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Constitutional Law—Separation of Church and State

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The National Psychological Association For Psychoanalysis, Inc., however, couched their objection in constitutional terms and attacked the validity of the statute on the ground that it did not contain a formal definition of "psychologist" and hence was violative of due process in that it arbitrarily restricted the carrying on of a lawful occupation by proscribing a non-certified psychologist from describing his professional services truthfully. Similarly, they argued that the statute's qualifying standards are meaningless without a definition to which they can attach and hence the statute unlawfully delegates legislative power without accompanying standards to guide the exercise of administrative discretion.

The Court of Appeals quickly dismissed the arguments by noting that the only thing proscribed was the use of specific words by non-certificants to describe the rendition of psychological services without in any manner proscribing the services themselves. Moreover, despite the relative impossibility of agreeing on a definition of modern psychology, for all practical purposes the term "psychologist" is defined as one who meets the standards set up by the statute.⁵⁹

Inconsistent with its own motion for summary judgment, plaintiff, on appeal, objected to the determination of a constitutional issue without a trial. The Court summarily dealt with his objection by pointing out that there were no issues of fact in this case; and a pure issue of law, even though it be constitutional law, can be dealt with by a motion for summary judgment.

The instant case represents no enlargement or retrogression from the established law of this state. It does however point up the power of the Legislature to protect the public while still interfering to only a minimal degree with the practice of a profession through the use of certifying laws rather than licensing laws.⁶⁰

SEPARATION OF CHURCH AND STATE

Prior to the Russian Revolution, the world wide membership of the Russian Orthodox Church recognized the Patriarch of Moscow as its spiritual and administrative head. The revolution resulted in the Church of Moscow becoming subject to the Communist party. After much hesitation and confusion, in 1924, because of this political interference, the North American Diocese declared itself administratively independent of the Patriarch of Moscow, with the right to elect its own bishops, rather than having them appointed in Moscow. In 1945, the North American Diocese instituted an action to gain

59. N.Y. Education Law § 7605.

60. An interesting provision of the statute which was not under attack in this case is § 7611 which reads as follows:

The confidential relations and communications between a psychologist registered under provisions of this act and his client are placed on the same basis as those provided by law between attorney and client, and nothing in this article shall be construed to require any such privileged communications to be disclosed.

possession of the Saint Nicholas Cathedral from the representative of the Moscow Church who was then in possession of it.

This action had two phases. In each phase, the United States Supreme Court reversed the New York Court of Appeals, which, in each case, had granted possession of the Cathedral to the North American Diocese. The present case of *Saint Nicholas Cathedral v. Kreshik*⁶¹ constitutes the second portion of this action. Before this second case can be understood, however, the first must be briefly summarized.

Shortly before the original commencement of this action in 1945, the Legislature enacted Article 5-c (Sections 105 and 107) of the Religious Corporations Law. The object of this legislation was to grant control and possession of the Cathedral to the North American Diocese because the representative of the Moscow Church was felt to be virtually an agent of the Communist Party. On the basis of this legislation, the Court of Appeals held in favor of the North American Diocese in the case of *Saint Nicholas Cathedral v. Kedroff*.⁶² On appeal to the United States Supreme Court, however, this decision was reversed on the ground that this statute violated the Fourteenth Amendment.⁶³ The Supreme Court stated: "We conclude that Article 5-c undertook by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America. . . . This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment."⁶⁴

The Supreme Court then remanded the case to the Court of Appeals to dispose of it in a manner not inconsistent with the Supreme Court's opinion. Instead of returning possession of the Cathedral to the Moscow representative, however, the Court of Appeals ordered that the case be tried anew as a case of common law ejectment, holding that the Supreme Court's opinion applied only to the statutory basis of the case. The Court of Appeals directed that the issue to be tried was the domination of the Moscow Church by the Communist Party. Thus, the second, and present phase of this case began.

The trial court dismissed the complaint on the merits as a matter of law and the Appellate Division unanimously affirmed.⁶⁵ The Court of Appeals, however, reversed, and once again granted control and possession of the Cathedral to the North American Diocese.⁶⁶ On the appeal to the Supreme Court, the Court of Appeals was reversed for the second time.⁶⁷

61. 7 N.Y.2d 191, 196 N.Y.S.2d 655 (1959).

62. 302 N.Y. 1, 96 N.E.2d 56 (1950).

63. *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952).

64. *Id.* at 107.

65. 9 Misc. 2d 1069, 166 N.Y.S.2d 245 (Sup. Ct. 1958), *aff'd*, 6 A.D.2d 866, 176 N.Y.S.2d 226 (1st Dep't 1958).

66. *Supra* note 61.

67. — U.S. —, 4 L. Ed. 2d 1140 (1960).

