RECENT DECISIONS

Civil Law — *A partition made by the heirs, excluding an heir and including persons who are in fact not heirs, is merely voidable and not void ab initio.*

LAO V. DEE HAO KIM, ET AL.
G.R. No. L-8663, October 31, 1957

Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong.[1] The partition of the estate may be effected by (1) the heirs themselves extrajudicially, (2) by the court in an ordinary action for partition, or in the course of administrative proceedings, (3) by the testator himself, and (4) by a third person designated by the testator.[2] It may happen that a partition is made which results in the exclusion of an heir who is rightfully entitled to a share and the inclusion of persons who are in fact not heirs. In such case, a controversy may arise among those claiming to be entitled to the property. Such a situation was dealt with in the instant case.

It appears that one Dee Chian Hong died intestate on February 1, 1945, leaving valuable stock in several financial and commercial institutions. Crispina Dee was one of his legitimate children; the other heirs are the herein defendants. In March 1946 these other heirs executed an extrajudicial settlement of the estate, dividing it among themselves, and in fraud of Crispina, awarded nothing to her. Crispina married the plaintiff herein in April, 1948. In March, 1954, the latter filed the present action, demanding a new partition of the properties of Dee Chian Hong and the delivery of Crispina's inheritance together with its income. Defendants filed a motion to dismiss and so did Crispina, who alleged that plaintiff's complaint asserted and usurped a cause of action completely belonging to her, and that she had never authorized him to institute any action concerning the estate of her deceased father. Plaintiff insisted that the partition was void ab initio, not only because Crispina had been excluded therefrom but principally because persons who were not heirs had been included therein. Invoking Article 1081[3] of the old Civil Code, he asserted that his wife's rights to her lawful share was never interrupted by such partition, inasmuch as it was void. Consequently, when they married, she had paraphernal property, the fruits of which formed part of the conjugal assets under his management, fruits which are therefore recoverable through this present action.

The lower court's judgment dismissing the complaint was upheld. Interpreting Article 1081, the Court held that although the article calls the contract void, it was not non-existent and was merely voidable insofar as it concerns the strangers who had mistakenly been included in the partition. The Court noted the fact that the new Civil Code provides that it shall be void "only with respect to the person who was mistakenly considered as an heir."[4] Consequently, if the contract under article 1081 was existing although voidable, so long as it was not avoided it had its effects; so that when Crispina married plaintiff in 1948, such partition agreement was existing and there could have

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1 Civil Code, Article 1079.
2 III TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, p. 533 (1955).
3 Civil Code, Article 1081, states: "A partition made with the inclusion of a person believed to be an heir, but who is not, shall be void."
4 Civil Code, Article 1105.

been no inheritance brought by her to the marriage and her husband could acquire no rights thereto.[5]

Furthermore, the person affected directly (his wife) objects to his action to recover. Crispina's conduct during the proceedings practically amounting to a desire to let the partition remain undisturbed could be construed, according to the Court, as a renunciation or disposition of her share or paraphernal property, which she could do under Act No. 3922 amending Article 1387 of the old Civil Code.[5a] The Court pointed out that under the new Code, "a married woman of age may repudiate an inheritance without the consent of her husband",[6] which repudiation "shall always retroact to the moment of the death of the decedent."[7]

> "x x x Crispina's repudiation of her share now, deprives her of the inheritance as of 1945. Hence in the eyes of the law when she married plaintiff in 1948 she did not carry such share with her into the conjugal partnership, which commences precisely on the date of the celebration of the marriage."

It would seem to be the rule, in the light of this case and the earlier one of *Varela v. Villanueva*[8], that the repudiation of an inheritance may be made impliedly, and need not be express, which seems to be the inference raised by Article 1051 of the new Civil Code, which states that "the repudiation of an inheritance shall be made in a public or authentic instrument, or by petition presented to the court having jurisdiction over the testamentary or intestate proceedings."

