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DECISION OF THE SUPREME COURT
OF PORTO RICO

AND DISSENTING OPINION
IN THE CASE OF

THE ROMAN CATHOLIC APOSTOLIC CHURCH
OF PORTO RICO

VS.

THE PEOPLE OF PORTO RICO

9-35304



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No. 1.

THE REVEREND DIOCESAN PRELATE OF THE ROMAN CATHOLIC
APOSTOLIC CHURCH IN PORTO RICO, Plaintiff,

vs.

THE PEOPLE OF PORTO RICO, Defendant.

Relating to the Recovery of Certain Properties Belonging to the
Catholic Church in this Island and the Obtaining, in Consequence
Thereof, of Certain Indemnities.

Opinion of the Court,

Rendered by the Chief Justice Quiñones, San Juan, Porto Rico,
15th of December, 1906.

50 The Attorney, Juan Hernández López, in the name and representation of the Most Illustrious, the Bishop of the Diocese of Porto Rico, in his character as such, and consequently, with the full representation and powers that pertain to him, as Diocesan Prelate of the Roman Apostolic Catholic Church in this Island, and in conformity with the provisions authorized and established by the law of the Legislative Assembly, of the 10th of March, 1904, filed in this Supreme Court a complaint out of which has originated this suit, against The People of Porto Rico, in order that the latter be condemned to restore to the Roman Catholic Apostolic Church, the properties existing in its possession, and which were derived from the Religious Communities of Friars of Santo Domingo and San Francisco, which existed in this city, and were abolished and of whose property the Government of this Island, took possession in the year 1838, by virtue of the Laws entitled "Laws of Ecclesiastical Disamortization," which were promulgated in Spain; and that, although said property had later on been declared to belong exclusively to the Roman Apostolic Catholic Church, the same as all other properties of like origin, existing in the possession of the Government of Spain, and the latter had contracted the solemn obligation to restore the same to the Catholic Church, in accordance with the Stipulations, contained in the Concordats concluded with the Holy See, during the years 1851 and 1859, the Government of Porto Rico never carried into effect the said restitution, but retained in its possession the property of the abolished Religious Communities, until the change of Sovereignty occurred in this Island; and

afterwards, said property, by virtue of the Treaty of Paris, passed into the possession of the Government of the United States, and from the latter, to The People of Porto Rico, which possesses
 51 and enjoys the same at the present time, and the said attorney likewise requests that, as a consequence of the aforesaid restitution, the Court order The People of Porto Rico, to pay to the Roman Apostolic Catholic Church, the revenues and products which have been produced, or should have been produced, by the restored properties, from the 18th of October, 1898, until the date of their restitution, which revenues and products are to be fixed by this Hon. Court, after having heard the opinion of experts, in accordance with the law, and, besides, the amount of the capitals of quitrents which have been redeemed by the persons who were obliged to pay the same, from the aforesaid date up to the present time, or which may be redeemed later on, until the execution of the Judgment, and the legal interest due on those amounts, at the rate of six per cent. per year; the Court being further requested, to impose upon the defendant the costs of the suit.

The principal ground of this complaint is contained in the allegation that, the Church having been separated from the State, in consequence of the Change of Sovereignty which has occurred in this Island, and the Catholic Church being without means of any kind, with which to provide for its necessities, as from the same day, on which this Island was occupied by the American Army, said Church ceased to receive the amount which had been assigned to it in the Budgets, in order to cover the expenses necessary for the maintenance of worship and clergy, in conformity with the provisions of the Concordats concluded with the Holy See, it was entirely reasonable and just, that the properties belonging to said Church, and which were in the possession of the Government of Porto Rico, should be restored to the former; it being alleged that the Church had not lost the right of ownership to the said properties, by
 52 virtue of the cession made of the same to the United States by the Treaty of Paris, since, according to Article VIII of the aforesaid Treaty, the cession made by Spain if the properties which in conformity with law, belonged to the public domain, and as such belonged to the Crown of Spain in this Island, should be understood, and was understood, as having been made without prejudice to the right of ownership belonging to civic or ecclesiastical bodies, or any other association having legal capacity to acquire and possess property in the territories ceded or renounced, or to private individuals, of whatsoever nationality such individuals might be, in which case was comprised the Catholic Church, whose legal capacity to acquire and possess property, was entirely unquestionable.

The properties which were the subject of the reclamation made by the Catholic Church, were described in the complaint, some being described individually, while in regard to the rest, reference was made to two certificates which were attached to said complaint, and one of which had been issued by the Hon. Commissioner of the Interior W. H. Elliot, on the 8th of January, 1903, and the other by the Hon. Treasurer of Porto Rico, W. F. Willoughby, on the 24th of February of the same year, with reference to certain records of the

extinct Treasury Department of this Island, relating to proceedings instituted in the year 1871, and which records comprised the properties derived from the Religious Orders, which were considered as State-property, and were subject to the effects of the disamortizations, according to the Royal Order of the 27th of July, 1865, for which reason, counsel for the Catholic Church, asked that the aforesaid certificates be considered as a part of the complaint; but as the Counsel for the People of Porto Rico opposed this request, and demanded that the representative of the Church present a bill
 53 of particulars, containing a statement and description of each and all of the said properties, counsel for the Catholic Church actually filed an itemized and concise statement, of all the properties claimed by the Church, which statement, after having been admitted by this Court, was attached to the record of the case, by order of the Court, and forms a part of said record.

The complaint of the Catholic Church has been attacked by The People of Porto Rico, for various reasons alleged by the same in its amended answer, which will be discussed later on. For the present, we shall limit ourselves to the examination of the historical facts relating to this interesting matter, in order to determine afterwards, whether the complaint of the Catholic Church is just or not.

It is indeed a positive fact, and one which appears with the greatest clearness from the evidence heard in this case, that in 1837 and 1838, and many years prior to that time, there existed in the city of San Juan, two Religious Communities of Friars of Santo Domingo and San Francisco, the former of which resided in a convent which was publicly considered as their property, and which was called "the Convent of Santo Domingo," being situated in the northern part of this city, and which is precisely the building, in the upper story of which are located, at the present time, the offices of this Supreme Court, and those of the District Court, while the lower story contains, some Military dependencies; and the latter, that is, the Friars of San Francisco, resided in another Convent, which was called the Convent of San Francisco, and which is situated on a public square of the same name, in this city, being occupied at present, we understand, by the High School of San Juan. Both buildings have been described in the bill of particulars filed by counsel for the Catholic Church.

54 Besides the aforesaid Convents, another, which the Friars of Santo Domingo possessed in the town of San Germán, and which was called "the convent of Santo Domingo de Porta Coeli," the said Religious Communities possessed a great many properties which belonged to them, and which consisted in rural estates and dwelling-houses of no small value, and a great number of capitals upon which were imposed quitrents and taxes, that produced abundant revenues to the said Friars, who used the same for their own maintenance, and the needs of the Divine Worship in the Churches pertaining to their respective Convents.

After the Religious Communities in Spain, had been abolished, and after the State had taken possession of all their property, by virtue of the laws called "Laws of Ecclesiastical Dis-amortization, the Communities of Friars of Santo Domingo, and of San Francisco, established in this Capital, had to suffer the same fate, in spite of the

facts that, by the Law of the 29th of July 1837, the Spanish possessions in America, had been excluded from the effects of the Dis-amortization, as must be inferred from the language of the said Law, on providing, in Section 1, "that all the Monasteries, Convents, Colleges, Congregations, and other houses or establishments of persons of both sexes, teaching or professing religion were abolished in the Peninsula, the adjacent Islands and the possessions of Spain in Africa;" and as nothing was said of the Spanish possessions in America, that is, the Islands of Cuba and Porto Rico, it is clear that they must be held to have been excluded from the effects of the said law. In spite of this, the dis-amortization was carried into effect in the Islands of Cuba and Porto Rico with the same severity as in the Peninsula, and the Communities of Friars of Santo Domingo and San Francisco, which existed in this island, were not only abolished; and all their property seized by the Government, but they
 55 were even ejected from their Convents, by military forces, as is stated by one of the witnesses introduced by the Catholic Church, a venerable old man of more than eighty years of age, who witnessed the said ejection, when he was very young, and remembers the same very well. After the Government had taken possession of all the properties of the said Religious Communities, it alienated some of them, while those that were not alienated, remained, in its possession, the revenues and products of the same, being freely utilized by the Government.

These events took place in the Peninsula, and in the Island of Porto Rico, during the year 1838, and this state of affairs continued for several years, until after the termination of the Carlist's War, which had so much influence on the measures taken by the Government against the Clergy, because the former believed the latter to be a partisan of the "Infante" Don Carlos, who laid claim to the crown of Spain, and who was said to receive great assistance from the Religious Communities; and after the natural state of things had been re-established, the Spanish Legislature passed the Law of the 8th of May, 1849, which was sanctioned by the Queen of Spain, Isabella II, by which law, the Government was authorized to enter into an agreement with the Holy See, for the purpose of settling the matters pending between the State and the Clergy, as well as all the questions pending between the two powers (the Church and the State), and the desired settlement was actually accomplished, by means of the famous Concordat of the 16th of March, 1851, which was concluded by the respective Commissioner of His Holiness, the
 56 Pope Pius the Ninth, who then filled the Holy See, and of her Majesty, the Queen of Spain Isabella the second, which concordat from that time, has become a part of the public law of Spain, and, by means of same, a great many questions which were pending between the Holy See and the Spanish Government, were actually settled, and of those questions, are the most important ones, for our purposes, those which refer to the ecclesiastical dis-amortization, and which, on account of their importance for the decision of the questions that are being examined in the present suit, are, transcribed below. The final paragraph of Section 35, which treated of the maintenance of the Religious Communities of Women, whose

properties had also been seized by the Government, by virtue of the aforesaid laws of dis-amortization, reads as follows:

“The properties which belong to the said Communities and which are in the possession of the Government, and have not been alienated, shall therefore, be restored, without delay, to the Communities referred to, and be delivered to the representatives of the same, that is, to the Diocesan Prelates, in whose jurisdiction the Convents are situated or were situated prior to the last vicis-situdes. But His Holiness, taking into consideration the present condition of these properties, and other particular circumstances, in order that a greater uniformity may be attained in providing with the products of the same, for the expenses of worship and other general expenses, directs that the prelates, in the name of the Religious Communities, which are the owners of the properties referred to, proceed immediately and without delay, to the sale of said properties by means of public auctions, to be held in canonical form, and with the intervention of a person to be appointed by the Government of Her Majesty. The proceeds of these sales shall be invested in intransmissible 3% bonds of the public debt, the capital and interest of which shall be distributed among all the aforesaid Convents, in proportion to their needs and circumstances, in order to provide for the expenses above mentioned, and for the payment of the pensions of the nuns, who may be entitled to such pensions, without prejudice to the Government's supplying as it has done up to the present time, the amount that may be necessary for the full payment of the aforesaid pensions, until the death of the pensioners.”

Section 38, in speaking of the funds, with which to cover the expenses of worship and clergy, makes the following provisions:

57 “The funds with which to provide for the maintenance of Worship and Clergy, shall be:

1. The product of the properties restored to the Clergy, by the Law of April 3, 1845.

2. The proceeds of the alms of the Holy Crusade.

3. The proceeds of the rents pertaining to the offices and dignities of Commanders and Grand-Masters of the four Military Orders which are vacant or may become vacant (*i. e.* the offices of Commanders and Grand-Masters).

4. A tax on the landed properties, dwelling-houses and cattle in each District, taking into account the proceeds mentioned in paragraphs 1, 2, and 3, and other revenues which in future, with the concurrence of the Holy See, may be appropriated for that purpose.

The Clergy shall collect this tax, receiving the same in agricultural produce, in specie or in money, according to agreements previously to be made by it with the provinces, with the towns, with the parished or with private persons; and in the cases where it is necessary, the Clergy shall be assisted by the public authorities, in the collection of this tax, and for that purpose the means shall be used, which has been established for the collection of taxes.

Besides, there shall be restored to the Church, immediately and without delay, all the ecclesiastical properties, which are not comprised in the aforesaid law of 1845, and which may not yet have been alienated, including those remaining of the Religious Communities.

of Friars. But in view of the present conditions of these different properties, and of the evident utility that will result to the Church, the Holy Father orders, that the capital derived from the sale of said properties, be immediately and without delay, invested in intransmissible 3% bonds of the public debt, and that the form and rules established in Section 35, with reference to the sale of the properties of the nuns, be strictly observed.

¶ All these properties shall be computed according to their exact value, after deduction has been made, of any charges encumbering the same, for the purposes of the provisions contained in this Section."

Section 40 declares:

"That all the aforesaid properties and revenues belong to the Church, as the property of the same, and that they shall be enjoyed and administered by the Clergy, in the name of the Church."

Section 41:

"That the Church, besides shall have the right to acquire property, by means of any legitimate title, and that its ownership of all the properties which it possesses at the present time or may acquire in future, shall be solemnly respected."

Section 42:

58 "That in view of the utility which the Catholic Religion will derive from this agreement, the Holy Father at the request of Her Catholic Majesty, and for the purpose of promoting the public tranquility, decrees and declares, that those, who during the past state of affairs may have bought ecclesiastical properties, in the dominions of Spain, in accordance with the civil laws then in force, and are in possession of the same, and those who may have succeeded, or may hereafter succeed to the rights of said purchasers, shall at no time, and in no way, be molested, by His Holiness, nor by the Popes, his successors; on the Contrary, they as well as their assigns, shall safely and peacefully enjoy the ownership of said properties, and the profits and proceeds of the same."

And Section 45:

"That, by virtue of this Concordat, the laws, orders and decrees published up to the present time in any form and manner, in the dominions of Spain, shall be considered as having been repealed, in so far as they are in conflict with said Concordat, and the latter shall be in force forever in the future, as the law of the land, in the aforesaid dominions. And, therefore, both of the contracting parties, promise, for themselves and their successors, the faithful observance of all and each of Sections of which the Concordat is composed. If in future any difficulty should arise, the Holy Father and Her Catholic Majesty will come to an understanding, in order to settle the same in an amicable manner."

Even more interesting than the provisions transcribed of the Concordat of the 16th of March, 1851, are those of the additional agreement made with the Holy See by the Government of Spain, on the 25th of August, 1859, under the authority granted to it by the Law of the 4th of November of the same year, to conclude and ratify a Convention with the Holy See, chiefly for the purpose of commuting the ecclesiastical properties, of whatever kind they might be, for intransmissible 3% bonds of the consolidated public debt,

and to exchange the rest of the revenues established, for the maintenance of worship and clergy, for bonds of the same kind, if it should be convenient for the respective Dioceses, while the Church was to retain the right to acquire property, which right was stated in Section 41 of the Concordat, and the amount of the revenues which the Church might acquire in future, was not to be computed in the dotation of the same.

59 The principal provisions of the said Convention, that is, of the part which relates to the matter under consideration, are the following, which, on account of their great importance, are likewise transcribed below.

In the preamble of said Convention, it is stated that the Pope Pius IX, and Her Catholic Majesty, Isabella II, Queen of Spain, being desirous of providing, by mutual consent, for the final settlement of the dotation of worship and clergy, in the dominions of Her Majesty, in consequence with the solemn Concordat of the 16th of March, 1851, had appointed their respective Plenipotentiaries, who after their credentials, containing their full powers, had been exchanged, had made the following agreement:

“SECT. 1. The Government of Her Catholic Majesty, having considered the lamentable vicissitudes suffered by the ecclesiastical properties at different times, and wishing perpetually to ensure to the Church, the peaceful possession of its properties and rights, and to prevent every motive for violating the solemn Concordat, made on the 16th of March, 1851, promises to the Holy See, that in future, no sale, commutation, or other kind of alienation, of the said properties, shall be made without the necessary authorization from the Holy See itself.”

