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May the Director of the Philippine National Library Grant, Refuse or Cancel Authorization to Solemnize Marriages

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HISTORICAL BACKGROUND

The institution of marriage is so old that we can say it began from the union of Adam and Eve in the Land of Paradise. At its earliest stage marriage did not require anybody to solemnize it. A man simply took the woman he liked, either by force or with consent, and they became husband and wife. When the Spaniards came to the Philippines, the inhabitants had already passed that stage. At first marriage consisted in the giving of the daughter by her father to the bridegroom. Later marriages were solemnized by tribal priests who obtained their names as such by reason of old age or by special favors from the chiefs or headmen. In the Council of Trent of 1563 only canonical marriages were recognized by the Catholic Church. With the advent of the Spaniards came Christianity. Catholic priests were authorized to solemnize marriages of Catholics by reason of their being priests. When the Civil Code of Spain of 1889 was extended to the Philippines by the Royal Decree of July 1889, the municipal judges were authorized to solemnize marriages. Paymasters of men-of-war and commanders of military forces were also given the power to authorize marriages of their merchantmen and soldiers who were "in articulo mortis." (Chapter III, Section II, C.C.) No marriage except those sanctioned by the Catholic Church was legally valid. On December 31, 1889, Governor General Wy Weyler suspended this particular provision of the law and therefore validated marriages solemnized by Catholic priests only.

The change of sovereignty from the Spanish to the United States established religious liberty. The Military Governor,

General Otis, promulgated General Orders No. 68 in December, 1899 which was later amended by General Orders No. 70. Civil and canonical marriages were then given legal effect and those who were authorized to solemnize marriages were "judges of any court inferior to the Supreme Court, justices of the peace or priests or ministers of the Gospel of any denomination." During all this period the priests or ministers were not required to register and obtain authority to solemnize marriages from any civil officer.

Due to the solemnization of many fraudulent and secret marriages and the existence of so many fake priests and ministers of the Gospel of unknown sects or religions who make it their business to solemnize marriages, the Legislature passed Act 3412 which was immediately repealed and superseded by Act 3613 in 1929 and enforced on June 5, 1930, six months after its approval by the Governor-General.

The marriage law of the Philippines, therefore, is a conglomeration of the principles of two great legal systems—the common law and the civil law. The consent and capacity of the parties as well as the requisites and formalities of marriage are governed by Act 3613, and in so far as they are consistent with the provisions of said Act, General Orders No. 68, Acts 1451 and 3412. (Sec. 46, Act 3613). Hence the law regarding these points rests on American Jurisprudence. "But the essential nature of marriage and the manifold consequences which flow from this civil status are still under the sway of the Spanish Laws." (Bocobo's Law of Persons and Family Relations, pp.17-18).

WHO MAY SOLEMNIZE MARRIAGES

Who may solemnize marriages in the Philippines are enumerated in Act 3613, otherwise known as the New Marriage Law. It provides:

"Sec. 4. —PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES—Marriage may be solemnized by—

- (a) The Chief Justice and Associate Justices of the Supreme Court;
- (b) Judges and auxiliary judges of the Courts of First Instance;
- (c) The municipal judges of Manila and justices of the peace, and

(d) Priests or ministers of the gospel of any denomination, church, sect or religion, and chaplains of the Army or Navy of the United States registered in the Philippine National Library, as provided in Chapter IV of this Act.”

The said Chapter IV mentioned in paragraph (d) of the above section provides for the method by which any priest or minister of any church, sect or religion may register in the Philippine National Library for the purpose of obtaining an authority to solemnize marriages from the Director of the same.

The following may, under the law, ask for the authority to solemnize marriages; (1) The Chief Justice of the Supreme Court, (2) Associate Justices of the Supreme Court, (3) Judges of the Court of First Instance, (4) Auxiliary Judges of the Court of First Instance, (5) Municipal Judges of Manila, (6) Justices of the Peace of the municipalities, (7) Priests and Ministers of the gospel of any denomination, church, sect or religion registered in the Philippine National Library and (8) Chaplains of the Army and Navy of the United States registered in the Philippine National Library.

General Orders No. 68 did not authorize the Justices of the Supreme Court to solemnize marriages. Neither did it make mention of the Chaplain of the United States Army and Navy. The judges of the Court of First Instance and the municipal judges of Manila were included under the term “any court inferior to the Supreme Court.”

The law does not require all, except number (7) and (8) to register in the Philippine National Library. We shall assume that chaplains are included in the general term “priests and ministers” because of the nature of their duties.

Who are priests or ministers of the gospel of any denomination, church, sect or religion, and who are chaplains? Bouvier defines a priest as an officer in the second order of ministry in the church. Our Supreme Court says: “‘Priest’ according to lexicographers, means one especially consecrated to the service of a divinity and considered as the medium through whom worship, prayers, sacrifice, or other service is to be offered to the being worshipped, and pardon, blessing, deliverance, etc., obtained by the worshipped, as a priest of Baal, or Jehovah; a Buddhist.”¹ A “minister,” according to Bouvier is one ordained by some church to preach the gospel. A “minister of the gospel” according to our Supreme Court is a clergyman of

(1) *Adon vs. Chiong Seng Co.*, 43 Phil. 43.

every denomination of faith. A "denomination" is a religious sect having a particular name. "Denomination" is therefore synonymous with sect. A church is the place of worship in one sense and in another sense a society of persons who professes a certain religion. And religion is real piety in practice, consisting in the performance of all known duties to God and our fellowmen. (Bouvier).

