THE CORPORATION SOLE IN THE PHILIPPINES†

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INTRODUCTION

THE Philippine law on corporations sole is found in exactly six articles of the Corporation Law, namely, Articles 154-159, and about a score of cases decided by the Supreme Court of the Philippines during the early years of the American regime.

The very term "corporation sole" would sound strange to the uninitiated, for it seems to imply a contradiction. The word "corporation," which comes from the Latin *corpus* (body) and *corporare* (to shape into a body), implies a plurality merged together or shaped into one. Why then shape into one that which is already one?

That, however, is exactly what the corporation sole is — a corporation consisting of one, and only one, individual person.

It is the purpose of this Article to delve deeper into the corporation sole, to find out more about its nature, examine the legal problems that confront it in the Philippines, and propose solutions to those problems.

This is not intended to be a study of religious societies in general, but only of those which have chosen to avail themselves of the incorporation device of the corporation sole. Necessarily, references and comparisons have to be made with the legal principles governing religious societies in general, especially those organized as corporations aggregate, but these have been kept to a minimum.

Most of the legal problems involving the corporation sole in the Philippines are, or are related to, constitutional provisions and concepts, such as the police power of the state, the power of eminent domain, the power of taxation, and the nationalistic provisions on acquisition and ownership of lands. Even as to these points, this Article is confined to religious societies with corporations sole. Constitutional questions affecting religious societies in general, like freedom of association and freedom of religion, have been avoided.

† This is the first of two parts. The second part will appear in the next issue.

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I. DIFFERENT WAYS OF HOLDING TEMPORALITIES OF RELIGIOUS SOCIETIES

In the Philippines, there are at least four different ways whereby religious societies may hold their temporal properties:

1. A corporation sole may be incorporated under the provisions of sections 154-159 of the Corporation Law, Act 1459.

2. A corporation aggregate may be incorporated under the provisions of sections 160-164 of the Corporation Law, Act 1459.

3. The properties may be held in the name of three trustees, without need of incorporating either the religious society or the trustees, under the provisions of Act 271.[1]

4. The properties may be held and administered by a trust corporation incorporated under sections 56-57 of Republic Act 337, otherwise known as The General Banking Act.

Corporations sole, which are the subject of this Article, are composed of only one person—the bishop, chief priest, or presiding elder of the religious society—and are authorized by law in cases where the rules, regulations, and discipline of the religious society concentrate the management of its properties in one such person.

A corporation aggregate may be formed when at least two-thirds of the membership of the religious society give their affirmative vote or written consent thereto, and provided that the incorporation of the religious society is not forbidden by competent ecclesiastical authority, or by the rules, regulations, or directors or trustees, numbering not less than five nor more than board of directors or trustees, numbering not less than five nor more than fifteen. The law does not specify how these directors or trustees are to be elected, although the general rule in non-stock corporations is that directors are elected by obtaining the highest number (plurality) of votes at a meeting where a majority of the members entitled to vote are present.[2] A corporation aggregate needs the consent of a majority of the members in order to purchase, hold, mortgage, or sell real estate. By-laws for the government of the corporation may be adopted, the language of the law being permissive[3] unlike by-laws of ordinary corporations, which according to the law *must* be adopted within one month after filing of the articles of incor-

[1] Sec. 2 of Act 271 provides: "Such religious institutions, if not incorporated, shall hold the land in the name of three trustees for the use of such association; the trustees shall be selected by the directing body in the Philippine Islands for such associations, and vacancies occurring among the trustees by death, resignation, or other cause shall be filled in the same manner as the original selection."

[2] Act 1459 § 31 (hereinafter cited as CORPORATION LAW).

[3] CORPORATION LAW § 161 uses the phrase: "*may* be adopted . . . ." (Emphasis added.)

poration,[4] although failure to file the same would seem to have no adverse effect on the status of the corporation.

Under Act 271, the state specifically grants religious associations of all sorts and denominations the right to hold lands in the Philippines, upon which to build churches, parsonages, or educational or charitable institutions. The law includes all religious associations whether incorporated in the Philippines, or incorporated in another country, or even if not incorporated at all. The land must be held in the name of three trustees, who will hold the same for the use of the religious association. The trustees need not themselves be incorporated.

The Supreme Court, in a recent case[5] has ruled that Act 271 must be deemed repealed insofar as it is incompatible with the provisions of the Constitution, which prohibits the transfer of land except to qualified individuals, corporations and associations.[6] With this qualification, therefore, Act 271 is still in force.

Trust corporations, under the provisions of the General Banking Act, are those formed for the purpose of "acting as trustee or administering any trust, or holding property in trust or on deposit for the use, benefit, or behoof of others."[7]

Trust corporations are expressly granted the power to "accept and execute any legal trust confident to it . . . by any person or corporation for the holding, management, and administration of any estate, real or personal, ..."[8] It seems, therefore, that a person may create a trust in favor of a religious society and place the holding and management of the properties conveyed in trust to a trust corporation.

Whether a religious society not incorporated may convey property in trust to a trust corporation would present a different question, inasmuch as when the statute specified that the trust must be confided to the trust corporation by a court of record or by a "person or corporation,"[9] it would seem to imply that the term "person" as used therein only refers to natural persons. However, an unincorporated religious society could, by vote of its members, authorize its head to make the necessary conveyance to the trust corporation, which conveyance would then come from a "person."

Unlike corporations sole and corporations aggregate, and also unlike the three trustees specified in Act 271, trust corporations are, by their nature, incorporated for financial or business purposes, for the purpose of making profits, while the aforementioned entities are formed mainly to hold and administer the properties of religious societies, and are basically non-profit.

[4] CORPORATION LAW § 20.
[5] Register of Deeds v. Ung Siu Si Temple, 51 O.G. 2866 (1955).
[6] PHIL. CONST. art. XIII §§ 1 & 5.
[7] R.A. No. 337 § 56.
[8] *Id.* at § 58 (e).
[9] *Ibid.*

Different sects have their favorite methods of holding properties. The Moravian, Anglican, and Catholic churches prefer the corporation sole.[10] Most churches organized under the presbyteral or congregational systems in the United States seem to favor the use of trustees, incorporated or unincorporated, while in the Philippines these same churches favor the formation of corporations aggregate under sections 160-164 of the Corporation Law.[11]

II. HISTORICAL BACKGROUND

Among the ancient Romans, the corporation sole was unknown,[12] and each corporation had to have at least three members, the corporation being known as a *universitas* or *collegium;* however, even if the membership was eventually reduced to one, the corporation was still considered to exist,[13] apparently with the expectation that the membership would eventually be restored to at least the minimum of three.

The concept of a corporation sole was a creation of English law for the purpose of holding in perpetuity the property and rights of an ecclesiastical establishment, or a civil office, or even the crown.[14] The following have been held to be corporations sole in English Law: the king, a bishop (Church of England), an archdeacon (Church of England), a canon or prebendary, the Chamberlain of London, the master of a hospital, a parson, a vicar or

[10] 76 C.J.S., *Religious Societies* § 58, at 825 (footnote).

[11] A compilation from the records of the Securities and Exchange Commission shows the following figures:

TYPE OF RELIGIOUS SOCIETY	SOLE	AGGREGATE
Roman Catholic dioceses and prelatures	28	—
Roman Catholic religious orders and societies	18	15
Roman Catholic single convent communities	3	9
Roman Catholic confraternities and associations of laymen	1	3
Other Roman Catholic organizations	—	7
Aglipayan	2	3
Iglesia ni Cristo	1	—
Protestant and other Christian denominations	27	120
Protestant and other Christian assemblies and synods	—	22
Chinese Buddhist and Christian groups	2	28
Mohammedan	1	5
Jewish	—	2
TOTALS	83	214

[12] Among the Romans, all corporations were aggregate, and Blackstone says that with regard to sole corporations, consisting of one person only, the Roman lawyers had no notion of them. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS c. 3, par. 52 (1943 ed.) (hereinafter cited as FLETCHER).

[13] Under the Romans, corporations were always aggregate. They were called universitates or collegia, from many being gathered into one. The maxim of the Roman law was that *tres faciunt collegium*, although if, by a subsequent contingency, the number was reduced to one, the corporation was still considered to exist. In such a contingency, the maxim was *si universitas ad unum redit, et stat nomen universitatis.* 14 C.J., *Corporations* § 39, at 71.

[14] FLETCHER c. 3, par. 52.

vicar choral.[15] A Roman Catholic bishop, however, was held not to be a corporation sole in an Irish case, and therefore his rights did not pass to his successor upon his death.[16] Unlike the corporation sole in the Philippines, the English common law corporation sole was not confined to religious societies, for even some public officers were considered corporations sole; and the corporation sole was recognized as such without any need of formal incorporation.

Amazingly, however, although its bishops, vicars, parsons, and other church officers were considered as corporations sole, the Church of England itself was, in its aggregate description, not considered a corporation at all; it was, rather, "a compendious expression for the religious establishment of the realm, considered in its aggregate under the superintendence of its spiritual head." Thus, a donation to the "Church of England" was held invalid, inasmuch as no such corporate body existed in legal contemplation, and therefore it could not take a grant of land *eo nomine* (in that name).[17]

Lord Chief Baron Gilbert wrote that according to the superstition of that age, abbots and prelates were supposed to be married to the church, and as husbands and representatives of the church, they had the right of possession of the estates of the church, just as a husband in that period held possession and control of the properties of his wife, and in this capacity the abbots and prelates could maintain actions regarding such properties, and recover them from adverse possession of third persons; they also held title thereto as if they were the owners thereof, in order to prevent any possible reversion of donated properties back to the donors thereof.[18]

In England, certain laws were enacted forbidding the alienation of land to religious corporations, thus preventing them from acquiring directly the real property they needed, and which generous donors often desired to convey to them. Also, some of the orders had vows of poverty, and it was inconsistent for them to hold property in their own names. These resorted to the device of having the land conveyed to an individual, who held it for the use of the religious order, the members thereof then having the beneficial use of the land, although they did not hold the title.[19]

Foreign sovereigns have also been regarded as corporations sole,[20] although this must have been in cases where the sovereign claimed divine right, or under some other theory under which sovereignty lodged in the

[15] XIII English and Empire Digest 275-76.
[16] *Id.* at 275.
[17] At common law the Church of England, in its aggregate description, is not deemed a corporation. It is indeed one of the great estates of the realm; but it is no more, on that account, a corporation than the nobility in their collective capacity. Town of Pawlet v. Clark, 13 U.S. (9 Cranch) 292 (1815).
[18] *Ibid.*
[19] BOGERT, HANDBOOK OF THE LAW OF TRUSTS 9 (1952 ed.).
[20] Foreign sovereigns and nations have been regarded as sole or aggregate corporations, according as the sovereignty was in the monarch or in the people. FLETCHER c. 3, par. 53.

monarch from some source other than the people, because where the sovereignty resided in the people, the nation was regarded more as a corporation aggregate.[21]

The common law doctrine on corporations sole found its way into the United States, where isolated cases arose in connection with the subject in the eighteenth, nineteenth, and early part of the twentieth centuries. Most of the American cases deal with bishops of the Roman Catholic Church, as do the Philippine cases on the subject. Among the states that have recognized the existence of common law corporations sole, without need of formal incorporation, were Kentucky, Florida, Illinois, California, Iowa, and New York.