SECT. 2. Being desirous of carrying definitively into effect, in a sure permanent and indepede-t manner, the plan of dotation of worship and clergy, prescribed in the said Concordat, the Holy See and the Government of Her Majesty agree to the following points:

“SECT. 3. In the first place, the Government of Her Majesty again formally recognizes the free and full right of the Church, to acquire, retain and enjoy the usufruct of all kinds of property, and securities, in the capacity of owner, and without any limitation or reservation, and, consequently, any dispositions contrary to this pact, especially the law of the 1st of May, 1855, in so far as it is in conflict with the same, are hereby repealed.

The properties, which the Church, by virtue of said right may in future acquire and possess, shall not be computed in the dotation which has been assigned to it in the Concordat.”

60 “SECT. 4. By virtue of the same right, the Government of Her Majesty, recognizes the Church, as the absolute owner of each and all of the properties that have been restored to it by the Concordat. But, having considered the deteriorated condition of the greater part of those properties, which have not yet been alienated, their difficult administration, and the various contradictory and inaccurate computations of the value of the same, with reference to the revenues they produce, all of which are circumstances, which, up to the present time, have made the dotation of the Clergy uncertain and even incongruous, the Government of Her Majesty has proposed to the Holy See, a permutation, and according

to this proposal the Bishops are given power to determine, with the concurrence of their Clergies, the price of the Church properties situated in their respective Dioceses, and the Government offers, in exchange for all of those properties, and the cession of the same to the State, as many intransmissible 3 % bonds of the consolidated public debt of Spain, as may be necessary to cover the total value of said properties."

"SECT. 5. The Holy See, being desirous that a sure safe and independent dotation for worship and for the Clergy, be immediately carried into effect, after having heard the opinions of the Bishops of Spain, and recognizing in the present case, and in the conjuncture of all the circumstances, the best interest of the Church, has made no objection to the carrying into effect of the permutation, in the following manner.

"SECT. 6. In each Diocese, all the properties enumerated in Sections 31 and 33 of the Concordat of 1851, to wit: the orchards, gardens, palaces and other buildings, which at any place in the Diocese, are destined for the use and amusement of the Bishops, shall be excepted from the permutation, and shall remain in the possession of the Church, as the property of the same. Also the houses intended as residences for the parish-priest with the orchards and fields pertaining thereto, and which are known under the denomination of *Iglesiaros Mansos*" and others shall be reserved for the Church. Besides, the Church shall retain as its property, the buildings of the conciliar seminaries with their dependencies, and the libraries and houses of correction, or ecclesiastical prisons, and in general, all the buildings which at the present time are used for worship, and those that are destined for the use of the regular Clergy, of both sexes, and for residence of the same, as well as all those buildings which in future may be destined for such purposes.

None of the properties enumerated in this Section, shall be computed in the dotation prescribed for worship and clergy, in the Concordat.

However, since the best interests of the Church, are the motive which induces the Holy See, to accept the aforesaid permutation of values, if in some Diocese, the Bishop should be of the opinion that, on account of particulars circumstances, it is convenient for the Church to retain some property, which is situated in the said Diocese, such property may be excepted from the permutation, and the amount of the revenues derived from the same, shall be deducted from the dotation of the Clergy."

SECT. 7. After the *the* Bishops have made the estimate of the properties, that are subject to the permutation, the Government shall immediately deliver to the same, intransmissible securities or bonds, for the full value of the said properties, as well as for the market price or value of those which have been alienated after the Concordat. After the delivery has been made, the Bishops, under proper authorization from the Apostolic See, shall make a formal cession to the State, of all the properties which, in accordance with this agreement, are subject to the permutation.

"The bonds shall be debited to the Clergy, as an integral part of its dotation, and the respective Diocesan Prelates shall apply the

revenues produced by the same to the payment of said dotation, in the manner prescribed by the Concordat."

"SECT. 8. In view of the urgency of the needs of the Clergy, the Government of Her Majesty binds itself to pay every month the consolidated revenue due to each Diocese."

"SECT. 9. In case that, by order of the temporal authority, the 3% revenue of the public debt of the State should suffer any diminution or reduction, the Government of Her Majesty binds itself from this moment, to give to the Church as many intransmissible bonds of the revenue which may be substituted for the 3 % revenue, as may be necessary entirely to cover the annual amount of the revenue, to be established, in favor of the Church so that said revenue in no eventuality and at no time, shall be diminished or reduced."

"SECT. 12. The Bishops, in conformity with the provisions of Section 35 of the Concordat, shall distribute among the Convents of Nuns, existing in their respective Dioceses, the intransmissible bonds to which they may be entitled, either on account of those of their properties which are now to be ceded to the State, or on account of those that have been sold by virtue of the aforesaid Concordat or the Law of the 1st of May, 1855. The Revenues derived from said bonds, shall be debited to the said Convents as a part of their dotation."

"SECT. 13. The provisions of the Concordat in regard to the supplement to be given, by the State, for the payment of the pensions of religious persons of both sexes, as well as all the provisions of Sections 35 and 36 of said Concordat, regarding the maintenance of the religious houses and congregations which may be established in the Peninsula, and concerning the repair of the churches and other buildings destined for worship shall remain in full force and effect. The state binds itself besides, to build at its expense the churches that may be considered necessary, to grant pensions to the few existing friars and lay-brothers who have been ejected from their Convents, and to provide for the dotation of the professional nuns, chaplains sextons, and worship in the churches of nuns in each Diocese."

"SECT. 20. In view of the Advantages which result to the Church from this new agreement, His Holiness in consideration of the repeated request of Her Catholic Majesty, has resolved to extend, and does hereby extend, the gracious exemption from all encumbrances, granted by Section 42 of the Concordat, to all the ecclesiastical properties, which have been alienated, in consequence of the aforesaid law of the 1st of May 1855."

62 SECT. 22. The Exchange of the ratifications of this agreement, shall take place within the term of three months or within a shorter time, if possible."

This agreement was signed in Rome by the respective plenipotentiaries, on the 25th of August, 1859, and ratified afterwards by the high contracting parties, on the 7th and 24th of November of the same year; and was ordered to be observed and complied with in all its parts, by the law of the 4th of April, 1860, which literally copied, reads as follows:

"Isabella II, by the Grace of God, and the Constitution of the Spanish Monarchy, Queen of Spain—know all men by these pres-

ents: That, by virtue of the authority granted to my Government, by the law of the 4th of November, 1859, for the purpose of making and ratifying an agreement with the Holy See, the principal object of which agreement was to be the commutation of ecclesiastical properties of any kind whatever, for intransmissible 3% bonds of the consolidated public debt, and to exchange the rest of the dotation of worship and clergy, for bonds of the same kind, preserving to the Church, the right to acquire property, which right was granted to it in the last Concordat;

I order that the agreement made with the Holy See on the 25th of August, and which was ratified on the 7th and 24th of November of last year, be published and observed as the Law of the Land; the literal context of said agreement being as follows:

Then follow the provisions of the said agreement, which we know already.

Now, then, in view of the stipulations, contained, in the Concordat of the 16th of March, 1851, and in the agreement made in addition to the same, which we have read just now, nobody can doubt the perfect right of ownership of the Roman Apostolic Catholic Church, to the properties seized from the Religious Communities, by virtue of the laws entitled "Laws of Ecclesiastical Dis-amortization," which properties were in the possession of the Government, at the time when the first of said Concordat was published, and which remained in its possession after the additional agreement of 1859, pending their permutation in the new form concerted with the Holy See, at the proposal of the Spanish Government.

63 The said permutation was carried into effect in all or most of the Dioceses of Spain, in compliance with the orders issued by the Government, for the accomplishment of the same, among which orders was the Royal Decree of the 21st of August, 1860, which contained the rules to be observed for the punctual execution or accomplishment of the said permutation; but nothing of the kind happened in the Islands of Cuba and Porto Rico, where the provisions of the concordat in regard to the restitution, to the Catholic Church, of the properties seized from the Religious Communities, or the permutation of the same, in the manner concerted with the Holy See, or any other manner, were never carried into effect notwithstanding the definite instructions, which in regard to this matter, had been given by the Queen of Spain, Isabella II, to the higher Authorities of the Island of Cuba, in Her Royal Letters Patent of the 26th of November, 1852; and although the latter were issued only for the aforesaid, Island, the statements made in the said supreme disposition, or decree, in regard to some of the questions under consideration in this suit, are, by reason of their analogy perfectly applicable to the present case.

In fact, in the preamble of the said Royal Letters Patent, the Queen of Spain, Isabella II, says the following:

"Since it is one of my first duties, as well as the most glorious gem in my Crown, to deserve the title of honor of Catholic, which I have inherited from my August and Pious Ancestors, it has been my greatest care, as soon as, by divine mercy, peace was reestablished, in the interior of the Kingdom, to renew, by the last Concordat the relations with the Holy See, which had been temporarily interrupted by the Civil War, as I am convinced, that the Religious belief is the first and indispensable basis for the prosperity of the nations, with-

out which belief, no fraternity and christian charity can exist, and no habit can be acquired, to show the submission and respect which are due to the Authorities.

64 Prompted by these same sentiments, and convinced that the rapid increase of the population and wealth of your Island, during the last 25 years, made necessary a proportional increase of the number of ministers of worship, and of their dotations, in order that none of my loyal subjects in said Island, might lack the necessary spiritual nourishment, I ordered to collect such data as I deemed convenient; and in consequence of the same, I directed that the Royal Letters Patent be issued, which under date of the 30th of September last, I communicated to you, relating to the dotation and arrangement, to be made for worship and the clergy, of the parishes of the Dioceses of your Island. But, although by these measures the habitual and most urgent needs of a catholic people can be satisfied, —as I confidently expect they can, they alone would not suffice, to supply the deficiency which, in this respect, must have been caused by the diminution and quasi-extinction of the Religious Orders, which was carried into effect by the higher Authorities, of your Island in the past year 1851, during my minority, and without proper authorization from the Government, which refraining at the time from giving its full approval, ordered, in conformity with the report made by the Advisory Board of Colonial Affairs, that all the papers and documents relating to this transcendental matter, be gathered together for the purpose of settling the same.

And afterwards, in the fifth provision of the said Royal Letters Patent, the Queen, Isabella II, expresses herself as follows:

“Although the last Concordat made with the Holy See, refers mostly to the personnel circumscription and management of the churches of the Peninsula, it extends nevertheless, to all my dominions, so far as the act- of government are concerned; as is expressly stated in several of the first Sections, of the same, especially in section 42, that is, the acts of government in all matters relating to the alienation of the ecclesiastical properties; and as Section 38 of the aforesaid Concordat, provides that all the properties which have not been alienated, including the remaining properties of the Religious Communities of Friars, shall be restored to the Church without delay, you will proceed, in fulfillment of this solemn promise, in concert with the Superintendent of my Royal Treasury, and with the intervention of the respective Diocesan Prelates, to make up inventories of all the quitrents, and landed properties and dwelling houses, which have belonged to the Religious Communities, and have not been alienated, but in-asmuch as the conversion of said properties into intransmissible bonds of the Public debt, which conversion is ordered by the aforesaid, Section, is inapplicable in these countries, and as I desire to supply this provision in the most adequate manner, it is my will that, after the termination of the inventory, the Superintendent issue, in my Royal Name, a formal obligation in favor of the Church, and of the respective Prelates, in whose Dioceses the properties are situated as representatives of the same, (*i. e.* of the Church), to apply to the needs of the

65 Church, and, with reference, to the maintenance and support of the Religious Institutes referred to in these Royal Letters Patent since the dotation of worship and the secular Clergy of the Island, has been secured by those which I have been pleased to issue

on the 30th of September last, all the proceeds of the quitrents sale (*venta á censo*), of the aforesaid properties, which sale shall be effected in accordance with the instructions which I reserve to myself, to give in view of the report which you in concert with the said Superintendent and Reverend Prelates, will submit to me, in regard to this matter."

The statements made by the Queen of Spain, in these Royal Letters Patent, convince, therefore, without any doubt, not only of the fact that the provisions of the Concordats, in so far as they referred to the recognition, in favor of the Catholic Church of the exclusive ownership of the properties seized from the Regular Clergy, and to the permutation of said properties concerted with the Holy See, were in force in these foreign dominions or Colonies (of Spain), but also of the fact that the abolition of the religious Communities, and the consequent seizure of their properties, was carried into effect by the higher Authorities of both Island-, without any authorization from The Government, which, at that time, refrained from giving its approval; and (in saying this) the Queen of Spain alluded without doubt, to the unusual fact that those severe measures against the Religious Communities then existing in Cuba and Porto Rico, had been carried into effect contrary to the definite provision of the Law of the 9th of July, 1837, which limited the effect of the Ecclesiastical Dis-amortization, to the Peninsula, the adjacent islands, and the Spanish possessions in Africa, and which said nothing of the Spanish possessions in America, that is, the Islands of Cuba and Porto Rico, which, consequently, should have been considered as excluded from the said Royal resolution, especially as the latter, being of a later date than the orders previously issued in regard to the same matter, must be held to have repealed the previous orders, or at least, to have modified the same, in so far as they were opposed or contrary to it:

In the Island of Porto Rico, the Government also provided for the needs of the Catholic Church, by means of the Royal Letters Patent of the 20th of April, 1858, relating to the settlement (of the Church property question) and the dotation of worship and clergy, the defrayment of whose expenses, the Government took upon itself, in accordance with the agreement contained in the concordat made with the Holy See; and although nothing was done in regard to the restitution of the properties, of the regular clergy to the Catholic Church, and the permutation of the same, and although, on the contrary, a great many orders were issued by the Government, to carry into effect the sale of said properties, for account of the State, said orders cannot deprive the Catholic Church of its ownership of said properties, for the reason that they have not been issued with the consent and acquiescence of said Church which was indispensable in order that they might leave without effect, the Concordats made with the Holy See, in representation of the Catholic Church, precisely with reference to one of the most important points of the same, that is the recognition by the Government of Spain, of the ownership or right of property of the Church with regard to the properties of the Religious Communities, which, at the time when the Concordat was made, were in the possession of the Government, and the solemn obligation contracted by the latter, to permute or exchange said properties for bonds of the public

debt of Spain, in order to apply the revenues derived from the same, to the needs of the Church; without which requisite, the Government could not acquire the ownership of those properties, and dispose of them as the legitimate owner of the same.

It is, therefore, evident and there can be no doubt whatever, that the properties derived from the Religious Communities of
67 Frairs of San Francisco, and Santo Domingo, of which properties the Government took possession, and which were in its possession at the time when the change of Sovereignty occurred in this Island, and were comprised in the cession which was made by Spain to the United States of all public real estate then existing in Porto Rico, belonging to the Roman Catholic Church, which has not lost the ownership of said properties, since the same is protected by the Treaty of Paris, which, by its Section VIII, preserved in full force all vested rights, as we have stated before.

After the ownership by the Roman Apostolic Catholic Church, of the Properties derived from the Communities of Frairs of San Francisco and Santo Domingo, which existed in this Island, and were abolished, and which properties were in the possession, of the Government of this Island, at the time when the latter was ceded by Spain to the United States, has thus been established in a general way, let us now examine the exceptions taken by the representatives of The People of Porto Rico, to the complaint filed by the Catholic Church.

