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# ATENEO LAW JOURNAL

## THE CORPORATION SOLE IN THE PHILIPPINES†

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### VII. ACQUISITION, HOLDING, AND DISPOSAL OF TEMPORAL GOODS

A corporation sole may purchase and hold real and personal property, may receive bequests and gifts, and may acquire, hold, sell, and mortgage real and personal property as its rules, regulations and discipline may provide.<sup>226</sup>

It should be noted that where the rules, regulations and discipline of the religious society prescribe certain formalities or impose certain conditions on any of these transactions in property, the provisions of the rules, regulations and discipline must be followed,<sup>227</sup> otherwise the contract entered into by the corporation sole in behalf of the religious society may be unenforceable.<sup>228</sup> The corporation sole is like an agent, with the rules and regulations of the religious society constituting his power of attorney, to which his actions must conform and which confer and delimit his authority to act for the religious society.

#### A. ACQUISITION BY PURCHASE AND OTHER CONTRACTS

A corporation sole may of course acquire property by purchase, barter, or by any other contract whereby any other corporation may do so. It may also acquire property by construction, and it would seem that where property is constructed for a corporation sole, there is no reason why the ordinary rules of law regarding construction should not apply, including such questions as liability for materials furnished and labor rendered. It is also bound by the same rules as any other corporation in regard to zoning

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<sup>226</sup> Act 1459 § 159 (hereinafter cited as CORPORATION LAW).

<sup>227</sup> *Ibid.*

<sup>228</sup> See *Gana v. Roman Catholic Archbishop of Manila*, 8 App. Ct. 754 (1947).

ordinances, building codes, electrical, plumbing, drainage, and other similar requirements.

There may be some question as to whether, in case of non-payment of materialmen or workers, there can be a statutory lien<sup>229</sup> on the property constructed for the religious society, especially if said property has been consecrated to public worship.

In the United States, it has been held that where by statute the property of a public charity was exempt from mechanic's and materialmen's liens, a church society was to be considered as a public charity, and therefore its property is exempt from such statutory liens.<sup>230</sup>

In the Philippines, if the theory that consecrated property is outside the commerce of man continues to prevail, there seems to be ground to hold that such properties cannot be subject to such liens, since they cannot be sold at auction to satisfy the liens. Lien or no lien, however, the liability for the material and labor furnished must be legally performed or otherwise satisfied by any legal means of extinguishment of obligations. A corporation sole is a juristic person "amenable to the jurisdiction of the Philippine courts for the enforcement of any legal right."<sup>231</sup>

Property constructed for the corporation sole becomes property of his religious society, regardless of whether the funds for said construction came from the religious society, or from the members of the congregation,<sup>232</sup> or even from public funds appropriated without reservation or restriction.<sup>233</sup>

#### B. ACQUISITION BY GIFTS AND BEQUESTS

A corporation sole is specifically granted the power to receive bequests and gifts for his church, for charitable, benevolent, or educational purposes.<sup>234</sup> The religious society, unless specifically disqualified, may accept donations,<sup>235</sup> and receive testamentary dispositions.<sup>236</sup> If the religious society should be disqualified to receive the donation<sup>237</sup> or the testamentary disposition,<sup>238</sup> the same shall be void. In the case of testamentary dispo-

<sup>229</sup> See art. 2242 (3) and (4), New Civil Code of the Philippines (hereinafter cited as NEW CIVIL CODE).

<sup>230</sup> *Morris v. Nowlin Lumber Co.*, 100 Ark. 253, 140 S.W. 1 (1911). The syllabi in this case are erroneous, giving the impression that mechanic's liens and materialmen's liens were enforceable against the building in question, whereas the body of the decision denies the application of these liens.

<sup>231</sup> *Gonzales v. Roman Catholic Archbishop of Manila*, 51 Phil. 420 (1928).

<sup>232</sup> An addition to a church built from a fund raised by a church guild or society on the church premises, and with the permission of the vestry of the church, becomes the property of the church, and does not belong to the members of the guild. *Read v. Church of St. Ambrose*, 137 Pa. 320, 20 Atl. 1002, 11 L.R.A. 727 (1891).

<sup>233</sup> *Municipality of Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296 (1908); *Santos v. Roman Catholic Church*, 212 U.S. 463 (1909).

<sup>234</sup> CORPORATION LAW § 159.

<sup>235</sup> Art. 738 NEW CIVIL CODE.

<sup>236</sup> Art. 1026 *id.*

<sup>237</sup> Art. 743 *id.*

<sup>238</sup> Arts. 1024 and 1031 *id.*

sitions or bequests, the capacity of the religious society to receive the bequest shall be determined by its qualifications at the time of the death of the person making the bequest.<sup>239</sup>

In the case of a testamentary bequest, if made to a disqualified entity, and therefore void, the bequest may only be questioned by a party with an interest in the succession, such as those to whom the property in question would go, and the action for declaration of the incapacity and recovery of the inheritance must be brought within five years from the time the disqualified entity took possession of the property.<sup>240</sup> Since the State has no pecuniary interest in the property, save for the estate and inheritance taxes, so long as there are heirs to inherit the property, and it only becomes an heir when the owner of the property in question dies without leaving a will covering all his property and without any relatives within the fifth civil degree,<sup>241</sup> it would seem that as a general rule, the State would have no power to question the bequest except in the last situation mentioned.

A donation must be accepted, otherwise it is void.<sup>242</sup> A testamentary bequest if not repudiated is deemed accepted.<sup>243</sup>

A donation to a religious society may of course be accepted by the corporation sole, but to repudiate the inheritance, he needs the approval of the court.<sup>244</sup> The repudiation may be made by public or authentic instrument, or by petition to the court.<sup>245</sup>

The donation may impose no condition at all, in which case it is termed a simple donation,<sup>246</sup> or it may impose conditions or burdens on the religious association.<sup>247</sup> In case it imposes any burdens, the rules on contracts shall be followed, at least as to that part subject to the burden.<sup>248</sup>

If the conditions are broken by the donee, the donor may revoke the donation, and recover the donated property, or it may be recovered by his heirs if the donor is dead; provided the action to revoke is brought within four years after the non-compliance with the condition.<sup>249</sup> The fruits from the date of non-compliance are also to be returned.<sup>250</sup>

Testamentary bequests may also be made with or without conditions or burdens.<sup>251</sup> If conditions are imposed and subsequently broken, the bequest may be resolved and the property recovered by the heirs of the

<sup>239</sup> Art. 1034 *id.*

<sup>240</sup> Art. 1040 *id.*

<sup>241</sup> Arts. 1010-1011 *id.*

<sup>242</sup> Art. 745 *id.*

<sup>243</sup> Art. 1057 *id.*

<sup>244</sup> Art. 1045 *id.*

<sup>245</sup> Art. 1051 *id.*

<sup>246</sup> Art. 726 *id.*

<sup>247</sup> Arts. 730, 731, 733 *id.*

<sup>248</sup> Art. 733 *id.*

<sup>249</sup> Art. 764 *id.*

<sup>250</sup> Art. 768, par. 2, *id.*

<sup>251</sup> Art. 871 *id.*

grantor.<sup>252</sup> The mere fact that a burden is imposed, or that the purpose of the bequest or manner of applying the property is specified does not make such burden or purpose a condition of the bequest, unless it appears that such was the giver's intention.<sup>253</sup> And where, without the fault of the religious society or the corporation sole, the burden or purpose cannot be complied with exactly, it shall be sufficient that it shall be complied with in a most analogous manner, and according to his probable wishes.<sup>254</sup> This analogous performance is known as the *cy pres* doctrine.

The law makes mention of some specific bequests involving religious societies, such as a bequest for prayers and pious works for the benefit of the soul of the giver,<sup>255</sup> and bequests for the poor.<sup>256</sup>

The law also imposes certain disqualifications involving religious societies which are as follows:

(1) A bequest made in favor of the priest who heard the confession of the testator during his last illness, or the minister who extended spiritual aid to him during the same period, or any relatives of such priest or minister within the fourth degree, is void, the persons enumerated being disqualified to succeed to the property bequeathed.<sup>257</sup>

(2) The same disqualification extends to the church, order, chapter, community, organization, or institution to which such priest or minister may belong.<sup>258</sup> Thus, where a priest heard the last confession of a testator, not only that priest, but also his church would be disqualified to take a bequest from such testator. If the priest is a member of a religious order, the order would likewise be disqualified to receive a bequest from the testator.

It is clear that the purpose of the disqualification is to prevent possible undue influence by the priest or minister on a dying man who, in expiation for his myriad sins, may be placed in a mood to make liberal bequests to the church or religious denomination. The law does not distinguish between bequests made before such confession or spiritual aid and bequests made after, and it is difficult to understand how a confession or spiritual assistance can unduly influence a bequest that pre-existed it. It would seem that the only way to justify the unreasonableness of the provision as it applies to bequests made well ahead of the confession or spiritual aid is that familiar maxim which is the last resort when all reason fails—*dura lex, sed lex*.

Furthermore, where the bequest imposes certain burdens on the grantee, and is therefore of an onerous character rather than gratuitous, it may be

<sup>252</sup> Art. 884 *id.*

<sup>253</sup> Art. 882 *id.*

<sup>254</sup> Art. 883 *id.*

<sup>255</sup> Art. 1029 *id.*

<sup>256</sup> Art. 1030 *id.*

<sup>257</sup> Art. 1027 (1) *id.*

<sup>258</sup> Art. 1027 (2) *id.*

that the rules governing bequests in general may not be completely applicable, in the same manner as in onerous donations,<sup>259</sup> where the rules on contracts are applied.

And where a bequest sets up a trust to be administered by a corporation sole, the fruits of the trust property being devoted to general charity and pious works, it may be that such a bequest may be considered as not made to the priest who heard the confession or the minister who administered spiritual aid during the last illness of the testator, nor to their church, order, chapter, community, organization, or institution, since the ownership of the property is not bequeathed but only the fruits thereof.<sup>260</sup>

It is not intended here to dwell on the intricacies of donations and bequests but only to study the capacity of the corporation sole to take them for his religious society.

On the side of the civil law, it seems that where the religious society is qualified to take the property donated or bequeathed, the corporation sole is likewise capacitated to receive such property, as we have seen from the foregoing discussion.

On the side of the ecclesiastical law, or the rules, regulations and discipline of the church, it may be that donations and bequests may not be accepted where they do not relate to the purposes for which the religious society was formed since the law authorizes the receiving of bequests and gifts only for religious, charitable, benevolent, or educational purposes, and the rules and regulations of the religious society may further restrict the purposes for which it is formed.

In accordance with the doctrine that the acts of the corporation sole must be in conformity with the rules, regulations and discipline of his religious society,<sup>261</sup> where said rules, regulations and discipline prescribe certain formalities and conditions for the acceptance of gifts and bequests, these formalities must be followed.

In the Roman Catholic Church, for example, the rules of the church specify that in gifts and bequests to that church or to its pious institutions, the bishop or ordinary must be made the executor of the gift or bequest,<sup>262</sup> that the bishop or ordinary may prescribe the minimum amount of a gift or bequest to be accepted, and may make regulations regarding the distribution of its income,<sup>263</sup> that the bishop is to first determine whether the church or institution can perform the burdens imposed by the gift or bequest and whether the income thereof is sufficient to support the burdens imposed,<sup>264</sup> and the Church specifically reserves the right to re-

<sup>259</sup> Art. 733 *id.*

<sup>260</sup> Villavicencio v. Quinio, 67 Phil. 367 (1939).

<sup>261</sup> See 5 ATENEO L.J. 497-500 (1956).

<sup>262</sup> CODEX JURIS CANONICI, Canon 1516 (1918).

<sup>263</sup> *Id.*, Canon 1545.

<sup>264</sup> *Id.*, Canon 1546.

duce the obligations or burdens imposed in cases where circumstances make it necessary.<sup>265</sup> These formalities and conditions, therefore, are considered imposed on every bequest or gift to the Roman Catholic Church, and the donor or testator is deemed to accede to these conditions, unless the contrary is clear from the terms of the will or donation, and in the latter case the Church may reject the bequest or gift.

