingo barracks and the lands contiguous thereto, and the Ballajá barracks, both held by the United States government; and the San Francisco barracks and site thereof, the site of the San Juan city market and adjacent streets, the site of the insane asylum, and a tract of sixty acres of grazing land near San Juan, all

<sup>1</sup> *House Document No. 2* (Fifty-sixth Congress, 2nd Session), "Report of the Military Governor of Porto Rico on Civil Affairs" (Washington, 1902), pp. 174-179. By an act of the United States Congress in 1932 the spelling of the form Porto Rico as previously used in the United States was changed to Puerto Rico.

of which were in the possession of the insular government. The Church also claimed certain *censos* or ground rents held by the government of Puerto Rico, amounting to about \$20,000.<sup>2</sup>

The claims of the Church in Puerto Rico were similar in most respects to the claims filed about the same time by the Catholic Church in Cuba and the Philippines. In all three cases satisfactory settlements were ultimately made, but the method of settlement in Puerto Rico differed from the settlements in Cuba and the Philippines which were based on reports made by special commissions. The Church in Puerto Rico requested that an independent commission be established to pass on its claims and to appraise the properties in dispute. The government did not grant this request, but on March 10, 1904, the legislative assembly of Puerto Rico enacted a law which conferred

original jurisdiction on the Supreme Court of the Island for the trial and adjudication of all questions, then existing or which may arise between the said Catholic Church and the People of Porto Rico. . . .'<sup>3</sup>

In accordance with the provisions of the aforesaid law, the Church filed suit in the Supreme Court of Puerto Rico against the People of Puerto Rico for the return of the above mentioned properties and for the interests, products, and revenues of the same from October 18, 1898.<sup>4</sup> The Church was represented by Attorney Juan Hernández López and the People of Puerto Rico by Attorney General Sweet. The Church claimed that by virtue of its relationship to the Dominican and Franciscan orders, the concordats of 1851 and 1859 which recognized its right to the properties in dispute, and the subsequent payments made by the state, it was entitled to the properties in question. In further support of its claims, the Church cited Article VIII of the Treaty of Paris between the United States and Spain which stated that the cession of public property by Spain

. . . cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of . . . ecclesiastical . . .

<sup>2</sup> *Annual Report of the Governor of Porto Rico for the Fiscal Year ended June 30, 1908* (Washington, 1909), p. 18. These *censos* were a species of annuities which constituted liens upon real estate. They had been granted by various individuals to the Church for the support of religious activities.

<sup>3</sup> *The Acts and Resolutions of the . . . Assembly of Porto Rico, Laws of 1904* (San Juan, P. R., 1904), p. 134.

<sup>4</sup> *Annual Report of the Governor of Porto Rico for the Fiscal Year ended June 30, 1908* (Washington, 1909), p. 19.

bodies, or other associations having legal capacity to acquire and possess property.<sup>5</sup>

The People of Puerto Rico answered these contentions by stating that the Church did not own the property of the suppressed religious orders, that said property after 1838 belonged to the government of Spain, and that by virtue of conquest and the Treaty of Paris said property was ceded to the United States and by that government to the government of Puerto Rico as public property. The defendant further answered that the claims of the Church, if ever valid, were now outlawed by the thirty years statute of limitations; and that the Bishop of Puerto Rico had no authority to represent the Catholic Church in this litigation.

After considering the evidence, arguments, and briefs, the court on December 15, 1906, by a vote of three to two rendered judgment in favor of the Church.<sup>6</sup> The insular government was ordered to return those properties held by it and to pay a rental equal to six per cent per annum of the appraised value of said properties from October 18, 1898. The aforesaid judgment further awarded all the *censos* amounting to \$19,764.23 to the Church and the People of Puerto Rico were adjudged to pay six per cent interest on this sum from October 18, 1898.<sup>7</sup>

In upholding the claims of the plaintiff the majority of the court, in an opinion by Chief Justice José S. Quiñones, held that the Catholic Church possessed "absolutely indisputable" capacity to acquire and possess property and therefore that Article VIII of the Treaty of Paris was applicable to the case at bar; that the Bishop of Puerto Rico, in accordance with the canons of the Catholic Church, had authority to represent the Church; that the concordats of 1851 and 1859 between Spain and the Holy See gave the Church "the perfect right of ownership" over the property seized from the religious orders by virtue of the so-called secularization laws; and that the claim was not barred by the statute of limitations because the government of Spain had "solemnly obligated" itself to return the property to

<sup>5</sup> *House Document No. 1* (Fifty-fifth Cong., 1st Sess.), "Papers Relating to the Foreign Relations of the United States. . . ." (Washington, 1901), p. 836.

