The Corporation Sole Under The Philippine Corporation Law; Its Nature And Scope

By EMMETT SHEA

(*Concluded*)

II. THE POWERS OF THE CORPORATION SOLE

A. *Powers of the Corporation Sole; In General.*—We have already demonstrated that the right of bishops, chief priests, or presiding elders to organize themselves into a corporation sole is not an inherent, but a derivative and expressly conferred right. Legislative authority, as we have seen, is essential to its exercise, and the body having the authority to bestow such a right or privilege has necessarily the power and authority to select the powers which can be exercised by such corporation sole and to attach such conditions and limitations as it may think proper in the exercise of such powers. Thus our law considers a corporation to be "an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by the law or incident to its existence." (Act 1459, Sec. 1).

When we ascertained and discussed the essential attributes of the corporation sole, we naturally touched upon the powers "incident to its existence." It is pertinent that we now turn our scrutiny to those powers expressly granted by the Corporation Law to the corporation sole. But before going further, the reader must be forwarned that not all the powers granted by our statute to private corporations in general can be exercised by the corporation sole because, firstly, of the nature of such corporation, and, secondly, of the character of the powers enumerated. Thus, as a Georgia Court says, "Every corporation must act according to its nature; a trading corporation must trade, a manufacturing corporation must manufacture, a banking corporation must bank, a transportation company must carry, and a religious corporation must preach, teach, minister to spiritual edification (Note: The Court at this point overshoots the mark. The Church and the corporation must not be confused with one another; the corporation has no spiritual functions but is created solely for the exercise of temporal powers) and private works of mercy and benevolence. A church incorporated as such cannot engage, even for a day, in merchandising, or in spinning or weaving, or in banking or broking, or in transporting freight or passengers. It must derive its income, not from the conduct of any worldly business, but from such property as it may happen to own, and from voluntary contributions. However urgent its needs for money, it cannot rent a farm to make a crop of corn or cotton, nor a store to buy and sell goods nor a livery stable to let out horses and carriages, nor can it hire a vessel to transport the public upon rivers or the ocean."

(Harriman v. First Bryan Baptist Church, 63 Ga. 106, 195; 36 Am. Rep. 117).

B. *The Corporation Sole as a "Trustee."*—Before going into a detail discussion of the powers expressly granted by law to the corporation sole, it is essential that we first determine the exact nature of the relationship of the corporation sole with respect to its religious denomination, society, or church and the temporalities, estates, and properties thereof. It is only by doing so can we have a clear comprehension of the powers, rights, and privileges which it can assume, and the duties and liabilities for which it can be made responsible.

Under the Common Law, corporations sole are of two kinds: "The one when the person has a corporate capacity for his own benefit; the other when he acts only as a trustee for the benefit of others. Of the former kind, Kyd instances the King, Bishops, parsons, etc., of the other, the most familiar instance, says the same author, is the Chamberlain of the City of London, who may take a recognizance to himself and successors, in trust for the orphans." (1 Cow [N.Y.], 670, 683). To which of this classification does the corporation sole under our law belong? Our law provides that upon due incorporation, such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole, and all temporalities, estates, and properties of the religious denomination, societies, or church theretofore administered or managed by him as such bishop, chief priest, or presiding elder, "shall be held in trust by him as a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof." (Act 1459, Sec. 156 as amended). Thus, it is obvious that under our law, the corporation sole is essentially a trustee, holding the temporalities, estate, and properties for the use, purpose, behoof and sole benefit of his religious organization.

In this connection, it is important to note that in England, as Kyd had shown, the bishops and parsons are the most familiar instances of persons having corporate capacity for their own individual benefit. Under our law, this nature of the office of the bishop as a corporation sole is manifestly not recognized because, as we have seen he acts only as a trustee endowed with corporate personality.

The American Courts have laid great stress on the necessity of the creation of the corporation sole before the religious dignitary can acquire property in trust. Thus, in Kain v. Giboney (101 U. S. 362, 365; 25 L. Ed. 813) it was held, "The gift was made 'Richard v. Weelam, Bishop of weeling, or to his successor in said dignity.' It was therefore, in effect, a gift to the office of Bishop. Neither Bishop Weelam, nor any Bishop succeeding him, was intended to derive any private advantage from it. Nothing was intended to vest in him the trust, and that was required to be executed by whomsoever should fill the office of Bishop, only so long as he should fill it, and executed in his character of Bishop, not as an individual. The bequest was practically to a bishopric, and as a bishop is not a corporation sole, it may be doubted whether, at the

