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HOLDING COMPANIES UNDER PHILIPPINE LAW

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I. INTRODUCTION

A. NATURE AND HISTORY.

A holding company as applied in American jurisprudence, is a corporation formed pursuant to statutory authority for the express purpose of controlling other corporations by the ownership of a majority of their stock. It is organized not to do business itself but to purchase and hold the stock of other corporation in order to secure control, is rather new in existence. Before, the same result was brought about by the actual consolidation of the various corporations or a sale of the property of one to the other. It was impracticable, however, because the statutes of some states where they were organized did not authorize a direct consolidation or sale. And with such a vast body of stockholders, there were many minority stockholders, who for a profit or principle, would institute injunction suits against a consolidation or sale. A plan was therefore devised for organizing a corporation for the purpose of owning and holding a majority at least of the stock of the various corporations which it was desirable to unite. (II Cook on Corporations, Sec. 317)

Holding corporations were impossible under the common law and any attempt of a corporation to control another corporation by holding a majority of each of the stock would have been held *ultra vires*. The reason for this illegality is that the purchase of stock in another corporation involves participation in a new and distinct enterprise. A corporation may make such a purchase only when the power can be found on statutes or can be implied as incidental to the powers expressly granted.

New Jersey was the first state to enact statutes specifically granting corporations to organize under its laws the power

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to hold the stock of other corporations. The law was adopted in 1888. It opened the way for the great industrial combinations. Therefore, similar combinations had been attempted by the appointment of a board of trustees in whose hands was placed a majority of the stock of the corporations to be controlled. These trustees then elected the board of directors that managed their respective corporation in the common interest. This arrangement was however declared illegal and was abandoned for the holding corporation (State v. Standard Oil Company, 49 Ohio St. 137; People v. Sugar Refining Company, 121 N. Y. 282). At the present time holding companies are permitted by express provision or by implication in a large majority of States of the Union: (Corporation Procedure by Conyngton, Bennet & Conyngton).

In effect a holding corporation may be similar to a consolidation or combination but they are not the same. The first is one company in origin which is formed to own stocks in other corporations to secure control while the latter springs from different corporations. In other words, a consolidation or combination is formed by the union of different corporations organized for the same similar purposes.

Under the Philippine Law, it seems that holding companies are referred to with regards to the holding of stock in other corporations as well as the holding of property real and personal. This may be accounted for the fact that Article 13 of Act No. 1459, known as the Corporation Law, includes them together in one section. It may also be due to the fact that the holding of property is one of the powers incident to corporate existence. The holding of stocks in other corporation comes, therefore, within the general powers.

B. LEGAL DIFFICULTIES.

There are certain difficulties in carrying out the plan of a stockholding corporation. The reason and object of such corporation is one thing, and its legality is another thing. The legal principle that a corporation does not possess the inherent power to purchase the stock of another corporation does not apply, because it is easy to insert in a certificate of incorporation an express power to purchase, hold and dispose of the stock of other corporations. Under the laws of many states it is permissible to organize a corporation for that purpose.

There are other legal difficulties which can not be so easily disposed of. For instance where it is illegal for two competing

railroads to consolidate, the law will not allow one of them to purchase the stock of the other (Penn R. R. v. Commonwealth, 7 Atl. 368 [Pa. 1886] nor will it allow one of them to guaranty the bonds of the other in consideration of the stock of the latter being held for the benefit of the stockholders of the former (Pearsall v. Great Northern Railroad, 161 U. S. 646, 761-1896). Where a railroad company has a subsidiary coal company which latter handles one-fifth of the anthracite coal production of the country, and to avoid the anti-trust act they organize a sales company the stock of which is subscribed for the railroad stockholders and paid for from a dividend declared by the railroad company, and then the sales company handles the product of the coal company, the whole plan is illegal under the anti-trust Act. (U. S. v. Lehigh Valley R.R., 254 U. S. 255.)

