

JESUS MA. CUI, PLAINTIFF AND APPELLANT, VS. TEODORO CUI, DEFENDANT AND APPELLEE. MARIANO CUI, INTERVENOR AND APPELLANT.*G. R. No. 39773. April 09, 1934*

Ponente: GODDARD, J.

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This case presents an interesting question and one of first impression in this jurisdiction. The question is whether an office in a corporation is a public office within the meaning of section 201 of the Code of Civil Procedure, providing that "a person claiming to be entitled to a public office, unlawfully held and exercised by another, may bring an action therefor," without the intervention of the Attorney-General or of the fiscal of the province, as required in other quo warranto proceeding under sections 199 and 200 of the same Code, especially where, as in this case, the corporation involved was created by a special Act of the Legislature of the Philippine Islands (Act No. 3239), wherein the succession to the office in question, as well as the duties attaching thereto, are defined by legislative act.

On November 27, 1925, an Act of the Philippine Legislature (Act No. 3239) was approved, accepting an offer of one Pedro Cui and one Benigna Cui to establish, maintain, and support in the Province of Cebu a home for the care and support free of charge of indigent invalids and incapacitated and helpless persons, to be known as Hospicio de San Jose de Barili. The text of the Act is as follows :

"SECTION 1. The offer of Pedro Cui and Benigna Cui to establish, maintain, and support in the Province of Cebu, Philippine Islands, a Home for the care and support, free of charge, of indigent invalids and incapacitated and helpless persons, to be known as Hospicio de San Josi de Barili, is hereby accepted. The Home so created shall be maintained with the revenues of the personal and real property with which its founders and other donators shall endow the same, and upon its organization in the special manner provided for in section eight of this Act, said Home shall have its legal domicile in the pueblo of Barili, in the province mentioned, shall be a body corporate for an indefinite period and endowed with the right of succession in its corporate name and competent to sue and be sued and to acquire and convey personal and real property, and shall be considered as a real corporation and vested in general with all the powers granted to and vested in corporations organized In accordance with Act Numbered Fourteen hundred and fifty-nine, and be subject to the provisions of said Act in so far as the same are not inconsistent herewith.

"SEC. 2. The Home organized in accordance with the provisions of this Act and the personal and real property owned by it and donated to it by its¹ founders, Pedro Cui and Benigna Cui, and any other property it may hereafter acquire by donation or any other legal method, shall be managed by said founders during their lifetime, and, in case of their incapacity or death, by such persons as they may nominate or designate, in the order prescribed by them. In case of the absolute incapacity of the persons designated by the founders of the institution, the administration of all the personal and real property of the same shall devolve upon the provincial government of Cebu, which shall manage the Home through the provincial board, in accordance with this Act, for the original purpose contemplated by its founders.

"SEC. 3. The managers or trustees of the Home shall—

"(a) Organize and appoint the personnel necessary for its administration.

"(b) Fix the salaries, functions, and authority of said personnel.

"(c) Make regulations for the government of said institution.

"(d) Prescribe the conditions subject to which invalids and incapacitated and destitute persons may be admitted into the institution: Provided, however, That no discriminations on account of religion shall be made in the admission of such persons.

"(e) Insure all the property of the Home with reputable insurance companies, in such manner as may best safeguard the existence of the institution, in case such precaution is necessary. Whenever the income of the Home shall exceed its operating expense, the managers or trustees shall invest the surplus in the purchase of additional revenue-producing real estate wherewith the institution may extend its activities on behalf of the helpless and destitute.

"(f) After providing for the purposes of sections six and seven, maintain at all times such number of places as the income from the property of the Home may permit, and admit all qualified destitute persons for whom a vacancy exists.

"In the performance of the duties prescribed in this section, the rules and conditions' of admission promulgated shall be valid only in so far as they are not in conflict with the provisions of this Act and the conditions stipulated by the founders of the institution in the instruments of donation.

"SEC. 4. The personal and real property donated to the Home by its founders or by other persons shall not be sold under any consideration: Provided, however, That this prohibition shall not prevent the managers or trustees of the Home from selling or alienating personal property belonging to it, which sale or alienation shall be made in the ordinary process of the operation or business of the Home. In connection with the administration of the Home, the Public Welfare Commissioner shall have power to audit the accounts and watch over the proper and adequate investment of the revenues of the property of the Home, and to ascertain whether the provisions of this Act are being complied with; but this power of supervision shall be exercised without prejudice to the discretionary powers of administration conferred by this Act.

"SEC. 5. All real property of the Home and the revenues thereof shall be exempt from the payment of the land tax, the income tax, and any other tax now or hereafter established by law.

"SEC. 6. The managers or trustees of the Home may establish and operate a pharmacy for the preparation and dispensing of the medicines necessary for the use of the Home and the public, and the Home shall be authorized to charge reasonable prices for medicine sold to the public. The income from this source shall be paid into the funds of the Home: Provided, That the pharmacy so established may sell medicine to the public only so long as there shall be no other privately owned pharmacy in the pueblo of Barili, Province of Cebu.

"SEC. 7. The managers or trustees of the Home shall set aside a part of the income thereof for the support of a young man or woman graduate of the public high school of the City of Cebu, selected by the faculty thereof, while studying medicine, and of a young man or woman graduate of the Colegio de San Carlos, Cebu, selected by the faculty of the latter, while studying pharmacy. These pensionados shall continue their studies in Manila in the University of the Philippines, or in such other university as the Government may maintain in lieu thereof.

"The managers or trustees of the Home shall also support a boy or girl graduate of the public elementary schools of the Province of Cebu, selected by the superintendent of schools of said province, until the completion of the high school course in the City of Cebu. All such pensionados shall be natives of Cebu without sufficient means to continue their studies.

"The three scholarships authorized in this section shall be permanent and shall be filled as soon as any of them becomes vacant by the death or incapacitation of the beneficiary or the completion of the studies contemplated.

"SEC. 8. As prerequisite for the organization and legal recognition of this Home, the founders thereof or, in case of their death, their executors, bind themselves to endow the same with personal and real property of a market value of not less than half a million pesos, the revenues of which shall be used exclusively for the purposes of the Home mentioned in this Act. The Public Welfare Commissioner of the Philippine Government is hereby authorized to accept the donation mentioned in this section on behalf of the Home; and as soon as said donation has been made and accepted by the Public Welfare Commissioner, the institution hereby authorized, known as Hospicio de San Jose de Barili, shall be understood to be organized and have entered upon its legal existence. Upon its legal foundation as provided in this section, all powers and functions thereof shall be exercised by the managers or trustees, in accordance with the provisions of this Act.

