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

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(To be concluded in the next issue)

C. *Modes of Creation; In General.*

There are three ways by which a corporation sole can be created under the Anglo-American law; they are (1) by force of the common law or by prescription, (2) by special charter, or (3) by incorporation under a general law. It is the purpose of the author, in this chapter, to investigate whether all of these modes of creation are applicable and in force in our jurisdiction.

(1) By Force of Common Law or Prescription.

a. Under the Common Law.

We have already stated that the corporation sole is the original product of English jurisprudence and its most outstanding contribution to the law of private corporations. In England, according to Blackstone, "the King's consent is absolutely necessary to the creation of any corporation, either impliedly or expressly given. The King's implied consent is to be found in corporations which exist by force of the common law, to which our former Kings are supposed to have given their concurrence; common law being nothing else but custom, arising from the universal agreement of the whole community. Of this sort are the King himself, all the bishops, parsons, vicars, church-wardens, and some others; who by common law have ever been held, as far as our books can show up, to have been corporations, virtute officii; and this incorporation is so inseparably annexed to the offices, that we cannot frame a complete legal idea of any of these persons, but we must also have an idea of a corporation, capable to transmit his rights to his successors at the same time." (1 Bl. Com. 472). The common law, so far as it related to the corporate capacity of the parsons or ministers of the parish to take in succession was recognized and adopted in the United States. Where the minister of a parish was seized, before the Revolution, of a freehold as parson ecclesiac 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. (Rawlet v. Clark, 9 Cranch, U. S., 292, 3 L. Ed. 735; Brunswick v. Downing, 7 Mass. 445; Weston v. Hunt, 2 Mass. 500). Thus, in the United States as in England, the corporation sole may be created by force of the common law or prescription.

b. Under the Philippine Laws.

We have already demonstrated that under the principles of the common law, where a parson or minister has been for a long time in the exercise of corporate powers, a presumption arises of an ancient charter, granted to their predecessors, making the exercise of such powers by them lawful

and rightful, a lost grant or charter from the crown or sovereign power being presumed. The question naturally arises, can a corporation sole be created by prescription under our laws?

Before answering the question, it will not be amiss if the author again reminds the reader that much of the common law notion of corporations has been introduced in our jurisprudence. Moreover, it must not be forgotten that the doctrine of corporation created by prescription has been expressly recognized and adopted by our courts. Thus, in the case of Barlin v. Ramirez (7 Phil. 41, 48) the objection was made by the defendant that there was no evidence of the corporate personality of the Roman Catholic Church, and that no special statute or incorporation had been cited. In disposing of this objection, the Supreme Court held, "It is suggested by the appellant that the Roman Catholic Church has no legal personality in the Philippines. This suggestion, made with reference to an institution which antedates by almost a thousand years any personality in Europe, and which existed when 'Grecian eloquence still flourished in Antioch and when idols were still worshipped in the temples of Mecca' does not require serious consideration."

While the above cited case refers to the corporate existence of the Roman Catholic Church, a corporation, aggregate and does not touch upon the legal personality of the head as a corporation sole, in this country, yet, it is humbly submitted that the case furnishes sufficient basis or analogy for answering the problem before us. Thus, under the principles of the above case, the writer takes the stand that the corporation sole may be created and recognized in our jurisprudence by prescription. Hence, if it can be shown that a bishop, chief priest, or presiding elder of any religious denomination, society, or church has been in the exercise of corporate powers from time immemorial or for a great and long span of years, there is no reason why our Courts will not recognize such dignitary as a corporation sole.

However, it must be emphasized that the corporations sole whose existence is recognized by force of common law or by prescription are those only which have existed for a great period of time, and from which it is impossible to show the consent by a particular charter or legislative enactment, the law then presuming that such charter or act of the legislature once existed, but that it has been lost by such accidents as lengths of time may produce. Therefore, it is very obvious that this method of obtaining a corporate existence is not only irregular but also uncertain in the highest degree. No particular time can be fixed after which the period of prescription begins to run. The facts upon which it is based must, in a great part, be established by oral evidence. This necessarily will perish with the persons capable of giving it. Thus, while a corporation sole may be created by prescription, such a mode is deemed, however to be unsafe.

(2) By Special Charter

a. Under the Common Law.

In the United States, to obviate the embarrassment experienced from lay trustee, recourse was had to the legislative power; and in several of the states, application was made for such acts of incorporation as would vest the temporalities of the Church in the bis-

hop, and thereby create a religious corporation sole, having the corporate attribute of succession independent of the laity.

Such was the mode of relief sought by the Roman Catholic Church in the state of Delaware, but which was defeated by the passage of a resolution declaring them entitled, as they always have been, to the same rights and privileges as all other religious denominations. (Union Church of Africana v. Sanders, 1 Houst. Del., 103; 63 Am. Dec. 187, 192). But in Illinois, the Catholic Bishop of Chicago was created a corporation sole by statute. (Chinuguy v. Catholic Bishop of Chicago, 41 Ill. 148). In Massachusetts, by the provincial statute of 28 G. 2, c. 9, the ministers of the several Protestant churches were made sole corporations, capable of taking in succession any parsonage lands, granted to the minister and his successors, or to the use of the ministry. (Weston v. Hunt, 2 Mass. 500).

b. Under the Philippine Laws.

We have, thus, shown that in the United States, the creation of corporations sole by special enactments, tho not common, is nevertheless recognized in the absence of organic limitations. In the Philippines, however, it is respectfully submitted that the legislature cannot by a special charter make a particular bishop, chief priest, or presiding elder of any religious denomination, society, or church into a corporation sole.

The reason for the author's contention is made apparent by a study of the Philippine Constitution. The organic law expressly provides that "the National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof." (Phil. Const. Art. XIII, Sec. 7). Thus, all private corporations except those owned or controlled by the Government shall be organized and regulated under a uniform and general law. The National Assembly is, therefore, prohibited from passing special laws for the organization of any particular private corporation. (Sinco, Phil. Gov't. and Pol. Law, 5th ed. p. 336).

The cited constitutional prohibition has salutory and beneficial effects. With the steady growth of Protestant churches and the onward increase of other religious sects and denominations, the multiplication of corporations sole by special enactments may involve the legislature in unending turmoil and subject its members to the constant and ever increasing importunities of all the different heads of religious organizations who may desire favorable charters from the hands of such solons.

(3) By General Law

a. Under the Common Law.