In general holding company, whether a railroad company or a purely holding, cannot legally hold stock in another company where competition is suppressed in violation of the common law or the statutes. In the Philippines we have no definite law regarding this matter but Sec. 20 of Act No. 3518 may be applied. The said Act prohibits a corporation engaged in commerce to acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired, and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. A holding company's calculated purchase of a controlling interest in two competing railroads and two coal companies, may be in violation of the anti-trust Act of Congress of July 2, 1890, especially where it has contracts with competitors in the coal business, even though it may not be illegal in itself for a railroad company to own stock in a mining company (U. S. v. Reading Co., 253 U. S. 26). Where to truck line railroads are practically parallel and have competed for a substantial amount of thorough traffic, even though several hundreds miles apart, one of them cannot legally acquire control of the other by having one of its subsidiary companies acquire 46 per cent of the capital stock of such competing railroad company, this being a dominating interest in the stock, leading to directors and officers in common between the two companies and the suppression of competition in violation of the anti-trust Act of Congress (U. S.

v. Union Pacific R. R., 226 U. S. 61). Often a minority interest is a controlling interest; and in fact, most great corporations are controlled by those who own only a minority interest, and often a very small minority interest. Another difficult question is whether an individual may own a controlling interest in the stock of two competing railroads or industrial corporations. In the Philippines we do not have any specific law touching this question so we have to follow the trend of American decisions and the general principles of law. The present decisions are that he may (U. S. v. Delaware R. R., 238 U. S. 516), but there is a line of decisions to the effect that several stockholder in competing companies cannot pool their stock into a trust to prevent competition, and in ordering the distribution of stocks held by a corporation, in violation of an anti-trust law, the same individuals will not be allowed to control the competing corporations. (U. S. v. Union Pacific R. R., 226 U. S. 470).

C. ADVANTAGES OF HOLDING CORPORATIONS.

The advantages of holding corporations are:

1. It furnishes a readily available and effective method of controlling one or more corporations.

2. It may be employed to perpetuate this corporate control. Financiers holding the control indefinitely may transfer their shares to a holding corporations. Their retirement or death will not then affect the control. In most cases the holding corporations may with advantage take the plea of a voting trust as its duration need not be limited as to time.

3. The holding company permits capitalization of controlling stock interests. For instance, the absolute control of a corporation having a capital of ten million dollars requires under ordinary condition a permanent investment or more than five million dollars assuming the stock worth par. If a holding corporation is formed with a capital equal to this required investment the same number of shares may be purchased by it and will carry control of the ten million dollar corporation.

4. The holding corporation may be used to form an effective organization of "parent company" and subsidiaries, for conducting enterprise that require operating companies in many states. (Corporation Procedure, by Conyngton, Bennet & Conyngton).

II. Laws Involved

A. PHILIPPINE LAWS.

Act No. 1459 otherwise known as the Corporation Law enumerates in article 13 the powers of a corporation. In this work, however, we are concerned only with paragraph 13 of the said article. Article 13 paragraph 5 provides:

"To purchase, hold, convey, lease, let, mortgage and encumber and otherwise deal with such real and personal property as the purposes for which the corporation was formed may permit and the transaction of the lawful business of the corporation may reasonably and necessarily require unless otherwise prescribed in this act: *Provided*, That no corporation shall be authorized to conduct the business of buying and selling lands or be permitted to hold or own real estate except such may be reasonably necessary to enable it to carry out the purposes for which it is created and every corporation authorized to engage in agriculture or in mining to own more than fifteen per centum of the capital stock than outstanding and entitled to vote by each of such corporations, it shall be unlawful for any corporation to own in excess of the fifteen per centum of the capital stock then outstanding and entitled to vote of any corporation organized for the purpose of engaging in agriculture or in mining; any stockholder of more than one corporation organized for the purpose of engaging in agriculture or in mining may hold his stock in such corporations solely for investment, and not for the purpose of bringing about or attempting to bring about a combination to exercise, control of such corporations, or to directly or indirectly violate any of the provisions, of the Public Land Law, and any corporation holding stock in any corporation organized for the purpose of engaging in agriculture or in mining may hold such stock solely for investment, and not for the purpose of bringing about a combination to effect control of such corporation, directly or indirectly violate any of the provisions of the Public Land Law. Corporations however, may loan funds upon real estate security and purchase real estate, when necessary for the collection of loans but they shall dispose of real estate so obtained within five years after receiving the title.

Paragraph 10 of the same article states: "Except as in this section otherwise provided, and in order to accomplish its purpose or purposes as stated in the articles of incorporation, to acquire, hold, mortgage, pledge or dispose shares, bonds,

securities, and other evidence of indebtness of any domestic or foreign corporation."

Later Act No. 3518 was passed. Section 20 of the said Act provides: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporations whose stock is so acquired, and the corporations making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly or any line of commerce.