"SEC. 9. Nothing in this Act provided shall be understood to authorize the institution hereby created to engage in any business other than that herein authorized, or to exempt it from the revocation of its rights and privileges in case of the violation by it of the provisions of this Act or of any other law to which it may be subject.

"SEC. 10. The privileges granted by this Act to the Hospicio de San Jose de Barili shall be understood to be subject to the provisions concerning the granting of privileges and franchises of the Act of Congress of the United States of August twenty-ninth, nineteen hundred and sixteen, commonly known as the Jones Law.

"SEC. 11. This Act shall take effect on its approval." Pursuant to the provisions of this Act, on January 2, 1926, the said Pedro Cui and Benigna Cui executed a deed of donation, reading as follows:

"EXHIBIT X

"ESCRITURA DE DONACION DE PEDRO CUI Y BENIGNA CUI AL HOSPICIO DE SAN JOSE DE BARILI, CEBU, 1927

"OFICINA DEL REGISTRADOR DE TITULOS DE CEBU

"ESCRITURA DE DONACION

"Nosotros, los hermanos Pedro Cui y Benigna Cui, mayores de edad, solteros, vecinos y residentes del Municipio de Cebu, de la Provincia de Cebu, y fundadores del asilo denominado Hospicio de San Jose de Barili, en cumplimiento del articulo 8 de la Ley No. 3239, que acepta nuestra oferta de establecer el mencionado asilo para el cuidado gratuito de personas invalidas, da personalidad legal al asilo asi creado y le reconoce ciertas facultades y concede ciertas exenciones, y para otros fines, por la presente donamos, cedemos y trasparamos a favor del mencionado Hospicio de San Jose de Barili las siguientes propiedades muebles e inmuebles, que nos pertenecen unos a Benigna Cui y otros a Pedro Cui, y que se describen a continuation:

(Here follows a description by lot number and certificate of transfer of title of fifteen parcels of land, valued at P564,200, and personal property, valued at P9,106.15.)

"Esta donacion la hacemos bajo las siguientes condiciones:

"1. ^a Que nosotros los aqui donantes, mientras vivamos, administraremos el expresado Hospicio de San Jose de Barili.

"2. ^a Que en caso de nuestro fallecimiento o incapacidad para administrar, nos sustituyan nuestro legitimo sobrino Mariano Cui, si al tiempo de nuestra muerte o incapacidad se hallare residiendo en la Ciudad de Cebu y nuestro sobrino politico Dionisio Jakosalem. Si nuestro dicho sobrino Mariano Cui no estuviese residiendo entonces en la Ciudad de Cebu, designamos en su lugar a nuestro otro sobrino legitimo Mauricio Cui. Ambos

sobrinos administraran conjuntamente el Hospicio de San Jos6 de Barili. A la muerte o incapacidad de estos dos admfnistradores, la administraci6n del Hospicio de San Jose de Barili pasara a una sola persona que sera el var6n, mayor de edad, que descienda legitimamente de cualquiera de nuestros sobrinos legitimos Mariano Cui, Mauricio Cui, Vicente Cui y Victor Cui, y que posea titulo de abogado, o medico, o ingeniero civil, o f armaceutico, o a falta de estos titulos, que pague al Estado mayor impuesto o contribution. En igualdad de circunstancias, sera preferido el var6n de mas edad descendiente de quien tenia tiltimamente la administracion. Cuando absolutamente faltare persona de estas cualificaciones, la administracion del Hospicio de San Jos6 de Barili pasard al Senor Obispo de Cebti o quien sea el mayor dignatario de la Iglesia Catolica Apost6lica Romana, que tuviere asiento en la cabecera de esta Provincia de Cebti, y en su defecto, al Gobierno Provincial de Cebti.

"3. ^a Que en caso de que un administrador o fideicomisario del Hospicio de San Jose de Barili no cumpla con los deberes que le imponen las condiciones de esta donation, o infrinja las disposiciones de la Ley No. 3239 al principio mencionada, o de otras a que esta sujeto dicho Hospicio, o padezca de enajenacion mental, o resulte inepto en el desempeio del cargo, o adolezca de falta de idoneidad evidente en el, sea removido del cargo bajo el procedimiento prescrito en el articulo 587 de la Ley No. 190, denominadaCodigo de Procedimiento en Juicios Civiles y Actuaciones Especiales en las Islas Filipinas, a instancia del Fiscal Provincial de Cebu o el que haga sus veces, y la vacante que resulte se cubra con la persona a quien corresponda ocuparla por el orden establecido en la precedente condicion 2. ^a.

"4. ^a Que el mencionado Hospicio de San Jose de Barili de albergue, alimento y vestido a personas desvalidas, naturales de los municipios de Barili, Dumanjug, Ronda, Alcantara, Moalboal, Carcar, Aloguinsan, Pinamungahan, Toledo y Balamban, todos de esta Provincia de Cebu, debiendo corresponder, en la adjudication de plazas, un veinte por ciento (20%) a Barili y un diez por ciento (10%) a cada uno de los demas. Tendran, sin embargo, preferencia los que tengan relation de parentezco con nosotros, los aquf donantes y que se hallan en las condiciones definidas en la siguiente condicion, aunque no sean naturales de los citados municipios.

"5. ^a Que los invalidos que han de ser admitidos en el Hospicio de San Jose de Barili sean aquellos que est6n fisicamente impedidos para el trabajo (profesen la religion que profesen), sean pobres y desprovistos de ayuda y socorro de otras personas, y no sean locos ni padezcan de enfermedades que requieran asistencia facultativa.

"6. ^a Que los administradores cubran preferentemente los gastos de reparation y conservation de las fincas aqui donadas y solamente la cantidad que haya sobrado de esta atencion pueden aplicar a la operation o funcionamiento del Hospicio de San Jose de Barili; y procuren ir adquiriendo con los productos de los bienes aqui donados nuevas mejoras que, acrecentando los rendimientos, permitan cada vez mas ampliar las actividades de dicho Hospicio, bastando el que les hagamos presente que mucho nos satisface pensar que, de un caudal de bienes con tanto esfuerzo reunido, han de poder participar otros, verdaderamente necesitados de amparo, vecinos de esos mismos pueblos, donde al Hacedor de todo lo existente plugo que empezaramos a acumularlos, conforme venia bien, nosotros lo creemos asi, a sus sapientisimos designios.