Under the phrase "any denomination, church, sect or religion" we may include the Catholic Church, all sects of Protestantism, the Anglican Church, the Aglipayan Church, the Sabbatists, the Seventh-Day Adventists, Iglesia ni Cristo, Iglesia Edificada de Jesucristo, Iglesia Cristiana Trinitaria, Samahang Tagapagpalaganap ng Evangelio, Iglesia de Jesucristo, Jerusalem Nueva, Religion Evangelica Filipino de los Cristianos Vivos, and many others. In fact the phrase is so broad that it includes all societies or associations of persons who practice real piety of any sort consisting in the performance of all known duties to God and our fellowmen.

But the question may arise as to societies of individuals who are neither pagans nor Mohammedans and who profess and practice a kind of piety which the Director of the Philippine National Library has never heard of. To cite an example: In the issue of the Philippines Free Press of July 30, 1927, we are told that a certain strange sect is in existence in a barrio called Bocal in San Fernando, Camarines Sur. The Philippines Free Press gives an account that in 1901 a man by the name of Basilio Olvido who believed in the efficacy of prayers, and in a life of seclusion and poverty, went to the mountains and secluded himself. He spread his belief and converted many, starting from his relatives, who later followed him to the place and organized the community now called Bocal. The founder organized a sort of ministry calling himself "Amá" and his chiefs his "priests" or "padé". Marriages, baptisms and funeral services were performed until the government, in 1925, prohibited them from celebrating marriages. They are called "colorums" by the people of the neighboring towns, but they are very much different from the troublesome colorums that we often read in newspapers. Examples of this strange sect who are neither Mohammedans nor pagans may be multiplied and will be a sort of trouble to the Director and will surely raise constitutional questions.

The Act excludes from this phrase for a period of twenty years, from December 4, 1929, Mohammedans and Pagans. (Sec. 25, Act 3613). With regards to them the law says, "Persons solemnizing marriages in accordance with this paragraph (referring to marriages between Mohammedans and Pagans) shall not be obliged to comply with the provision of section thirty-four of this Act." The Legislature intended that Igorots, Ifugaos, Negritos, Moros and other Non-Christians shall be included in this exception. In the Philippines the term "non-Christian" applies to geographical subdivision and not to the particular kind of religion.

Who decides as to whether or not the applicant is a priest or minister? The writer believes that such a question be decided by the authorities of the church, sect or religion, and the Director cannot question the appointment of the applicant to such priesthood or ministry.

HOW MAY AUTHORIZATION TO SOLEMNIZE MARRIAGES
BE GRANTED, REFUSED, OR CANCELLED

The law provides:

"Sec. 34.—AUTHORIZATION OF PRIESTS AND MINISTERS.—Every priest or minister authorized by his church, sect, or religion to solemnize marriage shall send to the Philippine National Library a sworn statement setting forth his full name and domicile, and that he is authorized by his church, sect, or religion to solemnize marriages, attaching to said statement a certified copy of his appointment. The Director of the Philippine National Library, upon receiving such sworn statement containing the information required, and being satisfied that the church, sect, or religion of the applicant operates in the Philippine Islands and in good repute, shall record the name of such priest or minister in a suitable register and issue to him an authorization to solemnize marriage. * * *"

"Sec. 35.—CANCELLATION OF AUTHORIZATION.—The Director of the Philippine National Library shall cancel the authorization issued to a bishop, chief, priest, pastor or minister of the gospel of any denomination, sect, or religion, on his own initiative or at the request of an interested party, upon showing that the church, sect, or religion whose ministers have been authorized to solemnize marriage is no longer of good repute. The cancella-

tion of the authorization granted to a priest, pastor, or minister shall likewise be ordered upon the request of the bishop, chief, or lawful authorities of the church, sect, or religion to which he belongs."

From the provisions of the law above quoted, we can see that the Director of the Philippine National Library is given the broad power to determine whether a church, sect, or religion operates in the Philippine Islands and is in GOOD REPUTE so as to entitle its priests and ministers to obtain the authority to solemnize marriages in the Philippines.

Act 3613 gives the Director of the Philippine National Library the power to grant, refuse and cancel authority to solemnize marriage. The authority may be granted to priests or ministers (1) when the priest or minister is authorized by his church, sect, or religion to solemnize marriage; (2) when such priest or minister sends an application to the Philippine National Library and a sworn statement setting forth the full name and domicile of the applicant and his bishop or head, a statement that he is authorized by his church, sect, or religion to solemnize marriage and an attached certified copy of his appointment; (3) when the church, sect, or religion of the applicant operates in the Philippine Islands; and (4) when the Director of the Philippine National Library is satisfied that the church, sect, or religion of the applicant is of GOOD REPUTE. The above requirements are essential conditions before the authorization can be granted. The absence of any of them justifies the refusal of the authorization to solemnize marriages.

Paragraph (d) of section 4 of Act 3613 provides that priests or ministers of the gospel and chaplains of the Army and Navy of the United States may solemnize marriages provided that they are registered in the Philippine National Library as provided for in Chapter IV of said Act. But said chapter does not make any mention of chaplains of the Army and Navy of the United States. A question may therefore arise as to whether Chapter IV is applicable to chaplains of the Army and Navy of the United States and if so whether the Director may refuse to grant the authority to solemnize marriage. From the nature of the duties of chaplains, it can be inferred that the term "priests and ministers of the gospel" includes them. But it is very doubtful if the Director could refuse chaplains the authority to solemnize marriages. The purpose of the law is to prevent irresponsible, dishonest persons from solemnizing fraud-

ulent marriages. Chaplains of the Army and Navy of the United States are appointed with great care and are supposed to be responsible and trustworthy members of sects or religions or denominations of good repute. It is very doubtful therefore, whether the Director could legally deny such authority, unless the church, sect, or religion for which such chaplain is representing does not operate in the Philippine Islands.

