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

By EMMETT SHEA*

PART I
INTRODUCTION

CHAPTER I
DEFINITION OF THE SUBJECT-MATTER

A. *Definition of Corporation Sole.*

In writing a critical analysis of any topic, it is always pertinent to inquire what the terms used mean. Unless we are clear about the signification of our words, it is obvious, that we shall only wander in a maze of confusion and uncertainty.

The Philippine Corporation Law (Act 1459, Sec. 154) states that "for the administration of the temporalities of any religious denomination, society, or church, and the management of the estates and properties thereof, it shall be lawful for the bishop, chief priest, or presiding elder of any such religious denomination, society, or church to become a corporation sole unless inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by competent authority thereof."

A "corporation sole" is generally defined to be a corporation composed of a single member, but this definition has been attacked by many authors as inaccurate and misleading. Thus, the capital stock of any corporation might by transfer become invested in one person, but this would not constitute it a corporation sole; it would still retain its original character. (Thompson on Corporations, Vol. 1, p. 15). A corporation sole has been more accurately defined by Blackstone as one which "consists of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantage, particularly that of perpetuity which in their natural persons they could not have had." (Bl. Com. 469). Another distinguished law writer defines it thus, "A corporation sole consists of only one person to whom belongs the legal perpetuity which is denied to natural persons. An officer or other person authorized to so hold to himself and his successors' property, real or personal, constitute a corporation sole." (Purdy's Beach Priv. Corp., Sec. 10; Thomas v. Dakin, 22 Wend (N. Y. 9). Chancellor Kent in his admirable Commentaries describes a corporation sole in the following words, "A corporation sole consists of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and especially that of perpetuity, which as a natural person, he cannot have. A bishop, dean, per-

* LL.B., University of the Philippines

son, and vicar are given in the English books as instances of sole corporations; and they and their successors in perpetuity take the corporate property and privileges." Thus, it is clear that a corporation sole "consists of a single individual having an artificial or legal personality distinguished from his natural character." (Roman Catholic Archbishop of San Francisco v. Shipman, 79 Cal. 288; 21 Pac. 830).

B. *The Corporation Sole Distinguished from the Corporation Aggregate.*

"The first division of corporations," says Blackstone, "is into aggregate and sole," and a similar classification was recognized by Chancellor Kent. (1 Bl. Com. 469; 2 Kent Com. 273). "There are", says Chancellor Kent, "very few points of corporation law applicable to a corporation sole. The corporations generally in use with us are aggregate or the union of two or more individuals in one body politic, with a capacity of succession and perpetuity."

A "corporation aggregate" is a collection of many individuals united into one body under a special name, having perpetual succession under an artificial form, invested by the policy of the law with the capacity of acting in several respects as an individual, and having collectively certain faculties which the individuals have not. (Trustees of Dartmouth College v. Woodward, 1 N. H. 111, 113). It consists of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue forever. (1 Bl. Com. 469). On the other hand, a sole corporation, as its name implies, consists only of one person, to whom and his successors belong that legal perpetuity the enjoyment of which is denied to all natural persons. (Angel and Ames, Corp. 18, 19). It embraces but a single individual with corporate powers. (Warner v. Beers (N.Y.) 23 Wend. 103, 172)

At Common Law, corporations aggregate could take in succession both real and personal property, but corporations sole could not take goods and chattels for the benefit of themselves and their successors, and its corporate capacity is confined to real estate. (2 Kent Com. 273; 1 Bl. Com. 477). However, this Common Law distinction is not observed under our law because "any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes." (Act 1459, Sec. 159).

"The first and most important distinction," says a Massachussetts Court, "is, that a corporation aggregate has a perpetual existence without change, so that an estate once vested in it, continues vested without interruption. Whereas, 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.

"There are a great variety of other particulars, in which the incidents and characteristics, which are considered essential to an ag-

gregate corporation, do no extend to a sole corporation, because by the reason and nature of their respective modes of operation, they do not apply; upon the principle, that when the reason of a rule ceases, the rule ceases.