"7. ^a Que los administradores vayan invirtiendo el dinero que recibieren a cuenta de retroventas, en la adquisicion de fincas rusticas con Titulo Torrens para darlas luego en arrendamiento; y destinen y empleen de los productos, ventas e intereses de los bienes aqui donados la cantidad que sea necesaria, para el establecimiento de una farmacia para la confeccion y distribucion de medicinas necesarias para el uso del Hospicio de San Jose de Barili y del publico, con sujecion al articulo 6 de la Ley No. 3239 ya citada.

"8. ^a Que en caso de que ocurra la revocaci6n de los privilegios y derechos concedidos al Hospicio de San Jose de Barili por la tantas veces mencionada Ley No. 3239 por los motivos que se expresan en los articulos 9 y 10 de la misma, los bienes aqui donados pasen al Sefior Obispo de Cebti, o quien sea el mayor dignatario de la Iglesia Catolica Apost6lica Romana que tuviere asiento en la cabecera de esta Provincia de Cebu para que los administre de tal modo que dicho Hospicio continue existiendo y funcionando de conformidad con nuestros

propositos, rogandole tenga a bien acoger nuestro llamamiento a su piedad para el manejo de una hacienda que se deja a su fe, en auxilio del pr6jimo desamparado que no halla mas refugio que la caridad de los demas, y todo para la mayor gloria de Dios.

"Nosotros los aqui donantes hacemos constar por la presente que no tenemos herederos forzosos y nos hemos reservado bienes suficientes¹ para vivir en un estado correspondiente a nuestras circunstancias.

"En testimonio de lo cual, el donante, Pedro Cui, estampa su firma de su puno y letra, y la donante, Benigna Cui, su marca, por no saber flrmar, en el presente documento en Cebu, Cebu, I. F., a 2 de enero de 1926.

"(Fdo.) PEDRO CUI

"(Marcada) BENIGNA CUI"

This donation was duly accepted by the Public Welfare Commissioner, as provided in section 8 of Act No. 3239 above quoted, on January 14, 1926 (pages 33-35, B. of E.), and the donors were duly notified of such acceptance on the same date (page 32, B. of E.), and they, in turn, on January 20, 1926, acknowledged receipt of such notification (pages 36-37, B. of E.).

On March 1, 1926, the said Pedro Cui executed another deed of donation of additional properties in favor of the Hospicio de San Jose de Barili under the same terms and conditions as the original donation (pages 39-57, B. of E.), except that the donor stipulated that the donee was to pay him a monthly pension of five hundred pesos (P500) to live upon. This donation was accepted by the donee in the deed itself (page 57, B. of E.).

On the same date, Benigna Cui, the other donor, executed another deed of donation of additional properties in favor of the Hospicio de San Jose de Barili upon the same terms and conditions as those executed by Pedro Cui on that date (pages 62-65, B. of E.). This donation was also accepted by the donee in the same instrument (pages 64, 65, B. of E.).

On January 26, 1932, the plaintiff herein, Jesus Ma. Cui, filed a complaint in quo warranto against the defendant, Teodoro Cui, setting up three causes of action. In the first of these, after reciting the foregoing facts, it is alleged that the total value of the property donated by Pedro and Benigna Cui, according to the three deeds of donation above described, is eight hundred forty thousand two hundred sixteen pesos and fifteen centavos (P840,216.15); that, as provided in section 2 of Act No. 3239 above quoted, the donors, Pedro Cui and Benigna Cui, administered the Hospicio after the latter had acquired corporate existence under the provisions of Act No. 3239, until the death of Pedro Cui on June 4, 1926, whereupon Benigna Cui continued to administer the same until her death on March 22, 1929; that, thereafter the Hospicio was jointly administered by Mauricio Cui and Dionisio Jakosalem until the death of Mauricio Cui on May 8, 1931, and that the administration continued in the hands of Dionisio Jakosalem until his death on July 1, 1931; that, on the following day, the defendant herein, without any right whatever, usurped and illegally assumed the administration of said Hospicio and continues to usurp and illegally assume that administration without any legal justification whatever therefor; that the deeds of donation provided, that after the death of the donors, the administration should be in charge either of Mariano Cui (the intervenor) and Dionisio Jakosalem jointly, or of Mauricio Cui and Dionisio Jakosalem jointly, and of an individual who shall be the oldest adult male legitimate descendant of any of the nephews of the donors, who may be a lawyer, a doctor, a civil engineer, or a pharmacist (said nephews being Mariano Cui, the intervenor, Mauricio Cui, Vicente Cui, and Victor Cui), or in case there be none of these among said descendants, he who pays the most taxes, and in case of equality of circumstances, the eldest male descendant from the last administrator; that the legitimate sons of Mariano Cui are Jose Ma. Cui, forty years of age; Jesus Ma. Cui, plaintiff herein, twenty-seven years of age;

Antonio Ma. Cui, twenty-six years of age; Serafin Ma. Cui, twenty-one years of age; and Jorge Cui, nineteen years of age; that the legitimate son of Mauricio Cui is Teodoro Cui, the defendant herein, thirty years of age; that the legitimate son of Vicente Cui is Angel Cui, thirty-seven years of age; and the sons of Victor Cui are Mariano V. Cut, twenty-eight years of age, and Ramon Cui, twenty-six years of age; and that the plaintiff is the only one of these who is a lawyer, and hence has the preferential right to the administration of the Hospicio.

In the second cause of action, after repeating by reference the allegations of the first cause of action, it is alleged that, even assuming, which is emphatically denied, that the defendant is entitled to the administration, he is inept for the office, because of excessive alcoholism and because of extravagant practices in employing an excessive number of subordinates in the administration of the Hospicio and paying them excessive salaries.

In the third cause of action, the plaintiff, after repeating by reference the allegations of the first cause of action, alleged that the defendant has refused to deliver the administration of the Hospicio to him, notwithstanding repeated demands therefor.

