

7 Phil. 41

[ G.R. No. 2832. November 24, 1906 ]

**REV. JORGE BARLIN, IN HIS CAPACITY AS APOSTOLIC ADMINISTRATOR OF THIS VACANT BISHOPRIC AND LEGAL REPRESENTATIVE OF THE GENERAL INTERESTS OF THE ROMAN CATHOLIC APOSTOLIC CHURCH IN THE DIOCESE OF NUEVA CACERES, PLAINTIFF AND APPELLEE, VS. P. VICENTE RAMIREZ, EX-RECTOR OF THE ROMAN CATHOLIC APOSTOLIC PAROCHIAL CHURCH OF LAGONOY, AND THE MUNICIPALITY OF LAGOYOY, DEFENDANTS AND APPELLANTS.**

## **D E C I S I O N**

**WILLARD, J.:**

There had been priests of the Roman Catholic Church in the pueblo of Lagonoy, in the Province of Ambos Camarines, since 1839. On the 13th of January, 1869, the church and convent were burned. They were rebuilt between 1870 and 1873. There was evidence that this was done by the order of the provincial governor. The labor necessary for this reconstruction was performed by the people of the pueblo under the direction of the *cabezas de barangay*. Under the law then in force, each man in the pueblo was required to work for the government, without compensation, for forty days every year. The time spent in the reconstruction of these buildings was counted as a part of the forty days. The material necessary was bought and paid for in part by the parish priest from the funds of the church and in part was donated by certain individuals of the pueblo. After the completion of the church it was always administered, until November 14, 1902, by a priest of the Roman Catholic Communion and all the people of the pueblo professed that faith and belonged to that church.

The defendant, Ramirez, having been appointed by the plaintiff parish priest, took possession of the church on the 5th of July, 1901. He administered it as such under the orders of his superiors until the 14th day of November, 1902. His successor having been then appointed, the latter made a demand on this defendant for the delivery to him of the church, convent, and cemetery, and the sacred ornaments, books, jewels, money, and other

property of the church. The defendant, by a written document of that date, refused to make such delivery. That document is as follows:

“At 7 o’clock last night I received through Father Agripino Pisino your respected order of the 12th instant, wherein I am advised of the appointment of Father Pisino as acting parish priest of this town, and directed to turn over to him this parish and to report to you at the vicarage. In reply thereto, I have the honor to inform you that the town of Lagonoy, in conjunction with the parish priest thereof, has seen fit to sever connection with the Pope at Rome and his representatives in these Islands, and to join the Filipino Church, the head of which is at Manila. This resolution of the people was reduced to writing and triplicate copies made, of which I beg to inclose a copy herewith.

“For this reason I regret to inform you that I am unable to obey your said order by delivering to Father Agripino Pisino the parish property of Lagonoy which, as I understand it, is now outside of the control of the Pope and his representatives in these Islands. May God guard you many years.

“Lagonoy, November 14, 1902.

(Signed) “VICENTE RAMIREZ.

“RT. REV. VICAR OF THIS DISTRICT.”

The document, a copy of which is referred to in this letter, is as follows:

“Lagonoy, *November 9, 1902.*

“The municipality of this town and some of its most prominent citizens having; learned through the papers from the capital of these Islands of the constitution of the Filipino National Church, separate from the control of the Pope at Rome by reason of the fact that the latter has refused to either recognize or grant the rights to the Filipino clergy which have many times been urged, and it appearing to us that the reasons advanced why such offices should be given to the Filipino clergy are evidently well-founded, we have deemed it advisable to consult with the parish priest of this town as to whether it would be advantageous to join the1

said Filipino Church and to separate from the control of the Pope as long as he continues to ignore the rights of the said Filipino clergy, under the conditions that there will be no change in the articles of faith, and that the sacraments and other dogmas will be recognized and particularly that of the immaculate conception of the mother of our Lord. But the moment the Pope at Rome recognizes and grants the rights heretofore denied to the Filipino clergy we will return to his control. In view of this, and subject to this condition, the reverend parish priest, together with the people of the town, unanimously join in declaring that from this date they separate themselves from the obedience and control of the Pope and join the Filipino National Church. This assembly and the reverend parish priest have accordingly adopted this resolution written in triplicate, and resolved to send a copy thereof to the civil government of this province for its information, and do sign the same below. Vicente Ramirez, Francisco Tsrael, Ambrosio Bocon, Florentino Relloso, Macario P. Ledesma, Ceeilio Obias, ISalbino Imperial, Juan Preseñada, Fernando Pemplor, Mauricio Torres, Adriano Sabater.”