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5 Plaintiff had also contended that his action does not refer to paraphernal property but to the fruits of such property, which are conjugal, but the Court considered such argument as fallacious. For there can be no recovery of fruits unless the identity, value or amount of the paraphernal property is previously established, and this may only be accomplished in an action involving the paraphernal property of the wife, an action which cannot be instituted without her consent. See Jacinto v. Salvador, 22 Phil. 376 (1912).

5a Article 1387, as amended by Act No. 3922, provided that "the married woman, of age, may alienate, encumber or mortgage or otherwise dispose of her paraphernal property, and appear in court to litigate with regard to the same, without necessity of the permission or presence of the husband." Prior to Sept. 12, 1932, when Act No. 3922, the wife could not do such acts without the authority of the husband, unless she had been judicially authorized to do so.

6 Civil Code, Article 1047. As a rule, the wife can repudiate an inheritance without the consent of her husband. But an exception should be noted: when the economic regime established by the marriage is the absolute community of property, Article 200 of the new Code provides that "neither spouse may renounce any inheritance without the consent of the other."

7 Civil Code, Article 1042. By fiction of law the will of the heir to accept or repudiate the inheritance is made simultaneous with the death of the decedent, in order to ensure that the continuity of ownership of property should not suffer interruption.

8 50 O.G. 4262 (1954). In this case, where an absent brother of the deceased had failed to notify the latter during the latter's lifetime of his whereabouts in the United States, his silence or inaction was construed as "an abandonment of his hereditary right in the Philippines." Previous to this ruling by the Supreme Court, it was the generally accepted view that repudiation, by its very nature, had to be express and formal, although acceptance could be implied. This is so, according to Tolentino, because "the acceptance of an inheritance confirms the transmission of the right of succession, while repudiation makes this transmission ineffective, producing thereby more violent and disturbing consequences which the law cannot permit by mere implications or presumptions." TOLENTINO, op. cit., at 504.

Civil Law — In case of non-appearance of the defendant in an action for legal separation, the fiscal may bring to light any facts which may afford an adequate defense to the granting of the decree.

BROWN V. YAMBAO
G.R. No. L-10699, October 18, 1957

In our jurisdiction, marriage is recognized as something more than a mere contact; it is an inviolable social institution,[1] in the maintenance of which in its purity the public is deeply interested. As stated in one case, when the legal existence of the parties is merged into one by marriage, the new relation is

1 Civil Code, Article 52.

regulated and controlled by the state or government upon principles of public policy for the benefit of society as well as the parties.[2]

It is the policy of the law, therefore, to look upon legal separation with disfavor. To that end, various safeguards are provided for in order that the decree may not be obtained with ease. Thus, the court in every case must take steps, before granting the legal separation, toward the reconciliation of the spouses.[3] Several grounds exist for the dismissal of the action for legal separation.[4] Furthermore, no decree can be granted upon a stipulation of facts or by confession of judgment.[5]

In its desire to preserve marriages validly entered into, the State must be ever vigilant to ensure that no collusion[6] between the parties is present. And because a grant of legal separation in case of default of one of the parties is fraught with danger of connivance or collusion, the law provides that "in case of non-appearance of the defendant, the court shall order a prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated."[7] The extent to which the fiscal is permitted to make inquiries is illustrated in the instant case.