<sup>6</sup> *Reports of Cases Adjudged in the Supreme Court of Porto Rico* (San Juan, 1907), Vol. 11, pp. 466-492. Hereafter cited as *11 Porto Rico Reports*. This is one of the few cases in the history of the Supreme Court of Puerto Rico where the three Puerto Rican members decided a case over the dissent of the two United States members. Judge Otto Schoenrich of New York City, to the author, March 9, 1937.

<sup>7</sup> *11 Porto Rico Reports*, pp. 490-491.

the Church in the form of annual payments and consequently that the term of prescription should not run from the concordat of 1859, but from 1898 when Spain ceased making the payments and transferred the sovereignty of Puerto Rico to the United States.<sup>8</sup>

The minority of the Court in a strong dissenting opinion by Justice James H. MacLeary stated that the court should probably have sustained the defendant's general demurrer to the complaint of the Church because the complaint on its face showed that the Church

has not now and never had any title to the lands sued for, and that the statutes of limitation have long since run in favor of the defendant and the former owners under whom possession and title is claimed.<sup>9</sup>

The dissent further states that according to the record the properties in question were held by the Franciscans and Dominicans independently of the Church and that nothing in the concordats of 1851 and 1859 vested title in the Church; that even if the government of Spain had breached the concordats, the Church did not have the right to follow the property into the hands of innocent purchasers, but that it must look to Spain for a redress of its grievances; that "adverse, peaceable and uninterrupted possession" by the defendant of all the properties for sixty-eight years barred plaintiff's action; and that,

If there were no other reason for dissenting from the judgment rendered in this case an all sufficient one is the lack of evidence to support it.<sup>10</sup>

A careful consideration of the majority and minority opinions in this case leads to the conclusion that the decision was based more on principles of justice and dictates of public policy than on the strict rules of law and evidence. The People of Puerto Rico promptly took an appeal from the decision of the Supreme Court of Puerto Rico to the Supreme Court of the United States.

It is to be noted that the claims of the Church included certain properties which were in the possession of the government of the United States. The court did not attempt to decide these claims

<sup>8</sup> *11 Porto Rico Reports*, p. 470 *et seq.*

<sup>9</sup> *Ibid.*, p. 494.

<sup>10</sup> *11 Porto Rico Reports*, pp. 501-509. The five judges were men of the highest honor and character and were of course not influenced by their religious belief, but it is interesting to note that the three Puerto Rican judges were Catholics, one of the American judges, Justice MacLeary, who wrote the dissenting opinion, was a Protestant, and the other American judge was of the Jewish faith. Judge Otto Schoenrich, to the author, May 6, 1937.

because the United States had not been sued, and because the Supreme Court of Puerto Rico did not have jurisdiction over this government. However, the government of the United States was interested in the subject matter of the claims and later intervened in the negotiations which led to a compromise settlement.

In a separate suit, the Church had claimed the right of use in perpetuity to a chapel in Santurce which belonged to the insular government. It based its claim on a resolution of the *Diputación Provincial* which permitted the chapel to be used for religious purposes. On December 15, 1906, the Supreme Court of Puerto Rico rendered judgment denying the claim of the Church, holding that the resolution in question could not

. . . be deemed to constitute a perpetual servitude of use, but only a concession revocable at any time at the pleasure of the *diputación*.<sup>11</sup>

The Church perfected an appeal to the Supreme Court of the United States.

