

NICOLAS TRINIDAD ET AL., PLAINTIFFS AND APPELLANTS, VS. THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, DEFENDANT AND APPELLEE.

G.R. No. 39533, December 29, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is before this court on an appeal taken by the plaintiffs Nicolas Trinidad, Atilano Trinidad and Santiago Gochangco, the last as administrator of the intestate estate of Alejandro Trinidad, from the judgment of the Court of First Instance of Manila absolving the defendant Roman Catholic Archbishop of Manila from the complaint, which was dismissed, without special pronouncement as to costs.

In support of their appeal, the appellants assign the following alleged errors as committed by the court a quo in its said judgment, to wit:

- "1. The lower court erred in holding that the Convenio Ley of 1867 relative to collative chaplaincies is not in force in the Islands as supplementary to the Civil Code.
- "2. The trial court erred in not declaring that the chaplaincy founded by Da. Valentina Teodoro is subject to commutation and redemption by the plaintiffs.
- "3. The lower court erred in not declaring plaintiffs entitled to an accounting of the fruits of the chaplaincy properties during its vacancy, and in not ordering defendant to render such accounting.
- "4. The court a quo erred in not ordering defendant to turn over to plaintiffs the products of the chaplaincy and its surplus products during the vacancy.
- "5. The lower court erred in denying plaintiffs' motion for a new trial."

This action was brought by virtue of the reservation made by the Court of First Instance of Manila in the dispositive part of its decision of March 6, 1930, rendered in civil case No. 33816 of said court and affirmed by this court in its decision promulgated on March 11, 1931, except in so far as it held that the action of the plaintiffs in said case had prescribed, which dispositive part reads as follows:

"Wherefore, it is ordered that the defendants cause to be noted on the Torrens certificates of title of the properties left by Valentina Teodoro the legal charge imposed by the deed of foundation executed by Basilio de la Trinidad. With this exception, the case is dismissed, without prejudice to the right of the plaintiffs to assert in a new action their rights, if they have any, to the surplus income accruing from the properties during the incumbency of Rosauo Trinidad and during the vacancies in the office of chaplain, without special pronouncement as to costs." (55 Phil., 801, 804.)

In the complaint in this case, it is prayed: (a) That the defendant be ordered to render to the plaintiffs a detailed account of the income collected by him on said properties from April 3, 1878, and to pay the same to said plaintiffs minus the expenses necessarily incurred by the trustee; (b) that the defendant be ordered to transfer to

the plaintiffs, as owners, the properties covered by Torrens certificates of title Nos. 5027, 16950 and 4546 of the office of the register of deeds of the City of Manila, declaring the plaintiffs entitled to receive the rents collected by the defendant.

The pertinent facts necessary for the resolution of the questions raised in this appeal are those which are hereinbelow copied from the stipulation of facts submitted by the parties, to wit:

"3. That on April 20, 1838, Valentina Teodoro made a will, a copy of which appears in Exhibits A and B attached to and made a part of this stipulation.

"4. That after making said will, the testatrix Valentina Teodoro died on or about April 22, 1838, and after her death a chaplaincy was created and constituted on the properties stated in her will, under the circumstance appearing in the Chaplaincy proceedings, Exhibit A, as well as in the excerpt from the Domesday Book of the defunct Ayuntamiento of the City of Manila, Exhibit B, which are made an integral part of this stipulation.

"5. That after the constitution of the chaplaincy, Telesforo Trinidad was appointed first chaplain thereof up to the time of his death on or about April 3, 1878, and was succeeded by Rosauro Trinidad, born in August, 1861, and died on December 12, 1914, from which date the chaplaincy became vacant, the defendant having received the income thereof during such vacancy and used it to defray the charges and other similar pious works.

"11. That in 1918 the new 'Codex Juris Canonici' was adopted and published by the Holy See, a copy of which is attached to and made a part of this stipulation as Exhibit 1 of the defendant.

"12. That of the 184 chaplaincies founded in the Philippine Islands from the year 1650 to 1930, none has been disentailed or subjected to a commutation of income or redemption of charges to date."

The pertinent parts of the will referred to in paragraph 3 of the above-quoted stipulation of facts are as follows:

"FOURTH: Likewise, having in my possession some properties belonging to my sister Doña Marcelina Bonifacio Alonso, situated in the market place or public square of this town, I leave the same at the disposal of my elder brother Don Basilio de la Trinidad and my nephews so that they may thereby procure the establishment of a chaplaincy charged with seventy-five masses.

"FIFTH: Likewise, I possess another house of stone and mortar with four stores and it is my will that another chaplaincy charged with fifty masses be established.

"SIXTH: Likewise, I declare that the house where I live was inherited from my parents, and a third chaplaincy charged with thirty masses annually shall be established thereon, for all of which it is my desire that my nearest relatives be nominated and preferred, the most worthy in case they belong to the same degree; and it being my object, partly, to leave this aid to those of my own blood, it is my will that each of them obtain a chaplain, for I expressly prohibit the union of two of these chaplaincies in only one person, unless no other relative of mine can be found entitled to it, in which case the person possessing the qualification of relationship may obtain all the three chaplaincies, his possession and enjoyment to be without prejudice to the right of any of my relatives who may later be found to be qualified to obtain them, upon whom I then wish one of them to be conferred; and should there be absolutely no relative of mine qualified to obtain them, a chaplain or three of them may be temporarily appointed as administrator or administrators, without the right of ownership or possession."

The first question to be decided in this appeal is whether or not the chaplaincy in question is collative or laical.

In the previous case between the same parties, G. R. No. 33769 (55 Phil., 801), this court, through Justice Malcolm, said: "We reach the very definite conclusion that no error was committed in holding the chaplaincy legally established and subsisting", without stating whether the chaplaincy in question therein and in this case is collative or laical. Although it is collative, judging from the manner of its establishment, and the court a quo so understood in said case, however, to better clarify this point, we shall examine the will founding it in order to

determine to which of these two kinds belongs the chaplaincy which the testatrix wished established. In the fourth clause of said will the testatrix leaves the establishment of chaplaincies on the properties enumerated and described therein at the disposal of her elder brother and sole heir, Basilio de la Trinidad, and her nephews. In the sixth clause thereof, she expresses her desire that "her nearest relatives be nominated and preferred, the most worthy in case they belong to the same degree", for appointment as chaplains of the chaplaincies in question. With this authority, and interpreting the will of the testatrix, the executor Basilio de la Trinidad, on September 25, 1841, filed a petition with the Archbishop of Manila praying that said properties be raised to the status of an ecclesiastical benefice for the proper compliance with the pious request of said deceased, his legitimate sister, nominating Telesforo Trinidad, his own son, for appointment as first chaplain. There is no question and the parties admit that a collative chaplaincy was established and constituted on the properties of the deceased with all the formalities and requisites prescribed by the canon laws, Telesforo Trinidad having been appointed first chaplain thereof. While the will of the founder does not expressly state that the chaplaincies which she desired established with her properties be collative ones, in providing that her nearest relatives be nominated and preferred for appointment as chaplains and in leaving the establishment of said chaplaincies at the disposal of her elder brother Basilio de la Trinidad and her nephews, she made it understood that the chaplaincies which she desired established be collative and familiar and not laical, since it is only in the establishment of collative chaplaincies where it is necessary for the guardian to nominate the candidates for appointment as chaplains to the proper authority or competent person, and not in laical ones where the appointment of a chaplain is made by the guardian without the intervention of the ecclesiastical authority, except to see to it that the charges are complied with (5 Seix, Enciclopedia Juridica Española, page 15; 3 Campos y Pulido, Legislacion y Jurisprudencia Canonica, page 370).