"An aggregate corporation may have and use a common seal, by which the will of the body is expressed, and its acts executed; they take and grant by their appropriate corporate name; may take and hold real and personal property; may make by-laws for the regulation of all matters within the scope of their authority, not contrary to the law of the land, or repugnant to the provisions of the charter or act of incorporation; they must appear by attorney and cannot appear in person; the will of the majority, orderly taken, at a meeting duly called and held, is the will of the body and must govern, unless otherwise provided by charter or by-law; they must regularly keep up a record, journal or other written account of their votes and proceedings, which is the proper evidence of their acts, and may elect and qualify a clerk or secretary for that purpose; they may elect a president or head, a treasurer, managers, directors, and other suitable officers, with such powers, as the term imports, and such as may be specially conferred upon them, by vote, or deed, to manage their affairs; they may elect members to fill vacancies, when it is not otherwise provided by the charter. Indeed this last qualification must be added, in regard to almost all these enumerated powers, and it may be remarked generally, that when these are denominated incidents to an aggregate corporation, it is to be understood that they are the most common and usual characteristics of such a corporation, and that they exist by implication, in case where it is not otherwise provided in the charter; but that its constitution and organization, the mode in which individuals may become and cease to be members, and also its action in all respects, the manner, times, places and occassion, on which meetings may be held, the members, particular individuals who must be present and vote to constitute a valid act, the officers who may or must be chosen the property they may hold, the powers they may exercise, the duration of their existence, may all be modified and regulated ad libitum, by the power which constitutes corporation. Nothing seems essential to a corporation but a capacity to have perpetual succession, under a special denomination and in an artificial form, a capacity to take, hold, and grant property, to sue and be sued by its corporate name, and in common to exercise powers, and enjoy franchises and immunities.

"In all these respects, the distinction between an aggregate and sole corporation, growing out of their different modes of constitution and forms of action, is striking and obvious. A bishop or parson acting in a corporate capacity and holding property to him and his successor in right of his office, has no need of a corporate name, he requires no peculiar seal, he performs all legal acts under his own seal, in his own name and name of office; his own will alone regulates his acts and he has no occasion for a secretary; for he need not keep a record of his acts; no need of a treasurer, for he has no personal property except the rents and proceeds of the corporate estate, and these he takes

to his own use when received. By-laws are unnecessary, for he regulates his own action, by his own will and judgment, like any other individual acting in his own right." (The Overseers of the Poor v. Sears, 39 Mass. 122).

While there are other points of distinctions, it is not necessary to pursue the comparison into all its details; the points suggested are sufficient to show the legal differences between the two classes of corporations.

CHAPTER II

METHOD OF DEVELOPMENT

It must be noted that our topic is limited to the discussion of the corporation sole under the Philippine Corporation Law (Act 1459 as amended). However, it should be borne in mind that our corporation law was based mainly on the corporation laws of the different states of the Union, particularly on those of California and New York; and that, the American members of the Philippine Commission, which passed said law and wherein they constituted the majority, implanted into this country statutory provisions from their homeland. The writer, therefore, feels himself justified in resorting to the rules, principles, and doctrines from the Common Law in order to strengthen and substantiate his development and conclusions of the subject of this thesis; and these, of course, only in so far as they do not conflict with our laws. This stand of the author is further fortified when it is borne in mind that the corporation sole has barely set a foothold in the field of our jurisprudence. From the enforcement of the Corporation Law in April 1, 1906, there is not a single case in any of the sixty volumes of the Philippine Reports dealing with the intrinsic nature and scope of the corporation sole. The writer of this work is, therefore, of the opinion that the law on the subject is not yet settled in our jurisprudence; and, therefore, recourse must be made to the rules, principles, and doctrines of the Common Law in order to have a clear and complete comprehension of the subject. Thus, our own Supreme Court in the case of Alzua and Arnalot v. Johnson (21 Phil. 308) states,

". . . While it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, 'nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions and are not in conflict with existing law,' nevertheless many of the rules, principles, and doctrines of the common law have to all intents and purposes been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they are derived and that to breathe the breath of life into many institutions introduced in these Islands under American Sovereignty, recourse must be had to the rules, principles, and doctrines of the common law under whose protecting aegis the prototypes of these institutions had birth."

To the same end, the Supreme Court in a later case ruled that ". . . the principles of the Anglo-American Common Law are to the Philippines just as they were for the State of Louisiana and just as the English Common Law was for the United States, of far-reaching influence. The common law is entitled to our deepest respect and reverence. The courts are constantly guided by its doctrines . . ." (U. S. v. Abiog, 37 Phil. 137). In a still later case the same rule had been laid down, that ". . . in interpreting and applying the bulk of the written laws of this jurisdiction and in rendering its decision in cases not covered by the letter of the written law, this court relies upon the theories and precedents of the Anglo-American cases, subject to the limited exception of those instances where the remnants of the Spanish written law presents well-defined civil law theories and of the few cases where such precedents are inconsistent with local customs and institutions. . ." (In re Shoop, 41 Phil. 213).