"No corporation shall acquire directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporation, or any of them, whose stock or other share capital is so acquired, as to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Section 21 of the same Act provides: "Section 190A is hereby amended to read as follows:

Section 190A—*Penalties.*—The violation of the provision of this act and its amendments not otherwise penalized therein, shall be punished by a fine of not more than five thousand pesos and by imprisonment of not more than five years, in the discretion of the court. If the violation is committed by a Corporation, the same shall upon such violation being proved be dissolved by quo warranto proceedings instituted by the Attorney-General or any provincial fiscal by order of said Attorney-General: *Provided,* That nothing in this section shall be construed to repeal the other causes for the dissolution of corporations prescribed by existing law, and the remedy already existing."

By virtue of statutory authority gathered from the above provisions it is now clearly permissible to organize under our law the investment trusts, so called, which have become in recent years, so common in the United States. Such corporations are organized, usually for the exclusive purpose of buying the shares and bonds of other corporations, to be held as an investment, and the sale of their own shares to investors.

Corporations authorized by their articles of incorporation to hold the shares of other corporations have often been used

as a means to control management. This may be done now under our statutes; and a holding corporation, as an investment for this purpose, is in many respects more efficacious than a voting trust and pooling agreement. A voting turst is by statute limited to five years while a holding corporation may exist for fifty years. The stock of a holding corporation may be so classified as to vest the voting power, and thru it, the control of the principal corporation, in a very fixed hands. The principal disadvantage is that the dividends of both the holding and the operating corporations are subject to income tax.

If, however, it should be attempted to control more than one corporation thru the devise of a holding company, obstacles will be encountered. The amendatory act of 1928 (Act 3518, Sec. 20) provides that no corporation "shall acquire all or any part of the stock of "two or more corporations engaged in commerce,—or tend to create a monopoly in any line of commerce," and it further provided therein (Act 3518, Sec. 22) that nothing contained in the amendments shall be construed as a modification of any of the provisions of the statute (Act 3247) prohibiting monopoly and combinations in restraint of trade. Neither in the Corporation Law nor in Act 3247 is there a statutory definition of the words "commerce" or "trade". They are species of commercial intercourse by the sale and exchange of commodities, and the transportation of persons by land and sea. Manufacturing is not commerce; but to the extent that it undertakes the sale of its own products a manufacturing corporation is engaged in commerce.

The statute (Sec. 13, par. 5, Act 1459) imposes other specific limitations upon inter-corporate stockholding. No corporation organized to engage in agriculture or mining may be "in anywise interested" in any other corporations organized in either of these activities. No corporation for whatever purpose organized, may own more than fifteen per centum of the outstanding voting stock of a mining or agricultural corporation or hold such stock for any purpose but investment.

As a number of Philippine Corporations, organized prior to the 1928 amendments, held shares in their list of shareholders, and questions concerning such stock ownership may still arise a consideration of the former law on the subject may be of something more than historic interest. The prevailing opinion expressed in the decisions of the courts of the United

States is that a corporation has no power to purchase or hold stock in another corporation unless one of the activities permitted by its articles of incorporation and the governing statute expressly authorizes the exercise of such power, or unless the circumstances are such that the transaction is a necessary means to the accomplishment of one or more of the lawfull purposes of the corporations. (7 R. C. L. Corp., Par. 535. 36 A. S. T. 136, 70 A. B. R. 164, De la Vergne vs. German Savings Institution, 175 U. S. 40, 44 L. Ed. 66).

Before the 1928 amendments, our statutes were silent on the subject. It contained an express authorization or prohibition of the purchase of shares in one corporation by another. The prevailing opinion in the United States Courts is that the power does not exist unless it is expressly conferred by the Statute and that in the absence of such statutory authority the power cannot be acquired by including it in the purpose clause of the article as one of the subjects of a corporation organized under a general incorporation act (People v. Chicago Gas Trust Co., 130 Ill. 266).

It may be taken for granted that if the purchase and holding of shares in another corporation is not included within the activities embraced by the purpose clauses of such transaction cannot lawfully be undertaken except under the exceptional circumstance to be considered hereafter. The important question is whether such activities might have been lawfully undertaken by the Philippine Corporation prior to the 1928 amendments, if expressly included within the purpose clause as the undertaking, or one of the undertakings for which the Corporation was created. If the proper interpretation of the Corporation Law, as it was prior to the 1928 amendments involves the conclusion that it did not authorize the formation of other corporations the inclusion of the statement of such a purpose in the articles would have been futile.

