

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, REPRESENTED BY
THE TREASURER OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. EL MONTE DE PIEDAD Y CAJA DE AHORROS DE
MANILA, DEF...**

G.R. No. 9959. December 13, 1916

Ponente: TRENT, J.

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TRENT, J.:

About \$400,000 were subscribed and paid into the Treasury of the Philippine Islands by the inhabitants of the Spanish Dominions for the relief of those damaged by the earthquake which took place in the Philippine Islands on June 3, 1863. Subsequent thereto and on October 6 of that year, a central relief board was appointed, by authority of the King of Spain, to distribute the moneys thus voluntarily contributed. After a thorough investigation and consideration, the relief board allotted \$365,703.50 to the various sufferers named in its resolution, dated September 22, 1866, and, by order of the Governor-General of the Philippine Islands, a list of these allotments, together with the names of those entitled thereto, was published in the Official Gazette of Manila dated April 7, 1870. There was later distributed, in accordance with the above-mentioned allotments, the sum of \$30,299.65, leaving a balance of \$365,403.85 for distribution. Upon the petition of the governing body of the Monte de Piedad, dated February 1, 1883, the Philippine Government, by order dated the 1st of that month, directed its treasurer to turn over to the Monte de Piedad the sum of \$80,000 of the relief fund in installments of \$20,000 each. These amounts were received on the following dates: February 15, March 12, April 14, and June 2, 1883, and are still in the possession of the Monte de Piedad. On account of various petitions of the persons, and heirs of others to whom the above-mentioned allotments were made by the central relief board for the payment of those amounts, the Philippine Legislature passed Act No. 2109, effective January 30, 1912, empowering and directing the Treasurer of the Philippine Islands to bring suit against the Monte de Piedad to recover, "through the Attorney-General and in representation of the Government of the Philippine Islands," the \$80,000, together with interest, for the benefit of those persons or their heirs appearing in the list of names published in the Official Gazette under date of April 7, 1870. Whereupon this action was instituted on May 3, 1912, by the Government of the Philippine Islands, represented by the Insular Treasurer, and after due trial, judgment was entered in favor of the plaintiff for the sum of \$80,000 gold or its equivalent in Philippine currency, together with legal interest from February 28, 1912, and the costs of the cause. The defendant appealed and makes the following assignment of errors:

"1. The court erred in not finding that the eighty thousand dollars (\$80,000), given to the Monte de Piedad y Caja de Ahorros, were so given as a donation subject to one condition, to wit: the return of such sum of money to the Spanish Government of these Islands, within eight days following the day when claimed, in case the Supreme Government of Spain should not approve the action taken by the former government.

"2. The court erred in not having decreed that this donation had been cleared; said eighty thousand dollars (\$80,000) being at present the exclusive property of the appellant the Monte de Piedad y Caja de Ahorros.

"3. That the court erred in stating that the Government of the Philippine Islands has subrogated the Spanish Government in its rights, as regards an important sum of money resulting from a national subscription opened by reason of the earthquake of June 3, 1863, in these Islands.

"4. That the court erred in not declaring that Act Numbered 2109, passed by the Philippine Legislature on January 30, 1912, is unconstitutional.

"5. That the court erred in holding in its decision that there is no title for the prescription of this suit brought by the Insular Government against the Monte de Piedad y Caja de Ahorros for the reimbursement of the eighty thousand dollars (\$80,000) given to it by the late Spanish Government of these Islands.

"6. That the court erred in sentencing the Monte de Piedad y Caja de Ahorros to reimburse the Philippine Government in the sum of eighty thousand dollars (\$80,000), gold coin, or the equivalent thereof in the present legal tender currency in circulation, with legal interest thereon from February 28th, 1912, and the costs of this suit."

In the royal order of June 29, 1879, the Governor-General of the Philippine Islands was directed to inform the home Government in what manner the indemnity might be paid to which, by virtue of the resolutions of the relief board, the persons who suffered damage by the earthquake might be entitled, in order to perform the sacred obligation which the Government of Spain had assumed toward the donors.

The next pertinent document in order is the defendant's petition, dated February 1, 1883, addressed to the Governor-General of the Philippine Islands, which reads:

"Board of Directors of the Monte de Piedad of Manila. Presidencia.