At the meeting at which the resolution spoken of in this document was adopted, there were present about 100 persons of the pueblo. There is testimony in the case that the population of the pueblo was at that time 9,000 and that all but 20 of the inhabitants were satisfied with the action there taken. Although it is of no importance in the case, we are inclined to think that the testimony to this effect merely means that about 100 of the principal men of the town were in favor of the resolution and about 10 of such principal men were opposed to it. After the 14th of November, the defendant, Kaniirez, continued in the possession of the church and other property and administered the same under the directions of his superior, the *Obispo Maximo* of the Independent Filipino Church. The rites and ceremonies and the manner of worship were the same after the 14th day of November as they were before, but the relations between the Roman Catholic Church and the defendant had been entirely severed.

In January, 1904, the plaintiff brought this action against the defendant, Ramirez, alleging in his amended complaint that the Roman Catholic Church was the owner of the church building, the convent, cemetery, the books, money, and other property belonging thereto, and asking that it be restored to the possession thereof and that the defendant render an account of the property which he had received and which was retained by him, and for other relief.

The answer of the defendant, Ramirez, in addition to a general denial of the allegations of the complaint, admitted that he was in the possession and administration of the property described therein with the authority of the municipality of Lagonoy and of the inhabitants of the same, who were the lawful owners of the said property. After this answer had been presented, and on the 1st day of November, 1904, the municipality of Lagonoy filed a petition asking that it be allowed to intervene in the case and join with the defendant, Ramirez, as a defendant therein. This petition having been granted, the municipality on the 1st day of December filed an answer in which it alleged that the defendant, Ramirez, was in possession of the property described in the complaint under tire authority and with the consent of the municipality of Lagonoy and that such municipality was the owner thereof.

Plaintiff answered this complaint, or answer in intervention, and the case was tried and final judgment entered therein in favor of the plaintiff and against the defendants. The defendants then brought the case here by a bill of exceptions.

That the person in the actual possession of the church and other property described in the complaint is the defendant, Ramirez, is plainly established by the evidence. It does not appear that the municipality, as a corporate body, ever took any action in reference to this matter until they presented their petition for intervention in this case. In fact, the witnesses for the defense, when they speak of the ownership of the buildings, say they are owned by the people of the pueblo, and one witness, the president, said that the municipality as a corporation had nothing whatever to do with the matter. That the resolution adopted on the 14th of November, and which has been quoted above, was not the action of the municipality, as such, is apparent from an inspection thereof.

The witnesses for the defense speak of a delivery of the church by the people of the pueblo to the defendant, Ramirez, but there is no evidence in the case of any such delivery. Their testimony in regard to the delivery always refers to the action taken on the 14th of November, a record of which appears in the document above quoted. It is apparent that the action then taken consisted simply in separating themselves from the Roman Catholic Church, and nothing is said therein in reference to the material property then in the possession of the defendant, Ramirez. There are several grounds upon which this judgment must be affirmed:

(1) As to the defendant, Ramirez, it appears that he took possession of the property as the servant or agent of the plaintiff. The only right, which he had to the possession at the time he took it, was the right which was given to him by the plaintiff, and he took possession

under the agreement to return that possession whenever it should be demanded of him. Under such circumstances he will not be allowed, when the return of such possession is demanded of him by the plaintiff, to say that the plaintiff is not the owner of the property and is not entitled to have it delivered back to him. The principle of law that a tenant can not deny his landlord's title, which is found in section 333, paragraph 2, of the Code of Civil Procedure, and also in the Spanish law, is applicable to a case of this kind. An answer of the defendant, Ramirez, in which he alleged that he himself was the owner of the property at the time he received it from the plaintiff, or in which he alleged that the pueblo was the owner of the property at that time, would constitute no defense. There is no claim made by him that since the delivery of the possession of the property to him by the plaintiff he has acquired the title thereto by other means, nor does he in his own behalf make any claim whatever either to the property or to the possession thereof.