The Roman Catholic Church looks upon the giving of money or other temporal goods to the church for the purpose of applying the same, or the income thereof, to masses, works of piety or charity, and similar works, as in the nature of bilateral contracts *do ut facias*.<sup>266</sup> There seems to be nothing contrary to this view in our civil laws. In such cases, therefore, the rules of contracts rather than of donations and testamentary bequests may be considered applicable.

The rules, regulations, and discipline of other religious societies may provide similarly.

#### C. ACQUISITION BY PRESCRIPTION

A religious society is perfectly capacitated to acquire property by prescription, or through the lapse of time in the manner and under the conditions laid down by law,<sup>267</sup> since any person who is capable of acquiring property or rights by other legal modes, such as purchase and donations, is also capable of acquiring property by prescription.<sup>268</sup> The religious society being unable to act in its own name if it is unregistered, it may acquire property or rights through its legal representatives,<sup>269</sup> which may be the three trustees mentioned under Act 271,<sup>270</sup> or a corporation sole, and therefore acquisition by prescription may be effected in the same manner.

The Philippine courts have consistently upheld the right of the Roman Catholic Church to acquire ownership of property by long possession, and this doctrine has often been availed of in cases determining the question of the right of possession to churches, convents, and cemeteries, as between the Roman Catholic Church, and the Filipino Independent Church or Aglipayan sect as well as municipalities and the insular government. The cases even went further than merely determining the right of possession, and stated definitely that the Church was not only entitled to the possession of said properties, but by virtue of its long possession, among other reasons,

<sup>265</sup> *Id.*, Canon 1551.

<sup>266</sup> *Id.*, Canon 1544.

<sup>267</sup> Art. 1106 NEW CIVIL CODE.

<sup>268</sup> Art. 1107, par. 1, *id.*

<sup>269</sup> Art. 1107, par. 2, *id.*

<sup>270</sup> Act 271 allows religious associations, of whatever sect or denomination, to hold lands in the Philippines upon which to build their churches, parsonages, or educational or charitable institutions. Such lands are to be held in the name of three trustees selected by the directing body of such religious associations. (Sections 1 and 2).

was the absolute owner of the same.<sup>271</sup>

Ownership, not only of lands, churches, convents, and cemeteries, but also of sacred images, could be acquired by prescription, according to the court, which in one case stated that "the church, having had possession of the image, under claim of ownership by gift, for a long period of time, the title of the Archbishop thereto is perfect."<sup>272</sup>

#### D. ACQUISITION OF PUBLIC LANDS UNDER THE PUBLIC LAND ACT

Commonwealth Act No. 141, otherwise known as the Public Land Act, contains special provisions authorizing the sale or lease of public lands for religious, educational, charitable, philanthropic, or scientific research purposes.<sup>273</sup>

The main features of these provisions are as follows:

(a) The public land may either be sold or leased, under the usual terms: in sales there is a down payment of ten *per centum* of the sales price, and the balance may be paid either in cash or in not more than ten equal annual installments.<sup>274</sup> Leases are for twenty-five years renewable for another twenty-five years, at the end of which all permanent improvements on the land revert to the state; the annual rental of the land shall not be less than three *per centum* of the appraised value of the land.<sup>275</sup>

(b) The land must be used for the following purposes: cemetery, church, school, college, university or other institution of learning, charity, philanthropy, or scientific research.

(c) The area sold or leased is limited to the reasonable needs of the purpose for which it is acquired, not to exceed ninety-six hectares in any one case.

(d) The sale or lease may, at the discretion of the Secretary of Agriculture and Natural Resources, be made without public bidding, the price or rental to be fixed by him.

(e) Requirements of cultivation may be waived by the Secretary of Agriculture and Natural Resources.

(f) The land may not be sold, transferred, encumbered, or leased for any other purpose than that contemplated in the original application for it.

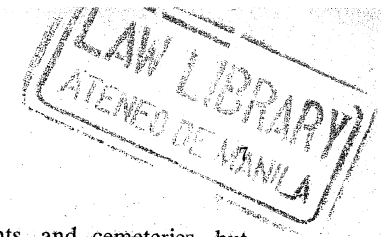
<sup>271</sup> *Hacbang v. Director of Lands*, 61 Phil. 669 (1935); *Director of Lands v. Bishop of Zamboanga*, 61 Phil. 644 (1935); *Roman Catholic Church v. Municipality of Cebu*, 36 Phil. 517 (1917); *Roman Catholic Church v. Municipalities of Negros Occidental*, 13 Phil. 486 (1909); *Roman Catholic Church v. Municipalities of Caloocan*, 12 Phil. 639 (1909); *Roman Catholic Church v. Municipalities of Tarlac*, 9 Phil. 450 (1907); *Barlin v. Ramirez*, 7 Phil. 41 (1906).

<sup>272</sup> *Archbishop of Manila v. Fajardo*, 53 Phil. 82 (1929).

<sup>273</sup> Commonwealth Act 141 §§ 69-70. (Public Land Law).

<sup>274</sup> *Id.*, §§ 25 and 27.

<sup>275</sup> *Id.*, §§ 37-38.





(g) Any resale, encumbrance, or sub-lease of the land needs the approval of the Secretary of Agriculture and Natural Resources.

(h) Violation of the conditions regarding resale, transfer, encumbrance or leasing, shall be cause for rescission of the sale or lease, and forfeiture to the State of all improvements on the land.

If the religious society is qualified to acquire and hold lands in the Philippines, it may certainly do so through its head as corporation sole. A question has been raised as to whether the religious society may do so if the person incorporated as corporation sole, or the present incumbent, is not a citizen of the Philippines. The question is discussed in a subsequent chapter.

#### E. REGISTRATION OF LAND

Where the religious society owns unregistered lands, registration for the same may be effected by the corporation sole under the provisions of the Land Registration Act, which state that application for registration of title to land may be made by the "person or persons claiming, singly or collectively, to have the power of disposing of the legal estate in fee simple."<sup>276</sup>

And even as to land held in trust for specific purposes, the corporation sole may also apply for the registration thereof.<sup>277</sup>

The capacity of corporations sole of the Roman Catholic Church to register lands belonging to the Church has been acknowledged by the court, and the title is to be issued in the name of the bishop as corporation sole. Ruling on the question of the name to be placed on the Torrens title, the court stated:

... There is a large difference between registering title in the name of the Roman Catholic Bishop of Nueva Segovia in trust for the Roman Catholic Apostolic Church and in registering title in the name of the Roman Catholic Apostolic Church. In the one case the title would be in the Roman Catholic Bishop of Nueva Segovia, while in the other it would be in the Roman Catholic Church. In the one case the Church has only the beneficial use, in the other it has absolute ownership. In the one case the Roman Catholic Apostolic Church is a *cestui que trust*, in the other the owner. The form of the decree as made by the Court of Land Registration would result, if strictly construed, in defeating the purposes of the law which it sought to follow instead of carrying out its provisions. The proper way to proceed is to decree the registration of title in the name of the petitioner as in any other case. After the decree is entered, the Corporation Law, section 157, operates and declares that the title to the property is in the Roman Catholic Apostolic Church, where, in all these cases, it is found to be, and the Bishop of Nueva Segovia is administering it as the representative of that Church. Moreover, it has been the practice in the courts of the Islands to bring actions and proceedings in favor of the Roman Catholic Apostolic

<sup>276</sup> Act 496, § 98 (Land Registration Law).

<sup>277</sup> *Id.*, § 69.

Church in the name of the archbishop or the bishop of the locality, it having been held by this court repeatedly, and it being generally understood, that any judgment rendered in such action or proceeding is in favor of or against the Roman Catholic Apostolic Church and not in favor of or against the archbishop or the bishop individually or as a separate and independent corporation.

The decree of registration is hereby modified by striking out the phrase "in trust for the use, purpose, behoof, and sole benefit of the Roman Catholic Apostolic Church in these Islands," and, as so modified, is affirmed....<sup>278</sup>

It is believed that the same rule would apply to other religious societies whose heads are incorporated as corporations sole.

As to the transfer of properties registered under Act 496, from one bishop to another bishop, in connection with the formation of part of an old diocese into a new one, the opinion has been advanced that since the new diocese was formerly part of the old, the members thereof being the same persons, the transfer from one bishop to the other merely constitutes a change of trustee for the same religious association, and therefore transfer fees should not be the graduated rate specified in section 114, par. C 16 of Act 496, but the flat rate prescribed in section 114, par. C 14 of the same act, which imposes fees of only five pesos for each title transferred. It may be added, furthermore, that the graduated fees specified in section 114 par. C 16 are based on the consideration received for the transfer of the property, and since a transfer of property from one bishop to another generally involves no monetary consideration, the graduated fees would hardly be applicable. As a rule, such transfers are drafted as sales for nominal considerations, say one peso, in order to expedite the transfer, but the true transaction is merely a transfer of administration or trusteeship.

#### F. IS THE CORPORATION SOLE A TRUSTEE?

A trust has been defined as "a fiduciary relationship in which one person is the holder of the title to property, subject to an equitable obligation to keep or use the property for the benefit of another."<sup>279</sup>

The principles of the general law on trusts have been expressly adopted by statute in this jurisdiction.<sup>280</sup> The statute classifies trusts into express and implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.<sup>281</sup>

One who establishes a trust is called a trustor,<sup>282</sup> settlor or grantor.<sup>283</sup> One in whom confidence is reposed as regards property for the benefit of an-

<sup>278</sup> Bishop of Nueva Segovia v. Insular Government, 26 Phil. 300 (1913).

<sup>279</sup> BOGERT, HANDBOOK OF THE LAW OF TRUSTS 1 (3d ed. 1952).

<sup>280</sup> Art. 1442 NEW CIVIL CODE.

<sup>281</sup> Art. 1441 *id.*

<sup>282</sup> Art. 1440 *id.*

<sup>283</sup> BOGERT, *op. cit. supra* note 279, at 2.

other person is called the trustee.<sup>284</sup> One for whose benefit a trust is created is called the beneficiary,<sup>285</sup> or *cestui que trust*.

Any person capable of taking title to property may be a trustee thereof.<sup>286</sup> Corporations, when allowed to take title to property by their charters or by statute, may be trustees.<sup>287</sup> In this jurisdiction, a corporation may be formed as a trust corporation for the express purpose of acting as trustee or administering or holding property in trust.<sup>288</sup> However it is not only trust corporations that can hold property in trust. The power of charitable, educational, and other non-profit organizations to hold property in trust has not been questioned in this jurisdiction. Likewise, the power of corporations sole to hold property in trust has not been questioned. In the United States, where the power of a corporation sole to receive a certain bequest of property as trustee was questioned, the court ruled that although the corporation sole could not receive the bequest in his corporate capacity, he could do so in his individual capacity.<sup>289</sup> Here, the power of a corporation sole to administer certain charitable trusts and to hold the property thereof was admitted even by the state itself.<sup>290</sup> The statute itself expressly empowers the corporation sole to hold all the temporalities and properties of his religious society, to be "held in trust by him as corporation sole."<sup>291</sup> The power of the corporation sole to act as trustee in this jurisdiction may therefore be considered a settled legal doctrine.

The question that arises next is whether the corporation sole does hold church property in trust, using the word "trust" in the strict sense of that term.

It would seem that as to express trusts, where a grantor expressly constitutes a corporation sole as trustee, to hold property for the benefit of the *cestui que trust*, there can be no doubt that such property would be considered as legally held in strict trust. The question narrows down, therefore, to whether the corporation sole holds in trust such property as is bestowed on him or his religious society, without words indicating an express trust.

The statute states that "when property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another

<sup>284</sup> Art. 1440 NEW CIVIL CODE.

<sup>285</sup> *Ibid.*

<sup>286</sup> BOGERT, *op. cit. supra* note 279, at 111-112.

<sup>287</sup> *Ibid.*

<sup>288</sup> Rep. Act No. 337 § 56 (General Banking Act).

<sup>289</sup> True, as we have already said, a bishop is for some purposes denominated a corporation sole; but he is none the less an individual, and as such may act as a trustee for any lawful purpose. *Rine v. Wagner*, 135 Iowa 626, 135 N.W. 471 (1907).

<sup>290</sup> *San Juan de Dios Hospital v. Municipal Council of San Rafael*, 67 Phil. 158 (1939).