The rule was early established, by the case of *Watson v. Jones*,⁶⁸ that whenever a dispute arose within a denominational group, the decision of the highest church authority to which this dispute was taken was binding on the civil courts. Adherence to this rule in the present case would clearly result in the Moscow representative retaining use and control of the Cathedral. The Court of Appeals, however, held that this rule did not apply in this case because the highest church authority was completely subservient to the Communist Party. In its decision, the Court of Appeals relied heavily on a case of the Sixth Circuit, the *Romanian Orthodox Missionary Episcopate of America v. Trutz*,⁶⁹ which was, factually, almost identical to the present case. In the *Trutz* case, the Romanian Orthodox Church of America declared itself autonomous from the Church of Romania because of the latter's domination by the Communists. The plaintiff, who claimed to be the duly appointed Bishop, by the authorities of Romania, of the American Episcopate, sought equitable relief to gain control of the assets of the American group. The Circuit Court affirmed the dismissal of the complaint by the District Court, and certiorari was denied.

The use of this case by the Court of Appeals does not appear to be entirely in error. In the first place, the *Trutz* case did reject the applicability of the *Watson* rule because of the Communist domination of the Romanian authorities. Secondly, the Circuit Court quoted with approval from the *Kedroff* case as follows: "Freedom to select the clergy where no improper methods of choice are proven . . . must now be said to have federal constitutional protection as part of the free exercise of religion against state interference."⁷⁰ Then the *Trutz* Court added, "Since this is true as to protection against the interference of an individual American state, we think it should be equally true as to protection against the domination and interference of a foreign state."⁷¹ The logic of this statement has a ring of credulity, and the Court of Appeals quoted this statement in its entirety.⁷² If the Circuit Court had said no more, the reliance of the Court of Appeals on these words could not be criticized without criticizing this statement itself in that it might fail to recognize that the First Amendment also prohibits any branch of the federal government from interfering in religious affairs. The Circuit Court did, however, go on to state as follows: "The decision must in any case be affirmed upon the ground that the plaintiff . . . has not borne the burden of proof in showing that he has been elected or consecrated as bishop of the Episcopate."⁷³ Thus, the real basis for the decision in *Trutz* case was the failure of the plaintiff to carry his burden of proof, and the statement quoted by the Court of Appeals is little more than a dictum.

68. 80 U.S. 679 (1871).

69. 205 F.2d 107 (6th Cir. 1953).

70. *Supra* note 63 at 115.

71. *Supra* note 69 at 112.

72. *Supra* note 61 at 208, 196 N.Y.S.2d 666 (1959).

73. *Supra* note 69.

In reversing New York's highest court, the Supreme Court cited the case of *N.A.A.C.P. v. Alabama*,⁷⁴ and held that regardless of whether a state acts through its legislature (as in the first phase of this case), or through its judiciary (as in the present phase), it is still the application of state power to religious matters, and is in violation of the Fourteenth Amendment.

Those cases which are concerned only with whether a given action of a state or the Federal government violates the Constitution are usually difficult of decision. Therefore when a case is compounded by the entrance of a foreign government into the picture (especially that of the Soviet Union) in addition to a state or the Federal government, the decision is made even more difficult. While the competing interests of this case, i.e., checking the influence of communism on the one hand and preserving separation of church and state on the other, may incline one to choose the former at the expense of the latter, the correctness of the view taken by the Supreme Court is best expressed by Justice Reed in the *Kedroff* case and by Chief Judge Desmond dissenting in the present case.

Justice Reed stated that "Legislative power to punish subversion cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense."⁷⁵

In a parenthetical remark, Chief Judge Desmond said, "(Rejection by our courts of the Patriarch's nominee for the archbishopric is the same kind of interference with religion of which we accuse the Soviet authorities)."⁷⁶

CONTRACTS

RECORDING REQUIREMENT OF AGREEMENTS INVOLVING MOTION PICTURE AND ALLIED RIGHTS

A copyright may be assigned, conveyed, or mortgaged.¹ Every assignment of a copyright must be recorded in the United States Copyright Office. If an assignment is not recorded, it is void as against a subsequent purchaser or assignee who pays valuable consideration for the copyright without notice of the first assignment.² In the case of *Vidor v. Serlin*,³ the principal issue confronting the Court of Appeals was whether the second assignment of a copyright, which had been recorded pursuant to 17 U.S.C. Section 28, took priority over a previous agreement which had not been recorded. The trial court held that the plaintiff, the subsequent assignee, was the sole and exclusive owner

74. 357 U.S. 449 (1958).

75. *Supra* note 63 at 109.

76. *Supra* note 61 at 220, 196 N.Y.S.2d 676 (1959).

1. 17 U.S.C. § 28.

2. 17 U.S.C. § 30. See *Photo-Drama Motion Picture Co., Inc. v. Social Uplift Film Corp.*, 220 F. 448 (2d Cir. 1915).

3. 7 N.Y.2d 502, 199 N.Y.S.2d 669 (1960).