The statute (Corporation Law, Sec. 14) provides that no corporation created by its authority shall possess or exercise any corporate powers except those conferred by the act and such others as are necessary to the exercise of the powers so conferred. The general grant of powers to corporation is contained, in Sec. 13 of the Statute. It provides *inter alia* that every corporation has power "to transact the business for which it was lawfully organized" and to that end to purchase, sell and otherwise deal with such real and personal property as the

purpose for which the corporation was formed may permit, and the transaction of the lawful business of the corporation may reasonably and necessarily require unless otherwise prescribed by this act.

The statute and the Organic Acts, during the period here under consideration specially prohibited corporations from engaging in certain classes of business and imposed definite limitations upon the scope of their activities with respect to other business. It was nowhere expressly provided that corporations should not engage in the business of purchasing, owning, and dealing, in the shares of other corporations. It would seem therefore, that the whole question is whether such dealings in the shares of other corporation constituted a business for which a Philippine Corporation might then be "lawfully organized".

There was one provision in the Philippine Statute which might have been construed as an indication of an understanding on the part of the legislature that corporations created pursuant to its authority might hold stock in other corporations. It was provided by the Corporation Law as it stood prior to the 1928 amendments (Sec. 13, par.5) that "it shall be unlawful—for any corporation organized for any purpose except irrigation to be in anywise interested in any other corporation engaged in irrigation or in mining".

This language which had been carried into the Corporation Law verbatim from Sec. 75 of the Philippine Bill was susceptible of the construction that the legislature considered that without such express prohibition, corporations organized under the act might become "interested in other corporations and that it was intended to permit the acquisition of such interest, except with respect to corporation engaged in agriculture or mining, and, of course, the normal method of becoming so interested would be by the purchase or acquisition of stock. The inference is even stronger that corporation organized to carry on the business of supplying water for irrigation might become interested in other corporations, including corporations authorized to engaged in agriculture or mining. The words of the statute (Sec. 13) pertinent to this inquiry were, as it stood before the 1929 amendment—"Every corporation has the power—to transact the business for which it was lawfully organized—Provided that—it shall be unlawful for any corporation organized for any purpose except irrigation to be in any-

wise interested in any corporation engaged in agriculture or in mining."

The purpose of a provision or exception is to restrict the scope of the preceding language, to except nothing which would otherwise be within (Lewis Sutherland Statutory Construction, 2nd Edition, par. 351). When there is a grant in general words. such as in the case under consideration, the grant to corporations to engage in the business for which they are "lawfully organized" followed by a saving of particular things, there is a strong implication that what is expected would be within the scope of the general grant or regulations if it had not been excepted, and thus the purview may be given a wider scope than it would otherwise have had. To quote from the language of Chief Justice Marshall (Gibbs v. Ogden, 9 Wheaton U. S. 191; 6 L. Ed. 1). It is a rule of construction, acknowledged by all that exceptions from a power mark its extent; for it would be absurd, as well as useless, to except from a granted power that which is not granted—that which the words of the grant would not comprehend."

Upon this principle if the business of holding and dealing in the shares of corporations, a lawful business for individuals and partnership was not one of the business for which corporations might be lawfully organized what would have been the occasion for the express exception in the former law, by way of proviso that it should be unlawful for any corporation organized for any purpose except irrigation to be in anywise interested in any other corporation engaged in agriculture or in mining.

It is of some significance that the Philippine Legislature had on several occasions anterior to the 1928 amendments to the Corporation Law when granting special charters to corporations expressly conferred the power to buy, hold and deal in the shares of other corporations. The Bank of the Philippine Islands, (Act No. 3330) is empowered to engaged in the business of "buying, selling and otherwise negotiating securities." The Philippine National Bank (Act No. 2738, Sec. 10) is authorized to invest part of its capital in shares of the stock of certain other banks. The National Development Co. (Act No. 2849, Sec. 2) is empowered to purchase, hold, deal in shares while owned by it. This may be regarded as an indication that the Philippine Legislature did not consider such stockholding contrary to public policy.

Trust companies have always, under our laws, been authorized to accept any legal trust for the holding of any estate, real or personal (Corporation Law, Sec. 134, par. 5). This language includes authority to hold in trust shares of other corporations.

