

THE MUNICIPALITY OF NUEVA CACERES, PETITIONER AND APPELLEE, VS. THE DIRECTOR OF LANDS AND THE ROMAN CATHOLIC BISHOP OF NUEVA CACERES, OPPONENTS. THE ROMAN CATHOLIC BISHOP OF NUE...

G.R. No. 7153. March 26, 1913

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from the decision of the Court of Land Registration dismissing the opposition of the Roman Catholic Bishop of Nueva Caceres and declaring the State (Insular Government) to be the owner of the property described in the petition.

On the 22d of December, 1908, the municipality of Nueva Caceres, through its president, filed an application in the Court of Land Registration for the inscription under the Torrens Law of a parcel of land situated in that municipality, bounded on the north by a lane, on the east by the land of the cathedral church, on the south by the land of Basilio Cleto, and on the west by Calle Santa Cruz, containing an area of 376 square meters. Upon this lot a schoolhouse of strong materials was constructed between 1875 and 1878.

On the 25th of January, 1909, the Roman Catholic Church, represented by the, bishop of the diocese of Nueva Caceres, presented its opposition to the inscription of the above described lot on the ground that the schoolhouse and the land occupied by it were the exclusive property of the church. The Director of Lands, represented by the Attorney-General, also opposed the inscription of this property and alleged that the same belonged to the Insular Government.

The Insular Government and the municipality arrived at a compromise in regard to their conflicting claims, and it appears that the Insular Government notified the court of its intention to cede all its rights in the property to the municipality.

The church being the only appellant, now insists that the lower court erred in dismissing its opposition and in holding that the property sought to be inscribed belonged to the State.

The court having held that the property, both house and lot, belonged to the State, and the municipality not having appealed from this decision, is bound by it. The only question, therefore, to be determined is whether or not the house and lot are the property of the church or of the Insular Government.

Maria de la Cruz was the first known proprietor of the land in question, and her son Basilio Cleto and his wife, Paula Hernandez, about the year 1875, gratuitously ceded this lot to Francisco Gainza, bishop of the diocese of Nueva Caceres. Bishop Gainza founded the school in 1875, making it a school for boys exclusively, supervised its construction, and paid for all of the work performed on it. Until its completion in 1878 neither the municipality nor the Government took any part in its erection. A part of the material which was used in the construction of the school building was that left over after the completion of admittedly church buildings. After the foundation of the

school, the bishop managed and directed it until his death, which occurred in the same year the building was completed. After his death Padres Mariano Villafuerte, Tomas Cariño, Manuel Nabea, and other priests intervened in the management of the school as teachers and inspectors at different times. Carlos Sabio, who was a graduate of the Catholic seminary of Nueva Caceres, was in charge of this school as teacher in 1889 and 1890. The doctrine of the Roman Catholic faith was taught in the school from its foundation until the time of American occupation. At the time this building was constructed, and for several years thereafter, it was the only boys' school within the poblacion of Nueva Caceres, and the Colegio de Santa Isabel was the only girls' school there. This boys' school was familiarly known as the "Escuela Publica" by some, and as the "Escuela Pia" by others. From the death of Bishop Gainza until the time of American occupation, this boys school was managed and directed by the Government (Insular, provincial, and municipal) and the church jointly, the former paying the teachers' salaries out of the local budget the greater part of the time. Since shortly after American occupation, this school has been in the exclusive possession and under the exclusive control of the Government, and has been known since that time as a public municipal school. The above facts are not contradicted.

The trial court said:

"The opposition of the Apostolic Roman Catholic Church appears to be based on the fact that the bishop of Nueva Caceres had intervened in the construction of the said schoolhouse and according to the proofs, documentary and oral, there is no doubt of this fact. But as may be seen in the document Exhibit 2 of the opposition, there is no doubt but that the said bishop had intervened in the construction from the desire to help because of the interest on his part in public education."