"Excellency: The Board of Directors of the Monte de Piedad y Caja de Ahorros of Manila informs your Excellency, First: That the funds which it has up to the present been able to dispose of have been exhausted in loans on jewelry, and there only remains the sum of one thousand and odd pesos, which will be expended between today and day after tomorrow. Second: That, to maintain the credit of the establishment, which would be greatly injured were its operations suspended, it is necessary to procure money. Third: That your Excellency has proposed to His Majesty's Government to apply to the funds of the Monte de Piedad a part of the funds held in the treasury derived from the national subscription for the relief of the distress caused by the earthquake of 1863. Fourth: That in the public treasury there is held at the disposal of the central earthquake relief board over \$100,000, which was deposited in the said treasury by order of your general Government, it having been transferred thereto from the Spanish-Filipino Bank where it had been held. Fifth: That in the straightened circumstances of the moment, your Excellency can, to avert impending disaster to the Monte de Piedad, order that, out of that sum of one hundred thousand pesos held in the Treasury at the disposal of the central relief board, there be transferred to the Monte de Piedad the sum of \$80,000, there to be held under the same conditions as at present in the Treasury, to wit, at the disposal of the Relief Board. Sixth: That should this transfer not be approved for any reason, either because of the failure of His Majesty's Government to approve the proposal made by your Excellency relative to the application to the needs of the Monte de Piedad of a part of the subscription intended to relieve the distress caused by the earthquake of 1863, or for any other reason, the board of directors of the Monte de Piedad obligates itself to return any sums which it may have received on account of the eighty thousand pesos, or the whole thereof, should it have received the same, by securing a loan from whichever bank or banks may lend it the money at the cheapest rate upon the security of pawned jewelry.— This is an urgent measure to save the Monte de Piedad in the present crisis and the board of directors trusts to secure your Excellency's entire cooperation and that of the other officials who have to take part in the transaction."

The Governor-General's resolution on the foregoing petition is as follows:

"GENERAL GOVERNMENT OF THE PHILIPPINES.

"MANILA, February 1, 1883.

"In view of the foregoing petition addressed to me by the board of directors of the Monte de Piedad of this city, in which it is stated that the funds which the said institution counted upon are nearly all invested in loans on jewelry and that the small amount remaining will scarcely suffice to cover the transactions of the next two days, for which reason it entreats the general Government that, in pursuance of its telegraphic advice to H. M. Government, the latter direct that there be turned over to said Monte de Piedad \$80,000 out of the funds in the public treasury obtained from the national subscription for the relief of the distress caused by the earthquake of 1863, said board obligating itself to return this sum should H. M. Government, for any reason, not approve the said proposal, and for this purpose it will procure funds by means of loans raised on pawned jewelry; it stated further that if the aid so solicited is not furnished, it will be compelled to suspend operations, which would seriously injure the credit of so beneficent an institution; and in view of the report upon the matter made by the Intendencia General de Hacienda; and considering the fact that the public treasury has on hand a much greater sum from the source mentioned than that solicited; and considering that this general Government has submitted for the determination of H. M. Government that the balance which, after strictly applying the proceeds obtained from the subscription referred to, may remain as a surplus should be delivered to the Monte de Piedad, either as a donation, or as a loan upon the security of the credit of the institution, believing that in so doing the wishes of the donors would be faithfully interpreted inasmuch as those wishes were no other than to relieve distress, an act of charity which is exercised in the highest degree by the Monte de Piedad, for it liberates needy persons from the pernicious effects of usury; and

"Considering that the lofty purposes that brought about the creation of the pious institution referred to would be frustrated, and that the great and laudable work of its establishment would be immediately lost and wiped out if the aid it urgently seeks is not granted, since the suspension of its operations would seriously and regrettably damage the ever-growing credit of the Monte de Piedad; and

"Considering that if such a thing would at any time cause deep distress in the public mind, it might be said that at the present juncture it would assume the nature of a disturbance of public order because of the extreme poverty of the poorer classes resulting from the late calamities, and because it is the only institution which can mitigate the effects of such poverty; and

"Considering that no reasonable objection can be made to granting the request herein contained, for the funds in question are sufficiently secured in the unlikely event that H. M. Government does not approve the recommendation mentioned, this general Government, in the exercise of the extraordinary powers conferred upon it and in conformity with the report of the Intendencia de Hacienda, resolves as follows:

"First. Authority is hereby given to deliver to the Monte de Piedad, out of the sum held in the public treasury of these Islands obtained from the national subscription opened by reason of the earthquakes of 1863, amounts up to the sum of \$80,000, as its needs may require, in installments of \$20,000.

"Second. The board of directors of the Monte de Piedad is solemnly bound to return, within eight days after demand, the sums it may have so received, if H. M. Government does not approve this resolution.

"Third. The Intendencia General de Hacienda shall forthwith, and in preference to all other work, proceed to prepare the necessary papers so that with the least possible delay the payment referred to may be made and the danger that menaces the Monte de Piedad of having to suspend its operations may be averted.

"H. M. Government shall be advised hereof.

(Signed) "P. DE RIVERA."