In Kentucky, a Roman Catholic bishop was recognized as a corporation sole, and it was held that a change of name of said corporation, effected merely by eliminating the words "and his successors in office," which were formerly attached to the official corporate name did not change the identity of the corporation.[22]

In Florida, it was held that a Roman Catholic Bishop was a corporation sole under the common law, and inasmuch as the common law doctrine on corporations sole had not been repealed by the organic or statutory law of the state, said common law doctrine remained in force in that state.[23]

An Illinois case recognized the Roman Catholic Archbishop of Chicago, the late George Cardinal Mundelein, as a corporation sole, without any objection being raised in connection with this point.[24]

In Massachussetts, cases held that a minister holding parsonage lands granted for the use of the incumbent minister of the town or parish was a corporation sole, and as such was capable of transmitting title to said lands to his successor in office.[25]

The California court recognized the position of the Roman Catholic Archbishop of San Francisco as a corporation sole.[26] It was even held in that state that a priest of a Catholic mission was, in respect to the lands of the mission, in a position analogous to that of a corporation sole, and therefore he could in that character maintain an action, in his own name, to recover possession of lands of the mission.[27]

[21] *Ibid.*
[22] A mere change in the corporate name is not a divestiture of title. McCloskey v. Doherty, 97 Ky. 300, 30 S.W. 649 (1895).
[23] Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927); Willard v. Barry, 113 Fla. 402, 152 So. 411 (1933).
[24] People *ex rel.* Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 142 N.E. 520 (1924). See also: Chiniquy v. Bishop of Chicago, 41 Ill. 148 (1866).
[25] Weston v. Hunt, 2 Mass. 500; Inhabitants of First Parish in Brunswick v. Dunning, 7 Mass. 445; Boston Overseers of the Poor v. Sears, 22 Pick. (Mass.) 122.
[26] Archbishop of San Francisco v. Shipman, 79 Cal. 288, 21 Pac. 830 (1889).
[27] Santillon v. Moses, 1 Cal. 92 (1850).

The Civil Code of California contains provisions[28] on the incorporation of corporations sole similar to the provisions of the Philippine Corporation Law, which was patterned after the statutes of the former.

In Iowa, the court bent over backward in ruling that a Roman Catholic bishop, a corporation sole, was qualified to receive in trust a bequest in excess of one-fourth of the donor's property although under the local statutes the donor could not bequeath more than one-fourth of this property to any institution or corporation, inasmuch as he left a wife, a child, or a parent. The court ruled that although the bishop was for some purposes a corporation sole, he was nonetheless an individual, and what he might be disqualified to do in his corporate capacity, he could nevertheless do in his individual capacity.[29]

Recent United States cases involving corporations sole are quite scarce, and it is the opinion of the authorities that the corporation sole is obsolescent in America, and has practically passed out of the law.[30] The more common manner of holding properties of religious societies is through the medium of trustees, usually incorporated, holding the land in trust for the religious society under the authority of the congregation or of the church authorities.

[28] Sec. 602 of the California Civil Code reads: "Religious societies may become a corporation sole.—Whenever the rules, regulations, or discipline of any religious denomination, society, or church so require, for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation, in the manner prescribed in this title as nearly as may be, and with all the powers and duties, and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed."

Sec. 602a. "Every corporation sole shall, however, for the purposes of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend, in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money, and give promissory notes therefor, and to secure the payment thereof by mortgage or other in lien upon property, real or personal; to buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, and without the order of any court: To receive bequests and devises for its own use or upon trusts to the same extent as natural persons may; and to appoint attorneys in fact, . . . provided, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society or church."

[29] While a bishop is for some purposes designated a "corporation," he is none the less an individual and as such may act as a trustee for any legal purpose. Rine v. Wagner, 135 Iowa 626, 113 N.W. 471 (1907).

[30] The corporation sole is obsolescent in American law by reason of changed conditions rather than from any substantial change in the law. While it is uncommon, and possibly in some states not sanctioned by statute, it has not disappeared nor become entirely obsolete, and there is authority that, where the common law is in force, a corporation sole may exist without any statutory authority. FLETCHER c. 3, par. 52. Corporations sole have practically passed out of the law in the United States. THOMPSON & THOMPSON, COMMENTARIES ON THE LAW ON CORPORATIONS par. 17 (3d ed. 1931) (hereinafter cited as THOMPSON).

In the Philippines, the corporation sole device seemed to have been primarily intended for the benefit of the Roman Catholic Church, under whose rules and canons the control of its properties is vested in the bishops, who possess almost full authority in dealing with said properties. At the time when the Corporation Law was enacted,[31] the Roman Catholic religion held the great majority of the people of the Islands. Protestant denominations were just sprouting, and the Filipino Independent Church, or Aglipayan sect, was still trying to consolidate its hold on the portions of the country where it had prevailed, through a series of legal cases for the possession of churches and other properties formerly held by the Roman Catholic Church, said cases invariably being decided in favor of the latter church.

III. NATURE AND ATTRIBUTES OF THE CORPORATION SOLE

A corporation sole consists of one individual endowed with corporate powers.[32] When the incorporated person vacates the office by death, resignation, removal, or any other manner, his successor in office becomes the corporation sole.[33] This incorporated person thereby acquires, by fiction of law, two personalities or characters—his natural character as a human being, which terminates when he dies, and his artificial or legal personality as a corporation, which survives him when he dies, and passes on to his successor in office, clothing the latter with the corporate personality, which by legal fiction is deemed to continue uninterrupted and unchanged.[34]

The principal attribute of the corporation sole, therefore, is that of perpetuity.[35] When a natural person dies, all of his properties pass on to the heirs under his will or to those named by the law as his heirs, and these heirs are usually those related to him by ties of blood relationship. Where, however, this person has been constituted a corporation sole, whatever properties he holds in that capacity will pass, upon his vacating the office, to the successor in office, and not to heirs by nature or under the law. This is the reason why, in conveyances in Anglo-American law, a transfer of property to a person is made to him and "his heirs and assigns," while a transfer of property to a corporation sole should be made to him and "his successor in office."[36] If a transfer of property were made to a corporation sole without including "his successors in office," the property was

[31] The Corporation Law took effect on April 1, 1906. See: CORPORATION LAW § 192.

[32] Warner v. Beers, 23 Wend. (N.Y.) 103 (1840).

[33] FLETCHER c. 3, par. 50.

[34] *Ibid.*

[35] 2 KENT'S COMMENTARIES 273-74 (13th ed.)

[36] *Ibid.*

deemed granted to him for his use during his lifetime, but upon his death the property reverted to the donor or his heirs.[37]

The person constituted as a corporation sole does not need a corporate name, requires no peculiar seal; he does not need to keep records or minutes of his act, and does not need any corporate by-laws to regulate his acts as a corporation.[38] Most of the legal points governing ordinary corporations are not applicable to the corporation sole.[39]

It is incorrect to say that a corporation sole is a corporation composed of a single member. An aggregate corporation, which consists of a plurality of persons, might have all of its capital stock transferred to one person, but this would not constitute him a corporation sole.[40] The corporation retains its original character as an aggregate corporation, inasmuch as the sole stockholder may eventually redistribute his shares to others.[41] Where an association, due to the large number of its membership, is allowed by the law to act through its head, such as its president, for the purpose of facilitating the prosecution of lawsuits, the head or president does not thereby become a corporation sole.[42]

As a general rule, corporations, whether sole or aggregate, can be created only by or under legislative authority,[43] although the common law corporation sole, as we have seen, is recognized without need of incorporation of any kind. Unless restricted by constitutional provisions, the legislature may grant corporate powers to one person, with power to associate others with him or to be alone exercising all of the powers of the corporation, and later passing the same to his successor.[44] The grant of corporate powers to a single person confers on him the right to exercise all the corporate powers thereby granted, alone and without need of taking any associates.[45] All his acts, when acting within his powers, and upon the subject-matter of the corporation, are the acts of the corporation.[46] Under general incorporation laws which establish a minimum number of stockholders or members, the incorporation of a corporation sole would not be possible.[47]

[37] Boston Overseers of the Poor v. Sears, 22 Pick. (Mass.) 122. Distinguishing between a corporation sole and a corporation aggregate, the court said: ". . . a grant to an aggregate corporation, carries a fee, without the word 'successors'; but a grant to a corporation sole, without including 'successors,' carries a life estate only to the actual incumbent, who is the first taker."

[38] *Ibid.*

[39] 18 C. J. S., *Corporations* § 15, at 393.

[40] THOMPSON par. 17; FLETCHER c. 3, par. 54.

[41] FLETCHER c. 3, par. 54.

[42] Brooks v. Dinsmore, 15 Daly 428, 8 N.Y. Supp. 103 (1889).

[43] FLETCHER c. 3, par. 50.

[44] Penobscot Boom Corp. v. Lamson, 16 Me. 224, 33 Am. Dec. 656 (1839). In this case, the corporation, although composed only of one person, cannot be regarded as a corporation sole inasmuch as he was free to associate others with him; whereas a corporation sole by its nature cannot associate others with it.

[45] Day v. Stetson, 8 Greenl. (Me.) 365 (1832); Penobscot Boom Corp. v. Lamson, 16 Me. 224, 33 Am. Dec. 656 (1839).

[46] *Ibid.*

[47] 18 C. J. S., *Corporations* § 15, at 393.

It is entirely possible for the legislature to permit the incorporation of a corporation sole for purely lay purposes.[48] Under the Corporation Law of the Philippines, however, corporations sole may only be incorporated in connection with religious societies.[49] Although the corporation is usually composed of an ecclesiastical personage, the Philippine corporation sole is not an ecclesiastical corporation as that term is understood in the English law, namely, as a corporation either sole or aggregate composed exclusively of ecclesiastical persons, and for purely religious ends.[50] The corporation sole in the Philippines is not organized for the furtherance of religion, but for purely secular ends.

Neither should the corporation sole in the Philippines be confused with religious corporations in the United States. Religious corporations are those whose charter, powers, or purposes are used for the promulgation and furtherance of religious beliefs,[51] said purposes being therefore directly connected with divine worship or religious teaching.[52] As already stated, such is not the purpose of the Philippine corporation sole. As will be seen later, it would seem that religious corporations, in the strict sense of the term, cannot be incorporated as such under the provisions of the Corporation Law entitled "Religious Corporations."[53]

A. Two Kinds of Corporations Sole

In the United States, two kinds of corporations sole are recognized. One kind is the person incorporated as a corporation sole for his own benefit; the other is the corporation sole constituted to act as trustee for the benefit of others.[54] It would seem that the corporation sole in the Philippines falls within the latter category, although the authorities are not unanimous on the point.

B. Who May Form Corporations Sole in the Philippines

The Corporation Law states that any "religious denomination, society, or church," may incorporate a corporation sole.[55]

[48] In Maine, for instance, a corporation engaged in the logging business was thus organized. See: Penobscot Boom Corp. v. Lamson, 16 Me. 224, 33 Am. 656 (1839).

[49] See CORPORATION LAW §§ 154-59.

[50] FLETCHER c. 3, par. 55; THOMPSON par. 18.

[51] THOMPSON par. 19.

[52] 76 C. J. S., *Religious Societies* § 1, at 737.

[53] CORPORATION LAW §§ 154-64.

[54] Jansen v. Ostrander, 1 Cow. (N.Y.) 670 (1824).

[55] CORPORATION LAW § 154.

A *religious denomination* or sect is a group of persons, more ro less closely associated, believing in the same religious doctrines.[56]

A *religious society* is a voluntary organization whose members are associated together for religious exercises, for the maintenance and support of its ministry, providing the conveniences of a church home, and promoting the growth and improvement of the work of the general church of which it is a part.[57]

The term *church* in its broadest sense includes any organization for religious purpose, for the public worship of God. In a more restricted sense, it may include any denomination or sect adhering to the Christian faith; it may mean the congregation of a single place of worship.[58]

Although the statute mentions only these three terms, the application thereof has been rather liberal. In the Philippines, corporations sole have been incorporated by Roman Catholic bishops, heads of other religious sects including some non-Christian ones, and heads of Catholic religious orders and congregations of priests or nuns. It would seem, therefore, that the terms "religious denomination, society, or church," as understood in the Philippines, would include a diocese under a bishop or archbishop, a religious order or congregation composed of men or women under religious vows, a single convent or monastic house. There is nothing in the law that would prevent the incorporation of a religious brotherhood composed of lay persons, such as a confraternity or *cofradia*. The term "religious society" is broad enough to embrace all these different associations.