In the development of the subject, no pretense, whatever, is made that this study is comprehensive, complete, and exhaustive. What this humble work purports to achieve is to assist in the badly needed task of ascertaining the nature and scope of the corporation sole in the light of the Philippine Corporation Law and the opinions of learned jurists and commentators.

For a more systematic development and comprehensive understanding of the subject, the writer deems it beneficial to follow these divisions: Part I—Introduction, under which is found Chapter I —Definition of the Subject-Matter and Chapter II—Method of Development; Part II—Origin and Creation of the Corporation Sole, under which is found, Chapter I—Origin and Development of Corporation Sole and Chapter II —Creation and Formation of the Corporation Sole; Part III—The Attributes and the Powers of the Corporation Sole, under which is found Chapter I—The Attributes of the Corporation Sole and Chapter II—The Powers of the Corporation Sole; and lastly, Part IV—Critique and Conclusion, under which is found, Chapter I —Criticism of the Corporation Sole and Chapter II—Summary.

PART II

ORIGIN AND CREATION OF THE CORPORATION SOLE

CHAPTER I

ORIGIN AND DEVELOPMENT OF THE CORPORATION SOLE

A. *Origin of the Corporate Concept; In General.*

Many scholars traced the genesis of the corporation to the Greece of Solon (638-559 B.C.), citing the Commentaries of Gaius on Roman Law and passages from the Pandects of Justinian as authority for the assertion that laws fathered by the great Hellenic jurist permitted the formation of private corporations for certain purposes, upon condition that they do not operate in violation of other laws of the state. (Ayliffe, Treatise on Civil Law, 197).

Blackstone, on the other hand, ascribes the birth of the corporation to the Romans, and cites Plutarch to back the contention. According to Plutarch, the corporation was introduced by Numa Rompilius, the second legendary

kind of Rome (715-672 B. C.) "who finding upon his accesion the city torn to pieces by the two rival factions of Sabines and Romans, thought it a prudent and politic measure to subdivide these two into smaller ones, by instituting separate societies of every manual trade and profession." (1 Bl. Com. 468-469).

B. *The Birth of the Corporation Sole in England*

The Romans established corporations in Britain after its conquest, and subsequently such bodies were established and recognized by English law for various purposes—municipal, charitable, and purely private, on principles adopted chiefly from the Roman or Civil Law. (Pollock and Maitland, Hist. of Eng. [2nd ed.], 1, p. 488). There grew up in England before the Norman conquest several classes of organizations embodying many of the elements of corporations. The first of these were those peculiar to the church, and grew out of the necessity of providing means for holding property. (1 Kyd on Corporations, 95). It was out of this situation that there developed the corporation sole, an offset of the corporate concept and subsequently applied, by analogy, to municipal affairs and to the State. (Pollock and Maitland, Hist. of Eng. (2 ed.), 1, p. 488).

It must be remembered that the corporation sole was chiefly the product of English jurisprudence. Under the Roman Law, corporations were always aggregate. With respect to sole corporations, consisting of one person only, the Roman lawyers had no notion of them; "their maxim being that 'tres faciunt collegium' . . . Though they held that if a corporation, orignally consisting of three persons, be reduced to one, 'si universitas ad unium rebit' . . ., it may still subsist as a corporation, 'et stet nomen universitates.'" (1 Bl. Com. 469).

The corporation sole was the creation of the English law for the purposes of some of the English institutions. Thus, at common law, the king was regarded as a sole corporation with the capacity of succession, in order to prevent a possible interregnum and to preserve the possession of the crown. (Coke on Littleton, 43). Sole corporations were also mostly employed to hold in succession the rights and property of the ecclesiastical establishments, and the English books give as instances of sole corporations, bishops, deans, parsons, and vicars. (2 Kent Com. 273)