The prevailing opinion in the United States of text-book writers and judicial decision of the subject is that the power of one corporation to hold and own stock in another corporation must be based upon express legislative authorization. This question cannot be regarded far from serious doubt. Even by those courts which deny to corporations the right in general to own and hold shares in other corporations without express legislative authority, it is held that they may acquire such shares in payment of an antecedent indebtedness. It has been held furthermore that even when there is such an express or implied prohibition against holding such shares the prohibition does not apply to the acceptance in good faith, of the stock of other corporations in payment of a debt. (R. C. L. Corporations, par. 538)

1. *Ownership and Control of Real Estate.*

In addition to the specific restrictions to which agricultural and mining corporations are subject, all corporations are subject to limitations in regard to the ownership of real estate. The Philippine Bill (Sec. 75) provided that no corporation might be authorized to "conduct the business of buying and selling real estate" or be permitted to hold or own real estate except such as may be reasonably necessary to enable to carry out the purpose for which it was created. These restriction was not included in the Jones Law, and might have been abolished by the Philippine Legislature had it seem fit to do so. The amendments (Act No. 3518) to the Corporation Law retained in Sec. 13, par. 5, the rule that no corporation shall be permitted to "hold or own real estate except as such may be reasonably necessary—for its corporate purpose but the prohibition upon buying and selling of real estate is now limited to such dealing in "public lands". This modification took effect upon the ratification of the amendments (Act No. 2518, Sec. 23) by Congress in 1928. Public land is the property of the State, until it has been sold in a manner authorized by law, and then it becomes public land. As long as any land continues to be public, it can be sold only by entity capable of giving title

to a grantee. The buying of public land with a view of its future sale is not likely to be made a business, even without the prohibition, as one purchase of the maximum permitted area exhausts the buying rights of any corporation (Act No. 2874, Sec. 23). The only restriction upon the area of land which may be sold by a corporation is that it shall not be more than is "reasonably necessary" to a corporation organized to engage in the business of buying and selling real estate, which must depend largely upon the extent of its available capital. No time limit is placed upon the period during which the land bought by such corporation may be held before it is sold. The limit of one thousand and twenty four hectares embodied in the Corporation Law (Sec. 13, par. 5) applies only to "corporations authorized to engage in agriculture."

Before the 1928 amendments, a corporation engaging in business of buying and selling real estate might be dissolved upon quo warranto proceedings at the instance of the government or, in the discretion of the court, it might be ousted from the user of the privilege unlawfully usurped by it (Gov't. of P. I. v. Phil. Sugar Estate Co., 38 Phil., 15). The violation of the Statute counted not in the occasional sale of real estate by the corporation as an incident to its principal business but in the purchase of real estate for the purpose of reselling it as a business. The word "conduct" involves the idea of continuity (Whitaker v. Rafferty, 38 Phil. 508).

The restriction of a corporation to the ownership and holding of such real estate only as may be reasonably necessary to enable it to carry out the purposes for which it is created presents some difficulties as there may be differences of opinion as to its extent. The question was considered by the Supreme Court in the case of the Government of P. I. v. El Hogar Filipino (50 Phil. 399) in which it was considered on behalf of the Government that the defendant corporation had violated the restrictions of the Corporation Law relating to the holding of real estate by purchasing a building lot in the City of Manila and erecting on it an office building containing a space in excess of that required by its own purposes. The court held that the purchase of this lot was reasonbly necessary to the development of the business of the corporation. It was permissible for the corporation to erect upon it a building adequate to the value of the land altho the office space thus made available was in

excess of what is needed by the corporation for its own business.

As a corporation may own all the real estate which is reasonably necessary for the accomplishment of its lawful purposes, the control of more by leasehold, usufruct, use, trust, or any other devise would be an unlawful attempt to exercise corporate powers, in excess of those conferred or reasonably incident thereto. A lease of land for a long term of years is for nearly all practical purposes equivalent to its ownership and to permit a corporation to hold by such a lease land in excess of that which it may lawfully own, would be to permit the accomplishment by, of that which cannot be lawfully done by direct means. The prohibition of the owning and controlling of real estate by corporations in excess of that reasonably required by them does not prevent the temporary holding of such property coming into the hands of the corporations in the ordinary course of business. Corporations are expressly authorized to loan money upon real estate security, and may purchase real estate in connection with the proceedings for the recovery of loans made by them; but they are required to dispose them within five years after taking title to it (Gov't. of P. I. v. El Hogar Filipino, 50 Phil. 399).

The prohibition or restriction of the ownership of real estate by a corporation does not prevent the taking of a mortgage upon real estate to secure an indebtedness, regardless of its area or value constituting such security. Such provisions are intended to prohibit the corporations from directly purchasing and holding real estate, beyond the extent authorized by law, but not to prevent it from acquiring an interest in such property incidentally whenever in the exercise of its lawful powers, it becomes necessary to do so in order to protect its legal rights. (7 R. C. L. Corp., par. 558).