<sup>291</sup> CORPORATION LAW § 157.

or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.<sup>292</sup>

Most of the cases on implied trusts in connection with the corporation sole involved the so-called charitable trust. Where a trust is deemed to accomplish an appreciable amount of social benefit to the public or to some reasonably large class, it is considered a charitable trust.<sup>293</sup> Unlike ordinary trusts which must have definite beneficiaries as a rule, charitable trusts may have indefinite beneficiaries,<sup>294</sup> such as the poor, relief of sickness, and the like.

Religious purposes, and gifts for masses, have both been held to be charitable trusts:

The maintenance and propagation of religion by providing for religious services, places of worship, the salaries and maintenance of religious workers, the education of the young in religion, the upkeep of home and foreign missions, and other similar religious objects, are valid charitable purposes.

The religion to be forwarded need not necessarily be the Christian religion or any branch or sect thereof, but may be any religion which does not teach immoral or criminal doctrines.

In nearly all states trusts for the purpose of having masses said for the soul of the settlor or for the soul of others are valid charitable trusts for religious purposes.

In a few jurisdictions gifts for the purpose of having masses said are valid, although not considered charitable trusts.<sup>295</sup>

The word "trust" is one of the most abused in legal terminology. The statement that certain property is held "in trust" does not necessarily imply that a true trust relationship exists, since the word "trustee" has been used in so many other senses, such as the "board of trustees" of an educational institution, and the "trustees" of a prison.

The following tests have been offered to determine whether certain property is held in trust or not:

a. Where an instrument conveying property to a religious society contains imperative instructions as to the manner whereby the property is to be used, a trust is thereby created; but where the language leaves the use and disposition of the property to the discretion of the grantee, there is no trust.<sup>296</sup>

b. The terms of the incorporation act must be considered. Where officers or trustees are incorporated, while the religious society remains unincorporated, the relation between the trustees and the members is that of trustee and *cestui que trust*.<sup>297</sup>

<sup>292</sup> Art. 1453 NEW CIVIL CODE.

<sup>293</sup> BOGERT, *op. cit. supra* note 279, at 246.

<sup>294</sup> *Ibid.*

<sup>295</sup> *Id.* at 261.

<sup>296</sup> 45 AM. JUR., *Religious Societies* § 62, at 773.

<sup>297</sup> 76 C.J.S., *Religious Societies* § 29, at 775.

Does a religious society hold property in trust or free of trust?

A number of United States cases held the following doctrine: Where property was granted to a religious society, or to trustees, to be held for a specific use, such as the building of a church, maintenance of a meeting house, education of children in a certain faith, for the use of colored members, for use of the minister and his successors, for use as a cemetery, and similar specific purposes, such property was held in trust for such specific purposes, and could not be diverted therefrom.<sup>298</sup> However, it was also held that when a grant of land for the building of a church contained no provision for reverter, upon the termination of such use of the land, the grantee's heirs had no interest in it.<sup>299</sup>

Where no particular specific use or purpose was imposed on the grant of property, its conveyance to a religious society being for a broad purpose such as the promulgation of its adopted faith and teaching, to support the preaching of certain doctrines, for the maintenance of the faith, and similar purposes of a rather general and broad nature, it was usually held that such property was held in trust for such purposes, and could not be diverted therefrom.<sup>300</sup>

In this jurisdiction, however, it has been held that the Roman Catholic Church was not a *cestui que trust* of the Church properties, but was the owner thereof. The titles to said Church properties were to be registered in the name of the bishop, omitting the words "in trust for the Roman Catholic Apostolic Church," because these latter words implied that the Roman Catholic Church was a *cestui que trust*. The bishop administered said Church properties as *representative* of the Roman Catholic Church.<sup>301</sup> The doctrine that the Roman Catholic Church was the "owner" of its property is well settled,<sup>302</sup> and it would seem that in this jurisdiction, the mem-

<sup>298</sup> 45 AM. JUR., *Religious Societies* § 63, at 774. *Lamb v. Cain*, 129 Ind. 486, 29 N.E. 13, 14 L.R.A. 518 (1891); *Field v. Field*, 9 Wend. 394 (1832); *Godfrey v. Walker*, 42 Ga. 562 (1871); *Busby v. Mitchell*, 23 S.C. 472 (1885); *Reformed Protestant Dutch Church v. Mott*, 7 Paige 77, 32 Am. Dec. 613 (1938); *Scott v. Stipe*, 12 Ind. 74 (1859); *Mason v. Hickman*, 4 Ky Lay Rep. 313 (1882); *Glader v. Schwinge*, 336 Ill. 551, 168 N.E. 658, 66 A.L.R. 172 (1929).

<sup>299</sup> 45 AM. JUR., *Religious Societies* § 63, at 774. *Glader v. Schwinge*, 336 Ill. 551, 168 N.E. 658, 66 A.L.R. 172 (1929).

<sup>300</sup> *Park v. Champlin*, 96 Iowa 55, 64 N.W. 674, 31 L.R.A. 141 (1895); *Smith v. Pedigo*, 145 Ind. 36, 33 N.E. 777, 19 L.R.A. 433 (1893); *Combe v. Brazier*, 2 Desaus (SC) 431 (1806); *Schradi v. Dornfeld*, 52 Minn. 465, 55 N.W. 49 (1893); *Inhabitants of Princeton v. Adams*, 64 Mass. (10 Cush) 129 (1854); *Kerler v. Evangelical Emmanuel's Church of Hales Corner*, 229 Wis. 243, 282 N.W. 32 (1938); *In re Stuart's Estate*, 184 Iowa 165, 168 N.W. 779 (1918); *First Regular Baptist Church of Indiana, Pa. v. Allison*, 304 Pa. 1, 154 Atl. 913 (1931).

<sup>301</sup> *Bishop of Nueva Segovia v. Insular Government*, 26 Phil. 300 (1913).

<sup>302</sup> *Trinidad v. Roman Catholic Archbishop of Manila*, 63 Phil. 881 (1936); *Hacbang v. Director of Lands*, 61 Phil. 669 (1935); *Director of Lands v. Bishop of Zamboanga*, 61 Phil. 644 (1935); *Santos v. Roman Catholic Church*, 41 Phil. 945 (1909); *Archbishop of Manila v. Barrio Sto. Cristo*, 39 Phil. 1 (1918); *Roman Catholic Church v. Municipality of Cebu*, 36 Phil. 517 (1917); *Government v. Archbishop of Manila*, 35 Phil. 934 (1916); *Municipality of Nueva Caceres v. Director of Lands*, 24 Phil. 485 (1913); *Roman Catholic Church v. Municipalities of Calocan*, 12 Phil. 639 (1909); *Roman Catholic*

bers of the Roman Catholic Church cannot validly claim to have any property rights as *cestui que trusts* of the Church properties.

Even as to so-called charitable trusts, it seems that the doctrine in this jurisdiction is that the Roman Catholic Church does not hold these in trust. The Roman Catholic Church administered certain charitable trusts which were the subject of controversy between the Government of the Philippine Islands and the Church. These included the Hospicio de San Jose, San Juan de Dios Hospital, Colegio de San Jose, Hospital of San Jose in Cavite, and the Colegio de Santa Isabel. The controversy was settled by an agreement between the Secretary of War of the United States, representing the Government of the Philippine Islands, and the Archbishop of Manila, representing the Roman Catholic Church. The agreement was ratified by the Government of the Philippines by the enactment of Act 1724.

Briefly, this agreement acknowledged the right of the Roman Catholic Church "to administer certain charitable trusts, and to take possession of, and assume control of" the enumerated estates. Among the provisions of the agreement were the following statements:

In consideration of the foregoing, and in the manner prescribed herein, the Archbishop of the Diocese of Manila, for the Roman Catholic Church in the Philippine Islands, is to take possession, and hold in absolute title, free from all claims or demands of the Philippine Government, the land and property, real and personal and mixed, set forth and described under sections one, two, three, four, and five hereof, namely: — Hospicio de San Jose; San Juan de Dios Hospital; Colegio de San Jose; Hospital of San Jose in Cavite; and the Colegio de Santa Isabel.

Sec. 5. The Governor-General of the Philippine Islands is hereby authorized and directed . . . to execute proper conveyances of title to the Roman Catholic Church as represented by the Archbishop of Manila, conveying all the right, title and interest of the Government of the Philippine Islands in and to the following-described property, to wit: The buildings, foundation, and property, real, personal, and mixed, pertaining and belonging to the Hospicio de San Jose, the Hospital de San Juan de Dios, the Hospital de San Jose in Cavite, and the Colegio de Santa Isabel.<sup>303</sup>

We notice here what appears to be an inconsistency. The agreement states that the property was "pertaining and belonging to" the various charitable trusts mentioned, yet the Roman Catholic Church, as represented by the Archbishop of Manila, was to take and "hold in absolute title, free from all claims and demands" the properties of said charitable trusts.

It would seem, therefore, that although the general rule is that church properties, even where they are held for broad and general purposes and

*Church v. Municipality of Lañgaran*, 11 Phil. 460 (1908); *Roman Catholic Church v. Municipalities of Cebu*, 11 Phil. 405 (1908); *Roman Catholic Church v. Municipality of Placer*, 11 Phil. 315 (1908).

<sup>303</sup> The provisions of the agreement are cited in the case of *San Juan de Dios Hospital v. Municipal Council of San Rafael*, 67 Phil. 158 (1939).

uses, are held in trust for such uses, this is not applicable to the Roman Catholic Church in the Philippines, which, as has been seen, holds in ownership not only its properties in general, but even the charitable trusts under its administration.

Does this doctrine apply equally to other religious societies in the Philippines? It would seem doubtful whether an affirmative answer could be given to this question. The Roman Catholic Church, without ceremony of incorporation, has been recognized as having juridical personality here. The same recognition of juridical personality has not been accorded to other religious groups; if unincorporated, they have to hold properties through the several methods already mentioned, either three trustees under Act 271, or duly incorporated corporations aggregate or corporations sole; they apparently cannot hold property directly. Unless, therefore, a clear ruling is made on this point, it would seem that other religious societies do not hold their properties and charitable trusts "in absolute title," but would seem subject to the general rule that these properties are held in trust for the purposes for which they were granted.

On the question of whether the property of a religious society is held in trust for the members of the society, there are conflicting cases. It was held in Kentucky that "every member of that church has a beneficial interest in the property . . . as long as he or she shall continue to be a member" of the congregation. This decision, involving a Catholic congregation, would imply that property of the Roman Catholic Church is held in trust for the congregation.<sup>304</sup> On the other hand, in Wisconsin, it was held that the members of a Roman Catholic congregation were not the equitable or beneficial owners of the property, and were not *cestui que trusts*.<sup>305</sup>

In this jurisdiction, in view of the long line of cases holding that the Roman Catholic Church has juridical personality and was the "owner" of its properties, it would seem a settled doctrine that the members of a Roman Catholic congregation are not *cestui que trusts* of the church property.

<sup>304</sup> Every member of that church has a beneficial interest in the property thus conveyed, so long as he or she shall continue to be a member, but no longer. It is only as a constituent element of the aggregated body or church, that any person can acquire or hold, as a *cestui que trust*, any interest in the property thus dedicated to that church. *Shannon v. Frost*, 3 B. Mon. (Ky) 253 (1842).

<sup>305</sup> Where a Catholic bishop holds church property by a deed in fee simple, though he may not, under church regulations, dispose of the same, and appropriate the proceeds, still he has such a sole ownership in the property that the possession is his as a matter of law, and the congregation who voluntarily contributed to build the church have no right to tear it down, in opposition to the wishes of the bishop, because it is out of repair. . . . The probability is that it was a gift . . . to the bishop to be held by him under the rules and regulations of the Catholic church for the use of the Catholic congregation which might worship there. But this would not make the persons of that faith . . . *cestui que trusts*, or equitable owners, in such a sense that they could destroy the building without the consent of the bishop. *Heiss v. Vosburg*, 59 Wis. 532, 18 N.W. 463 (1884).

The rule in the United States, as well as in this jurisdiction, seems to be therefore that property conveyed to a religious society for some purpose, whether definite or broad, is held in trust for such purposes. Where property is in the hands of a corporation sole, is he a trustee?