The prayer of the complaint is for a judgment to the effect that the defendant is without right to administer the Hospicio; that the plaintiff is vested with that right; that the defendant be ousted or removed from the office of administrator of said Hospicio so illegally held by him; that the plaintiff be named administrator of said Hospicio; and for costs and general relief. (Pages 1-10, B. of E.)

On February 20, 1932, the plaintiff (page 14, B. of E.) was permitted to amend his complaint by making the deed of donation a part thereof, marked Exhibit X (pages 15-67, B. of E.).

On February 29, 1932, the defendant interposed a demurrer to the three causes of action of the complaint (page 67, B. of E.) with supporting argument (pages 68-75, B. of E.), this being an amplification of a demurrer filed by him on February 9, 1932 (page 11, B. of E.). This demurrer was predicated upon the grounds, first that the plaintiff is without legal capacity to sue, and second that there is a defect in the party plaintiff.

On June 29, 1932, a petition for intervention with a complaint in intervention attached thereto was filed by Mariano Gui (pages 75-81, B. of E.), and on July 2, 1932, the trial court entered an order, admitting the complaint in intervention (page 82, B. of E.). In this complaint, the intervenor, Mariano Cui, alleged that he is the Mariano Cui mentioned in all the pleadings of the case; that in accordance with Act No. 3239, the corporation called Hospicio de San Jose de Barili has been organized and is existing; that in accordance with that Act, Pedro Cui and Benigna Cui donated certain properties to said Hospicio, which were duly accepted, and the donors advised of such acceptance, said properties constituting the capital of the said Hospicio; that also in accordance with said Act and with said deeds of donation, the office of administrator of said Hospicio was to be held by the donors, while either of them live. Upon their death or incapacity, the administration was to pass either to Mariano Cui or Dionisio Jakosalem jointly, or to Mauricio Cui, temporarily in substitution of Mariano Cui, if the latter were absent from Cebu at the time of the death of the donors, and upon the death of Dionisio Jakosalem and Mauricio Cui, or their incapacity, the administration would pass to one person who would be that adult male legitimate descendant of Mariano Cui, Mauricio Cui, Vicente Cui, or Victor Cui, who may be a lawyer, a doctor, a civil engineer, or a pharmacist; that accordingly the Hospicio was administered by Pedro Cui and Benigna Cui jointly until the fourth of June, 1926, when Pedro Cui died, by Benigna Cui alone until the 22d of March, 1929, when she died, by Mauricio Cui and Dionisio Jakosalem jointly until the 8th of May, 1930, when Mauricio Cui died, and by Dionisio Jakosalem alone until the first of July, 1931, when he died; that the only reason why the plaintiff intervenor, Mariano Cui, could not assume his office as administrator of the Hospicio de San Jose at the time of the death of Benigna Cui, to exercise it jointly with Dionisio Jakosalem, was because of his temporary absence in Manila, but since November, 1930, he, Mariano Cui, has returned to Cebu and resides there permanently; that on

the 2d of July, 1931, while Mariano Cui was living in Cebu, the defendant, Teodoro Cui, without any right, took and assumed for himself alone the office of administrator of the Hospicio, depriving said Mariano Cui of that office and refusing to deliver it to him, and that until the time of representing the complaint in intervention, the defendant, Teodoro Cui, continues to exercise the office of administrator of said Hospicio and to prevent the intervenor from occupying said office, without just reason; that the real intention of the donors, Pedro Cui and Benigna Cui, in designating Mauricio Cui as a temporary substitute of the intervenor was because of the frequent absence of Mariano Cui from Cebu, which would prevent him from attending personally to his duties as administrator, but it never was their intention to exclude him permanently from the administration of the Hospicio de San Jose merely because at the time of their death, he was not in Cebu, but in Manila; and that the plaintiff, notwithstanding the fact that he is the legitimate son of the intervenor, Mariano Cui, is not entitled to exercise the office of administrator, for the reason that said Mariano Cui is still living and claims for himself that office, in accordance with the wishes of Pedro Cui and Benigna Cui, as sanctioned by Act No. 3239. The prayer of the complaint in intervention is that the intervenor be adjudged entitled to the office of administrator of the Hospicio de San Jose and that the defendant be adjudged not entitled thereto; and for general relief.

On the 26th of July, 1932, the plaintiff answered the demurrer of the defendant (page 82, B. of E.), and on the 29th of July, 1932, the defendant interposed a demurrer to the complaint in intervention, based upon the same grounds as the demurrer of February 29, 1932, to the original complaint herein (page 97, B. of E.).

On the 1st of August, 1932, the plaintiff filed his answer to the complaint in intervention, denying generally and specifically each and every allegation contained in each of the paragraphs therein, with the exception of those expressly or impliedly admitted in the answer, as well as those expressly or impliedly set up in the amended complaint.

On the 26th of November, 1932, the intervenor presented a memorandum in opposition to the demurrer of the defendant to the complaint in intervention (pages 107-121, 6. of E.), to which the defendant made reply on the 6th of January, 1933 (pages 121-125, B. of E.).

On the 4th of April, 1933, the trial court entered an order, sustaining the demurrer to the complaint of the plaintiff and to the complaint in intervention, on the ground that the provincial fiscal of Cebu is the only person with capacity to institute the actions set up in the complaint and the complaint in intervention, and, taking the view that the complaint and the complaint in intervention were not susceptible of amendment, the same were dismissed without any order as to costs.

This order is based upon the theory that, since the Hospicio de San Jose de Barili is a corporation authorized by the Government of the Philippine Islands, under the provisions of section 197 of the Code of Civil Procedure in conjunction with sections 199 and 204 thereof, only the provincial fiscal may maintain an action for the removal from office of one who is alleged to retain the same unlawfully (pages 130-132, B. of E.); and on the further ground that the violation of the order of succession contained in the deed of donation is a violation of the conditions of the donation and of Act No. 3239, wherefore, under the third of the conditions of the deed of donation, as well as under Act No. 3239 providing that the donors should regulate the succession, only the provincial fiscal could maintain the action and that, in so far as the alleged incapacity of the defendant is concerned or his maladministration, the third condition of the deed of donation is that, in such cases, the action for the removal of the administrator shall be instituted by the provincial fiscal.