In the United States, the pressure brought upon the various legislatures to make the bishops and other heads of religious associations, corporations sole by means of special charters has not always been successful. Some legislatures have leaned against it, believing that the churches were asking for undue privileges.

In most of the states, the question is settled by statutes authorizing the bishops of various denominations to become corporations sole by complying with certain prescribed conditions, such as the filing of some statement, certificates, or affidavit with a certain officer. Their purpose is

to afford public notice of the existence of the corporation sole. (Mora v. Murphy, 83 Cal. 12; Barry v. Galtry, 69 Conn. 286; Techinor v. Brevi Exi; 98 Ky. 349; Gump v. Sibly, 79 Md. 165).

b. Under the Philippine Laws.

The Philippine Commission wisely provided for the creation and formation of the corporation sole by the compliance of natural persons with the prescribed conditions of the general law. (Act 1459, Secs. 154-159).

The constitutional prohibition against the formation of private corporations by special charters coupled with the statutory provisions authorizing the creation of corporations sole by incorporation under a general law have important and significant advantages. Such a mode of creation renders the formation of corporations sole convenient and speedy, secures uniformity in their powers and liabilities, and insures equality of rights and privileges, but most important of all, prevents the National Assembly from corruptly or improvidently granting corporate franchises to particular bishops, chief priests, or presiding elders to the prejudice and at the expense of other religious leaders.

D. *Incorporation.*

As has already been demonstrated, instead of adopting as a general practice the mode of creating corporations sole by special enactments, the Philippine Commission had enacted a general law (Act 1459) authorizing the bishop, chief priest, or presiding elder of any religious denomination, society, or church to become a corporation sole by incorporating under the provisions of the statute; and by constitutional limitations this is now, aside from the mode of creating corporations sole by prescription, the only way by which such corporations can be created:

(1) Substantial Compliance Required.

When a private corporation is organized under a general law, it does not come into existence until all the conditions prescribed \by the statute have been complied with. And, as a necessary consequence, no corporate act can be performed until such compliance.

However, it is a general principle, affecting the construction of statutes, that when a statute confers rights and privileges, but imposes conditions precedent to be performed, a substantial, as distinguished from a literal, compliance with the requisites of the law is all that is necessary; and this principle has repeatedly been applied in construing statutes authorizing the formation of private corporations, and requiring certain acts to be performed as a condition precedent. All that is necessary to legal incorporation under such a statute, and to the existence of a private corporation, not merely de facto, but de jure, is that the provisions of the law shall be substantially complied with. ((Floyd v. State, 177 Ala. 167, 59 So. 280). Thus, it has been held that a departure from the prescribed course will not of necessity prevent the creation of a private corporation de jure. "Whether or not such departure will have that effect depends upon the nature of the provision which is violated. If it is a mandatory provision, a failure to substantially comply with its terms will prevent the corporation from becoming one de jure: but, if the provision is merely directory, then a departure therefrom will not have that consequence." (J. W. Butter Butter Paper Co. v. Cleveland, 220 Ill. 128; 77 N. E.

99). From the fact that substantial compliance with the law is all that is needed, "it does not follow that any positive statutory requirement can be omitted on the ground that it is unimportant. They are conditions precedent to acquiring a statutory right, and none can be dispensed with by the court." (People v. Montecito Water Co., 97 Cal. 276; 32 Pac. 236).

Hence, if the bishop, chief priest, or presiding elder fails to comply substantially with the provisions of our Corporation Law, his corporate existence may be denied. Thus, in a California case, a certain bishop, Kelly, moved to be substituted in a pending litigation for the predecessor in office, the late Bishop Blakeslee. The defendant, as a countermove, prayed for the dismissal of the appeal on the ground that the said Kelly was not a corporation sole, for failure to comply with the provisions of the statute. The Court held, "If the deed was made to Blakeslee as a natural person, then the personal representatives are alone interested in the litigation, and are alone entitled to be substituted as appellants. If the deed is to be construed as intending to run to Blakeslee as bishop, and to his successors in office as bishop, then the word "successor" is valueless, and does not convey to or continue in said Kelly any estate in the land, unless the bishop of said church was and is a corporation sole. But there is no pretense that there was or is any such corporation. Such a corporation could be created in the state only by compliance with the provisions of the Civil Code on that subject, (Section 602) and it does not appear that there is any different law in the State of Illinois, or that there is any law there at all for the formation or existence of such a corporation. At all events, it is not contended that said bishop was a corporation. If, therefore, the use of the word 'successor' in the deed excludes the intent of the grantor to convey a fee to Blakeslee and his heirs, he took at best but an estate for life. Under any view, therefore, Kelly has no estate in the land, and no interest in the litigation." (Blakeslee v. Hall, 94 Cal. 159; 29 Pac. 623).

(2) Conditions Precedent to Incorporation

a. Who may incorporate.

The law provides 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." (Act 1459, Sec. 154).

In order to understand better the real meaning of the section under consideration, it is necessary to know the import of the different phrases used. It is only by doing this, by having a full comprehension of the legal signification of the words and phrases of the section that we can hope to have a full grasp of our subject.

(1) Meaning of "bishop", "chief priest", and "presiding elder."

According to Bouvier, a bishop is, "in England, an ecclesiastical officer, who is the chief of the clergy of his diocese, and is the next in rank to an archbishop. A bishop is a corporation sole. (1

Bl. Com. 469). In the United States, it is the title of a high ecclesiastical officer in the Roman Catholic Church, Protestant Episcopal, Methodist Episcopal, and some other churches. In the first two, he is the head of a diocese." (Bouvier's Law Dictionary, p. 128). The bishop may or may not be next in rank to an archbishop, depending upon the heirarchy of his organization. Thus, the highest religious dignitary in the Philippine Independent Church holds the rank and title of bishop.

A priest is one specially consecrated to the service of a divinity and considered as a medium thru whom worship, prayer, sacrifice, or other service is to be offered to the being worshipped. In Ecclesiastical Law, he is an officer of the second order of ministry, in the church. (Bouvier's Law Dictionary, p. 973). A chief priest is evidently, one who is put above the rest. Thus, a particular religious denomination or church may designate its highest officer with the rank and title of chief priest, depending upon its rules, regulations, or discipline.