The court then quoted from Exhibit 2, which reads as follows:

"Pursuant to the program arranged with the worthy governor of this province for the celebration of the popular and traditional feast of Our Lady of the Peña de Francia, yesterday morning, after the close of the religious services in the beautiful and renovated sanctuary, accompanied by the alcalde himself, the civil and military officials, employees, and other Spaniards, not only of this city and the towns of this province but of many others in Albay, the secular clergy and some friars, curates of neighboring towns, the leading citizens and a great throng of people from neighboring towns, I had the satisfaction of dedicating and inaugurating the fine large municipal school for boys which your excellency saw quite well advanced on your visit to this city; on this occasion I thought proper to address the select audience in a short and rambling speech, a copy whereof I have the honor to remit herewith, should your excellency see fit to report this event to the Government of his Majesty the King, so that it may again be informed how the bishop of Nueva Caceres employs his time, energy, and the means at his disposal, without at the same time neglecting the duties of his high and holy ministry, final proof whereof is the profitable diocesan mission inspection he has just completed with the satisfactory result of over 40,000 confessions and communions in the towns visited and over 30,000 confirmations made in the three and a half months the inspection lasted."

After which the court continued:

"It is clear, therefore, that the work done by the bishop was work apart and separate from his duties and obligations of his 'high and holy ministry.' Moreover, in the same document it is said that the schoolhouse is a municipal school for boys."

"In the report of buildings set apart for the public service in the capital of the Province of Ambos Camarines the schoolhouse in question is designated as being property of the Government, and that it is a school for boys; and the court has no doubt that said schoolhouse and the lot in question belong to the State and not to the opposing entity."

From the foregoing it appears, although riot clearly, that the court was of the opinion that Bishop Gainza, in

receiving the lot as a gift and constructing thereon the building, did so not as bishop of the diocese but in his private capacity, and that in his inaugural address ceded, donated, and dedicated the property in question to the municipality; and by reason of this cession or donation, the church parted with its title. The court reasons that this is true as is shown by the continued use and occupation of the premises by the municipality forever thereafter.

That the lot was gratuitously ceded to the Catholic bishop and that he built the schoolhouse thereon, is not disputed by anyone. Then, up to the time of the inauguration or dedication, either the bishop or the church was the owner in fee of both the lot and the building. Was it a part of the bishop's religious duty, as representative of the church, to assist in educating the young people of his diocese.?

According to Andres, the functions of a bishop were divided into two classes: (1) Rights and authority; and (2) duties and obligations. In his work (*Diccionario de Derecho Can6nico*, vol. 4, p. 70) he says:

"In order to reduce this extensive subject to a formula that may embrace everything without our falling into repetitions, we shall with some authors by way of recapitulation distinguish between what refers to the duties and obligations of the bishops and that which relates to their rights and authority. The duties of the bishops may easily be confused with their rights, for many things that were originally imposed as duties have come to be functions, the exercise whereof has been sought by many; such are the greater part of the functions relating to worship and the guidance of souls. Nevertheless, we think that we can and must make two separate articles; we treat here of the rights of the bishops in the general sense, and in the following paragraph we shall treat of their obligations.

"In the first place, we shall reduce the authority, rights, and functions of the bishops to three distinct divisions of the episcopal office, to wit, regulation, jurisdiction, and dignity."

He then goes on to enumerate the rights and functions of the bishops, among which are those of bendicion and consagracion, and in discussing the jurisdiction of the bishop states that he must preside over the government of his church, and that he is in charge of all the ecclesiastical property of his diocese.

He then proceeds:

"Let us now see what their duties and obligations are:

"They may be reduced to two principal objects, worship and the guidance of souls. Divine worship refers (1) to the faith and the respect due to God and his Saints; (2) to the celebration of divine services; (3) to the administration of the sacraments; and (4) to the ecclesiastical ministers, things, and places." (Andres, *Diccionario de Derecho Canonico*, vol. 3, p. 75.)

The duty or obligation which the bishop of Nueva Caceres speaks of in the letter referred to was a visita to the different parts of his diocese engaged in converting the people to the Catholic faith, thus falling under number one of the above subdivision.