decease of the testatrix there was any person capable of taking it." In another court, it was held, "Where the devise interpreted strictly according to the meaning of the words, it would be impossible to carry the intention of the testator into effect, for want of trustees to perpetuate the application of his bounty to the successive objects of it. A devise to an officiating priest and his successors, not being a corporation sole, is against the policy of the law, and void, as tending to a perpetuity." (McGirr v. Aaron, 1 Pen & W [P] 49; 21 Am. Dec. 361). In case the ecclesiastic is not of such a character as to be endowed with corporate attributes, it was held that a trust conferred upon such ecclesiastical functionary "so far as concerns title and ownership of land, is, in itself, not different from a trust vested in any other natural persons. The death of a bishop who simply holds land in trust, like that of any other individual who occupies the position of a trustee, vest the trust in the courts. If a successor in the trust is desired, appeal must be made to the proper court for his appointment." (Dwenger v. Geary, 113 Ind. 106, 116; 14 N. E. 903).

Sometimes, even if the bishop, chief priest, or presiding elder is duly incorporated as a corporation sole, a trust vested on such ecclesiastic has failed to operate. Thus, in Reid v. Barry (93 Flo. 849; 112 So. 846) it was held, "Even if it be conceded that the deed was made to Bishop Moore as Bishop of the Roman Catholic Diocese of St. Augustine, Flo., and his successors in office, and that therefore Bishop Moore and his successor could only take, hold, and use the property in their official capacity as bishop, respectively of such diocese, and the City of Orland, in which the property conveyed was situated, was located within such diocese, that is not enough to create an express trust for the further reason that it cannot be said whether the trust, if any, was for the benefit of the Church in Orland, or thruout the diocese, or for the benefit of the schools or charities of the Church in general. . . In construing the deed, the subsequent use of the property for church, school, and rectory purposes by the Roman Catholic Church in Orlands cannot be looked to, to supply the omission of the deed to state the object or purpose of the trust, or to designate, so as to identify, the beneficiary thereof, in order to make the instrument itself manifest an express trust." However, in Mannix v. Purcell (46 Ohio St. 102; 19 N. E. 572) it was held that when land was conveyed by deed absolute on its face to a named grantee, "his heirs and assigns," it could be shown by extrinsic evidence that such grantee was in fact the archbishop of the Roman Catholic Church for the diocese in which the property so conveyed was located, and that under the cannons and the decrees of such church, the property so conveyed was held by him in trust for the purposes of religious worship and other charitable uses, and that the courts would assume control to prevent the abuse or perversion of such trust.

C. *Power To Acquire and Hold Property.*—Our law gives the corporation sole authority to "purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes." (Act 1459, Sec. 159). In this respect,

our corporation sole enjoys greater powers of acquisition than the common law corporation sole. At common law, corporation aggregate take in succession both real and personal property, but corporation sole could not take goods and chattels for the benefit of themselves and their successors. The reason given was that such movable property was liable to be lost or embezzled, and this would give rise to a multitude of disputes between the successor and the executor, which the law was careful to avoid. (1 Bl. Com. 477). Obviously, this limitation is not recognized by our statute which authorizes the corporation sole to "purchase and hold real estate and personal property." (Act 1459, Sec. 159).

The possession of property, real or personal by the religious denomination, society, or church is the cause of the incorporation of its bishop, chief priest or presiding elder as a corporation sole. As long as the religious organization possesses no property, it can get along very well without troubling with the corporate existence of its high ecclesiastic officer. The acquisition of property will, however, not only raise the question, who is to administer and manage the property, but will also bring such administrator when selected and duly incorporated as a corporation sole into contractual relations with others. With respect to its power to make contracts, particularly in the acquisition and disposition of property, the corporation sole shall be governed by the same rules of contract and obligation as other classes of private corporations. While the corporation sole is different from other classes of corporations, it has no higher status than other societies organized under our corporation law. It is created for the purpose of managing the temporalities, estates, and properties of the religious denomination, society, or church, is endowed with substantially the same rights, subject to substantially the same rules as any other private corporations. In so far as it is authorized to make contracts, it is subject to the ordinary rules of law and equity applicable to any other contracting party. Thus, an American court says, "Religious organizations come before the courts in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the action of their members subject to its restraint." (Watson v. Jones, 80 U. S. 679, 714; 20 L. Ed. 666). Thus, the corporation sole is not to be regarded as an ecclesiastical corporation, in the sense of the English law, which is composed of entirely of ecclesiastical persons, subject to the ecclesiastical judicatories, and dedicated to spiritual edification, but as belonging to the class of private corporations of our civil law, as administered by the ordinary tribunals of justice.