In the United States, it has been held that where property had been conveyed to a minister or bishop "for the benefit of the church," "for the use of the . . . church," "for the use and benefit of the congregation," and similar words, even where there were no words creating an express trust, the conveyance transferred a "fee simple" to the minister or bishop to whom the transfer was made, "in trust for the church." The trust thus created attached to the office of the bishop or minister, and not to the person.<sup>306</sup>

Cases involving conveyances of property to bishops of the Roman Catholic Church generally held that the bishop held the property in trust.

In Pennsylvania, it was held that land transferred by the Roman Catholic congregation to the bishop "in trust for the congregation" was by him held in trust, despite provisions in the canons of the Church that the title of the property was in the bishop.<sup>307</sup>

In Arkansas, the same canons of the Church were used as an argument that the Roman Catholic bishop held the property "in trust for his church."<sup>308</sup>

In Ohio, the court rendered a very strong opinion holding that the Roman Catholic bishop held property in trust for his church, in the following language:

The parties have gone back 15 centuries into the laws and canons of the church for proof of the nature of the tenure by which the archbishop held the legal title to ecclesiastical property; and the proof is overwhelming that he was not invested with an absolute title in it as his own . . . It is no innovation upon the law of evidence in determining questions like the one at bar to call, in aid of the civil tribunal, upon the law of the particular church involved for the purpose of determining the title to church property. It surely is not unreasonable in a case like the present to hold one of the great prelates of the church of Rome to the terms upon which, by the very law to which he has avowed his fealty, he has consented to accept the legal title to property which

<sup>306</sup> *Olcott v. Gabert*, 86 Tex. 121, 23 S.W. 985 (1893); *Fink v. Umscheid*, 40 Kan. 271, 19 Pac. 623, 2 L.R.A. 146 (1888); *Krauczunas v. Hoban*, 221 Pa. 213, 70 Atl. 740 (1908).

<sup>307</sup> *Krauczunas v. Hoban*, 221 Pa. 213, 70 Atl. 740 (1908). In this case, however, the bishop was not a corporation sole. The conveyance was not made to him as a bishop, but as a trustee. Hence, the general rules on trusts were applied.

<sup>308</sup> *Morris v. Nowlin Lumber Co.*, 100 Ark. 253, 140 S.W. 1 (1911). A deed to Bishop Morris under the canons of his church is in legal effect a deed to the Roman Catholic Church in his diocese. If the grant had been made to the church direct, the bishop would have held the legal title in fee as trustee for his church. He represents the church. The bishop is the spiritual head of his church, it vests in him and in his successors likewise in fee. [citing: *Town of Pawlet v. Clark*, 13 U.S. (9 Cranch) 292 (1818)].

is appointed to the uses of the church to whose service he has with most solemn unction dedicated his life.<sup>299</sup>

In the Philippines, we have the two cases already mentioned, one holding that the Roman Catholic Church is not a *cestui que trust*,<sup>310</sup> which leads to the logical conclusion that the bishop is not a trustee; and the other whereby the Archbishop of Manila was to take and "hold in absolute title" certain charitable trusts, which again negates the idea of the bishop being a trustee.<sup>311</sup>

The statute, however, states that the corporation sole shall hold the properties "in trust by him as a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church. . . ."<sup>312</sup> This provision in the light of the preceding discussion would indicate that a trust relation exists between the corporation sole, as trustee, and the religious denomination, society, or church as *cestui que trust*.

It would seem, therefore, that in this jurisdiction, the rule is that a corporation sole holds properties of his religious society in trust. Since the religious society generally stays unincorporated, it will be seen that the existence of a trust relationship affords better legal protection to the unincorporated society. The existence of a trust relationship would preclude the corporation sole from claiming ownership over the church properties by prescription.<sup>313</sup> Should the corporation sole attempt to divert the property from the purposes for which it was granted to the religious society, the members thereof may sue to prevent said diversion or to recover the property for the society. In case of violation of the trust, the property may revert to the grantor or his heirs. The property may not be sold or alienated in violation of the trust.

If the holding is not "in trust" but in absolute ownership, it would be logical to conclude that members of the society may not be in a position to prevent diversion of the property, and the power of the religious society over said property would be more absolute; there would be no reverter of the properties held to the grantor or his heirs.<sup>314</sup> The property may be alienated at the will of the governing body of the religious society.

From the foregoing rule that a corporation sole holds properties of his religious society in trust, there seems to be one exception in this jurisdic-

<sup>299</sup> *Mannix v. Purcell*, 46 Ohio 102, 19 N.E. 572, 2 L.R.A. 753 (1888) followed and quoted in *Morris v. Nowlin Lumber Co.*, 100 Ark. 253, 140 S.W. 1 (1911).

<sup>310</sup> *Bishop of Nueva Segovia v. Insular Government*, 26 Phil. 300 (1913).

<sup>311</sup> *San Juan de Dios Hospital v. Municipal Council of San Rafael*, 67 Phil. 158 (1939).

<sup>312</sup> CORPORATION LAW § 157.

<sup>313</sup> *Palma v. Reyes*, 77 Phil. 713 (1946); *Salinas v. Tuason*, 55 Phil. 729 (1931); *Government v. Abadilla*, 46 Phil. 642 (1924).

<sup>314</sup> *Trinidad v. Archbishop of Manila*, 63 Phil. 881 (1934); *Trinidad v. Archbishop of Manila*, 55 Phil. 801 (1931); *Gonzales v. Archbishop of Manila*, 51 Phil. 420 (1923).

tion — bishops and other resident prelates of the Roman Catholic Church. Certainly it would be illogical to deny that they are in a fiduciary position, but from the cases already mentioned, it would seem that while they are considered representatives or administrators of the Roman Catholic Church, it does not necessarily follow that they hold the Church properties in trust. Probably the reason for the distinction is the fact that the Roman Catholic Church, as already mentioned, has been recognized as having a juridical personality of its own, and can therefore own properties directly.

#### G. SALE OR MORTGAGE OF CHURCH PROPERTIES

Where the rules, regulations, and discipline of the religious society contain provision for sale or mortgage of its properties, the law expressly recognizes such rules and states that court intervention shall not be necessary for this purpose.

Where there is no such provision in the rules and regulations, then the corporation sole cannot sell or mortgage real property held by him, except with the previous order of the Court of First Instance of the province where the property is located. The statute prescribes a hearing, at which it must be shown that the sale or mortgage is to the interest of the religious society, and members of the society may voice their opposition thereto.<sup>315</sup>

It is clear that the purpose of this provision is for the protection of the religious society and the members from possible abuse by the incumbent corporation sole and the loss of its property by negligence or fraud.

#### VIII. THE CORPORATION SOLE AND THE STATE

This chapter undertakes an examination of the effect on the corporation sole of the various powers of the State under the Constitution and the incorporation statute, especially as they relate to property held by the corporation sole.

There is, of course, the usual triduum of the main powers of the State: the police power, the power of eminent domain, and the power of taxation. Since the application of these powers to the corporation is apparently no different from their application in case of religious societies in general, the police power and the power of eminent domain will be treated only in the most general terms. The broad subject of taxation, which is a whole field in itself, has been left out of the scope of this work.

Then there are the nationalistic provisions of the Constitution on acquisition of public agricultural lands, acquisition of private agricultural lands, limitations on amount of lands owned, and expropriation of lands for sub-

<sup>315</sup> CORPORATION LAW § 159.



division and resale to tenants. The term agricultural land has been held to include all lands not mineral or timber.<sup>316</sup>

Finally, since the corporation sole is a civil corporation and a creature of the State, it is subject to the inherent power of the State to regulate its own creature.

#### A. THE POLICE POWER

One of the greatest mistakes of mankind is that people, upon joining a religious society or church, and more especially upon being elevated to ecclesiastical ranks, must act like angels or like saints. It is forgotten that a human being, though he may join the most austere religious society, remains human, subject to all human weaknesses and faults.

Regulation of religious societies by the State, insofar as lay matters are concerned, is therefore not only appropriate and proper but often necessary. The police power of the State is the power to prescribe regulations to promote the health, morals, education, good order or safety, or the general welfare of the people, and is based on the maxim *salus populi est suprema lex*.<sup>317</sup>

It will not be disputed, for example, that religious societies must abide by zoning ordinances and regulations, building regulations, regulations on electrical, plumbing, and similar matters. These are matters concerning the safety, health, and good order of the community, to which no one can claim exception.

The Civil Code has provisions on funerals which expressly respect the religious beliefs or affiliation of the deceased.<sup>318</sup> Regulations on burial, made in the interest of health, would of course be binding on religious societies. There may be some question regarding whether the State can, for example, specify the cremation of corpses, in the face of long standing regulations of some religious societies, such as the Roman Catholic Church, prohibiting the same, and it would be a question in such a case whether such a matter would constitute a violation of the freedom of religion.

Regulations on nuisances would also affect religious societies, and the fact that a society is devoted to the spread of religion and worship of the Deity would be no excuse for toleration of nuisances. The definition of nuisance under our law is so broad as to embrace almost anything,<sup>319</sup> and the opinion is here offered that the State may impose reasonable regulations on such matters as the ringing of bells at unholy hours, holding of loud services with benefit of modern public address systems and spreading

<sup>316</sup> *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947). See also dissenting opinions on this point.

<sup>317</sup> *From Primicias v. Fugoso*, 80 Phil. 71 (1948).

<sup>318</sup> Art. 307 NEW CIVIL CODE.

<sup>319</sup> Art. 694 *id.*

religious beliefs to the inhabitants of the area whether they subscribe to such beliefs or not, installation of loudspeakers on top church buildings for the holding of mass prayers in full volume, holding of processions on main streets and even on national highways without due consideration to the traffic thereon—all of these are common occurrences on the Philippine scene which the Filipino people, being by nature quite tolerant and anxious to avoid giving offense, have come to accept with more or less resignation.

Where all the members of the community belong to the same religious faith, undue ringing of bells and broadcasting of services may be no nuisance to the community, but imagine the effect of, say, *Iglesia ni Cristo* services, broadcast in full volume nightly to a predominantly Catholic community. Or imagine the effect of a religious society which believes in midnight services, pealing the church bells nightly at such a forbidding hour. All these things, it is believed, come within the police power of the State, and reasonable regulations may, and should be imposed thereon.

What has been said in reference to religious societies in general certainly applies in full force to those whose heads have been incorporated as corporations sole. In the United States, it has been held that religious corporations are subject to the police power of the State, regardless of the provisions of their charters.<sup>320</sup> Where a Roman Catholic bishop held legal title to certain church property which was set aside for use as a cemetery, and a suit was filed to restrain the use of the property for such purpose, claiming it to be a nuisance, the court held that the proper defendant to such a suit was the bishop.<sup>321</sup>

In this jurisdiction the corporation sole may be held responsible for violation of police power regulations since a corporation sole is a juridical person amenable to the jurisdiction of the courts for the enforcement of any legal right.<sup>322</sup>

#### B. EMINENT DOMAIN

The question has been raised as to whether the properties of a religious society are subject to the State's power of eminent domain.

Unconsecrated properties, which are not held for religious worship or for burial of the faithful, are definitely subject to the power of eminent domain, since they do not in any way differ from other private property, and, as has already been discussed, should not be considered beyond the commerce of men. Expropriation of church properties, for public use,

<sup>320</sup> A religious corporation under its charter was held entitled to be protected against impairment of contract, but was subject to the police power of the state, regardless of provisions of the charter. *Moritz v. United Brethren's Church on Staten Island*, 269 N.Y. 125, 199 N.E. 29 (1935).

<sup>321</sup> *Jung v. Neraz*, 71 Tex. 396, 9 S.W. 344 (1888).