Blackstone states that the recognition of bishops, deans, parsons, and vicars as corporations sole arose out of necessity and convenience. Thus, in his Commentaries, he states, "At the original endowment of parish churches, the freehold of the churchyard, the parsonage house, the globe, and the tithes of the parish, were vested in the then parson by the bounty of the donor, as a temporal recompense to him for his spiritual care of the inhabitants, and with intent that the same emoluments should ever afterwards continue as a recompense for the same care. But how was this to be effected? The freehold was vested in the parson; and, if we suppose it vested in his natural capacity, on his death it might descend to his heirs, and would be liable to his debts and incumbrances; or at best, the heir might be compellable at some trouble and expense, to convey

these rights to the succeeding incumbent. The law therefor has wisely ordained, that the parson, quatenas (as) parson, shall never die, any more than the king; by making him and his successors a corporation. By which means all the original rights of the parsonage are preserved entire to the successor, for the present incumbent, and his predecessor who lived seven centuries ago, are in law one and the same person; and what was given to one was given to the other also."

C. *Status of the Corporation Sole in the United States.*

Sole corporations are not common in the United States. In fact, it has been held in one state at least, that such corporations are not recognized and do not exist therein. But in other states, in the early decisions, corporations sole have been recognized. Thus it has been held that the minister of the town or parish who is seized of any lands in the right of the town or parish, which is the case of all parsonage lands or lands granted for the use of the ministry, or of the minister for the time being, is for the purpose a sole corporation and holds the same to himself and his successors. A priest of a Catholic mission has also been held to be, with respect to the lands of the mission, in a position analogous to that of a corporation sole in England, and in that character could maintain an action to recover possession of the lands. In other cases, Catholic bishops or archbishops have been held sole corporations with respect to lands held in such character. (Fletcher, Cyclopedia of Private Corporations, Vol. 1, Sec. 60).

This Massachussetts doctrine (recognizing the existence of the corporation sole) was adopted in other Congregational states such as Maine. In Southern and Middle Atlantic States, which had adopted the Episcopal form of worship, such as Virginia and Georgia, the corporation sole appears to have been the only corporate body in control of the church property. Still other states, such as New Hampshire, did not recognize the form of corporation. When the corporation depended on the territorial parish, as in Massachusetts and Maine, it becomes useless when the territorial parish was succeeded by the voluntary religious society, and therefore disappeared without a struggle, tho the territorial parish itself died a lingering death. (Zollman, American Church Law, Sec. 99).

In Episcopal states, however, particularly Virginia, the process of elimination was not so simple. After many contradictory statutes relative to religion had been enacted in this state, a law was passed in 1802 which vested all the lands then held by Episcopal ministers under the old order in the overseers of the poor, after the "present incumbent" had died or had been removed in some other way. This law was upheld in a test case by the court of original jurisdiction. When the case appealed, the Supreme Court stood three to two for a reversal of the judgment. The night before the decision was to be announced, one of the three judges constituting the majority died, so that now the Court stood evenly divided, and the judgment of the lower court was upheld. Though this decision was an accident, it stood as the law

of Virginia for thirty-six years. Not until 1840 was the question again raised in the Supreme Court. The court, however, now preferred to follow its former decision because of the long acquiescence of all concerned in it, the recognition it had received from all the branches of the government, and the fact that most of the church land had been alienated under it. Of course, the statute did not dissolve the corporation until the death of the present ministerial incumbent. Attempts on the part of the overseers of the poor to seize church property before that event were therefore very properly enjoined. After the incumbent's death, however, the corporation came absolutely to an end, and its property automatically passed to the state. Since more than a century has elapsed, it is certain that no such corporation exists today in the state. (Zollman, American Church Law, Sec. 100).

While the old form of corporation sole has passed away with the system of religious establishment of which it was a part, a new form of it has been developed and is vigorously flourishing today. (Zollman, American Church Law, Sec. 101.)

It has been held that particular public officers who are clothed with certain powers with respect to their office and who are vested with capacity of succession, are corporations sole or quasi-corporation sole. Thus, a town supervisor has been held to be a quasi-corporation sole. And when a statute directs bonds to be made payable to the governor or some other functionary having legal succession, the office is the payee and the successor may maintain an action on such bond. It follows that such officer is made by statute and for public benefit, quoad hoc, a corporation sole. But the mere fact that a court directs a bond to be made to a particular officer does not make him a corporation sole, so that his successor can sue on the bond. In the absence of a statute, he himself individually, or if he be dead, his personal representative must sue thereon. (Fletcher, Cyclopedia of Private Corporations, Vol. 1, Sec. 61).