An elder is a church officer of varying rank or function. In the Presbyterian Church, either any one of a body of laymen who superintend the spiritual work and interest of a church (called also presiding or ruling elder) or a clergyman. In the Methodist Church, a clergyman entitled to preach and to administer the sacraments. Among the Moravians, either a layman with practically the functions of a Presbyterian presiding or ruling elder, or one of a body of clergymen (specifically called provincial elders) superintending a federated division of the church. Presiding elder in the Methodist Church is one who has oversight of a district. (Funk and Wagnalls, New Standard Dictionary of the English Language). Thus, elder may be one ordained in sacris or a mere layman, depending, of course, upon the organization of the particular religious denomination, society, or church.

But not all bishops, chief priests, or presiding elders can become corporations sole. The law authorizes such bishop, chief priest, or presiding elder to become a corporation sole only when not "inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by competent authority thereof." (Act 1459, Sec. 154). Thus, the law requires that the bishop, chief priest, or presiding elder must state in his articles of incorporation "that the rules, regulations, and discipline of his religious denomination, society, or church are not inconsistent with his becoming a corporation sole and do not forbid it." (Act 1459, Sec. 156 as amended.) Furthermore, he must also make showing in his articles of incorporation "that as such bishop, chief priest, or presiding elder he is charged with the administration of the temporalities and the management of the estates and properties of his religious denomination, society, or church within his territorial jurisdiction describing it." (Act 1459, Sec. 156 as amended).

(2) Meaning of "religious denomination," "society," and "church."

A "religious denomination" or sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people. (State v. Hallock, 16 Nev. 313, 385).

It consists of people believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein. (State v. District Board, 44 N. W. 967, 973).

A "religious society" is an assembly met; or a body of persons who usually meet, in some stated place for the worship of God and religious instruction. It is made up of individuals who have associated together for religious as opposed to secular purposes, having no regard to the particular mode or manner of constitution or forming the society, or to its being incorporated, altho the term as used in particular statutes may have reference to incorporated or quasi incorporated religious societies. (54 C. J. Sec. 1). A religious society is a body of persons associated together for the purpose of maintaining religious worship only, omitting the sacraments. (Selsby v. Barlow, 82 Mass. 329, 330). Religious society has in English Ecclesiastical law and in our law a well defined meaning, as commonly used in our law, it is synonymous with "parish" or "precinct", and designates an incorporated society created and maintained for the support of public worship. (Riffe v. Proctor, 74 S. W. 409). The term "religious society" may with propriety be applied in a certain sense to a church, as that of religious association, religious union, or the like, yet in the true sense, and as commonly used in our law, it is synonymous with "parish", "precinct," etc. and designates an incorporated society created and maintained for the support and maintenance of public worship. In this, its legal sense, a church is not a religious society. It is a separate body, formed within such parish or religious society, whose rights and usages are well known and to a great extent defined and established by law. (Weld v. May, 63 Mass. 181, 188)

A "church" has been defined to be a building consecrated to the honor of God and religion (Robertson v. Bullions, N. Y., 9 Barb. 64) or it may consists of an indefinite number of persons, of one or both sexes, who have made a public profession of religion, and who are associated together by a covenant of church fellowship for the purpose of celebrating the sacraments and watching over the spiritual welfare of each other. (Baptist Church v. Witherell, N. Y., 3 Paige, 296, 301; 24 Am. Dec. 223). As far as all question of property are concerned, the term of "church" means the body of communicants gathered into church order, according to the established usage in any town, parish, precinct, or religious society established according to law, and actually connected and associated therewith for religious purposes. (Stebins v. Jennings, 27 Mass. 172, 193).

(3) "Religious society" and "church" distinguished.

A "church" and "religious society" are often united in maintaining worship, and in such cases the society commonly owns the property and makes the pecuniary contract with the minister, but in many cases societies exist without a church, and churches without a society. Churches are not corporate bodies, and commonly have no occasion for the exercise of corporate powers. (Selsby v. Barlow, 82 Mass. 329, 330). The term "church" is sometimes employed as of the same meaning as "religious society" and continues in a more restricted sense as mean-

ing a body having to do only with matters relating to the religious doctrine and discipline of its members apart from any temporal matters such as the acquisition and ownership of property and the maintenance of facilities for worship. So a "church" and a "religious society" may or may not be distinct, separate bodies, depending upon the usages and law of the jurisdiction and the nature of the church policy of the particular church under consideration. (54 C. J. Sec. 1).

b. Purpose of incorporation

The Corporation Law (Act 1459, Sec. 154 et seq.) authorizes 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 any religious denomination, society, or church, and the management of the estates and properties thereof."

By the term "temporalities" is meant something relating to temporal affairs; a temporal or material matter, interest, or possession. A revenue or possession of a religious house or an ecclesiastic. (Funk and Wagnalls, New Standard Dictionary of the English Language). In the common law, temporalities mean revenues, land, tenements, and lay fees which bishops have from the livery of the King, and in virtue of which they sit in parliament. 1 Rolle, Abr. 881 (Bouvier's Law Dictionary, p. 1169). The "temporalities" of the Roman Catholic Church are the revenues of the church derived from pew rents, Sunday and other collections, graveyard charges, school fees, and donations. (Barabaz v. Kabat, 37 Atl. 720; 86 Md. 23). Thus, from the various definitions given, it is obvious that by temporalities is meant property not used exclusively for religious worship.

The main and only purpose of incorporation is therefor, to make the bishop, chief priest, or presiding elder into a corporation sole and vest upon him, in such corporate capacity, the administration of the temporalities of his organization. The reason of the law in authorizing the creation of such corporation is, in the language of an American Court, "to obviate the embarrassment experienced from lay trustees, recourse was had to the legislative power; and in several of the states, application was made for such acts of incorporation as would vest the temporalities of the church in the bishop, and thereby create an ecclesiastical corporation sole, having succession independent of the laity." (Union Church of Africana v. Sandars, 1 Houst., Del. 103; 63 Am. Dec. 187, 192).

C. *Papers to be filed.*

In order to become a corporation sole, the bishop, chief priest, or presiding elder of any religious denomination, society, or church must file with the proper government authority the following papers: (1) the articles of incorporation, and (2) a copy of the commission, certificate of election, or letters of appointment of such bishop, chief priest, or presiding elder. (Act 1459, Secs. 155-156 as amended).