(2) The municipality of Lagonoy, in its answer, claims as such, to be the owner of the property. As we have said before, the evidence shows that it never was in the physical possession of the property. But waiving this point and assuming that the possession of Ramirez, which he alleges in his answer is the possession of the municipality, gives the municipality the rights of a possessor, the question still arises, Who has the better right to the present possession of the property? The plaintiff, in 1902, had been in the lawful possession thereof for more than thirty years and during all that time its possession had never been questioned or disturbed. That possession has been taken away from it and it has the right now to recover the possession from the persons who have so deprived it of such possession, unless the latter can show that they have a better right thereto. This was the proposition which was discussed and settled in the case of the Bishop of Cebu vs. Mangaron,<sup>[1]</sup> No. 1748, decided June 1, 1906. That decision holds that as against one who has been in possession for the length of time the plaintiff has been in possession, and who has been deprived of his possession, and who can not produce any written evidence of title, the mere fact that the defendant is in possession does not entitle the defendant to retain that possession. In order that he may continue in possession, he must show a better right thereto.

The evidence in this case does not show that the municipality has, as such, any right whatever in the property in question. It has produced no evidence of ownership. Its claim of ownership is rested in its brief in this court upon the following propositions: That the property in question belonged prior to the treaty of Paris to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United States; that by section 1.2 of the act of Congress of July 1, 1902, such property was transferred to

the Government of the Philippine Islands, and that by the circular of that Government, dated November 11, 1902, the ownership and the right to the possession of this property passed to the municipality of Lagonoy. If, for the purposes of the argument, we should admit that the other propositions are true, there is no evidence whatever to support the last proposition, namely that the Government of the Philippine Islands has transferred the ownership of this church to the municipality of Lagonoy. We have found no circular of the date above referred to. The one of February 10, 1903, which is probably the one intended, contains nothing that indicates any such transfer. As to the municipality of Lagonoy, therefore, it is very clear that it has neither title, ownership, nor right to possession.

(3) We have said that it would have no such title or ownership even admitting that the Spanish Government was the owner of the property and that it passed by the treaty of Paris to the American Government. But this assumption is not true. As a matter of law, the Spanish Government at the time the treaty of peace was signed, was not the owner of this property, nor of any other property like it, situated in the Philippine Islands.

It does not admit of doubt that from the earliest times the parish churches in the Philippine Islands were built by the Spanish Government. Law 2, title 2, book 1, of the Compilation of the Laws of the Indies is, in part, as follows:

“Having erected all the churches, cathedrals, and parish houses of the Spaniards and natives of our Indian possessions from their discovery at the cost and expense of our royal treasury, and applied for their service and maintenance the part of the tithes belonging’ to us by apostolic concession according to the division we have made.”

Law 3 of the same title relates to the construction of parochial churches such as the one in question. That law is as follows:

“The parish churches which may be erected in Spanish towns shall be of durable and decent construction. Their cost shall be divided and paid in three parts: One by our royal treasury, another by the residents and Indian *encomenderos* of the place where such churches are constructed, and the other part by the Indians who abide there; and if within the limits of a city, village, or place there should be any Indians incorporated to our royal crown, we command that for our part

there be contributed the same amount as the residents and *encomenderos*, respectively, contribute; and the residents who have no Indians shall also contribute for this purpose in accordance with their stations and wealth, and that which is so given shall be deducted from the share the Indians should pay.”

Law 11 of the same title is as follows:

“We command that the part of the tithes which belongs to the fund for the erection of churches shall be given to their superintendents to be extended for those things necessary for these churches with the advice of the prelates and officials, and by their warrants, and not otherwise. And we request and charge the archbishops and bishops not to interfere in the collection and disbursement thereof, but to guard these structures.”

Law 4, title 3, book 6, is as follows:

“In all settlements, even though the Indians are few, there shall be erected a church where mass can be decently held, and it shall have a door with a key, notwithstanding the fact that it be subject to or separate from a parish.”

Not only were all the parish churches in the Philippines erected by the King and under his direction, but it was made unlawful to erect a church without the license of the King. This provision is contained in Law 2, title 6, book 1, which is as follows:

“Whereas it is our intention to erect, institute, found, and maintain all cathedrals, parish churches, monasteries, votive hospitals, churches, and religious and pious establishments where they are necessary for the teaching, propagation, and preaching of the doctrine of our sacred Roman Catholic faith, and to aid to this effect with our royal treasury whenever possible, and to receive information of such places where they should be founded and are necessary, and the ecclesiastical patronage of all our Indies belonging to us:

“We command that there shall not be erected, instituted, founded, or maintained any cathedral, parish church, monastery, hospital, or votive churches, or other

pious or religious establishment without our express permission as is provided in Law 1, title 2, and Law 1, title 3, of this book, notwithstanding any permission heretofore given by our viceroy or other ministers, which in this respect we revoke and make null, void, and of no effect.”