And Andres, in referring to a visita (*Diccionario de Derecho Candnico*, vol. 4, p. 351) refers to it as an indispensable duty or obligation of the bishop, and states that the object of all visitas is to introduce the holy and Catholic doctrine.

Among the decrees of the Council of Trent we find the following mandate:

"If the patriarchs, primates, archbishops, and bishops cannot every year visit the whole of their dioceses because of the latter's great extent, either in person or through their vicar-general or their inspector, in case these are legitimately hindered from so doing, they should at least travel over the greater portion, in such manner that the whole inspection be completed either in person or through their inspectors in two years." (Andres, *Diccionario de Derecho Canonico*, vol. 4, p. 351.)

The instruction of boys has been from the beginning of its organization one of the greatest cares of the Roman Catholic Church. Perujo, in his *Diccionario de las Ciencias Ecclesiasticas* (vol. 4, page 230), tells us that such schools have existed since the first century when the evangelist, St. John, founded one in Ephesus. He also informs us that there were schools for all ages and that not only the doctrine of the Catholic faith was taught, but also all branches of knowledge; and that any person who desired might attend them, as they were not limited to any particular creed of faith and that each episcopal chair ordinarily had a school and a library adjoining.

And in Andres (*idem*, vol. 2, p. 287) in referring to the importance of schools, it is said:

"In spite of this, schools were always necessary for the instruction of youth; and even in Paris itself they were necessary for the poor and for those who did not aspire to the courses of the university; and therefore, the councils of those and subsequent times have provided for this need; such has always been the conviction of the advantages the instruction of youth produces. In this connection, the councils of Rouen, Narbonne, Aix, and Bordeaux may be consulted; the last-named, which was held in 1358, expressed itself in article 27 thus;

"'De scholis in proemio, recte quodam hujus soeculi sapiente literis mandatum est, nihil esse de quo concilium divinus iniri possit, quam de recta puerorum institutione: juvenus enim est spes ac soboles republicae quae si dum adhuc tenera diligenter excolatur, maxime at merae suavitatis fructus feret; contra vero si negligenter, aut nullos, aut amarissimos.'

"These councils charge the bishops to establish schools and to watch over the conduct and customs of the teachers. Nothing is more important than to prevent youth from imbibing evil doctrine, from being perverted by bad examples. It is well understood that these public schools, the establishment and control of which the councils entrusted to the bishops, were not so magnificent as those of which we have just been speaking, if we except the seminaries, which form a separate establishment, as we shall state in its proper place, and that they were looked down upon in spite of their necessity.

"The schools for boys must be conducted by men and those for girls by women, without the boys and girls going to the same school at the same time; and the orders in this respect have done nothing more than confirm the decrees of the provincial and diocesan councils."

Thus it will be seen that the founding of schools was not only one of the functions and duties of the bishop, but was as important as any of the other obligations which his ministry carried with it. It is therefore clear that the lot in question was ceded to the church, and that the schoolhouse was built for the church, and that neither was the private property of the bishop. Both belonged to the church at the time of the dedication. Has the church parted with the ownership of this property since that time, by donation, cession, prescription, or in any other manner?

That the school in question was administered by the Insular Spanish Government and the teachers' salaries paid out of the local budgets, is no argument that the church parted with the fee or possession of this property, nor is there anything strange about such a dual state of affairs when we read the orders and regulations relating to schools and see the cooperation of church and state in educational matters. As far as instruction and the interior running of the schools were concerned, the church had almost entire control.

Article 31 of the royal decree of December 20, 1863, provides:

"The chiefs of the province shall be provincial inspectors and they shall exercise their trust with the aid of a commission, presided over by the same, and composed further of the prelate of the diocese, or, in his absence, of the parish priest of the capital and of the alcalde mayor or the collector of revenue. The parish priests will be the local inspectors of primary instruction in their respective districts." (Quoted in Berriz' *Dictionary of the Administration of the Philippines*, vol. 3, p. 325.)