It may be alleged that the testatrix, in providing at the end of the sixth clause of her will that "should there be absolutely no relative of mine qualified to obtain them, a chaplain or three of them may be temporarily appointed as administrator or administrators, without the right of ownership or possession", desired that laical chaplaincies be established.

As will be seen later, the naked ownership of the properties constituting the endowment of a collative chaplaincy, after said properties are spiritualized, is vested in the church, and the usufruct thereof in the chaplain appointed by canonical collation to receive the fruits thereof with the obligation to comply with the charges imposed by the foundation. Inasmuch as the usufruct and possession thereof, in case of vacancy, vests in the church to which the naked ownership already belongs, the fact that the founder provides for the appointment of temporary chaplains to temporarily administer the properties of the chaplaincy but without the right of ownership or possession is not in conflict with the nature and purposes of collative chaplaincies. Had she provided otherwise, that is, that the temporary chaplain was entitled to the ownership and possession of the properties constituting the endowment of the chaplaincy, and were there nothing in the will indicating that it was her intention and desire to establish collative chaplaincies, then it could be assumed that her intention was to create laical chaplaincies.

But if there should really be some doubt in the testamentary foundation as to the intention or wish of the testatrix on this point, Campos y Pulido, in his book on "Legislacion y Jurisprudencia Canonica", volume III, page 372, speaking of the distinction between collative and laical chaplaincies, states as follows: "So, when a chaplaincy may be granted to a church or the rector thereof, or to a corporation of clergymen, be they regular or secular, as provided for in the foundation, the chaplaincy shall be ecclesiastical, otherwise it shall be laical when it involves a corporation of laymen. In the case of a hospital, the nature thereof shall be taken into consideration. Lastly, should the founder express himself ambiguously so that it is difficult to determine the nature of the chaplaincy, and documents are at the same time lacking to clarify these doubts, in such case it shall be considered ecclesiastical."

In Seix's *Enciclopedia Juridica Española*, volume V, page 13, it is also stated as follows: "When the founder has expressed himself in ambiguous terms, so that it is difficult to determine the nature of the chaplaincy, and documents are at the same time lacking to clarify these doubts, it shall be considered collative."

Therefore, under the rule of canonical interpretation and under the terms of the testamentary foundation, the chaplaincy in litigation is ecclesiastical and collative and was established in accordance with the canon laws and the will of the founder.

The second question to be decided is in whom the ownership of the properties constituting the endowment of the ecclesiastical or collative chaplaincies is vested.

"Canonists entertain different opinions as to the person in whom the ownership of the ecclesiastical properties is vested, with respect to which we shall, for our purpose, confine ourselves to stating with Donoso that, while many doctors cited by Fagnano believe that it resides in the Roman Pontiff as Head of the Universal Church, it is more probable that ownership, strictly speaking, does not reside in the latter and, consequently, ecclesiastical properties are owned by the churches, institutions and canonically established private corporations to which said properties have been donated." (Campos y Pulido, *supra*, page 420.)

In the case of *Late Corporation of Latter-Day Saints Church vs. United States* (136 U. S., 1, 53), the Supreme Court of the United States said:

"By the Spanish law, whatever was given to the service of God became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support, and the repairs, books and furniture of the church, was devoted to words of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like. (Partida III, tit. 28, 11, 12-15.) When property was given for a particular object, as a church, a hospital, a convent or a community, etc., and the object failed, the property did not revert to the donor or his heirs, but devolved to the crown, the church, or other convent or community unless the donation contained an express condition in writing to the contrary."

Upon the establishment of the chaplaincy under consideration and the conversion of the properties constituting the endowment thereof from temporal to spiritual ones, the naked ownership of the same became vested in the church, subject to the charges imposed in the documentary foundation. It cannot be otherwise, inasmuch as the continuation of the ownership of said properties in the executor, after a collative chaplaincy has been established thereon, conflicts with the idea of their spiritualization and conversion into ecclesiastical properties. Ecclesiastical properties, being outside the commerce of men, cannot be owned by lay persons. According to paragraph 8 of the stipulation of facts, the properties on which the chaplaincy in litigation was constituted have neither been disentailed nor subjected to commutation of income or redemption of charges to date; therefore, they continue to belong to the church (V Seix, *supra*, page 15; Royal Decree of October 12, 1895).

The third question to be decided is whether or not the plaintiffs-appellants are entitled to recover possession of the properties in question or to commute the income thereof.

Article VIII of the Treaty of Paris, which was signed and ratified on December 10, 1898, provides as follows:

"In conformity with the provisions of Articles I, II and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands of the West Indies, in the Island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

"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 civil 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."

At the time of the signing of said Treaty of Paris, the Roman Catholic Apostolic Church, through its representative in these Islands, continued to be the owner of the properties in question and, therefore, its ownership was guaranteed by said treaty.

By virtue of the change of sovereignty, the only laws that continued in force, according to the rules of public law, were those intended for the protection of private rights and which were not inconsistent with the laws and the constitution of the new sovereignty, until abrogated or changed by the new government (*Ortega vs. Lara*, 202 U. S., 339, 342).

On August 14, 1898, General Merritt, commander in chief of the United States Army, published a proclamation which reads:

"3. The government established among you by the United States Army is a government of military occupation; and for the present it is ordered that the municipal laws such as affect private rights of persons and property, regulate local institutions, and provide for the punishment of crime, shall be considered as continuing in force, so far as compatible with the purposes of military government, and that they be administered through the ordinary tribunals substantially as before occupation; but by officials appointed by the government of occupation."

It will be seen that in the above-quoted proclamation the only laws considered as continuing in force at the commencement of the American occupation were those that "affect private rights of persons and property, regulate local institutions, and provide for the punishment of crime."