By agreement at an early date between the Pope and the Crown of Spain, all tithes in the Indies were given by the former to the latter and the disposition made by the King of the fund thus created is indicated by Law 1, title 16, book 1, which is as follows:

“Whereas the ecclesiastical tithes from the Indies belong to us by apostolic concessions of the supreme pontiffs, we command the officials of our royal treasury of those provinces to collect and cause to be collected all tithes due and to become due from the crops and flocks of the residents in the manner in which it has been the custom to pay the same, and from these tithes the churches shall be provided with competent persons of good character to serve them and with all ornaments and things which may be necessary for divine worship, to the end that these churches may be well served and equipped, and we shall be informed of the provisions made, it pertaining to the worship of God, our Lord; this order shall be observed where the contrary has not already been directed by us in connection with the erection of churches.”

That the condition of things existing by virtue of the Laws of the Indies was continued to the present time is indicated by the royal order of the 31st of January, 1856, and by the royal order of the 13th of August, 1876, both relating to the construction and repair of churches, there being authority for saying that the latter order was in force in the Philippines.

This church, and other churches similarly situated in the Philippines, having been erected by the Spanish Government, and under its direction, the next question to be considered is, To whom did these churches belong? Title 28 of the third *partida* is devoted to the ownership of things and, after discussing what can be called public property and what can be called private property, speaks, in Law 12, of those things which are sacred, religious, or holy. That law is as follows:

“LAW XII-HOW SACRED OR RELIGIOUS THINGS CAN NOT BE OWNED BY ANY PERSON.



“No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, (he support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty, and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, hooks, and others tilings which they might be in need of, and other similar charitable purposes.”

And then taking up for consideration the first of the classes into which this law has divided these things, it defines in Law 13, title 28, third *partida*, consecrated things. Thai law is as follows:

“Sacred things, we say, are those which are consecrated by I he bishops, such as churches, the altars therein, crosses, chalices, censers, vestments, books, and all other things which are intended for the service of the church, and the title to these tilings can not be alienated except in certain specific cases as we have .already shown in the first *partida* of this book by the laws dealing with this subject We say further that even when<sup>1</sup> a consecrated church is razed, the ground upon which it formerly stood shall always be consecrated ground. Jiut if any consecrated church should fall into the hands of the enemies of our faith it shall there and then cease to be sacred as long as the enemy has it under control, although once recovered by the Christians, it will again become sacred, reverting to its condition before the enemy seized it and shall have all the rights and privileges formerly belonging to it.”

That the principles of the *partidas* in reference to churches still exist is indicated by Sanchez Roman, whose work on the Civil Law contains the following statement:

“First Group. *Spiritual and corporeal or ecclesiastical*. A. *Spiritual*.—From early times distinction has been made by authors and by law between things governed by divine law, called divine, and those governed by human law, called human, and although the former can not be the subject of civil juridical relations, their nature and species should be ascertained either to identify them and exclude them from such relations or because they furnish a complete explanation of the foregoing tabulated statement, or finally because<sup>1</sup> the laws of the *partidas* deal with them.

“*Divine things are those which are either directly or indirectly established by God for his service and sanctification of men and which are governed by divine or canonical laws. This makes it necessary to divide them into spiritual things, which are those which have a direct influence on the religious redemption of man such as the sacrament, prayers, fasts, indulgences, etc., and corporeal or ecclesiastical, which are those means more or less direct for the proper religious salvation of man.*

“7. First Group. *Divine things*. B. *Corporeal or ecclesiastical things* (sacred, religious, holy, and temporal belonging to the church).—Corporeal or ecclesiastical things are so divided.

“(a) *Sacred things are those devoted to God, religion, and worship in general, such as temples, altars, ornaments, etc. These things can not be alienated except for some<sup>1</sup> pious purpose and in such cases as are provided for in the laws, according to which their control pertains to the ecclesiastical authorities, and in so far as their use is concerned, to the believers and the clergy. (2 Dereeho Civil Español, Sanchez Koman, p. 480; 8 Manresa, Commentaries on the Spanish Civil Code, p. 030; 3 Alcubilla, Diccionario de la Adinistracion Española, p. 480.)*”

The *partidas* defined minutely what things belonged to the public in general and what belonged to private persons. In the first group churches are not named. The present Civil Code declares in article 338 that property is of public or private ownership. Article 339, which defines public property, is as follows:

“Property of public ownership is—

“1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.