Article 3 of the royal order of the 20th of December, 1863, in regard to the rules for the running of the interior

part of the school provides:

"Before the fifth day of each month the teacher will send to the chief of the province a list of all the children in the school who were there on the day preceding, with an account of who pay for instruction, also those who have entered and left during" the month, according to the form given, and a copy of the daily register of attendance for the same time. These documents must be countersigned by the parish priest, and to the said end the teacher will submit to him the books referred to."

Article 6 of the same order says, in part;

"When any child frequently fails to attend the school without its parents giving notice of the reason therefor, the teacher shall so inform them, and if after this it continues to be absent in the same way, he shall notify the parish priest."

Article 10 of the same order provides that at the hour assigned by the parish priest inspector, the men and women teachers shall come together with their pupils in the church and hear mass, during which they shall repeat a part of the rosary; that at seven the children shall go to their schools and repeat the prayers which the bishop of the diocese assigns; that in the afternoon the children shall again assemble in the church and do the same as they did on arriving in the morning, and that on leaving the school in the evening they shall take the cross to the church and from there retire to their respective homes; that on Sundays and feast days the boys shall go to mass, and afterwards they shall visit the parish priest. Conferences over the Christian doctrine and ethics shall be at the hour which he assigns. Every three months, on a day which the parish priest assigns, the teacher shall take the boys to confession and to receive the sacrament.

Article 12 of the same order provides in part:

"Chastisements shall be proportioned to the nature of the offenses, and shall be; (1) To stand or kneel for not over an hour; (2) to review the reading or writing lesson; (3) to stay in after school up to an hour, writing or studying; and (4) any other moderate correction suited in the parish priest inspector's judgment to the nature of the offense.

"In no case shall any chastisement not included in the foregoing article be imposed, and the teacher who violates this regulation shall be twice reprimanded by the parish priest, and if he does not correct himself he shall be suspended."

Article 13 provides that the examinations in the schools in the different towns shall be presided over by the parish priest in union with the gobernadorcillo and two other persons named by the parish priest.

Article 14 provides that the regulations of this decree may be modified by the superior civil government, upon the recommendation of the superior commission of primary instruction. The parish priest shall inform that authority of the result and reforms necessary and especially in so far as it concerns the time spent in class work and the distribution of the classes. (Berriz, Dictionary of the Administration of the Philippines, vol. 3, p. 328, et seq.)

The circular of the superior civil government, dated August 30, 1867, says:

"Sufficient is a very brief statement of the duties of inspectors so that their seriousness may be understood. Principally, the local inspectors, who in the towns are the reverend and learned parish curates, look after the advancement of education. They are (1) to visit the schools as frequently as possible and see that the regulations are observed; (2) to reprimand the teachers who may commit any offense and suspend them when in his judgment they have erred to such an extent that they should no longer be permitted to manage the school, making report thereof to the provincial inspector; (3) to encourage the attendance of children at the school; (4) to give written orders regarding admission therein, stating whether the instruction should be free or paid for; (5) to propose through the provincial inspector whatever he may esteem suitable for fostering and improving

primary instruction; and (6) to exercise over the teaching of Christian doctrine and ethics the supervision set forth in article 4." (Berriz, Diet. Admr. Phil., vol. 3, p. 338.)

And we find in rule 2, contained in the above circular order of the civil government in regard to corrections and suspensions of teachers:

"This is the most delicate power which the Reglamento gives to inspectors." (Berriz, id., p. 342.)

Rule 5 in regard to the betterment of the schools says:

"One error alone is sufficient to ruin a generation. Fortunately, as has already been said, the circumstance that the duties of inspectors are confided to the reverend and learned parish priests is a guaranty for the state and the parents that in religion and in morality, the cardinal bases of all solid instruction, no reforms of principle or of method will be arbitrarily introduced." (Berriz, id., p. 345.)