The plaintiff-appellant assigns seven errors as having been committed by the trial court, but the only question in issue in this case is tersely summed up in the one assignment of error of the intervenor-appellant which reads as follows:

"The trial court erred in holding that no action may be maintained by the plaintiff or the intervenor in this case or by any other private person to try title to the office of administrator of the Hospicio de San Jose de Barili, but that such action may only be instituted and maintained by the provincial fiscal."

The plaintiff-appellant contends that the Hospicio de San Jose is a public corporation in view of the fact that it was not organized under the general Corporation Law, Act No. 1459, but by a special law, Act No. 3239, and maintains that private corporations are those formed for some private purpose, benefit, aim, or end, as distinguished from public corporations which have for their purpose the general good or welfare, and that the Hospicio de San Jose was created for the general good and welfare. Therefore the administrator of the Hospicio de San Jose is a public officer. The plaintiff-appellant however contends that even admitting that the Hospicio de San Jose is not a public corporation, it is in the nature of a quasi-public corporation and that the office of an administrator of a quasi-public corporation is a public office.

The intervenor-appellant contends that an office in a private corporation is a "public office" and in support of that contention invites the attention of this court to the adjudication of American courts in which that view has been sustained.

The defendant-appellee contends that the Hospicio de San Jose is a private corporation, that its officers are not public officers and cites the decision of this court in the case of *National Coal Co. vs. Collector of Internal Revenue* (46 Phil., 583), in which it was held that the National Coal Co. is a private corporation, and that a private individual can not institute a quo warranto proceeding to try title to an office in a private corporation. Hence, neither the plaintiff nor the intervenor "can sue under the authority of section 201 of Act No. 190".

In this case it is not necessary to decide whether the Hospicio de San Jose is a public or a private corporation. The issue in this case can be confined to the contention of the intervenor-appellant, i. e., whether an office in a private corporation is a public office so that an individual, who believes himself entitled thereto, may bring an action of quo warranto against another unlawfully holding it without the intervention of the Attorney-General or the provincial fiscal under section 201 of the Code of Civil Procedure which as we have seen provides as follows:

"SEC. 201. An individual may commence such action.— A person claiming to be entitled to a public office, unlawfully held and exercised by another, may bring an action therefor." The basis upon which the view of the intervenor-appellant is grounded is "that private corporations, whether created directly by special Act of the Legislature or indirectly under the authority of a general corporation law, differ in no essential that affects the public character of the franchise from corporations created for purely public services, such as municipal corporations and others; its transactions are interlaced with the whole of the business life as defined and controlled by law, it can lawfully do only those things and can do them only in the manner prescribed by the law of its creation and of the state, and whatever may be the purpose of its creation, whether for private profit or public good, its offices are public in the sense that enables the state, by proper remedies, to compel obedience and prevent disobedience of its laws."

In the case of *Brooks vs. State ex rel. Richards* (26 Del., 1; 79 Atl., 790; Ann. Cas., 1915A, 1133; 51 L. R. A. [N, SJ, 1126, 1133, 1134), the court said:

"This brings us to a consideration of what is a public office. At the time the common-law remedy by information was employed in England, public offices seem to have been only those which were a part of the apparatus of government at large, or that of municipalities, cities, and boroughs. Here, as in England, we have offices of the same public character in our municipal corporations, created and established by acts of the legislature, in regard to the protection of which, by the remedy of an information, there can be no question; and we have as well a large number of corporate offices, created by special and general legislative authority in connection with grants of corporate franchises. These offices are created so that the design of the grant may be

effectuated and the existence of the corporation perpetuated by the due and regular election of officers in accord with the rules and laws of their governance. Those who fill the offices are alike amenable to the law of their origin. With respect to the manner of their creation, there is in principle no difference between the office of mayor of a municipal corporation and that of president of a state bank, created alike by special acts of the legislature, nor in principle is there any difference between the office of director of a bank, created by special act of the legislature, and the office of a director of a manufacturing corporation created under the general provisions of a law providing for the grant of corporate franchises. If the public character of the latter offices, when the remedy by information is applied to them, is to be determined by the character of the public offices¹ that prevailed in England at the time of the adoption of the remedy, then, indeed, the law is a stationary thing, and acts on precedent rather than upon principle,

"The public character of a corporation and of its offices, when viewed with respect to the remedy under consideration, and as distinguished from corporations and offices that are public in a political sense, is not to be determined by the nature or purpose of its business, but is to be determined by the character of its origin and the policy of the law. In the case of *People ex rel. Atty. Gen. vs. Utica Ins. Co.* (15 Johns, 386; 8 Am. Dec, 243), the Supreme Court of the State of New York, in emphatic language, held:

"That every privilege or immunity of a public nature, which cannot legally be exercised without legislative grant, is a public franchise/ Followed in *State vs. Asley* (1 Ark., 513, 536). The privileges and immunities of a corporation, even in a business of the most private character, cannot be exercised except by legislative grant. A corporation is a franchise (Com. Digest, title, Corp. F), and when granted only by legislative authority or by force of public will, it becomes a public franchise. In our system of government all franchises repose in the people, and, when parted with, are granted by the people under an established system of law, which directs the method of their use and provides against their abuse. Corporations for private gain, whether created directly by act of the legislature, or indirectly, under the general authority of a corporation law, differ in no essential that affects the public character of the grant of the franchise, from corporations created for purely public purposes. Their corporate powers spring alike from the same source, their organization is directed by the same hand, their regulation and restraint are controlled by the same authority, and they are answerable alike to the same sovereignty. If a corporation is chartered by the state to engage in what would otherwise be a private business, surely it is not thereby necessarily a private corporation. Like a corporation for public purposes, it acts only upon license. Its transactions are interlaced with the whole of business life as defined and controlled by law; it can do lawfully only those things and can do them only in the manner prescribed by the law of its charter and of the state; and whatever may be the purpose of its creation, whether for private profit or public good, its offices are public in the sense that enables the state by proper remedies to compel obedience and prevent disobedience of its laws.