“2. That belonging exclusively to the State without being for public use and which is destined to some public service, or to the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until their concession has been granted.”

The code also defines the property of provinces and of pueblos, and in defining what property is of public use, article 344 declares as follows:

“Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by the said towns or provinces.

“All other property possessed by either is patrimonial, and shall lie governed by the provisions of this code, unless otherwise prescribed in special laws.”

It will be noticed that in neither one of these articles is any mention made of churches. When the Civil Code undertook to define those things in a pueblo which were for the common use of the inhabitants of the pueblo, or which belonged to the State, while it mentioned a great many other things, it did not mention churches.

It has been said that article 25 of the Regulations for the Execution of the Mortgage Law indicates that churches belong to the State and are public property. That article is as follows:

“There shall be excepted from the record required by article 2 of the law:

“First. Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds, with the exception of railroads; streets, parks, public promenades and commons of towns, provided they are not lands of common profit to the inhabitants; walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are

in common and general use, always reserving the servitudes established by law on the shores of the sea and borders of navigable rivers.

“Second. Public temples dedicated to the Catholic faith.”

A reading of this article shows that far from proving that churches belong to the State and to the eminent domain thereof, it proves the contrary, for, if they had belonged to the State, they would have been included in the first paragraph instead of being placed in a paragraph by themselves.

The truth is that, from the earliest times down to the cession of the Philippines to the United States, churches and other consecrated objects were considered outside of the commerce of man. They were not public property, nor could they be subjects of private property in the sense that any private person could be the owner thereof. They constituted a kind of property the distinctive characteristic of which was that it was devoted to the worship of God.

But, being material things it was necessary that some one should have the care and custody of them and the administration thereof, and the question occurs, To whom, under the Spanish law, was intrusted that possession and administration? For the purposes of the Spanish law there was only one religion. That was the religion professed by the Roman Catholic Church. It was for the purposes of that religion and for the observance of its rites that this church and all other churches in the Philippines were erected. The possession of the churches, their care and custody, and the maintenance of religious worship therein were necessarily, therefore, intrusted to that body. It was, by virtue of the laws of Spain, the only body which could under any circumstances have possession of, or any control over, any church dedicated to the worship of God. By virtue of those laws this possession and right of control were necessarily exclusive. It is not necessary or important to give any name to this right of possession and control exercised by the Roman Catholic Church in the church buildings of the Philippines prior to 1898. It is not necessary to show that the church as a juridical person was the owner of the buildings. It is sufficient to say that this right to the exclusive possession and control of the same, for the purposes of its creation, existed.

The right of patronage, existing in the King of Spain with reference to the churches in the Philippines, did not give him any right to interfere with the material possession of these buildings.

Title 6 of book 1 of the Compilation of the Laws of the of Indies treats *Del Patronazgo Real de las Indias*. There is nothing in any one of the fifty-one laws which compose this title which in any way indicates that the King of Spain was the owner of the churches in the Indies because he had constructed them. These laws relate to the right of presentation to ecclesiastical charges and offices. For example, Law 49 of the title commences as follows:

“Because the patronage and right of presentation of all archbishops, bishops, dignitaries, prebends, curates, and doctrines and all other benefices and ecclesiastical offices whatsoever belong to us, no other person can obtain or possess the same without, our presentation as provided in Law 1 and other laws of this title.”

Title 15 of the first *partida* treats of the right of patronage vesting in private persons, but there is nothing in any one of its fifteen laws which in any way indicates that the private patron is the owner of the church.

When it is said that this church never belonged to the Crown of Spain, it is not intended to say that the Government had no power over it. It may be that by virtue of that power of eminent domain which necessarily resides in every government, it might have appropriated this church and other churches, and private property of individuals, but nothing of this kind was ever attempted in the Philippines.

It, therefore, follows that in 1908, and prior to the Treaty of Paris, the Roman Catholic Church had by law the exclusive right to the possession of this church and it had the legal right to administer the same for the purposes for which the building was consecrated. It was then in the full and peaceful possession of the church with the rights aforesaid. That these rights were fully protected by the Treaty of Paris is very clear. That Treaty, in article S, provides, among other things, as follows:

“And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or

of private individuals, of whatsoever nationality such individuals may be.”