By the royal order of December 3, 1892, the Governor-General of the Philippine Islands was ordered to "inform this ministerio what is the total sum available at the present time, taking into consideration the sums delivered to

the Monte de Piedad pursuant to the decree issued by your general Government on February 1, 1883," and after the rights of the claimants, whose names were published in the Official Gazette of Manila on April 7, 1870, and their heirs had been established, as therein provided, as such persons "have an unquestionable right to be paid the donations assigned to them therein, your general Government shall convoke them all within a reasonable period and shall pay their shares to such as shall identify themselves, without regard to their financial status," and finally "that when all the proceedings and operations herein mentioned have been concluded and the Government can consider itself free from all kinds of claims on the part of those interested in the distribution of the funds deposited in the vaults of the Treasury, such action may be taken as the circumstances shall require, after first consulting the relief board and your general Government and taking account of what sums have been delivered to the Monte de Piedad and those that were expended in 1888 to relieve public calamities," and "in order that all the points in connection with the proceedings had as a result of the earthquake be clearly understood, it is indispensable that the offices hereinbefore mentioned comply with the provisions contained in paragraphs 2 and 3 of the royal order of June 25, 1879." On receipt of this royal order by the Governor-General, the Department of Finance was called upon for a report in reference to the \$80,000 turned over to the defendant, and that Department's report to the Governor-General dated June 28, 1893, reads:

"Intendencia General de Hacienda de Filipinas (General Treasury of the Philippines)—Excellency.—By Royal Order No. 1044 of December 3, last, it is provided that the persons who sustained losses by the earthquakes that occurred in your capital in the year 1863 shall be paid the amounts allotted to them out of the sums sent from Spain for this purpose, with observance of the rules specified in the said royal order, one of them being that before making the payments to the interested parties the assets shall be reduced to money. These assets, during the long period of time that has elapsed since they were turned over to the Treasury of the Philippine Islands, were used to cover the general needs of the appropriation, a part besides being invested in the relief of charitable institutions and another part to meet pressing needs occasioned by public calamities. On January 30, last, your Excellency was pleased to order the fulfillment of that sovereign mandate and referred the same to this Intendencia for its information and the purposes desired (that is, for compliance with its directions and, as aforesaid, one of these being the liquidation, recovery, and deposit with the Treasury of the sums paid out of that fund and which were expended in a different way from that intended by the donors) and this Intendencia believed the moment had arrived to claim from the board of directors of the Monte de Piedad y Caja de Ahorros the sum of 80,000 pesos which, by decree of your general Government of the date of February 1, 1883, was loaned to it out of the said funds, the (Monte de Piedad) obligating itself to return the same within the period of eight days if H. M. Government did not approve the delivery. On this Intendencia's demanding from the Monte de Piedad the eighty thousand pesos, thus complying with the provisions of the Royal Order, it was to be supposed that no objection to its return would be made by the Monte de Piedad for, when it received the loan, it formally engaged itself to return it; and, besides, it was indisputable that the moment to do so had arrived, inasmuch as H. M. Government, in ordering that the assets of the earthquake relief fund should be collected, makes express mention of the 80,000 pesos loaned to the Monte de Piedad, without doubt considering as sufficient the period of ten years during which it has been using this large sum which lawfully belongs to other persons. This Intendencia also supposed that the Monte de Piedad no longer needed the amount of that loan, inasmuch as, far from investing it in beneficent transactions, it had turned the whole amount into the voluntary deposit funds bearing 5 per cent interests, the result of this operation being that the debtor loaned to the creditor on interest what the former had gratuitously received. But the Monte de Piedad, instead of fulfilling the promise it made on receiving the sum, after repeated demands refused to return the money on the ground that only your Excellency, and not the Intendencia (Treasury), is entitled to order the reimbursement, taking no account of the fact that this Intendencia was acting in the discharge of a sovereign command, the fulfillment of which your Excellency was pleased to order; and on the further ground that the sum of 80,000 pesos which it received from the fund intended for the earthquake victims was not received as a loan, but as a donation, thus in the opinion of this Intendencia, erroneously interpreting both the last royal order which directed the apportionment of the amount of the subscription raised in the year 1863 and the

superior decree which granted the loan, inasmuch as in this letter no donation is made to the Monte de Piedad of the 80,000 pesos, but simply a loan; besides, no donation whatever could be made of funds derived from a private subscription raised for a specific purpose, which funds are already distributed and the names of the beneficiaries have been published in the Gaceta, there being lacking only the mere material act of the delivery, which has been unduly delayed. In view of the unexpected reply made by the Monte de Piedad, and believing it useless to insist further in the matter of the claim for the aforementioned loan, or to argue in support thereof, this Intendencia believes the intervention of your Excellency necessary in this matter, if the Royal Order No. 1044 of December 3, last, is to be complied with, and for this purpose I beg your Excellency kindly to order the Monte de Piedad to reimburse within the period of eight days the 80,000 which it owes, and that you give this Intendencia power to carry out the provisions of the said royal order. I must call to the attention of your Excellency that the said pious establishment, during the last few days and after demand was made upon it, has endorsed to the Spanish-Filipino Bank nearly the whole of the sum which it had on deposit in the general deposit funds."

The record in the case under consideration fails to disclose any further definite action taken by either the Philippine Government or the Spanish Government in regard to the \$80,000 turned over to the Monte de Piedad.