The law does not permit every religious denomination, society, or church to incorporate a corporation sole; it is further required that the rules, regulations and discipline of the religious society must not be inconsistent with the formation of a corporation sole, and must not forbid it,[59] otherwise the religious society if desirous of incorporation, would have to do so under the provisions governing corporations aggregate.

There are, in the United States, three principal forms of organizations of religious societies: the prelacy or episcopal form, the presbyteral, and the congregational.[60] Some authorities add the papal form as a fourth.[61]

In the episcopal form of religious organization, the government of the church is by bishops.[62] In the presbyteral form, as typified by the Presbyterian churches, there is a governing body known as a "presbytery" composed of the ministers and ruling elders within a certain district, and each presbytery in turn sends delegates to the highest ecclesiastical tribunal, which is the supreme body in the church.[63] There is also an intermediate body, called "synod," composed of ministers and elders within a district of several presbyteries.[64]

[56] 76 C.J.S., *Religious Societies* § 1, at 738.
[57] 45 AM. JUR., *Religious Societies* § 2, at 723.
[58] *Ibid.*
[59] CORPORATION LAW §§ 154-55.
[60] 76 C.J.S., *Religious Societies* § 2, at 745.
[61] Elston v. Wilborn, 208 Ark. 377, 158 A.L.R. 179, 186 S.W.2d 662 (1945). The court stated in categorical terms: "So for as we know, churches in the United States may be classified, as regards the form of church government, into four groups: papal, episcopal, presbyteral, and congregational."
[62] 76 C.J.S., *Religious Societies* § 1, at 741 (footnote).

The congregational form of religious organization represents an attempt to apply the popular democratic form of government to church societies. Each congregation is an independent group, the affairs of which are controlled by the will of the majority of the members, as expressed by their vote, to which it is usually the duty of the minority to submit.[65]

A religious society with a congregational form of government would not be eligible to organize a corporation sole under the Corporation Law. Neither would a society with a presbyteral form be eligible, unless the rules and discipline of the church permitted the concentration of administrative authority in a single person, which does not seem to be the usual case.

Religious societies with the episcopal form of government would be very well qualified to form corporations sole, inasmuch as they concentrate administrative power over a district or diocese in the hands of the bishop or chief minister.

It may very well happen that a religious society may possess the congregational form of government insofar as its internal and ecclesiastical affairs are concerned, but may authorize control over its properties by a single officer, who would then be eligible for incorporation as a corporation sole. In such case, it could happen, although we have no decided cases in point, that the members of the congregation may be estopped from questioning acts of the incorporated officer within the scope of his authority, even where such acts may be contrary to the will of the majority of the congregation.

C. WHO MAY BE INCORPORATED AS A CORPORATION SOLE

The statute states that the person to be incorporated must be a bishop, chief priest, or presiding elder, duly elected or appointed as such in accordance with the rules, regulations and discipline of the religious society. As evidence of his position, he is required to file a copy of his commission, certificate of election, or letter of appointment as such bishop, chief priest, or presiding elder.[66]

An ordinary priest, who ranks below a bishop, cannot incorporate as a corporation sole. The term "chief priest" may include the superior or provincial of a religious order, and the head of a prelature or prefecture

[63] *Id.* at 744.
[64] *Id.* at 745.
[65] Elston v. Wilborn, 208 Ark. 377, 158 A.L.R. 179, 186 S.W.2d 662 (1945); Mitchell v. Church of Christ, 221 Ala. 315, 128 So. 781, 70 A.L.R. 71 (1930).
[66] CORPORATION LAW § 156.

who sometimes is not a bishop; and it includes a priestess who heads a religious society.

An elder is a member of the governing board of a religious society.[67] While a bishop or chief priest is usually a clerical person consecrated to holy orders, a presiding elder may be a layman who heads a religious society. The term presiding elder would include heads of women religious communities, heads of sodalities or "cofradias," heads of lay brothers' congregations.

It is not enough that the applicant for incorporation be a duly appointed bishop, chief priest, or presiding elder. It is further required that, under the rules, regulations and discipline of his religious society, he must be charged with the administration of the temporalities and the management of the estates and properties of the religious society within a definite territorial jurisdiction.[68]

Under this requirement, titular bishops of a church, such as the Roman Catholic Church, who are appointed as bishops of dioceses no longer in existence, would be ineligible for incorporation as corporation sole, unless they were in actual charge over a definite territorial jurisdiction, such as a prelature.

D. Purpose of Corporation Sole

The statute states that the purpose of incorporating a corporation sole in the Philippines is for "the administration of the temporalities and the management of the estates and properties of his religious denomination, society, or church."[69] The corporation sole in the Philippines, therefore, is not concerned with any religious matters, but only with temporalities, which term includes the lands, buildings, and other properties of a religious society, real and personal, as well as its revenues from its various sources of income.[70] Temporalities have also been considered, in a more restricted sense, as comprising only the property of a religious society not used exclusively for religious worship,[71] but a review of the Philippine cases will show that this latter definition has not been followed in the Philippines inasmuch as many of the cases involved the possession of properties devoted exclusively to religious worship, such as churches and chapels. The cases indicate that the broader definition of temporalities, as including all properties of the church, is followed in this jurisdiction. If the more restricted definition were followed, there might arise the case when a litigation involving possession of a church building may be dismissed by the court on the ground that said building, being devoted to exclusively religious uses, was not comprised

[67] 76 C.J.S., *Religious Societies* § 22, at 769.
[68] Corporation Law § 155 (3).
[69] *Ibid.*
[70] 62 C.J., *Temporalities* at 308.
[71] 7 R.C.L., *Corporations* § 17.

among the "temporalities" of the church, and therefore was outside of the administrative jurisdiction of the corporation sole, which existed only for the administration of "temporalities." Clearly such a view would not be tenable.

The temporalities of a church could very well be administered by a natural person, but upon his death, problems might arise in connection with succession to the properties. Such properties as might have been registered in his name may, through the operation of the laws on succession, find their way to his heirs, instead of his successor in office in the religious society. It was this need for securing the succession of the properties for the religious society that led to the creation of the corporation sole device in England.[72] The purpose of the corporation sole, therefore, is not merely to administer the temporalities of a religious society, but also to hold and transmit these temporalities to successive incumbents of the office. And inasmuch as said temporalities are for the use of a religious society, for the worship of the Almighty, who must necessarily be eternal as believed by practically all religions regardless of creed, it follows that this succession must be perpetual, as religion is intended to be perpetual.

E. The Corporate Name

While in the case of ordinary private corporations, the Corporation Law requires the registration and use of a corporate name,[73] there is no such requirement in the case of corporations sole. It has been held that a corporation sole may maintain an action in his own name to recover possession of lands.[74] In some of the American cases, the personal name of the bishops were used,[75] while other cases were brought by or against the official title of the bishop.[76]

In the Philippines, too, practice has not been uniform. There are several cases brought by or against the bishop's personal name,[77] but most of the later cases were brought by or against the bishop's official title.[78]

[72] Fletcher c. 3, par. 52.
[73] Corporation Law § 6 (1).
[74] Santillon v. Moses, 1 Cal. 92 (1850).
[75] Reid v. Barry (bishop), 93 Fla. 849, 112 So. 846 (1927); McCloskey (bishop) v. Doherty, 97 Ky. 300, 30 S.W. 649 (1895).
[76] Archbishop of San Francisco v. Shipman, 79 Cal. 288, 21 Pac. 830 (1889); People *ex rel.* Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 142 N.E. 520 (1924).
[77] Hacbang (bishop) v. Director of Lands, 61 Phil. 669 (1935); Verzosa (bishop) v. Fernandez, 55 Phil. 307 (1930); Harty (archbishop) v. Sandin, 11 Phil. 450 (1908); Dougherty (bishop) v. Evangelista, 7 Phil. 37 (1906).
[78] Director of Lands v. Roman Catholic Bishop of Zamboanga, 61 Phil. 644 (1935); Santos v. Roman Catholic Bishop of Nueva Caceres, 45 Phil. 895 (1924); Roman Catholic Archbishop of Manila v. Barrio Sto. Cristo, 39 Phil. 1 (1918); Roman Catholic Bishop of Lipa v. Municipality of Taal, 38 Phil. 367 (1918); Government v. Roman Catholic Archbishop of Manila, 35 Phil 935 (1916); Roman Catholic Bishop of Nueva Segovia v. Insular Government, 26 Phil. 300 (1913).

In a proceeding for land registration, the court has held that the property should not be registered in the name of the "Bishop of Nueva Segovia in trust for the use, purpose, behoof and sole benefit of the Roman Catholic Apostolic Church" but only in the name of the "Bishop of Nueva Segovia."[79] In the same case, the court stated that it has been the practice of our courts to bring actions and proceedings in favor of the Roman Catholic Church in the name of the bishop or archbishop of the locality.

Many of the cases, however, were not brought in the name of the bishop, but in the name of the Roman Catholic Church.[80]

In the case of *Alonzo v. Villamor*,[81] the case was brought by Father Alonzo, a Catholic priest, to recover certain articles taken from a Catholic church. Objection was raised to the bringing of the action in the priest's name, but the court waived aside the objection, and permitted the amendment of the pleadings by substituting the name of the "Roman Catholic Apostolic Church" in the place of the name of the plaintiff priest. It would seem that the ruling in this case, in which the priest brought action in his name with the tacit consent of the bishop, would be inapplicable in a case where a priest brings suit without the bishop's authorization.

Articles of incorporation of corporations sole, filed with the Securities and Exchange Commission, display a similar lack of uniformity in the use of corporate names.

Many use the name of the religious society itself, *e.g.*, Iglesia ni Cristo, Congregation of the Most Holy Redeemer, Madres Franciscanas Misioneras de Maria, Tun Chi Temple, Inc., etc.

The majority use the official title of the incorporating dignitary, *e.g.*, Roman Catholic Archbishop of Manila, Roman Catholic Prelate of Infanta, Inc., Supreme Bishop of the Iglesia Filipina Independiente, Prior Provincial de la Corporacion de Padres Dominicos o Sagrada Orden de Predicadores de la Provincia del Santissimo Rosario de las Islas Filipinas, Presiding Elder of the United World, Inc., etc.

Some use the personal name of the incorporating church head, *e.g.*, Rosa Peña Tongko, Sam Brown, Charles Henry Brent.

A few use a title that describes the position held by the incumbent, *e.g.*, Ecclesiastical Head of the Agama Islam in Sulu.

[79] Roman Catholic Bishop of Nueva Segovia v. Insular Government, 26 Phil. 300 (1913).

[80] Roman Catholic Church v. Municipalities of Cebu, 36 Phil. 517 (1917); Roman Catholic Church v. Municipality of Placer, 11 Phil. 315 (1908); Roman Catholic Church v. Municipality of Badoc, 10 Phil. 659 (1908), 7 Phil. 566 (1907), 6 Phil. 345 (1906).

[81] 16 Phil. 315 (1910). The court disposed of the objection by saying: "Although the action was brought in the name of the parish priest, the real party in interest was the Roman Catholic Church. No one was misled by this error, so there is no need for a new trial. The pleadings, proceedings and decision are amended by substituting the name of the Roman Catholic Church as plaintiff."

Another group is composed of corporations sole that have not registered any corporate name at all.

Of these different corporate names used in practice, the one most appropriate for the corporation sole would seem to be the official title of the incorporating bishop, chief priest, or presiding elder. The name of the religious society is inappropriate since the society itself stays unincorporated, only the head being incorporated. The personal name of the incorporator would result in an absurdity when applied to his successor in office. The complete omission of a corporate name would lead to difficulties in the drafting of contracts, conveyance and titling of properties, prosecution of suits, and similar matters.