It is not necessary, however, to invoke the provisions of that treaty. Neither the Government of the United States, nor the Government of these Islands, has ever attempted in any way to interfere with the rights which the Roman Catholic Church had in this building when Spanish sovereignty ceased in the Philippines. Any interference that has resulted has been caused by private individuals, acting without any authority from the Government. Against such interference by private persons with the rights of others, redress is given in the courts of justice without reference to the provisions of the treaty of Paris.

No point is made in the brief of the appellant that any distinction should be made between the church and the convent. The convent undoubtedly was annexed to the church and, as to it, the provisions of Law 19, title 2, book 1, of the Compilation of the Laws of the Indies would apply. That law is as follows:

“We command that the Indians of each town or barrio shall construct such houses as may be deemed sufficient in which the priests of such towns or barrios may live comfortably adjoining the parish church of the place where they may be built for the benefit of the priests in charge of such churches and engaged in the education and conversion of their Indian parishioners, and they shall not be alienated or devoted to any other purpose.”

The evidence in this case makes no showing in regard to the cemetery. It is always mentioned in connection with the church and convent and no point is made by the appellant that if the plaintiff is entitled to recover the possession of the church and convent, he is not also entitled to recover possession of the cemetery. So, without discussing the question as to whether the rules applicable to churches are in all respects applicable to cemeteries, we hold for the purpose of this case that the plaintiff has the same right to the cemetery that he has to the church.

(4) It is suggested by the appellant that the Roman So ordered.

*Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.*

*Johnson, J., reserves his vote.*

*CONCURRING IN THE RESULT*

**CARSON, J.:**

I am in entire accord with the majority of the court as to the disposition of this case, but I can not adopt the reasoning by which some of the conclusions appear to have Catholic Church has no legal personality in the Philippine Islands. This suggestion, made with reference to an institution which antedates by almost a thousand years any other personality in Europe, and which existed “when Grecian eloquence still flourished in Antioch, and when idols were still worshiped in the temple of Mecca,” does not require serious consideration. In the preamble to the budget relating to ecclesiastical obligations, presented by Montero Kios to the Cortes on the 1st of October, 1871, speaking of the Roman Catholic Church, he says:

“Persecuted as an unlawful association since the early days of its existence up to the time of (Juliano, who was the first of the Roman emperors to admit it among the juridical entities protected by the laws of the Empire, it existed until then by the merer and will of the faithful and depended for such existence upon pious gifts and offerings. Since the latter half of the third century, and more particularly since the year 313, when Constantine, by the edict of Milan, inaugurated an era of protection for the church, the latter gradually entered upon the exercise of such rights as were required for the acquisition, preservation, and transmission of property the same as any other juridical entity under the laws of the Empire. (3 Dictionary of Spanish Administration, Alcubilla, p. 211. See also the royal order of the 4th of December, 1890, 3 Alcubilla, 181).”

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith, and ten days thereafter the record be remanded to the court below for execution. been obtained, nor accept without reserve all of the propositions laid down in the majority opinion.

Profoundly as I respect the judgment of my associates, and distrustful as I ought to be of my own, the transcendent importance of the issues involved seems to impose upon me the duty of writing a separate opinion and stating therein as clearly as may be the precise grounds

upon which I base my assent and the reasons which forbid my acceptance of the majority opinion in its entirety.

I accept the argument and authority of the opinion of the court in so far as it finds: That the Roman Catholic Church is a juridical entity in the Philippine Islands; that the defendant, Ramirez, can not and should not be permitted in this action to deny the plaintiff's right to the possession of the property in question, because he can not be heard to set up title thereto in himself or a third person, at least until he has first formally surrendered it to the plaintiff who intrusted it to his care; that the municipality of Lagonoy has failed to show by evidence of record that it is or ever was in physical possession of the property in question; and that the possession of the defendant, Ramirez, can not be relied upon as the possession of the municipality because the same reason which estops Ramirez from denying the right of possession in the plaintiff estops any other person claiming possession through him from denying that right. I agree, furthermore, with the finding that the defendant municipality failed to establish a better right to the possession than the plaintiff in this action, because, claiming to be the owner by virtue of a grant from the Philippine Government, it failed to establish the existence of such grant; and because, furthermore, it was shown that the plaintiff or his predecessors had been in possession and control of the property in question for a long period of years prior to the treaty of Paris by lawful authority of the King of Spain, and that since the sovereignty of these Islands has been transferred to the United States the new sovereign has never at any time divested or attempted to divest the plaintiff of this possession and control.