2. *Corporations Engaged in Agriculture*

As a result of the enactment of Congress of the first Organiz Act of the Philippine Government (Philippine Bill, 1902) the following restrictions were placed on the acquisition, ownership, and control of agricultural lands.

(1) Corporations were limited to the purchase of one thousand and twenty-four hectares of agricultural lands (Sec. 15).

(2) Individuals were limited to the purchase for homesteading of sixteen hectares of agricultural (public lands.) Secs. 13 & 15 of Act of Congress of 1902.

(3) Corporations authorized to engage in agriculture were required to be restricted, by their charters, to the ownership and control of not to exceed one thousand and twenty-four hectares of land whether public or private, and no corporation might engage in the business of buying and selling real estate.

(4) It was made unlawful for any member of a corporation engaged in agriculture or mining and for any corporation organized for any purpose except irrigation to be in anywise interested in any other corporation engaged in agriculture or mining.

(5) Any sale of public agricultural lands was "conditional upon actual and continued occupancy, improvement, and cultivation of the premises, sold for a period of not less than five years," during which time the purchaser was not permitted to alienate or encumber the land or the title thereto. (Sec 15, Act of Congress of 1902).

B. AMERICAN LAWS AND INTERPRETATION.

1. *Power To Take and Hold Real and Personal Property.*

In the absence of express restrictions in its charter or in some statute applicable to it, a corporation has the implied power to take and hold property, real or personal by purchase, gift, devise or bequest.

But it can not acquire or hold property for a purpose that is foreign to the objects for which it was created.

In some state there are statutory limitations on its power to take by devise. (Clark: Law of Private Corporations, Sec. 56).

The power to purchase and hold such real and personal property as the purchase of the corporation may render necessary or proper is incident, at common law, to all corporations, unless they are specially restrained by their charter or by some statute. Such power is generally expressly conferred by the charter, but is not at all necessary that it should be, for it is always implied in the absence of express restriction. (Nicoll v. R. R. Co., 12 N. Y. 131; 1 Cumming 1 Cases on Private Corporation 73; Regent of University of Michigan v. Detroit Young Men's Soc., 12 Mechigan 138, etc.) And subject to the same

limitations it may take by gift, bequest, or devise, for an unauthorized purpose (Cox v. Kelly, 133 C. S. 21). Where a charter enumerates the purpose for which the corporation may acquire and hold real estate, it impliedly excludes all other premises. Therefore, where a charter of a railroad company authorized it to take land for right of way, and for certain enumerated purposes connected with the use and mangement of the road, it was held that it could not take lands by donations not for use in connection with the road. In some states the amount or value of property which particular corporations may take is limited by charter or by statute. Such restriction only applies to the value of the property at the time it is acquired and a subsequent rise in value does not require the corporation to dispose of part of it. In the absence of evidence to the contrary, a corporation is presumed to have the right to purchase and hold real estate (People v. La Rue, 87 Cal. 526; 8 Pac. 84).

English statutes prohibited corporations from purchasing lands without license from the king, but this principle was not adopted in the United States except in Pennsylvania. A corporation is not prevented from taking a grant of land in fee by the fact that its period of existence is limited to a term of years. The corporation may sell the land so acquired when it is no longer necessary or convenient (Nicoll v. Railroad Co. 12 N. Y. 121). At common law, none but natural persons can take in joint tenancy. A corporation cannot take such an estate jointly either with another corporation or with a natural person. The reason assigned by early writers is that they hold in different capacities and different rights. (Telfair v. Howe, 3 Rich. Eq. 235).

2. *Personal Property.*

Authority to take and own personal property is sometimes given by the direct words of the corporation's charter or the statutes (Tomay v. Crist, 78 Colo. 477, 226 Pac. 156, etc.) but as will be seen in the following section an express grant of powers is not indispensable. There are as well prohibitions, and restrictions to be found in the laws of the corporation's organization. There are various features of corporation law relating to personal property which lie outside the scope of the present chapter. The authority of a corporation to act and contract, in respect to personal property is not limited to that which has been expressly conferred upon it. Having the incidental or

implied power to do what is fairly within the purposes and objects for which it was created, a corporation may in pursuance of this right and even in the absence of express authorization, acquire personal property in accomplishing such corporaate purpose and property which is reasonably necessary to enable it to carry on its business. Those capacities to take and hold personal property is common to all corporations. Corporations organized for manufacturing or trading purposes are undoubtedly empowered to acquire and own property of this character. (Lyndeborough Co. v. Mass., Ill Mass. 315; Iowa Drug Co. v. Towers, 139 Iowa 72). Within the scope and in the fulfillment of their corporate objects, corporations not formed to engage in business or commercial pursuits have also the right, when not expressly prohibited to take and hold personalty.