<sup>322</sup> *Gonzales v. Roman Catholic Archbishop of Manila*, 51 Phil. 420 (1928).



with just compensation, has been the subject of several decisions of our courts.<sup>323</sup>

The question of taking consecrated properties by the power of eminent domain presents a somewhat different problem, since our courts have held that such properties are outside the commerce of men, a doctrine which as we have seen may be open to question.<sup>324</sup>

The right of the King of Spain to take churches in the Philippines by the right of eminent domain was mentioned in an *obiter dictum* by the Supreme Court which stated:

When it is said that this church never belonged to the Crown of Spain, it is not intended to say that the Government had no power over it. It may be that by virtue of that power of eminent domain which necessarily resides in every government, it might have appropriated this church and other churches, and private property of individuals. But nothing of this kind was ever attempted in the Philippines.<sup>325</sup>

The power of the State to take a cemetery for road building purposes was thoroughly discussed in the famous case of the *City of Manila v. Chinese Community of Manila*, where the court stated that a cemetery open to the public was a public use, and the land devoted to such public use can only be taken for another public use by express authority of the Legislature expropriating the specific land in question, and could not be taken under a general grant to exercise the power of eminent domain, such as that granted to the city of Manila. Justice Malcolm, concurring, stated that "it is unquestionable that the Legislature has the power to authorize the taking of land already applied to one public use and devote it to another."<sup>326</sup> This power must only be exercised "upon the direst necessity."

### C. LIMITATION OF AMOUNT OF CHURCH PROPERTY

One of the causes of the Philippine Revolution of 1896 was the ownership of large tracts of lands by the Roman Catholic Church and its religious orders.<sup>327</sup> That these holdings seemed to have enjoyed some degree of unpopularity may be deduced from the provisions of the Malolos Constitution, which stated that "All the lands, buildings, and other properties belonging to the religious corporations in these Islands shall be understood to have been restored to the Filipino state on the 24th of May last, the day on which the dictatorial government of Cavite was constituted."<sup>328</sup>

<sup>323</sup> Provincial Government of Pampanga v. Archbishop of Manila, 57 Phil. 1014 (1933); Municipality of Paombong v. Archbishop of Manila, 57 Phil. 1014 (1933).

<sup>324</sup> See Chapter VI, 5 ATENEO L.J. 500 *et seq.* (1956).

<sup>325</sup> Barlin v. Ramirez, 7 Phil. 41, 56 (1906).

<sup>326</sup> City of Manila v. Chinese Community of Manila, 40 Phil. 349 (1919).

<sup>327</sup> Register of Deeds of Rizal v. Ung Siu Si Temple, 51 O.G. 2866 (1955).

<sup>328</sup> Additional article to the Malolos Constitution.

The provision of the Malolos Constitution used the term "religious corporations," which must have contemplated not only the Roman Catholic Church, but the different religious orders that then held sizable tracts of land, as well as confraternities or "cofradias" which, under the Canon Law and the Spanish laws then in force, were recognized as corporations.<sup>329</sup>

The United States government realized the unrest caused by these land-holdings, and remedial measures were taken early, starting with the Philippine Bill of 1902, which provided as follows:

Sec. 63. That the Government of the Philippine Islands is hereby authorized, subject to the limitations and conditions prescribed in this Act, to acquire, receive, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain.

Sect. 64. That the powers hereinbefore conferred in section sixty-three may also be exercised in respect of any lands, easement, appurtenances, and hereditaments, which, on the thirteenth of August, eighteen hundred and ninety-eight, were owned or held by associations, corporations, communities, religious orders, or private individuals in large tracts or parcels and in such manner as in the opinion of the Commission injuriously to affect the peace and welfare of the people of the Philippine Islands....

Under this authority, the Government of the Philippine Islands did acquire by purchase some of the large tracts of land held by religious orders in the Islands, known as "friar lands."

The same authority is conferred on the Republic of the Philippines by the Philippine Constitution, which provides that "Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."<sup>330</sup> By virtue of this constitutional authority, Congress enacted in 1955 the Land Tenure Administration Act<sup>331</sup> providing for the expropriation of lands which exceed a certain area for resale to tenants thereof.

The Constitution went one step farther, and provided that Congress may even limit the size of private agricultural lands which individuals, corporations, or associations may hold, "subject to rights existing prior to the enactment of such law."<sup>332</sup>

Exactly what can the State do under these provisions of the Constitution?

In the United States, the rule has been laid down that "subject to constitutional guarantees as to religious liberties, regulatory legislation affecting the temporalities of a church may be sustained."<sup>333</sup> There, statutes limiting the amount of property which religious societies may hold have been

<sup>329</sup> Government v. Avila, 38 Phil. 383 (1918).

<sup>330</sup> PHIL. CONST. art. XIII § 4.

<sup>331</sup> Republic Act No. 1400 (1955).

<sup>332</sup> PHIL. CONST. art. XIII § 3.

<sup>333</sup> 76 C.J.S., *Religious Societies* § 87, at 878.

held to be constitutional, and such limitations cannot be evaded by the device of placing the properties in the hands of a trustee or trustees.<sup>334</sup> The wording of such a statute must be quite precise, for it has been held that where a statute limited the amount of real estate that religious corporations could hold, such a limitation was not applicable to unincorporated religious societies.<sup>335</sup> If such a ruling were followed in this jurisdiction, then a limitation of the amount of land that religious corporations can hold would apply to incorporated religious societies, such as corporations aggregate, but would be inapplicable to religious societies whose heads are incorporated as corporations sole, since in such a case the religious societies remain unincorporated.<sup>336</sup> Of course, the constitutional provision authorizes the limitation of amount of lands that can be owned by even unincorporated societies, since the terms used include "individuals, corporations, or associations."<sup>337</sup>

Where a statute is enacted limiting the amount of real estate that religious societies can hold, the question arises as to the status of the properties held in excess of such a limitation. In the first place, the rule seems to be that private individuals generally have no personality to question a violation of such a statute; only the State may question such acquisition or holding in a direct proceeding.<sup>338</sup> One who has conveyed land to a religious society in violation of such a statutory provision would not be in a position to question the capacity of the religious society to receive and hold such land, since he would be estopped from denying the title of his grantee and to claim any interest in the property conveyed.<sup>339</sup>

Where the statute is enacted limiting the amount of land that a religious society may use for each church and adjacent ground, but without limiting the capacity of the religious society to hold property for other purposes, the limitation only applies to lands acquired for this specified purpose.<sup>340</sup>

Where the statute merely limits the amount of land that can be owned without declaring the forfeiture of any excess, then the State cannot escheat any lands held in excess of the limitation; the most it can do is force the religious society to dispose of or sell the land.<sup>341</sup> It is, of course, within the power of the State to enact a statute declaring forfeited to the State all properties of a religious society in excess of reasonable requirements, and it has been held that an Act of Congress in 1862, limiting the amount of real estate which religious corporations could hold in a territory, and

<sup>334</sup> 76 C.J.S., *Religious Societies* § 51, at 814-815.

<sup>335</sup> *Church of Jesus Christ of L.D.S. v. United States*, 136 U.S. 1 (1890); *Alden v. St. Peter's Parish*, 158 Ill. 631, 42 N.E. 392, 30 L.R.A. 232 (1895).

<sup>336</sup> See Chapter IV D, 5 ATENEO L.J. 494 *et. seq.* (1956).

<sup>337</sup> See PHIL. CONST. art. XIII § 3.

<sup>338</sup> 76 C.J.S., *Religious Societies* § 51, at 813; 45 AM. JUR., *Religious Societies* § 50, at 762.

<sup>339</sup> 14 C.J., *Corporations* § 244, at 233; 10 R.C.L., *Estoppel* § 5, at 676-677.

<sup>340</sup> 45 AM. JUR., *Religious Societies* § 49, at 760-761.

<sup>341</sup> 76 C.J.S., *Religious Societies* § 51, at 814-815.

forfeiting to the United States the real estate held in excess thereof, was a valid exercise of congressional power.<sup>342</sup>

In the Philippines, it would seem that a statute limiting the amount of land that a religious society may hold, and escheating to the State all property in excess of the limitation, could be validly applied only to property acquired subsequent to the enactment of the statute, in view of the due process clause, and more particularly in view of the provision that the right of Congress to limit the size of land ownership is "subject to rights existing prior to the enactment of such law."<sup>343</sup> This restriction is even broad enough to be interpreted as meaning that a limitation of the amount of land owned cannot apply to properties previously owned even in excess of the statutory limitation.

#### D. LIMITATION OF PURPOSES FOR WHICH CHURCH PROPERTIES

##### MAY BE HELD

May the State limit the purposes for which religious societies may hold property, and prohibit the use of such property for any other purposes? In the United States, the question has been answered in the affirmative, and a statute providing that religious associations may only own a limited amount of real estate on which to build houses of religious worship was held as prohibiting such associations from devoting their lands and buildings to secular purpose.<sup>344</sup>

In the Philippines there is no such statute, and the question of limitations on the uses of church properties in the absence of statutory prohibitions has already been discussed.<sup>345</sup>

#### E. CAPACITY TO ACQUIRE AND HOLD LAND

The Constitution of the Philippines lays down a very strict rule on the capacity of persons and entities to acquire and hold lands in the Philippines. In order to acquire public agricultural land in the Philippines, the grantee must be (a) an individual who is a citizen of the Philippines, or (b) a "corporation or association at least sixty per centum of the capital of which is owned by such citizens."<sup>346</sup> Acquisition of private agricultural lands is likewise limited to the persons who are qualified to acquire public agricultural land.<sup>347</sup>

The only exception to this rule is private land owned by non-citizens or

<sup>342</sup> *Church of Jesus Christ of L.D.S. v. United States*, 136 U.S. 1 (1890). And this prohibition cannot be evaded by putting the property in the hands of a trustee. *Ibid.*

<sup>343</sup> PHIL. CONST. art. XIII § 3.

<sup>344</sup> *First M.E. Church of Chicago v. Dixon*, 178 Ill. 260, 52 N.E. 887 (1899).

<sup>345</sup> See Chapter VI, 5 ATENEO L.J. 500 *et. seq.* (1956).

<sup>346</sup> PHIL. CONST. art. XIII § 1.

<sup>347</sup> *Id.*, § 5.

corporations or associations not qualified to acquire lands, acquired by them prior to the taking effect of the Constitution on November 15, 1935. In such cases, the Constitution provides that the property may pass by hereditary succession,<sup>348</sup> although it does not define exactly what is embraced in the term hereditary succession.

Without sinking into the intricacies of the freedom of religion, which is beyond the scope of this Article, one may ask the question whether freedom to own land for the erection of houses of religious worship and other religious purposes is a part of the wider freedom of religion. The question has still to be answered in this jurisdiction, although the tendency of our court decisions would seem to be in the direction of a negative answer. The Supreme Court has stated:

As to the complaint that the disqualification under Art. III (Constitution of the Philippines) is violative of the freedom of religion guaranteed by Art. III of the Constitution, we are by no means convinced (nor has it been shown) that land tenure is indispensable to the free exercise and enjoyment of religious profession or worship; or that one may not worship the Deity according to the dictates of his own conscience unless upon land held in fee simple.<sup>349</sup>

Of course, the preceding statement by no means resolves the question, but it is indicative of the tendency in this jurisdiction to disqualify all aliens and corporations and associations not qualified under the Constitution, including religious associations, from holding lands in the Philippines. This tendency is further complicated by at least two factors: Historically, it is well known that large landholdings of the Church and religious orders in the Philippines were one of the causes of the 1896 revolution,<sup>350</sup> and was the subject of provisions providing for the acquisition of such landholdings by the government in the organic laws of the country.<sup>351</sup> Legally, there exist the nationalistic provisions of the Constitution, which make no distinction between ordinary corporations and associations and those organized for religious worship.

Of course the statement that large landholdings of the Church and religious orders have been the cause of land unrest cannot be interpreted as referring to lands used for church sites, convents, cemeteries, and similar purposes. Lands used for these purposes cannot be extensive, and can hardly be considered a cause for rural unrest. Logically, therefore, any attempt to restrict church landholdings should not be so blindly extensive as to include restrictions on church sites, convents, cemeteries, but such restrictions should be interpreted as including only such other properties as extensive farm lands. Even the Constitution itself regards lands used

<sup>348</sup> *Ibid.*

<sup>349</sup> Register of Deeds of Rizal v. Ung Siu Si Temple, 51 O.G. 2866 (1955).