Thus fur I am able to accept the reasoning of the majority opinion, and these propositions, supported as they are by the law and the evidence in this case, completely dispose of the question before us and establish the right of the plaintiff to a judgment for possession.

I am not prepared, however, to give my assent to the proposition that prior to the treaty of Paris "The King of Spain was not the owner of the property in question nor of any other property like it situated in the Philippine Islands," and inferentially that the United States is not now the owner thereof and has no property rights therein other than, perhaps, the mere right of eminent domain.

I decline to affirm this proposition, first, because it is not necessary in the decision of this case; and second, because I am of opinion that, in the unlimited and unrestricted sense in which it is stated in the majority opinion, it is inaccurate and misleading, if not wholly erroneous.



That it is not necessary for the proper disposition of this case will be; apparent if we consider the purpose for which it is introduced in the argument and the proposition which it is intended to controvert. As stated in the majority opinion, the claim of ownership of the defendant municipality—

“Is rested upon the following propositions: That the property in question belonged, prior to the treaty of Paris, to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United States; that by article 12 of the act of Congress of July 1, 1902, such property was transferred to the Government of the Philippine Islands, and that by a circular of that Government dated November 11, 1902, the ownership and the right to the possession of this property passed to the municipality of Lagonoy.”

It is evident that if any one of these propositions is successfully controverted, the defendants' claim of ownership must fall to the ground. The majority opinion finds (and I am in entire accord as to this finding) that neither the Government of the United States nor the Philippine Government has ever made, or attempted to make, such transfer, and in making this finding it completely, conclusively, and finally disposes of defendants' claim of ownership.

All the acts of the Government of the United States and of the present Government of the Philippine Islands which can have any relation to the property in question are before us, and so short a period of years has elapsed since the transfer of the sovereignty of these Islands to the United States that it is possible to demonstrate with the utmost certainty that by no act of the United States or of the Government of the Philippine Islands has the ownership and possession of this property been conferred upon the defendant municipality; it is a very different undertaking, however, to review the legislation of Spain for the three centuries of her Philippine occupation for the purpose of deciding the much-vexed question of the respective property rights of the Spanish sovereign and the Roman Catholic Church in State constructed and State aided churches in these Islands; and if I am correct in my contention that a holding that the “King of Spain was not,” and, inferentially, that the Government of the United States is not, “the owner of this property or any other property like it situated in the Philippine Islands” is not necessary for the full, final, and complete determination of the case at bar, then I think that this court should refrain from making so momentous a finding in a case wherein the United States is not a party and has never had an opportunity to be

heard.

But the mere fact that a finding that the King of Spain had no right of ownership in this property which could pass to the United States under the provisions of the treaty of Paris is not necessary in my opinion for the disposition of the case at bar, would not impose upon me the duty of writing a separate opinion if it were in fact and at law a correct holding. I am convinced, however, that when stated without limitations or restrictions, as it appears in the majority opinion, it is inaccurate and misleading, and it may not be improper, therefore, to indicate briefly my reasons for doubting it.

As stated in the majority opinion, "it does not admit of doubt that the parish churches in the Philippines were built by the Spanish Government," and it would seem therefore that prior to their dedication, the beneficial ownership, the legal title, the possession and control of all this property must be taken to have been vested in that Government. But it must be admitted that after this property was dedicated, the ownership, in contemplation of Spanish law, was said to have been in God, and there can be no doubt that the physical possession and control of these churches for the purposes for which they were dedicated was given to the Roman Catholic Church— not, as I think, absolutely and conclusively, but limited by and subject to the royal patronage (*patronato real*) which included the right to intervene in the appointment of the representatives of the church into whose hands the possession and control of the sacred edifices were to be intrusted.

The anomalous status thus created might well have given rise to doubts and uncertainties as to the legal title and beneficial ownership of this property had not the grantor and the lawgiver of Spain expressly and specifically provided that neither the Roman Catholic Church nor any other person was or could become the owner thereof, and that all these sacred edifices were to be regarded as beyond the commerce of men.