The director is also given the power to revoke or cancel the authorization previously granted on his own initiative or at the request of an interested party when it appears to him upon proof, that such church, sect, or religion whose ministers have been authorized to solemnize marriage is no longer of GOOD REPUTE, and when the bishops, chief, or lawful authorities of the church, sect, or religion to which the priest or minister belongs requests such cancellation.

From these provisions of the law we can see that the common grounds upon which the Director may grant, refuse and cancel the authority to solemnize marriage are in operation in the Philippine Islands and the GOOD REPUTE of the church, sect, or religion to which the applicant priest or minister belongs. In the determination of these grounds the Director is guided by Administrative Order No. 31 (1928) of the Secretary of Justice.

A church, sect or religion, operates in the Philippine Islands when a great number of Filipinos profess it and this fact appears clearly in the Census of the Philippine Islands of 1918. (Sec. 2, Administrative Order No. 31 [1928] of the Secretary of Justice). The Director of the Philippine National Library has the discretion to decide the number of persons that will compose "a great number of Filipinos." If the church, sect, or religion has existed before the Census of 1918 but has not been included therein, or if it is newly organized, or in case of doubt, its existence may be proved by a sworn statement of its founder, bishop, or head, setting forth; (a) a brief history of the said church, sect, or religious denomination, (b) that the said church, sect, or religious denomination is duly incorporated for the administration of its temporalities, (c) that it has at least a temple, or chapel; and the town, city or province in which it is situated, and if there are more than one, the places or towns wherein they are sit-

uated, and (d) that it has a congregation of not less than two hundred bona fide active members, all residents of the Philippine Islands, who attend at the religious gatherings which it holds periodically in its church or chapel. (Idem).

A church, sect, or religion is in good repute if it holds religious services or gatherings periodically in its church or chapel, complies with the requirements of the Act and Administrative Order No. 31 (1928) of the Secretary of Justice, and when there is nothing in its teachings, principles, and practices that is contrary to the common weal. (Idem, sec. 3) "Common weal" is the sound, healthy, or prosperous state of the community. It is the common well-being and prosperity of the people. With regards to churches, sects, or religions that appear in the Census of 1918, there is a presumption that they are in good repute, (Idem) and with regards to churches, sects, or religions which do not appear in the Census, if there is any doubt as to their good reputation, the question of their good reputation may be proved by the certificate of the Mayor and the Chief of Police of the City of Manila or of the Provincial Governor and the Chief District Inspector of the Philippine Constabulary, as the case may be. (Idem). When any church, sect, or religion appoints priests or ministers who do not celebrate nor hold religious gatherings or services periodically but whose activity appears to be that of solemnizing marriage only, it is considered, prima facie, in bad repute and the Director of the Philippine National Library is justified in refusing or cancelling the authorization to solemnize marriages to its priests and ministers. (Idem, Sec. 4). What proofs are necessary to overcome the presumption, we cannot tell. It lies wholly within the discretion of the Director of the Philippine National Library to decide whether the proofs are sufficient to overcome the presumption.

HOW DOES OUR LAW COMPARE WITH OTHER MARRIAGE LAWS?

Similar provisions of our New Marriage Law are found in about eighteen states of the United States. Among them are Arkansas, Delaware, District of Columbia, Georgia, Kentucky, Maine, Massachusetts, Nevada, New Hampshire, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Wisconsin, West Virginia, and others.¹ In Arkan-

¹ May, "Marriage Laws and Decisions in United States".

sas, Delaware, New Hampshire, New York, Pennsylvania and Rhode Island the laws provide that no minister or priest shall be authorized to solemnize marriages until he shall have recorded in office of some civil authorities his license or credentials of his clerical character. But in all those states it is the ministerial duty of the recording civil authorities to record the license and grant authority to a priest or minister who applies for such authorization. No requisite of good repute of the church, sect, or religion of the applicant is required. In Georgia where the Negroes are discriminated, the law provides that ordained colored ministers of the gospel shall celebrate marriage between persons of African descent only, under the same regulations as required for marriage between white citizens.

In Kentucky, no minister or priest can solemnize marriage until he has obtained a license therefor from the county court of the county in which he resides, upon satisfying the court that he is of good moral character, and in regular communication with his religious society, and upon giving covenant with good surety not to violate the law of the state concerning marriage, breach of which covenant is punishable by fine not exceeding \$2000. Such license may be annulled by any county court. In that State a discretion is given to the county court to inquire into the moral character of the applicant but not into the good repute of the church to which he belongs. The court, not any subordinate administrative official, is given the power to cancel such license. For any breach of the applicant's duty, a fine is imposed, besides the cancellation of the authority to solemnize marriages.

In Maine, it is the Secretary of State, the right hand man of the State Governor, that issues the authority to solemnize marriages, but he is not given the power to inquire into the good repute of the church, sect or religion to which the applicant belongs. In Massachusetts the power to cancel authorization to solemnize marriages is given to the State Governor, but such power is given with regards to justices of the peace only who are duly appointed by him, not to priests or ministers. In Nevada there is no provision of law which authorizes the revocation or cancellation of the authority to solemnize marriages.