In the absence of express restrictions, a corporation has the power to take personal property as collateral security for a debt, whether contracted previously or at the time (Commercial Bank of Manchester v. Nolan, 7 How 508) and it may take such property in payment of a debt due to it, in order to prevent loss, or, for a like purpose, it may levy property at the sale under a judgment, mortgage, or pledge in its favor. (Farmer's and Miller's Bank of Milwaikee v. Detroit and M. R. Co., 17 Wis. 372.) So under proper conditions a corporation may take a chattel mortgage.

3. *Power to Hold Stock of Other Corporations*

Under the common law, which did not permit one corporation to invest in stock of another, holding corporation were impossible and any attempt of a corporation to control another corporation by holding a majority of its stock would have been held *ultra vires.*

This is so because the purchase of stock in another corporation involves participation in a new and distinct enterprise. A corporation may make such a purchase only when expressly authorized to do so by the statute, or when the power can be implied as incidental to the power specifically granted.

Corporation have certain incidental powers of acquiring and holding stock, as discussed in the section that follows. The general limit to purchase and hold the stock of other corporations under which the holding corporations is however derived from legislative enactment either by virtue of statutes express-

ly conferring the power to buy and hold the stock of other corporations or in some states under the operation of statutes permitting the formation of corporations for any legitimate purposes.

In many cases corporation have power to hold stock in other corporations as a power incidental to their main purpose. For instance certain corporations like the great insurance companies that in the regular course of business have large sums for investments, are very properly allowed to invest these in safe stocks. Also in almost all cases corporations are allowed to take corporate stock to save a debt. They may also take stock as collateral to secure an obligation in the usual course of business and this other corporation will promote some of its specified purposes, as when a street car company takes a stock of a hotel company or an amusement park near its lines, or, a manufacturing company takes stock in a power development company from which it will obtain power.

New Jersey was the first state to enact statutes specifically empowering corporations organized under its laws to hold the stock of other corporations. This law was first adopted in the year 1888, and its enactment paved in the way for the great industrial combinations. Heretofore such combinations had been attempted by the appointment of a board of trustees in whose hands was placed a majority of the stock of the corporations to be controlled, these trustees then electing boards of directors that managed their respective corporations in the common interest. This arrangement in a number of important decisions was declared illegal and was abandoned for the holding corporation. (State v. Standard Oil Co., 49 Ohio St. 137; People v. Sugar Refining Co., 121 N. Y. 282).

At present time holding companies are permitted by express provisions or by implication in a large majority of the states of the Union.

4. *The Holding Company as a Stockholder.*

Where a corporation has the right to hold stock of other corporations it has all the rights and privileges as stockholder than an individual stockholder would have.

The holding company occupies a position of very great importance in industrial combination being the means by which many of the great combinations have been effected and controlled. The holding corporation is the instrument by which

most of the great industrial combinations have been effected, and has been generally recognized as the proper legal means to this end. Many of this great industrial combinations have come to grief though the enforcement of the Sherman Anti-Trust Laws. This is not thru any inherent viciousness of the holding company, but merely because it was used for purposes forbidden by the law.

III. Comparative Study of American And Philippine Cases

A. GENERAL VIEW.

The Philippine Law on holding Corporations is still young in development and there is yet no case regarding holding corporations as understood in America, that has been decided by Philippine Courts. In the United States, however, the law has been of full development and numerous cases has been decided by the different state courts. The various judicial decisions are almost similar or uniform in the different states and we can go to them for reference in case similar cases arise in our courts. Most of the American cases involved railroad companies. The Sherman Anti-Trust Act placed some restrictions in the establishment of holding companies.

B. PHILIPPINE CASES.

According to leading Philippine cases on the subject, the holding of real estate for a period over five years and for a purpose other than for which the corporation was organized is contrary to law.

The Philippine Sugar Estate Co. clearly violated the provisions of its charter. Its relation with the Tayabas Land Co. showed that it actually engaged in the business of "holding and owning" real estates which was unnecessary to carry out the purposes for which it was organized.