"No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the

poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty; and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes.” (Law 12, title 28, *partida* 3.)

It is difficult to determine, and still more difficult to state, the precise meaning and legal effect of this disposition of the ownership, possession, and control of the parish churches in the Philippines; but since it was not possible for God, in any usual or ordinary sense to take or hold, to enforce or to defend the legal title to this property, it would seem that a grant to Him by the King or the Government of Spain could not suffice to convey to Him the legal title of the property set out in the grant, and the truth would seem to be that the treatment of this property in contemplation of Spanish law as the property of God was a mere arbitrary convention, the purpose and object of which was to crystallize the status of all such property in the peculiar and unusual mold in which it was cast at the time of its dedication.

So long as church and state remained united and so long as the Roman Catholic Church continued to be the church of the State, this convention served its purpose well; indeed, its very indefiniteness seems to have aided in the accomplishment of the end for which it was adopted, and on a review of all the pertinent citations of Spanish law which have been brought to my attention, I am satisfied that the status created by the above-cited law 12 of the *partidas* continued Avithout substantial modification to the date of the transfer of sovereignty from the King of Spain to the United States. But this transfer of sovereignty, and the absolute severance of church and state which resulted therefrom, render it necessary to ascertain as definitely as may be the true meaning and intent of this conventional treatment of the parish churches in the Philippines as the property of God, and it is evident that for this purpose we must look to the substance rather than the form and examine the intention of the grantor and the object he sought to attain, rather than the words and conventional terms whereby that intent was symbolically expressed.

It is not necessary to go beyond the citations of the majority opinion to see that the objects which the grantor sought to attain were, first, and chiefly, to advance the cause of religion among the people of the Philippine Islands and to provide for their religious instruction and edification by furnishing them with parish churches suitable for the worship and glorification of God; second, to place those sacred edifices under the guardian care and custody of the church of the State; and, third, to deny to that church and to all others the

right of ownership in the property thus dedicated; and since God could neither take nor hold the legal title to this property, the declaration of the King of Spain as set out in the above-cited law, that when dedicated these churches became in some peculiar and especial manner the property of" God, was in effect no more than a solemn obligation imposed upon himself to hold them for the purposes for which they were dedicated, and to exercise no right of property in them inconsistent therewith.

This declaration that these churches are the property of God and the provisions which accompanied it, appear to me to be precisely equivalent to a declaration of trust by the grantor that he would hold the property as trustee for the use for which it was dedicated—that is, for the religious edification and enjoyment of the people of the Philippine Islands—and that he would give to the Roman Catholic Church the physical possession and control thereof, including the disposition of any funds arising therefrom, under certain stipulated conditions and for the purposes expressly provided by law. In other words, the people of the Philippine Islands became the beneficial owners of all such property, and the grantor continued to hold the legal title, in trust nevertheless to hold the property for the purposes for which it was dedicated and on the further trust to give the custody and control thereof to the Roman Catholic Church. If this interpretation of the meaning and intent of the convention of Spanish law which treated God as the owner of the parish churches of the Philippine Islands be correct, a holding that the King of Spain had no right of ownership in this property which could pass to the United States by virtue of the treaty of Paris can not be maintained; and it is to withhold my assent from this proposition that I have been compelled to write this separate opinion.

For the purposes of this opinion it is not necessary, nor would it be profitable, to do more than indicate the line of reasoning which has led me to my conclusions, nor to discuss at length the question of ownership of this property, because whether it be held to be in abeyance or in God or in the Roman Catholic Church or in the United States it has been shown without deciding this question of ownership that the right to the possession for the purpose for which it was dedicated is in the Roman Catholic Church, and while the complaint in this action alleges that the Roman Catholic Church is the owner of the property in question, the prayer of the complaint is for the possession of this property of which it is alleged that church has been unlawfully deprived; and because, furthermore, if I am correct in my contention that the legal title to the State constructed churches in the Philippines passed to the United States by virtue of the treaty of Paris, it passed, nevertheless, subject to the trusts under which it was held prior thereto, and the United States can not at will repudiate the conditions of that trust and retain its place in the circle of civilized nations;

and as long as this property continues to be used for the purposes for which it was dedicated, the Government of the United States has no lawful right to deprive the Roman Catholic Church of the possession and control thereof under the terms and conditions upon which that possession and control were originally granted.

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<sup>[1]</sup> 6 Phil. Rep., 286.

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