In the defendant's general ledger the following entries appear: "Public Treasury: February 15, 1883, \$20,000; March 12, 1883, \$20,000; April 14, 1883, \$20,000; June 2, 1883, \$20,000, total \$80,000." The book entry for this total is as follows: "To the public Treasury derived from the subscription for the earthquake of 1863, \$80,000 received from the general Treasury as a returnable loan, and without interest." The account was carried in this manner until January 1, 1899, when it was closed by transferring the amount to an account called "Sagrada Mitra" which latter account was a loan of \$15,000 made to the defendant by the Archbishop of Manila, without interest, thereby placing the "Sagrada Mitra" account at \$95,000 instead of \$15,000. The above-mentioned journal entry for January 1, 1899, reads: "Sagrada Mitra and subscription, balance of these two accounts which on this date are united in accordance with an order of the Exmo. Sr. Presidente of the Council transmitted verbally to the Presidente Gerente of these institutions, \$95,000."

On March 16, 1902, the Philippine Government called upon the defendant for information concerning the status of the \$80,000 and received the following reply:

"MANILA, March 31, 1902.

"To the Attorney-General of the Department of Justice of the Philippine Islands.

"SIR: In reply to your courteous letter of the 16th inst., in which you request information from this office as to when and for what purpose the Spanish Government delivered to the Monte de Piedad eighty thousand pesos obtained from the subscription opened in connection with the earthquake of 1863, as well as any other information that might be useful for the report which your office is called upon to furnish, I must state to your department that the books kept in these Pious Institutions, and which have been consulted for the purpose, show that on the 15th of February, 1883, they received as a reimbursable loan and without interest, twenty thousand pesos, which they deposited with their own funds. On the same account and on each of the dates of March 12, April 14 and June 2 of the said year, 1883, they also received and turned into their funds a like sum of twenty thousand pesos, making a total of eighty thousand pesos.— (Signed) Emilio Moreta.

"I hereby certify that the foregoing is a literal copy of that found in the letter book No. 2 of those Pious Institutions. "Manila, November 19, 1913.

(Sgd.) "EMILIO LAZCANOTEGUI,

"Secretary.

(Sgd.) "O. K. EMILIO MORETA,

"Managing Director."

The foregoing documentary evidence shows the nature of the transactions which took place between the Government of Spain and the Philippine Government on the one side and the Monte de Piedad on the other, concerning the \$80,000. The Monte de Piedad, after setting forth in its petition to the Governor-General its financial condition and its absolute necessity for more working capital, asked that out of the sum of \$100,000 held in the Treasury of the Philippine Islands, at the disposal of the central relief board, there be transferred to it the sum of \$80,000 to be held under the same conditions, to wit, "at the disposal of the relief board" The Monte de Piedad agreed that if the transfer of these funds should not be approved by the Government of Spain, the same would be returned forthwith. It did not ask that the \$80,000 be given to it as a donation. The Governor-General, after reciting the substance of the petition, stated that "this general Government has submitted for the determination of H. M. Government that the balance which, after strictly applying the proceeds obtained from the subscription referred to, may remain as a surplus, should be delivered to the Monte de Piedad, either as a donation, or as a loan upon the security of the credit of the institution," and "considering that no reasonable objection can be made to granting the request herein contained," directed the transfer of the \$80,000 to be made with the understanding that "the Board of Directors of the Monte de Piedad is solemnly bound to return, within eight days after demand, the sums it may have so received, if H. M. Government does not approve this resolution." It will be noted that the first and only time the word "donation" was used in connection with the \$80,000 appears in this resolution of the Governor-General, it may be inferred from the royal orders that the Madrid Government did tacitly approve of the transfer of the \$80,000 to the Monte de Piedad as a loan without interest, but that Government certainly did not approve such transfer as a donation for the reason that the Governor-General was directed by the royal order of December 3, 1892, to inform the Madrid Government of the total available sum of the earthquake fund, "taking into consideration the sums delivered to the Monte de Piedad pursuant to the decree issued by your general Government on February 1, 1883." This language, nothing else appearing, might admit of the interpretation that the Madrid Government did not intend that the Governor-General of the Philippine Islands should include the \$80,000 in the total available sum, but when considered in connection with the report of the Department of Finance there can be no doubt that it was so intended. That report refers expressly to the royal order of December 3d, and sets forth in detail the action taken in order to secure the return of the \$80,000. The Department of Finance, acting under the orders of the Governor-General, understood that the \$80,000 was transferred to the Monte de Piedad as a loan and not as a donation. The Monte de Piedad well knew that it received this sum as a loan, for it appears in its books that it received the amount from the general treasury "as a returnable loan, and without interest." The amount was thus carried in its books until January, 1899, when it was transferred to the account of the "Sagrada Mitra" and was thereafter known as the "Sagrada Mitra and subscription account." Furthermore, the Monte de Piedad recognized and considered as late as March 31, 1902, that it received the \$80,000 "as a returnable loan, and without interest." Therefore, there cannot be the slightest doubt about the fact that the Monte de Piedad received the \$80,000 as a mere loan or deposit and not as a donation. Consequently, the first alleged error is entirely without foundation.