On July 14, 1955, William Brown filed an action to obtain legal separation from his lawful wife, Juanita Yambao. He alleged that while he was under internment during the Japanese occupation, his wife engaged in adulterous relations with one Field, of whom she begot a baby girl; that he learned of his wife's infidelity only upon his release in 1945; that thereafter the spouses lived separately and later executed a document liquidating their conjugal partnership. The wife failed to answer the summons in due time, and upon petition of the plaintiff, the court declared her in default. However, the Court, in accordance with article 101 of the new Civil Code, directed the City Fiscal to investigate whether or not a collusion existed between the parties. The examination by the Assistant City Fiscal during the trial elicited the fact that after liberation, Brown had lived maritally with another woman and had begotten children by her. Thereafter, the court rendere djudgment denying the legal separation granted on the ground that, while the wife's adultery was established, Brown had incurred a similar misconduct, thus barring his right of action under Article 100 of the new Civil Code, which provides that where both spouses are offenders, a legal separation cannot be claimed by either of them. Furthermore, the action had prescribed because Brown, although he had learned of his wife's infidelity in 1045, only filed action in 1955. Plaintiff appealed.

The decision was affirmed. In disposing of appellant's contention that the fiscal's authority is limited to finding out whether or not there is collusion and

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2 Goitia v. Campos Rueda, 35 Phil. 252, 254 (1916).

3 Civil Code, Article 98.

4 The grounds for the dismissal of an action for legal separation may be summarized briefly as: (1) consent or connivance on the part of the plaintiff to the marital offense; (2) pardon by the plaintiff of the fact constituting the ground for legal separation; (3) recrimination, (4) collusion, (5) lack of residence in the Philippines; (6) prescription, and (7) death of one of the parties. I TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, p. 283 (1953).

5 Civil Code, Article 101.

6 Collusion is a corrupt agreement between the spouses whereby one of them for the purpose of enabling the other to obtain a divorce commits a matrimonial offense, or whereby for the same purpose evidence is fabricated of an offense actually committed or evidence of valid defense is actually suppressed (19 C.J. 91). Collusion between the parties causes the dismissal of the complaint (Art. 100, Rep. Act No. 386).

7 Paragraph 2 of Article 101 is a new provision, taken from Article 103 of the California Civil Code, which provides: "No divorce can be granted upon the default of the defendant or upon the uncontradicted statement, admission, or testimony of the parties, or upon any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers."

if there is none, to intervene only for the state and not for the defendant, the Supreme Court stated: "it was legitimate for the Fiscal to bring to light any circumstance that could give rise to the inference that the wife's default was calculated, or agreed on, to enable appellant to obtain a decree of legal separation that he sought without regard to the legal merits of his case." Inasmuch as it was clearly established that Brown had cohabited with a woman other than his wife, such fact bars him from claiming legal separation.

In support of its decision affirming the action taken by the fiscal, the Court had occasion to refer to the policy considerations of the law: "The policy of Article 101 of the new Civil Code, calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages under article 88) is to emphasize that marriage is more than a mere contract, that it is a social institution in which the state is vitally interested, so that its continuance or interruption cannot be made to depend upon the parties themselves."[8] In consonance with this policy, it is proper that the Fiscal's inquiry be allowed to focus upon any relevant matter that may indicate whether the proceedings for separation or annulment are fully justified or not.

As to the prescription of the action, it is clearly brought out of time. Under article 102 of the new Civil Code, not only must the party aggrieved bring his action for legal separation within one year after he has knowledge of the cause but such action can no longer be maintained after the lapse of five years from the date when such cause occurred, whether the complainant was cognizant of the cause or not.[10] In the instant case, Brown did not bring his action until 10 years from the time he learned of his wife's misconduct. While it is true that the wife did not interpose prescription as a defense, yet the courts can take cognizance thereof, in line with the policy of the law that no decree of legal separation be issued if any legal obstacles thereto appear upon the record.

Teodoro D. Regala

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8 Civil Code, Article 52; Adong v. Cheong Gee, 43 Phil. 43 (1922); Ramirez v. Gamur, 42 Phil. 855 (1918); Goitia v. Campos, supra, note 2.

9 It is believed that five years is sufficient time for the innocent spouse to find out the infidelity of the other spouse, and that any allegation to the contrary must be from one who must have knowingly allowed himself to be deceived and who, for that reason, may not complain as a deceived person. I CAPISTRANO, COMMENTS ON THE NEW CIVIL CODE, 144 (1950).