What happens when the official title is changed, such as when a bishopric is elevated to the rank of archbishopric, or where a prelature becomes a full-fledged diocese and the head is no longer a prelate but a bishop? It would seem proper in such case to file amended articles of incorporation with the Securities and Exchange Commission to register the new name.

In the United States, the question arose, when the corporate name was changed, as to whether it was necessary to convey properties from the old name to the new one. The court answered:

> We think it manifest that a mere change in the corporate name is not a divestiture of title, or such a change as would require a regular transfer of title to property, whether real or personal; . . . the last-named corporation being the same as the first, and held for like purposes and by the same person, . . .[82]

F. Continuity of Corporate Life

The purpose of the corporation sole being to hold the temporalities of a religious society in perpetual succession, the law requires that one of the requisities for the incorporation of a corporation sole is that the rules, regulations and discipline of the religious society provide a manner of filling vacancies in the office of bishop, chief priest, or presiding elder.[83] Thereafter, if the incorporated office should be vacated by the incumbent, by death, resignation, removal, or any other manner, the successor in office shall become the corporation sole upon his accession to the office.[84] The only requirement imposed by the law on the successor in office is to file a copy of the commission, certificate of election, or letter of appointment of such successor, with the Securities and Exchange Commission together with ten pesos as filing fee.[85]

Sometimes the successor in office is not appointed or selected immediately after the office is vacated, resulting in a temporary vacancy in

[82] McCloskey v. Doherty, 97 Ky. 300, 30 S.W. 649 (1895).

[83] Corporation Law § 155 (4).

[84] *Id.* at § 158.

[85] *Ibid.*

the incorporated office. Here, again, the law goes by reference to the rules, regulations, and discipline of the religious society, and states that during such vacancy the person or persons authorized and empowered by the religious society to administer the temporalities and manage the estates and property during the vacancy shall "exercise all the power and authority of the corporation sole during such vacancy."[86]

In the Roman Catholic Church, the Holy See may appoint an *administrator apostolic* for a vacant diocese, or even when the incumbent bishop is still alive but incapacitated due to age, illness or other causes.[87] In cases of emergency, such as when the bishop is in captivity, exiled, or otherwise inhabilitated, the administration of the diocese will fall on the *vicar general* or another priest appointed by the bishop; if both fail or are impeded in any of the ways already mentioned, the cathedral chapter shall appoint a *vicar capitular* to take over the reins of the diocese until a permanent successor to the bishop is appointed.[88]

The law does not require any registration of the commission of the temporary administrator in cases of temporary vacancies, neither does it state that the temporary administrator becomes the corporation sole; it only states that he shall exercise all the power and authority of the corporation sole during the vacancy.[89] In a way, therefore, the continuity of the corporation sole may be said to be interrupted, inasmuch as there is no person occupying the position at this time.

Furthermore, the law realizes that the temporary administrator appointed as such under the rules of the religious society may be an individual or a group or board, since it uses the words "person or persons authorized and empowered by the rules . . . to administer the temporalities and manage the estates and properties of the corporation sole during the vacancy..."[90] Thus, it may happen that the powers of a corporation sole may actually be exercised by a group or board under such circumstances.

Should it be necessary for the temporary administrator to prosecute a suit during the temporary vacancy of the corporation sole, it is not clear in what name the suit should be brought. In the case of *Barlin v. Ramirez*,[91] the suit was prosecuted in the name of the Rev. Jorge Barlin, apostolic administrator of the vacant diocese of Ambos Camarines.

[86] *Id.* at par. 3.
[87] CODEX JURIS CANONICI, Canon 312 (1918).
[88] *Id.*, Canon 429.
[89] CORPORATION LAW § 158, par. 3.
[90] *Ibid.*
[91] 7 Phil. 41 (1906).

IV. INCORPORATION OF THE CORPORATION SOLE

A. PROCEDURE FOR INCORPORATION

The incorporation of a corporation sole is effected by filing with the Securities and Exchange Commission the following:

a. Articles of incorporation.

b. Affidavit or affirmation of the bishop, chief priest, or presiding elder, verifying the articles of incorporation.

c. Certified copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder, duly certified to be correct by a notary public or a clerk of a court of record.

d. Filing fees, ₱25.00.[92]

The contents of the articles are enumerated in section 155 of the Corporation Law and may be briefly summarized as follows:

a. That the applicant is the bishop, chief priest, or presiding elder, as the case may be, of his religious denomination, society, or church, the name of which is usually mentioned; and that he desires to become a corporation sole.

b. That the rules, regulations and discipline of said religious society are not inconsistent with his becoming a corporation sole, and that they do not forbid it.

c. That as such bishop, etc., he is charged with the administration of temporalities and the management of the estates and properties of his religious society, etc., within his territorial jurisdiction. The territorial jurisdiction must be described.

d. The manner of filling vacancies in the office to be incorporated, according to the rules of the religious society.

e. The location of the principal office of the corporation sole, which must be within the Philippines.

The law states that the articles of incorporation must be verified by affidavit or affirmation of the bishop, chief priest, or presiding elder.[93] In practice, some articles of incorporation are drafted as affidavits, and some are even so titled, instead of using the title "Articles of Incorporation"; the Securities and Exchange Commission has been quite lenient in this, as in most of the other requirements.

In the Roman Catholic Church, the commissions of the bishops come from the Holy See in Rome, and are written in Latin, the official language of that church. In such case, a translation of the document into an official language, which may be English, Spanish, or the National Language, is filed

[92] CORPORATION LAW §§ 155-56.
[93] *Id.* at § 156.

together with the Latin original. Translations, duly certified by church officials, have been accepted for registration by the Securities and Exchange Commission.

Requirements for ordinary private corporations, such as the name, purpose clause, term of existence, capitalization, are not required. Neither is the applicant required to file a balance sheet of the assets and liabilities of his religious society.

B. Commencement of Corporate Existence

Ordinary private corporations incorporated in the Philippines commence their corporate existence upon the issuance of a *certificate of incorporation* by the Securities and Exchange Commission.[94] The law does not lay down the same rule in the case of corporations sole; for it states that "from and after the filing... of the said articles of incorporation... such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole,"[95] which would seem to indicate that it is not necessary for the commencement of corporate existence of the corporation sole that a certificate of incorporation be issued, and that, therefore, said corporate existence commences immediately upon the filing of the articles of incorporation, related papers, and the filing fee.

In practice, however, the Securities and Exchange Commission does issue certificates of incorporation to corporations sole, as well as to corporations aggregate. Although not necessary to the commencement of corporate existence, such certificate of incorporation would be useful and convenient if the corporation, in a judicial proceeding for example, would be asked to show prima facie evidence of its due incorporation. Without the certificate of incorporation, this would entail the presentation of evidence of the incorporation, which may even possibly be assailed, whereas with the presentation of the certificate of incorporation such delays would be avoided.

C. Defectively Formed Corporations Sole

In the United States, the *de facto* doctrine has been applied to religious societies, and it has been held that where a religious society has in good faith attempted to organize legally as a corporation, and has long claimed and exercised the rights and powers of a corporation, it becomes a corporation *de facto*.[96] Under the *de facto* doctrine, where a corporation, acting under a valid incorporation statute, attempts in good faith to incorporate, and actually starts exercising corporate powers, it may be considered at least as a corporation *de facto*, although due to some defect or another it may

[94] *Id.* at § 11.
[95] *Id.* at § 157.
[96] 76 C.J.S., *Religious Societies* § 10, at 755.

fail to qualify as a corporation *de jure*, and thereafter its corporate existence cannot be assailed collaterally by any person, and is subject to attack only in a direct proceeding by the state. In the Philippines, it has been held that to qualify as a corporation *de facto*, a corporation should at least have obtained a certificate of incorporation from the Securities and Exchange Commission, otherwise it cannot claim in good faith to be a corporation at all.[97]

Since *de jure* corporate existence of corporations sole in this jurisdiction commences immediately upon the filing of the articles of incorporation and related papers, the certificate of incorporation not being made a requisite therefor, it would be difficult to conceive of a *de facto* corporation sole who acquires that status due to some defect in the registration procedure. So long as the corporation sole is qualified under the rules of his religious society, and files the papers in due form, he is a *de jure* corporation.

Even as to the requirement of user of corporate powers, the law states that a corporation must formally organize and commence the transaction of its business within two years from the date of its incorporation, otherwise its corporate powers cease,[98] and it may be dissolved upon suit by the state; but a corporation sole does not have to organize inasmuch as it has no officers and is composed of only one individual, and since its business, if it may be so called, is only to hold, administer, and transmit the temporalities and properties of a religious society, and not to engage in any business or commercial transactions, it may be said to have commenced the transaction of its "business" by the mere act of taking possession of the properties of the religious society.

In the case of an organization that is well organized, centuries old, and world-wide, like the Roman Catholic Church, the question of whether a corporation sole is *de jure, de facto*, or no corporation at all, may be of academic importance, since its capacity to own properties in the Philippines has been admitted by a long line of cases decided by the Supreme Court, without regard as to whether it incorporates corporations sole or not. However, in the case of a local religious society with a small congregation, the question might be of great importance, as where the society sinks into debt, or where it has properties and is torn by dissension among the members. The existence of a corporation sole, *de facto* or *de jure*, to hold its properties, may very well determine whether these properties will be preserved for the society under the authority of the incorporated head, or whether, if there should be no corporation at all, the property may be subject to a free for all among the members, which may spell the death of the religious society.

Suppose a bishop files articles of incorporation and related papers and fees, becomes duly incorporated, and subsequently the fact is discovered

[97] Hall v. Piccio, 47 O.G. (12s) 220 (1950).
[98] Corporation Law § 19.

that said incorporation is contrary to the rules, regulations or discipline of his religious society, under which the bishop is the spiritual head but does not hold any of the properties — would it then be legally a *de jure* corporation, or a *de facto* one, or no corporation at all? If the bishop was aware of the prohibition under his church rules, then the element of good faith in the attempt to incorporate would be missing, and following the general rule, the bishop would not be considered a corporation at all. Even if he was unaware of the prohibition, it may nevertheless be contended that he still does not qualify even as a corporation *de facto*, inasmuch as a disqualification under the rules and regulations of his religious society would also constitute a disqualification to incorporate under the statute, and therefore he can not possibly become a corporation at all.

In the case of a defectively incorporated corporation sole, or even of an unincorporated one, there may also be applicable the so-called "estoppel" doctrine, under which a person who has been dealing with a corporation sole as such may under certain circumstances be estopped from denying the corporate existence of the latter.[99] In a Kentucky case, the court held that "the appellee or his vendees contracted with the Right Reverend William George McCloskey in his corporate name, and acquired the right of entry and possession (to the property) under his title, and is estopped from denying the manner of his holding."[100] An analogous doctrine, although not squarely in point, has been held in the Philippines, where it has been held that a parish priest takes possession of church property from his bishop and like an agent is therefore estopped from denying the title of the bishop who is his principal.[101]

There is also a so-called "corporation by prescription" in the Philippines, although it is not a corporation sole — the Roman Catholic Church — which has been held as a recognized legal entity with full juridical personality, not only by the Supreme Court of the Philippines, but also by the Supreme Court of the United States, since it "antedated by almost a thousand years any other personality in Europe," and existed "when Grecian eloquence still flourished in Antioch, and when idols were still worshipped in the temple of Mecca."[102] The personality of the Roman Catholic Church in this jurisdiction will be the subject of a later discussion in this Article.