All schools, both public and private, were under the direction and supervision of the Government, which provided rules and regulations for their administration, as in the case of the school of Santa Isabel, the only girls' school in Nueva Caceres, the ownership of which has never been questioned by the Government. The royal decree of 1875 provided especially for the administration of this school an in article 49 says:

"The expenses of the personnel and material for the normal school shall be met: (1) With the sums designated now in the provincial budgets for the personnel of the sisters of charity in charge of the teaching in the College of Santa Isabel and with those that are included for the increase of two women teachers; (2) with those which shall be designated in the municipal budgets for the maintenance of girl pupils and for the keeping up of the establishment; (3) with those which are included in the municipal budgets of Nueva Caceres for the practical school as the public school for girls." (Berriz, id., vol. 3, p. 317.)

It will be seen that the above royal decree referred to the Colegio of Santa Isabel as a girls' public school. No one has ever questioned the ownership of the Catholic Church in this school, and the record shows that it is still in possession thereof. As in the case of that school, so in the case of the one under discussion, the salaries of the teachers and the expense of keeping up the school were provided for by the local budgets.

That the Crown of Spain always codperated with the Roman Catholic Church in educational as well as religious matters and assisted the church in every way possible is clearly set forth in the case of the Roman Catholic Church vs. Municipality of Rizal (12 Phil. Rep., 639, 646), which says:

"Scarcely had the Indies been discovered when the Pope and the Crown of Spain began to manifest a deep interest in the religious and educational welfare of the people of the Indies. (Bull of Alexander VI of the 4th of May, 1493; also the bull of the 16th of December, 1501; Ordinance 5 (a) by the Council of the Indies, 1575, Law 10, title 1, book 1, of the Laws of the Indies, of the 1st of June, 1574; Law 14, title 2, book 1, of the Laws of the Indies, and many others, the collection of which may be found in volume 7 of the Legislacion Ultramarina, p. 476.)

"From the reading of these various bulls and royal decrees and ordinances, it will be seen that the Government and the church were constantly working together for the advancement of the religious and educational welfare of the Indios. The Government lent its most enthusiastic support to the efforts that were made by the church in this regard, even to the extent of paying funds out of the public exchequer, together with funds contributed by the encomenderos and the people of the towns, for the purpose of erecting the magnificent Catholic churches existing everywhere throughout, the Spanish island possessions. While the Crown of Spain always reserved a certain control over the operations of the Catholic Church, yet no one can doubt that, when these lands were donated or designated and the edifices were erected thereon, it was the intention of the Crown that such lands and such edifices should be devoted absolutely to the use of the church. It is a well-known fact that, when a church edifice of the Roman Catholic Apostolic Church was once accepted, and dedicated for religious

purposes, it thereafter could never be used for any other purpose."

Not only were all schools under the supervision and regulation of the Government, public or private, but the churches themselves could not be built without the consent of the Spanish Government, and the expenses for their construction and maintenance, as well as the salaries of their pastors, were paid out of the royal exchequer.

"Whereas it is our intention to erect, institute, found, and maintain all cathedrals, parish churches, monasteries, votive hospitals and churches, and religious and pious establishments where they may be necessary for the teaching, propagation, and preaching of the doctrine of our holy Roman Catholic faith, and to aid to this effect with our royal treasury in so far as possible, and to receive information of such places where they should be founded and are necessary, and the ecclesiastical patronage of all our Indies pertaining to Us:

"We command that there shall not be erected, instituted, founded, or maintained any cathedral or parish church, monastery, hospital or votive church, or other pious or religious establishment without our express permission, as provided in Law 1, title 2, and Law 1, title 3, of this book, notwithstanding any permission heretofore given to our viceroys or other ministers, which in this respect we revoke and make null, Void, and of no effect. Law 2, title 6, book 1." (Quoted in *Barlin vs. Ramirez*, 7 Phil. Rep., 41.)

See also *Ponce vs. Roman Catholic Church* (210 U. S., 296, 62 L. ed., 1068).

Thus it will be seen that all institutions founded by the church, convents, seminaries, churches, hospitals, and schools, were under the supervision of the Government and easily came to be confused with and known as public institutions of the State.

Dean Milman, in his *History of Latin Christianity* (vol. 1, p. 507) says:

"The Christian churches succeeded to that sanctity which the ancient law has attributed to the temples; as soon as they were consecrated they became public property, and could not be alienated to any other use. The ground itself was hallowed, and remained so even after the temple had been destroyed. This was an axiom of the heathen Papinian."