D. *Introduction of the Corporation Sole in the Philippines.*

It must be noted that the Spanish Code of Commerce, which became operative as law in the Philippines on Dec. 1, 1888, does not contain a single provision relating to the corporation sole. The same may be said of the Spanish Civil Code which took effect in the Philippines on Dec. 7, 1889; and for that matter, to all the Spanish laws in force in the country before the advent of the American sovereignty.

However, with the implantation of the American rule in the Philippines, the Anglo-American principles on the corporation sole entered the field of Philippine jurisprudence. The Philippine Corporation Law (Act 1459) was enacted by the Philippine Commission on March 1, 1906 and went into effect on April 1, 1906. The Philippine Commission was then composed of five American and three Filipinos, and naturally, therefore, said law was influenced mainly by the American concept of the corporation sole.

CHAPTER II

CREATION AND FORMATION OF THE CORPORATION SOLE

A. *Constitutionality of the Corporation Sole.*

Before discussing in detail the formation of the corporation sole under our law, it is pertinent, in this stage of our essay, to inquire whether such a corporate organization can be validly upheld under the precepts of our constitution and the underlying fundamental principles of our democracy. If it cannot be so sustained, then there is no need of discussing its creation under the Philippine Corporation Law.

But before proceeding further, it is noteworthy to mention that the Corporation Law authorizes the formation of two widely different forms of corporate structure, the corporation sole and the corporation aggregate, for the administration of the temporalities and the management of the estates and properties of religious organizations. The law permits the bishop, chief priest, or presiding elder of any religious denomination, society, or church to become a corporation sole for the administration of the temporalities of his organization unless inconsistent with its rules, regulations, or discipline, or forbidden by competent authority thereof. (Act 1459, Sec. 154). It also recognizes the right of any religious society or religious order, or any diocese, synod, or district organization or any church, unless forbidden by the constitution, rules, regulation or discipline of the religious order, society, or church of which it is a part, or by competent authority, and 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 to incorporate for the administration of its temporalities or for the management of its properties or estates; and the corporation aggregate, when formed, shall be directed by a board of directors or trustees, not less than five nor more than fifteen. (Act 1459, Sec. 160).

This legislative policy of allowing religious organizations to incorporate or authorizing their religious dignitaries to become corporations sole had been attacked in American courts as violating the democratic principles of the separation of church and state But the United States Supreme Court upheld the validity of such a procedure when it stated that "It is conceded on all sides that, at the revolution, the Episcopal Church no longer retained its character as an exclusive religious establishment. And there can be no doubt that it was competent for the people and the legislature to deprive it of its superiority over other religious sects, and to withhold from it any support by public taxation. But although it may be true that 'religion can be directed only by reason and conviction, not by force or violence,' and that 'all men are equally entitled to the free exercise of religion according to the dictates of conscience,' as the bill of rights of Virginia declares, yet it is difficult to perceive how it follows as a consequence that the legislature may not enact laws more effectively to enable all sects to accomplish the great objects of religion by giving them corporate rights for the management of their property, and the regulation of their temporal as well as spirit-

ual concerns. Consistent with the constitution of Virginia, the legislature could not create or continue a religious establishment which should have exclusive rights and prerogatives, or compel the citizens to worship under a stipulated form or discipline, or to pay taxes to those whose creed they could not conscientiously believe. But the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead. And that these purpose could be better secured and cherished by corporate powers, cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations. While, therefore, the legislature might exempt the citizens from a compulsive attendance and payment of taxes in support of any particular sect, it is not perceived that either public or constitutional principles required the abolition of all religious corporations." (Terret v. Taylor, 9 Cranch, U. S., 43; 3 L. Ed. 650). For the same reasons, the United States Supreme Court held that where the minister of a parish was seized, before the Revolution, of a freehold as persons ecclesiae in the same manner as in England, he and his successors did not cease to be a corporation sole for that purpose after the states became independent. (Pawlet v. Clark, 9 Cranch, U. S., 292; L. Ed. 753).

The creation of the corporation sole had also been particularly attacked as unjust and oppressive, and repugnant to the spirit of enlightened government. However, the Supreme Court of Maryland refused to countenance such a harsh criticism when it held that, "all legislative power belongs to the legislature, except when limited by the Constitution of the United States, or by the declaration of rights, or by the constitution of the state. We refer not now to certain proceedings in the form of statutes which have been so unjust and oppressive, and so repugnant to the spirit of enlightened government, that some good men and able lawyers have declared that they were not in nature of legislative acts. Such exceptional transactions do not pertain to our present purpose. We are considering the ordinary course of lawmaking power within its well-recognized limits. There was nothing in the Constitution to prevent the legislature from granting corporate capacity to the archbishop, and there is nothing to prevent it from enlarging and extending that capacity." (Gump v. Sibley, 79 Md. 165; 28 A. 977).