10 Under a similar provision, it was held that where the husband had personal knowledge of the adultery of his wife in August, 1924, and did not bring his complaint for divorce upon such ground until February 10, 1927, his action was barred by the provisions of sec. 4 of Act 2710. Juarez v. Turon, 51 Phil. 736 (1928).

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Labor Law — *The Court of Industrial Relations may order the reinstatement of employees and grant them backpay in labor disputes in industries indispensable to the national interest certified to it by the President.*

PHILIPPINE MARINE RADIO OFFICERS' ASSOCIATION (PHILMAROA) V. COURT OF INDUSTRIAL RELATIONS, ET AL.
G.R. Nos. L-10095 and L-10115, October 31, 1957

The rule of voluntary settlement of labor disputes set forth in Section 7 of the Industrial Peace Act[1] is not without exception. The single exception is established by Section 10[2] concerning labor disputes in industries indispensable to the national interest certified to the Court of Industrial Relations by the President of the Philippines. Said Section 10 restores the Court of Industrial Relations' power of compulsory arbitration — at least as far as the particular

labor disputes are involved. Thus, in such cases, the Court has the power to set wages, rates of pay, determine the lawfulness of dismissal of employees, rule on demands for vacation and sick leave benefits, free hospitalization, closed shop, collective bargaining and other conditions of employment. And the Court is further empowered to enjoin the employees from striking and the employer from declaring a lockout during the pendency of the investigation by the Court. As a matter of fact, when the Court of Industrial Relations takes cognizance of a case under Section 10, it would seem that it would exercise all the powers that it had under Commonwealth Act 103, for the reason that the power of compulsory arbitration of the Court established under Commonwealth Act 103 is not inconsistent with the power of compulsory arbitration conferred upon the Court by Section 10. And since according to Section 27 only "laws or parts of laws which are inconsistent with the provisions" of the Industrial Peace Act are repealed, the applicability of Commonwealth Act 103 to cases taken cognizance of by the Court under Section 10 is clear.[3]

The instant case is an application/interpretation of Section 10. The facts are: The PHILMAROA (a union of licensed radio telegraph operators working in vessels), its demands not having been met by respondent shipping companies, declared a strike against some of the latter. The President of the Philippines certified the case to the Court of Industrial Relations in accordance with Section 10. The CIR directed the return of the strikers, members of petitioner PHILMAROA and respondent shipping companies, but refused the grant of backpay to them during the period of the strike. On appeal from said order, one of the respondent shipping companies (the Compania Maritima) contended that the CIR, in a case certified to it by the President under Section 10, has no power to order the reinstatement of employees and to grant them backpay. The argument is that the Industrial Peace Act does not prohibit the replacement of strikers, and if this is so the employer has the right to make replacements during the strike, which replacements may not be nullified by a subsequent order of the CIR for the return of the strikers.

The Supreme Court refused to subscribe to Compania Maritima's contention but instead adopted PHILMAROA's position that upon certification by the President under Section 10, the case comes under the operation of Commonwealth Act 103, which enforces compulsory arbitration in cases of labor disputes in industries indispensable to the national interest certified to the CIR by the President. Elaborating upon this enunciation of a doctrine, the Court remarked:

> "x x x The evident intention of the law is to empower the Court of Industrial Relations to act in such cases, not only in the manner prescribed under Commonwealth Act 103, but with the same broad powers and jurisdiction granted by that Act. If the Court of Industrial Relations is granted authority to find a solution in an industrial dispute and such solution consists in the ordering of employees to return back to work, it cannot be contended that the Court of Industrial Relations does not have the power or jurisdiction to carry that solution into effect. And to what use is its power of conciliation and arbitration if it does not have the power and jurisdiction to carry into effect the solution it has adopted. Lastly, if the said court has the power to fix the terms and conditions of employment, it certainly can order the return of these workers with or without backpay as a term or condition of the employment."