With respect to its power of acquisition of property, the English courts had recognized the unity of the natural person and the corporate entity, and it is for this reason, as we have seen in our discussion of the attribute of artificial personality of the corporation sole, that Maitland attacks with bitter sarcasm the legal fiction treating the bishop as a corporation. Thus, it has been held that "a sole corporation, as a bishop or a parson, could not make a lease to himself, because he cannot be both lessor

and lessee." (Salter v. Growenor, 8 Md. 303, 304). And in another English case, it was held that "If a bishop hath lands in both capacities, he cannot give or take to or from himself." (Wood v. Mayor, of London, Salk. 397, 398; Grant, Corporations, p. 635). An American court has also recognized this apparent inconsistency between the orthodox corporate concept of treating the legal entity entirely separate from its component members and the unity of the individual ecclesiastic and his corporate being. Thus, in Roman Catholic Archbishop of San Francisco v. Shipman (79 Cal. 288; 21 Pac. 830), a decree was rendered for the sale of the land in question for a street assessment, the plaintiff archbishop nor being made a party in his corporate capacity. He thereupon attacked the decree claiming that it could not affect his corporate property, and alleging that the property involved had been transferred from Alemany as an individual to Alemany as Archbishop and corporation sole. To this contention, the court held, "To constitute the possession adverse it must have been open, visible, notorious, and exclusive, and must have been retained under a claim of right to hold against the owner, and in hostility to his title. Here the owner of the legal title, as it appeared of record, was in the actual possession of the property, and, as the sole corporation, he was the beneficiary under the deed conveying him the legal title, and, as the respondent contends, he was also in possession as the adverse claimant, and holding in hostility to himself. So far as the title was concerned, he might have held it either as an individual or is the representative of the church; but the possession must have been by Joseph S. Alemany in person, in either capacity, and his possession in one capacity could in no way be distinguished from his holding in the other .... So he was equally entitled to the possession and control of the property, whether his holding was that of an absolute owner in his individual right, or of a trustee under an absolute deed; and his right to possession was precisely the same as if the deed had been made to him as the Archbishop in his corporate capacity. Such being the case, we cannot conceive of any theory upon which a title by adverse possession can be upheld under the circumstances of this case. One cannot hold in hositility to himself; nor can one holding in one capacity hold adversely to himself, claiming in another capacity." Thus, it is apparent that by judicial limitation, a corporation sole cannot acquire property by prescription from himself as a natural person.

Before closing this topic, it is essential to note another limitation placed by judicial precedents upon the power of the corporation sole to acquire and hold property. Chancellor Kent ably states the rule, thus, "The word 'Successors' is generally as necessary for the succession of property in a corporation sole, as the word 'heirs' is to create an estate of inheritance in a private individual. A fee will pass to a corporation aggregate, without the word successors in the grant, because it is a body which by nature is perpetual; but as a general rule, a fee will not pass to a corporation sole, without the word 'successors' and it will continue for the life only of the individual clothed with corporate character." (2 Kent Com.

273). This limitation on the proprietary power of the corporation sole has been affirmed by an American court which held that "when a bishop or parson, holding estate as a sole corporation, dies or resigns his office, the fee is in abeyance, until a successor is appointed. From this flows one necessary, but obvious legal consequence which is, that a grant to an aggregate corporation, carries a fee, without the word 'successors'; but a grant to a corporation sole, without including successors, carries a life estate only to the actual incumbent, who is the first taken." (Overseers of the Poor v. Sears, 39 Mass. 122).

In conclusion, it may not be amiss to remember that the corporation sole is also empowered to "receive bequest or gifts," for its church, charitable, benevolent or educational purposes. (Act 1459, Sec. 159). Undoubtedly, there can be no question that contracts for voluntary subscriptions to defray the expenses of the church or to make improvements on the property, and the enforcement of the same are within the scope of the powers that every corporation sole may enjoy. This power of solicitation is of primary importance to the corporation sole when we consider that all support of religion is voluntary in this country.

D. *Power to Dispose of the Property.*—The Common Law as well as our Corporation Law strikingly limits the power of the corporation sole to dispose of the property vested in him and his successors by right of their office. Thus, at Common law, it has been held that "if the minister alien with the assent of his parish, or of the vestry of the church, the alienation shall bind the successor; if without such assent, it will be valid no longer than he continues minister; and it will be no discontinuance of the estate, so as to drive the successor to his action, but he may enter." (Weston v. Hunt, 2 Mass. 500). Our Corporation Law grudgingly gives this power of disposition when it authorizes, subject to a condition precedent, the corporation sole to "mortgage or sell real property held by it upon obtaining an order for that purpose from the Court of First Instance of the province in which the property is situated." (Act 1450, Sec. 159).