The first exception is relative to the title of ownership of the Church with regard to the properties, which are the subject of the reclamation referred to; for, as it is an indispensable principle of the Law of Procedure (of the old as well as of the new) that, in order that an action for recovery of title, to which class the action brought by the complainant belongs, may be successful, it is indispensable that the plaintiff prove his ownership of the thing he claims, the action entered in this case cannot be successful and must be dismissed, if the Catholic Church fails to comply with the aforesaid requisite and does not present its title of ownership of the properties, which are the subject of the complaint.

68 But this exception of The People of Porto Rico, is completely inefficacious in the present case; the Catholic Church bases its ownership on the stipulations contained in the Concordats made by the Government of Spain with the Holy See, on the 16th of March, 1851, and in the Convention, which in addition to the aforesaid Concordat, was made by the same high contracting parties, on the 25th of August, 1859, according to which stipulations, the Government of Spain, which had taken possession of all the properties of the Religious Communities, and had retained in its possession some of the same, which it had not alienated, solemnly recognized the ownership of said properties in favor of the Catholic Church, and bound itself, to restore the same immediately and without further delay, to the said Church, although on account of the special circumstances and condition of those properties, and other considerations which were borne in mind by the contracting parties, the latter agreed that they should be permuted or exchanged for intransmissible 3% bonds of the consolidated public debt of Spain on the basis of the value of said properties, which was to be fixed by the Bishops, in concert with their Clergy, in their respective Dioceses,

in order to endow the Church with a revenue, with which it might be able to provide for the needs of catholic worship.

The title of ownership of the Church cannot be more evident: it is constituted by the Concordats, made by the Holy See, with the Crown of Spain, which Concordats had the character of real international covenants, and which, as diplomatic documents, contain all the formal requisites that are necessary for its authenticity, and form part of the Spanish public law, contained in the Legislative Collection of Spain.

This first exception taken by The People of Porto Rico, to the complaint of the Catholic Church must therefore be overruled.

The same is to be said in regard to the personal capacity of the Bishop of Porto Rico, to represent the Catholic Church in this litigation, The Bishops represent the Church in their respective Dioceses, according to the canons of the Catholic Church, and this representation was specially recognized by the Concordats in everything referring to the delivery of the said properties to the Bishops, and the permutation of the same, in the form agreed to by both Powers.

In regard to the titles of ownerships of the Friars of San Francisco and Santo Domingo, with reference to the properties, which are the subject of the reclamation made in this complaint, which is another of the exceptions taken by counsel for The People of Porto Rico, to said complaint, we are of the opinion that this point is completely foreign to the question under consideration, and that, therefore, it must not be discussed.

The question in this case, is not to clear the titles of ownership of the Friars, of Santo Domingo and San Francisco, with regard to the properties, claimed in the complaint. The question in the present case, is to ascertain whether or not the properties, the delivery of which is demanded by the Catholic Church, from the People of Porto Rico, form part of those which the Government seized from the said Religious Communities, at the time when it took possession of the properties of the same, in the year 1838, by virtue of the Laws

relating to the Ecclesiastical Disamortization, the ownership of which was recognized by the Concordats, in favor of the Catholic Church, and which properties the Spanish Government bound itself, to restore in the manner agreed upon, without conditions or reservations of any kind, and prescinding absolutely, from the titles of ownership, which the Friars of San Francisco and Santo Domingo might have concerning the same, and in regard to which titles no question was raised either before or after the Concordat. That is the only matter to be discussed in this case. All the other objections made by the representative of the People of Porto Rico, to the effect that the Catholic Church has not proved or cleared, in these proceedings, the titles of ownership of the Friars, with regard to the properties which are the subject of the complaint, and that the Convents, the delivery of which is demanded by the Church, far from being the property of the said Religious Communities, were built by the Government at its expense, and later on ceded to the Friars, in order, that they might fix their residence in the same—in regard to which point, we may remark by the way The People of Porto Rico *has* not even attempted to present any proofs, all this is superfluous, and can be no subject of discussion in this litigation.

The only question under consideration in the present case, is, as we have said already, to determine whether or not the properties claimed in the complaint, belong to those which were seized by the Government, from the Friars, of San Francisco and Santo Domingo, by reason of the abolishment of said Religious Communities; and this point, which we might call the point of identification of the thing claimed, is so clear that there can be no doubt whatever in regard to the same. In the first place, because it has been
71 definitely recognized by the People of Porto Rico, in the writing containing its amended answer, and in the second place because it appears perfectly clear from the documents presented by both parties in these proceedings.

In fact, there is in the record, as we have said before, the list of the properties which are the subject of the reclamation made by the Catholic Church, and if we compare the same with the inventories, made up by the Commissions, which intervened in the seizure of the properties of said Religious Communities, when the Government took possession of the same, in the year 1838, and with the certified copies issued by the Commissioner of the Interior, and the Treasurer of Porto Rico, which were attached to the complaint and with the certified copy which was later on presented by the attorney of the Catholic Church, at the oral hearing, and which had also been issued by the Treasurer, it will be found that they agree exactly with the only difference that the lots or parcels of land occupied by the Ballajá Barracks, the Insane Asylum and the Market Place, do not figure in the inventories under these names, but form part of the parcels of land which were granted to the Friars of Santo Domingo, by the Conqueror, and first populator of this Island, Juan Ponce de León, to the North of this City, in order that they might establish themselves, and found their Convent, which parcels of land do figure in the inventories of the properties seized from the said Religious Community; and as to the quitrents, it will be found that only those have been proven to exist, in the possession of the People of Porto Rico, which are stated in the certified copy issued by the Treasurer, and presented by counsel for the Catholic Church, in the act of the oral hearing, and which together amount to the sum of —

dollars, but not the other quitrents, set forth in the state-
72 ment of the properties which are claimed in the complaint, doubtless because they have been redeemed, during the period which has elapsed from the year 1838, when the Government took possession of the same, up to the present time. The record contains copies of the aforesaid inventories, which were made up by the Commissioner who intervened in the seizure of the properties of the abolished Religious Communities, which copies were presented as evidence by the representatives of the Catholic Church, and no objections have been made by the representatives of the opposing party, in regard to the exactness of the same; surely in the inventory made of the documents, which were seized from the Friars of Santo Domingo, there appears the title of ownership of the parcels of land, that were granted or ceded to the said Community, by the Conqueror, Juan Ponce de León, which document seems to have been mislaid; but the existence of the same cannot be doubted, as reference is made to it, not only in the inventory alluded to, but also in other

papers, which are on file in the offices of the Government, and which have been presented at the trial, as evidence, by counsel for the Catholic Church.

In regard to this point, that is, the identity of the properties claimed by the Catholic Church, as part of those seized from the Communities of Friars of Santo Domingo and San Francisco, at the time when the Government took possession of all their properties, there can be no doubt either. It is a very clear point, on which the official documents included in the record, throw a vivid light.

Leaving, therefore, this point aside, let us now fix our attention on the prescription, which is another of the exceptions taken by The People of Porto Rico, to the complaint.

The representatives of the defendant, alleges, in regard to this point, that, since more than 60 years, have elapsed from the
73 year 1838, when the seizure of the properties of the Friars, by the Government of Porto Rico, took place, until the date of the complaint, during which long course of time no reclamation was made by the Catholic Church, in order to obtain the possession of its properties, said Church has no longer a cause of action, to claim said properties, inasmuch as more than 30 years have elapsed from the aforesaid date up to the present time, which period, (*i. e.* 30 years) is the term fixed by Section 1864 of the Civil Code in force, for the prescription of an action for the recovery of real estate.

But, aside from the fact that the term of prescription was interrupted by the Concordats, made by the Spanish Government with the Holy See, in 1851, and 1859, in which Concordats the Government of Spain recognized that the ownership of those properties belonged to the Catholic Church, and bound itself solemnly, to restore, said properties to the same, in the manner agreed upon; and although the term of prescription afterwards commenced to run anew, it is a fact that, inasmuch as the Church has not been legally able to demand from the Government, the restitution of those properties, until the year 1888 when the change of Sovereignty took place in this Island, the term of prescription must, at all events, be reckoned from that date; and since only some six years have elapsed from that time until the date of the filing of the complaint, it is clear that the exception relating to the prescription of the real action referred to, is not well taken in the present case, and that it cannot serve to prevent the success of the complaint.

According to Section 1870 of the Civil Code in force, which is a literal reproduction of Section 1969 of the old Code, "the time for the prescription of all kinds of actions, when there is no special provision to the contrary, shall be counted from the day on which they could have been instituted;" and we have seen already by
74 the review which we have made of the provisions contained in the Concordats made with the Holy See, that although by Sections 35 and 38 of the Concordat, made in the year 1851, it was determined that the Government should restore immediately and without delay to the Catholic Church, the properties of the Clergy, including those which still remained of the properties that had been seized from the Religious Communities of both sexes, in order that they might be sold by the Bishops at public auction, for the purpose of investing the proceeds of the sale, in bonds of the public debt of

Spain said stipulation was afterwards essentially modified by the additional Convention made with the Holy See, on the 25th of August 1859, according to which the properties of the Catholic Church existing in the possession of the Government, were to be permuted or exchanged for 3% bonds of the public debt of Spain, in the manner established by the Sections 4 and 5 of the Convention referred to; and it is evident that, inasmuch as the Church was bound to the carrying into effect of the permutation agreed upon, it had no action to demand from the Government, the delivery of its property. But then came the war between Spain and the United States, which was terminated by the Treaty of Paris, by virtue of which, Spain, ceded this Island to the United States of America, with all the buildings, piers, barracks, fortifications, establishments, public roads and other real property, which according to law, belonged to the public domain, and as such, pertained to the Crown of Spain, and among the real properties so ceded by Spain were those derived from the extinct Religious Communities, which were in the possession of the Government, and the permutation of which in the form concerted with the Holy See, was still pending; and as this fact implied, on the part of the Spanish Government, a manifest violation of the agreement, which, in addition to the Concordat

75 of the year 1851, had been made with the Holy See, on the 25th of August, 1859, inasmuch as the said Government could not acquire the ownership of the real properties referred to, without paying the value of the same, by their permutation or exchange for bonds of the public debt of Spain, or in some other equivalent manner, in order to cede, as it did, the said properties to the Government of the United States, it is clear that from that time, the Catholic Church was perfectly able to demand the delivery of those properties—the ownership of which had been solemnly recognized in its favor by the Government of Spain, in the Concordats made with the Holy See, in the year 1851 and 1859, and which it had not lost in spite of the fact that said properties had been ceded to the United States of America,—by entering an action for recovery of real property, in order to recover the real properties referred to, from the party possessing the same, that is, The People of Porto Rico, which possesses and enjoys said properties at the present time; in accordance with the well-known legal maxim "*res ubicumque sit pro dominio suo clamat;*" and, as from the time when the Catholic Church was able to bring a valid action for the recovery of real property, until the date when the present complaint was brought, no more than 6 years have elapsed, it is evident that, in the present case, the term fixed by law, for entering an action for the recovery of real estate, which term is 30 years has not elapsed, and that, from this point of view, the exception taken by The People of Porto Rico, on account of the prescription alleged in its amended answer to the complaint, is not well founded. That is considering the prescription as a means for extinguishing the action of ownership of a property and as a manner of acquiring the ownership of a property it is not applicable

76 to this case either; for, in order to acquire, by prescription, the ownership of real property, it is necessary, according to Section 1842 of the Civil Code in force, which agrees with Section 1941 of the Old Code,—even in a case where the prescription is based on a possession of over thirty years—that the property, be-

sides having been possessed for the period required by law, be possessed by the holder, on the pretence of being the owner of the same; and the Spanish Government knew perfectly well that the properties referred to, belonged to the Church, and that it retained the same in its possession only on account of the fact that the permutation of said properties, in the form concerted with the Holy See, or in some other adequate form, was still pending, and that only after having paid to the Church the value of the same and after the Bishops, with the authorization of the Pope, had ceded the properties to the Government, the latter would have acquired the ownership of the same, according to the provisions of Section of the said addition agreement of the 25th of August 1859.

In regard to this point, we have nothing to object to the statement made by the representative of The People of Porto Rico. The objection is true; but we must state that the evidence heard at the trial of this case, shows that the aforesaid Convent of Santo Domingo, with the lands adjacent to the same, as well as the land on which the Barracks of Ballajá are located, belong to the Roman Apostolic Catholic Church, and that only for a technical reason, which is strengthened, by the regard which we have for the resolution of the President of the United States, we do not pronounce the same judgment in regard to the said properties, is that they be returned, to the Catholic Church together with the other properties which are the subject of the reclamation made in this suit.

We hold, therefore, that with this sole exception, the Catholic Church must be reinstated in the possession of all the other properties belonging to the same, which are unduly possessed and enjoyed by The People of Porto Rico, and that a judgment to that effect should be rendered in this suit, by this Supreme Court, so as to compensate for the spoliation, which was committed by the Government of Spain against the Roman Apostolic Catholic Church in this Island, by ceding and transferring to the Government of the United States, the properties belonging to said Church, and referred to in this complaint, without having previously acquired said properties in the form agreed to, in the treaties made with the Holy See, in accordance with the principles of international law, which have been proclaimed once more by the Treaty of Paris, in its Section 8; and the application of these principles in the present case, is not obstructed by the doctrine laid down by the Supreme Court, of the United States, in the case of *Cessana vs. United States*, according to which doctrine "although it is the duty of a nation which receives the cession of a territory, to respect all the property rights, such as they were recognized by the nation making the cession, it is by no means the duty of the former, to correct the errors, which the nation, by which the cession was made, may have committed against an individual before the cession took place except in case the spoliation of error of the nation, which has made the cession, has been committed so shortly before the cession was made, that the individual, who has been deprived of his property, has had no time to apply to the Courts of the ceding nation, in order to obtain a remedy; for, in that case, it might be that the duty referred to, were incumbent upon the nation which has made the cession;"

and this is precisely the case that has been submitted to us for consideration, for the spoliation committed against the Catholic Church, is so recent that it was consummated, precisely at the time when the American Government took possession of this Island, 78 by virtue of the cession made of the same, by the Government of Spain, so that it has not been possible for the Catholic Church to obtain the remedy otherwise, than by means of the present complaint; and consequently, this case is precisely comprised in the exception referred to by the Supreme Court of the United States, in the litigation above mentioned.

Lastly it remains for us to occupy ourselves with another of the objections made by The People of Porto Rico, against the complaint of the Catholic Church, and that is the objection relating to the Convent of Santo Domingo and the lands annexed thereto, and to the parcel of land, on which the Ballajá-Barracks are situated, in regard to which particulars, the defendant alleges in his answer to the complaint, that, inasmuch as those properties are not in the possession of the People of Porto Rico, on account of having been reserved for military purpose, by the President of the United States, in the exercise of the authority granted to him to that effect, by a law of Congress, nothing definite can be decided in this suit with regard to those properties, as the Government of the United States has not been a party to the same.

In regard to this point, we have nothing to object to the statement made by representatives of the People of Porto Rico. The objection of the defendant is true, and it will therefore, be necessary to eliminate the said properties from the reclamation made by the Catholic Church.