Counsel for the defendant, in support of their third assignment of error, say in their principal brief that:

"The Spanish nation was professedly Roman Catholic and its King enjoyed the distinction of being deputy ex officio of the Holy See and Apostolic Vicar-General of the Indies, and as such it was his duty to protect all pious works and charitable institutions in his kingdoms, especially those of the Indies; among the latter was the Monte de Piedad of the Philippines, of which said King and his deputy the Governor-General of the Philippines, as royal vice-patron, were, in a special and peculiar manner, the protectors; the latter, as a result of the cession of the Philippine Islands, implicitly renounced this high office and tacitly returned it to the Holy See, now represented by the Archbishop of Manila; the national subscription in question was a kind of foundation or pious work, for a charitable purpose in these Islands; and the entire subscription not being

needed for its original purpose, the royal vice-patron, with the consent of the King, gave the surplus thereof to an analogous purpose; the fulfillment of all these things involved, in the majority, if not in all cases, faithful compliance with the duty imposed upon him by the Holy See, when it conferred upon him the royal patronage of the Indies, a thing that touched him very closely in his conscience and religion; the cessionary Government, though Christian, was not Roman Catholic and prided itself on its policy of non-interference in religious matters, and inveterately maintained a complete separation between the ecclesiastical and civil powers.

"In view of these circumstances it must be quite clear that, even without the express provisions of the Treaty of Paris, which apparently expressly exclude such an idea, it did not befit the honor of either of the contracting parties to subrogate to the American Government in lieu of the Spanish Government anything respecting the disposition of the funds delivered by the latter to the Monte de Piedad. The same reasons that induced the Spanish Government to take over such things would result in great inconvenience to the American Government in attempting to do so. The question was such a delicate one, for the reason that it affected the conscience, deeply religious, of the King of Spain, that it cannot be believed that it was ever his intention to confide the exercise thereof to a Government like the American. (U. S. vs. Arredondo, 6 Pet. [U. S.], 711.)

"It is thus seen that the American Government did not subrogate the Spanish Government or rather, the King of Spain, in this regard; and as the condition annexed to the donation was lawful and possible of fulfillment at the time the contract was made, but became impossible of fulfillment by the cession made by the Spanish Government in these Islands, compliance therewith is excused and the contract has been cleared thereof."

The contention of counsel, as thus stated, is untenable for two reasons, (1) because such contention is based upon the erroneous theory that the sum in question was a donation to the Monte de Piedad and not a loan, and (2) because the charity founded by the donations for the earthquake sufferers is not and never was intended to be an ecclesiastical pious work. The first proposition has already been decided adversely to the defendant's contention. As to the second, the record shows clearly that the fund was given by the donors for a specific and definite purpose—the relief of the earthquake sufferers—and for no other purpose. The money was turned over to the Spanish Government to be devoted to that purpose. The Spanish Government remitted the money to the Philippine Government to be distributed among the sufferers. All officials, including the King of Spain and the Governor-General of the Philippine Islands, who took part in the disposal of the fund, acted in their purely civil, official capacity, and the fact that they might have belonged to a certain church had nothing to do with their acts in this matter. The church, as such, had nothing to do with the fund in any way whatever until the \$80,000 reached the coffers of the Monte de Piedad (an institution under the control of the church) as a loan or deposit. If the charity in question had been founded as an ecclesiastical pious work, the King of Spain and the Governor-General, in their capacities as vicar-general of the Indies and as royal vice-patron, respectively, would have disposed of the fund as such and not in their civil capacities, and such functions could not have been transferred to the present Philippine Government, because the right to so act would have arisen out of the special agreement between the Government of Spain and the Holy See, based on the union of the church and state which was completely separated with the change of sovereignty.

And in their supplemental brief counsel say:

"By the conceded facts the money in question is part of a charitable subscription. The donors were persons in Spain, the trustee was the Spanish Government, the donees, the cestuis que trustent, were certain persons in the Philippine Islands. The whole matter is one of trusteeship. This is undisputed and indisputable. It follows that the Spanish Government at no time was the owner of the fund. Not being the owner of the fund it could not transfer the ownership. Whether or not it could transfer its trusteeship it certainly never has expressly done so and the general terms of property transfer in the Treaty of Paris are wholly insufficient for such a purpose even could Spain have transferred its trusteeship without the consent of the donors and even could the United States, as a Government, have accepted such a trust under any power granted to it by the thirteen original States in the

Constitution, which is more than doubtful. It follows further that this Government is not a proper party to the action. The only persons who could claim to be damaged by this payment to the Monte, if it was unlawful, are the donors or the *cestuis que trustent*, and this Government is neither."

If "the whole matter is one of trusteeship," and it being true that the Spanish Government could not, as counsel say, transfer the ownership of the fund to the Monte de Piedad, the question arises, who may sue to recover this loan? It needs no argument to show that the Spanish or Philippine Government, as trustee, could maintain an action for this purpose had there been no change of sovereignty and if the right of action has not prescribed. But those governments were something more than mere common law trustees of the fund. In order to determine their exact status with reference to this fund, it is necessary to examine the law in force at the time these transactions took place, which are the law of June 20, 1849, the royal decree of April 27, 1875, and the instructions promulgated on the latter date. These legal provisions were applicable to the Philippine Islands (*Benedicto vs. De la Rama*, 3 Phil. Rep., 34).