The second paragraph of article 38 of the Civil Code invoked by the plaintiffs in their favor in connection with the *Convenio Ley* of June 24, 1867, in so far as it refers to the church, is of special character and is subordinated to the agreement between the Holy See and the Crown of Spain regarding the form and manner in which the church may acquire and possess property of all kinds. Concordats are "treaties or agreements between ecclesiastical and civil powers to regulate the relations between the church and the state in those matters which, in some respect, are under the jurisdiction of both" (8 Seix, *supra*, page 17), and they take place in countries where there is union of church and state. As a consequence of such union both powers have common interest in moral, social, religious and temporal matters. On the other hand, in countries where there is separation of church and state and where the state as a political entity cannot, by constitutional law, adopt any definite religion, such concordats cannot take place.

The same may be said of the *Convenio Ley* of June 24, 1867, since it is a contract between the Holy See and the Spanish Government wherein both powers make mutual concessions regarding property in which both have interest.

In the case of *United States vs. Balcorta* (25 Phil., 273), this court stated as follows:

"The change of sovereignty and the enactment of the fourteenth paragraph of section 5 of the Philippine Bill caused the complete separation of church and state, and the abolishment of all special privileges and restrictions theretofore conferred or imposed upon any particular religious sect."

Therefore, under the principle of separation of church and state, the second paragraph of article 38 of the Civil Code, in so far as it refers to the church (*Willard, Notes on the Spanish Civil Code*), as well as the *Convenio Ley* of June 24, 1867, cannot be considered in force in these Islands after the Treaty of Paris.

The defendant-appellee Roman Catholic Archbishop of Manila, as representative of the church in these Islands,

being the owner of the properties in question at the time of the change of sovereignty by virtue of the Treaty of Paris, which guarantees his ownership, and the second paragraph of article 38 of the Civil Code, as regards the church, as well as the Convenio Ley of June 24, 1867, having been abrogated as a consequence of said change of sovereignty, the herein plaintiffs-appellants are not entitled to revindicate said properties or commute their income.

The fourth question to be decided is whether or not said plaintiffs are entitled to demand an accounting of the income of the properties under consideration.

Having arrived at the conclusion that the chaplaincy established with said properties is collative and was created with all the requisites and formalities prescribed by the canon laws and in accordance with the will of the founder; and that the naked ownership of said properties is vested in the Roman Catholic Apostolic Church or the Roman Catholic Archbishop of Manila, the administration of the same and the right to receive the income belonging to the chaplains canonically instituted, said chaplains alone are entitled to demand an accounting of the fruits thereof.

Furthermore, according to the stipulation of facts, the defendant Roman Catholic Archbishop of Manila received the income of the chaplaincy during the vacancy thereof from December 12, 1914, when the last chaplain Rosauro Trinidad died, and said income was used by him to redeem the charges and defray analogous pious works. The decree of foundation of the collative chaplaincy under consideration provides that the chaplain shall "with the income thereof, attend to all repairs necessary for the preservation of said properties in good condition" (Exhibit A, folio 9). This provision is in accordance with canon 1481 of the new Code of Canon Laws adopted in 1918, which provides as follows:

"After all kinds of expenses have been deducted and the provisions of canon 472, No. 1, (regarding allowance for the temporary incumbent) complied with, one-half of the income of the vacant benefice shall be added to the endowment of said benefice and the other half used for the repair of the church, unless there is a contrary custom of using all for the common good of the diocese."

If, according to the stipulation of facts, the income received by the defendant-appellee during the vacancy of the chaplaincy was used by him to redeem the charges and to defray analogous pious works, he is under no obligation to render any account of said income.

This on the one hand. On the other, the herein plaintiffs-appellants not being chaplains of the chaplaincy in question, they are not entitled and have no juridical personality to ask for such accounting.

For the foregoing considerations, this court is of the opinion and so holds: (1) That when the testatrix, in a will directing the establishment of chaplaincies on certain properties described therein, places the fulfillment thereof at the disposal of her executor and desires her nearest relatives to be nominated and preferred, and her said executor, by virtue of such power, asks the competent ecclesiastical authority for the establishment of collative chaplaincies, the intention of the testatrix is to have chaplaincies of such nature established, and the provision contained in her said will to the effect that in the absence of her own relatives others may be appointed to administer them but without the right of ownership or possession, neither conflicts with said intention nor implies the desire to found laical chaplaincies; (2) that the naked ownership of the properties constituting the endowment of a collative chaplaincy belongs to the ecclesiastical authority within whose jurisdiction such properties are found, the possession and administration of the same and the right to receive the income thereof for the purposes stated in the decree of foundation belonging to the chaplain canonically instituted, and in case of vacancy said administration and possession are transferred to the competent ecclesiastical authority while the vacancy exists; (3) that the ecclesiastical authority administering said properties during the vacancy is empowered to apply the

income thereof to the purposes intended and in the manner prescribed by canon 1481 of the Code of Canon Laws adopted in 1918, and (4) that both the second paragraph of article 38 of the Civil Code, providing that the church shall be governed in the acquisition and possession of property of all kinds by any agreement which may have been entered into between the two powers, and the Convenio Ley of June 24, 1867, have been abrogated as a consequence of the change of sovereignty, being inconsistent with the principle of separation of church and state.

Wherefore, the appealed judgment is affirmed, with costs to the appellants. So ordered.

Abad Santos and Diaz, JJ., concur.

Street, J., concurs in the result.

CONCURRING

IMPERIAL, J.:

Nicolas Trinidad and Atilano Trinidad, as heirs of Valentina Teodoro, and Santiago Gochangco, as judicial administrator of the other deceased coheir named Alejandro Trinidad, brought an action against the defendant praying: That they be declared owners of certain properties on which three (3) chaplaincies had been founded; that the title to said properties, which is now registered in the name of the defendant, be transferred to them by the latter; that said defendant render an account of the income produced by said properties from the time the chaplaincy founded thereon became vacant, and that the surplus thereof, after the charges and other necessary expenses have been deducted, be turned over to them.

After his demurrer had been overruled, the defendant filed an amended answer wherein, after denying each and every allegation of the complaint, he interposed the following special defenses: That there is a misjoinder of parties plaintiffs; that the validity of the chaplaincy in question has already been decided affirmatively in the decision rendered by this court in case G. R. No. 33769 (55 Phil., 801); that the action for revindication or recovery of said properties, if it ever existed in favor of the plaintiffs, has already prescribed; that the chaplaincy founded, being ecclesiastical, is governed by the canon laws in accordance with which the plaintiffs are not entitled to the income thereof; that the plaintiffs ratified the establishment of the chaplaincy and are estopped from questioning the validity and existence thereof, and that under the canon laws and the Codex Juris Canonici of 1918, the descendants or relatives of the founder of a collative chaplaincy are not entitled to receive the fruits of the properties of said chaplaincy, except the one appointed chaplain among them and only during his incumbency.

The plaintiffs appealed from the judgment dismissing their complaint, without costs.