Antonio R. Bautista

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1 "SEC. 7. **Fixing Working Conditions by Court Order.** — In order to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into in collective bargaining, no court of the Philippines shall have the power to set wages, rates of pay, hours of employment, or conditions of employment except as is provided in Republic Act Numbered Six hundred two and Commonwealth Act Numbered Four hundred forty-four as to hours of work."

2 "SEC. 10. **Labor Disputes in Industries Indispensable to the National Interest.** — When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lockout the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment."

3 1 FRANCISCO, THE LAW GOVERNING LABOR DISPUTES IN THE PHILIPPINES, 447-8 (3rd ed., 1956).

Labor Law — *Public officers' inability or unwillingness to furnish adequate protection as requisite to issuance injunction.*

CRUZ V. CINEMA, STAGE AND RADIO ENTERTAINMENT FREE WORKERS (FFW)
G.R. No. L-9581, July 31, 1957

So far it is apparent that courts are primarily concerned in labor cases with defining what Chief Judge Pound of the highest New York court so aptly called "the allowable area of economic conflict."[1] The role of the injunction in labor relations and the enactment of the stringent anti-injunction provisions in the Industrial Peace Act attest to the validity of this statement. But the stringency of the procedural requirements, for instance, that the Act imposes find justification nevertheless in the irritating potentialities of the injunction. Thus, significantly, Section 9 (d) thereof provides that no court of the Philippines shall issue a temporary or permanent injunction in any case involving or growing out of a labor dispute *except after* finding:

> "(1) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained xx xx xx;
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> "(2) That substantial and irreparable injury to complainant's property will follow;
>
> "(3) That as to each item or relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
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> "(4) That complainant has no adequate remedy at law; and
>
> "(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

The instant case involves merely the fifth requirement; it point-blankly demonstrates the rule of strict construction put by the Supreme Court on the above-enumerated requisites. The case, involving the picketing of the Society Theater on Echague St., Manila, reveals that "the workers formed a circle just near the ticket-window displaying placards and sawing 'Walang awa sa naalis sa trabajo,' 'Huwag kayong pumasok magkakagulo' xx xx xx *but no arrests were made by the police*" (as per testimony of witness). The Court of First Instance issued an injunction to restrain the picketers.

In resolving the validity of the injunction order, the Supreme Court noted particularly that except for the statement that no arrests were made by the police, no finding was made as to the public officers' inability or unwillingness to furnish adequate protection. Explaining the insufficiency of such statement as compliance with the fifth requirement,[2] the Court discoursed thus:

> "x x x x It (the statement) does not say the police were present. It does not imply they saw the placards and heard the threats. It does not say they were requested to make arrests, but declined or were unable to do so. Of course, the statement that 'but no arrests were made' might conceivably give rise to the inference some of them were there and in spite of the threats made no arrests. The law however is not satisfied with mere probable implications. Under the circumstances there should have been an express finding of the officers' inability or unwillingness — i.e., they were present and

1 GREGORY, LABOR AND THE LAW 158 (rev. and enl. ed., 1946).

2 "x x x The obvious purpose of the instant requirement is to reinstate the primary responsibility for keeping the peace upon public officers, whose sworn duty it is to keep the peace. x x x (it adopts) the contention advanced by labor for many years, that the remedying of wrong-doing committed in the course of industrial disputes is an executive and not a judicial function." I TELLER, THE LAW GOVERNING LABOR DISPUTES AND COLLECTIVE BARGAINING, 629 (1940 ed.).

beheld acts calling for arrest, or were informed thereof, but declined or were unable to make such arrests."

The injunction order was therefore set aside.