Just how the Supreme Court of the United States would have decided the Church cases had they not been compromised is a matter of conjecture. However, it is probable that the claims of the Church for the return of the properties in question would have been upheld. In the case of the Roman Catholic Church against the Municipality of Ponce, Puerto Rico, the Supreme Court of the United States rendered an opinion, on June 1, 1908, in favor of the plaintiff. Some of the points made by the defendant in this case were similar to those raised by the People of Puerto Rico in the cases now under consideration. In a unanimous decision, the opinion being written by Chief Justice Fuller, the Court held that Spanish law in Puerto Rico was not foreign law and that the Supreme Court of Puerto Rico was bound to take judicial notice of it in so far as it was applicable; that the legislative act of March 10, 1904, conferring original jurisdiction on the Supreme Court of Puerto Rico for the trial and adjudication of Church claims, was valid; that the Treaty of Paris of 1898 recognized the Catholic Church as a legal entity and that said treaty protected the Church in its property rights; and the fact that a municipality or other agency gave funds to the Church did not divest the Church of title to property which it held in trust for religious purposes.<sup>12</sup> Undoubtedly this decision influenced the gov-

<sup>11</sup> *11 Porto Rico Reports*, pp. 451-464.

<sup>12</sup> *United States [Supreme Court] Reports* (New York, 1908). Vol. 210, pp. 296-334. This case was originally brought in the Supreme Court of

ernments of Puerto Rico and the United States to agree to a compromise.

In April, 1908, Regis H. Post, Governor of Puerto Rico, received a letter from the Bishop of Puerto Rico in which he suggested that the cases now on appeal be settled out of court. The Bishop proposed that the insular government, the government of the United States, and the Church appoint two commissioners each to meet in San Juan and settle all matters in dispute.<sup>13</sup> The Attorney General of the United States approved the plan and the following commissioners were named: for Puerto Rico, Henry M. Hoyt, Attorney General of Puerto Rico, and José de Diego, Speaker of the House of Delegates of Puerto Rico; for the United States, Robert Bacon, Assistant Secretary of State, and Major Frank McIntyre, Assistant Chief of the Bureau of Insular Affairs of the War Department; and for the Church, Right Reverend William A. Jones, Bishop of Puerto Rico, and Juan Hernández López, Attorney for the Church in Puerto Rico.<sup>14</sup>

The commissioners met in San Juan on August 12, 1908. The amount in dispute on that date was approximately \$648,000. The Church claimed \$283,000 from the United States and approximately \$365,000 from the People of Puerto Rico. It did not take the commissioners long to reach a decision which was equitable and satisfactory to all concerned.<sup>15</sup> In a memorandum, signed by all the commissioners on August 12, 1908, it was agreed that:

(1) the United States should pay the Church \$120,000 in full settlement of all claims for properties held by it and the said properties to belong to the United States;

Puerto Rico by virtue of the act of March 10, 1904. The Municipality of Ponce filed a demurrer to the Church's complaint which was overruled. The defendant failed to file an answer for which reason the Supreme Court of Puerto Rico rendered a judgment by default, without writing an opinion. Since no opinion was given, the case was not mentioned in the English edition of the *Porto Rico Reports*. In the tenth Spanish volume of the decisions of the Supreme Court of Puerto Rico, namely *10 Decisiones de Puerto Rico*, p. 257, under the *per curiam* opinions there is a very brief mention of the case which states that judgment was given for plaintiff. This judgment is quoted in 210 U. S. 299.

<sup>13</sup> *Annual Report of the Governor of Porto Rico for the Fiscal Year ended June 30, 1908*, p. 19.

<sup>14</sup> *Loc. cit.*

<sup>15</sup> *The Acts and Resolutions of the Fourth Legislative Assembly of Porto Rico in Special Session, of the First Session of the Fifth Legislative Assembly of Porto Rico and of the Fifth Legislative Assembly of Porto Rico in Special Session* (San Juan, P. R., 1909), pp. 112-116. Hereafter cited as *Laws of 1909*.