The facts proven in this case do not differ substantially from those established in the former case which was docketed in this court under G. R. No. 33769, the parties thereto being the same. In the decision rendered in said case, which is published in volume 55 of the Philippine Reports, pages 801 et seq., the facts are stated as follows:

"About a century ago, there lived in Manila two sisters and a brother by the names of Marcelina Bonifacio Alonso, Valentina Teodoro, and Basilio de la Trinidad. Marcelina Bonifacio Alonso was the first to pass on. Valentina Teodoro died on April 22, 1838, leaving as her sole heir her brother Basilio de la Trinidad. Two days before her death, Valentina Teodoro executed a will the pertinent clauses of which read as follows:

"Fourth Item.—Having in my possession some properties belonging to my sister Doña Marcelina Bonifacio, situated in the market place or public square of this town, I leave the same at the disposal of my elder brother Don Basilio de la Trinidad and my nephews for the establishment of a chaplaincy charged with seventy-five masses.

"Fifth Item.—Possessing another property consisting of rough stone and mortar with four stores, it is my will that another chaplaincy be established charged with fifty masses.

"Sixth Item.—Declaring that the house where I live was inherited from my parents, and a third chaplaincy shall be established thereon charged with thirty annual masses, for all of which I wish that my nearest relatives be appointed and preferred, and the most worthy in case they belong to the same degree, and it being my object, partly, to leave this aid to those of my own blood, it is my will that each of them obtain a chaplain, for I expressly prohibit the union of two of these chaplaincies in one person unless no other relative of mine can be found entitled to it, in which case anyone possessing the qualification of relationship may obtain all the three chaplaincies, his possession and enjoyment being without prejudice to the right of any of my relatives who may later be found qualified for appointment, to whom I then desire to be conferred one of them, and in the event that I have absolutely no relative qualified for appointment, a chaplain, or three of them, may be temporarily appointed as administrator or administrators, without the right of ownership or possession.

"Eighteenth Item.—I appoint as my executors, first Don Basilio de la Trinidad, second, Don Teodoro Pantoja, and third, Don Gregorio Alonso, to comply strictly in that capacity with the provisions of this her will, in accordance with the inventory of real and personal properties.'

"It was not until September 25, 1841, that the executor Basilio de la Trinidad requested the Archbishop of Manila to approve the creation of three chaplaincies. As the rents received from the properties were considered insufficient for the maintenance of three chaplaincies, the petition, on recommendation of the promotor fiscal, was denied. Thereupon, on July 15, 1842, the executor filed a new petition in which it was prayed that the three chaplaincies be united in one. This petition met with a favorable response from the Archbishop of Manila who, on July 12, 1843, approved the creation of one chaplaincy, and named to the same Telesforo Trinidad, the son of the executor Basilio de la Trinidad. Telesforo Trinidad acted as chaplain until his death on April 3, 1878. He had under his charge the administration of the three properties which constituted the chaplaincy. The chaplaincy was again filled on June 6, 1879, when Rosauro Trinidad was declared entitled to the chaplaincy and to its income, the capital to be administered by the representative of the Sacred Mitra in like manner as the properties of the same kind are administered. The matter stood in this way up to December 12, 1914, when Rosauro Trinidad died. From that date to the present time, the chaplaincy has remained vacant.

"The properties which originally were assigned for the chaplaincy had no great value. At the present time, however, they are assessed for purposes of taxation at P165,987. The properties have Torrens titles standing in the name of the Roman Catholic Archbishop of Manila."

I have chosen to reproduce the facts as they appear in said decision, in addition to the foregoing reason, because I shall later try to show that my concurring opinion does not conflict with the conclusions of fact as well as of law arrived at therein, thereby reaffirming the rule known as the "law of the case".

Besides the foregoing facts, the parties to this case stipulated in writing as follows:

"1. That the plaintiffs Nicolas Trinidad and Atilano Trinidad are of age and residents of the City of Manila; Santiago Gochangco is the duly appointed and qualified administrator of the Intestate Estate of Alejandro Trinidad, civil case No. 35654 of the Court of First Instance of Manila.

"2. That the defendant ROMAN CATHOLIC ARCHBISHOP OF MANILA is a corporation sole constituted in accordance with the laws of the Philippine Islands, domiciled in the City of Manila, with capacity to sue and be sued.

"3. That on April 20, 1838, Valentina Teodoro executed a will copy of which appears in Exhibits A and B, attached to and made a part of this stipulation.

"4. That after the execution of said will, the testatrix Valentina Teodoro died on or about April 22, 1838, and after her death a chaplaincy was created and constituted on the properties mentioned in her will, under the circumstances appearing in the chaplaincy proceedings, Exhibit A, as well as in the excerpt from the Domesday Book of the defunct Ayuntamiento of the City of Manila, Exhibit B, which are made a part of this stipulation.

"5. That upon the constitution of the chaplaincy, Telesforo Trinidad was appointed first chaplain thereof up to his death which took place on or about April 3, 1878, having been succeeded by Rosauo Trinidad, born in August, 1861, and died on December 12, 1914; from which date the chaplaincy remained vacant, the defendant having received the income during such vacancy and used it to redeem the charges and to defray other analogous pious works.

"6. That the property described in clause 4 of Valentina Teodoro's will is now known as Lot No. 12, Block No. 2121 of the Manila Cadastre No. 33, G. L. R. O. Cadastral Record No. 165, whereon is built what is commonly known as LA DEFENSA BUILDING, Ongpin Street, Manila (the building or improvement does not belong to the chaplaincy), and is described as follows:

"On the N. by Cad. Lot 11; on the E. by Ongpin; on the S. by Plaza Sta. Cruz; on the W. by Cad. Lot No. 11.'

"7. That the property mentioned in clause 5 of the will is now known as Lot No. 15, Block No. 2127 of case No. 33, G. L. R. O. Cadastral Record No. 165, commonly known as Nos. 332-340 Ronquillo Street, Manila, and described as follows:

"A parcel of land (plan 11-11311) having an area of 170 square meters, with the buildings and improvements existing thereon, situated on Ronquillo Street Nos. 332-340, District of Sta. Cruz, City of Manila, P. I., bounded on the SE. by property of Fernandez Hermanos and Rafael Calvo Hermanos; on the SW. by property of Rafael Calvo y Hermanos and on the NW. by Ronquillo Street.'

"8. That the property mentioned in clause 6 of the will is known as Lot No. 20, Block No. 2159, case No. 21, G. L. R. O. Cadastral Record No. 133, known as No. * * *, Sales Street, Manila, described as follows:

"On the N. by Cad. Lot No. 21, Block No. 2159; on the E. by Calle Sales; on the S. by Cad. Lot No. 15, Block No. 2159, Callejon; on the W. by Estero Cegado.'

"9. That the actual assessed values of the properties stated in clauses 4, 5 and 6 of said will are: P57,462; P3,700 and P7,363, respectively.