As for the rest, we are of the opinion that the action should be sustained, and that therefore, the People of Porto Rico should be adjudged to restore to the Roman Apostolic Catholic Church in this Island, as properties, which belonged to those that were seized by the Government of the same, from the Religious Communities of Friars of Santo Domingo and San Francisco which were 79 abolished by virtue of the laws enacted in Spain, with regard to the Ecclesiastical dis-amortization the buildings known by the name of "Convent of San Francisco," which is situated on the public Square of the same name, in this City according to the description, which the expert, José Canals, has made of the same, in his certificate, which was ratified by him under oath, in the act of the trial; the parcels of land which are occupied by the Market-Place and the adjacent streets, and those that are occupied by the Insane Asylum, also according to the description which has been made of the same by the said expert José Canals; further the quit-rents enjoyed by The People of Porto Rico, which also belong to the abolished Communities, and which according to the certified copy issued by the Treasurer of Porto Rico, on the 14th of January, 1903, and which is included in the record, as a part of the evidence produced by counsel for the Catholic Church, amount to \$19,764.23 (dollars); and, besides, to the payment of an indemnity or compensation for the income or revenues that have been produced, or should have been produced, by the aforesaid properties, from the

18th of October 1898, until the judgment be executed in accordance with the valuation made by the said expert José Canals; as well as to the payment of an indemnity for the capitals of the quitrents that have been redeemed, and the revenues which have been paid into the Treasury of Porto Rico, since the same date, the amount of which it has not been possible to ascertain, for the reason that the certified copies requested with regard to both these items, and which were demanded by the Court at the request of counsel for the Catholic Church have not been issued by the Treasurer, and besides to the payment of the legal interest on the aforesaid amounts, at the rate of six per cent. per annum, from the date of the filing
80 of the complaint, until the payment be made, in accordance with Section 1075, taken in connection with Section 1060 of the new Civil Code, which agree with Sections 1100 and 1108 of the old Code; and the action, in so far as the Convent of Santo Domingo and the lands annexed thereto, and the parcel of land on which the Barracks of Ballajá are located, are concerned, be dismissed, without special imposition of the costs.

And before definitely closing this opinion, we will state here, on account of the intimate relation which it has to the case under consideration, the very interesting precedent, that the reclamations of the Catholic Church in the Island of Cuba, which were identical with those made by the Illustrious Diocesan Prelate of the same Church in this Island have obtained, from the American Government, which was established in said Island, during the period of the military occupation of the same, after the war with Spain, the most satisfactory solution. The Catholic Church has obtained the restitution of all its properties, by virtue of an agreement made with the Government of said Island, by which agreement the latter reserves to itself the right to acquire said properties, for a price fixed and agreed to by both parties within a period of five years; and it was further agreed that until the purchase was carried into effect, the Government should pay to the Church an annual rent of five per cent., on the value of those properties, which would not be retained by the Government, for the purpose of using the same, and also an indemnity, compensating the Church for the loss of the revenues and profits, which it had failed to derive from said properties, during the time elapsed from the date of the occupation, until the date
81 on which the agreement was signed; and besides, that the Government should pay, in cash, the capitals of the quitrents, under deduction of a reasonable percentage from the amount of the same.

We take pleasure in stating this precedent which is a publicly known fact, and which speaks so much in favor of the justice of the reclamations made by the Catholic Church in the present litigation which reclamations as we have said before, are identical with those made by the same Church in the Island of Cuba.

Dissenting Opinion of Mr. Justice MacLeary.

Filed 10th January, 1907.

This is a case of original jurisdiction filed in this Court under a special act of the Legislature of Porto Rico, passed on the 10th of March, 1904, and entitled "An Act, to confer original jurisdiction on the Supreme Court of Porto Rico for the trial and adjudication of certain property claimed by the Roman Catholic Church in Porto Rico."

Ever since the American occupation of the island of Porto Rico claims have been made by the Roman Catholic Church, or by some of its members in its behalf, to certain lands, buildings and other property, situate in Porto Rico and in the possession of the American Government. Efforts were continually being made to induce the Government, both here and at Washington, to recognize these claims. After many plans had been discussed and rejected finally the Insular Legislature, on the 10th of March, 1904, passed a statute conferring on the Supreme Court of Porto Rico original jurisdiction for the trial and adjudication of all questions between the Church and the People affecting property rights, whether real, personal or mixed, claimed by either party. Power was conferred on this Court, by said act, to issue process for witnesses, and to receive and hear testimony; and direction was given to use the same procedure, as near as might be, as that prescribed for the District Courts in civil

cases, full power being conferred on the court to enter any
132 and all orders and decrees that might be necessary to a final and full adjudication of all the claims of either party to the proceedings, authorizing the issue of all writs or process necessary to enforce the jurisdiction therein conferred upon this court.

The attorney general of Porto Rico was by the same act authorized to accept service, for the People of Porto Rico, of any citation, summons or other process issued in the proceedings; and was instructed to commence an action in behalf of the Insular Government unless the Church should do so within three months after the passage of the act; that is to say on or before the 10th of June, 1904.

This court was further directed, after the issues had been fully submitted upon the law and the facts and after hearing the arguments of the respective parties or their counsel, to enter a final judgment and decree, fully determining the rights of either or both of the parties, and vesting the title to the subject matter of the controversy, or any part thereof, in such party or parties as the court might deem entitled thereto. An appeal was reserved to each of the parties to the Supreme Court of the United States as in other cases.

This act was approved and took effect on the 10th of March, 1904. See Session Acts of 1904, pp. 134 and 135.

Whatever original jurisdiction this court has in the case under consideration is derived from this statute, and from the organic act of Porto Rico.

In accordance with this law the Roman Catholic Bishop of Porto Rico through his attorney, Juan Hernandez Lopez, Esq., filed a complaint in this court on the 6th day of June, 1904, asking that the People of Porto Rico be adjudged to restore to the Roman

Catholic Apostolic Church the properties which the defendant held in possession in the city of San Juan and in the town of San German, and which formerly belonged to the communities of frairs of the orders of Santo Domingo and San Francisco, which orders had been abolished and whose property the Spanish Government had confiscated in the year 1838, by virtue of the Disamortization Laws.

To this complaint the defendant promptly filed a general demurrer and special exceptions, which were based on the new code of civil procedure, which took effect on the 1st of July, 1904. These were fully argued by counsel on both sides on 24th, 25th, and 26th of October, 1904, and taken under advisement until the 10th June, 1905, and then decided. But inasmuch as the complaint had been filed under the old Spanish law, after the new Code of Civil Procedure had been passed but before it took effect, it was held to be sufficient that the complaint should comply with the former law, and that the requirements of the new and existing law should not be applied to it, and the demurrer and exceptions of the defendant were accordingly overruled. It was also held that the proceedings in the case should conform to the old law up to the 1st of July, 1904, and after that to the new code of civil procedure, which took effect on that day. This was strictly in accordance with the well established principles that the court must apply the statute which is in force at the date of the proceeding under consideration; and that although an act has been already passed by the legislature it cannot be enforced by the courts prior to the date on which by its terms it takes effect. It is very seriously doubted that the court was correct in overruling the demurrer interposed by the People of Porto Rico to the complaint filed herein under the old Code of Civil Procedure; on account of the complaint showing on its face that the Church has not now and never had any title to the lands sued for, and that the statutes of limitation have long since run in favor of the defendant, and the former owners under whom possession and title is claimed. But it is not desirable to elaborate this point here since the writer of this opinion did not expressly dissent from the ruling at the time it was made; accepting the assurance of the ponente that under the old code of civil procedure the complaint was amply sufficient.

134 The defendant's answer was finally filed on 6th July, 1905, and it was demurred to on the 12th of August; which demurrer was overruled on 27th of October of the same year. A bill of particulars had in the mean time, on motion of the defendant, been required of the plaintiff, and was filed on the 1st of December, 1905. On 15th December the defendant, by leave duly granted, filed an amended answer; and the case was set down for trial. Finally on the 15th of January, 1906, the trial was begun and concluded on the 19th of the same month.

The case was taken under advisement by the court and some interlocutory orders were made from time to time, and it was not until the 15th of December, 1906, that the Judgment was finally rendered in favor of the plaintiff, the Roman Catholic Apostolic Church, by a divided court; two of the Justices, MacLeary and Wolf, dissenting from the opinion of the majority.

There is some question raised in regard to the personality of the plaintiff in this action. It is a little difficult to determine whether

the attorney drawing the complaint desired the Bishop or the Church, as a corporation, to be considered the plaintiff. It certainly was not intended, by the pleader, that the Bishop should sue as a trustee or representative of the rights of the extinguished communities of friars; since no allegations whatever indicating such a purpose are included in the complaint.

The relation between the Franciscan Friars and the Dominican Friars on the one part and the Roman Catholic Apostolic Church on the other are not explained either in the pleadings or in the evidence. There is some evidence to show that, at one time, one or the other of these brotherhoods had possession of certain property described in the complaint; but from all that appears in the record that possession was independent of the Roman Catholic Church, and had no connection with that institution. It does not clearly appear which of them if either claimed to own or to be in possession
135 of the *censos*, or ground rents or annuities, sued for in this complaint; or to whom such *censos* may have belonged.

This case, at least so far as the lands and buildings are concerned, is simply an action of ejectment between the Roman Catholic Church and the People of Porto Rico, and is, or should be, tried in this court, as a court of original jurisdiction, the same as any other ejectment case would be tried between Smith and Brown, or any two ordinary natural persons.

Of course the United States Government was not made a party to this action, as no jurisdiction in such a matter could be conferred on this court, by the Insular Legislature. However several large portions of the real estate involved in this proceeding are in possession of the General Government and never have passed into possession of the People of Porto Rico. This is the case in regard to the Santo Domingo Barracks and the lands appurtenant thereto and to the block of land on which the Ballajá Barracks are situated. The plaintiff could not possibly recover these buildings and lands in this action and the court very properly "eliminated" them from the claims made by the Catholic Church. It affords me pleasure to remark in passing that, though I cannot agree to the judgment herein rendered in favor of the plaintiff for many reasons, some of which are expressed herein, and others omitted for the sake of brevity, in regard to at least one point my views are in accord with those expressed by a majority of the Court. I concur with the ponente herein in the proposition that the plaintiff cannot recover in this case the Santo Domingo Barracks or the Ballajá Barracks, or any of those properties which were reserved in the proclamation of the President as they belonged to the United States, and if the Roman Catholic Church has any claim upon them that claim must be presented to the National Government, and not to the Insular Government nor any of its courts. It is only in regard to the other property sued for and adjudged to the plaintiff that there is any
dissent among the Justices of this court.

136 The People of Porto Rico, the corporate body which is made the Defendant in this case, was created by the organic act, an act of Congress passed on the 12th of April 1900, and taking effect on the 1st day of May thereafter. See U. S. Statutes at large, Vol. 31 Chapter 191, pp. 77-86.

By section 7 of that act certain inhabitants of this island, "together with such citizens of the United States as may reside in Porto Rico,

shall constitute a body politic under the name of the People of Porto Rico, with Governmental powers as hereinafter conferred and with power to sue and be sued as such." The defendant in this case had no existence, as a legal entity, prior to the taking effect of the organic act, on the 1st of May 1900. Of course not being in existence it could not have possession of any of the properties claimed by the plaintiff prior to that time. And in point of fact it did not gain possession of them, at least of the lands sued for until long afterwards, to wit on the 30th day of June 1903. An act of the congress of the United States was necessary to invest the People of Porto Rico with the title and possession of the lands, buildings and other property involved in this proceeding. This act was passed on the 1st day of July 1902. See U. S. Statutes at Large, Vol. 32 Chapter 1383, pp. 731-732.

The judgment herein is against the defendant not only for the capital sum but for the interest, rents and profits on the property recovered from the 18th day of October 1898; being the date on which the Spanish Military authorities surrendered the island to the Americans and sailed away for the Iberian Peninsula. It seems to me that this is an arbitrary date, and, except the fact that it is as early a one as could possibly be fixed, no reason is apparent for choosing it as a beginning point from which to calculate interest and collect rents.

By the Treaty of Paris, Article VIII, which was ratified on the 11th of April 1899, this property passed, with all other property of that nature, from the Government of Spain to the Government of the United States; and by the Act of Congress of 137 the 1st of July 1902 and the proclamation of the President of 30th June 1903, (See 32 United States Statutes at Large, Chapter 1383, and 33 United States Statutes at Large, p. 2315) a portion of it passed to the People of Porto Rico, and a portion was reserved by the President of the United States under his said proclamation for the use of the Military and Naval Departments of the Nation.

Certainly in no event can any judgment be rendered against the defendant for any claim on account of interest accruing prior to the 1st of May 1900, the date on which the People of Porto Rico became a body politic under the Organic Act passed by Congress on the 12th of April previous. Nor indeed could any claim be properly made or legally sustained against the defendant for damages of any description in regard to the property, arising prior to the date of the President's Proclamation, the 30th of June 1903. (33 U. S. Statutes at Large p. 2315).

During the progress of the trial in this case a large volume of evidence was introduced, including many Spanish laws which were read from the books, or referred to by counsel and considered by the court to have been read. It is provided by the statutes of Porto Rico, which are only declaratory in some particulars of the common law on that subject, that the court may take judicial notice of the following facts. Among others, of whatever is established by laws, of the laws of nature, the measure of time, and the geographical divisions and political history of the world; and the court is authorized in these cases to quote and consult the adequate books or documents. See section 36 of An Act to Regulate the Introduction of Evidence in Civil Proceedings approved 9th March 1905. Session Acts of 1905, page 76.

The provisions of the Laws of Spain in force and in existence in this island, prior to the 11th April 1899, when the treaty of cession was ratified, fall under the class of "whatever is established by law," and can be judicially noticed by the courts of Porto Rico.

We are not authorized by this statute, or any other law known to me, to take judicial notice of the authority of the Diocesan Prelate, or Bishop of Porto Rico, to represent the Roman Catholic Church, in this or any other litigation, nor are we authorized to ascertain by any other means than evidence properly introduced on the trial, the relations sustained by the Franciscan Friars and the Dominican Friars to the Roman Catholic Church. It may be that they were orders or societies, existing within the body of the Church and controlled by the Bishop and other ecclesiastical authorities, but it may be that they, like the Jesuits, and perhaps other Roman Catholic Societies, held their own lands and property entirely independent of the Church, and that neither the Pope nor the Bishop had any control over them whatever. It is said that the Bishops represent the church in their respective dioceses by virtue of the canons of the Catholic Church; if so those canons must be proven like the by-laws of any other society; and judicial notice cannot be taken of them by this court. Nothing in the record shows the purport of these canons nor the authority of the Bishop to represent the Church. Nor has the Rev. Pedro Maria Berrios, who figures in the judgment, shown any authority whatever to appear or be recognized as "Apostolic Administrator of the Catholic Diocese of Porto Rico" as he is therein styled. If the Church had any right to represent these monastic orders, or any authority to bring a suit in their behalf, or inherited from them any property or any claim against the Government, it was incumbent upon the plaintiff in this case to show that fact by evidence; the Court certainly could not presume it. Search has been made in vain through the record of this case for any evidence bearing upon this point; and the Findings of Fact, approved by a majority of the court, while taking a very wide range into the field of history and fancy, is silent on this important and vital point.