Antonio R. Bautista

It is everywhere held that a failure to allege and prove the instant requirement precludes the issuance of an injunction in a "labor dispute" case. Lauf v. Shinner, 303 U.S. 323 (1938); Heintz Mfg. Co. v. Local Union, 20 F. Supp. (1937); Diamong Full Fashioned Hosiery Co. v. Leader, 20 F. Supp. 876 (1937); Grace Co. v. Williams, 20 F. Supp. 263 (1937) aff'd 96 F(2d) 478 (1938); Cupples v. American Federation of Labor, 20 F. Supp. 894 (1937); International Brotherhood of Teamsters v. International Union, 106 F(2d) 871 (1939); Coryell v. Petroleum Workers Union, 19 F. Supp. 749 (1936); People ex rel. Sandness v. King's County, 299 N.Y.S. 9 (1937).

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Constitutional Law And Political Law — *Constitutional requirement of "at least sixty per centum of the capital" of corporations or associations is inapplicable to a religious corporation sole; a corporation sole has no nationality; vested rights are constitutionally protected.*

CATHOLIC APOSTOLIC ADMINISTRATOR OF DAVAO, INC.
V. LAND REGISTRATION COMMISSION, ET AL.
G.R. No. L-8451, Dec. 20, 1957.

The Roman Catholic Apostolic Church in the Philippines, or better still, the corporation sole[1] named the Roman Catholic Apostolic Administrator of Davao, Inc., is qualified to acquire private agricultural lands in the Philippines because the framers of the Constitution did not have in mind the religious corporations sole when they provided that at least sixty *per centum* of the capital thereof be owned by Filipino citizens.[2] A corporation sole has no nationality and the citizenship of the incumbent bishop or Ordinary has nothing to do with the operation, management or administration of the corporation sole, nor affects the citizenship of the faithful connected with their respective dioceses or corporations sole.

On October 1, 1954, Mateo L. Rodis, a Filipino citizen, executed a deed of sale of a parcel of land located in Davao City in favor of the Roman Catholic Administrator of Davao, Inc., a corporation sole organized and existing in accordance with Philippine law, with Msgr. Clovis Thibault, a Canadian citizen, ac actual incumbent. When the deed of sale was presented to the Register of Deeds of Davao for registration, the latter, entertaining some doubts as to the registerability of the document, referred the matter to the Land Registration Commissioner *en consulta*, who maintained that in view of the provisions of Article XIII of the Constitution, the vendee was not qualified to acquire private lands in the Philippines in the absence of proof that at least sixty *per centum* of the capital, property or assets of the Roman Catholic Apostolic Administrator of Davao was actually owned or controlled by Filipino citizens. A motion for reconsideration having been denied, this action for mandamus was instituted.

The Supreme Court, through Justice Felix, who penned the majority opi-

1 A corporation sole consists of one person only, and his successors (who will always be one at a time), 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. In this sense, the King is a corporation sole; so is a bishop, or deans, distinct from their several chapters. Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927). See I BOUVIER, LAW DICTIONARY, 682-683 (1914); Act No. 1459 (The Corporation Law, as amended April 1, 1906) especially section 154, 155, 157, 159, & 163.

2 PHIL. CONST., Art. XIII, sec. 1 reads: "All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belonging to the States, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution x x x."

nion, ordered the registration of the land question in favor of the petitioner, because the provisions of Article XIII of the Constitution, particularly sections 1 and 5,[3] are inapplicable to corporations sole. Although the Court fully adheres to the view that the nationalization and conservation of our natural resources was one of the dominating objectives of the Convention and in drafting the present Article XIII of the Constitution the delegates were goaded by the desire (1) to insure their conservation for Filipino posterity, (2) to serve as an instrument of national defense, helping prevent the extension into the country of foreign control through peaceful economic penetration, (3) to prevent making the Philippines a source of international conflicts with the consequent danger to its internal security and indenpendence;[4] yet such a view was never meant to cover corporations sole.