The articles of incorporation must set forth the following facts:

"(1) That he is the bishop, chief priest, or presiding elder of his religious denomination, society, or church and that he desires to become a corporation sole;

(2) That the rules, regulations, and discipline of his religious denomination, society, or church are not inconsistent with

his becoming a corporation sole and do not forbid it;

(3) That as such bishop, chief priest, or presiding elder he is charged with the administration of the temporalities and the management of the estates and properties of his religious denomination, society, or church within his territorial jurisdiction describing it;

(4) The manner in which any vacancy occuring in the office of bishop, chief priest, or presiding elder is required to be filed, according to the rules, regulations, or disciplines of the religious denomination, society, or church to which he belongs;

(5) That the place where the principal office of the corporation sole is to be established and located, which place must be within the Philippine Islands." (Act 1459, Sec. 155 as amended).

The statute, moreover, requires that "the articles of incorporation must be verified before filing by affidavit or affirmation of the bishop, chief priest, or presiding elder, as the case may be, and accompanied by a copy of the commission, certificate of election, or letters of appointment of such bishop, chief priest, or presiding elder, duly certified to be correct by any notary public or clerk of a court of record." (Act 1459, Sec. 156).

For the filing of such articles of incorporation, the statute charges twenty-five (Act 1459, Sec. 157 as amended); and for every such copy of a commission, certificate, or letters, the fee of ten pesos. (Act 1459, Sec. 158 as amended).

All these papers, with the required contents, must be filed in order to have a de jure corporation sole. The statutes which require articles of association generally prescribe the necessary contents, and substantial compliance with requirements of the statute in this respect is essential to a valid incorporation. If the statute specifically enumerates the various matters or facts which the articles must contain, and there is no other statute requiring other facts to be stated, only those matters specifically named need be contained in the articles. (Fletcher, Private Corporations, Vol. 1, Sec. 193). The legal existence of a corporation is not affected by the fact that the application, articles of incorporation, or certificate state matters not required by the statute, if they contain all the statements which are required, since the unnecessary statements may be rejected as surplusage. (Fletcher, Private Corporations, Vol. 1, 189).

The provision of the statute requiring that "the articles of incorporation must be verified before filing by affidavit or affirmation of the bishop, chief priest, or presiding elder, as the case may be" must be complied with in order to have a de jure corporation sole. (Act 1459, Sec. 156). Thus, it has been held, in numerous cases, that in order to become a corporation de jure, 'laws requiring the incorporation papers to be acknowledged or verified must be complied with. (Fift Bapt. Church v. Baltimore, 4 Mackay, D. C., 43; People v. Montecito Water Co., 97 Cal. 276, 32 Pac. 236). Likewise, the requisite that articles of incorporation must be "accompanied by a copy of the commission, certificate of election, or letters of appointment of such bishop, chief priest, or presiding elder, duly certified to be correct by any notary public or clerk of a court of record" is deemed to be a mandatory provision. (Act No. 1459, Section 156). Thus, it has been

held that where the statute require the articles of incorporation to contain a verified statement as to election of officers, the requirement as to verification is not merely directory but is a prerequisite to existence as a de jure corporation. (Wall v. Mines, 130 Cal. 27; 62 Pac. 386).

(3) Filing and Recording of Articles

The articles of incorporation and the copy of the commission, certificate of election, or letters of appointment of such bishop, chief priest, or presiding elder duly verified and certified respectively must be filed with the proper government authority. The filing of such papers, is, of course, an essential condition precedent to corporate existence. (Act 1459, Secs. 155 and 157 as amended).

a. With whom filed; his authority.

Formerly, the articles of incorporation and the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder were required to be filed with the Director of the Bureau of Commerce (Act 1459, Secs. 155-158); but under the present law, "the powers, duties, and functions now vested in, or performed and exercised by, the Bureau of Commerce in connection with the registration of corporations and all other forms of association are transferred to the Securities and Exchange Commission." (Com. Act 287).

Under a long line of judicial precedents, it was held that, "in the matter of filing of articles of incorporation, the Director of the Bureau of Commerce exercises only ministerial functions. If the purpose of the proposed corporation appearing upon the face of the articles of incorporation is lawful, the Director cannot make inquiries to ascertain whether the proposed corporation has a purpose different from that stated in the articles of incorporation. When the purpose of the proposed corporation is unlawful, as may be gathered from the articles of incorporation, the Director may refuse the filing thereof and the issuance of the certificate to the incorporators. The same rules may be applied to inquiries with respect to the truthfulness of the facts obtained in the affidavit attached to the articles of incorporation, for Section 9, Act 1459, as amended does not seem to confer upon the Director of Commerce to make such inquiries." (Asuncion v. De Yriarte, 28 Phil. 67; Uy Suiliong v. Director of Commerce, 40 Phil. 541; Gonzales v. Balmaceda, G. R. No. 1066). Therefore, following this line of decisions, it was obvious that the Director could not go beyond the papers submitted before him by the bishop, chief priest, or presiding elder and conduct outside inquiries as to the truthfulness of their contents.

However, with the passage of Commonwealth Act 287 a revolutionary change has been introduced in our law. This statute is of utmost importance in the determination of the exact period of the commencement of the corporate existence of the bishop, chief priest, or presiding elders desiring to become a corporation sole. It is, therefore, respectfully submitted that all of the cases cited above, holding that the act of the government officer in receiving the necessary papers as purely ministerial, have been overruled by this new law when it vests upon the Securities and Exchange Commission "the enforcement of all laws affecting corporations and associations, and to

this end may conduct such investigation as it may consider necessary." (Com. Act 287, Sec. 1). Thus, it is not only the duty of the Commission to scrutinize the articles of incorporation and the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder in order to determine inter allia, whether such papers comply substantially with the requisites of the law, but also to go beyond the papers submitted and make the pertinent inquiries and investigations. It is, therefore, apparent that his duty in receiving the papers required for incorporation is not merely ministerial in character, but is rather based upon a sound discretion. His duty, then, being discretionary, the exact period of the corporate existence of the bishop, chief priest, or presiding elder is also materially affected.

b. What constitute filing.

In order to become a corporation sole, the bishop, chief priest, or presiding elder of any religious denomination, society, or church must file with the Securities and Exchange Commission the papers enumerated by law. (Act 1459, Secs. 156-157). The statute also requires that "for the filing of such articles of incorporation, the Securities and Exchange Commission shall collect twenty-five pesos," (Act 1459, Sec. 157 as amended), and "for filing every such copy of a commission, certificate, or letters the said Securities and Exchange Commission shall collect the sum of ten pesos." (Act 1459, Sec. 158 as amended). It cannot be doubted that the filing of the proper papers in the proper office is made, by the statute, a condition precedent to the vesting of corporate powers.