<sup>350</sup> *Ibid.*

<sup>351</sup> Philippine Bill of 1902, §§ 63-64; PHIL. CONST. art. XIII § 5.

for church sites, convents, cemeteries, and other pious purposes, as especially privileged, and exempts such lands from taxation.<sup>352</sup>

In the case of the corporation sole, whose capacity should determine whether or not land may be acquired? The legal title to church properties is in the corporation sole, while the true owner thereof is the religious society which remains unincorporated. Will the constitutional provision be applied based on the holding of the legal title, or will it go deeper and determine who is the true owner of the property? Whose capacity will be determinative, that of the agent, or that of the principal? Will a corporation sole be allowed to acquire and hold land if the incumbent should be a Filipino citizen, or will the capacity of the religious society, rather than that of the corporation sole, determine whether land can be acquired?

If the capacity to acquire land should be based on the capacity of the corporation sole, then any corporation sole who is a Filipino citizen would be qualified to acquire and hold lands in the Philippines. Then a religious society composed of alien members could, by the mere utilization of a Filipino as head of the religious society and his incorporation as a corporation sole, acquire and hold lands. On the other hand, religious societies with Filipino membership but with alien heads and corporations sole, would be disqualified from acquiring lands.

We have seen that the corporation sole holds the temporal properties of his religious society "in trust by him as corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church."<sup>353</sup> Since he is not the owner thereof, neither his individual citizenship, nor the percentage of ownership of his capital as a corporation should be the determining factor in deciding whether or not he should be qualified to acquire land.

The true owner of the properties being the unincorporated religious society, then it is the qualifications of said religious society to acquire land in the Philippines that should be determinative of the question.

Does an unregistered society possess the qualification to acquire land in the Philippines?

Nowhere does the Constitution make it a requirement that to be qualified to acquire land in the Philippines, a society must be incorporated. The words used by the provision are "corporations or associations,"<sup>354</sup> and the very use of these two terms in contradistinction clearly shows that the constitutional provision was adopted in full awareness of the difference between them. Neither does the Constitution require that associations be registered in any manner in order to be qualified to acquire lands. Thus it would

<sup>352</sup> PHIL. CONST. art. VI § 22 (3).

<sup>353</sup> CORPORATION LAW § 157.

<sup>354</sup> PHIL. CONST. art. XIII § 1.

seem that the fact that it is unincorporated or unregistered does not disqualify a religious society from acquiring and holding lands here.

The Constitutional provision states that at least sixty *per centum* of the capital of such corporations or associations must be owned by citizens of the Philippines.<sup>355</sup> Does it follow that in order to be qualified to acquire land in the Philippines, a corporation or association must necessarily have "capital"?

The term "capital" as used in the constitutional provision cannot possibly be limited to mean "capital stock" since the provision contemplates not only corporations, but also other forms of associations, while the term "capital stock" is definitely not applicable in all these cases, but only to stock corporations. Non-stock corporations and partnerships, among others, have no capital stock. Neither do public corporations, such as provinces, municipalities, and chartered cities. Certainly the provision cannot be interpreted in such a manner as to disqualify all these entities from holding lands in the Philippines.

Associations which are not organized as stock corporations may have funds and properties. Are these the "capital" that the Constitution contemplates in the provision in question? If so, then the difficulty is further complicated, because the funds and properties of such associations are not owned by the individual members thereof, but belong to the associations as legal entities. Thus, although it may be said that such associations have "capital," this capital would not be owned by the members, but by the associations themselves, and therefore, the associations would be disqualified to own land inasmuch as at least sixty percent of their capital is not owned by citizens. Certainly such a view cannot be upheld.

Must, then, corporations and associations have capital at all in order to be qualified to acquire lands in the Philippines?

An analogous case may be found in the Corporation Law, where there are provisions affecting stock corporations as well as non-stock corporations, such as provisions on voting majorities. Where the statute provided for majority or two-thirds vote of the stock in case of stock corporations, it also provided that the equivalent in the case of non-stock corporations was the majority or two-thirds vote of the members. Thus where there was no capital stock to be used as the basis of voting, the membership was deemed to be the equivalent.

In the same manner, where the Constitution prescribed a requirement of "sixty *per centum*" of the capital, this requirement should be deemed applicable only to those associations which have capital. In the case of associations without capital, the requirement should be interpreted as referring to the membership, *i.e.*, sixty *per centum* of the membership.

<sup>355</sup> *Ibid.*

The Supreme Court apparently adheres to such a view, as it stated in a recent case:

The fact that the appellant religious organization has no capital stock does not suffice to escape the Constitutional inhibition, since it is admitted that its members are of foreign nationality. The purpose of the sixty per centum requirement is obviously to ensure that corporations or associations allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos, and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.

To permit religious associations controlled by non-Filipinos to acquire agricultural lands would be to drive the opening wedge to revive religious holdings in this country. We cannot ignore the historical fact that complaints against land holdings of that kind were among the factors that sparked the revolution of 1896.<sup>356</sup>

The foregoing ruling should have solved the problem once and for all, that capacity of religious associations and societies to acquire lands in the Philippines depends upon the citizenship of their members, and that if sixty percent of the members should be citizens, then the society may acquire lands; but a new difficulty has been raised, namely, that "controlling membership should be composed of Filipino citizens."

In the case of stock corporations, although sixty percent of the capital is owned by Filipino citizens, said sixty percent does not have to be "controlling." The great majority of the stock of the corporation, in Filipino hands, may be non-voting, and the small minority of voting stock may be held by aliens. Such a situation would not seem to disqualify the corporation from acquiring lands in the Philippines, since the sixty percent requirement is satisfied literally and actually.

If the "controlling membership" were the only test, then a religious society composed mainly of aliens may constitute a Filipino citizen as its head and incorporate him as a corporation sole, with exclusive control over the properties of the society; and since as a corporation sole the Filipino citizen would be the only "controlling member," the society would then be qualified to acquire lands. It has been previously shown that in religious societies organized under the episcopal or presbyteral forms, the control of the society is not in the members, but in the duly constituted church authorities.

On the other hand, following the same reasoning, a religious society composed largely of Filipino citizens would be disqualified from acquiring land if its head and corporation sole should be an alien. This is the practice in some religious societies, where alien heads govern the religious society until such time as Filipinos have been trained to take over the work.

<sup>356</sup> Register of Deeds of Rizal v. Ung Siu Si Temple, 51 O.G. 2866 (1955).

Is it necessary, then, that to be qualified to acquire lands in the Philippines, it is not enough that a religious society should have at least sixty percent of its membership composed of Filipino citizens, but it is further required that the control of the properties of said society must be in the hands of the members thereof?

We have seen that religious societies may be organized either under the episcopal, the presbyteral, or the congregational forms of internal government. The first two vest control of the affairs of the religious society in duly constituted ecclesiastical authorities, the latter vests in it the membership of the society. To hold that the members must control the property of the society in order to qualify it to acquire lands in this country would be practically disqualifying religious societies of the episcopal or presbyteral forms from holding lands here, and in effect compelling the congregational form of government on religious societies that may want to acquire some lands for their purposes. But the Constitution itself recognizes the right to form associations freely, and states that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed," and that the "right to form associations or societies for purposes not contrary to law shall not be abridged."<sup>357</sup> Certainly such an interpretation must be avoided which will result in the preference of one form of church government over others: "... the right of every religious sect to preserve the peculiar economy it prefers, and perhaps has obeyed immemorially, touches closely, if it is not part of, that religious freedom which American Constitutions guarantee. . . ."<sup>358</sup>

It is submitted, therefore, that for a religious society to be qualified to acquire land in the Philippines, it should be a sufficient requirement that at least sixty percent of the members thereof are Filipino citizens, and that the term "controlling membership" be interpreted to mean nothing more than "at least sixty percent of the total membership." Under such an interpretation, religious societies composed largely of Filipino citizens would be qualified to acquire lands. Such an interpretation would qualify religious societies for Filipinos, regardless of the peculiarities of their organization.

There is no question, however, that religious societies and orders composed of aliens are now disqualified from acquiring lands in the Philippines. Many of the religious orders which used to own extensive lands in the Philippines are no longer qualified to acquire additional lands, unless at least sixty percent of their members be composed of Filipino citizens. In these cases, the Filipinization of the membership of the religious orders would not only accomplish the primary aim of these orders in the Philippines,

<sup>357</sup> PHIL. CONST. art. XIII § 1 (6) and (7).

<sup>358</sup> *Klix v. Polish Roman Catholic St. Stanislaus Parish*, 137 Mo. App. 347, 118 S.W. 1711 (1909).

which is to spread the faith in these Islands, but it would also accomplish the effect of qualifying them to hold and acquire lands in the Philippines. Religious advancement would thus produce legal advantages, and the constitutional provisions would operate not only to conserve the development and ownership of lands for Filipino citizens, but also to expedite the Filipinization of religious societies in the Philippines.

#### F. THE FIFTY-YEAR LIMIT

What happens to the corporation sole after the lapse of fifty years?

The fifty year limit on the life of corporations seems to be a purely statutory provision. The fifty-year limit in the Constitution of the Philippines refers to franchises and certificates for the operation of public utilities.<sup>359</sup> It is the Corporation Law that states that the articles of incorporation shall state "The term for which it is to exist, not exceeding fifty years except as hereinafter provided."<sup>360</sup>

The above provision applies to articles of incorporation of corporations in general. In the case of corporations sole, there is another provision stating the matters to be included in the articles of incorporation,<sup>361</sup> and this latter provision is completely silent on the term for which corporations sole are to exist.

It will be noticed that the provision regarding the articles of incorporation of religious corporations aggregate,<sup>362</sup> as well as that regarding colleges and institutions of learning,<sup>363</sup> similarly contain no provision regarding the term for which such corporations are to exist.

What is the significance of this omission? The very essence of corporations sole is that of holding the properties of religious societies in perpetuity; the same holds true for religious corporations aggregate. Certainly such an interpretation cannot be held which would accuse the state of limiting the lifetime of religious organizations to a maximum of fifty years, especially in a situation where practically all of them antedate the State, which is the situation in this jurisdiction. It is believed therefore that the omission of the fifty year limit from the prescribed articles of incorporation of corporations sole, corporations aggregate, as well as educational corporations, can only be interpreted in one way—that the State did not intend the fifty year limit to apply to these entities.

This view is further strengthened by the fact that religious organizations which choose to hold their property through the medium of three trustees under the provisions of Act 271 are not in any way subject to the fifty-

<sup>359</sup> PHIL. CONST. art. XIV § 8.

<sup>360</sup> CORPORATION LAW § 6 (4).

<sup>361</sup> *Id.*, § 155.

<sup>362</sup> *Id.*, § 160.

<sup>363</sup> *Id.*, § 165.



year limit. The position of the corporation sole is quite similar to that of the three trustees, both are for the purpose of holding properties for an unincorporated religious society. There is no reason why the life of one should be limited while that of the other be not.

Of course it may be that the question is an academic one, since it has been held that "a reincorporation of a religious society is merely a continuance of the old corporation, unless dissolution of the old is the purpose of the reincorporation."<sup>364</sup>

#### G. THE VISITORIAL POWER OF THE STATE

The Corporation Law empowers the President of the Philippines, at any time, "to make an examination into the *business affairs*, administration, and condition of any corporation *transacting business* in the Philippines..."<sup>365</sup>

What constitutes "transacting business" in the Philippines? The court has had occasion to pass upon the meaning of this term, not in connection with the visitorial power, but in connection with the licensing of foreign corporations. A foreign corporation needs a license "to transact business" in the Philippines,<sup>366</sup> and if it transacts business without such license, it cannot maintain a suit in this jurisdiction to enforce obligations arising from such transacts.<sup>367</sup>

Where a foreign corporation engaged in one or a few isolated business transactions, it was held that such corporation did not need to secure a license to do business in order to maintain a suit in local courts.<sup>368</sup> It would seem that a few isolated business transactions would not constitute "doing business" in the Philippines.

No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.... The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.<sup>369</sup>

Although the above mentioned cases interpreted the meaning of "transacting business" as it applies to licensing of foreign corporations, the rulings seem to be equally applicable to the visitorial power of the State. In both

<sup>364</sup> 76 C.J.S., *Religious Societies* § 9, at 755.