The funds collected as a result of the national subscription opened in Spain by royal order of the Spanish Government and which were remitted to the Philippine Government to be distributed among the earthquake sufferers by the Central Relief Board constituted, under article 1 of the law of June 20, 1849, and article 2 of the instructions of April 27, 1875, a special charity of a temporary nature as distinguished from a permanent public charitable institution. As the Spanish Government initiated the creation of the fund and as the donors turned their contributions over to that Government, it became the duty of the latter, under article 7 of the instructions, to exercise supervision and control over the monies thus collected to the end that the will of the donors should be carried out. The relief board had no power whatever to dispose of the funds con-tided to its charge for other purposes than to distribute them among the sufferers, because paragraph 3 of article 11 of the instructions conferred the power upon the secretary of the interior of Spain, and no other, to dispose of the surplus funds, should there be any, by assigning them to some other charitable purpose or institution. The secretary could not dispose of any of the funds in this manner so long as they were necessary for the specific purpose for which they were contributed. The secretary had the power, under the law above mentioned to appoint and totally or partially change the personnel of the relief board and to authorize the board to defend the rights of the charity in the courts. The authority of the board consisted only in carrying out the will of the donors as directed by the Government whose duty it was to watch over the acts of the board and to see that the funds were applied to the purposes for which they were contributed. The secretary of the interior, as the representative of His Majesty's Government, exercised these powers and duties through the Governor-General of the Philippine Islands. The Governments of Spain and of the Philippine Islands in complying with their duties conferred upon them by law, acted in their governmental capacities in attempting to carry out the intention of the contributors. It will thus be seen that those governments were something more, as we have said, than mere trustees of the fund.

It is further contended that the obligation on the part of the Monte de Piedad to return the \$80,000 to the Government, even considering it a loan, was wiped out on the change of sovereignty, or in other words, the present Philippine Government cannot maintain this action for that reason. This contention, if true, "must result from settled principles of rigid law," as it cannot rest upon any title to the fund in the Monte de Piedad acquired prior to such change. While the obligation to return the \$80,000 to the Spanish Government was still pending, war between the United States and Spain ensued. Under the Treaty of Paris of December 10, 1898, the Archipelago, known as the Philippine Islands, was ceded to the United States, the latter agreeing to pay Spain the sum of \$20,000,000. Under the first paragraph of the eighth article, Spain relinquished to the United States "all buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belonged to the public domain, and as such belonged to the crown of Spain." As the \$80,000 were not included therein, it is said that the right to recover this amount did not, therefore, pass to the present sovereign.

This, in our opinion, does not follow as a necessary consequence, as the right to recover does not rest upon the proposition that the \$80,000 must be "other immovable property" mentioned in article 8 of the treaty, but upon contractual obligations incurred before the Philippine Islands were ceded to the United States. We will now inquire what effect this cession had upon the law of June 20, 1849, the royal decree of April 27, 1875, and the instructions promulgated on the latter date. In *Vilas vs. Manila* (220 U. S., 345), the court said:

"That there is a total abrogation of the former political relations of the inhabitants of the ceded region is obvious. That all laws theretofore in force which are in conflict with the political character, constitution, or institutions of the substituted sovereign, lose their force, is also plain. (*Alvarez y Sanchez vs. United States*, 216 U. S., 167.) But it is equally settled in the same public law that that great body of municipal law which regulates private and domestic rights continues in force until abrogated or changed by the new ruler."

If the above-mentioned legal provisions are in conflict with the political character, constitution or institutions of the new sovereign, they became inoperative or lost their force upon the cession of the Philippine Islands to the United States, but if they are among "that great body of municipal law which regulates private and domestic rights," they continued in force and are still in force unless they have been repealed by the present Government. . That they fall within the latter class is clear from their very nature and character. They are laws which are not political in any sense of the word. They conferred upon the Spanish Government the right and duty to supervise, regulate, and to some extent control charities and charitable institutions. The present sovereign, in exempting "provident institutions, savings banks, etc.," all of which are in the nature of charitable institutions, from taxation, placed such institutions, in so far as the investment in securities are concerned, under the general supervision of the Insular Treasurer (paragraph 4 of section 111 of Act No. 1189; see also Act No. 701).

Furthermore, upon the cession of the Philippine Islands the prerogatives of the crown of Spain devolved upon the United States. In *Magill vs. Brown* (16 Fed. Gas., 408), quoted with approval in *Mormon Church vs. United States* (136 U. S., 1, 67), the court said:

"The Revolution devolved on the State all the transcendent power of Parliament, and the prerogative of the crown, and gave their Acts the same force and effect."

In *Fontain vs. Ravenel* (17 How., 369, 384), Mr. Justice McLean, delivering the opinion of the court in a charity case, said:

"When this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them except so far as they have delegated a portion of it to the Federal Government. The sovereign will is made known to us by legislative enactment. The State as a sovereign, is the *parens patriæ*."