(2) the People of Puerto Rico should pay the Church \$180,000 in full settlement of all claims for properties held by them and the said properties to belong to the People of Puerto Rico;

(3) the People of Puerto Rico should give the Church the exclusive possession of the Chapel in Santurce;

(4) the People of Puerto Rico should relinquish to the Church all *censos* together with all payments received in connection therewith; and that

(5) the People of Puerto Rico should return to the Church the tract of sixty acres of grazing land near San Juan. The agreement further provided that the insular government would pay the sum of \$180,000 in three equal instalments, that the Church would guarantee title to all properties transferred by it, that the People of Puerto Rico would not be bound to guarantee titles to properties transferred by them, that the money paid the Church by the governments of Puerto Rico and the United States should be used "exclusively for the benefit of the Church in Porto Rico", and that the Church would "relinquish all claims of every kind whatsoever arising in Porto Rico prior to the ratification of this settlement, either against the United States or against the People of Porto Rico."<sup>16</sup>

The ratification of the compromise agreement by the Congress of the United States, the Holy See, and the Legislative Assembly of Puerto Rico led to the dismissal of the Church cases pending before the United States Supreme Court. On September 16, 1908, the Legislative Assembly of Puerto Rico, in special session, appropriated \$200,000 to be paid in principal and interest to the Church during the years 1909, 1910, and 1911 in full settlement of all claims. In like manner the government of the United States promptly paid its \$120,000 to the Church. The ratification of the compromise and the cash payments made in accordance therewith settled a much disputed question and completed the separation of Church and State in Puerto Rico.<sup>17</sup>

Various factors contributed to the quick compromise and its speedy ratification. The governments of the United States and Puerto Rico were greatly influenced by the victory of the Church in the Ponce case.<sup>18</sup> These governments were also anxious to make an equitable settlement of a matter which had agitated the people of the island for some ten years. The fact that the United States Provisional Government of Cuba had paid the Catholic Church approximately \$1,750,000 on similar claims during 1907 and 1908 served to

<sup>16</sup> For text of this memorandum see *Laws of 1909*, pp. 117-122. See also *Report of the Governor of Porto Rico for the Fiscal Year ended June 30, 1909* (Washington, 1909), pp. 13-14.

<sup>17</sup> *Laws of 1909*, p. 128.

<sup>18</sup> *Ibid.*, p. 110.



strengthen the case of the Church in Puerto Rico.<sup>19</sup> The Church was prone to compromise because it was in sore need of ready cash and because it had no special use for some of the properties in dispute. Furthermore, the Church, which had experienced many difficulties in Puerto Rico since the Spanish American War, was anxious to make a settlement which would allow it to work in harmony with the governments of the United States and Puerto Rico.

The settlement was equitable and to the advantage of all parties concerned. The United States and the insular government received at less than their actual appraised value, fee title to buildings which were needed and already occupied by them. The Church recovered the *censos* and certain properties, and received needed substantial cash payments for other properties which were not essential for religious purposes. Finally, claims of a special nature and international in character were adjusted without bitterness and in a manner conducive to the welfare and coöperation of the Church, the People of Puerto Rico, and the United States.<sup>20</sup>

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#### THE FIRST CONVENTION OF THE INTER-AMERICAN BIBLIOGRAPHICAL AND LIBRARY ASSOCIATION

The first convention of the Inter-American Bibliographical and Library Association was held in Washington, D. C., Friday and Saturday, February 18 and 19, 1938, with headquarters in the Washington Hotel. The sessions of the convention were divided into three groups: Bibliography; Archives; and Libraries.

The first session, that on Bibliography, was fittingly held in the Pan American Union, with Dr. Adrián Recinos, minister of Guatemala—a bibliographer in his own right—presiding. After a cordial greeting to the delegates by Dr. Leo S. Rowe, director general of the Pan American Union, Dr. James Brown Scott, secretary of the Carnegie Endowment for International Peace, and honored through-

<sup>19</sup> David A. Lockmiller, "The Settlement of the Church Property Question in Cuba", in *THE HISPANIC AMERICAN HISTORICAL REVIEW*, XVII (November, 1937), 488-498.

<sup>20</sup> *Report of the Governor of Porto Rico for the Fiscal Year ended June 30, 1909*, p. 14.