The case of *Register of Deeds of Rizal v. Ung Siu Si Temple*[5] was distinguished from the instant case. In the former, the Court, through Justice J. B. L. Reyes, said:

> "The fact that the appellant religious organization has no capital stock does not suffice to escape the Constitutional inhibition, since it is admitted that the members are to insure that corporations or associations allowed to acquire agricultural lands or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of citizens."

In that case, Ung Siu Si Temple was not a corporation sole but a corporation aggregate, i.e., an unregistered organization operating through 3 trustees, all of Chinese nationality, and that is why this Court laid down the doctrine just quoted. However, in the instant case, the petitioner is a registered corporation sole, evidently of no nationality and registered mainly to administer the temporalities and manage the properties belonging to the faithful of said church residing in Davao.

As an *obiter dictum*, Justice Felix applied the "vested right saving clause," citing Laurel's concurring opinion in *Gold Creek Mining Corp. v. Rodriguez and* Abadilla,[6] which reads:

> "This recognition is not mere graciousness but springs from the just character of the government established. The framers of the Constitution were not obscured by the rhetoric of democracy or swayed to hostility by an intense spirit of nationalism. They well knew that conservation of our natural resources did not mean destruction or annihilation of acquired property rights."

The facts show that the Roman Catholic Bishop of Zamboanga was incorporated as a corporation sole in 1912, having control of Mindanao, including Davao. After the last war, new dioceses were formed one of which is the petitioner. This "vested right" theory is merely the personal opinion of Justice Felix.

In a separate concurring opinion, Justice Labrador maintained that the nationality of the constituents of the parish or diocese who are the beneficial owners of the land, and not that of the bishop or chief priest who registers as corporation sole, is the decisive factor in determining the applicability of the constitutional provision limiting ownership of land to Filipinos.

J. B. L. Reyes, in his dissenting opinion, issued a strong warning in that the decision in this case will be of far reaching results, for once the capacity of corporations sole to acquire public and private agricultural lands is admitted,

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3 PHIL. CONST., Art. XIII, sec. 5 reads: "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

4 II ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 592-604 (1937).

5 G.R. No. L-6776, May 21, 1955.

6 66 Phil. 259 (1938).

7 PHIL. CONST., Art. XIII, sec. 3 reads: "The Congress of the Philippines may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law."

there will be no limit to the areas they may hold until Congress implements section 3 of Article XIII of the Constitution,[7] empowering it to set a limit to the size of private agricultural land that may be held; and even then it can only be done without prejudice to rights acquired prior to the enactment of such law. In other words, even if a limitative law is adopted, it will not affect the landholdings acquired before the law becomes effective, no matter how vast the estate should be.

In interpreting the "sixty *per centum*" requirement, he argued persuasively that "in requiring corporations or associations to have sixty per cent (60%) of their capital owned by Filipino citizens, the Constitution manifestly disregarded the corporate fiction, i.e., the juridical personality of such corporations or associations. It went behind the corporate entity and looked at the natural persons that composed it, and demanded that a clear majority of the same *(60%)* should be Filipinos."

Emmanuel S. Flores

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Special Proceedings — *Settlement of the estate of a decreased person; appointment of three special administrators for one special administration.*

MATIAS V. GONZALES ET AL.
G. R. No. L- 10907. June 29, 1957

When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed.[1] The Supreme Court in the case of *Roxas v. Pecson et al*[2] held that as under the law only one general administrator may be appointed to administer, liquidate and distribute the state of a deceased, it clearly follows that only one special administrator may be appointed to administer temporarily said estate, because a special administrator is but a temporary administrator who is appointed to act in lieu of the general administrator. However, in the above entitled case of *Matias v. Gonzales et al*, the Supreme Court made a distinction between the two cases and held that the courts have the power to appoint several special co-administrators.