139 The plaintiff relies in this case to prove his title, on the concordat entered into by the Pope and the Queen of Spain on the 25th of August 1859. An examination of that document will show that it is therein clearly recognized that the Government of Spain was at that time in possession of the properties which had been secularized and taken from the possession of the Friars, among which are those included in this suit. It is unnecessary here to quote at large from these concordats which can readily be referred to, and many sections thereof being set out in full in the Findings of Fact hereinafter quoted. The Crown recognized a claim on the part of the Church to the said properties and agreed in lieu of surrendering the same to the Church, to retain them and pay for them in three per cent. bonds, or certificates of the public debt, which should not be transmissible but should be held by the Church and the interest devoted to the maintenance of worship and to the support of the clergy. No change whatever was made in the possession of the secularized property, and the agreement between the Church and the Crown amounted to a settlement of a dispute which had

been in existence for more than twenty one years; and if either party failed to carry out the contract, then and there made, neither the title nor the possession to the lands involved was thereby affected. If the Church did not receive the bonds, or the proceeds thereof, to which it was entitled under the concordat a claim could and should have been made against the Crown of Spain for what was justly due; but it could not be said that the Church could therefore claim the property itself from the Crown, much less from a purchaser who had acquired the same in good faith, long after the concordat had been made and ratified.

In fact, by section 7 of the Concordat, it is provided that after the Bishops had made the estimate, etc., the bonds should be issued for the full value of the properties "as well as for the market
140 price or value of those which have been alienated after the concordat," clearly recognizing the right of the Church to continue the alienation and sale of the properties as it had continually done for twenty-one years previously.

Supposing the King of Spain is guilty of a breach of the contract, does that give the Church or the Friars, or the claimants of these lands, whoever they may be, the right to consider the contract broken, and follow the property into the hands of subsequent purchasers, and innocent purchasers at that? By no means. When the Crown of Spain attempted to convey, and did convey to the Government of the United States the properties included in this suit, the latter government had a right to presume that the Spanish Crown had a perfect title to the property conveyed, and should be considered in the same light as any other subsequent, innocent purchaser for value. But the Church in this case is not only attempting to follow the property from the possession of the Crown of Spain into that of the United States of America, but from that of the latter government into the possession of the People of Porto Rico, the defendants in this case, and presumably into the hands of any individuals who may have purchased portions of the same from time to time since title was acquired under the President's proclamation.

This view of the matter is the inevitable result and the logical sequence of the position taken by the plaintiff in this case and upheld by a majority of this court. A mere statement of it in plain language seems to me to be sufficient to show that it will not stand the test of legal analysis. Whether or not the Church or the Bishop, or any person acting in their behalf, ever received the bonds or the certificates of debt from the Spanish Government in accordance with the concordats heretofore referred to does not appear from the record in this case. But it is a fact judicially known to this Court

from the public laws of the Kingdom of Spain and the
141 Province of Porto Rico that annual appropriations were made for the support of the Clergy and public worship and for pensions to the dispossessed friars of one hundred dollars per annum, altogether amounting during some of the years just prior to the American Occupation, and the cession made under the Treaty of Paris, to nearly two hundred thousand dollars. This large and liberal appropriation, made from year to year by the Spanish Government and the provincial Government of Porto Rico, was probably accepted in lieu of the bonds or certificates of the public debt

which could have been claimed under the concordats of the Roman Catholic Apostolic Church or by the Communities of friars or other ecclesiastical authorities, and was doubtless regarded as a fair settlement of any claims supposed to exist against the Government on account of the secularization of the monasteries and other property belonging to these brotherhoods. Indeed, it has been argued that inasmuch as under the change of government the intimate relations existing between the Church and the State have been dissolved and the support of the Clergy and the Catholic worship has been discontinued that some provision should be made to satisfy the losses thereby incurred by the Church and its Clergy. This argument is altogether fallacious and has no basis in sound reason or authority. At the time of the cession made by the Spanish Crown of these properties to the American Government it was well known that there was no union of any kind between the Church and the State in the United States of America, and that neither our National Government, nor any State or territorial government existing or possible under our Constitution, could appropriate public moneys for the benefit of any Church or to support any form of worship whatever. If the Church or the Clergy had suffered any damage, by the events herein alluded to, the Pope or the Bishop must look to His Catholic Majesty Alfonso the XIII, King of Spain, to right their wrongs or to redress their grievances. Certainly such an argument as this furnishes no basis whatever to sustain any right or title to the property

142 involved in this suit on behalf of the plaintiff and against the defendant herein.

In this case the defendant pleads the Statute of limitations, which in this island in real actions requires the lapse of thirty years, to bar the action. Civil Code P. R. Article 1864. The friars were, as shown by the evidence of three aged witnesses beyond a doubt, dispossessed of the convents, by the Military forces of the Spanish Government, in the year 1838; and ever since that time it is claimed by the defendant that the Government, whether Spanish, American, or Insular, has been in adverse, peaceable and uninterrupted possession of all the property claimed.

The evidence clearly shows that all the property itself involved herein has been in such possession of the Government of Spain and the United States Government and the Government of the People of Porto Rico, since the year 1838, and no suit of any kind was ever instituted for its recovery against the Government or any person, so far as appears from the record, in any court whatever, before the 6th of June 1904, when this action was brought. Whether the thirty years statute, or some other article of the Civil Code of Porto Rico, prescribing a shorter term, applies to the *censos* or quitrents claimed herein, need not, in this opinion be discussed. Certainly if the claim of the plaintiff to these lands has been barred by the statute of limitations, the claim to the *censos* has been also barred.

Unless there was some event which took the case out of the statute of limitations, the term of thirty years was complete in 1868; and it had run twice over before the American occupation, or conquest, on the 18th of October 1898. What event happened in the meantime?

It is claimed that the concordats made between the Pope and the Queen of Spain were events of this nature and interrupted the running of the statutes. Let us see.

After the Communities of Friars had been abolished, and after the Spanish Government had taken possession of all their
 143 monasteries and other property, by virtue of the "Laws of Ecclesiastical Disamortization," the Friars of Santo Domingo, and of San Francisco, which had long since been established in San Juan, Porto Rico, had of course to conform to the same laws. The secularization was carried into effect in the island of Porto Rico, with the same strictness as in the Peninsula, and the Communities of Friars of Santo Domingo and San Francisco, which had previously existed in this island, were not only abolished, and all their property seized by the Government, but they were ejected from their monasteries, by military force, as is stated by one of the witnesses introduced by the Roman Catholic Church, a man of more than eighty years of age, who testified that he had witnessed the said ejection when he was very young, and remembers the same very well. After the Spanish Government had taken possession of all the properties of the said religious communities, it alienated some of them, while those that were not sold, remained in its possession, the revenues and products of the same, being freely utilized by the Government. Much eloquence has been expended in denouncing the laws under which spoliation of the Church property was accomplished. With the policy, the justice or the necessity of those laws we have nothing to do. It is a historical fact that such laws have been passed not only in Spain but in Mexico, in England, Austria, Germany, France and other European countries and they were deemed necessary, right and proper at the time. If the title passed under the secularization laws that is all that concerns us at present. On this point there can be no doubt.

These events, that is to say the enforcement of the secularization laws took place in the Island of Porto Rico, during the year 1838, and this state of affairs resulting therefrom continued for several years, until long after the termination of the Carlist war. Later the Spanish Congress passed the act of the 8th of May, 1849, which was sanctioned by the Queen of Spain, Isabella II, by which law, the Queen was authorized to enter into an agreement with the Holy
 144 See, for the purpose of settling the matters pending between the crown and the clergy, as well as all the questions pending between the Church and the State, and the desired settlement was accomplished by means of the famous Concordat on the 16th of March, 1851. The final paragraph of section 35, which treats of the maintenance of the Religious Communities of Women, whose properties had also been seized by the Government by virtue of the afore-said laws of disamortization, provides for the retention of their landed property by the government and the permutation of the same at a fair value into certificates of the public debt bearing three per cent. annual interest and that the proceeds thereof should be distributed by the several bishops among the convents according to their needs.

Section 38 makes provision for the maintenance of worship and the clergy in which the very first item is "the product of the properties which had been restored to the clergy" by former concordats; and which by the way had never been actually restored. Further

provision was made in this same section for the permutation of the properties of the friars into like three per cent. bonds of the public debt for the benefit of the monks whose property had been secularized. Other particulars were settled by this concordat which it is unnecessary to mention in this connection. There was also an additional agreement made with the Holy See by the Government of Spain, on the 25th of August, 1859, under the authority granted to it by the Law of the 4th of November previous, to conclude and ratify a Convention with the Holy See, chiefly for the purpose of commuting the ecclesiastical properties, of whatever kind they might be, for intransmissible three per cent. bonds of the consolidated public debt, and to exchange the rest of the revenues established for the maintenance of worship and clergy, for bonds of the same kind, if it should be convenient for the respective dioceses, while the Church was to retain the right to acquire property, which right was stated in section 41 of the Concordat, and the amount of the 145 revenues which the Church might acquire in future, was not to be computed in the dotation of the same. It is unnecessary in this connection to set forth at length the whole of this lengthy document.

This agreement was signed in Rome by the respective plenipotentiaries, on the 25th of August, 1859, and ratified afterwards by the high contracting parties, on the 7th and 24th of November of the same year; and ten years later was again confirmed and was ordered to be observed and complied with in all its parts by a royal decree made on the 4th of April, 1869.

It is claimed by the Roman Catholic Church that the Concordat of 1859 especially is the basis of its title to the property in controversy. If carefully examined it will be seen that no title is given the plaintiff by this concordat to any property whatever except the non-transferable bonds of the Spanish Government, and certain palaces, orchards, gardens and other property, not covering those included in this action; and more than all that nothing in any of these concordats prevents the Church or the Pope or his prelates from making claim against the crown for any property unjustly withheld from them.

Then we see that these celebrated contracts had no such effect as to interrupt or prevent the running of the statutes of limitations. Nor is any law of Spain called to our attention which would prevent the Church or the brotherhoods from bringing suits against the King or the Government of Spain to enforce their claims upon these lands if any they had. But not even a petition to the Crown is presented much less is a suit brought in any court whatever. From all that is shown the church had been satisfied in some other way for the loss of the property of which the friars had been deprived. This was doubtless by the large annual appropriations made for the support of the clergy by the Government of Spain as well as by the provincial government of Porto Rico.

The statute of limitations, as is shown by the record herein, has clearly run in favor of the defendant in this case, and that 146 statute is properly pleaded by the defendant and must be considered by the court. It would be useless to say, if it were the fact, that the Church, from time to time, made claims against the Government and endeavored to have them recognized by the King of Spain, or by the Cortes. Nothing short of a suit brought

in a court of justice would stop the running of the statute of limitations, (article 1874 Civil Code), and nothing in the nature of law or fact is shown which would have prevented the Church, the Pope, the bishops, or the friars, or whoever might claim these properties, from instituting a suit against the Government in the proper court having jurisdiction of such matters. Administrative suits against the Government were frequently brought under the Spanish system; and they were governed by peculiar rules of procedure applicable to them alone.

In considering the right, if such right existed, of the plaintiff in this case to follow the land which it claims from the Spanish Government into the hands of the United States, and further into those of the People of Porto Rico, the principles of law enunciated by the Supreme Court of the United States in the year 1897, may well be invoked. That Court in the case of *Cessna vs. the United States* (169 U. S. 186) uses the following pertinent language:

“In this respect the action taken was in harmony with the general rule of international law. It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have heretofore committed upon every individual. There may be an exception when the dispossession and wrong of the grantor nation were so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. In such a case perhaps the duty will rest upon the grantee nation, but such possible exception has no application to the present case and in no manner abridges the general rule that among the burdens assumed by the nation receiving the cession is not the obligation to right wrongs which have for many years theretofore been persisted in by the grantor nation. Because Mexico had more than twenty years before the cession forcibly taken from Doctor Heath land that was rightfully his and given part or all of it to other persons 147 it does not follow that when the United States accepted the cession they came into the obligations to do that which Mexico had failed to do, place Dr. Heath in possession and restore to him the land of which he had been thus wrongfully deprived. Such action if taken might well expose this Government to just claims for compensation in behalf of the subsequent grantees of Mexico, who apparently took no personal part in the wrongs done to Heath. Doctor Heath may have had a claim against Mexico for those wrongs, but he failed to prosecute his claim in the way prescribed, and he cannot now make his failure to pursue such prescribed way a reason for enforcing a title which that nation had refused to recognize. So long as Mexico repudiated his claim to this tract his only recourse was direct appeal or through the intervention of this government to seek compensation for the property of which he had been deprived. When this government accepted the cession of the territory it did not thereby assume an obligation to satisfy any pecuniary demands which he as an individual may have had against the Mexican Government. In other words, it took that territory bound to respect all rights of property which the Mexican government respected, but under no obligation to right the wrongs which that government had theretofore committed.”

It cannot be said that the Church in the present case had no time to appeal to the courts or authorities of the Spanish Nation for redress. The wrongs suffered, if the complaint is correct, were of long standing, having occurred more than sixty years prior to the cession of the Island of Porto Rico to the United States, and to the transfer of the property claimed from the defendant by the Spanish Government to the United States Government.

This Government by accepting the cession of the territory of Porto Rico did not assume an obligation to satisfy any pecuniary demands which ecclesiastical or other corporations or individuals within that island had against the Spanish Government. The United States Government, and under it the Government of Porto Rico, succeeded to the rights of the Spanish Government in that island, bound to respect all rights of property which the Spanish Government respected, but under no obligation whatever to right the wrongs, if any, which that government had committed.

It clearly appears that these correct principles of International Law, applied to the case of Doctor Heath ten years ago, are
148 equally applicable to the case of the People of Porto Rico now and here.

The attorney for the plaintiff sought to bring to the attention of this court the action of the Military Government of Cuba, during the administration thereof by Major General Leonard Wood of the United States Army, as a precedent to be followed in the decision of this case. That incident has no value as a precedent or an authority in this court; for in the first place it was not based on the decision of a court, but of a board of arbitrators; and in the second place the facts of the two cases are entirely different. By the Treaty of Paris the King of Spain *cedes* the Government lands in Porto Rico to the United States and merely *relinquished* the title to those in Cuba. There is quite a difference in the terms used and it was thereby left for the Government in Cuba to make the best settlement it could with the Church. But it did not relinquish possession to an inch of land, it merely settled a vexed question by the payment of a large money bonus. This Congress can do today if it is thought just or politic; but this court has no power to arbitrate or settle vexed questions but only to try this case and render judgment in accordance with the law and the facts.

If there were no other reason for dissenting from the judgment rendered in this case an all sufficient one is the lack of evidence to support it. An examination of the Finding of Facts, especially the third, fourth, fifth, sixth, seventh, and eighth subdivisions thereof, made a part of the record herein, shows this inherent and fundamental defect.

It is unnecessary to encumber this opinion with a literal copy of these paragraphs, which can be found in the record, and will afford a complete understanding of the claims of the plaintiff, and which embody all of the evidence in support of the plaintiff's case which was introduced on the trial, and many observations, inferences and arguments which have no proper place in the evidence or the
149 Findings of Fact. It is needless to say more than merely to recur again to the principal reason which the writer has for dissenting from the judgment rendered.

The burden of proof is on the plaintiff to make out its case in this court by proper pleadings and sufficient evidence. In other words

this plaintiff, like John Doe or Richard Roe, must recover upon the strength of its own title and not upon the weakness of the defendant's claim. The defendant can rely alone on its possession in the absence of title shown by the plaintiff. This simple elementary proposition needs no authorities to support it; but in order to show that in other cases it has been recognized as binding in this island two cases decided by this Court will be cited. They are *Bianchi vs. Añasco* 2 P. R. Rep. 484, and *Monviño vs. Carreras*, 2 P. R. Rep. 581. Unless the plaintiff shows to the court by proper evidence that the property claimed belongs to it, the defendant must recover at least the costs of suit. The plaintiff in this case has not shown any title whatever to the lands or buildings in controversy, nor to the *censos*, quitrents or annuities and other property of that description.