D. Effect of Incorporation on the Religious Society

Upon the filing of the articles of incorporation and related papers with

[99] 76 C.J.S., *Religious Societies* § 10, at 755.
[100] McCloskey v. Doherty, 97 Ky. 300, 30 S.W. 649 (1895).
[101] Evangelista v. Ver, 8 Phil. 653 (1907); Barlin v. Ramirez, 7 Phil. 41 (1906); Dougherty v. Evangelista, 7 Phil. 37 (1906).
[102] Barlin v. Ramirez, 7 Phil. 41 (1906). See also: Municipality of Ponce v. Roman Catholic Church of Porto Rico, 210 U.S. 296 (1908); Santos v. Roman Catholic Church, 212 U.S. 463 (1910).

the Securities and Exchange Commission, the bishop, chief priest, or presiding elder shall become a corporation sole, and shall hold the properties of his religious society.[103] The entity incorporated is the bishop, chief priest, or presiding elder, himself.

Depending on the terms of the incorporation statute, there may be an incorporation of the religious society itself, or only of its officers or trustees.[104] Where the incorporation is of the trustees, there is no incorporation of the religious society itself, but only of the trustees, for the purpose of holding the properties of the religious society in trust.[105]

Where the religious society is incorporated, there is still a distinction between the religious corporation and the religious society: the religious society does not lose its separate existence or become wholly merged in the corporation, but remains separate, so that there are actually two entities — the religious society which has its jurisdiction in the ecclesiastical and spiritual spheres and does not depend on the civil law for its existence, and the religious corporation which is a creation of the civil law and which has its jurisdiction in the purely temporal sphere, namely, the holding of the temporalities and properties of the society.[106] The corporation thus incorporated is not an ecclesiastical corporation, which is formed for religious ends, but a civil corporation for material ends, and therefore it has the same powers as other civil corporations insofar as they may be applicable.[107]

If the religious society remains distinct from the religious corporation when the whole society itself is incorporated, the separate identity of one from the other should be even more pronounced where the religious society stays unincorporated. The legal theory, held by most authorities in the United States, that there exist two separate, distinct entities, the religious society which stays unincorporated, and the civil corporation to hold title to the properties, which is incorporated,[108] is clearly applicable. In such case the action of one entity ordinarily has no effect on the members of the other entity.[109]

It would seem, therefore, that under the Philippine Corporation Law,

[103] Corporation Law § 157.
[104] 76 C.J.S., *Religious Societies* § 9, at 754.
[105] The act for the incorporation of trustees of religious societies is not an act for the incorporation of the societies, but for the incorporation of such trustees, to the end that corporations thus formed may hold the property and funds of the societies in trust. Page v. Asbury Methodist Episcopal Church, 78 N.J. Eq. 114, 78 Atl. 246 (1910).
[106] 45 Am. Jur., *Religious Societies* § 8, at 727.
[107] 76 C.J.S., *Religious Societies* § 9, at 754.
[108] A church organization possesses a dual nature, being at once a congregation and an incorporated or unincorporated body with a spiritual or ecclesiastical and a temporal side. Harlem Church of Seventh Day Adventists v. Greater New York Corporation of Seventh Day Adventists, 145 Misc. 508, 260 N.Y. Supp. 517 (1932).
[109] Walker Memorial Baptist Church v. Saunders, 173 Misc. 455, 17 N.Y.S.2d 842 (1940).

which permits the incorporation of the bishop, chief priest, or presiding elder as a corporation sole, the only entity incorporated is the bishop, chief priest, or presiding elder himself, and the religious society, denomination, or church, remains unincorporated. Thus we have two separate and distinct entities: the corporation sole, a civil corporation formed under the incorporation statute of the state, dependent upon the law of the land for its legal existence, subject to the rules governing civil corporations insofar as they may be applicable, having its powers in the purely temporal sphere in connection with the holding and administration of the properties of the religious society; and the religious society itself, unincorporated, not dependent on the state for its existence, but existing as a purely voluntary society, and having its jurisdiction in the religious or ecclesiastical sphere.[110] The act of one is not the act of the other, although, due to the intimate relationship between the two, it may have a profound effect upon the other.

The case of corporations aggregate is different. Here a reading of the provisions of the statute would seem to indicate that the religious society is actually incorporated, for the law states that any "religious society or religious order, or any diocese, synod, or district organization of any church, . . . may, . . . incorporate for the administration of its temporalities . . ."[111] and also requires that "the incorporation of the religious society, religious order,... is not forbidden by competent authority or by the constitution, rules, regulations, or discipline of the society, church, or order of which it forms a part; . . ."[112] Thus, as between the corporation sole and the corporation aggregate, there exist the difference not only in the number of members, but also in the fact that in the case of the former the religious society stays unincorporated, while in the latter it becomes incorporated. In the United States, it has been held that where a statute is enacted limiting the quantity of real estate which can be held by incorporated church societies, the limitation is not applicable to unincorporated church societies, and that public policy does not require that the statutory limitation upon incorporated societies be imposed upon unincorporated ones.[113] In this jurisdiction, where the Constitution in its provisions on nationalization of lands[114] does not distinguish between incorporated and unincorporated associations, it is doubtful whether such a doctrine would be upheld.

E. Failure to Incorporate

As a general rule, an unincorporated association is regarded as having no legal existence, and as being incapable to take and hold property in

[110] 45 Am. Jur., *Religious Societies* § 8, at 727.
[111] Corporation Law § 160.
[112] *Id.* at 160 (3).
[113] Alden v. St. Peter's Parish, 158 Ill. 631, 42 N.E. 392, 30 L.R.A. 232 (1895).
[114] Phil. Const. art. XIII.

the name of the association, except as may be authorized by law.[115] Unincorporated religious societies, however, have been held as not falling within this rule.[116] The rule in the United States seems to be well established that an unincorporated religious society cannot sue or be sued in its own name, nor in the name of its agents or trustees in whom no right of property has been vested, but must sue and be sued in the name of all its members, although a few may, in some cases, sue in the name of all.[117] In the Philippines, an unregistered association with a numerous membership may sue and be sued in the name of one or more of its members, in a class suit,[118] and an association that has been "doing business" in the common name may be sued under that name.[119]

Of course, under the general doctrines on *estoppel,* where an association has been using a common name, leading others to believe in the legal existence of the association, and to act upon that belief, the association may be estopped from denying its existence under such common name,[120] especially when such a denial would result in damages to the innocent third person. There seems to be no reason why this doctrine of *estoppel* should not be applicable to a religious society pretending to be legally incorporated, or a corporation sole pretending and acting as if it were incorporated. There is no reason for exempting a person from this doctrine, designed to protect the interests of innocent third parties from actual or constructive fraud, merely because he happens to be a bishop, chief priest, or presiding elder, because assuming such office does not have the effect of terminating his existence as a natural person subject to the jurisdiction of the state.

Where the religious society fails to incorporate, whether as a corporation sole or as a corporation aggregate, it would not thereby be disqualified to own properties, real or personal, in this jurisdiction. The constitution states that "corporations or associations" may own real properties so long as they comply with the 60% citizenship requirement.[121] Furthermore, under Act 271, an unincorporated religious society is expressly authorized to hold properties in the name of three trustees.

V. By-Laws of the Corporation Sole

A corporation sole need not file any code of by-laws. He does not need any since he performs all corporate acts alone, and needs no board directors' resolutions in order to legalize these corporate acts. His acts, when acting on the subject matter of the corporation, are the acts of the corporation.[122]

[115] *In re* Houk's Estate, 33 D. & C. 511.
[116] *Ibid.*
[117] 45 Am. Jur., *Religious Societies* § 93, at 796-97.
[118] Rule 3 § 12.
[119] Rule 3 § 15.
[120] Rule 123 § 68 (a).
[121] Phil. Const. art. XIII.
[122] Boston Overseers of the Poor v. Sears, 22 Pick. (Mass.) 122.

The Corporation Law, therefore, makes no mention whatsoever of any code of by-laws for the corporation sole.

The law makes frequent reference, however, to the rules, regulations, and discipline of the religious society, mentioning them at least five times in the six sections on the corporation sole.[123]

The Supreme Court has held that these rules, regulations, or sometimes called canons, are analogous to by-laws of associations, and thus govern the affairs of the church society.[124] The law itself specially states that in cases where the rules of the religious society regulate the methods of acquiring, holding, alienating, or mortgaging its properties, such rules shall govern and the courts will not have to interfere in any of these acts.[125] Where there are no by-laws, or if the by-laws should not contain provisions for the sale or mortgage of property, court intervention is prescribed by the law.[126]

In the United States the same rule has been followed with almost universal uniformity. A religious society, even if unincorporated, is held as having the power to adopt rules and regulations by which it is to be governed, and each member is bound thereby upon becoming a member.[127] It is even held that these rules and regulations are a contract between the members and the association.[128]

The rules and regulations of religious societies are recognized and enforced by the civil courts so long as they are not in conflict with the Constitution and the laws of the state.[129] Thus, where a congregation professes to be Roman Catholic or Episcopal, it must render submission to the discipline of that church.[130] Members are bound to comply with the rules

[123] See CORPORATION LAW §§ 154-59.

[124] Gonzales v. Roman Catholic Archbishop of Manila, 51 Phil. 420 (1928); Evangelista v. Ver, 8 Phil. 653 (1907).

[125] CORPORATION LAW § 159.

[126] *Ibid.*

[127] Rock Zion Baptist Church v. Johnson, 47 So. 2d 397 (1950); Philomath College v. Wyatt, 27 Ore. 390, 31 Pac. 206, 37 Pac. 1022, 26 L.R.A. 68 (1894); Clark v. Brown, 108 S.W. 421 (1908); First Presbyterian Church v. Myers, 5 Okla. 809, 50 Pac. 70, 38 L.R.A. 687 (1897).

[128] An unincorporated religious association can adopt a charter, constitution, by-laws, rules or regulations by which it is organized and governed and exists, and each member is bound thereby upon becoming a member, and the charter, constitution, by-laws, rules or regulations so adopted are the contract between the members and the association. Rock Zion Baptist Church v. Johnson, 47 So.2d 397 (1950). Rules and regulations for church government and discipline, prescribed by the governing bodies of religious associations and churches, will be obligatory upon members, congregations, and officers, and will be given effect by the civil courts. First Presbyterian Church v. Myers, 5 Okla. 809, 50 Pac. 70, 38 L.R.A. 687 (1897). See also: Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481 (1952).

[129] A conflicting canon law yields to the law of the land. *In re* Trustees of St. Joseph's Lithuanian Roman Catholic Church of Mahanoy City, 117 Atl. 216 (1922). See also: Krecker v. Shirey, 163 Pa. 534, 30 Atl. 440, 29 L.R.A. 476 (1894).

[130] Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 191 Atl. 140 (1937); Smith v. Bonhoof, 2 Mich. 115 (1915).

and regulations, "and on a proper occasion will be enjoined from acting otherwise."[131]

When property rights are in question, the courts will refer to the rules and regulations of the religious society to determine the respective rights of the parties.[132] Where the church rules prescribe that the officers cannot alienate land without the consent of the congregation, then that consent is needed. Where said rules state that alienation of land shall be subject to the approval of superior officers, then this approval is required.[133]

The rules and regulations of the religious society are binding not only on the members thereof, but even on third persons who may deal with the corporation sole. A corporation is incapable of making contracts forbidden by its constitution or by-laws, or contracts not related to its purposes, and if it does so, the contract is *ultra vires* and may be unenforceable against the corporation. The doctrine seems to have been extended to religious associations, and third persons dealing with them "must, at their peril, take notice of the powers granted" to the corporation sole.[134] To bind the religious society, the corporation sole must act within the scope of his authority,[135] and this follows the general rule in agency that an agent acting without authority or legal representation, or who acts beyond his powers, cannot bind the principal.[136]

In the case of the members, since they join the religious society voluntarily and could leave it whenever they pleased, since no one can legally be compelled to join any religious society when freedom of worship is guaranteed by the constitution of the state, nor to stay therein at the penalty of being burned at the stake if he left, they are therefore bound by the rules and regulations of the society by the mere fact of joining.