<sup>365</sup> CORPORATION LAW § 54 (emphasis added).

<sup>366</sup> *Id.*, § 68.

<sup>367</sup> *Mentholatum Co. v. Mangaliman*, 72 Phil. 524 (1941).

<sup>368</sup> *Central Republic Bank & Trust Co. v. Bustamante*, 71 Phil. 359 (1941).

<sup>369</sup> *Mentholatum Co. v. Mangaliman*, 72 Phil. 524 (1941).

cases, the law uses the same term, "transacting business." In both cases, the purpose of the law is supervision over certain, but not all, corporations.

It would seem, therefore, that the visitorial power of the State only applies to such corporations as are engaged in commercial or business transactions with sufficient continuity so as to constitute "transacting business." Where a corporation does not transact any business, then the visitorial power does not apply.

The corporation sole is fundamentally the acting agent of a religious society, and we have seen that he is not ordinarily empowered to engage in business.<sup>370</sup> So long as the corporation sole does not engage in business transactions, he would seem to be exempt from the visitorial power of the State.

Furthermore, engaging in occasional, isolated business transactions is not considered as "doing business" and consequently, the occurrence of occasional business transactions by the corporation sole would not bring him within the limits of the visitorial power.

It may be argued, *contra*, that since the visitorial power is for the protection of the State and the public from corporations, and since religious organizations may possibly be used as means to defraud, they should be brought within the visitorial power of the State. On the other hand, there is the freedom of religion guaranteed by the Constitution, which may be interpreted to disqualify the State from prying into the internal affairs of a religious society through the use, or abuse, of the visitorial power.

#### IX. THE PECULIAR POSITION OF THE ROMAN CATHOLIC CHURCH

The Roman Catholic Church, as an international entity, has a two-fold aspect, a spiritual one, and a temporal one. The visible head of the Church is the Pope, the bishop of Rome. As Pope he is both spiritual and temporal head—he heads the international religious society, and is also recognized as the temporal ruler of the Vatican City, considered as a state possessing all the requisites of territory, population, government, and sovereignty. Nations send ambassadors and other diplomatic representatives to the Vatican, and receive in return its "nuncios" and other diplomatic personnel.

During the Spanish occupation of the Philippines, the Roman Catholic Church was the official religion of the State, and in the course of time it came to possess a large number of churches, convents, cemeteries, and even agricultural lands.

With the cession of the Philippines to the United States, concern for the fate of the properties of the Church was one of the reasons which led to the inclusion of a provision in the Treaty of Paris as follows:

Art. 8. And it is hereby declared that the relinquishment or cession, as the

<sup>370</sup> See 5 ATENEO L.J. 514 (1956).



case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belongs to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories, renounced or ceded, or of private individuals of whatever nationality such individuals may be.

The "ecclesiastical . . . bodies . . . having legal capacity to acquire and possess property" included the Roman Catholic Church, which was the only Christian religion in the Islands at the time, as well as the different religious corporations and confraternities which were recognized as having legal personality at that time.

The recognition of the juridical personality of the Roman Catholic Church by the courts started with the case of *Barlin v. Ramires*,<sup>371</sup> where the court brushed aside the contention that the Church had no personality by stating that such contention was untenable since the Church had been recognized as a juridical entity for centuries.

The recognition was affirmed in the United States in the leading case of *Municipality of Ponce v. Roman Catholic Apostolic Church in Porto Rico*,<sup>372</sup> where the United States Supreme Court, citing the *Barlin* case with approval, stated that the Roman Catholic Apostolic Church in Porto Rico possessed "corporate existence" and "juristic personality." The case was closely followed by *Santos v. Roman Catholic Church*,<sup>373</sup> appealed to the United States Supreme Court from the Philippines, where the court reiterated the stand taken in the *Ponce* case.

The Philippine Supreme Court followed up the *Ponce* case with the case of *Roman Catholic Church v. Municipality of Placer*,<sup>374</sup> which quoted extensively from the *Ponce* case, and further confirming the juridical personality of the Roman Catholic Church in the Philippines. Thereafter, the legal personality of the Church has been accepted as a settled doctrine.

An examination of the cases just mentioned reveals the following points of interest:

a. The cases recognized the "juridical entity," "legal personality," "juristic personality," of the Roman Catholic Church, and nowhere is there mention that it is a corporation except that the term "corporate existence" was mentioned in the *Ponce* case. The use of the term "corporation by prescription" may seem unnecessary, since an entity, to have legal personality, does not necessarily have to be a corporation, and the term creates a misleading impression, especially in those who start with the conclusion that the State must necessarily have almost absolute power over corporations,

<sup>371</sup> 7 Phil. 41 (1906).

<sup>372</sup> 210 U.S. 296 (1908).

<sup>373</sup> 41 Phil. 945 (1909); 212 U.S. 463 (1909).

<sup>374</sup> 11 Phil. 315, 319-22 (1908).

since corporations can only exist by and under the power of the State. The term "juridical entity," used in the *Barlin* case, should be a sufficient description of the legal status of the Church, without having to go into the niceties of whether it is a corporation or not.

b. The recognition seems to have been extended to the Roman Catholic Church either as an international entity, or the Roman Catholic Church in the Philippines, assuming there exists such an entity. The *Barlin* case mentions that the Church "antedated by almost a thousand years any other personality in Europe," a statement which can be interpreted as implying that the court recognized the Church in its international aspect.

The recognition, as given, would seem to have the following legal effects:

a. The Roman Catholic Church as a juridical entity does not owe its legal personality to any creative act of the State or to any formal act of incorporation under the power of the State. Neither is it recognized as a body incorporated under a foreign state, since the Church never incorporated under the laws of any of the states of today — it antedates them all. It is therefore exempt from all statutory provisions regarding incorporation and organization of corporations, which can only apply to those entities which acquire their status by virtue of incorporation under the laws of some state, and who owe their existence to that state. It is exempt from such rules as registration, corporate organization, voting majorities, and other matters affecting the internal government and structure of corporations created by the power of the State.

b. Since the Church was not created by the State, but only recognized by the State, it cannot be subject to the same limitations as ordinary state-created corporations, such as the statutory fifty-year limit, or the power of the legislature to dissolve corporations.

c. While other religious groups, if unincorporated, must act through trustees or corporations sole or aggregate, the Roman Catholic Church, with its juristic personality, has held property in its own name, has sued and been sued in that name. It would seem that this power could exist, even without the use of devices such as corporations sole or trustees and it seems that the dissolution of all corporations sole by the State would hardly have any effect on the property rights of the Roman Catholic Church.

d. The Roman Catholic Church, in its international aspect, is not a "corporation or association at least sixty per centum of the capital of which is owned by (Filipino) citizens"; consequently it might be considered disqualified to acquire any more lands in the Philippines, if present tendencies in the decisions of our courts are narrowly followed. Even the test of membership may fail, inasmuch as the Church has over four hundred million members throughout the world, of which Filipino citizens certainly cannot comprise sixty percent.

e. If, however, the recognition of juridical personality is deemed to apply only to "the Roman Catholic Church in the Philippines" then it may be able to comply with the sixty percent membership requirement, since well over ninety-eight percent of the membership of the Church in the Philippines is composed of Filipino citizens. The *Ponce* case was brought against "the Roman Catholic Apostolic Church in Porto Rico," which gives the impression that the branch of the Church in that country was being recognized as a separate legal personality. The name "Roman Catholic Church in the Philippine Islands" was used in the agreement between the United States Secretary of War and the Archbishop of Manila regarding trust properties, which was ratified by the Government of the Philippines in Act 1724, and applied in the case of *San Juan de Dios Hospital v. Municipal Council of San Rafael*.<sup>375</sup>

f. Should the State, some day, decide to impose a limitation on the amount of real property that any one entity, incorporated or not, may hold in the Philippines, there may arise the incongruous situation where the whole Roman Catholic Church in the Philippines may, as a single entity, be subjected to the same limitation as small incorporated religious societies with a few hundred members, and allowed to hold only the same amount of property.

#### A. RELIGIOUS CORPORATIONS WITHIN THE CHURCH

Within the folds of the Roman Catholic Church there are independent religious societies, each with its own juridical personality separate from the Church. In the Canon Law, these are known as "moral persons."<sup>376</sup> There are two general classes: collegiate, and non-collegiate. Collegiate bodies include religious orders and congregations, third orders secular, confraternities, pious unions, the last three mentioned being composed of laymen, but nevertheless granted recognition as "moral persons" in the Church.<sup>377</sup> Non-collegiate bodies include churches, seminaries, benefices, etc.

Among the religious orders, the whole society is considered as having legal personality, so also is each province, and even each individual house, like a separate convent under a superior,<sup>378</sup> provided these are so permitted by the constitution of the order,<sup>379</sup> in which case they possess capacity to acquire and hold temporal goods.

Each order is governed by its own constitution.<sup>380</sup> Administration of the temporal goods are usually in the care of the superior and other officials

<sup>375</sup> 67 Phil. 158 (1939).

<sup>376</sup> CODEX JURIS CANONICI, Canon 99.

<sup>377</sup> *Id.*, Canon 687.

<sup>378</sup> *Id.*, Canon 536.

<sup>379</sup> *Id.*, Canon 531.

<sup>380</sup> *Id.*, Canon 532.

so designated by the constitution. Some of the orders have elective superiors, who are elected by vote of the members thereof, and an election procedure is prescribed.<sup>381</sup>

Although each order is independent and separate from the Catholic Church, it is subject to the general laws of the Church, and for some transactions the consent of the Bishop is necessary, such as the investment of money by the superioress of a congregation of nuns.<sup>382</sup> For bigger transactions, the *beneplicitum* of Rome is prescribed as a requisite for the validity of the contract.<sup>383</sup> This is not deemed to destroy the independent personality of each religious order, any more than the approval of certain municipal transactions of large amounts may be subjected to the approval of the provincial board or even of the National Government, without destroying the independent juridical personality of the municipal corporation.

The independent personality of these religious orders is clearly demonstrated by the fact that they can acquire property of other religious entities, and even property of the Roman See itself, by adverse possession and prescription.<sup>384</sup>

The regular religious orders are composed of men or women who lead a community life and take the three usual vows of poverty, chastity, and obedience. There are other congregations or societies of men and women who lead a community life, but without taking all these three vows. These, likewise, may be considered as "moral" or juridical personalities, with power to independently acquire and hold property,<sup>385</sup> and they follow rules similar to those of the religious orders.<sup>386</sup>

Associations of the lay faithful, duly constituted and approved by the local bishop or by Rome, also become "moral persons" with juridical personality.<sup>387</sup>

Our courts have recognized the independent legal personality of the religious orders and congregations, as well as associations of the faithful. A religious order with its head incorporated as a corporation sole has been so recognized.<sup>388</sup> Distinction has been made between property belonging to religious orders and property belonging to the Roman Catholic Church in a case where the sale of *haciendas* belonging to the former was deemed not to include churches, convents, and cemeteries which belonged to the

<sup>381</sup> *Id.*, Canon 506.

<sup>382</sup> *Id.*, Canon 533.

<sup>383</sup> *Id.*, Canon 534.

<sup>384</sup> *Id.*, Canon 1511.

<sup>385</sup> *Id.*, Canon 673.

<sup>386</sup> *Id.*, Canon 676.

<sup>387</sup> *Id.*, Canon 687.

<sup>388</sup> *Trinidad v. Sagrada Orden de Predicadores*, 42 Phil. 397 (1921), *aff'd*, 263 U.S. 578 (1924).

latter.<sup>389</sup> The legal personality of the Agustinian order was also recognized.<sup>390</sup>

Juridical personality of a "cofradia" or confraternity was also recognized by the court, which stated that a "cofradia" which had been a juridical person prior to the enactment of the Corporation Law maintained its juridical personality after the enactment of such law, and may register real property in its name under the Land Registration Law. In this same case, the power of the "cofradia" to own property in opposition to the Roman Catholic Church was recognized by the court. The court stated:

....It is undisputed that the Catholic Archbishop of Manila, as head and representative of the Catholic Church, has and enjoys the right of intervention and supervision over the existence and *modus operandi* of such Catholic associations and Cofradias . . . but said supervision or intervention does not imply concentration or assumption of the right of ownership which the Cofradia . . . enjoys over the real property which it possesses, nor can such intervention deprive the members . . . of the ownership of the five lots which they possess in common and under title of the members of an association, although such association is neither legally constituted nor incorporated in accordance with the law in force regarding corporations.<sup>391</sup>

Even a Catholic charitable trust has been recognized as possessing a legal personality in the Philippines. Applying article 35 of the Spanish Civil Code, which was in force at the time, the court has held that the Hospital de San Juan de Dios, being a foundation of public interest, was a juridical person, with "rights and personality of its own to apply for registration and obtain a decree and title" to land.<sup>392</sup>

Some of the so-called "friar lands" and "church properties" were actually not owned by the Roman Catholic Church but belonged to religious orders and charitable trusts, so that the statement that the Roman Catholic Church owned large tracts of land in the Philippines is not exactly correct or complete.