"We are of opinion that the offices of a corporation created by special act of the legislature, or under the provisions of the general corporation law of this state, are offices of public character within the meaning that the remedy by information in the nature of a writ of quo warranto lies against one who usurps such an office. (*Angell, Corp.*, 476, 478, 480; *Com. ex rel. Clements vs. Arrison*, 15 Serg. & R., 127; 16 Am. Dec, 531; *Atty. Gen. vs. Utica Ins. Co.*, 2 Johns, Ch., 371; *People ex rel. Atty. Gen. vs. Utica Ins. Co.*, 15 Johns, 358; 8 Am. Dec, 243; *Com. vs. Union F. & M. Ins. Co.*, 5 Mass., 231; 4 Am. Dec, 50; *Gunton vs. Ingle*, 4 Cranch, C. C, 438; *Fed. Cas. No. 5,870*; *People ex rel. Israel vs. Tibbets*, 4 Cow., 388; *State ex rel. Dunlap vs. Stewart*, 6 Houst. [Del.], 359; *State ex rel. Danforth vs. Hunton*, 28 Vt, 594; *Hullman vs. Honcomp*, 5 Ohio St., 237; *State ex rel. Kilbourn vs. Tudor*, 5 Day, 329; 5 Am. Dec, 162; 23 Am. & Eng. Enc Law [2d ed.], 640; 32 Cyc, 1425; *Spelling, Extr. Rem.*, sees. 1831, 1842, 1855.)"

According to Ruling Case Law, in the article on quo warranto, the view in England has been that public offices are only those which were a part of the machinery of government, and that offices in a private corporation are not of a public nature. This view has been followed in Canada, and by a few of the American courts, but in nearly all

the states of the latter country, it is held that an office in a private corporation is a public office.

"In nearly all the states of this country it is held that the remedy by quo warranto or information in the nature thereof lies against one who usurps an office in a private corporation. The general principle underlying this conclusion is that corporations chartered by the state or organized under the general statutes of the state are public franchises, regardless of the character of the corporation, and that the usurpation of a corporate office, therefore, amounts to the usurpation of a privilege granted by the state." (22 Ruling Case Law, p. 666.)

Corpus Juris, vol. 51, p. 318, says:

"Apart from statute, an office in a private corporation, created and chartered by the state, is deemed to be of a public character, or the public is deemed to have an interest therein, in such a sense and to such an extent as to render the remedy available against a person who, not being lawfully entitled to do so, holds the office."

Fletcher's Corporations (Rev. ed., vol. 5, pp. 813, 814), says:

"It is quite well settled at present, however, that offices in a private corporation are sufficiently public in character to warrant an information in the nature of quo warranto in case of usurpation thereof, and to oust an incumbent who has no title thereto, * * *."

Also in volume 2 of the same work, pages 128, 129, it is said:

"When any corporate office is usurped by one who has no title thereto, * * * quo warranto will lie to determine the title to the office, and to oust the incumbent from the exercise thereof. And the proceedings may be instituted either by the person who claims to be entitled to the office, or by a stockholder."

In the case of *Dennistoun vs. Davis* (179 Minn., 373; 229 N. W., 353), the Supreme Court of Minnesota held as follows:

"Action by quo warranto to test the title to office in a private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the Attorney General."

In *Hornady vs. Goodman* (167 Ga., 555; 146 S. E., 173), the court held:

"If each citizen and taxpayer of any political subdivision of the state has such an interest in the question of who shall hold public office therein as will authorize the writ of quo warranto to issue at his instance, to inquire into the right of one holding a public office therein to function as such, and if, as seen in *McCarthy vs. McKinney*, *Hussey vs. Gallagher*, and *Harris vs. Pounds*, supra, quo warranto is the remedy to test the title of one holding an office in a private corporation, whether such corporation be one organized for gain to its stockholders, or for benevolent, charitable, or religious purposes, then certainly the members of a civic and social club have a similar right to have judicial inquiry made to determine the question of whether one is legally assuming and exercising the function devolving upon the executive head of a civic and social organization, whose members are socially upon a level, that owns exceedingly valuable property, and receives large revenue from the use of certain of its property by others."

In the case of *State ex rel. N. W. Colonization and Improv. Co. vs. Huller* (23 N. M., 306; 168 Pac, 528; 1 A. L. R. (170), the court, distinguishing between quo warranto proceedings to dissolve a corporation, or to try the right to a government office, and those to test the title to an office in a private corporation, declared the doctrine to be that in the first case only the Attorney-General may institute the proceedings while in the second case a private individual who has an interest in the office may himself institute the proceedings, without the Attorney-General's intervention ; the reason for this doctrine being that in the former case the interest is essentially public, whereas the latter case deals essentially with private rights and private grievances. The court said:

"This brings us to the next phase of appellant's objection, as to the right of relator to be heard. This objection, as stated under point 2 in appellant's brief, is that 'informations in the nature of quo warranto, brought against individuals to inquire by what right they use and exercise the liberties, privileges, and franchises of a corporation, must be brought by and in behalf of the state, and filed and prosecuted by the attorney-general of the state.'

"In support of this contention appellants cite numerous authorities. The most succinct statement of the entire question, however, we believe, is given in Bailey on Habeas Corpus, at sec. 343, from which we quote &s follows: 'At common law, private individuals, without the intervention of the attorney general, cannot, either as of right or by leave of court, file an information in the nature of a quo warranto. The abuse of a public franchise under color of a legislative grant is a public wrong, as distinguished from a private grievance; hence, the remedy by quo warranto must proceed from the attorney general, or some authorized agent of the sovereign power, to dissolve it. In cases involving merely administration of corporate functions or duties which touch practically only individual right, such as the election of officers, admission of a corporate officer or member, and the like, the writ may issue at the suit of the attorney general, or of any person desiring to prosecute the same, where such method has the sanction of statutory permission; and where not, and such private person has an interest which is injuriously affected, of such a character as will satisfy the proceedings, he may, upon leave of the court, in the name of the state or attorney-general, prosecute such proceedings.'

"It is our opinion that the appellants have fallen into error in an assumption that the sole question under consideration in the present case is one affecting public interest, such as might be said to arise from the abuse of a public franchise, referred to by Mr. Bailey. We have already pointed out in this opinion that, where the object of a suit is to dissolve a corporation or seize its franchises, the action can only be prosecuted in the name of the state. This principle is well stated by Mr. High, in his work on Extraordinary Legal Remedies, in the following language (sec. 624): 'Since, under the American system, all power emanates from the people, who constitute the sovereignty, the right to inquire into the authority by which any person assumes to exercise the functions of a public office or franchise is regarded as inherent in the people in the right of their sovereignty.'