In that case, petitioner Aurea Matias seeks a writ of certiorari to annul certain orders of the trial court in connection with the administration of the estate of the deceased. On May 15, 1952, Matias initiated said special proceeding with a petition for the probate of a document purporting to be the last will and testament of her aunt Gavina Raquel who died single. In the will, the testatrix instituted Aurea Matias as her universal heiress and at the same time appointed her as executrix without a bond. Basilia Salud, a first cousin of the testatrix, opposed the probate of the will and was sustained by the lower court. Matias appealed from the order denying the probate of the will.

On February 17, 1956, Basilia Salud moved for the dismissal of Horacio Rodriguez as special administrator of the estate and the appointment in his stead of Ramon Plata. When the motion was set for hearing, Rodriguez did not appear, having moved for postponement. This latter motion was denied and instead the judge found him guilty of abuse of authority and gross negligence. He was therefore dismissed as special administrator. The trial court then

1 Rules of Court, Rule 81, Sec. 1.
2 82 Phil. 407 (1948).

appointed Basilia Salud as special administratrix to "be assisted and advised by her niece, Miss Victoria Salud" who "shall always act as aide, interpreter and adviser of Basilia Salud." Said order, likewise, provided that "Basilia Salud shall be helped by Mr. Ramon Plata who is hereby appointed as co-administrator."

On March 8, 1956, Matias asked that said order of February 27 be set aside and that she be appointed special co-administratrix, jointly with Rodriguez. The motion was based upon the ground that Basilia Salud is over eighty years of age, totally blind and physically incapacitated to perform the duties of said office and that the movant is the universal heiress of the deceased and the person appointed administratrix under the will. This motion was denied. However, on March 17, 1956, Basilia Salud tendered her resignation as special administratrix by reason of physical disability, due to old age and recommended the appointment in her place, of Victoria Salud. Before any action could be taken thereon, Matias sought a reconsideration of the order denying her motion of March 8, 1956. Moreover, she expressed her conformity to the resignation of Basilia and at the same time objected to the appointment of Victorina on account of her antagonism to the movant. This motion for reconsideration was denied.

Shortly afterwards, respondents Plata and Victorina Salud requested to collect the rents due or which may be due to the estate. Respondent judge granted them such authority. Hence this petition.

Upon review of the record, the Supreme Court found itself unable to sanction fully the acts of the respondent judge for several reasons but for the purpose of this digest, the following will suffice:

(1) Although the probate of the alleged will and testament of Gavina Raquel was denied by respondent Judge, the order to this effect is not, as yet, final and executory. It is pending review on appeal by the proponent. The probate of the alleged will being still within the realm of legal possibility, Matias has — as the universal heiress and executrix designated in said instrument — a special interest to protect during the pendency of said appeal.

(2) The respondent Judge in effect appointed three special administrators — Basilia Salud, Victorina Salud and Ramon Plata. Indeed, the subsequent order of the court maintained the appointment of the above persons. The record shows that there are, at least, two factions among the heirs of the deceased, namely one, represented by the petitioner and another to which Basilia Salud belongs. Inasmuch as the lower court has deemed it best to appoint more than one special administrator, justice and equity demand that both factions be represented in the management of the estate of the deceased.

The rule, laid down in Roxas v. Pecson[3] to the effect that "only one special administrator may be appointed to administer temporarily" the estate of the deceased, must be considered in the light of the facts obtaining in said case. The lower court appointed therein one special administrator for some properties forming part of said estate, and a special administratrix for other properties thereof. Thus, there were *two* separate and independent special administrators. In the case at bar there is only *one* special administration, the powers of which shall be exercised jointly by *two* special *co-administrators*. In short, the *Roxas* case is not squarely in point. Moreover, there are authorities[4] in support of the power of courts to appoint several special co-administrators.

Agnes L. Mamon

3 Ibid.

4 Lewis v. Logan, 87 A. 750 (1913); Harrison v. Clark, 52 A. 514 (1902); In re Wilson's Estate, 61 N.Y.S. 2d 49 (1946); Davenport v. Davenport, 60 A. 379 (1904).

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