Capacity of these religious orders, confraternities, and foundations, to acquire property would probably depend on the composition of their membership, and it would seem that under the Constitution<sup>393</sup> a religious order of which Filipino citizens do not compose at least sixty percent of the members would be disqualified to acquire lands in the Philippines.

Most religious orders and congregations in the Philippines have incorporated their heads as corporations sole, while more have used the corporation aggregate for their incorporation. A whole province may incorporate, or a separate religious convent community.

<sup>389</sup> Government v. Archbishop of Manila, 35 Phil. 934 (1916).

<sup>390</sup> Warner v. 771 Objectors, 5 Phil. 153 (1905).

<sup>391</sup> Government v. Avila, 38 Phil. 383 (1918).

<sup>392</sup> Government v. Marcos, 67 Phil. 150 (1939); San Juan de Dios Hospital v. Municipality of San Rafael, 67 Phil. 158 (1939).

<sup>393</sup> PHIL. CONST. art. XIII § 5.

## B. CHURCH SUBDIVISIONS

Aside from the religious corporations and associations of the laity, there are other entities considered as legal persons under the Canon Law. Each Catholic diocese is a separate juridical personality under the leadership of its resident bishop. Resident bishops are usually by appointment from Rome, but some are elected by majority vote by some collegiate bodies.<sup>394</sup>

The bishop is the supreme head of the diocese, and he may promulgate laws, not contrary to the Canon Law, for the government of the diocese; and his authority extends not only over the spiritual affairs of the diocese, but also over its temporal affairs.<sup>395</sup> Although he is subject to the authority of the Pope, the latter's authority is in matters of faith and morals, discipline, and government of the international Church.<sup>396</sup>

The bishop and his diocese may be likened to a municipal corporation with its mayor, existing as a separate corporation, although it is subject to the authority of the central government, and it may promulgate ordinances for its internal affairs provided they do not contravene the statutes of the State. Just as a municipal corporation is recognized as a separate legal personality with power to acquire property, so the diocese is also considered by the Roman Catholic Church, for the diocese is a "moral person." The Canons state that "individual churches" are endowed with the right to acquire, hold, and administer their own property.<sup>397</sup>

"Individual churches" are dioceses or organizations which have their own superior, endowed with jurisdiction *in foro externo*, who act as representatives of the universal Church . . . Note that single churches or corporations (for instance, religious communities) are capable of exercising ecclesiastical property rights only so long and in so far as they belong to the body of the Catholic Church . . . Hence, if a particular church or organization departs from unity of faith or government, or adopts a worship different from that of the universal Church, it can lay no claim to any property which it enjoyed whilst united to the entire, supremely sovereign organism. This has also been ruled by courts in the United States.

These individual churches and corporations, then, are dependent upon the Church for their existence, for they cannot grow except on ecclesiastical soil, and become dead outside the pale. They depend on the universal Church also in as far as the *common law of the same* is binding on them concerning the acquisition, possession, and administration of property. It does not follow from this proposition that there are two subjects of such ecclesiastical property rights, one the Church universal, and the other an individual corporation. The Code is against such a splitting up of the one and indivisible property right. "Ius est", it is right, dependent only in as far as the welfare of the whole Church requires. In a similar manner our civil corporations depend on the

<sup>394</sup> CODEX JURIS CANONICI, 329.

<sup>395</sup> *Id.*, Canon 335.

<sup>396</sup> *Id.*, Canon 218.

<sup>397</sup> *Id.*, Canon 1495.

State, but enjoy the complete and autonomous right to possess and administer their property.<sup>398</sup>

Although the diocese is considered an independent "moral person," the bishop is required to report regularly on the affairs of the diocese to the Roman See, and to report to Rome personally once every five years. This cannot be deemed to destroy its separate juridical personality, any more than the annual report of a municipal corporation to the national government means a surrender of corporate personality.

The Pope is the supreme administrator and steward of all church property, and this is deemed to include also the properties of the dioceses.<sup>399</sup> St. Thomas Aquinas stated that:

"The possessions of the Church belong to the Pope, not as their lord and owner, but as their principal dispenser. This means that the Pope may dispense or dispose of all church property, even that owned by single corporations, in favor of the universal Church if an urgent reason exists and the welfare or tranquility of the Church requires it. This power is given for the edification of the society founded by Jesus Christ, not for its destruction, or for the enrichment of the Pontiff or of his family or nation." There is nothing absurd in the exercise of this power, for the State, too, claims the right of eminent domain, in virtue of which it confiscates or expropriates private property . . . .<sup>400</sup>

Is each diocese considered a separate religious denomination, society, or church, in the Philippines? The answer seems to be in the affirmative, since each diocese is, like a completely separate religious society, allowed to incorporate its head as a corporation sole.

It is true that the word "diocese" is not specifically mentioned in articles 154-155 of the Corporation Law, but it is mentioned in article 160 as one of the bodies which can incorporate as corporations aggregate. Certainly an entity which can incorporate its membership may, if its type of organization and its rules so permit, stay unincorporated and allow its head to become a corporation sole.

Can a diocese acquire and hold properties in the Philippines?

The answer seems to be an affirmative one, provided the membership of such diocese be at least sixty percent composed of Filipino citizens, as has already been discussed.

We would even go farther and offer the following points:

a. The capacity of a diocese to acquire property does not depend upon the nationality of the corporation sole, since the latter is a mere administrator, as has already been stated.

b. Capacity of a diocese to acquire property should not be confused

<sup>398</sup> AGUSTINE, A COMMENTARY ON THE NEW CANON LAW 553-54 (1923).

<sup>399</sup> CODEX JURIS CANONICI, Canon 1518.

<sup>400</sup> AGUSTINE *op. cit.* *supra* note 398, at 577-78.

with the capacity of the international Church, since the two are separate legal personalities, and each may own its own properties.

c. There should be some distinction, especially in registration of titles to land, between property of the Roman Catholic Church, and the property of the diocese. A suggestion would be to register title of the international Church in the name of the "Roman Catholic Apostolic Church," and those of the diocese under the name of the bishop as corporation sole. Property of the international Church would of course be under its representative, who usually is also the bishop.

d. The bishop therefore would hold at least two classes of property: that of the international Church, and that of the diocese.

e. Any disqualification of the international Church from acquiring real property in the Philippines should not carry with it the disqualification of each separate diocese, since the latter may be said, in truth, to be a religious society composed of Filipino citizens, even though the bishop may, for the time being, be an alien.

f. The power of the Roman Pontiff to transfer property of the diocese to other entities of the Roman Catholic Church, granted to him under the Canon Law, should be interpreted as limited by the civil law in that the State would not allow the transfer of said property to an entity disqualified from acquiring property under the civil law. The rules and regulations of a religious society will be recognized and enforced by the civil courts when not in conflict with the Constitution and statutes of the State.<sup>401</sup>

Is the separate personality of the diocese from that of the international Church a distinction unknown to the civil law?

In the United States, when a bequest of certain property was made to the Roman Catholic Bishop of the diocese of Green Bay "to be used" by him "for the benefit and behalf of the Roman Catholic Church," it was held that the bequest was void because the beneficiary was uncertain—"it not appearing what church or body was designated or intended—whether the Roman Catholic Church of any particular city, state, or diocese, or the Roman Catholic Church throughout the world."<sup>402</sup>

The distinction between the diocese and other church entities possessing legal personality, and the Roman Catholic Church throughout the world, is therefore one that has received judicial recognition.

<sup>401</sup> *Evangelista v. Ver*, 8 Phil. 653 (1907); *Gonzales v. Archbishop of Manila*, 51 Phil. 420 (1928); *Krecker v. Shirey*, 163 Pa. 534, 30 Atl. 440, 29 L.R.A. 476 (1894).

<sup>402</sup> *McHugh v. McCole*, 97 Wis. 166, 72 N.W. 631, 40 L.R.A. 724 (1897).

## X. SUMMARY AND CONCLUSIONS

This Article has tried to analyze the corporation sole in the Philippines, its nature, its powers and limitations, its problems. It has been shown that in this jurisdiction, the corporation sole has the following characteristics:

1. He is basically not organized for his own benefit, but to be an administrator or trustee for an unincorporated religious society, to hold its properties in perpetuity, handing them down to his successor in office in trust for the religious society.
2. He must be the head of the religious society, and charged with the administration of its properties, under its rules, regulations, and discipline.
3. Although a corporation, he is not subject to the same regulations governing corporations in general, such as organization, holding of formal meetings, passing of formal resolutions and keeping of minutes, using a corporate seal, and other incidental formalities governing ordinary corporations.
4. He needs no code of by-laws to regulate his corporate acts; but the rules, regulations, or canons of his religious society are like by-laws to him, controlling his acts and his authority, binding not only him and the members of his religious society, but even third persons dealing with him as corporation sole.
5. He needs no corporate name, but may act in his own name, and when he so acts in connection with the affairs and properties of the religious society, his acts are the acts of the corporation.
6. He holds title to the properties of the religious society, but he is not the owner thereof — he is only the administrator or trustee, the real owner being the religious society in the aggregate and not the individual members thereof.
7. He is the acting agent of the unincorporated religious society, and therefore suits by or against the society shall be brought by or against him, and decisions for or against him are understood to be for or against the religious society of which he is the head.
8. He may acquire and dispose of properties in the same manner as any other civil entity, within his powers, as defined and limited by the rules, regulations and discipline of his religious society, and by the modes and within the restrictions laid down by law.
9. As a corporation, he is a creature of the State, a civil corporation and not an ecclesiastical one, and therefore amenable to the power of the State and subject to reasonable regulation under the police power of the State, eminent domain, nationalistic constitutional provisions on acquisition of properties, and other constitutional powers of the State, provided of

course these do not unduly encroach on the constitutional freedoms of association and of religion.

It has also been shown that the Roman Catholic Apostolic Church in the Philippines occupies a unique and peculiar position among the different religious societies in the Philippines, having been accorded recognition of its juridical personality and capacity to own properties; and that within this world-wide Church there are many smaller organizations and subdivisions which possess, under its own laws, independent existence and juridical personality.

The corporation sole device, where authorized by the rules, regulations, and discipline of the religious society, is the most convenient and simple manner of holding, administering, and disposing of the properties of the society, for ordinary corporate formalities have almost been completely eliminated. Legal acts are performed with a minimum of legal formalities, the corporation sole acting just like a natural person. However, with this convenience and simplicity there also lies danger. The incumbent corporation sole may very easily abuse his powers, which are almost absolute, since he holds title to property in his name, and is entrusted with the powers of administration thereof. In such a case, the religious society may find difficulty in seeking redress from fraud, abuse, or negligence of the corporation sole incumbent.

While it may be questioned whether the ownership of property is a necessary element of freedom of religion, it must be admitted that such ownership does aid greatly the promotion of religious beliefs. Man, in his search for the immortal and the imponderable, has, even before the dawn of recorded history, erected temples to the Unknown God, and there is no doubt that he will continue to do so for all time to come, as long as he continues "imploing the aid of Divine Providence."

The corporation sole in the Philippines is a civil corporation, organized for civil ends, but it is primarily intended to help the Church and not the State, in a regime of separation of Church and State. This device, adopted by an older, wiser, and more judicious generation, may verily be looked upon by the short-sighted, power-happy, and directionless generation of today as a sincere effort of the State to "render unto God the things that are God's."