"10. That said properties are covered by certificates of title Nos. 5027, 3233 (subsequently 16950) and 4546, of the City of Manila.

"11. That in 1918 the Holy See adopted and published the new 'Codex Juris Canonici' copy of which is attached to and made a part of this stipulation as Exhibit 1 of the defendant.

"12. That of the 184 chaplaincies founded in the Philippine Islands from the year 1650 to 1930, none has been disentailed or subjected to a commutation of income and redemption of charges to date.

"13. That the following Exhibits are attached to this stipulation and made a part thereof, to wit:

"Exhibit C—Baptismal certificate of Atilano Alonzo.

"Exhibit D—Baptismal certificate of Valentina Teodoro.

"Exhibit E—Death certificate of Valentina Teodoro.

"Exhibit F—Baptismal certificate of Basilio Magno Trinidad.

"Exhibit G—Baptismal certificate of Telesforo Trinidad.

"Exhibit H—Death certificate of Telesforo Trinidad.

"Exhibit I—Baptismal certificate of Agaton Trinidad.

"Exhibit J—Baptismal certificate of Raymundo Trinidad.

"Exhibit K—Baptismal certificate of Atilano Alonzo Trinidad.

"Exhibit L—Baptismal certificate of Rosauro Trinidad.

"Exhibit M—Death certificate of Rosauro Trinidad.

"Exhibit N—Deposition of Nicolas Trinidad attached to the record of the Case No. 33816 of the Court of First Instance of Manila.

"Exhibit O—Judgment of the Supreme Court of the Islands in the case entitled 'Nicolas Trinidad et al. vs. The Roman Catholic Archbishop of Manila', published in 29 Off. Gaz. (No. 113), 2711, 2713.

"14. That in case the Honorable Court should decide that the plaintiffs are entitled to a liquidation and order the same, the right to present the evidence which the parties may deem appropriate in the matter be reserved to them, and the defendant may, if he so desires, file an amended answer."

It is now my intention to discuss the merits of the rights invoked by the plaintiffs, to wit: that they are entitled to the commutation of the chaplaincy, to the redemption of the real properties on which it was founded, to an accounting of the income thereof, and to receive the surplus after payment of the charges and the necessary administration expenses. For this purpose, it is necessary to reproduce hereinbelow the errors assigned, to wit:

"I. The lower court erred in holding that the Convenio Ley of 1867 relative to the collative chaplaincies is not in force in the Islands as supplementary to the Civil Code.

"II. The trial court erred in not declaring that the chaplaincy founded by Da. Valentina Teodoro is subject to commutation and redemption by the plaintiffs.

"III. The lower court erred in not declaring plaintiffs entitled to an accounting of the fruits of the chaplaincy properties during its vacancy, and in not ordering defendant to render such accounting.

"IV. The court a quo erred in not ordering defendant to turn over to plaintiffs the products of the chaplaincy and its surplus products during the vacancy.

"V. The lower court erred in denying plaintiffs' motion for a new trial."

The resolution of the first three assignments of error, in turn, involves the study and determination of the nature of the chaplaincy or chaplaincies founded as well as that of the endowment thereof as provided by the founder. In the matter of chaplaincies as well as in that of religious and pious foundations and institutions, the will of the founder is the fundamental law and it must be complied with to such an extent as is practicable provided it is not inconsistent with the laws of the state and of the church. The intention of the founder, in instituting the three chaplaincies, may be inferred from the above-quoted clauses 4, 5 and 6 of her will.

A careful analysis thereof will convince that the founder never intended to cede the ownership of her three real properties in favor of either the church or the chaplains appointed by the Archbishop or who would be designated by him. She founded three chaplaincies upon her three properties in question and provided that with the income thereof, which constituted their endowment, 155 masses would be celebrated by the chaplains. That the founder did not cede the ownership of her properties is shown by the phraseology used in the last part of clause 6, which

reads: "and in the event that I have absolutely no relative qualified for appointment, a chaplain, or three of them, may be temporarily appointed as administrator or administrators, without the right of ownership or possession." The court interpreted the words "without the right of ownership or possession" as referring exclusively to the case where chaplains, who were not descendants or relatives of the founder had to be appointed temporarily. However, if this interpretation were correct and if in previous designations of her kindred chaplains the ownership and right of possession thereof were transferred, for such would be the reverse of the above interpretation, then it would be pertinent to ask: What else could possibly be transmitted to chaplains who are outsiders or nonrelatives and what is the purpose of making such an explanation and reservation of ownership? If the ownership and right of possession were transmitted to the first two kindred chaplains, Telesforo Trinidad and Rosauro Trinidad, what application would the reservation contained in clause 6 thereafter have, and above all, how can this result be reconciled with the theory that the three properties were spiritualized and converted into ecclesiastical ones? In my opinion these and other considerations adducible prove that the founder did not part with the ownership of her properties and that what she really offered as endowment of the chaplaincies was nothing more than the income thereof. Undoubtedly, this court so understood when, in the decision rendered in the first case, it laid down the following consideration:

"The disposition of the defendant's appeal presents no difficulties. It is true that the complaint did not ask specifically for the notation of the foundation, but this was naturally included in the larger question submitted by the plaintiffs. Moreover, it was a chaplaincy or chaplaincies which the testatrix had in mind to create. It never occurred to the deceased to donate absolutely these properties to the church. Whether the proper indorsement of the incumbrance be made by an order in this case or by an order in another proceeding instituted for that particular purpose is unimportant, for in so far as the equities are concerned, they all move in the direction of the action so appropriately taken by the trial judge." (55 Phil., 805, 806.)

It having been demonstrated that the three (3) chaplaincies were founded by the will of the founder upon each of the three (3) properties, the endowment thereof consisting solely in the income then produced and thereafter to be produced by them, I shall now proceed to state my opinion on the kind of chaplaincy created and on the point also at issue whether or not the Archdiocese of Manila was authorized to fuse into only one the three (3) chaplaincies conceived and created by the founder.

After a careful study of the canonical definitions of the various kinds of chaplaincies, the court declared that the one created by the decree of foundation was a collative and familiar or ecclesiastical chaplaincy. I agree to this because by its nature and manner of establishment it really belongs to said kind of pious and religious institutions. Dr. Gomez-Salazar, Bishop of Leon, in his book entitled "Instituciones de Derecho Canonico" (volume III, pages 307 et seq., 1891 edition), defines a chaplaincy as "The right to receive certain fruits with the obligation to redeem or comply with certain spiritual charges" and collative chaplaincies as "those which, having the necessary requisites of ecclesiastical chaplaincies, are freely conferred by the prelate or competent person", adding that "Familiar chaplaincies are those that have to be conferred to individuals of a certain family, in accordance with the foundational clauses". In the chaplaincy under consideration, for which the founder desired that her blood relations or descendants be given preference and that no strangers be appointed except only when her family has become extinct, the prelate intervened in the appointment of the first chaplains. Under this manner of selection and judging from the pious purpose for which the fruits or income of the chaplaincy were intended, the chaplaincy necessarily had to be collative and familiar.