There is no title of any kind shown, emanating from the sovereignty of the soil or from the Insular Authorities, from the time of Ponce de Leon down to the American occupation, to the friars or any one else. It is said that there was a title issued to one of the brotherhoods by Ponce de Leon to some indefinite property, and it is surmised that it has probably been lost. But there is no proof in the record, nor mention in the findings, either of the existence of such a title, or the loss of the document which was evidence of the same. Both of these supposed facts are based on either guesswork or vague tradition. The concordats do not confer title on anyone; and indeed do not touch the title except to confirm it, if that were necessary, in the crown of Spain. They also provide for a compensation, supposed to be adequate, in the issuance of bonds, equal in amount to the value of the property, which had been secularized by the Government, and remained unsold. No vendor's lien or other incumbrance is claimed or acknowledged in the concordats in favor of the Church upon the lands claimed, and if the Spanish Government has failed to comply with the contract claimed to be set out in the concordats, the Church or the friars must look to the crown of Spain for relief, and not try to follow the lands into the hands of subsequent, innocent purchasers.

According to the views which are held and expressed above the judgment herein should have been rendered in favor of the defendant, The People of Porto Rico.

(Endorsed:) File No. 20,817. Supreme Court U. S. October Term, 1907. Term No. 414. The People of Porto Rico, App'ts, vs. The Roman Catholic Apostolic Church. Stipulation of counsel in relation to dissenting opinion in Supreme Court of Porto Rico & copy of said opinion. Filed Nov. 15th, 1907.

EXHIBIT A.

CONVENTION BETWEEN PIUS IX AND ISABELLA II, QUEEN OF SPAIN, 1851.

In the name of the Most Holy and Undivided Trinity:

His Holiness the Supreme Pontiff Pius IX, moved by his pastoral care toward the whole Catholic flock and by his peculiar friendship toward the glorious and devoted Spanish nation, wishing to promote the good of religion and the usefulness of the Church in said Kingdom; and Her Majesty the Catholic Queen, Isabella II, according to her traditionary piety and her sincere devotedness to the apostolic see, being moved by a like desire, inherited from her ancestors, have determined to celebrate a formal concordat regulating all ecclesiastical matters in a stable and canonical manner.

To this end, His Holiness the Pope has deemed proper to appoint as his plenipotentiary His Excellency John Brunelli, archbishop of Thessalonica, a domestic prelate of His Holiness and assistant of the pontifical throne and apostolic nuncio a latere, with a power of a legate in the kingdom subject to Spain.

And Her Majesty the Catholic Queen, His Excellency Emanuel Bertran de Lis, Knight of the Great Cross and of the distinguished Spanish order of Charles III, of that of St. Mauritius and of St. Lazarus of Sardinia and of the Neopolitan Order of Francis I, deputy to the Cortes and her minister of state, who, after having delivered to each other their respective credentials and their authenticity having been acknowledged, have agreed upon the following:

ARTICLE 1. The Roman Catholic and Apostolic religion, which, to the exclusion of any other cult, continues to be the only religion of the Spanish nation, shall be preserved forever in all the dominions of Her Catholic Majesty, with all the rights and prerogatives which it must enjoy according to the law of God and the provisions of the sacred canons.

ART. 2. Consequently the instruction in universities, colleges, seminaries, and public and private schools of whatsoever class, shall conform in all details to the doctrine of the said Catholic religion; and to this end bishops and all other diocesan prelates whose duty it is to watch over the purity of the doctrine of faith and morals and the religious education of the young in the exercise of this charge shall in no way be restrained in the exercise of this duty, even with regard to public schools.

ART. 3. Nor shall any impediment whatsoever be placed in the way of said prelates or other sacred ministers fulfilling their duty. Nor shall anyone, under any pretext whatsoever, molest them in anything relating to the fulfillment of the functions of their offices. Indeed, all authorities of the Kingdom must be careful to show them and enforce personal reverence and obedience, according to Divine precepts, and that nothing be done which might imply di-honor or contempt of them. Her Majesty and her Royal Government shall always give their powerful protection and help, if the bishops should ask for it at any time, especially if they are to oppose the wickedness of men who attempt to pervert the minds of the faithful or their morals, or when the introduction or circulation of bad or sacrilegious books should have to be prevented.

ART. 4. In all other matters which pertain to the law and the exercise of ecclesiastical authority and to the ministry of the sacred orders, the bishops and the clergy subject thereto shall enjoy the full liberty established by the sacred canons.

ART. 5. In view of the weighty reasons of necessity and convenience which suggest such a course, for the greater good and spiritual utility of the faithful, and new division and definition of the dioceses shall be made in the entire Peninsula and in the adjacent islands. Hence the present metropolitan sees of Toledo, Burgos, Santiago, Sevilla, Tarragona, Valencia, and Zaragoza shall remain such and the suffragan one of Valladolid shall be raised to the grade of a metropolitan one.

In like manner the following suffragan dioceses shall be retained: Almeria, Astorga, Avila, Bajadoz, Barcelona, Cadiz, Calahorra, Canaries, Cartagena, Cordoba, Coria, Cuenca, Gerona, Guadix, Huesca, Jaén, Jaca, Leon, Lerida, Lugo, Malaga, Mallorca, Menorca, Mondoñedo, Orense, Orihuela, Osma, Oviedo, Palencia, Pamplona, Plasencia, Salamanca, Santander, Segorbe, Segovia, Siguenza, Tarazona, Teruel, Tortosa, Tuy, Urgel, Vich, and Zamora.

The diocesis of Albarracin shall be annexed to that of Teruel; that of Basastro to that of Huesca; that of Ceuta to that of Cadiz; that of Ciudad Rodrigo to that of Salamanca; that of Ibiza to that of Mallorca; that of Solsona to that of Vich; that of Teneriffe to that of Canaries, and that of Tudela to that of Pamplona.

The prelates of the sees to which another one is annexed shall add to the title of bishops of the Church under their charge that of the Church annexed.

New suffragan dioceses shall be established in Ciudad Real, Madrid and Victoria.

The episcopal see of Calahorra and of Calzada shall be transferred to Logroño; that of Orihuela to Alicante; that of Segorbe to Castellón de la Plana, when everything is ready for this purpose in the cities and it is deemed proper, after hearing the respective prelates and chapters.

In cases in which an assistant bishop shall be necessary in order to improve the service of any diocesis, the usual canonical form shall be used in providing the same.

In the same manner general vicars shall be established at points where in view of the annexation of diocesis provided for in this article, or for any other good cause, they should be considered necessary after hearing the respective prelates.

In Ceuta and Teneriffe assistant bishops are hereby at once provided.

ART. 6. The distribution of the referred to dioceses, in so far as their dependence upon the respective metropolitan dioceses is concerned, shall take place in the following manner:

The following shall be suffragan to the metropolitan Church of Burgos: Those of Calahorra or Logroño, Leon, Osma, Palencia, Santander, and Victoria.

To that of Granada: Those of Almeria, Cartegena, or Murcia, Guadix, Jaén, and Malaga.

To that of Santiago: Those of Lugo, Mondoñedo, Orense, Oviedo, and Tuy.

To that of Sevilla: Those of Bajadoz, Cadiz, Cordoba, and the Canary Islands.

To that of Tarragona: Those of Barcelona, Gerona, Lérida, Tortosa, Urgel, and Vich.

To that of Toledo: Those of Ciudad Real, Coria, Cuenca, Madrid, Plasencia, and Sigüenza.

To that of Valencia: Those of Mallorca, Menorca, Orihuela or Alicante, and Segorbe or Castellón de la Plana.

To that of Valladolid: Those of Astorga, Avila, Salamanca, Segovia, and Zamora.

To that of Zaragoza: Those of Huesca, Jaca, Pamplona, Tarazona, and Teruel.

ART. 7. The new bounds and special demarcation of the said dioceses shall be fixed as soon as possible and in the proper manner (*servatis servandis*) by the Holy See, for which purpose he will give the necessary powers to the apostolic nuncio in these Kingdoms in order to carry out the said demarcation, the Government of Her Majesty being consulted therefor.

ART. 8. All the reverend bishops and their churches shall acknowledge the canonical dependence of the respective metropolitan bishops, and by virtue thereof the exemptions of the bishoprics of Leon and Oviedo shall cease.

ART. 9. As, on the one hand, it is necessary and urgent to apply the proper remedy in order to remedy the serious inconveniences which have arisen in the ecclesiastical administration of the four military orders of Santiago, Calatrava, Alcántara, and Montesa, and as, on the other hand, there should be carefully preserved the glorious remembrances of an institution which had done so much for the Church and the State, and the prerogatives of the Kings of Spain as grand masters of the said orders by apostolic concession, there shall be designated in the new ecclesiastical demarcation a specific number of towns to form a circular district over which the grand master shall as up to the present time exercise the ecclesiastical jurisdiction, entirely in accordance with the said concession and the pontifical bulls.

The new territory shall be called "Priorato de las Ordenes Militares," and the prior shall have an episcopal character with a title of the Church in partibus.

The towns which at the present time belong to the military orders and are not included in their new territory, are incorporated to the respective dioceses.

ART. 10. The very reverend archbishops and the reverend bishops shall extend the exercise of their authority and ordinary jurisdiction over the entire territory embraced in their respective dioceses by virtue of the new circumscription; consequently those who exercised the same over dioceses situated in other districts shall discontinue it.

ART. 11. All privileged and exempt jurisdictions shall also cease, whatever be their character and denomination, including that of St. John of Jerusalem. Their present territories shall be annexed to the respective dioceses in the new demarcation which will be made of them, according to article 7, with the following exceptions:

1. That of the chief prochaplain of Her Majesty.
2. That of the vicar-general of the city.
3. That of the four military orders of Santiago, Calatrava, Alcántara, and Montesa, in the manner stated in article 9 of this concordat.
4. That of the regular prelates.
5. That of the apostolic nuncio pro tempore in the church and hospital of Italians of this court.

The special powers pertaining to the general commissary of the crusade shall remain in force with regard to matters pertaining to his office, by virtue of the brief of delegation and other apostolic provisions.

ART. 12. The office of general collector of annuities and unreclaimed property is hereby abolished, the commission for the administration of unclaimed property, the collection of arrears, and the conduct and termination of pending business, being for the present joined to the commissary-general of the crusade.

The apostolic and royal tribunal of the grace of the "Excusado" is also hereby abolished.

ART. 13. The chapter of the cathedral churches shall be composed of the dean, who shall always be the first chair post pontificalem; of four dignitaries, viz: an archpriest, an archdeacon, a precentor, and a teacher of divinity (*maestrescuela*), and, furthermore, a treasurer in metropolitan churches; of four *ex officio* prebendaries, viz: the magistral, the doctoral, the lectoral, and the penitentiary, and of the number of canons by appointment mentioned in article 17.

There shall be, furthermore, in the church of Toledo two other dignities with the respective titles of first chaplain to kings and first chaplain to muzarbies; in that of

Sevilla the dignity of first chaplain of San Fernando; in that of Granada that of first chaplain to the Catholic kings, and in the one of Oviedo that of abbot of Covadonga.

All the members of the chapter shall have therein equal voice and vote.

ART. 14. The prelates may call a meeting of the chapter and preside thereover whenever they deem it advisable; in the same manner they may preside over competitive examinations for the filling of the position of prebend.

At these and at any other proceedings the prelates shall always have the seat of honor, and no privilege or custom to the contrary shall be an obstacle thereto; they shall be treated with such honor and deference as is due their sacred character and their office as head of their church and chapter.

When they preside they shall have the right to speak and vote in all matters in which they have no direct personal interest, and their vote shall also be the deciding one in case of ties.

At every election or appointment of persons which pertains to the chapter the prelate shall have three, four, or five votes according as to whether the chapter is composed of sixteen, twenty, or more than twenty members. In such cases when the prelate does not attend the chapter a committee from the chapter shall visit him to receive his votes.

When the prelate does not preside at the chapter the dean shall do so.

ART. 15. As the cathedral chapters are the senate and council of the very reverend archbishops, and the reverend bishops, they shall be consulted by the latter in order to hear their opinion, or to obtain their consent in the terms which, in view of the variety of the matters and the cases, are prescribed by canonical law, and especially by the sacred council of Trent. Consequently any immunity, exemption, privilege, use or abuse, which may have been introduced in any manner whatsoever in the different churches of Spain in favor of such chapters to the prejudice of the ordinary authority of the prelates shall cease at once.

ART. 16. In addition to the dignitaries and prebendaries who exclusively compose the chapter, there shall be in the cathedral churches beneficiaries or assistant chaplains, with the proper number of other ministers and employees.

The dignitaries and prebendaries, as well as the beneficiaries and chaplains, even though they be divided for a better service of the respective cathedrals into sacerdotal, diaconal, and subdiaconal, they must all be presbyters, in accordance with the prescriptions of His Holiness, and those not such when they appear to take possession of their benefices must become such within one year or suffer the canonical penalties.

ART. 17. The number of capitulars and beneficiaries in the metropolitan churches shall be the following:

The churches of Toledo, Sevilla, and Zaragoza shall have 28 capitulars each, and that of Toledo 24 beneficiaries; that of Sevilla 22, and that of Zaragoza 28.

Those of Tarragona, Valencia, and Santiago, 26 capitulars and 20 beneficiaries, and those of Burgos, Granada, and Valladolid, 24 capitulars and 20 beneficiaries.

The suffragan churches shall respectively have the number of capitulars and beneficiaries which follow:

Those of Barcelona, Cadiz, Cordoba, Leon, Malaga, and Oviedo shall have 20 capitulars and 16 beneficiaries. Those of Badajoz, Calahorra, Cartagena, Cuenca, Jaen, Lugo, Palencia, Pamplona, Salamanca, and Santander, 18 capitulars and 14 beneficiaries. Those of Almeria, Astorga, Avila, the Canaries, Ciudad Real, Coria, Gerona, Guadix, Huesca, Jaca, Lerida, Mallorca, Mondoñedo, Orense, Orihuela, Osma, Placencia, Segorbe, Segovia, Siguenza, Tarazona, Teruel, Tortosa, Tuy, Urgel, Vich, Victoria, and Zamora, 16 capitulars and 12 beneficiaries.

That of Madrid shall have 20 capitulars and 20 beneficiaries, and that of Menorca 12 capitulars and 10 beneficiaries.

ART. 18. In surrogation of the 52 benefices mentioned in the concordat of 1752, there are reserved to His Holiness, to be freely filled by him, the dignity of precentor in all the metropolitan churches and in the suffragan churches of Astorga, Avila, Badajoz, Barcelona, Cadiz, Ciudad Real, Cuenca, Guadix, Huesca, Jaen, Lugo, Malaga, Mondoñedo, Orihuela, Oviedo, Placencia, Salamanca, Santander, Siguenza, Tuy, Victoria, and Zamora; and in the other suffragan churches a canonship de gracia, which shall be determined by the first appointment made by His Holiness. These benefices shall be conferred in accordance with the said concordat.