In the case of third persons, the operation of the law may be somewhat harsh, but no more so than the generally accepted principle in agency that a person dealing with an agent must determine for himself, at his own risk, the limits of the latter's authority.

This rule has been applied in the Philippines, where the Court of Ap-

[131] Furmanski v. Iwanowski, 265 Pa. 1, 108 Atl. 27 (1919).

[132] While not concerned with matters of discipline and doctrine in churches, the civil courts, nevertheless, where property rights are involved, will look to the canons, laws, and usages of a church to determine how property has been acquired, and how it should be held and disposed of. Morris v. Nowlin Lumber Co., 100 Ark. 253, 140 S.W. 1 (1911). When a church has been incorporated, the regulations and customs of the communion to which it belongs regarding the disposition of secular business will be respected by the courts so far as possible. Klix v. Polish Roman Catholic St. Stanislaus Parish, 137 Mo. App. 347, 118 S.W. 1171 (1909). See also: Heiss v. Vosburg, 59 Wis. 532, 18 N.W. 463 (1884).

[133] 76 C.J.S., *Religious Societies* § 65, at 842.

[134] 45 AM. JUR., *Religious Societies* § 73, at 783.

[135] 76 C.J.S., *Religious Societies* § 29, at 777.

[136] Art. 1403 CIVIL CODE OF THE PHILIPPINES (hereinafter cited as NEW CIVIL CODE).

peals decreed that where a third person entered into a contract with an archbishop of the Roman Catholic Church, as a corporation sole, and under the canons of said church such contract, being above a certain amount, needed the approval of superior ecclesiastical authority, the contract cannot be enforced against the Church since the necessary approval was never obtained.[137]

VI. Temporal Goods

The purpose of the corporation being mainly the holding, administration, and transmitting in perpetual succession, of the "temporalities," "estates and properties"[138] of a religious society, it seems desirable to inquire into the nature of these "temporalities."

Temporalities have been defined as including the revenues, lands, and tenements of the church, and the secular possessions with which it may be endowed.[139] The term, therefore, is broad enough to include any kind of properties that a religious society may possess.

Church property is private property,[140] and is therefore entitled to the same protection as all other private property, and the state has the power and duty to protect religious societies in their property rights.[141]

There are several factors that must be considered in connection with properties of religious societies, including the following:

a. The nature of the religious society acquiring or holding the properties.

b. The rules, regulations, discipline, or canons of the religious society, and its general organization.

c. The instrument of conveyance by which the property is acquired.

d. Constitutional provisions and limitations.

e. Statutory provisions and limitations.[142]

A. Kinds of Religious Properties

One of the best organized systems of classificaion of church properties is that of the Roman Catholic Church, which is the prevailing religion in the Philippines. Details of classification and regulation of its properties are found in the Code of Canon Law, otherwise known as the *Codex Juris Canonici*, which contains the laws of the Roman Catholic Church complete in one code. An examination of the articles of this code, called *canons*, will reveal that the concepts and rules stated therein could very well apply

[137] Gana v. Roman Catholic Archbishop of Manila, 8 App. Ct. Rep. 754 (1947).
[138] Corporation Law § 155 (3).
[139] 62 C.J., *Temporalities* at 308.
[140] 76 C.J.S., *Religious Societies* § 56, at 818-19.
[141] *Ibid.*
[142] *Ibid.*

to the properties of other religious societies. Special attention to the provisions of the *Codex* will therefore be given, in the belief that its principles would be enlightening on church properties in general.

The *Codex Juris Canonici* calls temporalities "ecclesiastical goods."[143] Ecclesiastical goods are called "sacred" if they have been destined for Divine worship, and "precious" if they have great value, materially, artistically, or historically.[144]

Not all ecclesiastical goods are sacred. Only those which have been especially consecrated or blessed, and destined for Divine worship, are considered sacred.[145] Even blessing alone is not sufficient to make property sacred, since the Church has blessings for almost anything, including houses, individuals, automobiles, machinery, and almost all other properties in normal everyday use. Thus both these requisites must concur in order that properties may be considered as sacred: (1) destination for Divine worship, and (2) consecration or blessing for that purpose.

Properties not sacred as stated above, we shall call "unconsecrated" properties for the purpose of this Article.

Sacred or *consecrated* properties include two classes:

a. *Sacred Places*, which are consecrated either for Divine worship or for burial of the faithful.[146] Included in this classification are churches, which are sacred buildings for public worship,[147] oratories or chapels which are for semi-public or for private use,[148] altars, [149] and cemeteries.[150]

b. *Sacred things*, also consecrated for divine worship, include sacred images, relics, and sacred utensils. Sacred relics include the bodies of the saints or the blessed, or parts thereof, articles used by them during their lifetime, and parts of the Holy Cross.[151] Sacred utensils include those used in the public worship of the church, such as the ring and pectoral cross of the bishop, the chalice, paten, purificator cloth, and other items used in the celebration of holy mass and other church ceremonies.[152]

Properties other than sacred places and sacred things are considered *unconsecrated*.

The distinction between consecrated and unconsecrated church properties has not received sufficient emphasis in the decisions of our courts involving church properties but the distinction should be a very significant one, since

[143] Codex Juris Canonici, Canon 1497.
[144] *Ibid.*
[145] *Ibid.*
[146] *Id.*, Canon 1154.
[147] *Id.*, Canon 1161.
[148] *Id.*, Canon 1188.
[149] *Id.*, Canon 1197.
[150] *Id.*, Canon 1205.
[151] *Id.*, Canons 1281, 1282, 1287.
[152] *Id.*, Canons 1298, 1306.

the legal status of one should be quite different from that of the other. The distinction would be determinative in some cases, for example, in taxation.

B. The Legal Nature of Church Properties

As already stated, church properties are private property.[153] In the Philippines, religious societies acquire and dispose of properties through the usual modes prescribed by law for conveyances and transfers, including sale, donation, bequest, barter, and other modes of acquiring property. Church properties are not properties for public use, since the latter are not even susceptible of registration under the Land Registration Law,[154] while the former are. Thus, where the Roman Catholic Church brought suit against a municipality for the recovery of a plaza, ownership of which was claimed by the Church, the court declared that said plaza was not private property of the Church, neither was it patrimonial property of the municipality, but belonged to that class of property destined for public use, and therefore not capable of being acquired by prescription.[155] In a later case, the court further added that public plazas, being property for public use, could not be registered in the name of the municipality in a cadastral case, since property for public use was not susceptible of registration.[156]

From the foregoing cases, it seems clear that in this jurisdiction, church properties are not considered properties for public use.

Church properties being private property, are they within the commerce of man?

The prevailing doctrine in the Philippines on this point seems to be that laid down in the case of *Barlin v. Ramirez*,[157] the leading case on the legal personality of the Roman Catholic Church in the Philippines, where the court stated:

> The truth is that, from the earlier times down to the cession of the Philippines to the United States, churches and other consecrated objects were considered outside of the commerce of man. They were not public property, nor could they be subjects of private property in the sense that any private person could be the owner thereof. They constituted a kind of property the distinctive characteristic of which was that it was devoted to the worship of God.

A few years later, the court ruled that cemeteries which had been consecrated by the Roman Catholic Church for its use, and which had been taken over by the municipalities of Occidental Negros which had seceded

[153] 76 C.J.S., *Religious Societies* § 56, at 818-19.
[154] Act 496.
[155] Harty v. Municipality of Victoria, 13 Phil. 152 (1909).
[156] Director of Lands v. Roman Catholic Bishop of Zamboanga, 61 Phil. 644 (1935).
[157] 7 Phil. 41 (1906).

to the Aglipayan sect, must be returned to the Church. Being consecrated, the cemeteries could not pass to the possession of the municipalities.[158]

This doctrine was followed in subsequent cases. Speaking of the status of churches during the Spanish regime in the Philippines, the court stated:

> It is a well known fact that, when a church edifice of the Roman Catholic Apostolic Church was once accepted, and dedicated for religious purposes, it thereafter could never be used for any other purpose.[159]

In a later case, when the Dominican and Recollect orders sold certain *haciendas* to the Government of the Philippine Islands, and in the deed of sale the parties failed to exclude the churches, *atrios*, convents, and cemeteries from the property conveyed, and the government sought to register title to the whole of the *haciendas*, without excepting the said churches, *atrios*, convents, and cemeteries, the Roman Catholic Church, through the Archbishop of Manila, filed its opposition on the ground that it was the owner of the said churches, *atrios*, convents, and cemeteries. The court, following the doctrine laid down in the previous cases, stated:

> It has been settled by a series of decisions that the Roman Catholic Church of the Philippine Islands is the true owner of the churches, *atrios*, convents, and cemeteries where it is shown that such churches, etc., are built upon sacred ground which has been withdrawn from the commerce of men. . . .[160]

In a famous subsequent case involving the expropriation of certain portions of the Manila North Cemetery, the court declared that "where a cemetery is open to the public, it is a public use . . ."[161] Justice Malcolm, in a concurring opinion, further added that "while these places are yet within the memory and under the active care of the living, while they are still devoted to pious uses, they are sacred, . . ."[162]

Much later, the Supreme Court extended the doctrine to other kinds of church properties. In a case involving certain real estate established as a trust fund (chaplaincy) where the descendants of the donor sought the recovery of the properties on the ground of violation of the trust, the court stated that the recovery could not be decreed since the establishment of the chaplaincy resulted in the conversion of the properties from temporal to spiritual ones, thereby constituting them as ecclesiastical properties, despite the fact that said buildings were not consecrated properties, but were for rent, the income thereof being devoted to stipends for masses. It held:

[158] Roman Catholic Church v. Municipalities of Negros Occidental, 13 Phil. 486 (1909).
[159] Municipality of Nueva Caceres v. Director of Lands, 24 Phil. 485 (1913).
[160] Government v. Roman Catholic Archbishop of Manila, 35 Phil. 935 (1916).
[161] City of Manila v. Chinese Community of Manila, 40 Phil. 349 (1919).
[162] *Ibid.*

"Ecclesiastical properties, being outside of the commerce of men, cannot be owned by lay persons."[163]

If we follow this last ruling to its logical conclusion, it would seem that in this jurisdiction, all ecclesiastical properties of the Church, or at least all those acquired during the Spanish regime, are to be considered as being outside the commerce of men. With such a conclusion we find it difficult to agree.

As regards unconsecrated properties, which are held by a religious society in exactly the same manner as the properties of any private person, the doctrine that they are "outside the commerce of men" seems to be entirely without basis. The *Codex Juris Canonici* itself makes careful provision for the manner whereby such properties may be sold,[164] mortgaged,[165] leased,[166] or even loaned with reasonable interest, not exceeding the rates allowed by law.[167]

If these properties, not consecrated at all, are outside the commerce of men, then any contract made by the Church with regard to them would be legally void *ab initio* for lack of a legitimate subject matter,[168] and the Church, intended probably to be benefitted by such a legal doctrine, may find itself stranded with its temporal properties completely frozen for all legal purposes, and rendered financially unproductive, defeating the very purpose for which at last some of these properties are being held.

As regards consecrated properties, the doctrine would seem to stand on more plausible grounds. To hold that properties consecrated to the worship of God are thereby placed outside of the commerce of men would seem to be a more tenable theory.

Even as to these properties, however, we are of the opinion, with due regard for the rather consistent doctrine on this matter in the past, that the holding is erroneous in the light of the *Codex Juris Canonici* itself. With the taking effect of this *Codex* on May 19, 1918, the doctrine may need to be reviewed.