The authority of the founder's executor and the Archbishop to fuse into only one the three chaplaincies created by the former is questioned, alleging that such act and decision were inconsistent with said founder's intention expressed in her will, but this question has already been settled in the affirmative in the former case and I am of the opinion that it does not require further discussion. In the decision promulgated in said case, it was said:

"A resolution of the appeal perfected by the plaintiffs offers more perplexities. In the first place, it is alleged that the creation of one, instead of three chaplaincies, was improper, and so resulted in only establishing a trust for the benefit of the heirs of the deceased. It is, of course, a cardinal rule that the testator's intention should prevail. The purpose of the testatrix, here, as disclosed by her will, was to provide for three chaplaincies and to prohibit the union of any two of these chaplaincies in one person. However, a practical difficulty, which had not been foreseen by the testatrix, confronted the executor of the will and the Archbishop of Manila, and this was that the properties set aside for the chaplaincies did not produce sufficient revenue to warrant the creation of three chaplaincies. It may, therefore, be safely assumed that the executor and the Archbishop of Manila were acting in the best of faith to carry out the wishes of the deceased when they agreed upon one chaplaincy instead of three. It is very easy now to find fault with this action, but if we were to put ourselves in the position of the executor and the Archbishop in those early days, we would probably have been inclined to do exactly as they did. Moreover, curiously enough, the testatrix set aside for one chaplaincy certain properties belonging to her sister, while had the chaplaincy not been carried out, the properties would have gone to the surviving heir, who was the brother Basilio de la Trinidad. Although in presenting his petition for the amalgamation of the chaplaincies, the brother did so in his testamentary capacity, yet his rights as the heir of the deceased were affected. At this late date, we are not inclined to nullify proceedings taken so many years ago." (Trinidad vs. Roman Catholic Archbishop of Manila, *supra*, pages 806, 807.)

It is, therefore, of no avail to insist on the illegality of the decree of foundation which fused the three (3) chaplaincies into only one because this point must be governed by the rule of the "law of the case" invoked.

I dissent, however, from the statement contained in the appealed judgment that the three (3) properties on which the chaplaincies were founded became ecclesiastical property and passed to the ownership of the church by the mere fact that they were spiritualized. The confusion of ideas has its origin in the fact that the collative and familiar chaplaincy has been classed with benefices proper when it does not belong to such class. A benefice, according to Bishop Gomez-Salazar (volume III, page 174), is "the perpetual right constituted by ecclesiastical authority to enjoy the fruits of ecclesiastical properties by reason of some spiritual service." This is the so-called ecclesiastical benefice which must necessarily be constituted upon properties belonging to the church or upon ecclesiastical properties, while chaplaincies may be founded on properties of private individuals or may consist only in the income thereof, which is what will constitute their endowment in this latter case. Expressing the substantial difference between the two institutions, it may be stated that in benefices proper the properties on which the right is created are necessarily ecclesiastical or of the church, while in chaplaincies the founder thereof may found them on the fruits of his properties without making it understood thereby that said properties have been transferred to the church; and this is precisely what took place in the case under consideration wherein the founder reserved for herself the ownership of said properties, which ownership must be understood to have been transferred by operation of law to her descendants or heirs from the time of her death. For this reason, I cannot agree with the appealed judgment that the properties were converted into exclusive church property merely because they were spiritualized by virtue of the presentment and decree of foundation.

I shall now discuss the assignments of error relied upon by the appellants, by the first of which it is contended that the Convenio Ley of 1867, entered into between the Spanish Government and the Holy See, was extended to and in force in the Philippines at least as a supplementary provision of article 38 of the Civil Code, and that by virtue of said Convenio Ley the chaplaincy in question became disentailed and subject to redemption, thereafter giving rise to the right of the plaintiffs, as heirs of the founder, to commute it with titles of three per cent (3%) of the Consolidated Debt of the Government of Spain.

I am of the opinion that the question whether or not the Convenio Ley of 1867 was in force in the Philippines has already been decided in the negative in the decision rendered in the first case between the same parties. In said case (55 Phil., 808), the following was said on this point:

"Aside from the foregoing, it would not appear necessary to decide whether or not the Supreme Court of Spain was right in its decision of April 28, 1882, regarding the duration of certain laws or whether Alcubilla and others are right in criticizing this decision. The point is that the chaplaincy was established in 1843 agreeable to law then permitting it, and has continued during all the years of Spanish occupation of the Philippines without protest. Further, it would be with extreme difficulty that the agreement of 1867 could be given effect in 1931 to the facts before us.

"We reach the very definite conclusion that no error was committed in holding the chaplaincy legally established and subsisting."

But aside from the fact that the question has already been decided, I can conceive no sound reason in support of the theory of the appellants. In the case of Shoop (41 Phil., 213, 225 and 226), this court, in indicating which were the Spanish laws in force in the Philippines and how they were extended thereto, stated:

"Spanish law became highly codified during the nineteenth century. All of the laws of Spain were, however, not made applicable to the Philippine Islands; only those were effective here which were extended by royal decree. The chief codes of Spain made effective in the Philippines were as follows:

Penal Code

1887

Code of Commerce

1888

Ley Provisional, Code of Criminal Procedure, and Code of Civil Procedure

1888

Civil Code

1889

(Except portion relating to marriage, thus reviving a portion of Marriage Law of 1870)

Marriage Law

1870

Mortgage Law

1889

Railway Laws

1875, 1877

Law of Waters

1866

"In addition to these there were certain special laws having limited application: Las Siete Partidas; Las Leyes de Toro; Leyes de las Indias; La Novisima Recopilacion; Mining Law; Notarial Law; Spanish Military Code, and the Copyright Law."

In the case of *Roman Catholic Apostolic Church vs. Municipality of Badoc* (10 Phil., 659, 671), it was likewise stated that:

"It is an historical fact that the laws permitting the sale of previously unalienable property were not made applicable to the Philippines in things ecclesiastical. And, the said article 25 being a general legal provision for the colonial provinces, it can only be made applicable to those two where said laws were enforced and made applicable also to things ecclesiastical."