The office of dean shall be filled by Her Majesty in all the churches and at any time and whatever be the manner they become vacant. The canonships ex officio shall be filled after a competitive examination by the prelates and chapters. The other offices and canonships shall be filled in strict alternation by Her Majesty and the respective archbishops and bishops. The beneficiaries or assistant chaplains shall be appointed alternatively by Her Majesty and the prelates and chapters.

The prebends, canonships, and benefices which shall become vacant by the resignation or the promotion of the holder to another benefice, if not of those reserved to His Holiness, shall always and in every case be filled by appointments by Her Majesty.

The same shall be done with regard to those which shall become vacant *sede vacante*, or those which shall not have been filled by the prelates who should have done so, at the time of their death, transfer, or resignation.

The first appointment to dignities, canonships, and chaplaincies of the new cathedrals and those which may be increased in the new metropolitan cathedral of Valladolid shall be the right of Her Majesty, excepting those reserved to His Holiness and of the canonships *de officio*, which shall be filled in the ordinary manner.

In any case the persons appointed to the said benefices must obtain the canonical collation and institution from their respective ordinaries.

ART. 19. In view of the fact that, by reason of former vicissitudes as well as on account of the provisions of this Concordat, the condition of the Spanish clergy has greatly changed, His Holiness on his part and Her Majesty the Queen on hers, agree that no dignity, canonship, or benefice shall be conferred of those which require a personal residence upon persons who, by reason of any other office or commission, may be obliged to reside continually somewhere else. Nor shall there be conferred upon those who are in possession of any benefice of the character named any of such offices or commissions, unless they renounce one of said offices or benefices, which are consequently declared to be incompatible in all respects.

In the royal chapel there may be as high as six prebendaries of the cathedral churches of the Peninsula; but in no case shall those be appointed who occupy the first chairs, nor canons *de officio*, those who have a *cura de almas* (who administer, etc., the sacraments of the Church), or two from the same church.

With regard to those who at the present time and by virtue of special or general exemptions are in the possession of two or more of these benefices, offices, or commissions, the necessary steps shall at once be taken in order to arrange their condition in accordance with the provisions of this article, according to the necessities of the Church and the difference in the cases.

ART. 20. In the case of a vacant see the chapter of the metropolitan or suffragan church within the term fixed and in accordance with the provisions of the sacred Council of Trent, shall appoint only one capitular vicar, in whose person shall be vested all the ordinary power of the chapter without any reservation whatsoever on its part, and without the power to revoke the appointment after it has been made or to make a new one; therefore, any privilege, use, or custom of administering as a whole, of appointing more than one vicar or any other which in any manner whatsoever is contrary to the provisions of the sacred canons, is hereby abolished.

ART. 21. In addition to the chapel of the royal palace, the following shall be retained:

1. That of the Kings and the Muzarabic of Toledo, and those of San Fernando de Sevilla and of the Catholic Kings of Granada.

2. The collegiate chapels located in the capitals of provinces where there exists no episcopal see.

3. Those under special patronage, whose patrons assume the obligation to pay the excess expenses which the collegiate chapel will occasion the parochial church.

4. The collegiate chapels of Covadonga, Roncesvalles, San Isidro de Leon, Sacromonte de Granada, San Ildefonso, Alcalá de Henares, and Jerez de la Frontera.

5. The cathedral ones of the episcopal sees which are annexed to others by virtue of the provisions of this concordat shall be retained as collegiate.

All other collegiate chapels, whatever be their origin, age, and foundation, shall be reduced, when the local circumstances do not prevent it, to parochial churches, with the number of beneficiaries which may be considered necessary for the parochial service as well as for the dignity of worship.

The preservation of the chapels and collegiate churches mentioned must always be understood subject to the prelate of the dioceses to which they belong, and with the abolition of any exemption or jurisdiction *vere* or *quasi nullius* which shall in any manner limit the power of the ordinary clergy.

The collegiate churches shall always be parochial and shall be distinguished by the name of principal parish, if the town shall have one or more other ones.

ART. 22. The chapter of the collegiate churches shall be composed of one abbot as president, who shall have the power to administer the sacraments of the Church, without any further authority or jurisdiction than the economic and financial management of his church and chapter; of two canons *de officio* with the titles of magistral and doctoral, and of eight canons *de gracia*. There shall also be six beneficiaries or assistant chaplains.

ART. 23. The rules established in the preceding articles, for the filling of prebends and benefices or chaplaincies of cathedral churches, as well as for the government of

their chapters, shall be carefully observed in all their parts with regard to collegiate churches.

ART. 24. In order that in all towns of the Kingdom the proper care may be given to religious worship and to all the necessities of spiritual nourishment, the very reverend archbishops and reverend bishops shall immediately proceed to make a new arrangement and parochial demarcation of their respective dioceses, taking into consideration the size and character of the territory and of the population and other local circumstances, after hearing the cathedral chapters, the respective archpriests, and the fiscales of the ecclesiastical tribunals, and adopting on their part all necessary measures in order that the preceding arrangement may be considered as concluded and be carried out, after the approval of the Government of Her Majesty, within the shortest period possible.

ART. 25. No chapter or ecclesiastical corporation can have the right to administer the sacraments of the church and the perpetual curatorships and vicarships which were previously attached pleno jure to any corporation, shall be entirely subject to the common law. The coadjutors and employees of parishes and all ecclesiastics engaged in the service of hermitages, sanctuaries, oratorios, public chapels or churches which are not parochial, shall be under the direction of the curate of their respective territory and shall be subordinate to him in all that relates to worship and religious functions.

ART. 26. All curatorships, without distinction as to towns or classes or the time they become vacant, shall be filled by a public competitive examination in accordance with the provisions of the Holy Council of Trent, the ordinaries preparing ternaries of those approved or who have passed, addressing the same to Her Majesty in order that the appointment may be made of one of those certified. Hence, the patrimonial privileges and the exclusive or preferred right which in some parts those enjoying a patrimony had to obtain curatorships and other privileges shall cease.

Curatorships of the ecclesiastical patronage shall be filled by the patron appointing one of the persons named in the ternary prepared in the manner mentioned by the prelates, and those of the laical patronage by the patron appointing one of those who show that they have passed a public competitive examination in the respective dioceses, a period of four months being granted to those who can not do so for the purpose of proving that they have passed an examination held in the above-mentioned manner, always reserving the right of the ordinary ecclesiastic to examine the person presented by the patron, should he deem it advisable.

The coadjutors of parishes shall be appointed by the ordinary ecclesiastics after a synodal examination.

ART. 27. The proper steps shall be taken to prevent any injury, in so far as possible, by the new ecclesiastical arrangement to the rights of the present possessors of any prebends, benefices, or charges which will be abolished in consequence of the provisions thereof.

ART. 28. The Government of Her Catholic Majesty, without prejudice to the establishment at the proper time, after an agreement with the Holy See, and as soon as circumstances will permit, of general seminaries which will give the proper scope to ecclesiastical studies, will on its part issue the proper provisions for the establishment without delay of conciliar seminaries in dioceses where they have not as yet been established, in order that hereafter there may not be within the Spanish dominions any church which will not have at least one seminary sufficient for the instruction of the clergy.

Such youths shall be admitted into these seminaries and educated and instructed in the manner prescribed by the sacred Council of Trent whom the archbishops and bishops may consider it advisable to receive according to the necessity or utility of the dioceses; and in all that pertains to the arrangement of the seminaries, to instruction, and to the administration of their property, the decrees of the said Council of Trent shall also be observed.

If as a result of the new division of dioceses two seminaries should remain in one diocese one in the seat of the present bishopric and the other in the seat of that annexed thereto, both shall be preserved as long as the Government and the prelates by common consent consider them useful.

ART. 29. In order that there may be in the Peninsula a sufficient number of evangelical ministers and friars of whose services the prelates may avail themselves to undertake missions in the towns of their dioceses, assist the curates, attend the sick, and for other works of charity and public utility, the Government of Her Majesty, whose intention it is at the proper time to make improvements in the College of Missions for the colonies, will at once take the proper steps in order that they may be established wherever necessary, after hearing the diocesan prelates, religious houses, and congregations of St. Vincent de Paul, San Felipe Neri, and another order of those approved by the

Holy See, which colleges shall serve at the proper time as places of retirement for the ecclesiastics for spiritual exercises and other pious uses.

ART. 30. In order that there may also be religious houses for women, in which their vocation may be followed by those who are called to a contemplative life and to an active life of attending the sick, teaching young girls, and other works and occupations as pious as they are useful to the people, the institution known as of the Sisters of Charity shall be preserved under the direction of the clergy of St. Vincent de Paul, the Government promoting the same.

The convents for women shall also be retained which unite to the contemplative life the education and instruction of girls or other works of charity.

With regard to the other orders, the ordinary prelates, taking into consideration all the circumstances of their respective dioceses, shall recommend the convents in which the admission and profession of novices would be advisable as well as the works of instruction and charity which it may be convenient to establish in the same.

The profession of no nun shall take place until her support is previously provided for in proper form.

ART. 31. The allowance to the very reverend archbishop of Toledo shall be 160,000 reales annually.

That of those of Sevilla and Valencia, 150,000.

And that of those of Burgos, Tarragona, Valladolid, and Zaragoza, 130,000.

The allowance of the reverend bishops of Barcelona and Madrid shall be 110,000 reales.

That of those of Cartagena, Cadiz, Cordoba, and Malaga, 100,000.

That of those of Almeria, Avila, Badajoz, Canaries, Cuenca, Gerona, Huesca, Jaen, Leon, Lérida, Lugo, Mallorca, Orense, Oviedo, Palencia, Pamplona, Salamanca, Santander, Segovia, Teruel, and Zamora, 90,000 reales.

That of those of Astorga, Calahorra, Ciudad Real, Coria, Guadix, Jaca, Menorca, Mondoñedo, Orihuela, Osmá, Plasencia, Segorbe, Sigüenza, Tarazona, Tortosa, Tuy, Urgel, Vich, and Victoria 80,000 reales.

That of the patriarch of the Indies, if he have not an archbishopric or bishopric of his own, 150,000, there being deducted in a proper case from this amount any other sum which he may receive as an ecclesiastical pension or under any other title from the State.

Prelates who are cardinals shall receive 20,000 reales in addition to their allowance.

The assistant bishops of Ceuta and Teneriffe and the prior of the orders shall receive 40,000 reales per annum.

These allowances shall not suffer any reduction whatsoever, neither by reason of the cost of the bulls which the Government will defray, nor for any other expenses which may occur by reason hereof in Spain.

Furthermore, the archbishops and bishops shall retain their palaces and gardens, orchards or houses which may have been destined in any portion of the dioceses to their use and recreation and shall not have been alienated.

The present legislation relating to expolios (the property left by a prelate at his death) of archbishops and bishops is repealed, and consequently they may without restriction dispose as they may see fit of the property they leave at their death, being succeeded ab intestato by their legitimate heirs who shall enjoy the same right: there shall be excepted from the foregoing in either case the ornaments and pontificals which shall be considered as the property of the mitre and shall pass to his successors thereto.

ART. 32. The first chair of the cathedral church of Toledo shall enjoy an allowance of 24,000 reales; those of the other metropolitan churches, 20,000; those of the suffragan churches, 18,000; and those of the collegiate churches 15,000.

The dignities and canons de officio of the metropolitan churches shall receive 16,000 reales; those of the suffragan churches 14,000; and the canons de officio of the collegiate churches, 8,000.

The other canons shall receive 14,000 reales when attached to a metropolitan church, 12,000 when in a suffragan church, and 6,600 when attached to a collegiate church.

The beneficiaries or assistant chaplains of the metropolitan churches shall receive 8,000 reales, those of the suffragan churches 6,000, and those of the collegiate churches, 3,000.

ART. 33. The allowance of the curates of the town parishes shall be of 3,000 to 10,000 reales; in rural parishes the minimum allowance shall be 2,200 reales.

Coadjutors and curators shall receive from 2,000 to 4,000 reales.

In addition, curates having their own parish, and, in a proper case, the coadjutors shall enjoy the houses destined to their habitation and the gardens or grounds which may not have been alienated and which are known as *iglesarios*, *mansos* (manors), or by any other name.

The said curates and their coadjutors shall also receive the part belonging to them of the surplice fees and other offerings (pie de altar).

ART. 34. In order to defray the cost of worship the metropolitan churches shall receive from 90,000 to 140,000 reales per annum, the suffragan churches from 70,000 to 90,000, and the collegiate churches from 20,000 to 30,000.

For the cost of administration and the extraordinary expenses for inspections, the metropolitan churches shall be allowed from 20,000 to 30,000 reales and the suffragan churches from 16,000 to 20,000.

For the expenses of the parochial worship there shall be allowed to the respective churches an annual sum not less than 1,000 reales, in addition to the eventual emoluments and the fees which may be fixed for certain functions or which are fixed for this purpose in the schedules of fees of the respective dioceses.

ART. 35. The conciliar seminaries shall receive from 90,000 to 120,000 per annum, according to their circumstances and requirements.

The Government of Her Majesty shall provide by the best means possible to the subsistence of the religious houses and congregations referred to in article 29.

With regard to the support of the religious communities, the provisions of article 30 shall be observed.

There shall at once and without delay be returned to the same, and on their behalf to the diocesan prelates within whose jurisdiction the convents are or may have been located before the late vicissitudes, such property belonging to the same now in possession of the Government and which has not been alienated.

But His Holiness, taking into consideration the present condition of this property and other special circumstances, in order that the proceeds therefrom may be applied with more equality to defraying the cost of worship and other general expenses, prescribes that the prelates, in the name of the religious communities owning the same, shall proceed immediately and without delay with the sale of the said property by means of public sales held in the canonical manner, and with the intervention of a person appointed by the Government of Her Majesty. The proceeds from these sales shall be converted into nontransferable bonds at 3 per cent of the debt of state, the capital and interest of which shall be distributed among the convents referred to in proportion to their requirements and circumstances in order to meet the expenses mentioned and for the payment of the pensions of the nuns entitled thereto without prejudice to the Government making up, as it has to the present time, the sum which may be necessary in order to fully pay said pensions until the death of the pensioners.

ART. 36. The allowances fixed in the preceding articles for the cost of worship and the expenses of the clergy shall be understood without prejudice to the increase which may be made therein when circumstances will permit. Nevertheless, when for special reasons in some particular case any allowance made in article 34 should not be sufficient, the Government of Her Majesty will take the proper steps to remedy the matter; it shall in the same manner provide for the repair of the temples and other buildings devoted to worship.

ART. 37. The amount of the income derived by virtue of the vacancy of the episcopal sees, shall be applied in equal parts for the benefit of the conciliar seminary and of the new prelate after deducting the emoluments of the curator who shall be delegated by the chapter when the capitular vicar is elected and the expenses for the repairs necessary to the episcopal palace.

The income derived by reason of the vacancy of dignities, canonships, parishes, and benefices of each diocese, shall in the same manner, after deducting the respective charges, be applied to the establishment of a reserve fund at the disposal of the ordinary in order to meet the extraordinary and unforeseen expenses of churches and of the clergy, as well as the serious and urgent requirements of the dioceses. For the same purpose there shall also be paid into the said fund the amount which corresponds to the twelfth portion of their annual allowance which shall be paid once only during the first year by those newly appointed to prebends, curatorships, and other benefices; hence any other discount which may have been made for any reason, use, disposition, or privilege whatsoever shall cease.