Neither does the creation and recognition of the corporation sole violate the letter or the spirit of our Constitutional system nor the fundamental principles of our democracy. Thus, an Illinois Court says, "Religious corporations are based upon the usages and customs of the particular denomination or synod seeking corporate power, and the exercise of that power and the manner thereof frequently is a part of the religious belief. That it is exercised autocratically or by a corporation sole has never been held to be against the public policy of the state. Neither the legislature by enactment nor the courts by construction in this state have ever held that social and religious af-

fairs of the people should be free or equal." (Knights of the Klu Klux Klan v. First National Bank, 254 Ill. App. 264, 287, 288).

From the foregoing considerations, the writer believes it safe to conclude that the creation of the corporation sole under the Philippine Corporation Law is a constitutional exercise of the legislative power.

B. *Necessity of Legislative Authority.*

As a general rule, corporations 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 even tho not inconsistent with the rules, regulations, or discipline of his religious organization or not forbidden by competent authority thereof; authority from the sovereign power, express or implied, is necessary. A corporation sole not being like a natural person, one of the essential elements of which government is formed, can only be considered as a creature of the law. It is the law alone which gives to it a personality distinct and separate from that of the sole member composing it and his successors.

Such an authority from the sovereign power is a condition precedent to the creation and formation of the corporation sole. In those states of the Union where the common law concept of the corporation sole is not recognized and where there is no law authorizing its creation, it has been held that such a corporation cannot be created by the mere will or agreement of the parties concerned. Thus, in Hawaii it was held that the Roman Catholic Bishop was not a corporation sole and could not take by succession from his predecessor in office, where he was not made so by any statute. (Zeugma v. Paahao, 16 Hawaii, 345). The same doctrine is also recognized in Virginia where it had been held that such a bishop was not a corporation sole. (Kain v. Gibboney, 101 U. S., 362, 363; 25 L. Ed. 813).

Where there is no such authority from the sovereign power to act as a corporation sole, the bishop, chief priest, or presiding elder cannot assume corporate powers. Thus, in Indiana where the bishop was not recognized as a corporation sole, the court held, "When Bishop Lewers died, mere property rights vested in him did not pass to his successors nominated in his will or by his devisees. The ecclesiastical office held by the bishop of Ft. Wayne is not of such a character as to clothe it with corporate attributes; in no sense is the office a corporation. A trust conferred upon a bishop or other ecclesiastical functionary, so far as concerns title and ownership of trust of land, is in itself, not different from a trust vested in any of the 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." (Dwenger v. Gerry, 113 Ind. 106; 1 N. E. 903).

The legislative authority for the creation of the corporation sole is so essential that in some states, where the doctrine of the corporation sole is not recognized, it has even been held that a devise to a priest and his successors, not a corporation sole, was contrary to public policy. Thus, the Court

held in McGier v. Aaron (1 Len & W, Pa., 49; 21 Am. Dec. 361): "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 perpetuity."

The power to create corporations is one of the attributes of sovereignty. McCullough v. Maryland, 4 Wheat, 316; 4 L. Ed. 579). The exercise of the power, in our jurisprudence, is legislative in character. The Philippine Commission, which passed the Corporation Law, was vested with the sovereign powers delegated to it by the Congress of the United States; and had exercised its authority by expressly recognizing the common law concept of the corporation sole, and, wisely, made provisions for its creation and formation.

(To be continued in the following number)

LIBERTY AND KNOWLEDGE

"HE is the free man," said Spinoza, "who lives according to the dictates of reason alone." We are free only if we know, and so in proportion to our knowledge. There is no freedom without choice, and there is no choice without knowledge,—or none that is not illusory. Implicit therefore in the very notion of liberty is the liberty of the mind to absorb and beget . . . The mind is in chains when it is without the opportunity to choose. One may argue, if one please, that opportunity to choose is more an evil than a good. One is guilty of a contradiction if one says that the opportunity can be denied, and liberty subsist. At the root of all liberty is the liberty to know.—MR. JUSTICE CARDOZO, *The Paradoxes of Legal Science.*