In order to constitute a filing, it is necessary not only that the papers should be left with the officer at his office, but also that they be received and retained by the officer as papers on file. (State v. Chicago, 43 N. E. 226). The term "file" includes the idea that the paper is to remain in its proper order on file in the office. In the sense of a statute requiring the filing of a paper or document, it is filed when delivered to and received by the proper officer to be kept on file. The word carries with it the idea of permanent preservation of the thing so delivered and received; that it may become a part of the public record. It is not synonymous with deposited. (Bouvier's Law Dictionary, p. 413). Moreover, since the law requires the payment of the corresponding fees for the filing of the required papers, the author takes the stand that the payment of such sums is necessary for a proper filing. Thus, it has been held that "there is no filing where a person goes to the officer to file the papers, but on refusal to pay the filing fees, he leaves the office. . . ." (State of Chicago v. E. I. R. Co., 145 Ind. 229; 43 N. E. 226).

From the above definitions, it is apparent that the term "file" involves two distinct processes, the act of delivery by the bishop, chief priest, or presiding elder of the necessary papers and the corresponding fees, and the act of reception on the part of the Commission. Since, as we have already proven, that the duty of the Commission is discretionary and that he is empowered to make inquiries beyond the papers submitted to him, it is obvious that a long time may elapse before he accepts the papers in order to keep them on file. Thus, weeks may come and go before the papers,

after their delivery, are deemed to be properly filed in accordance with the law.

All of the above dissertations are relative to the solution of our next problem, the determination of the period when the corporate existence of the bishop, chief priest, or presiding elder begins.

(4) Commencement of the Corporate Existence

The corporation sole is an artificial person, and necessarily can have no legal existence until it has been fully created. And until it comes into a juridical existence, it cannot, in the nature of things, legally act as a corporation. So, until that time, the bishop, chief priest or presiding elder cannot enter into contracts, acquire or dispose of personal or real property, maintain actions, and perform other acts in a corporate capacity. Thus, it has been held, in numerous judicial precedents that where there is no law authorizing the creation of the corporation sole or even if there is such a statute but there is no due incorporation, the bishop, chief priest, or presiding elder cannot possess corporate rights or privileges nor assume corporate duties or functions. (Dwenger v. Geary, 113 Ind. 106, 111, 14 N. E. 903; McGirr v. Aaron, 21 Am. Dec. 361; Dain v. Gibboney, 101 U. S. 362, 365, 25 L. Ed. 813; Zuegama v. Paahao, 16 H. 345; Blakeslee v. Hull, 94 Cal. 159, 29 Pac. 623). Therefore, that the bishop, chief priest, or presiding elder must have a full and complete existence as a corporation sole before it can assume and exercise corporate rights, privileges, and powers seems to be self-evident.

We have already demonstrated that the corporation sole does not come into being until all the conditions precedent prescribed by the statute are substantially complied with. Hence, the corporate existence commences only "from and after the filing with the Securities and Exchange Commission of said articles of incorporation, verified by affidavit or affirmation as aforesaid and accompanied by the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder, duly certified as prescribed in the section immediately preceding, such bishop, chief priest, or presiding elder as the case may be, shall become a corporation sole." (Act 1459, Sec. 187 as amended).

In, thus, ascertaining the exact period in which the corporate existence of the bishop, chief priest, or presiding elder as the case may be commences, we are not moved merely by a purely academic curiosity; but on the contrary, we believe that the marking of the exact time when the corporation sole comes into being has far reaching practical and legal consequences. Thus, from that time on, "all temporalities, estates, and properties of the religious denomination, society, or church therefore 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. 157 as amended).

A. Effect of Defective Incorporation.

The Philippine Corporation Law (Act 1459) prescribes the conditions upon which bishops, chief priest, or presiding elders desiring to do so may become cor-

poration sole. In order that there be a de jure corporation sole, it is necessary that there should be a substantial compliance with the formal requisites of the statute. It is the formation of a de jure corporation sole that is the object of due incorporation. However, like all human actions, the incorporation of the corporation sole may be attended with blunders and mistakes; and the law may only be partially complied with. It is clear that such mistakes will result either in a de facto corporation sole or corporation sole by estoppel.

In order to have a de facto corporation sole, the principles of private corporation establish three prerequisites: (1) a valid law under which a de jure corporation sole may be organized (and we have shown that the creation of the corporation sole under the Philippine Corporation Law is a valid and constitutional exercise of the legislative power), (2) a bona fide attempt, however abortive, to organize under it, and (3) the user of corporate powers. (Methodist Episcopal Union Church v. Pickett, 19 N. Y. 492: Van Buren v. Ref. Church of Gansevoort, 62 Barn. N. Y. 495). A body, therefore, which cannot become a corporation de jure cannot become one de facto. (Evenson v. Ellingson, 67 Wis. 634: 31 N. W. 342).

In case there is a compliance with the above requisites, then there is a de facto corporation sole. In such a case, the corporate existence of the bishop, chief priest, or presiding elder cannot be challenged or questioned in a collateral proceeding but can only be attached in a direct proceeding, by quo warranto, brought by the State. (Rule 63 of the Rules of Court in the Philippines). Thus, in Chinuguy v. Catholic Bishop of Chicago (41 Ill. 148), it was held that, "altho this act required the Catholic bishop of Chicago, within six months after his appointment to file for record a statement of his appointment, under his hand and corporate seal, and verified by his affidavit, and that the then Catholic bishop of Chicago should comply with such requisite within three months after the act become a law, it nowhere declares his titles shall be forfeited if he does not do these things, nor do we conceive the last provision was designed as a prerequisite to the organization of the corporation of which he was the head. In this action, these matters cannot be inquired into. On the direct proceeding by quo warranto, such proof might be demanded, and, in its absence, the corporation might be dissolved. It cannot be assailed in this collateral proceeding."