ART. 38. The funds from which the allowances to the clergy and for worship shall be paid are the following:

1. The proceeds from the property returned to the clergy by the law of April 3, 1845.
2. The proceeds from charity of the Holy Crusade.
3. The proceeds from the rents and dignities (maestrazgos) of the four military orders which are or may become vacant.
4. A tax upon city and country property and upon the live stock as high as may be necessary to make up the amount of the allowance, taking into consideration the proceeds mentioned in paragraphs 1, 2, and 3, and other incomes which may hereafter be assigned to this purpose in concurrence with the Holy See.

The clergy shall collect this tax, receiving it in products, kind or money, after an agreement which it may make with the provinces, the towns, the parishes, or with individuals; and in necessary cases will be assisted by the public authorities in the collection of this tax, applying to this end the means established for the collection of other taxes.

There shall also be returned to the Church at once and without delay the ecclesiastical property not included in the said law of 1845, and which has not as yet been sold, including that which remains belonging to male religious communities. But in view of the present circumstances of either property, and the evident utility which must result to the Church, the Holy Father prescribes that the capital thereof be immediately and without delay exchanged for nontransferable bonds of the 3 per cent state debt, the form and rules established in article 35 with regard to the sale of the property of nuns being strictly observed.

All this property shall be appraised at their true value, after deducting any charges for the purposes of the provisions contained in this article.

ART. 39. The Government of Her Majesty, reserving the inherent right of the diocesan prelates, shall issue the provisions necessary in order that the persons among whom the property of chaplaincies and pious foundations may have been distributed, assure the means of fulfilling the charges to which such property may be subject.

Similar provisions shall be issued in order that pious charges upon ecclesiastical property sold subject thereto may be complied with.

The Government shall always and exclusively be responsible for those imposed upon property which may have been sold by the State not subject to such charges.

ART. 40. It is hereby declared that the said property and incomes belong to and are the property of the Church, and that they shall be enjoyed and administered by the clergy on its behalf.

The funds of the Crusade shall be administered in each diocese by the diocesan prelates, being vested for the purpose of the powers of the bull to apply the same as prescribed in the last extension of the said apostolic concession, reserving the obligations they are subject to by virtue of conventions celebrated with the Holy See. The manner and form in which said administration must take place shall be fixed by an agreement between the Holy Father and Her Catholic Majesty.

The diocesan prelates shall in a similar manner administer the funds of the Lenten Indult, applying the same to charitable institutions and acts of charity in the respective dioceses, in accordance with apostolic concessions.

The other apostolic powers relating to this branch and the consequent privileges shall be exercised by the archbishop of Toledo to the extent and in the manner determined by the Holy See.

ART. 41. In addition the Church shall have the right to acquire, by virtue of any legitimate title, and all the property which it now or later may come into possession of, shall be solemnly respected. Consequently, with regard to the old and new foundations of an ecclesiastical character, no suppression or union can be made without the intervention of the authority of the Holy See, reserving the powers vested in the bishops in accordance with the holy council of Trent.

ART. 42. In this connection, in view of the utility of this convention to religion, the Holy Father, at the instance of Her Catholic Majesty and in order to secure public tranquility, decrees and declares that those who shall have acquired ecclesiastical property in the dominions of Spain during the late circumstances, in accordance with the civil provisions in force at the time, and are in possession thereof, and those who have or may succeed to the rights of said purchasers, shall at no time or in any manner whatsoever be molested by His Holiness or the Supreme Pontiffs, his successors; on the contrary, they as well as their successors in right, shall securely and peacefully enjoy the ownership of said property and their emoluments and income.

ART. 43. Everything else belonging to ecclesiastical persons and things, with regard to which no provision is made in the foregoing articles, shall be directed and administered in accordance with the discipline of the Church canonically in force.

ART. 44. The Holy Father and Her Catholic Majesty, the royal prerogatives of the Crown of Spain, to be reserved and intact, in accordance with the conventions previously celebrated between both powers. And, therefore, the said conventions and especially the one celebrated between the Supreme Pontiff Benedict XIV and the Catholic King Ferdinand VI, in the year 1753, are declared confirmed and shall continue in full force in all that is not altered and modified hereby.

ART. 45. By virtue of this concordat, there shall be considered as revoked, in so far as in contravention herewith, all laws, orders, and decrees published up to the present time, in whatsoever manner or form, in the dominions of Spain, and this concordat shall be in force forever hereafter as a law of the State in the said dominions. And, therefore, both contracting parties promise for themselves and their successors a

faithful observance of each and every one of the articles contained in the same. If hereafter any difficulty should occur, the Holy Father and Her Catholic Majesty shall agree to decide the same in an amicable manner.

ART. 46 and last. The exchange of the ratifications of this convention shall take place within two months, or before if possible.

In testimony whereof we, the undersigned plenipotentiaries, have signed this concordat and sealed it with our own seal in Madrid on March 16, 1851. (Signed) Joanes Brunelli, Archiepiscopus Thesalonicensis [Loco sigilii]. (Signed) Manuel Bertran de Lis—[Seal].

Therefore, we do commend, etc.

(Alcubilla, Diccionario de la Administración Española, III, 103-109.)

EXHIBIT B.

LAW OF APRIL 4, 1860.

Isabella II, by the grace of God and the constitution of the Spanish Monarchy, Queen of Spain, to all who may see and understand these presents, know ye: That availing myself of the authority granted my Government by the law of November 4, 1859, to conclude and ratify with the Holy See an agreement, for the main purpose of exchanging ecclesiastical property, of whatsoever class, for nontransferable certificates of the 3 per cent consolidated debt, and to represent by certificates of the same character the remainder of the endowment of the clergy and worship, reserving to the Church the right to acquire property established in the last concordat,

I hereby order the publication and observance as a law of the state of the convention celebrated with the Holy See on August 25 and ratified on November 7 and 24 of last year, the literal context of which is as follows:

In the name of the Most Holy Trinity:

The Supreme Pontiff Pius IX and Her Catholic Majesty Isabella II, Queen of Spain, being desirous to reach an amicable final agreement relating to the endowment of worship and the clergy in the dominions of Her Majesty, in harmony with the formal concordat of March 16, 1851, have respectively appointed as their plenipotentiaries:

His Excellency the Most Reverend Cardinal Santiago Antonelli, secretary of state, by His Holiness.

His Excellency Antonio de los Rios y Rosas, his extraordinary ambassador near the Holy See, by Her Majesty, who, after exchanging their full powers, have agreed upon the following:

ARTICLE 1. The Government of Her Catholic Majesty, considering the lamentable vicissitudes through which ecclesiastical property has passed at different periods, and being desirous to insure to the Church forever the peaceful possession of its property and rights, and to prevent by all means the violation of the formal concordat celebrated on the 16th of March, 1851, promises the Holy See that hereafter no sales, exchange, or any other kind of alienation of said property shall take place without the necessary authorization of the said Holy See.

ART. 2. Being desirous of definitely carrying out in a certain, stable, and independent manner the plan of endowment of the worship and clergy prescribed in the said concordat, the Holy See and the Government of Her Catholic Majesty agree upon the following points:

ART. 3. First, the Government of Her Majesty acknowledges again formally the full and unrestricted right of the Church to acquire, retain, and enjoy the usufruct as owner, without any limitation or reservation whatsoever, all kinds of property and securities, this agreement, therefore, repealing any other provision contrary thereto and particularly the law of May 1, 1855, in so far as in contravention hereto.

The property which by virtue of this right the Church may acquire and possess hereafter shall not be computed in the endowment granted it by the concordat.

ART. 4. By virtue of the same right, the Government of Her Majesty recognizes the Church as the absolute owner of each and every one of the properties returned to it by the concordat. But in consideration of the deteriorated condition of the greater portion of those not as yet alienated, the difficulty of their administration and the various, contradictory, and inexact estimates of their income value, all of which circumstances have up to the present time made the endowment of the Church uncertain and even incongruous, the Government of Her Majesty has suggested to the Holy See an exchange, the bishops being given the power to determine, in accordance with their parishes, the price of their respective dioceses, the former offering

in exchange for all of them and in consideration of their cession to the State as many certificates of the 3 per cent consolidated debt of Spain as may be necessary to cover the total value of said property.

ART. 5. The Holy See being desirous that a specific, certain, and independent endowment be secured for the worship and clergy, after having heard the opinion of the bishops of Spain and recognizing in the present case in view of all the circumstances the greater utility of the Church, sees no objection to said exchange being made in the following manner:

ART. 6. All the property mentioned in articles 31 and 33 of the concordat of 1851 shall be exempted from the exchange and shall remain the property of the Church, viz, the orchards, gardens, palaces, and other buildings which may be destined to the use and enjoyment of the bishops. There shall also be reserved to it the houses used as the residences of the rectors, together with their gardens and enclosures, known by the name of *iglesarios*, *mansos*, and others. The Church shall furthermore retain as owner the buildings of the conciliar seminaries with the annexed grounds, and the libraries and correctional establishments or ecclesiastical prisons, and in general all buildings which at the present time are used for worship, and those destined to the use and habitation of the regular clergy of both sexes, as well as those which may hereafter be devoted to such purposes.

None of the properties mentioned in this article shall be reckoned in the endowment prescribed for worship and the clergy in the concordat.

Finally, as the utility of the Church is the motive which induces the Holy See to permit the said exchange of securities, if the bishop should for special reasons believe that an estate situated in any diocese should be retained by the Church, said estate may be excepted from the exchange, the amount of the income derived therefrom being reckoned in the endowment of the Church.

ART. 7. After the bishops have made an estimate of the properties subject to the exchange, there shall immediately be delivered to them nontransferable bonds or certificates for the full value of said property as well as for the market value of that sold after the concordat. After the delivery has taken place, the bishops, properly authorized by the Apostolic See, shall make a formal cession to the State of all the property which in accordance with this convention may be subject to the exchange.

The certificates shall be reckoned as an integral part of the endowment of the clergy, and the respective diocesans shall apply the interest thereon to cover the same in the manner prescribed in the concordat.

ART. 8. In view of the peremptory character of the requirements of the clergy, the Government of Her Majesty binds itself to pay the proper consolidated income to each diocese monthly.

ART. 9. In case that by virtue of a provision of the temporal authority there should be any reduction or diminution in the 3 per cent interest derived from the public debt of the State, the Government of Her Majesty binds itself to turn over to the Church as many nontransferable certificates of the revenue substituted for the 3 per cent debt as may be necessary to fully cover the annual sum which is to be issued in favor of the Church; so that this revenue shall at no time and for no reason ever be reduced.

ART. 10. Property belonging to *capellanías colativas* (the capital and interest of a foundation that requires its possessor to be a clergyman) and other similar pious foundations, which by reason of their peculiar character and object and the different rights which they embrace can not be included in the exchange and cession the subject-matter hereof, shall be the subject of a special convention between the Holy See and Her Catholic Majesty.

ART. 11. The Government of Her Majesty in confirming the stipulations of article 39 of the concordat binds itself again to pay the State in the manner which may be agreed upon by common consent by reason of the charges imposed, whether on the property sold as free by the State or on that now ceded to it, a fixed sum which may bear the closest proportion possible to the said charges. It also binds itself, in specific terms, to fulfill on its part the obligations which the State contracted in paragraphs 1 and 2 of the said article.

A mixed commission shall be created of a consulting character for the purpose of examining within one year the charges which incumber the property mentioned in paragraph 1 of this article, and to recommend the specific sum which the State is to pay by reason thereof.

ART. 12. The bishops, in accordance with the provisions contained in article 35 of the concordat, shall distribute among the convents of nuns which exist in their respective dioceses the nontransferable certificates corresponding to the property now owned by them and ceded to the State or to the property of the same character which may have been sold by virtue of said concordat, or the law of May 1, 1855. The income derived from these certificates shall be reckoned as a part of the endowment of said convents.

ART. 13. The provisions of the concordat with regard to the advance which the State is to make for the payment of the pensions of the members of religious orders of both sexes, as well as all that is prescribed by articles 35 and 36 of the same with regard to the maintenance of religious congregations and buildings which may be established in the Peninsula and with regard to the repair of the temples and other buildings devoted to worship. The State binds itself, furthermore, to construct at its own expense the churches which may be considered necessary, to grant pensions to the few living lay friars of suppressed convents, and to provide for the endowment of the regular nuns, chaplains, sacristans, and worship of the churches of nuns in every diocesis.

ART. 14. The revenue from the Holy Crusade (?), which forms a portion of the present endowment, shall hereafter be devoted exclusively to the expenses of worship, reserving the obligations placed thereon by agreements celebrated with the Holy See.

The State will continue to make up as up to the present time the amount which may be lacking to cover the allowance made for worship by article 34 of the concordat.

ART. 15. The annual tax which was established by the fourth paragraph of article 38 of the concordat to make up the allowance of the Church is declared its property, and it shall be collected and distributed in accordance with the terms thereof. Nevertheless, the Government of Her Majesty binds itself to grant any request which for local reasons or for any other cause the bishops may advance for the conversion of the tax quotas corresponding to the respective dioceses into nontransferable bonds of the consolidated debt referred to under the conditions and in the manner stated in articles 7, 8, and 9 of this convention.

ART. 16. In order to ascertain exactly what the amount of the said tax should be, each bishop, in concurrence with his chapter, shall, as soon as possible, make a definite budget of the allowance for his diocese, observing the prescriptions of the concordat in its preparation. And in order to specifically determine in each case the allowances with regard to which a maximum or a minimum has been established in the former, the bishops may, in concurrence with the Government, select an average, when this is rendered necessary by the requirements of the churches and all other attendant circumstances.

ART. 17. Steps shall immediately be taken to make out the new parish districts in accordance with the discussion and agreement of both powers.

ART. 18. The Government of Her Majesty, in accordance with the provisions of article 36 of the concordat, will consider reasonable propositions which may be made for the increase of allowances by the bishops in the cases provided for in said article, and especially those relating to seminaries.

ART. 19. The Government of Her Majesty, granting the wishes of the Holy See, and being desirous of giving a new proof of its desire to encourage not only the material but also the spiritual interests of the Church, declares that it will not place any obstacle in the way of the celebration of diocesan synods, when the respective prelates see fit to call them.

It also declares that with regard to provincial synods and various other difficult and important points, it proposes to come to an agreement with the Holy See, having in view the welfare and splendor of the Church.

Finally, it declares that it cooperates with the greatest zeal on its part in order to carry out without delay the provisions of the concordat which have not as yet been executed.

ART. 20. In view of the advantages which will accrue to the Church by virtue of this new convention, the Holy See, by virtue of the repeated requests of Her Catholic Majesty, agrees to extend and does extend the benign guaranty contained in article 42 of the concordat to the ecclesiastical property alienated in consequence of the aforesaid law of May 1, 1855.

ART. 21. This convention, which is additional to the formal concordat in force of March 16, 1851, shall be observed in Spain forever as a law of the State, in the same manner as said concordat.

ART. 22. The exchange of the ratifications of this convention shall take place within the period of three months, or sooner, if possible.

In testimony whereof the undersigned plenipotentiaries have signed and sealed this convention with their respective seals. Issued at Rome in duplicate on August 25, 1859. (Signed) Santiago, Cardinal Antonelli [Seal]. (Signed) Antonio de los Rios y Rosas [Seal].

Therefore, we order all tribunals, justices, commanders, governors, and other authorities, civil as well as military and ecclesiastical, of whatsoever class and rank, to observe and enforce the observance of this law in all its parts. Given at the Palace on April 4, 1860. I, the Queen. Santiago Fernandez Negrete, Minister of Grace and Justice. (Colección Legislativa, vol. 83, p. 267.)

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