Apparently, the condition precedent required before the property can be validly mortgaged or sold is primarily for the protection of the interests of the religious denomination, society, or church, and to prevent the bishop, chief priest, or presiding elder from abusing his corporate powers, and wasting away the temporalities, estates, and properties of his religious organization. From the language of the statute it is plain and clear that this essential requisite is required only when the corporation sole exercises its powers to "mortgage or sell real property held by it." (Act 1459, Sec. 159). The law is silent with respect to the mortgage or sale of personal property; from this, we can safely infer that the approbation of the proper court is not required when the corporation sole mortgages or sells personal property. It is obvious that this burdensome condition is required with respect to the mortgage and sale of real estate but not of personal property because of the usually trifling cost of the latter.

However, even the requisite of securing the permission of the

proper court before the real property can be legally mortgaged or sold is dispensed with "in cases where the rules, regulations, and discipline of the religious denomination, society, or church concerned represented by such corporation sole regulate the methods of acquiring, holding, selling, and mortgaging real estate and personal property, such rules, regulations, and discipline shall control and the intervention of the courts shall not be necessary." (Act 1459, Sec. 159). The statute, obviously, recognize that the religious denomination, society, or church may have provided sufficient safeguards by means of its own rules, regulations, and discipline to prevent the corporation sole from abusng its corporate powers, and, thereby, protect its own property rights; it also illustrates the liberal spirit pervading our Corporation Law in allowing religious organizations to manage and control their own affairs under any rules, regulations, and discipline which they may deem advisable, and without the meddlesome interference on the part of the state provided that such affairs are conducted and such prescribed canons are in accordance with public order, sound morals, and public policy.

In cases, where the religious organizations concerned represented by the bishop, chief priest, or presiding elder as corporation sole fail to regulate, by their rules, regulations, and discipline, the methods of acquiring, holding, selling, and mortgaging real estate, then the corporation must secure the prior authority from the proper court before it can legally mortgage or sell the real property held by it. However, before the tribunal concerned can give the necessary permission, "proof must be made to the court that notice of the application for leave to mortgage or sell has been given by publication or otherwise in such manner and for such time as said court or the judge thereof may have directed, and that it is to the interest of the corporation that leave to mortgage or sell should be granted. The application for leave to mortgage or sell must be made by petition, duly verified by the bishop, chief priest, or presiding elder, acting as corporation sole, and may be opposed by any member of the religious denomination, society, or church represented by the corporation sole." (Act 1459, Sec. 159).

From the above discussion, it is apparent that the power of the corporation sole to dispose of the property vested in him by right of his office is strictly curtailed. Thus, it has even been held in a Massachusetts case that the parish could not even convey the ministerial lands to the minister himself who is a corporation sole under the common law, so as to make a title derived thru the will of such minister good against his successor in office. The court reasons, thus, ". . . . the subsequent conveyance, attempted by the immediate grantors of the tenant, under the will of their father, who had been the minister to whom the grant of the town was made, must be ineffectual; for the father was seized only during the continuance of his ministerial office, which had ceased before this conveyance was made; and his executors derived no power, under his will, to make a title to this land. . . . . If Mr. Maccarty had alienated the premises in his lifetime, with reference to the vote of the town, as expression of their as-

sent, we do not know but the alienation would have been valid. But this power over the estate ceased with his life; and he could not, if it had been his intention, communicate an authority to his executors to dispose of them. The deed of the executors, therefore, as it respects the conveyance of title, is void, and the tenant can claim no benefit under it." (Austin v. Thomas, 14 Mass. 333).