In spite of the careful investigation made, no royal decree, royal cedula or any other legal provision has been found making said *Convenio Ley* effective in the Philippines. The attorneys for the appellants, notwithstanding their extensive study of the matter, neither have come across nor indicated any legal provision tending to the result claimed by them. Their contention in support of the operation thereof is based entirely on the proposition that it should be considered as a supplementary provision of article 38 of the Civil Code. But this legal provision, as the terms thereof clearly state, refers to the modes of acquiring and possessing properties in general by the church, not being applicable to religious and pious institutions, as chaplaincies which in Spain were governed from time immemorial by special laws. This conclusion is supported by Manresa, commenting on said article 38 of the Civil Code as follows:

"The Catholic Church is governed in this particular with respect to Spain by any agreement entered into by the two powers and, consequently, by the Agreement of 1859, article 3 of which provides 'that the Government again solemnly recognizes the free and full right of the Church to acquire, possess and exclusively enjoy, without any limitation or reservation whatsoever, all kinds of properties and securities.' From the many times repeated associations law, it is inferred that associations of the Catholic Religion not included among those authorized by the Concordat and non-Catholic religious associations shall be governed by it and, therefore, in this particular by the provisions thereof relative to collective property, in accordance with its article 18." (Manresa, *Comentarios al Código Civil Español*, volume I, page 191, 1890 edition.)

Another circumstance leading to the conclusion that the *Convenio Ley* of 1867 was never in force in the Philippines may be found in the adoption in Rome of the *Codex Juris Canonici* in 1917, the taking effect of which was promulgated by the church in 1918. This Code contains provisions relative to the administration and usufruct of the properties and endowments of chaplaincies, which provisions would not have been adopted and would be without effect or application in the Philippines if the *Convenio Ley* of 1867 had been extended thereto, because the primary purpose of said *Convenio Ley* was to disentail and redeem said chaplaincies.

It must therefore be concluded that the *Convenio Ley* of 1867 was not in force in the Philippine Islands and cannot be considered as a supplementary provision of article 38 of the Civil Code.

The appellants argue that they are entitled to redeem the chaplaincy by virtue of the provisions of the *Convenio Ley* of June 24, 1867, and those of the Instruction of the 25th of said month, for which reason they assign the

second alleged error. It having already been demonstrated that the Convenio Ley in question cannot be invoked on the ground that it was not extended to the Philippines, it becomes unnecessary to discuss this second assignment. With respect to the Instruction of June 25, 1867, suffice it to state that the provisions thereof were adopted merely for the execution of and compliance with the Convenio Ley.

By the third assignment of error, the plaintiffs contend that the court should have declared them entitled to demand an accounting of the fruits or income of the chaplaincy and erred in failing to do so. Upon arriving at this point there again arise the necessity of determining the rights of the plaintiffs in connection with the chaplaincy established, which has been called a collative and familiar chaplaincy.

It has already been pointed out and stated hereinbefore that the founder neither parted with the ownership of the properties nor ceded them to the church, and that the endowment thereof consisted merely of the fruits then produced and thereafter to be produced by them. With this conclusion in mind, it will easily be seen that the right of the plaintiffs must consist exclusively in the title to or ownership of the properties, and the question that arises is, therefore, whether or not they are also entitled to ask the defendant to inform them what he has done with the income produced by the properties from the year 1914 when the chaplaincy became vacant, no chaplain having been appointed.

We should not lose sight of the fact that the chaplaincy so created was permanent and perpetual in character. Its founder did not limit the time thereof. The decree of foundation, subsequent to the presentment made by the executor, spiritualized the income which constituted its endowment, converting it into ecclesiastical property. For this reason, while the chaplaincy exists the plaintiffs are not entitled to intervene in the application and investment of the income and cannot inquire of the defendant what he has done with it, because under the canon laws the latter has unlimited power to apply it in any manner permissible without neglecting of course, the last will of the founder. It is unnecessary to determine whether or not the plaintiffs would be entitled to compel the defendant to appoint a chaplain to comply with the will of the founder; this point is not under controversy and is not one of the remedies sought by the plaintiffs. Furthermore, it is stipulated by the parties that from the time the chaplaincy became vacant the income of the properties was employed in the performance of the spiritual charges and the excess thereof in other pious and religious purposes.

In the case of *Gonzalez vs. Roman Catholic Archbishop* (280 U. S., 1 et seq.; 74 Law. ed., 131 et seq.) wherein the right to receive the surplus income of a collative chaplaincy during its vacancy, after deducting the expense of masses, was also discussed, the Supreme Court of the United States said:

"Third. Raul urges that, even though he is not entitled to be appointed chaplain, he is entitled to recover the surplus net income earned during the vacancy. Indeed, it is the property rights involved that appear to be his main consideration. The value of the property in 1820 was about 1,700 pesos. The annual net income was then 180 pesos, a sum sufficient only to defray the annual expense of sixty masses. The annual net income has grown to about 12,000 pesos; and the annual expense of the sixty masses does not now exceed 300 pesos. In each year during the vacancy the masses have been duly celebrated. The surplus income accruing during the vacancy has been used by the Archbishop currently for pious purposes, namely, education. By canon 1481 of the new Codex the surplus income of a chaplaincy, after deducting expenses of the acting chaplain, must one-half be added to the endowment or capital and one-half to the repair of the church, unless there is a custom of using the whole for some common good to the diocese. The use made of the surplus of this chaplaincy was in accordance with what was claimed to be the long established custom of the archdiocese. Both the custom and the specific application made of this surplus have been approved by the Holy See. The Supreme Court held that since Raul had sought the income only as an incident of the chaplaincy, he could not recover anything.

"Raul's claim, which is made even in respect to income accrued prior to his birth, is rested upon some alleged right by inheritance, although his father is still living. The intention of the foundress, so far as expressed, was

that the income should be applied to the celebration of masses and to the living of the chaplain, who should preferably be the nearest male relative in the line of descent from herself or the first chaplain. The claim that Raul individually is entitled as nearest relative to the surplus by inheritance is unsupported by anything in the deed of gift or the applicable law. Since Raul is not entitled to be appointed chaplain, he is not entitled to a living from the income of the chaplaincy."

Applying the doctrine laid down in said case to the one under consideration, it likewise appears that neither would the plaintiffs be entitled to an accounting of the surplus income from the time the chaplaincy became vacant because in accordance with canon 1481 of the Codex Juris Canonici, the Archbishop was authorized to apply said surplus to other pious works according to custom and for the good of the archdiocese, and because the herein plaintiffs are not entitled to be appointed chaplains for not possessing the qualifications required by the canon laws.

In support of their claim, the plaintiffs likewise cite the Royal Cedula of March 18, 1776, which provided, among other things, that in chaplaincies the same rule as in mayorazgos should be observed, and inasmuch as there is not a moment of vacancy in the latter by operation of law, neither should there be any vacancy in chaplaincies and that in case of vacancy the income of collative as well as laical chaplaincies should be left to the blood relations of the founders or persons entitled thereto. Granting that said Cedula was really in force in the Philippines, it appears, however, that the provisions thereof relative to existing chaplaincies were suspended and became inoperative in view of the provisions of canon 1681 of the Codex Juris Canonici of 1918 which, as already held in the case of Gonzalez vs. Roman Catholic Archbishop, supra, was in full force and effect in the Philippines, and the presumption is that it was adopted with the approval of the Government of Spain.