In Ohio, Oregon, Virginia, West Virginia, Wisconsin and District of Columbia, a minister or priest, upon producing to

the judge of any county in which he officiates, credentials of his being regularly ordained or licensed by any religious society, is entitled to receive a license authorizing him to solemnize marriages.

We can see that in the states where official credentials are required of the priests or ministers, the good reputation of the sect or religion is not inquired into by the officer issuing such license. In Kentucky the good reputation of the applicant is inquired into, not that of the religion or sect or religious denomination or society to which the applicant belongs. Where the law requires such registration of persons solemnizing marriage, it is the ministerial duty of the registering officer to register the applicant's name. No discretion is given to grant or deny such registration of the applicant. If there is any discretion at all, such discretion is given to the judicial officer only, and in such cases the discretionary power of the judicial officer does not go as far as to inquire into the good repute of the sect, church, religious denomination or society of the applicant, but to the personal reputation of the applicant, to his status, and to the authority given him by his church, sect, denomination, religion or religious society. With regards to the power to revoke such authority to solemnize marriage, no power is given to the civil officers except in Maine and Massachusetts. But in Maine, such power is given to the highest official of the State, the State Governor, and for cause, and in the state of Massachusetts, the Governor is given that power with regards only to justices of the peace duly appointed by him.

In the United States, therefore, the States may be divided into groups: those that require official credentials and those that require no official credentials of priests celebrating marriages. In both cases no laws can be found that inquire into the good repute of the religion, sect, church, denomination or religious society of the priest or minister. This is due to the fact that in the United States, as in the Philippines, the principles of separation of the church and the state and religious liberty and freedom are deeply rooted in the very foundation of the government.

In the Civil Codes of Chile, Peru, Germany and Japan nothing can be found which requires the priests and ministers solemnizing marriages to show that the church, sect, or religion to which they belong stands in good repute. In England marriages must be solemnized by a priest or a deacon who

must be a third party to the contract. (38 C. J. 1311) But the foundation of our government is that of the United States where religious liberty is guaranteed by the Constitution.

CRITICISMS AND CONSTITUTIONALITY OF
THE LAW

The power given to the Director of the Philippine National Library to grant, refuse and cancel authority to solemnize marriage is unconstitutional, it being a delegation of legislative power to an executive department. The particular provision of the law is incomplete and leaves to the Director of the Philippine National Library, an administrative officer, the power to complete it. GOOD REPUTE is so broad a term that the law gives an unlimited discretion to the Director of the Philippine National Library to decide whether a church or religion is a proper organization or movement. This particular provision violates the constitutional guaranty of freedom in the exercise and enjoyment of religious profession and worship, and the fundamental principle of separation of the Church and the State.

The Laws: "The Director of the Philippine National Library, upon receiving such sworn statement containing the information required and being satisfied that the church, sect, or religion of the applicant operates in the Philippine Islands and is in GOOD REPUTE, shall record the name of such priest or minister in a suitable register and issue to him an authorization to solemnize marriage * * *." (Sec. 34, Act 3613). With regards to the power to cancel such authority the Law says, "The Director of the Philippine National Library shall cancel the authorization issued to a bishop, chief, priest, pastor, or minister of the gospel of any denomination, church, sect, or religion, on his own initiative or at the request of an interested party, upon showing that the church, sect, or religion whose ministers have been authorized to solemnize marriage is no longer of GOOD REPUTE * * *." (Sec. 35, Id.) What is meant by the phrase "In good repute" or "of good repute" the Law is silent about this. It leaves to an administrative officer the power to complete Act 3613, a delegation not warranted by the fundamentals of a constitutional government.

The governmental power in our political system is divided into three great branches: the legislative, the administrative, and the judicial powers. These powers are distributed

by the constitution to the legislative, administrative and judicial departments of government, respectively. "Although not expressly incorporated in the organic laws of the Philippines, the doctrine of separation of powers has become the pith and core of the system of government in the Islands through judicial construction and legislative enactment. The reason for the adoption of this doctrine is that this government has been modelled after the Federal and State governments of the United States, and consequently the intention of the laws creating it is to follow the constitutional theory inherent in the American system." (Sinco, *Phil. Gov't and Pol. Law*, p. 47).

"The general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act." (Jones Law, Sec. 8 and 12). In the case of *HAMPTON JR. & Co. vs. U. S.* (276 U. S. 394, 72 L. ed. 624 [1928]) Chief Justice Taft says, "The well-known maxim 'delegata potestas non potest delegari' applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our Federal and State Constitution than it has in private law." "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted can not relieve itself of the responsibility by choosing other agencies upon which the power shall be developed, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." (Cooley's *Constitutional Limitations*, 6th ed., p. 137). It is therefore the general rule that the power delegated to the legislature constitutes not only a right but a duty to be performed by it alone without the intervening judgment of another. (*U. S. vs. Barrias*, 11 Phil. 327). To this general rule the exception sanctioned by immemorial practice permits the central legislative body to delegate legislative powers to local authorities. (*Rubi vs. Provincial Board of Mindoro*, 39 Phil. 660).