PART IV

CRITIQUE AND CONCLUSION

CHAPTER I

Criticism of the Corporation Sole

The writer has endeavored to show, by all the means under his limited ability, the true and exact nature and scope of the corporation sole under the Philippine Corporation Law. But before concluding this thesis, the author takes the boldness and liberty to make some comments regarding his appraisal of that unique legal entity, the corporation sole, in our jurisprudence, pointing out, as he goes along, what he believes to be its striking merits and demerits. In this connection and to make the observations of the writer more comprehensible, it will not be amiss to again remind the reader that the Philippine Corporation Law authorizes the religious organizations to adopt two forms of corporate structure—the corporation sole and the corporation aggregate, for the administration of their temporalities and the management of the estates and preperties thereof. (Act 1459, Secs. 154-163). With respect to the creation of the corporation aggregate, the law expressly authorizes "any religious society or religious order, or any diocese, synod, or district organization of any church, unless forbidden by the constitution, rules, regulations, or discipline of the religious order, society, or church of which it is a part, or by competent authority, may, upon the written consent of two-thirds of the membership, or by an affirmative vote of two-thirds of the membership had at a regular meeting, incorporate for the administration of its temporalities or for the management of its properties or estates by . . . ." complying with the provisions of the statute; and such corporation, when duly incorporated, shall be run by a board of directors or trustees, not less than five nor more than fifteen, elected by the religious society or order or the diocese, synod, or district organization of the church. (Act 1459, Sec. 160). In making this criticism, the author is naturally inclined to make comparisons between the corporation sole and such corporation aggregate, indicating the distinctive and important advantages of one over the other. It is only by adopting this method of development in his critique that the writer believes he can make his stand clear and understandable.

In the first place, the author firmly agrees with Maitland in his declaration that the corporation sole "is no 'juristic person'; he or it is either natural man or juristic abortion." (Maitland, Selected Essays, 100-103). The writer regards this peculiar legal entity as an inexcusable juristic abortion or freak because it has wrought havoc, instead of making clear and intelligible, upon our legal theories regarding the corporation. Thus, it is an elementary principle of our corporate concept that the corporation is an artificial person entire-

ly separate and distinct from the natural persons composing it. However, this orthodox notion, as we have already seen, seems not to be applicable to the corporation sole. Thus, we have been told that "a sole corporation, as a bishop or a parson, could not make a lease to himself, because he cannot be both lessor and lessee." (Solter v. Grosvenor, 8 Mod. 303, 304). In another English case, we are again reminded that "if a bishop hath lands in both capacities he cannot give or take to or from himself." (Wood v. Mayor of London, Salk. 397, 398; Grant, Corporations, 635). And again, in a California case, it was held that an archbishop, as a corporation sole, cannot acquire by adverse possession property from himself, as a natural person, because "one cannot hold in hostility to himself; nor can one holding in one capacity hold adversely to himself, claiming in another capacity." (Roman Catholic Archibishop of San Francisco v. Shipman, 79 Cal. 288; 21 Pac. 830). This unorthodox and sweeping abrogation of a long settled legal principle is of no consequence if the matter is one of purely pholosophical or academic study; but such is not the case, since the corporation sole, possessing the aptitude of being the subject of rights, obligations, and legal relations in its corporate and natural "person", the significant and ever-perplexing question of when to hold the bishop, chief priest, or presiding elder responsible as a natural person and when as a corporation sole comes momentously to the foreground. Since, our statute has not made a clear-cut distinction between the two divergent status and there is no standard formula for answering the problem, the corporation sole, in this respect, may forever remain a legal freak, a bewildering enigma, and an inexhaustible source of never-ending legal controversies. Moreover, when we speak of administrator, manager, or trustee, we do not feel it necessary to speak of corporations or artificial personality, and I fail to see why our law should do this when a man is a bishop, chief priest, or presiding elder.

We have already seen that the primary reason for the creation of the corporation sole is to grant to one person and his successors, in some particular station, "some legal capacities and advantage, particularly that of perpetuity which in their natural persons they could not have had." (1 Bl. Com. 469). However, in spite of this essential attribute of perpetuity or succession, the title resting on the corporation sole at times must inevitably be in abeyance. (Weston v. Hunt, 2 Mass. 500; Brunswick v. Dunning, 7 Mass. 545; Brown v. Porter, 10 Mass. 93; Overseers of Poor v. Sears, 39 Mass. 22). This contingency, it is humbly submitted, is one of the salient defect or weakness of such a corporate organization. The bishop, chief priest, or presiding elder, as a corporation sole, cannot live forever. When he dies, as die he must, some time must elapse before his successor is elected or appointed. During this time confusion may ensue. Such a result is highly improbable with the corporation aggregate. This is managed by a board of directors or trustees, not less than five nor more than fifteen. If one or more of such directors or trustees die, others can be elected or appointed to fill the vacancy; and in the

meantime, the corporate succession is kept up indefinitely without only break, whatsoever, in the administration of the temporalities and the management of the estates and proporties thereof.