Chancellor Kent says:

"In this country, the legislature or government of the State, as *parens patriæ*, has the right to enforce all charities of a public nature, by virtue of its general superintending authority over the public interests, where no other person is entrusted with it" (4 Kent Com., 508, note.)

The Supreme Court of the United States in *Mormon Church vs. United States*, *supra*, after approving also the last quotations, said:

"This prerogative of *parens patriæ* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and for the

prevention of injury to those who cannot protect themselves."

The court in the same case, after quoting from *Sohier vs. Mass. General Hospital* (3 Cush., 483, 497), wherein the latter court held that it is deemed indispensable that there should be a power in the legislature to authorize the sale of the estates of infants, idiots, insane persons, and persons not known, or not in being, who cannot act for themselves, said:

"These remarks in reference to infants, insane persons and persons not known, or not in being, apply to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority, acting as *parens patriæ*. They show that this beneficent function has not ceased to exist under the change of government from a monarchy to a republic; but that it now resides in the legislative department, ready to be called into exercise whenever required for the purposes of justice and right, and is as clearly capable of being exercised in cases of charities as in any other cases whatever."

In *People vs. Cogswell* (113 Cal. 129, 130), it was urged that the plaintiff was not the real party in interest; that the Attorney-General had no power to institute the action; and that there must be an allegation and proof of a distinct right of the people as a whole, as distinguished from the rights of individuals, before an action could be brought by the Attorney-General in the name of the people. The court, in overruling these contentions, held that it was not only the right but the duty of the Attorney-General to prosecute the action, which related to charities, and approved the following quotation from *Attorney-General vs. Compton* (1 Younge & C. C, 417) :

"Where property affected by a trust for public purposes is in the hands of those who hold it devoted to that trust, it is the privilege of the public that the crown should be entitled to intervene by its officers for the purpose of asserting, on behalf on the public generally, the public interest and the public right, which, probably, no individual could be found effectually to assert, even if the interest were such as to allow it." (2 Kent's Commentaries, 10th ed., 359; Lew in on Trusts, sec. 665; 1 Dan i ell's Chancery Practice, sec. 13; Perry on Trusts, sec. 732.)

It is further urged, as above indicated, that "the only persons who could claim to be damaged by this payment to the Monte, if it was unlawful, are the donors or the *cestuis que trustent*, and this Government is neither. Consequently, the plaintiff is not the proper party to bring the action." The earthquake fund was the result or the accumulation of a great number of small contributions. The names of the contributors do not appear in the record. Their whereabouts are unknown. They parted with the title to their respective contributions. The beneficiaries, consisting of the original sufferers and their heirs, could have been ascertained. They are quite numerous also. And no doubt a large number of the original sufferers have died, leaving various heirs. It would be impracticable for them to institute an action or actions either individually or collectively to recover the \$80,000. The only course that can be satisfactorily pursued is for the Government to again assume control of the fund and devote it to the object for which it was originally destined.

The impracticability of pursuing a different course, however, is not the true ground upon which the right of the Government to maintain the action rests. The true ground is that the money being given to a charity became, in a measure, public property, only applicable, it is true, to the specific purposes to which it was intended to be devoted, but within those limits consecrated to the public use, and became part of the public resources for promoting the happiness and welfare of the Philippine Government. (*Mormon Church vs. U. S.*, supra.) To deny the Government's right to maintain this action would be contrary to sound public policy, as tending to discourage the prompt exercise of similar acts of humanity and Christian benevolences in like instances in the future.

As to the question raised in the fourth assignment of error relating to the constitutionality of Act No. 2109, little need be said for the reason that we have just held that the present Philippine Government is the proper party to the action. The Act is only a manifestation on the part of the Philippine Government to exercise the power or right

which it undoubtedly had. The Act is not, as contended by counsel, in conflict with the fifth section of the Act of Congress of July 1, 1902, because it does not take property without due process of law. In fact, the defendant is not the owner of the \$80,000, but holds it as a loan subject to the disposal of the central relief board. Therefore, there can be nothing in the Act which transcends the power of the Philippine Legislature.

In *Vilas vs. Manila*, supra, the plaintiff was a creditor of the city of Manila as it existed before the cession of the Philippine Islands to the United States by the Treaty of Paris of December 10, 1898. The action was brought upon the theory that the city, under its present charter from the Government of the Philippine Islands, was the same juristic person, and liable upon the obligations of the old city. This court held that the present municipality is a totally different corporate entity and in no way liable for the debts of the Spanish municipality. The Supreme Court of the United States, in reversing this judgment and in holding the city liable for the old debt, said:

"The juristic identity of the corporation has been in no wise affected, and, in law, the present city is, in every legal sense, the successor of the old. As such it is entitled to the property and property rights of the predecessor corporation, and is, in law, subject to all of its liabilities."