The Philippine Legislature in giving the Director of the Philippine National Library the power to determine what is GOOD REPUTE of the church, sect, or religion of the applicant priest or minister, has delegated its legislative power by substituting the judgment of the said Director to that of its own. The delegation is not only an omission but a deliberate abdication of the legislative power, for it can be seen in the "Diario de Sesiones" of the Philippine Senate¹ and the House of Representatives² that this question was touched and discussed by the members of both houses. The Act itself does not lay down what considerations and standard the Director should consider and follow in determining good repute. There is no ascertainable standard in the law whatsoever. (*Dowling vs. Lancashire Ins. Co.*, 92 Wis. 63). As it now stands, the Director is guided by Administrative Order No. 31 (1928) of the Secretary of Justice who defines in such Order when is a church, sect or religion in operation in the Philippines; when is it in good repute, and when is it in bad repute.

The term "good repute" is very broad and has a flexible meaning. What is good repute in the opinion of an individual may be bad repute in the opinion of others. This is especially true with regards to religion. Religious beliefs abound in varieties and no one can exactly say that a church, sect or religion measures up to the standard of good repute. The reason is obvious * * * there is no standard at all. Administrative Order No. 31 (1928) of the Secretary of Justice fixes the standard of good repute in these terms, when "there is nothing in its teachings, principles, and practices that is contrary to the common weal." Admitting, without conceding, that common weal is the standard of good repute, who fixed that as the standard? The Legislature left the law incomplete and empowered an administrative officer to fix it.

In the case of *U. S. vs. Ang Tang Ho* (43 Phil. 1) the constitutionality of Act 2868 was put in issue. The Act authorized the Governor-General, with the consent of the Council of State, for ANY CAUSE resulting in an extraordinary rise in the price of palay, rice or corn, to issue and promulgate temporary rules and emergency measures. The Supreme Court held that the law was unconstitutional and there was a delegation of power on the ground that the Legislature does

¹ October 12, 1928, vol. III, pp. 1107-1109.

² October 30, 1929, vol. IV, p. 13335.

not undertake to specify or define under what condition shall the proclamation issue but says that it may be issued for ANY CAUSE and leaves the question as to what is ANY CAUSE to the discretion of the Governor-General—that is to say, that the Legislature itself has not in any manner specified or defined any basis for the order, but has left it to the sole judgment and discretion of the Governor-General to say what is or what is not a cause. If the Legislature cannot delegate such power to the Governor-General who is the supreme executive officer, notwithstanding the fact that the consent of the Council of State must first be obtained, much less can the power to determine what is or what is not a church, sect, or religion of GOOD REPUTE, be delegated to the Director of the Philippine National Library who is only a subordinate executive officer. It must be noted that all those who are authorized in paragraphs (a), (b) and (c) of Section 4 of Act 3613 are either appointed by the President of the United States or the Governor-General with the advice and consent of the United States and Philippine Senate. Consequently, if the Director is given the power to grant, refuse and cancel authority to solemnize marriages to priests, and ministers of any church, sect, or religion, the Legislature would be giving the Director the power of appointment which is so broad that it will place him even above the President of the United States or the Governor-General because the advice and consent of the United States and Philippine Senate will not be necessary.

In the case of *Field vs. Clark* (143 U. S. 649) the Supreme Court of the United States held that the law which authorizes the President of the United States to suspend the provision of an Act which admits free introduction of sugar, molasses, coffee and tea with regards to countries producing and exporting them that imposed exactions and duties on the agricultural and other products of the United States which the President deemed reciprocally unequal and unreasonable, is constitutional. But in that case the court held, "Legislative power was exercised when Congress declared that the suspension shall take effect upon a named contingency." In Act 3613, what is the standard or contingency which the Law fixed for good repute? It is left to the administrative officer the power to complete the law by defining what is the standard of good repute.

The doctrine of delegation of powers does not prohibit the Legislature from seeking assistance in the other departments specially the executive department. The three branches of government are independent but are coordinate parts of one government. Each department may invoke the action of the other in so far as the action invoked shall not be an assumption of the constitutional field of action. (*Hampton Jr. & Co. vs. U. S.*, 276 U. S., 394, 72 L. ed. 624.) The constitutional prohibition of delegation of legislative power should be zealously protected. (*Rubi vs. Provincial Board of Mindoro*, 39 Phil. 660). In granting the Director of the Philippine National Library such broad powers the Legislature has abdicated its duty imposed by the Constitution, and the Executive department has assumed a legislative power. It may be argued that the Legislature has the general legislative power and can give the Director of the Philippine National Library such power to grant, refuse and cancel the authority to solemnize marriage. That is true, but in so far only as the Legislature does not abdicate a constitutional duty which the Constitution intended the Legislature to do without the intervening mind of any other department. Judge Ranny of Ohio Supreme Court says, "The true distinction therefore is between the delegation of power to make law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (*Cincinnati W. & Z. R. Co. vs. Clinton County*, 1 Ohio St. 77, 88). A law in order to be valid must be complete in all its terms and must not leave anything to the judgment of other parties to complete it. (*U. S. vs. Ang Tang Ho* (supra); *Dwelling vs. Lancashire Ins. Co.* 92 Wis. 63).