With respect to the corporation sole by estoppel, the bishop, chief priest, or presiding elder may assume to act as a corporation sole when he has not gone far enough in his attempt to incorporate to acquire even a de facto corporate standing. Under certain circumstances, either the bishop, chief priest, or presiding elder or the persons contracting with him as a corporation may be "estopped" to deny that he is a corporation sole. While it is true and we have proved that as against the State a corporation sole cannot be created by the mere will of the bishop, chief priest, or presiding elder, yet, as between parties litigants they may, by their agreements, admissions, or conduct, place themselves where they cannot be permitted to deny the fact of the existence of the corporation sole. The corporation sole under such circumstances is designated a corporation sole by

estoppel. Thus, in McClosley, Roman Catholic Bishop of Louisville, v. Doherty (97 Ky. 300; 30 S. W. 649) it was held, "Besides, it appears that the appellee or his vendees contracted with the Right Reverend William George McCloskley in his corporate name, and acquire the right of entry and possession under this title, and is estopped from denying the manner of his holding. This right of way carved out of the tract of land then claimed and in the possession of this corporation, and the entry of the appellee was under this title." This doctrine of private corporations by estoppel has been recognized by our courts in many cases. (Cia Agricola de Ultramar v. Reyes, 4 Phil. 12; Chamber of Commerce v. Pua Te Ching, 14 Phil. 222; Asia Banking Corporation v. Standard Products Co., 46 Phil. 144).

PART III

THE ATTRIBUTES AND THE POWERS OF THE CORPORATION SOLE

CHAPTER I

The Attributes of the Corporation Sole

A. Attributes of the Corporation; In General

Blackstone, in his Commentaries, enumerates the attributes of a corporation in substance as follows: (1) the capacity of perpetual succession; (2) the power to sue or be sued in the corporate name; (3) to purchase and hold real estate; (4) to have a common seal; (5) to make by-laws for the internal government of the corporate body. (1 Bl. Com. 475).

It is highly doubtful whether even in Blackstone's day all of these attributes were essential to corporate existence; however, this may be, it is well settled today that some of the faculties above described are not at all essential to the corporation sole. It is true that these faculties are ordinarily incident to the corporate existence of the sole corporation, but some of them are not in the least essential. Thus, in a leading Massachusetts case, the Court held, "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." (Overseers of the Poor v. Sears, 39 Mass. 122).

In a leading New York case, Chief Justice Nelson said, "that the essence of a corporation consists in a capacity (1) to have perpetual succession under a special name, and in an artificial form; (2) to take and grant property, contract obligations, sue and be sued, by its corporate name as an individual; and (3) to receive and enjoy in common grants of privileges and immunities." (Thomas v. Dakin, 22 Wend. (N. Y.) 9).

B. Essential Attributes of the Corporation Sole

Before discussing in detail the powers of the corporation sole, it

is pertinent that we first ascertain and then describe those attributes of the corporation sole which are essential to its corporate existence; for only by doing so, can we have a sufficient comprehension of the powers of such corporation.

(1) Continuing Succession.

As has been seen, Blackstone regarded the capacity of perpetual succession as an essential attribute of a corporation. That erudite jurist considered the attribute of succesion as the most important faculty of the corporation sole when he defined the latter as consisting 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 advantages, particularly that of perpetuity which in their natural persons they could not have had." (1 Bl. Com. 469). In this connection, it may be well to observe that the term "perpetual succession" is not generally construed to imply corporate immortality, but rather a continuity of the existence of the corporation sole regardless of the changes in its sole membership. Upon the death, resignation, transfer, or deprivation of the bishop, chief priest, or presiding elder, his rights and powers as a sole corporation passes to his successors in office.

This attribute of the corporation sole is expressly recognized by our law when it declares that "the successors in office of any bishop, chief priest or presiding elder incorporated as a corporation sole shall become the corporation sole on accesion to office, and shall be permitted to transact business as such on filing with the Securities and Exchange Commission a copy of their commissions, certificate of election, or letters of appointment duly certified to be correct by any notary public or clerk of a court of record." (Act 1459, Sec. 158 as amended). For filing every such copy of a commission, certificate, or letters, the law requires the payment of the sum of ten pesos. (Act 1459, Sec. 158 as amended).

One of the most important and of serious consequence to the corporation sole is the effect of the vacancy in the office of the bishop, chief priest, or presiding elder upon the administration of the temporalities and the management of the estates and properties thereof. In such an eventuality, many cases have arisen as to who shall administer the temporalities and who are entitled to the profits of the estates and properties thereof. It has been held that "the minister holding parsonage lands in fee simple, holds them in right of his parish or church; and therefore, on his resignation, deprivation, or death, the fee is in abeyance until there be a successor. During the vacancy the parish or church have the custody, and are entitled to the profits, of the parsonage. 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. An alienation of the parsonage by the town, district, or precinct or vestry is void; for if there be a minister, the fee is in him; or if there be a vacancy, the fee is in abeyance." (Weston v. Hunt, 2 Mass. 500). To the same effect a later case held. "in case of a vacancy in the office, the town or parish is entitled to the custody of the same, and for that purpose may enter and take the profits,

until there be a successor." (First Parish of Brunswick v. Dunning, 7 Mass. 545).

Fortunately, our law has wisely provided for the condition resulting from the vacancy in the office of the bishop, chief priest, or presiding elder; and the numerous cases regarding the administration of the temporalities and the enjoyment of the profits of the estates and properties thereof, it is respectfully suggested, may not occur in this country. The statute providently recites that "during a vacancy in the office of the bishop, chief priest, or presiding elder of any church incorporated as a corporation sole, the person or persons authorized and empowered by the rules, regulations, or discipline of the religious denomination, society, or church represented by the corporation sole to administer the temporalities and manage the estates and property of the corporation sole during the vacancy shall exercise all the power and authority of the corporation sole during such vacancy." (Act 1459, Sec. 158 as amended). And in order to further safeguard against the failure of the office being filled in due time during such a vacancy, the law expressly requires that the articles of incorporation must state "the manner in which any vacancy occurring in the office, of bishop, chief priest, or presiding elder is required to be filled, according to the rules, regulations, or discipline of the religious denomination, society, or church to which he belongs." (Act 1459, Sec. 155 as amended).

(2) Artificial Personality

A corporation sole, as we have already described, has been judicially defined as "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. 30). Our law also defines a corporation (and this definition applies to all forms of corporation organized under the Philippine Corporation Law) as ". . . . an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by Law or incident to its existence." (Act 1459, Sec. 1). Thus, a corporation sole is declared by judicial and statutory definition as possessing, as one of its most essential faculty, the attribute of artificial personality. This means that in legal contemplation every corporation sole is a "person", an entity distinct from the natural person who is its sole component.