And Andres, in speaking of religious schools (vol. 2, p. 285), defines a school in his treatment of church schools as "a public establishment where knowledge is taught." (Vol. 2, p. 286.)

Morales tells us in his *Derecho Canonico* (vol. 2, p. 245):

"The word 'church' has in this work a special meaning, for we take it only in a material sense, that is, as the spot or place devoted to divine services and to sacred objects. Therefore, it may be defined as the public building devoted to divine worship."

And even the bishops and all the priests of the Roman Catholic Church were appointed by the Government of Spain. We take the following from Gomez Zamora, *Patronato Regio Español e Indiano*, p. 322:

"For convenience' sake, the patronage in the Indies enjoys very important privileges, such as the tithes, stipends and vacancies, indulgence money, etc., which will be discussed in Chapter XXII.

"These imposts lay upon the patron the duty of defending the church (Law 4, Tit. XV, part 1), and moreover in the Indies of contributing to it, as is expressly provided in the bull of Alexander VI, November 16, 1501.

"The presentation, which is the designation of clergy suitable for the vacant benefice or church, is made by the patron, in the case of the larger or canonical benefices; the others are made in the colonies by the vice-patron. (Laws 3 and 24, book 1, Tit. VI, Recop. de Ind.)"

And at pages 330 and 331 of the same author the following:

"By Royal Cedula of July 14, 1765, as the result of an appeal filed against the archbishop of Hispaniola by his chapter to the apostolic judge of Puerto Rico, and the appeal by force of law carried by the same chapter to the royal audiencia of the same island against the apostolic judge of Puerto Rico because he had refused to admit the appeal, the royal audiencia was informed: 'It would have been surprising had you admitted said appeal, for you must remember, as that prelate did, the provisions of the laws, and that in no way did he act in this matter on his own authority but as my delegate, on the strength of the special character the bull of Alexander VI confers upon me as vicar and delegate of the Holy See; and by virtue Whereof my royal authority extends to intervention into whatever concerns the spiritual government of the Indies, so extensively that the Holy See confers upon me not only his representation in the economic concerns of the ecclesiastical branches and affairs but also in the litigious and jurisdictional, reserving to itself only the power of regulation, for which laymen are incompetent.'

"By Royal Order of 1835, addressed to the Governor-General of the Philippines, it is provided that to allow resignation from ecclesiastical benefices pertains, under the laws of the royal patronage, solely to the vice-patron, and in no way to the prelates."

Therefore, it will be seen from a reading of the above royal decrees and regulations governing the primary instruction of the boys, that boys' schools were under the direction and control of both the church and the state. It was only natural that the schools of the church should be governed by the general laws regulating primary instruction inasmuch as all the schools were under its supervision; and as by throwing open the school to the public, boys generally would be instructed in the faith, it was to the advantage of the church to make its schools as public as possible.

So, the fact that the Government intervened in the administration of the school in no way tends to show or prove that the church had ceded the building or the lot in question to either the local or central government of Spain in the Philippines. On the contrary, it would have been highly unreasonable that such should have been the case, for the church is very jealous of its property and especially of its educational institutions for the instruction of the young, and especially of a lot and building which faced its cathedral in Nueva Caceres and adjoined the same lot on which its seminary for the instruction of aspirants to the priesthood was built. In fact, there is no doubt that until the revolution and separation of church and state, brought about by the advent of American sovereignty, the church was in possession of the school in question, considering it as its own exclusive property.

It appears that there was a great scarcity of buildings for the use of public schools, as the instructions given the various parish priests in the above quoted circular letter of the central government of the 30th of August, 1867, (Berriz, Die. Admin. Phil., vol. 3, p. 346) call the attention of the parish priests to the fertile field offered by the lamentable conditions of the schools of primary instruction and the scarcity of public buildings for their use.