Under the provisions of the *Codex*, the bishop may turn over to decent profane use a church, should it be so dilapidated that it is not worth repairing.[169] The *Codex* admits that sacred objects may be under private ownership, and can even be acquired by one private individual from another private individual by right of prescription, without thereby necessarily losing their consecration.[170] Sacred objects may be sold or exchanged,

[163] Trinidad v. Roman Catholic Archbishop of Manila, 63 Phil. 881 (1934).
[164] CODEX JURIS CANONICI, Canons 1530-32, 1539.
[165] *Id.*, Canon 1538.
[166] *Id.*, Canons 1541-42.
[167] *Id.*, Canon 1543.
[168] See arts. 1347 and 1409(4) NEW CIVIL CODE.
[169] CODEX JURIS CANONICI, Canon 1187.
[170] *Id.*, Canon 1510.

with an admonition that the price must not be raised on account of their consecration.[171] Sacred utensils may lose their consecration, such as when they lose their shape, or having been used for unbecoming purposes or exposed for public sale.[172] And where the Church cannot have her own cemeteries, the bishop is authorized, if the state would allow it, to bless a portion of the state or municipal cemetery for the burial of Catholics.[173] Where even this is not permitted, it is urged that at least the individual graves of Catholics in the state cemetery be blessed.[174]

With the foregoing provisions in the law of the Church itself, how can the doctrine that ecclesiastical properties are outside the commerce of men be legally maintained at present? Are all sales of sacred objects, authorized by the church law, to be legally considered void *ab initio* and the buyer thereof given the right to return the object and recover the price paid? Or, if the state were to allow the blessing of the portion of a municipal cemetery, would that portion then be suddenly thrown out of the commerce of man?

Furthermore, considering the fact that under the Constitution there is recognized the complete freedom of religion, and any group of persons, no matter how small, may gather together and create their own religious society, what would be the effect if any small group of men could, by the simple expedient of organizing a religious society and transferring their properties to it, withdraw said properties from the commerce of men, to the utter detriment of their creditors, who, the moment said properties are consecrated, may be left without any other practicable legal remedy for the enforcement of their rights?

This doctrine was adopted at a time when it might have been needed for the preservation and protection of the properties of the Church from the Filipino Independent Church and from property-hungry municipalities. Probably it was not even necessary to state such a doctrine—the rights of the Church could just as well have been legally protected by the clear views on its juridical personality and its right to hold and to own properties. In the light of the provisions of the *Codex Juris Canonici*, which was promulgated subsequent to the leading Philippine cases establishing this doctrine, it may be proper to reconsider the doctrine to conform more with, not only the Canon Law, but also the Civil Code provisions on properties, as well as for the ultimate protection of the Church herself. At the least, the doctrine could be applied in a modified form, so as to place outside the commerce of men

[171] *Id.*, Canon 1539.
[172] *Id.*, Canon 1305.
[173] *Id.*, Canon 1206.
[174] *Ibid.*

only those properties which under the laws of the Church itself may not pass to private ownership, but to refrain from the blanket application of the doctrine to those properties which, under the Canon Law itself, are susceptible of sale or other conveyances and contracts.

C. Legal Title to Church Properties

Upon filing the articles of incorporation, the bishop, chief priest, or presiding elder becomes a corporation sole, and all properties previously managed or administered by him as bishop, chief priest, or presiding elder, "shall be held in trust by him as a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church, . . ."[175]

Unincorporated religious societies being incapacitated from holding properties in their own name, it is customary for them to hold properties through their officers or trustees, who "take and hold the legal title in trust with power of alienation."[176] The legal title to the property is vested in the trustees for convenience in the control and management.[177] For such purposes, a corporate body may be formed to act as trustee, or trustees may be constituted by deed.[178] Where so authorized by statute, the corporate body may be a corporation sole.

In some religious systems, such as the Roman Catholic and the Moravian, the practice is to vest title to church property in the bishop, who controls the enjoyment thereof, and transmits title to his successor in office.[179] This practice has been recognized by many states[180] whether the bishop was considered a corporation sole, or no corporation at all. In some states where, by statute, the policy was laid down that church property cannot be acquired and held, except under the condition that it be subject to the control and disposition of the lay members of the church, the Roman Catholic

[175] Corporation Law § 157. See also § 159.

[176] Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927).

[177] Thus, although they have this control and management, they "have no power to pervert it, or prevent its being used for those purposes. The power is subordinate to the customs and rules of the organization." Brunnenmeyer v. Buhre, 32 Ill. 183 (1863).

[178] 45 Am. Jur., *Religious Societies* § 47, at 757-58.

[179] *Ibid.* "In a certain sense he is a trustee thereof for religious uses, but there is no declaration of trust, and he controls the enjoyment, and transmits the title by devise." Baxter v. McDonnell, 155 N.Y. 83, 49 N.E. 667, 40 L.R.A. 670 (1898).

[180] Klix v. Polish Roman Catholic St. Stanislaus Parish, 137 Mo. App. 347, 118 S.W. 1171 (1909); Krauczunas v. Hoban, 221 Pa. 213, 70 Atl. 740 (1908); Heiss v. Vosburg, 59 Wis. 532, 18 N.W. 463 (1884); Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927); *In re* Fitzgerald's Estate, 62 Cal. App. 744, 217 Pac. 773 (1923); McCloskey v. Doherty, 97 Ky. 300, 30 S.W. 649 (1895); Wright v. Morgan, 191 U.S. 55 (1903).

bishop was nevertheless the holder of the record title, a so-called "dry trustee" with no power to control or manage.[181]

In the Philippines, the rule that the title to properties of the religious society shall be in the name of the corporation sole is followed. It has been held that the Torrens title to land which belongs to the Roman Catholic Church must be registered in the name of the "Bishop of Nueva Segovia" and that thereupon, the provisions of section 157 of the Corporation Law would automatically take effect and the true ownership would be vested in the church.[182]

D. Ownership of Temporal Goods

While the corporation sole holds the legal title to the goods of the religious society, he is not the owner thereof. The law clearly states that he only holds the properties in trust for the use, purpose, behoof, and sole benefit of his religious society.[183] It has been held that words conveying the idea of trust need not be mentioned in the title, since upon the vesting of title in the corporation sole the provision of the law itself operates to vest ownership in the religious society.[184]

The rule in the United States seems to be that property so taken is the property of the church or religious society itself, although unincorporated. The members of the congregation are not the owners of said property.[185] Whatever interest the members may have in said property, such as a beneficial interest, if any, depends only on their membership, and when they cease to be members of the religious society, all their rights in the properties cease.[186]

In the Philippines, a long line of decisions starting with the case of the *Roman Catholic Church v. Municipality of Placer*,[187] has followed the con-

[181] A Pennsylvania statute, since repealed, required that title to church property should be in the congregation regardless of what the canons of the church directed, and that the property should be subject to the control of the lay members of the congregation subject to any trust terms or conditions placed thereon. Thus, a resolution of the congregation that the bishop should hold all the property of the congregation in accordance with the laws, rules and usages of the Roman Catholic Church invested the bishop with the absolute control of the church property and was held as contrary to public policy and of no force whatever. Mazaika v. Krauczunas, 233 Pa. 138, 81 Atl. 938 (1911).

[182] Roman Catholic Bishop of Nueva Segovia v. Insular Government, 29 Phil. 300 (1913).

[183] Corporation Law § 157.

[184] Roman Catholic Bishop of Nueva Segovia v. Insular Government, 29 Phil. 300 (1913).

[185] Thus, it was held that 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).

[186] Shannon v. Frost, 3 B. Mon. (Ky.) 253 (1842); Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 191 Atl. 140 (1937).

[187] 11 Phil. 315 (1908).

sistent doctrine that the Roman Catholic Church was the absolute owner of its properties, that ownership thereof was never in the King of Spain and therefore did not pass to the Government of the Philippines, nor into the municipalities wherein said properties were located, and that this ownership vested in the Church regardless of whether the acquisition or construction of said properties came wholly or partly from the members of the congregation, from the Spanish crown, or from the municipal corporations during the Spanish regime.[188] These rulings applied to cases involving churches, convents or parsonages, cemeteries, other real estate, and sacred images.

There is no question, of course, that other religious societies are equally entitled to the ownership of their properties. The law authorizes any corporation sole to purchase and hold real and personal properties for its church, and may receive gifts and bequests for such purposes.[189]

E. Control Over Temporal Properties

Aside from holding the legal title to the church properties, the corporation sole in the Philippines also has the right to the administration of the properties. This is made a condition precedent to incorporation by the law, which states that the rules, regulations and discipline of the religious society must vest the power of administration in the applicant for incorporation.[190]

In the United States, the rule seems to be that so long as property is not subject to a particular trust, the control thereof is determined by the rules and discipline of the religious society.[191] Thus, where the religious society is of the congregational or democratic type, the control of such properties would be in the hands of the majority vote of the congregation,[192] who are free in its control so long as they use it for the church or congregation.[193] Where the religious society is of the presbyteral or episcopal type, wherein the affairs of the society are run by church officers selected according to rules of the society, the control of the church properties is vested in these officers, and the members, as such, have no voice in the control or administration of the properties; even the courts of the state will not interfere in such an organizational set-up unless laws of the state are violated, or unless the officers of the religious society themselves violate the very rules of the society.[194]

[188] 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); 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 Caloocan, 12 Phil. 639 (1909); Roman Catholic Church v. Municipality of Langaran, 11 Phil. 460 (1908); Roman Catholic Church v. Municipalities of Cebu, 11 Phil. 405 (1908).

[189] Corporation Law § 159.

[190] *Id.*, at § 155 (3).

[191] 76 C.J.S., *Religious Societies* § 60, at 833.

[192] Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872).

[193] 45 Am. Jur., *Religious Societies* § 60, at 769-70.

The Philippine rule is more definite, as already stated above. This is not to say, however, that the law compels all religious societies in the Philippines to confer the administration of their temporal properties in their bishops, chief priests, or presiding elders. Where the society rules do not so provide, the society may not incorporate its head as a corporation sole, even if he may be styled a "bishop." If the society wishes to incorporate, it will have to do so under the provisions of corporations aggregate,[195] or, if it prefers, it may do without incorporating anything at all, by holding the properties in the name of three trustees, under the provisions of Act 271.

The powers of the corporation sole in the administration of the properties of the religious society are not absolute. The rules, regulations, and discipline of the society may regulate the ways of acquiring, holding, alienating, and mortgaging the property of the society, and in such case, such rules shall control.[196]

This provision of the Corporation Law is intended to give freedom to religious societies to adopt and impose their own rules, regulations, discipline, and canons. This follows closely the same view which is held in the United States, where courts have inhibited themselves as a rule from interfering in the internal affairs of religious societies, especially where the societies have rules and regulations to govern their affairs. The rule was very well stated in the case of *Klix v. Polish Roman Catholic St. Stanislaus Parish*,[197] as follows:

> Many religious sects, and among them the Roman Catholic, are of world-wide extent and vast membership, with congregations, parishes, and established hierarchies and councils in every land. For ages they have observed a uniform polity, not only in spiritual matters, but in the transaction of secular business and the management of their properties. To force upon them an unaccustomed economy would introduce confusion and embarrassment; whereas to refuse them corporate capacity, except on the condition of renouncing their customs, would be illiberal treatment by the state. The record indicates that in the Roman Catholic communion, the titles to church possessions are vested in the bishops and archbishops, who manage them, either directly or through the parish priests, and without participation by the congregation. A statutory alteration of the form of church government may not constitute interference with matters of faith, yet, nevertheless, the right of every religious sect to preserve the peculiar economy it prefers, and perhaps has obeyed immemorially, touches closely, if it

[194] *Ibid.*

[195] Corporation Law §§ 160-64.

[196] *Id.*, at § 159, proviso. See also: Gana v. Archbishop of Manila, 8 App. Ct. Rep. 754 (1947).

[197] 137 Mo. App. 347, 118 S.W. 1171 (1909).

is not part of, that religious freedom which American Constitutions guarantee. . . .