However, we must never forget that the bishop, chief priest, or presiding elder who has duly incorporated as a corporation sole is, in his natural self, also a "person" in contemplation of the law. Thus, we have a very unique status of an individual under our law who is both a "person" in the natural and juridical sense. This combination of the natural and artificial "person" simultaneously in the bishop, chief priest, or presiding elder gives rise to serious legal problems, inasmuch as in both senses, real or juridical, he is susceptible of rights and obligations, or of being the subject of a legal relation. Having thus possess the aptitude to be the subject of rights and obligations or of a legal relation in both capacities, the question that naturally always occur is ,when will such bishop, chief priest, or presiding elder he held responsible as a natural person and when as a legal entity. In some cases, it is difficult to draw with mathematical

precision the dividing line between the two. The statute itself, as far as the real and the legal being of the corporation sole is concerned, does not establish and divide fields of black and white.

Because of the serious and perplexing problems brought about by this peculiar status of the corporation sole, many notable jurists have looked with extreme disfavor the legal fiction treating the corporation sole as a juridical person. Thus, as far back as the year 1522, Fineux, a Chief Justice in Britain, was declaring a corporation sole would be an absurdity, a nonentity. "It is argued," he said, "that the master and his Brethen cannot make a gift to the master, since he is the head of the corporation. Therefore, let us see what a corporation is and what kinds of corporations there are. A corporation is an aggregation of head and body: not a head by itself, nor a body by itself; and it must consonant to reason, for otherwise it is worth nought. For albeit the King desires to make a corporation of J. S., that is not good, for common reason tells us that it is not a permanent thing and cannot have successors. "The Chief Justice goes on to speak of the Parliament of Kings, Lords, and Commons as a corporation by the force of the common law. He seems to find the essence of corporations in the permanent existence of the organized group, the "body of members", which remains the same body though its particular change, and he denies that this phenomenon can exist where only one man is concerned. There is no permanence. The man dies and, if there is office or benefice in the case, he will have no succeesor until time has elapsed and a successor has been appointed. This is what had made the parsons case a difficult case for English lawyers. Finneaux was against feigning corporateness where none really existed. (Maitland Selected Essays, p. 79).

Maitland, the celebrated English jurist, attacked with great vigour and sound reason the artificial personality of the corporation sole. He states, "When we turn from this mere ghost of a fiction to a true corporation, a corporation aggregate, surely the main phenomenon that requires explanation, that sets us talking of personality and, it may be of fictitious personality, is this, that we can conceive and do conceive that legal transactions, or acts in the law, can take place and do often take place between the corporation of the one part and some or all of the corporators of the other part. A beautiful modern example shows us eight men conveying a colliery to a company of which they are the only members: and the Court of Appeals construes this as a 'sale' by eight persons to a ninth person, though the price consists not cash, but in the whole share capital of the newly formed corporation. But to all appearance there can be no legal transaction, no act in the law, between the corporation sole and the natural man who is the one and only corporator. We are told, for example, that 'a sole corporation, as a bishop or a person, could not make a lease himself because he cannot both be lessor and lessee.' We are told that 'if a bishop hath lands in both capacities he cannot give or take to or from himself.' Those who use such phases as these show plainly enough that in their opinion there is no second 'person' involved in the cases of which they speak; 'he' is 'himself', and there is an end of the matter. I

can find no case in which the natural man has sued the corporation sole or the corporation sole has sued the natural man." And the eminent jurist concludes sarcastically, "Be that as it may, the ecclesiastical corporation sole is no 'juristic person'; he or it is either natural man or juristic abortion". (Maitland, Selected Essays, 101-109).

(3) Name

In Rolle's Abridgment, citing the Sutton Hospital case, it is laid down that the name of incorporation is a proper name or a name of baptism, and that a name is, therefore, essential to a corporation. (Rolle's Abridgment, "Corporation," 512). Blackstone says that "when a corporation is erected, a name must be given to it and by that name alone it must sue and be sued and do all legal acts; though a very minute variation thereon is not material. Such name is the very being of its constitution.... without which it could not perform its corporate functions." (1 Bl. Com. 474, 475).

However, in the leading case of Overseers of Poor v. Sears (39 Mass. 122), it was held that, "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"; but in the same breath, the Court goes on to say that" .... he performs all legal acts under his own seal, in his own name and name of office. "With due reverence to the bold and striking dictum propounded by the learned court, the author of this essay humbly submits that a corporate name is as essential to a corporation sole as to any other classes of corporation. We have already demonstrated that the bishop, chief priest, or presiding elder, duly incorporated as a corporation sole, possesses the aptitude to be the subject of rights and obligations or of a legal relation in his dual capacity, that is, in both his natural and juridical person; and by reason of this unique status, the great and difficult problem of when to hold such religious dignitary responsible as a natural person and when as a legal being heavily confronts the puzzled jurists. In most cases, the Courts have sought to drive a wedge between these two divergent capacities by emphasizing the use of a corporate name by such bishop, chief priest, or presiding elder. Thus, it can be readily seen that the existence of a corporate name is an all-important index or test in the solution of this difficult question brought about by this peculiar status of the sole corporation.

A few illustrative cases will bear out our assertion. Thus, in the case of Reid v. Barry, (93 Flo, 849; 112 So. 846), the Court laid great stress upon the use of a corporate name when it held, "If the deed in this case had read merely to 'Right Rev. John Moore, Bishop of St. Augustine,' not being preceded by the word 'as', might have been merely descriptio personae; but the grantee in the deed is, 'Right Rev. John Moore, Bishop of St. Augustine, Florida, of the County of St. Johns, and his successors in office and assigns forever, 'and the deed contains full covenants of seisin, quiet enjoyment, and warranty. It was the plain purpose of the deed to vest the complete legal title in fee, with full power of alienation, in Bishop Moore, and his successors in office, in their official, as contradistinguished from their individual, capacities, respectively. "And in a still later case, a certain Williard secured a

judgment against the Right Rev. Patrick Barry, Bishop of the Diocese of St. Augustine. The judgment declares against "Rt Rev. Patrick Barry, Bishop of the Diocese of St. Augustine." The Bishop then brought an action seeking to procure a decree holding the judgment to be a judgment against Patrick Barry as an individual and not a judgment against Rt. Rev. Patrick Barry, bishop of the diocese of St. Augustine as a corporation sole. The defendant Willard answered, stressing great importance on the use of the title of the ecclesiastical officer by the prelate in his transactions with the defendant which culminated in the litigation and the consequent judgment against the bishop. The Court held, "The allegations of the answer, if proven to be true, constitute a sufficient basis for an adjudication that the judgment which the complainant contends is ambiguous is a judgment against the corporation sole and not a judgment against the individual. That a suit in equity may be maintained for the purpose of such an adjudication is not questioned." (Willard v. Barry, 152 So. 411).