It must be noted that when a bishop, chief priest, or presiding elder, acting in the capacity of a corporation sole, comes to the estate of his predecessor, he comes as an heir does to his inheritance, a stranger. He is usually a younger man, newly elected or appointed to his office, and not knowing much about the temporalities of his religious organization and the estates and properties thereof, till about the time of his settlement. He is dependent on the duty and courtesy of the representatives of his predecessor to be furnished with the necessary information, regarding the nature of his new duties and the state of the temporalities, which he is to administer. Considerable time, therefor, may elapse before he can become acquainted with the amount and the condition of the properties, which he is bound to preserve and manage for the benefit of himself, his religious organization, and his successors. But with respect to the corporation aggregate, vested, like the corporation sole, with corporate powers for the better execution of the trust, the situation is altogether different. Looking at the matter practically, it is highly probable that many, perhaps, most of the directors or trustees will be re-chosen, and it is safe to say that the board will change gradually. But even supposing that an entirely new board comes in, the records, votes, and minutes of the business done and transactions accomplished are all in the hands of their secretary; the money, securities, personal property, and title deeds of real property are held by the treasurer of the corporation. Such officers are in a better condition to acquaint the new board with the execution of the trust reposed in them. Thus, by virtue of its board of directors or trustees, the corporation aggregate is assured of a continuous administration and uninterrupted management by a group of officers, thoroughly acquainted with the nature, duties, and scope of their responsibilities.

We have also demonstrated that under our law, the corporation sole is essentially a trustee, holding the temporalities, estates, and properties of the religious organization, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof, "for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church." (Act 1459, Sec. 157 as amended). Undoubtedly, the Philippine Commission, in approving the Corporation Law, was imbued with the Common Law concept of trust. In the Common Law, the subject of trust has received so careful and detailed study as to cover almost all of its ramifications. Unfortunately, it has been held by our Supreme Court that the "branch of the law known in England and America as the law of trusts had no exact counterpart in the Roman Law and has none under the Spanish Law. In this jurisdiction, therefore, Father De la Penas liability is determined by those portions of the Civil Code which relate to obligations." (Roman Catholic Bishop of Jaro v. De la Peña, 26 Phil., 144). Hence, it is very apparent that the Common Law principles on trust have not entered, to an appreciable extent, into the field of Philippine juris-

prudence; and the Philippine law on trust may be found, scattered, in the provisions of the Civil Code relating to "fideicommissarious", "mayorazgo", and the Rules of Court respecting to trust. The observation is ineccapable that our law on trust, particularly the regulation of the corporation sole as a trustee, is very far from adequate. In order, therefore, to protect amply the property rights and interests of the religious denomination, society, or church, and close the door to fraud, the author takes this opportunity to suggest that our law on trust must be further developed, with particular amphasis on the corporation sole as a trustee. To justify the foregoing recommendation, the writer takes the stand that a more systematic and comprehensive law on trust can properly be considered as pertinent limitations upon the corporate powers of the bishop, chief priest, or presiding elder as trustee, and timely safeguards against their abuse by such corporation sole.

The bishop, chief priest, or presiding elder, when duly incorporated as a corporation sole, is recognized by our law as a temporal head of his religious denomination, society, or church, in charge of the administration of its temporalities and the management of the estates and properties thereof. However, it is noteworthy to remember that such dignitaries as ecclesiastical officers are also endowed with spiritual powers according to the rules, regulation, or discipline of their religious organizations. This union of the temporal and the spiritual powers in the corporation sole is subject to abuse by such a corporation, and is very dangerous as far as the protection of the property rights and interests of the religious denomination, society, or church is concerned. Thus, the bishop, chief priest, or presiding elder, using the coercive influence of his divine powers, may exert undue pressure upon his own religious organization, respecting the temporalities and the estates and the estates and properties thereof. This lamentable contingency has actually happened in numerous cases brought before the courts of justice. Thus, in Krauczunas v. Hokan (70 A. 740; 221 Pa. 213), the St. Joseph's Congregation, a Roman Catholic organization, by action of its members and be legal proceedings and deed, transferred the church property to Bishop Hoban in trust for the congregation. Subsequently, a large majority the congregation passed a resolution to secure the transfer of the title from Bishop Hoban to ten trustees elected by them. The bishop, however, refused to make the transfer, claiming the right under the laws of the Roman Catholic Church to hold the title to said property in trust for the congregation. The Court, after a long, exhaustive, and bitter struggle, ordered the bishop to make the necessary conveyance to the trustees selected by the congregation. The bishop acceded, reluctantly, to this order, and, simultaneously, circumvented the decree by excommunicating the trustees appointed by the congregation, and placed the St. Josephs Congregation under an interdict, "until the members of the congregation shall turn these faithless men out and place the church once more under the care of the bishop of the diocese of Scranton, according to the laws of the Catholic Church." (Mazaika v. Krauszunas, 223 Pa. 138,