In support of the fifth assignment of error counsel for the defendant argue that as the Monte de Piedad declined to return the \$80,000 when ordered to do so by the Department of Finance in June, 1893, the plaintiff's right of action had prescribed at the time this suit was instituted on May 3, 1912, citing and relying upon articles 1961, 1964 and 1969 of the Civil Code. While on the other hand, the Attorney-General contends that the right of action had not prescribed (a) because the defense of prescription cannot be set up against the Philippine Government, (b) because the right of action to recover a deposit or trust funds does not prescribe, and (c) even if the defense of prescription could be interposed against the Government and if the action had, in fact, prescribed, the same was revived by Act No. 2109.

The material facts relating to this question are these: The Monte de Piedad received the \$80,000 in 1883 "to be held under the same conditions as at present in the treasury, to wit, at the disposal of the relief board." In compliance with the provisions of the royal order of December 3, 1892, the Department of Finance called upon the Monte de Piedad in June, 1893, to return the \$80,000. The Monte declined to comply with this order upon the ground that only the Governor-General of the Philippine Islands and not the Department of Finance had the right to order the reimbursement. The amount was carried on the books of the Monte as a returnable loan until January 1, 1899, when it was transferred to the account of the "Sagrada Mitra." On March 31, 1902, the Monte, through its legal representative, stated in writing, that the amount in question was received as a reimbursable loan, without interest. Act No. 2109 became effective January 30, 1912, and the action was instituted on May 3rd of that year.

Counsel for the defendant treat the question of prescription as if the action was one between individuals or corporations wherein the plaintiff is seeking to recover an ordinary loan. Upon this theory June, 1893, cannot be taken as the date when the statute of limitations began to run, for the reason that the defendant acknowledged in writing on March 31, 1902, that the \$80,000 were received as a loan, thereby in effect admitting that it still owed the amount. (Section 50, Code of Civil Procedure.) But if counsels' theory is the correct one the action may have prescribed on May 3, 1912, because more than ten full years had elapsed after March 31, 1902. (Sections 38 and 43, Code of Civil Procedure.)

Is the Philippine Government bound by the statute of limitations? The Supreme Court of the United States in *U. S. vs. Nashville, Chattanooga & St. Louis Railway Co.* (118 U.S., 120, 125), said:

"It is settled beyond doubt or controversy—upon the foundation of the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided—that the United States, asserting rights

vested in it as a sovereign government, is not bound by any statute of limitations, unless Congress has clearly manifested its intention that it should be so bound." (Lindsey vs. Miller, 6 Pet. 666; U. S. vs. Knight, 14 Pet., 301, 315; Gibson vs. Chouteau, 13 Wall., 92; U. S. vs. Thompson, 98 U. S., 486; Fink vs. O'Neil, 106 U. S., 272, 281.)

In Gibson vs. Chouteau, *supra*, the court said:

"It is a matter of common knowledge that statutes of limitation do not run against the State. That no laches can be imputed to the King, and that no time can bar his rights, was the maxim of the common law, and was founded on the principle of public policy, that as he was occupied with the cares of government he ought not to suffer from the negligence of his officers and servants. The principle is applicable to all governments, which must necessarily act through numerous agents, and is essential to a preservation of the interests and property of the public. It is upon this principle that in this country the statutes of a State prescribing periods within which rights must be prosecuted are not held to embrace the State itself, unless it is expressly designated or the mischiefs to be remedied are of such a nature that it must necessarily be included. As legislation of a State can only apply to persons and things over which the State has jurisdiction, the United States are also necessarily excluded from the operation of such statutes."

In 25 Cyc, 1006, the rule, supported by numerous authorities, is stated as follows:

"In the absence of express statutory provision to the contrary, statutes of limitations do not as a general rule run against the sovereign or government, whether state or federal. But the rule is otherwise where the mischiefs to be remedied are of such a nature that the state must necessarily be included, where the state goes into business in concert or in competition with her citizens, or where a party seeks to enforce his private rights by suit in the name of the state or government, so that the latter is only a nominal party."

In the instant case the Philippine Government is not a mere nominal party because it, in bringing and prosecuting this action, is exercising its sovereign functions or powers and is seeking to carry out a trust devolved upon it when the Philippine Islands were ceded to the United States. The United States having in 1852, purchased as trustee for the Chickasaw Indians under treaty with that tribe, certain bonds of the State of Tennessee, the right of action of the Government on the coupons of such bonds could not be barred by the statute of limitations of Tennessee, either while it held them in trust for the Indians, or since it became the owner of such coupons. (U. S. vs. Nashville, etc., R. Co., *supra*.) So where lands are held in trust by the state and the beneficiaries have no right to sue, a statute does not run against the State's right of action for trespass on the trust lands. (Greene Tp. vs. Campbell, 16 Ohio St., 11; see also Atty.-Gen. vs. Midland R. Co., 3 Ont., 511 [following Reg. vs. Williams, 39 U. C. Q. B., 397].)

These principles being based "upon the foundation of the great principle of public policy" are, in the very nature of things, applicable to the Philippine Government.

Counsel in their argument in support of the sixth and last assignments of error do not question the amount of the judgment nor do they question the correctness of the judgment in so far as it allows interest, and directs its payment in gold coin or in the equivalent in Philippine currency.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, and Araullo, JJ., concur.

Moreland, J., did not sign.

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