It has been held that a minute variation in the name of the corporation sole does not affect in any degree the corporate rights and powers. Thus, in the case of McCloskley, Roman Catholic Bishop of Louisville v. Doherty (97 Ky. 300; 30 S. W. 649), the land, in controversy, belonged to the diocese of which the appellant, Rt. Rev. William George McCloskley, was bishop, and had been hold by him, and the bishops preceding him, for many years. Prior to April, 1888, the title was vested in the "Right Reverend William George McCloskley, Roman Catholic Bishop of Louisville, and His successors in Office," at which time the style of this corporation was changed by an act of the legislature to that of "Right Reverend William George McCloskley, Roman Catholict Bishop of Louisville," omitting the words, "and His Successors in Office," and it was contended that, as the name of the corporation was changed it was necessary, in order to pass the title, that conveyance should have been made from the one corporation to the other, as the legislature had no power to divest one of title in that mode. In answer to this allegation, the Court held, "We think it manifest that a mere change in the corporate name is not divesture of title, or such a change as would require a regular transfer of title to property, whether real or personal, and the last named corporation being the same as the first, and held for like purposes and by the same person, such an objection is no obstacle to recovery." And again, in another case, it was held, "This we deem a sufficient description and to mean the name under which defendant William George McCloskley has chosen to have himself designated by an act of incorporation as the 'Rt. Rev. Wm. George McCloskley, Roman Catholic Bishop of Louisville.' The words used by the testatrix in making this devise over are, 'to the Roman Catholic Bishop of the city of Louisville,' thus interpolating the words 'of the city'. These words, however, do not in any wise make doubtful or uncertain the object of the testatrix bounty. Such minor inaccuracies have often been held by this court as immaterial." (Tichenor v. Brever's Exi, 95 Ky. 349; 33 S. W. 86).

(4) The Power to Sue and Be Sued in the Corporate Name.

We have already seen that Blackstone considers the power to sue or be sued in the corporate name as one of the essential faculty of a corporation. In a California case, it was held that this attribute is an inseparable incident to the corporate sole. The Court states, "The point in relation to which evidence improperly admitted may have an undue weight upon the minds of the jury, is whether the premises in dispute constitute a part of this reservation. If they do not, then, assuming that the confiscation took place as alleged and not denied on the argument, we see no ground upon which this action can be maintained. If they do, we think that the priest, in his character as priest, may maintain the action. The case of Lineker v. Ayesford is inapplicable. In that case the plaintiff appeared upon the face of his own declaration to be but a naked agent, whereas, the priest in this case seems to have charge of the Church property, or at least of some partitions of it, coupled with an interest. His position seems to be more analogous to that of a sole corporation, than to that of a naked agent, and the power to sue is an inseparable incident to such corporation." (Santillan v. Moses, 1 Cal. 92).

In the Philippines, the right of the religious corporation sole to sue and be sued has been recognized. (Bishop of Cebu v. Mangaron, 6 Phil. 286; Harty, Roman Catholic Archbishop of Manila v. Municipality of Victoria, 13 Phil. 152; Archbishop of Manila v. Roxas, 22 Phil. 450; Bishop of Nueva Segovia v. Bantay, 28 Phil. 347; Dumangas v. Bishop of Jaro, 34 Phil. 541; City of Manila v. Roman Catholic Archbishop of Manila, 36 Phil. 815; Rivera v. Archbishop of Manila, 40 Phil. 717).

(5) Power to Hold Realty.

Blackstone regarded the power to purchase and hold lands as an inseparable incident of corporate existence. Our law provides that "any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes." (Act 1459, Sec. 159).

The author humbly submits that this power is not an essential attribute of the corporation sole. It is true that this faculty is expressly granted, but it is also evident, by a study of the language used in the statute, that this power is merely permissive and not mandatory; hence the corporation sole may or may not exercise this power. Thus, the ecclesiastical corporation sole may be expressly prohibited by the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by the competent authority thereof from acquiring and holding real estate, yet such bishop, chief priest, or presiding elder may be none the less a corporate entity. What is ordinarily incident to corporate existence must not be confounded with what is really vital, and the attribute to acquire and hold real estate is not by any means an essential corporate faculty.

(6) To have a Common Seal.

Blackstone, as we have seen, enumerates as one of the essential attributes of a corporation the power to have a common seal. The use of seals by corporations is a vestige of the ancient common law of England under which a corporation could not only under its seal and was not bound by

written contracts not authenticated by its seal. (7 R. C. L. Corps, Par. 109)

It is respectfully suggested that this is not an essential corporate attribute. It is a settled law today even in the common law countries that a corporation may make contracts without the use of a seal, and the doctrine that no corporate act can be binding without bearing the corporate seal, has long ceased to be maintained. (Thomas v. Dakin, 22 Wend [N. Y.] 9). With respect to the corporation sole, an American Court held with respect to the corporate seal, "A bishop or person acting in a corporate capacity and holding property to him and his successors in right of his office . . requires no peculiar seal, he performs all legal acts under his own name and name of office." (Overseers of Poor v. Sears, 39 Mass. 122).

Moreover, it must be remembered that the use of seal as a formal element in the law of contracts has no place in the Philippine Civil Law. Section 56, Rule 123 of the Rules of Court provides that "there shall be no difference in legal effect between sealed and unsealed private writings." Thus, it is apparent that the faculty to have a corporate seal is not an inseparable attribute to a corporation sole.

(7) To Make By-Laws.

Blackstone, as we have seen, considers the power to make by-laws for the internal government of the corporation as an essential corporate attribute.

However, it has been held, with respect to a bishop or parson acting a corporate capacity and holding property to him and his successors in right of his office, that "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." (Overseers of Poor v. Sears, 39 Mass. 122).

Hence, it is obvious that by-laws are not indispensable to the existence of the corporation sole.

(8) Recapitulation.

Having discussed in detail the attributes of the corporation considered essential by Blackstone, we can now readily ascertain the essential attributes of the corporation sole.

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.

(To be continued in the following number)