"This case does not involve a public question, such as would arise were an attack made upon the franchise of the corporation, but is a case involving a private right, and one such as referred to by Mr. Bailey, when he speaks of a case involving merely the administration of corporate functions or duties, which touch practically only individual rights, such as election of officers, admission of a corporate officer or member, and the like; in which cases this author recognizes the right of a private person, having an interest which is injuriously affected, to maintain proceedings in the nature of quo warranto, upon leave of court, in the name of the state or attorney general. (See also High, Extra. Leg. Rem., sec. 654.) Mr. Bailey supports his text by the citation of the following authorities: *Murphy vs. Farmers' Bank* (20 Pa., 415); *People ex rel. Jones vs. North Chicago R. Co.* (88 111., 537) ; *Kenney vs. Consumers' Gas Co.*, 142 Mass. (417; 8 N. E., 138); *State vs. Paterson & H. Turnp. Co.* (21 N. J. L.t 9).

"Upon examination of the Pennsylvania case referred to, a first impression would seem to warrant the conclusion that the case was not authority, because the opinion of the court is an interpretation of a legislative act of 1836, conferring the right to maintain the action on 'any person or persons desiring to prosecute the same.' A more careful examination of the case, however, discloses that the same words appear in the Statute of Anne, and were evidently taken from that statute. So that we may reasonably assume that the conclusion of the court would have been the same had the Statute of Anne been alone under consideration. This case is so instructive as pointing out the distinction between the use of the remedy of quo warranto in cases involving public right only and in cases involving individual grievances, that we take the liberty of quoting somewhat extensively therefrom. The court said:

" 'The Statute of Anne was enacted in 1710, and gave jurisdiction in quo warranto to the Queen's Bench. In 1722 our Supreme Court was authorized to issue habeas corpus, certiorari, writs of error, and all remedial writs, and were clothed with the same jurisdiction and powers as the justices of the court of King's Bench,

common pleas, and exchequer, at Westminster. This was a sufficient warrant for this court to adopt in practice a rule prescribed in the Statute of Anne, and justifies the remark of Judge Gibson in *Burrell's Case*, 7 Pa., 34, that the substance of that statute had been adopted before our Revolution, as part of our common law.

"These words have been the subject of judicial decisions, and the authorities show that they do not give a private relator the writ of quo warranto in a case of public prerogative involving no individual grievance. On this point the authorities are full, direct, and harmonious. The usurpation of an office, established by the Constitution, under color of an executive appointment, and the abuse of a public franchise under color of a legislative grant, are public wrongs and not private injuries, and the remedy by quo warranto, in this court at least, must be on the suggestion of the attorney general, or some authorized agent of the commonwealth.

"For the authorities, I refer myself to those cited in the argument of the respondent's counsel. They establish this as the uniform construction. In questions involving * * * merely the administration of corporate functions, or duties which touch only individual rights, such as the election of officers, admission of a corporate officer, or member, and the like, the writ may issue at the suit of the attorney general, or of any person or persons desiring to prosecute the same.'

"The Supreme Court of Illinois in the case of the People ex rel. Jones vs. North Chicago R. Co., 88 Ill., 537, in a well-considered opinion, clearly pointed out the difference between an offense against the public, where the state alone may punish or waive its right to do so, and cases affecting private or individual rights, such as 'those which merely affect the administration of corporate functions without affecting the existence of the corporation.' In the latter case it was held that the courts may interpose on a proper showing.

"We therefore conclude that information in the nature of quo warranto, brought against individuals to inquire by what right they use or exercise the liberties, franchises, and privileges of a corporation, may be brought on behalf of the state, on the relation of any person or persons having

The following statement appears in a note appended to this case:

"The reader may be interested to know that it is settled law that the right of a person assuming to act as an officer or director of a private corporation may be tested upon the relation of any one having a direct interest in the affairs of the corporation (*Com. vs. Union F. & M. Ins. Co.* [1809], 5 Mass., 230; 4 Am. Dec, 50) such as another director (*Place vs. People* [1899], 83 Ill. App., 84), or a stockholder (*People ex rel. Matthiessen vs. Lihme* [1915], 193 Ill. App., 341, affirmed in [1915], 269 Ill. App. 351; 109 N. E., 1051; Ann. Cas., 1916E, 959; *Com. ex rel. Morris vs. Stevens* [1895], 168 Pa., 582; 32 Atl., Ill; *Com. ex rel. Lauffer vs. Stevenson* [1901], 200 Pa., 509; 50 Atl., 91; *State ex rel. Mitchell vs. Horan* [1900], 22 Wash., 197; 60 Pac, 135)."

One of the cases cited in the above quoted note is that of *Commonwealth vs. Union Insurance Co.* (5 Mass., 230; 4 Am. Dec, 50). In that case a motion was filed on behalf of seventeen persons alleging themselves to be members of the corporation, for an order directed to the defendants, to show cause why an information in the nature of a quo warranto should not be filed against them, dissolving the company, and adjudging void their corporate powers. The court held:

"Informations of this nature are properly grantable for the purpose of inquiring into the election or admission of an officer or member of a corporation, when moved for by any person interested in, or injured by, such election or admission, if the same was unduly made. * * *

"But an information for the purpose of dissolving the corporation, or of seizing its franchises, cannot be prosecuted but by the authority of the commonwealth, to be exercised by the legislature, or by the attorney or solicitor general acting under its direction or ex officio in its behalf. For the commonwealth may waive any breaches of any condition, expressed or implied, on which the corporation was created, and we cannot give judgment for the seizure by the commonwealth of the franchises of any corporation, unless the commonwealth be a party in interest to the suit, and thus assenting to the judgment. This distinction between informations in

the nature of a quo warranto, to impeach any election or admission of a corporate officer or member, and informations to dissolve a corporation is well settled, and upon sound principles of law: *Rex vs. Corporation of Carmarthan*, 2 Burr., 869."

All of the above authorities hold that quo warranto lies against one who usurps an office in a private corporation upon the ground that such an office is of a public character in such a sense and to such an extent as to render this remedy available against a person who, not being lawfully entitled to do so, holds an office in a private corporation. In the cases cited, which consider the question as to who has a right to maintain quo warranto proceedings, it appears that the right of a person assuming to act as an officer of a private corporation may be tested upon the relation of anyone having a direct interest in the affairs of the corporation. Some of these authorities hold, independently of statutory provisions, that a private person has a right to test the title to an office in a private corporation by quo warranto proceedings.