146; 81 A. 938). The congregation now was in a dilemma. The bishop, by the use of his ecclesiastical weapons, was, thus. holding the upper hand. In consequence, the congregation was deprived of all opportunity to worship in the church and its right to control its own property. Some of its members now tried the expedient of calling upon the court to revoke the interdict. But the court held that it was powerless to interfere with such ecclesiastical matter, and counselled that "if they desire to proceed further, their appeal must be first to the ecclesiastical authority which has forbidden Catholic worship in the Church for the recission of the episcopal interdict that inhibits it." (Novickas v. Krauczunas, 240 Pa. 248; 87 A. 686). As a result of this long controversy, certain members of the congregation called upon a priest, not in connection with the Roman Catholic Church, and non-Catholic worship was followed by a large number for a while. Thus, the very church itself suffered a schism. (Novicky v. Krauczunas, 245 Pa. 86; 91 A. 671). These cases, taken together, illustrates the helplessness which the members of the religious denomination, society, or church may find themselves in case they dare to differ with the bishop, chief priest, or presiding elder, regarding the temporalities and the estates and properties thereof. Thus, it is made apparent that the simultaneous exercise of temporal and ecclesiastical powers may work to the prejudice of the members of the religious denomination, society, or church, as far as their property rights and interests are concerned.

Another serious problem that may arise between the corporation sole and his religious organization is the effect of the incorporation of the latter upon the proprietary interests of the former. Thus, in the cases of Beckwith v. Rector (69 Ga. 584), the deed was to Bishop Elliot, Jr., "of the Protestant Episcopal Church in the division of Georgia in fee simple," etc., it was held that such trust did not attach to the person of bishop, and passed to his successors in office. But what is more important is the ruling that the subsequent incorporation of the church did not divest did not direct the title of the bishop. Hence, under the principle of this case, the subsequent incorporation of the religious denomination, society, or church may not operate to divest the corporation sole of his property interests over the temporalities and the estates and properties thereof. The above case, if blindly followed, may result in a grave and dangerous controversy between the corporation sole and the corporation aggregate, regarding their divergent property interests; and illustrates, more than ever, the extensive power of the corporation sole over the temporalities and the estates and properties thereof.

Before concluding this critique, it will not be amiss to say a few words about the religious corporation aggregate and its distinct advantages over the corporation sole. This form of religious corporation (commonly known as membership corporation in the United States), for the administration and management of the temporalities and the estates and properties thereof, is so simple that it does not require much space to elucidate it. Says, the Missouri Court: "Religious incorporators are aggregate corporators, and whatever

property they possess or acquire is vested in the body corporate. It is true, the officers have it under their control or dominion, but their possession is the possession of the artificial person whose agents they are. Altho called trustees, they do not hold the property in trust. Their right to intermeddle with or manage the property is an authority, and not an estate or title. They have no other or greater possession than the directors of a bank in a banking establishment. The whole title or estate is vested in the incorporated body, and the corporation is the proper party to sue." (North St. Louis Christian Church v. Mc. Gowan, 62 Mo. 279, 288). The church members are the corporators and may in a body as a religious corporation provide rules, regulation, and discipline for the election, government, and removal of the board of directors or trustees. Thus, it is obvious that the corporation aggregate is more democratic, more responsive to the will and wishes of the members whose rights are thus, better protected.

CHAPTER II

Summary

The only justification for the chapter is the desire on the part of the author to recapitulate the conclusions he has drawn from this critical study of the nature and scope of the corporation sole, to make some observations, and lastly, to suggest pertinent recommendations.

1st. In the first place, it must be remembered that the corporation sole was chiefly the product of English jurisprudence for the purposes of some of England's institutions. Under the Roman Law, corporations were always aggregate. With respect to sole corporations, consisting of one person only, the Roman jurists had no notion of them.

2nd. In the Philippines before the advent of the American sovereignty, the Spanish laws in force at that time and even at the present do not contain a single provision relating to the corporation sole. It was only with the advent of the American rule that the Common Law principles of the corporation sole entered the field of Philippine jurisprudence.