As stated in the brief for the plaintiffs-appellants, the fourth and fifth assignments of error are mere corollaries of the preceding ones and this, naturally, relieves me from further consideration.

It has been insinuated at the beginning that the doctrine laid down by this court in the former case between the same parties should be the law of the case. This rule of law is defined in Ballentine Law Dictionary, page 731, as follows:

"A term applied to an established rule that when an appellate court passes on a question and remands the cause for further proceedings, the question there settled becomes the law of the case upon subsequent appeal."

Other authorities define it as follows:

"The opinion delivered on a former appeal." (See cases cited.) (36 C. J., 965.)

"It is a rule of general application that the decision of an appellate court in a case is the law of that case on the points presented throughout all the subsequent proceedings in the case in both the trial and the appellate courts, and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first decision rested, and according to some authorities, provided the decision is on the merits. This doctrine is not one whose extension is looked upon with favor, and it is adhered to in the single case in which it arises and is not carried into other cases as a precedent." (4 C. J., 1093-1096, sec. 3075.)

According to the authorities above-quoted the decision in the first case should not be the law of the case because it was not remanded to the court of origin for further proceedings. By reading the judgment or dispositive part of the decision rendered therein, it is undeniable that what this court did was to finally decide the appeal, merely reserving to the plaintiffs their alleged right to an accounting of the income, a right which they had to enforce or exercise in a separate and independent action. However, for the purposes I have in mind, I shall consider the decision in said case as the criterion which should prevail in deciding the identical questions newly raised herein,

showing thereby that I have not deviated from the rule previously established by this court.

By carefully reading the decision rendered in the first case, it will be seen that the only points directly or indirectly decided were: that the founder created three chaplaincies; that by the presentment made by the executor and by virtue of the Archbishop's decree of foundation, the three chaplaincies were merged into only one; that the chaplaincy so created and founded subsisted notwithstanding the diverse legislations on collative and familiar chaplaincies promulgated in Spain; that the Convenio Ley of June 24, 1867 and the Instruccion of the 25th of said month never were in force in the Philippines; that the founder, according to the terms of her will, never intended to transfer to the church the properties on which the chaplaincies were instituted; that as a consequence of her last will, a trust consisting in the ownership of the three properties was created; that the action of the plaintiffs in connection with this trust has not prescribed in accordance with section 38 of the Civil Code, and that the court acted correctly and in accordance with law in ordering the notation in the certificates of title of the properties, issued to the defendant therein, of the nature of the lien to which said properties were subject.

However, it was not decided that the then plaintiffs, who are the same plaintiffs in this case, were really entitled to require the defendant to render an account of the investment made by him of the income of said properties from December 12, 1914, when the chaplaincies became vacant for failure to appoint a chaplain. The only thing decided by this court on this point, affirming the judgment of the lower court, was to reserve in favor of the plaintiffs their right, if any, to bring a separate and independent action for the purpose of requiring the defendant to render an account of the income of the chaplaincy. To remove any doubt that might remain on this point the consideration made by this court is quoted below:

"There remains for consideration the question of whether or not on the supposition that the chaplaincy was valid, the plaintiffs have a right to ask for an accounting. The trial judge, it will be recalled, left this matter for decision in a new action. The allegations of the complaint are undoubtedly sufficient to throw the question of accounting into issue. At the same time, the defendant has not interposed any special defense in relation with this question, presumably for the reason that he assumed the main question to be one of the validity or invalidity of the chaplaincy. Also, the evidence along this line is possibly deficient. It would appear preferable, therefore, to follow the lead of the trial judge in this regard. When the new action shall be begun, it will likely be found that the plaintiffs will lay emphasis on the lack of power of the ecclesiastical authorities to vary the terms of a testamentary foundation and on that clause of the will reading, 'administrador o administradores, sin derecho de propiedad ni de posesion', while it may be expected that the defense will lay emphasis on the surplus income accruing from the chaplaincy belonging to the church for its general pious purposes, in accordance with custom and the provisions of the canon law. This is a clear issue which can be amplified in a new complaint, in a new answer, in a new hearing, and in a new decision (*Gonzalez vs. Harty and Hartigan* [1915], 32 Phil., 328; *Gonzalez vs. Roman Catholic Archbishop of Manila* [1929], 280 U. S., 1)."

Summarizing all that has been stated in the foregoing paragraphs, I understand: That the endowment of the chaplaincy founded consisted only in the income of the three properties; that it was said income alone that could be spiritualized by the decree of foundation and was converted into ecclesiastical property; that the chaplaincy founded being permanent and perpetual, the plaintiffs are not entitled to enjoy the income nor to demand of the defendant an accounting thereof while the chaplaincy subsists and is not dissolved; that the plaintiffs, as heirs of the founder, are entitled to the ownership of the three properties, their right thereto being subject to the lien and limitation abovestated, and that the three properties are held and administered in trust by the defendant.

For the foregoing reasons, I am of the opinion that the judgment appealed from should be affirmed, although on different grounds, without special pronouncement as to the costs of this instance.

Avanceña, C. J., concurs in this opinion.

DISSENTING

MALCOLM, HULL, VICKERS, BUTTE, and GODDARD, JJ.:

With all due respect, we are compelled to register our dissent and to state that in our opinion the decision of the trial court should be set aside and the record remanded for further proceedings.

The case was on appeal once before, and on that occasion there were two views in the court (*Trinidad vs. Roman Catholic Archbishop of Manila* [1931], 55 Phil., 801). In contrast to the majority view, the minority view as announced by Justice Romualdez, with whom concurred Justice Villa-Real, was (1) that a collative chaplaincy had been established; (2) that this being true, the action had prescribed, and (3) that it was improper to order the notation of the trust on the certificate of title. The present decision of the majority conforms in its major aspects with the minority view as expressed on the previous appeal. To this there could be no objection if the present action was not the result of a special reservation in the first case. Under such conditions what is known as the "law of the case" governs, so as to permit an appellate court to perform its duties satisfactorily and efficiently and as a matter of policy in order to end litigation. A recent example of the applicability of this salutary doctrine is found in what are known as the *Mayorazgo* cases, where on a second appeal members of this court were constrained to vote with the majority although holding the view that the previous decision of this court was wrong.

The majority decision in this case when it was first here on appeal resolved every assignment of error made by both parties and pointed the way toward an accounting. From that place the case should have gone forward in the trial court without a reexamination of questions already decided by the Supreme Court. Particularly was it unjustifiable to set aside the ruling of the trial judge in the first case, affirmed on appeal by the Supreme Court, to the effect that the properties did not belong absolutely to the church, a finding predicated squarely on a clause of the testamentary foundation.

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