The Law grants an arbitrary power upon the Director of the Philippine National Library, an executive officer, and allows him, in execution of the law to make unjust discrimination against different churches, sects and religions in the Philippine Islands. Such law is clearly a void delegation of power. (*Village of Little Chute vs. Van Camp*, 136 Wis., 526; 128 A. S. R.). It may be alleged that the Director is supposed to be just and reasonable in his determination of the GOOD REPUTE and that it is presumed that he will do his duty well. The nature of the power is so arbitrary from its very nature that the Director of the Philippine National Library cannot

help discriminating against religious organizations in determining the good repute. In the example given before, suppose that the Director of the Philippine National Library refuses to grant the authority to the priests or ministers of such strange sect, is there any one who can legally prevent him from refusing the authorization to solemnize marriages? Under the Law he is given the absolute discretion to determine the good repute of the church, sect, or religion. That would place any church, sect or religion in a dangerous and precarious condition when its beliefs are not in accord with the beliefs of the Director of the Philippine National Library, for it is not impossible that a Director may be a fanatic. Mandamus will lie only to force the Director to exercise his discretion, not to force him to decide in a certain definite manner, as has been decided many times by the courts of justice. The court cannot, in order to bring it within the fundamental law, amend the law by construction. (*Yu Cong vs. Trinidad*, 271 U. S. 500; 70 L. ed. 1059).

The most important principle that the Act violates is the constitutional guaranty of freedom of religion together with the principle of separation of the Church and the State. In fact in the discussion of this particular provision of the law in the Philippine Senate this is the main objection presented against the use of the phrase "and is in good repute." The Jones Law provides: "That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever allowed, and no religious test shall be required for the exercise of civil or political rights."

Religious freedom or the separation of the Church and the State is not new in this country. The Constitution of Biacnabato of 1897 and the Constitution of the Philippine Republic of 1899 recognized this principles. The Treaty of Paris provides: "The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion." (Art. X) The constitutional guaranty therefore does not come from Congress only but is one of the conditions upon which the Philippines was ceded by Spain to the United States.

What does "free exercise of religion" mean? Following the condition prescribed in the Treaty of Paris and the funda-

mental principles of the United States Government. President McKinley instructed the Philippine Commission "that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever allowed." The instruction further directs "that no ministry or religion shall be interfered with or molested in following *his calling* and that the separation between state and church shall be real, entire and absolute." That, according to President McKinley, is the meaning of "free exercise of religion." The Philippine Bill and Jones Law reproduced their main constitutional provision establishing religious toleration and equality in similar language as that provided for in the Treaty of Paris and the Instruction of President McKinley to the Philippine Commission. This constitutional guaranty has not only established religious tolerance but religious equality. (Cooley, Constitutional Limitations, p. 572)

Now, the Director is given the power to grant the authority to solemnize marriages to priests or ministers WHEN HE IS SATISFIED that such church, sect, or religion of the applicant operates in the Philippines and is in GOOD REPUTE. The Director will have to decide whether a church, sect, or religion is a proper organization or movement. It is unquestionable that such inquiry would be a violation of the constitutional guaranty that no law shall prohibit the free exercise of religion, and enjoyment of religious profession and worship without discrimination or preference, shall forever be allowed. Invariably, every church, sect or religion prescribes the form and requisites of its marriage institution and appoints priests or ministers one of whose duties is to solemnize marriages. The Jones Law guaranties that such a religious profession shall be forever allowed. Act 3613, however, gives the Director of the Philippine National Library the authority to investigate whether such religious profession shall be allowed or not.

It may be argued that under the police power of a state, the government is justified in adopting any measure which is necessary for the protection of public interest and the promotion of general welfare. But the exercise of the police power is justified only when the interest of the public, not a particular class, or individual, requires the exercise of such power; and

when the means employed to accomplish the end sought to be achieved are reasonably necessary and are not unduly oppressive upon individuals. (Sinco, Phil. Govt. and Constitutional Law, p. 291). The law granting the Director of the Philippine National Library such power may be demanded by public interest, but certainly the means employed to accomplish the end sought to be achieved are unreasonable and oppressive. It lies entirely within the discretion of the Director of the Philippine National Library whether a church, sect, or religion is of good repute or not. That is, oppressive and arbitrary.

Let us take the example cited above. The members cannot be called Mohammedans because their religion is very different from Mohammedanism. Neither can they be called pagans because they are not uncivilized like the Igorots, Negritos, and Ifugaos. Pagans in the sense that is used in this Act refers to the degree of civilization and culture, for in section 25 it says, "when the state of culture and civilization of the Mohammedan and pagan inhabitants of said provinces shall warrant." Should the Director grant authority to solemnize marriages to the priest of this strange sect, remembering that in 1925 the government prohibited them from solemnizing marriages?

A church, sect or religion is a collective term and its good repute cannot be determined by the acts and conducts of its priests, ministers or dignitaries, much less from the conducts of its members. However unworthy the priests and ministers of a church or sect may be such would not justify the Director to declare that such church, sect or religion is not in good repute when there is nothing in its canons and doctrines that is against morality.

In order to determine whether there is nothing in the teachings, principles and practices of the church, sect or religion which is contrary to the common weal as defined in the Administrative Order No. 31 (1928) of the Secretary of Justice, the Director of the Philippine National Library must necessarily examine the doctrines and canons of such church, sect or religion. That is tantamount to a violation of the constitutional guaranty that no religious tests shall be required for the exercise of civil or political rights. If such action should be allowed and sanctioned, it would give the Director of the Philippine National Library the power to establish religions

whose priests and ministers are privileged to solemnize marriages. "No man in religious matters is to be subjected to the censorship of the State or any public authority." (Cooley, Constitutional Limitations, p. 577). "Of these questions human tribunals, so long as the public order is not disturbed, are not to take cognizance, *except as to the individual*, by his voluntary actions in associating himself." (Cooley, Constitutional Limitations, p. 571). If the tribunals cannot do it, the more reason why a mere chief of a bureau can not examine the doctrines and canons of such sect to determine its good repute for the purpose of the authorization to solemnize marriages.