3rd. Since the Philippine Corporation Law (Act 1459) was enacted by the Philippine Commission, then predominantly composed of Americans, it was natural that said law was influenced mainly by the American concept of the corporation sole. However, not all the Common Law principles regarding the corporation sole have been introduced, thus:

(a) The corporation sole under the Philippine Corporation Law is not an ecclesiastical corporation, in the technical sense of the term. The ecclesiastical corporation, as known to the English law, is primarily erected for the furtherance of religion and spiritual edification, and consists entirely of spiritual persons, such as, bishops, deans, parsons, and vicars, which are sole corporation. Under our law, the sole corporation is primarily for the administration of the temporalities of the religious denomination, society, or church and the management of the estate and properties thereof.

(b) The mode of creating the corporation sole by special charters is not recognized in this jurisdiction.

(c) Not all the essential attributes of a private corporation enumerated by Blackstone are indispensable to the essence of the corporation sole under our law.

(d) Under the Common Law, the corporations sole could not take goods and chattels for the benefit of themselves and their successors, and its corporate capacity is limited to real estate. Under our law, any corporation sole may purchase and hold real estate and personal property; hence, in this respect, our corporation sole enjoys greater powers of acquisition than the Common Law corporation sole.

(e) In England, as Kyd had shown, the bishop is the most familiar instance of a person holding corporate capacity for his own individual benefit. Under our law, this nature of the office of the bishop as a corporation sole is manifestly not recognized because he is essentially a trustee, endowed with corporate attributes, holding the temporalities, estates, and properties for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church.

4th. The creation, recognition, and existence of the corporation sole can be validly upheld under the precepts of our Constitution and the underlying fundamental principles of our democracy. This legislative policy of authorizing the bishops, chief priests, or presiding elders to become corporations sole does not violate the principles of separation of church and state. Neither can such corporate structure be successfully attacked in the courts as unjust and oppressive or repugnant to the spirit of enlightened government. It is safe, therefore, to conclude that the creation of the corporation sole under the Philippine Corporation Law is a constitutional exercise of the legislative prerogative.

5th. The corporation sole cannot be created, nor corporate powers be assumed, by the mere will of the bishop, chief priest, or presiding elder of any religious denomination, society, or church; authority from the sovereign power, express or implied, is necessary.

In our jurisdiction, this authority has been given, and the corporation sole can be created by incorporation under the provisions of the Philippine Corporation Law. The mode of creating corporations sole by special franchise cannot be adopted in this country because of Constitutional inhibitions. The corporation sole may be created by prescription but such a mode is deemed to be unsafe and burdensome.

6th. The private nature of the corporations sole is attested by reviewing the steps by which these corporations come into being, and the recognition which they receive when their birth has been irregular. In case the incorporation is attended with mistakes or blunders, either a de facto corporation sole or a corporation sole by estoppel may result. The sole effect which such incorporation, whether proper or defective, has on the State is simply to add another private corporation to the innumerable number of such bodies.

7th. The essence of the corporation sole consists in the capacity (a) to have perpetual succession under a special name, (b) to have an artificial personality, and (c) the power to take and dispose of property, real or personal, contract obligations, sue and be

sued, receive and enjoy in common grants of privileges and immunities not inconsistent with its corporate nature, under its corporate name.

However, the combination of the natural and artificial "person" simultaneously in the bishop, chief priest, or presiding elder has given rise to serious legal problems since, having thus possess the aptitude of being the subject of rights and obligations in both capacities, the question of when to hold such bishop, chief priest, or presiding elder responsible as a natural person and when as a legal entity is hard to determine with precision.

8th. Under our law, the corporation sole is essentially a trustee, holding the temporalities, estates, and properties for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof.

In order to protect amply the property rights and interests of the religious denomination, society, or church, and close the door to fraud, the author suggests that our law on trust must be further developed and amplified, with particular emphasis on the corporation sole as a trustee.

9th. The corporation sole, as a corporate organization for the administration of the temporalities of its religious denomination, society, or church, and the management of the estate and properties thereof, has many salient defects which are discussed in detail in our brief critique.

10th. Under the Philippine Corporation Law, there are two forms of religious corporation that may be created for the administration of the temporalities of the religious denomination, society, or church, and the management of the estate and properties thereof. Of these two, the corporation sole serves the necessities of those religious denominations, societies, or churches, which believe in vesting their bishops, chief priests, or presiding elders elders with large discretion in matters of temporal affairs and property. The religious corporation aggregate, on the other hand, is the triumph of democratic government in church affairs and fills the wants of those religious denominations, societies, or churches which vest the control of their temporalities, estates, and properties directly in the board of directors or trustees, who are more responsive to the will and wishes of the members of the congregation, and whose rights are, consequently, better protected.