It follows that the office of administrator of the Hospicio de San Jose is, at least, an office public in character and that quo warranto will lie against one who usurps that office.

The defendant-appellee insists that section 201 of the Code of Civil Procedure refers only to government offices and that section 197 of that Code is the "only one remaining section that permits the filing of quo warranto action to try title to an office."

The appellee also insists that, according to paragraph 3 of the deed of donation, the provincial fiscal is the only person authorized to bring this action.

This paragraph establishes the procedure to be followed for the ousting of an administrator for the reasons specified therein.

It provides for the removal of an administrator, who, as such, fails to comply with his obligations; who, while acting in his official capacity, violates any of the provisions of Act No. 3239, such as discriminating in the admission of persons on account of religion; failing to insure all of the property of the Home; admitting persons who are not destitute ; selling real property donated to the Home and failing to apply the income as provided in that law. This section also provides for the removal of an administrator who becomes insane; who is inept or lacks the aptitude or capacity to carry on the work assigned to him in Act No. 3239 and in the deed of donation. In such cases the provincial fiscal of Cebu is the person authorized to bring an action for the removal of the administrator under section 583 of the Code of Civil Procedure.

The procedure prescribed in paragraph 3 of the deed of donation is not available against one who usurps, intrudes into, or unlawfully holds, the office of administrator of the Hospicio de San Jose.

In this case there is a genuine controversy as to who has a right to the office of administrator of the Hospicio de San Jose. The plaintiff, the intervenor and the defendant claim the right to that office under paragraph 2 of the deed of donation. They all allege their reasons for making this claim. The defendant is the actual administrator. If he has invaded or usurped the right of either the plaintiff or the intervenor, as alleged, there should be a way by which they can bring their grievance to the courts and have their rights, if they have any, restored to them. If there was no provision in our statute books with respect to quo warranto proceedings, would a person deprived of his right to an office in a private corporation, by force or fraud, have no recourse to the courts for the enforcement of his right, because there was no law prescribing a procedure for such action? The mere statement of the question gives the answer to it; for the right of every citizen to his day in court inheres in him and exists independently of constitutional provisions. As said in 12 C. J., 1287:

"Among the most highly prized and hardly won of the rights conferred by Magna Charta were those

guaranteed by the brief but expressive clause: 'We will sell to no man, we will not deny to any man either justice or right.' In a large number of state constitutions provisions of like import have been inserted to the effect that the courts shall be open to every person; that each individual shall have a prompt and certain remedy by due course of law for injuries which he may receive in his person, property, or reputation; that he shall obtain such remedy freely without being obliged to purchase it; and that justice shall be administered impartially and without prejudice. * * *

"These constitutional guarantees do not create any new right but are merely declarations of fundamental principles. * * *

It is the duty of courts to so construe statutes as to do no one injustice and so as to avoid absurd results. This court said In re Allen (2 Phil, 630, 643):

"* * * it is the duty of courts in interpreting statutes to so construe them, if possible, as to do no one injustice."

In the case of Heydenfeldt vs. Daney Gold and Silver Mining Company (93 U. S., 634-638) it was said: "If a literal interpretation of any part of it (statute) would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the Act taken as a whole, it should be rejected."

Should the phrase "public office" in section 201 of the Code of Civil Procedure be interpreted so as to deny to an individual his inherent right to seek redress for his grievances in the courts of the land? This court cannot lend itself to the accomplishment of such a result, particularly where the only means thereto is by a resort to a technicality that is, at best, of doubtful application, and is certainly not conducive to public interest or welfare. It must be borne in mind that "it is a principle in the construction of statutes that the legislature does not intend * * * to interfere with the liberty or rights of the citizen * * * by doubtful language." (Sutherland's Statutory Construction, vol. 2, p. 502.)

Section 197 of the Code of Civil Procedure does not exclude an action by an individual and at the most it is permissive in character.

"SEC. 197. Usurpation of an office or franchise.—A civil action may be brought in the name of the Government of the Philippine Islands:

"1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;"

The government may waive any breaches of any condition, expressed or implied, on which a corporation was created. If the Government of the Philippine Islands should decide not to bring this action at the instance of the plaintiff or the intervenor, they would be left without recourse to the courts. There would be no way by which the Solicitor-General could be compelled to aid them in vindicating their alleged private or individual rights. This case does not involve a public question, such as would arise were an attack made upon the franchise of a corporation, but is a case involving a private right, and one such as referred to by Mr. Bailey, *supra*, when he speaks of a case involving merely the administration of corporate functions or duties, which touch practically only individual rights; in which cases that author recognizes the right of a private person, having an interest which is injuriously affected, to maintain proceedings in the nature of quo warranto.

This court held in the cases of Navarro vs. Gimenez (10 Phil., 226), and Lino Luna vs. Rodriguez (36 Phil., 401), that a person entitled to a public office may maintain quo warranto without intervention of the Attorney-General, or the fiscal, and without necessity of first obtaining leave of the court.

In the case of A. L. Ammen Transportation Co. vs. Golingco (43 Phil., 280), this court held: "If the right which

any public utility is exercising pursuant to lawful order of the Public Utility Commissioner has been invaded by another public utility, it is not essential that an action be maintained by the Government of the Philippine Islands under section 197 of the Code of Civil Procedure, but, in appropriate cases, actions may be maintained by the complainant public utility."

Paraphrasing the above we hold that if the right of any person to an office in any corporation created by the authority of the Government of the Philippine Islands has been invaded or usurped by another, it is not essential that an action be maintained by that Government under section 197 of the Code of Civil Procedure, but such action may be maintained under section 201 of that Code by a person having an interest which is injuriously affected.

The order of the lower court of April 4, 1933, sustaining the demurrer of the defendant-appellee to the first and third causes of action of the complaint of the plaintiff-appellant is reversed. The order is affirmed in so far as it applies to the second cause of action of that complaint. The procedure provided in paragraph 3 of the deed of donation is applicable to the facts alleged in that cause of action. The order sustaining the demurrer of the defendant-appellee to the complaint in intervention filed by the intervenor-appellant is reversed and this case is remanded to the court of origin for further proceedings in accordance with law and this decision, without costs. So ordered.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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