Cooley says. "Whatever establishes a distinction against one class or sect is, to the extent to which the distinction operates unfavorably a persecution; and if based on religious grounds, a religious persecution. The extent of the discrimination is not material to the principle; it is enough that it creates an inequality of right or privilege." (Cooley, Constitutional Limitations, p. 575). Such refusal to grant or the cancellation of the authority to solemnize the marriage would operate to discriminate and would be a religious persecution. "Religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions." (8 Jefferson's Works, p. 113)

Good repute is ordinarily determined by the general reputation, but with regards to religions, general reputation cannot establish good repute, much less the opinion of the Director of the Philippine National Library, the Mayor of Manila, the Provincial Governor, nor the Chief District Inspector of the Philippine Constabulary. The reason is that it is clearly in conflict with the spirit of religious freedom. Men who differ in their religious opinions will naturally discredit the doctrines and canons of each others' religion. "Death to the infidels" was the battle cry of the Cruzaders. "They are infidels" is the slogan in this peaceful struggle for religious domination. Should good repute mean the approval of the majority there would be religious intolerance, not religious freedom. The exercise by the Director of the power given by the law would establish a distinction against a religious class and would destroy the equality which the Constitution seeks to establish and protect. In *State ex. rel. Weiss vs. District Board*, (76 Wis. 177; 44 N. W. 967, 975) the question as to whether a mandamus will lie to

compel teachers in a public school to discontinue the practice of reading in the school selections from the Bible, the Court granted the writ and held, "When, as in this case, a small minority of pupils in the public school is excluded, for any cause, from a stated school exercise, particularly when such cause is in apparent hostility to the Bible which a majority of the pupils have been taught to revere, from that moment the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion and subject to reproach and insult. But it is sufficient reputation to the argument that the practice in question tends to destroy the equality of the pupils which the constitution seeks to establish and protect, and puts a portion of them to serious disadvantage in many ways with respect to others." The denial of the authorization to solemnize marriage from the priests or ministers of a church, sect or religion would place it in public aversion, and would subject it to public distrust, ridicule and reproach. Such denial would put a serious disadvantage in many ways with respect to these religious classes who are denied the authority.

It may be argued that the power to solemnize marriage is a privilege, not a right of the church, sect or religion. Let us grant, without conceding, that it is so. Shall the government grant a privilege to one sect or religion and deny the same privilege to the others for the reason that their doctrines, practices and teachings differ? To prohibit such action is the very purpose of the provision of the Jones Law which says that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights."

Pursuant to the Act, the Director decides that a church, sect or religion that operates in the Philippines and composed of "non-pagans" is not in good repute. He refuses to grant its priests the authority to solemnize marriage; but the doctrines and canons of that church, sect or religion prohibit solemnization of marriage by any other person, not even civil authorities, except their own priests and ministers. Can the government force the parties to the marriage to have it solemnized by the justice of the peace or any other civil officer authorized to solemnize marriages, or by a minister of any other church, sect, or religion? That would be a restraint upon the

expression of religious belief and the free exercise of religion according to the dictates of conscience. The power of the government is not to establish articles of faith, or forms of worship, by the force of laws. Without penalties laws are of no force at all and penalties in this case are absolutely impertinent because they are not proper to convince the mind. Nothing but light and evidence can work a change in men's religious beliefs. The evident result of such a situation would be to encourage the so-called "common law marriages" which is contrary to the very foundation of Filipino morality and conscience which the law should zealously protect, uphold and maintain.

In the discussion of this particular provisions of the law in the Philippine Senate,¹ Senator Osias presented an amendment striking out the phrase "y goza de buena reputacion." No less than Senate President Quezon supported and argued in favor of the amendment. Senator Osias argued that the power to determine the good repute of a church, sect, or religion is foreign in the office that the Director of the Philippine National Library occupies; that that power cannot be given to any director of any governmental office; that it would place a church, sect or religion in a dangerous and precarious condition when its beliefs are not in accord with the beliefs of the Director of the Philippine National Library; that it would violate the principles of Separation of the Church and the State; that it is possible that a Director of the Philippine National Library may be a fanatic, "un proselito fervoroso de sus creencias religiosas," and may deny the authority to priests or ministers who profess beliefs contrary to his, under the pretext that their churches, sects or religions are not in good repute. Senator Quezon is of the same opinion but emphasized much the doctrine of separation of the Church and the state.

In answer to the question of separation of Church and the State, the proponent of the Bill (Senate Bill No. 70, 1928), Senator Vera, also the author of the Act, said that the principle of separation of the Church and the State is not violated and that the Legislature is only exercising its power to regulate professions. The Senator, however, forgot that religious profession is an exception because the Jones Law expressly provides that the free exercise and enjoyment of religious profession,

¹Diario de Sesiones, Philippine Senate, October 12, 1928; Vol. III, p. 1107-1109.

without discrimination, shall forever be allowed (Sec. 3). The proponent of the Bill further said that this same provision existed in Act 3412 and that until that time (of the discussion of Act 3613) no person, church, sect or religion has ever presented any protest. Again he forgot that a law is not tested by what has been done but what may be done under it. (Walter E. Olsen & Co. vs. Aldanese and Trinidad, 43 Phil. 259)