While the El Hogar Filipino did not violate any provision of its charter. The purpose of the law restricting the corporation to the tenure of five years for the holding of land was to prevent the revival of the entail (Mayorazgo) or other institutions by which land could be kept and its alienations hampered over a long period of time. In the case at bar the delay of the defendant corporation to dispose of the land within five years was explained to the satisfaction of the court.

Neither does the fact of leading the excess rooms considered, a violation of its charter for it is a mere incident in the exercise of the right of ownership. The corporation was merely exercising a good judgment in constructing a large building for its expanding business. (The Government of the P. I. v. El Hogar Filipino, 50 Phil. 399).

C. AMERICAN CASES.

In the case of Booth et al v. Robinson, the court held that one corporation may deal in the shares of another corporation without express authority to do so unless expressly prohibited, or the nature of its business render it improper to deal. (Booth v. Robinson, Richard Cases, 291; 55 Md. 419). In the case of Venner v. New York Central and H. R. R. Co., 160 App. Div. 127, 145 N. Y. Supp. 725, it was held that there is an implied power under section 53 of the Corporation Law to purchase stock in other corporations for purposes of control.

A railroad company may acquire stock in coal and elavator companies when the purpose is to facilitate the business for which it was chartered. (State ex inf. Atty. General v. Missouri Pac. R. Co. et al, 237 Mo. 338, 141 S. W. 643, Richard Cases 294).

The incidental power to invest is to be narrowly construed being an interrogation of the ordinary rule that one corporation can not invest in the shares of stock of another. There would be great practical defficulties if that power to invest in the shares of stock of other corporations can be construed as an unlimited power to initiate or to promote a new enterprise different in character and scope than that for which the original powers were granted. The power of holding shares is a subordinate power, to be so exercised as to enlarge the general scope of the business of the corporation by promoting other distinct corporate enterprises whether in a different field or in the same field. (Robinson v. Halbrock et al, Circuit Court D. Rhode Islands, 1906, 148 Rod. 107).

In the case of D. and J. D., Edwards v. Fairbanks and Gelman et al, the court said that the law does not mean that if a corporation acquires property in a manner prohibited by law, the property thus acquired still belong to the vendor who has received his price, and that it can be seized by his creditors to pay his debts.

In the case of Leasure v. Hillegus (Sup. Ct. of Pennsylvania 1821, 7 Serg. & R. 313, Richard Cases 394) the court held that a corporation has from its nature a right to purchase lands, though the charter contains no license to that purpose.

It is rather improper to be comparing Philippine decisions to that of American decisions on the subject matter because the holding companies as understood in the United States is narrower in its application than in the Philippines. We have to take American cases on all subjects covered by holding corporations under our laws, for authority and not only limit ourselves to the study of stock holding companies. As we said holding companies here covers the holding of property, real and personal, which includes holding of stocks. Inasmuch as our law is undeveloped and unsettled on the matter, it is but natural to look for American cases for authority. Our court has set a precedent in its decisions in two leading cases which we have discussed here.

IV. CONCLUSION

By virtue of the express and implied grant of powers holding corporations may be organized under our laws. Article 13, par. 5, of Act No. 1459, empowers a corporation to "purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real or personal property as the purposes for which the corporation was formed may permit, and the transaction of the lawful business the corporation may reasonably and necessarily require unless otherwise prescribed in this Act * * *" By virtue of the power to hold, holding companies can hold real and personal property provided it is not contrary to its charter, and provided also that it does not violate the limitations prescribed by law. The holding of stocks in other corporations would be possible in the Philippines just as it is within the purposes of the corporation which may be implied from its powers. The holding of real property by agricultural corporations is limited only in so far as the law provides that the area of such real estate must not exceed 1,024 hectares. Corporations may hold property, real and personal, as securities, however, in case of purchase of real estate to recover loans, the same must be disposed within five years.

Sec. 20 of Act No. 3518 somewhat modify the corporation law with regards to the acquisition of stocks in other corporations. Such acquisition would be illegal if the purpose is to

lessen competition, or to restrain commerce in any section or community or create a monopoly of any line of commerce. This amendatory act gives us a difficult situation. Prior to this amendment it is clear that our law permits a corporation to hold stock in other corporation if it is included in the purpose of its charter, but now we could not determine whether this would be possible and not come within the limitation prescribed by the new amendment (Act No. 3518, Sec. 30). We must, therefore, resort to American decisions for authority.

Trust companies are under our statute, authorized to accept any legal trust for the "holding" of any estate real or personal. This language is broad enough to include the authority to hold in trust shares of other corporations.