The town of Nueva Caceres wae, in all probability, unable to gather funds for instruction for either boys or girls; therefore, Bishop Francisco Gainza took it upon himself to provide for both of these schools and opened them to the public. This act of liberality on the part of the bishop in no way inferred, nor was it intended to infer, that he thereby ceded the fee of the lot and building of either the boys' or girls' school to the State. There is no donation or dedication to the State of any sort shown by the record.

That he referred to the school as "La Escuela Municipal de Niños" in the letter which has been introduced in evidence, shows in no way a cession or dedication to the municipality or to the state, nor can we infer from this phrase that the bishop intended that the municipality should have complete control or authority over the school, for the record shows that no one ever considered it as a municipal school. The only possible thing the bishop could have intended, as the evidence shows, was that the school founded by him should be open to the whole community, to every boy in the municipality, for those who could not pay, as well as for those who were able to pay. The record shows that the school was called "La Escuela Pia," and it is remarkable to note that the only

witness who really knew anything about the inside running of the school and its administration, Carlos Sabio, who was a teacher there in 1889, after taking a course in the seminary of Nueva Caceres, refers to the school throughout his testimony as "La Escuela Pia," showing that this was really the designation applied to it by those more intimately acquainted with its curriculum. Sabio was the only witness in a position to know the character of the school in question. His testimony, shows that it was a religious school. No schools of the property of the Insular Government were known-by the name of "Escuelas Pias," while on the other hand many of the primary schools belonging to the church were termed by laymen "Escuelas publicas." It certainly cannot be contended that the church has lost its right to the property in question through prescription.

The evidence discloses that the church was commonly recognized in Nueva Caceres as the owner of the property in question, although it was being used for school purposes and was under the supervision of the Government.

Article 1942 of the Civil Code reads:

"Acts of a possessory character, performed by virtue of a license, or by mere tolerance on the part of the owner, are of no effect for establishing possession."

Article 444 provides that acts which are merely tolerated do not affect possession.

And again, at the time the lot was ceded to the Catholic Church it was in the possession of Basilio Cleto and his wife Paula Hernandez, who utilized it, as well as did Maria de la Cruz before them, for their own 'use and enjoyment. That there was a donation of the land to the church and that the school was built on the land at the expense and with the funds belonging to the bishop for the church, who exercised all the rights in regard to the land which an owner might exercise, there can be no question. The lower court apparently laid great stress on the fact that the schoolhouse in question was classified as a public school in the list of buildings devoted to the public service in the capital of Ambos Camarines. But this is not by any means conclusive evidence that the same was the property of the State. This list of buildings is dated October 27, 1885, in Nueva Caceres, is signed by the alcalde mayor of Camarines Sur and is entitled, "Buildings devoted to the public service." It is not signed by any representative of the Catholic Church, and cannot be construed in any way as an admission of the church. The church never has denied that this school was open to the public and that like the other church institutions it was devoted to the interests of the public, but with the reservation that this public was a Catholic public, and that the school should remain under the control and be directed by the priests of the Roman Catholic Church; and that the Catholic faith be taught therein. This school would not have been thrown open to the public in general but for the fact that the Roman Catholic faith was at that time the religion of the state, the only religious denomination in the country. Therefore, the only religion of the public. It was a Catholic public to whom the portals of this school were thrown open, and the regulations of the central government specifically ordered that the Catholic faith and only the Catholic faith should be taught in every such school. For this reason only, Bishop Gainza permitted all boys to enter, and, for the same reason, were all establishments belonging to the church, such as seminaries, hospitals, and schools, termed public institutions. The very purpose and aim of the Catholic schools was to educate the young in the Catholic faith. Had a state of affairs existed which has been brought about by the advent of the American Government, with its tolerance of all religious doctrines, this school would not have been looked upon as a public institution; the Government would not have had the slightest voice in its administration. This whole question must be viewed from the standpoint of a dual government when the church and state were both supreme, and not from the standpoint of the relation of the church to the state at the present time.

We therefore conclude that the Church was in fact and in law in possession of the schoolhouse and the land occupied thereby until the advent of the American Government, and that it has never parted with the fee to the property in question. The judgment is reversed and the petition dismissed, without costs.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.

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