To support the amendment, President Quezon said: "No se trata, Señor Presidente, de si es el Director de la Biblioteca y Museo de Filipinas cumplirá lealmente ó no con su deber, ó si tendrá conocimiento y discernimiento bastantes para determinar si una iglesia ó secta religiosa goza ó no de buena reputación. Todo esto se puede dar por admitido; sin embargo, la objeción a que se conceda a cualquier funcionarios del Gobierno la facultad de determinar que iglesia ó secta religiosa debe estar autorizada a celebrar matrimonios no queda obviada, porque la objeción estriba premedialmente en el principio basico de que donde existe separación entre la Iglesia y el Estado no debe ingerirse en materias de religion, y desde el momento en que a un funcionario del Gobierno se le conceda facultad para determinar si una iglesia ó una secta religiosa goza de buena reputación, habremos violado la teoria de la separación de la Iglesia y el Estado." (Diario de Sesiones de Senado, vol. III, p. 1108)

The author of the Bill believes that the Government has the power to legislate on matters pertaining to marriage. We agree that the Legislature has authority, with respect to the matrimonial contracts of its own citizens to regulate the qualifications of the contracting parties, the forms or proceedings essential to constitute a marriage, the duties and obligations it creates, (C. J. 1275): but it has no right to violate the principle of freedom of religion and religious beliefs. He believes that there is a general clamor against certain religious sects or denominations or temporary character whose only object is to "engañar a ciertas gentes y poder solemnizar matrimonios." President Quezon very well answered this argument when he said, "Quien fuera de Dios mismo, puede predecir si una religion nueva ha de ser de carácter temporal ó permanente? Quien pudo haber predicho jamas cuando Jesus cruzaba las calles de

Jerusalem, que la religion que el predicará iba a ser eterna como creemos los cristianos que lo será? El Presidente del Comité de Justicia (Senator Vera) sabe muy bien que desde el punto de vista del gobierno romano de entonces, la religion cristiana era una religion no solo de mala reputación, sino destructiva de la sociedad." Moreover, in the exercise of the police power of the state the demand of the public is not the only requisite; the means employed to accomplish the end sought to be achieved should be reasonable. The means employed in this case is not only unreasonable but arbitrary.

The arguments in favor of the amendment striking out the phrase "y goza de buena reputación" from the Senate Bill No. 70 were clear and convincing. Unfortunately the discussion was suspended and when the Senate met the following day, the Bill was approved without further discussion and without voting on the Osias amendment, as was done with all other amendments that were presented.

SUGGESTIONS AND CONCLUSIONS

The evident purpose of the law is to prevent the solemnization of hasty and fraudulent marriages by persons who call themselves "priests" or "ministers" of the gospel of certain church, sect or religion. There was a time when persons who styled themselves as such abound in number in every nook and corner, especially in large cities like Manila. These "priests" had no other business than to exploit the public by solemnizing secret marriages. In the words of its author, the law eliminates "los matrimonios impremeditados, procesos electricos y subrepticios y flagelando", and avoids "la explotación de la primera por un grupo de ministros vergonzantes de religiones baratas una y efimeras otras, que con caratolas de mercachifles en las puertas de sus casas ofrecian al publico por dos denaros la solemnización de matrimonios." To that end section 43 of Act 3613 provides: "Any person who, not being authorized to solemnize marriage, shall publicly advertise himself, by means of signs or placards placed on his residence or office or through the newspapers, as authorized to solemnize marriage, shall be punished by imprisonment for not less than one month nor more than two years, or by fine of not less than

fifty pesos nor more than two thousand pesos, or both, in the discretion of the court." These fake priests and ministers were the source of fraudulent marriages which have wrought destructions to many of our virgins and have sent many to prisons. The law accomplished its purpose by eradicating them. It has not, so far, denied honest, trustworthy and dignified priests and ministers the authority to solemnize marriage, but the validity and merits of the law is not tested by what has been done but what may be done under it. With due regards to the noble purpose of the author of the Law, we say that in his eagerness to achieve the desired end, the author did not foresee that the law would encourage common law marriages, as in fact it has, which are contrary to the very foundation of Filipino morality.

In most of the states of the United States where registration of priests and ministers are required in order that they may solemnize marriages, the registration is a ministerial duty of the recording officer. The public is protected from being exploited by these self-styled priests and ministers, by the punishment which the law imposes upon the violators of the law. To avoid the unconstitutionality and at the same time to accomplish its commendable purpose, the wiser policy would be to take away the discretionary power of the Director of the Philippine National Library to decide what is a church, sect or religion of good repute; to make it a ministerial duty of the Director to issue the authorization to solemnize marriage to priests and ministers of any church, sect, or religion who has complied with the requirements except the requirement of good repute. The amendment presented by Senator Osias striking out the phrase "y goza de buena reputacion" would have taken away this constitutional objection against the law. The law in Kentucky (*supra*) would serve the purpose as a model. It should be remembered that a church, sect, or religion is collective and the law seeks to punish not the church, sect, or religion, but the priests, or ministers who belong to it and who exploit the public. Thus, the law should look into the good repute of the individual, not of the church, sect, or religion.

After the foregoing discussions, we conclude that the power given to the Director of the Philippine National Library to grant, refuse, or cancel authority to solemnize marriage to

priests or ministers of the gospel of any church, sect, or religion of any denomination is unconstitutional because it is a delegation of the legislative power; because the law is incomplete and leaves an executive officer to complete it; because it gives the Director an arbitrary power to discriminate between one religious class and another; and because it is a violation of the constitutional guaranty of freedom of religion. Even admitting that the law is constitutional it encourages common law marriages which should be discouraged in this country, being contrary to Filipino morality and conscience.