. . . The evidence proves there is a graded hierarchy in the Catholic Church, extending from the priests of parishes through bishops and archbishops, to the Roman See; and, as said, the higher clericals, and not the congregation, hold title to and manage temporalities.

We can state the rule on administration and control of properties of religious societies with corporations sole, in the Philippines, as follows: The title to the properties is vested in the corporations sole, as is also the management of said properties, but the ultimate power of control is not in him but is governed by the rules, regulations, and discipline of the religious society, to which his power of administration is subject.

Where the administration of the properties is vested in the bishop, chief priest, or presiding elder, as a corporation sole, what is the role of the parish priests, ministers, and other subordinates of the bishop, chief priest, or presiding elder?

In the United States, the decisions are conflicting on this point. It has been held that the possession of church property by the priest is possession by the bishop, since the priest is his agent.[198] It has likewise been held that the bishop was not liable for unauthorized acts of the parish priest, there being no agency resulting from their relationship.[199] It has also been held that the priest or minister does not ipso facto represent his bishop or congregation by virtue of his office as priest, and cannot bind either unless he has special authorization to do so.[200] It would seem that the whole question again devolves on the provisions of the rules, regulations and discipline of the religious society, and that the minister or priest would have whatever power of administration that said rules, regulations and discipline may prescribe.

The latter rule is followed in the Philippines, where the court has stated that "since the Roman Catholic Church has placed the curate in charge in the first place, it could by its rules determine the powers of a priest or lack of them, in alienating its property." The court added that "canons and rules of a church, according to the settled law of the United States, will be enforced in adjusting property rights growing out of ecclesiastical relations."[201]

While it has been held that between the bishop and the parish priest there is no relationship of principal and agent,[202] yet in taking possession of church property the priest, like an agent or a tenant, cannot later on deny the title

[198] Heiss v. Vosburg, 59 Wis. 532, 18 N.W. 463 (1884).
[199] Reifsnyder v. Dougherty, 301 Pa. 328, 142 Atl. 98 (1930).
[200] 76 C.J.S., *Religious Societies* § 44, at 801.
[201] Evangelista v. Ver, 8 Phil. 653 (1907).
[202] *Ibid.*

of the bishop, who stands like a principal or landlord.[203] Having received possession from the bishop, the priest is estopped to deny the latter's title.

The members of the congregation of a religious society with a corporation sole have no power whatsoever to intervene directly in the administration of the church properties, since the administration is vested by the church rules on the bishop, chief priest, or presiding elder. Here again it is necessary to examine rules of the particular religious society to determine exactly what rights the members have in the church property.

In the United States, it has been held that while members of a religious society may have no right to participate in the administration of the church properties, they may have the right to resort to the civil courts to prevent diversion of properties received in trust for specific purposes,[204] in cases where the ruling bodies of the church itself act in violation of the church rules and regulations,[205] or when the laws of the land are violated.[206] However, whatever rights the members may have in the property only flows from their membership in the religious society, and exists only in accordance with its rules, regulations, and discipline, since any person, by joining a voluntary society, subjects himself to its rules. Hence, where part of a parish was separated by authority of the bishop, in accordance with the canons of his church, and the members thereof constituted into another parish, the separated members could not thereafter claim any interest in the properties of their former parish, since upon their separation from it by decree of the proper church authorities, they lost their membership therein.[207]

The same rule was laid down in the Philippines, when the court stated that the fact that all, or almost all, or even the best part of the inhabitants of a town ceased to be Catholics, the property of the Roman Catholic Church in said municipality would not go with the seceding members, but remained the property of the Church.[208] And where the governing body of a church decides that certain members of the church have seceded, even if these members should form the majority of the congregation, they lost whatever

[203] Barlin v. Ramirez, 7 Phil. 41 (1906); Dougherty v. Evangelista, 7 Phil. 37 (1906).
[204] Where the conditions under which a religious society is formed and its property acquired require a particular doctrine and discipline, a minority of the members may insist upon carrying out the purposes for which the society was organized, and a majority will not be permitted to divert the common property to other uses, or to use it for the support and maintenance of doctrines or discipline at variance with its original constitution. Schradi v. Dornfeld, 52 Minn. 465, 55 N.W. 49 (1893). Also: Kerler v. Evangelical Emmanuel's Church of Hales Corners, 229 Wis. 243, 282 N.W. 32 (1938).
[205] Krecker v. Shirey, 136 Pa. 534, 30 Atl. 440, 29 L.R.A. 476 (1894); Furmanski v. Iwanowski, 265 Pa. 1, 108 Atl. 27 (1919).
[206] Krecker v. Shirey, 136 Pa. 534, 30 Atl. 440, 29 L.R.A. 476 (1894).
[207] *In re* Trustees of St. Casimir's Polish Roman Catholic Church, 273 Pa. 494, 117 Atl. 219 (1922).
[208] Roman Catholic Church v. Municipalities of Negros Occidental, 13 Phil. 486 (1909).

rights they had to the church property.[209] It would seem, therefore, that the rule in this jurisdiction, like that in the United States, is that whatever rights the members may have in the property of the religious society only depends upon the rules, regulations, and discipline of the society, which they joined voluntarily, and which they are free to leave at any time. As a rule, the courts will not interfere in the internal affairs of religious societies, even as to matters affecting the properties thereof, but will leave such matters to the duly constituted church authorities,[210] although it may interfere where such church authorities act outside the scope of their authority, or in a manner contrary to their own organic law and rules.[211]

This does not prevent the members of the congregation from owning properties devoted to religious uses independently of the church. The court has held that a chapel or "visitas," which is not formally consecrated to divine worship by the church, was never conveyed to it, and was supported by voluntary contributions of the residents of the barrio, was not the property of the church.[212]

In the case of the Roman Catholic Church, the administration of the church properties as vested in the bishops under the laws of that church has been recognized in a series of consistent decisions.[213] The fact that the authority of the bishop is subject to the rules, regulations and discipline of the church has also been recognized.[214]

F. Purposes of Temporal Properties

For what purposes may a corporation sole hold properties, especially real estate?

In the United States, the rule seems to be that a religious corporation can only hold such real properties as may be needed for the promotion of the object of its creation,[215] although if it does take property in violation of this limitation, such act cannot be questioned by any party, except the state.[216] It has been held, furthermore, that the legislature has no power to take property from the possession of the governing body of a religious society

[209] Verzosa v. Fernandez, 55 Phil. 307 (1930).
[210] Gonzales v. Roman Catholic Archbishop of Manila, 51 Phil. 420 (1928); U.S. v. Cañete, 38 Phil. 255 (1918); Evangelista v. Ver, 8 Phil. 253 (1907).
[211] Fonacier v. Court of Appeals, 51 O.G. 1332 (1955).
[212] Roman Catholic Bishop of Lipa v. Municipality of Taal, 38 Phil. 367 (1918); Archbishop of Manila v. Barrio Sto. Cristo, 39 Phil. 1 (1918).
[213] Santos v. Roman Catholic Bishop of Nueva Caceres, 45 Phil. 895 (1924); City of Manila v. Archbishop of Manila, 36 Phil. 815 (1917); Roman Catholic Church v. Municipality of Cebu, 36 Phil. 517 (1917); Alonzo v. Villamor, 16 Phil. 315 (1910); Dougherty v. Evangelista, 7 Phil. 37 (1906).
[214] Gana v. Roman Catholic Archbishop of Manila, 8 App. Ct. Rep. 754 (1947).
[215] 45 Am. Jur., *Religious Societies* § 50, at 761-62. See also: Thompson v. West, 59 Neb. 677, 82 N.W. 13, 49 L.R.A. 337 (1900).
[216] 45 Am. Jur., *Religious Societies* § 50, at 762; 76 C.J.S., *Religious Societies* § 51, at 813.

because of an apprehension that said property may be used for improper purposes, even where this apprehension is reasonable.[217]

A corporation organized for benevolent, charitable, and philantrophic purposes may not engage in a commercial interprise, even though the profits derived therefrom are wholly devoted to the main purposes of the corporation.[218] However, where certain land was conveyed to the officers of a church for the purpose of "keeping and maintaining a church for worship, and all privileges and appurtenances thereunto belonging, . . ." it was held that the officers could lease a small portion of the lot for commercial purposes for several years, the rent to be applied to the purposes and uses of the church.[219] A religious corporation may engage in enterprises incidental to the maintenance and upkeep of the religious corporation.[220]

In the Philippines, the law states that "any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes."[221] In the articles of incorporation of the corporation sole, there is no need of a purpose clause.[222] Does the foregoing provision constitute a limitation on the power of the corporation sole to hold property, or it is a mere general statement of the power of the corporation sole to acquire real and personal property by purchase, gift or donation?

Section 13 of the Corporation Law states: "Every corporation has the power: . . ." and proceeds to enumerate the general powers of corporations which are as follows: the power of succession; to sue and be sued; to transact the business for which it was organized and exercise such incidental powers to accomplish the purposes for which it was formed; to make and use a seal; to acquire, deal in, encumber, or alienate real and personal properties in accordance with its purposes and the transaction of its business; to appoint, dismiss, compensate subordinate officers; to make by-laws for its internal government; to admit members or to issue stock to stockholders; to enter contracts essential to the administration of its affairs and to the accomplishment of its purposes; to deal in stocks and bonds and securities of any domestic or foreign corporation in order to accomplish its purposes.

While section 159 mentions the power to acquire and hold property for church, charitable, benevolent, or educational purposes, section 13 gives a

[217] Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952). In this case, however, Justice Jackson dissented, saying: "By seeking the privilege of incorporation under the state law, a religious society submits to that law its property and all connected with its temporal affairs."
[218] State *ex rel.* v. Southern Pub. Ass'n., 169 Tenn. 257, 84 S.W.2d 580, 100 A.L.R. 576 (1935).
[219] Hayes v. Franklin, 141 N.C. 590, 54 S.E. 432 (1906).
[220] Beth Jacob of Boro Park v. Morgan Appliances Inc., 196 Misc. 677, 94 N.Y.S.2d 398 (1949).
[221] Corporation Law § 159.
[222] *Id.* at § 155.

much broader power, allowing the corporation to acquire and deal in any real and personal property, provided that it be permitted by the purposes for which the corporation was formed, and as the transaction of the lawful business of the corporation may reasonably require. Section 13 gives these powers to "every" corporation.

A reading of the powers enumerated in section 13 shows that there is nothing therein fundamentally inconsistent with the nature of the corporation sole.

It would seem, therefore, that in this jurisdiction, there is no limitation upon the power of religious societies, through corporations sole, to acquire and hold properties only for strictly church, charitable, benevolent, or educational purposes; it would seem that it is perfectly legal for a corporation sole to hold, for example, income-producing properties, the income thereof being devoted to the purposes of the religious society. That a corporation sole may use its property to produce an income by way of rents, interest, and dividends, and furnish at a profit a small quantity of supplies to its agencies, has been recognized both by the Philippines Supreme Court, as well as the United States Supreme Court.[223]

Since it may hold properties for investment, a corporation sole may own stocks, bonds, and securities of other corporations, whether commercial or industrial or otherwise, for the income thereof. As a matter of fact, the Corporation Law expressly authorizes any corporation to "acquire, hold, mortgage, pledge, or dispose of shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation" in order to accomplish its purposes.[224]

This is not intended to hold that a corporation sole may engage in business, because engaging in business is quite different from merely holding properties for income or investment. A religious society "must derive its income not from the conduct of any worldly business, but from such property as it may happen to own and from voluntary contributions," and it is no justification for engaging in commercial transactions that the profits therefrom are wholly devoted to the main purpose of the religious society.[225]

[223] Trinidad v. Orden de Predicadores, 263 U.S. 578 (1924).
[224] CORPORATION LAW § 13 (10).
[225] 45 AM. JUR., *Religious Societies* § 74, at 784.

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