SUPPLEMENT
A CASE PREVIOUSLY ADJUDGED
IN THE
SUPREME COURT OF THE REPUBLIC OF LIBERIA

SAMUEL HOLDER, JAMES A. HOLDER, RICHARD N. HOLDER, SARAH HOLDER, RICHARD I. HOLDER, et al., Appellants, *v.* JOSEPH F. DUNBAR, Priest-in-Charge, J. E. MURRY, Senior Warden, SAMUEL H. HARDY, Junior Warden, ALBERT PORTE, Recording Secretary, SARAH E. DUNBAR and LOUISE H. PORTE, Vestrywomen, All Being Officers of Christ Church, Crozierville, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 11, 12, 1947. Decided December 11, 1947.

1. A corporation not formally organized or chartered *de jure* may be deemed to exist *de facto.*
2. The existence of a *de facto* corporation can be questioned only by the state in a direct proceeding and cannot be collaterally attacked.
3. When the Government has granted land to officers of an unincorporated church, the grant will be deemed to have been made to the church as a *de facto* corporation.
4. A *de facto* corporation may acquire and hold title to real property.
5. A license given by a church for burial of members of another church in its cemetery is revocable absent a binding agreement to the contrary.
6. The amount of indemnification of an injunction bond is discretionary with the court.

On appeal from a decree granting an injunction on application by officers of a church against members of an-

other church, forbidding the latter from continuing to enter petitioners' cemetery for purposes of burial of dead after revocation of permission to do so, the injunction *decree* was *affirmed*.

Benjamin G. Freeman and *O. Natty B. Davis* for appellants. *T. Gyibli Collins* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The present appellees, as plaintiffs in the court below, instituted an action of injunction against the present appellants, as defendants below, on the 26th day of November, 1946. The said defendants, having appeared, filed their answer on the 21st day of December and the pleadings progressed to the surrejoinder of the plaintiffs.

The case came up for hearing before His Honor Judge Edward J. Summerville, then presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, at its March 1947 term. The injunction was perpetuated in a decree entered on the 8th day of April following. To this decree, the defendants excepted and prayed an appeal to this Court.

The bill of exceptions presents for our consideration one count which reads as follows:

> "Defendants, after arguing the law pleadings and making certain citations, submitted. His Honor the trial judge reserved his ruling on the said law pleadings (see records of court). The ruling on the said law pleadings was made on the 8th day of April, 1947, when the injunction was perpetuated. Defendants took exceptions to the ruling referred to and prayed an appeal to the Supreme Court of the Republic of Liberia, sitting in its October term, 1947."

Because of the condensation of the bill of exceptions to one count only, we consider ourselves, in the decision of

this appeal, restricted to the points presented in the appellants' brief. But before entering upon the consideration of the issues presented in that brief, we shall recapitulate a succinct history of the facts in the case as shown by the pleadings certified to us. In the year 1866, His Excellency Daniel B. Warner, then President of the Republic of Liberia, deeded to certain persons as wardens and vestry of Christ Church, Crozierville, a parcel of land situated on the Caryesburg road and containing 25 acres and also bearing the number 25, "to have and to hold the above granted premises with all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said wardens and vestrymen of said church and their successors in office." At the time of this grant from the Government, the said church was not an incorporated body according to the law of this country; but in the year 1903, the Legislature incorporated it, giving it the right to the acquisition, holding, and possession of property. From the time of the grant of this property in the year 1866, the said church has held and enjoyed undisturbed, undisputed, unquestioned, and quiet possession of same.

It appears that in the year 1927, the vestry of said church passed resolutions wherein it is shown that a portion of this 25-acre grant was designated as a burial ground for the members of said church; but it having been forcefully brought to the attention of said vestry that the designated church cemetery was "being regarded and used as a public graveyard in so much so that some of the plots in it assigned to families of the church were already filled and others nearly so," they resolved further that immediately after the passage of these resolutions it should be expressly understood that "none but members of the Protestant Episcopal Church, communicant and baptized, are to be interred in the cemetery thus designated."

It further appears from the pleadings that no allotment of a portion of this designated cemetery of said church has

been given or made to any family or families who are not members of Christ Church except to Reverend Joseph R. Clarke of the Methodist Church who, upon his proper application made therefor, was granted the permission to bury his dead within the designated area. In face of the above facts which are well known to the defendants, the plaintiffs, having objected and refused to the defendants and their privies the privilege of continuing to bury their dead on said land, the defendants have defiantly and in utter disregard of the rights and protests of plaintiffs continued to bury their dead on said premises.

On the basis of the foregoing alleged facts which the plaintiffs regarded as sufficient equitable reasons, they applied to the courts for a writ of injunction against the defendants, their agents and privies, to enjoin and restrain them from entering upon the said premises for the purpose of burying their dead or in any manner interfering with the quiet and peaceful possession of the plaintiffs.

Out of fairness it must be noted that the above facts have been gathered from the complaint of the plaintiffs, to which the defendants filed an answer containing ten counts; but all these counts appear to raise issues of law and not of fact against the right of the plaintiffs to maintain the action. Since, as we have already said, we consider ourselves restricted to the review of these points only as presented in the appellants' brief, we do not propose to open up their answer in its entirety. And so we pass on to said brief, Count 1 of which reads as follows:

> "Appellants submit that the mode in which actions of injunction are commenced is specifically set forth by our statutes, and that appellees, plaintiffs in the court below, did not follow this mode because, in their complaint, instead of praying for a writ of injunction in the manner prescribed by statute, they prayed for the issuance of a writ of summons."

Counsel's attention having been called to the fact that the issue contained in this count of the brief did not appear

to have been raised in the answer for the court below to have passed upon, yielded the point and waived said count. However, upon inspection of the complaint, it is discovered that it prayed both for a writ of injunction and a writ of summons.

Count 2 reads as follows:

> "Appellants submit that the deed upon which appellees claim title to said property is not a deed that would give them such title because said deed was executed long before appellees or the institution which they set themselves up as representing was made a corporate body. It is a fundamental principal of law that only corporate bodies, whether religious or otherwise, can own real estate; and until such a body has, by legislative enactment, been constituted as a corporate body or organization, it cannot own real estate, nor can it sue or be sued. It follows then that since the deed in question was executed at the time and prior to said body being a corporate body, the title sought to be vested by the said deed could not and cannot legally vest in appellees, because at such time they did not constitute a corporate entity."

The contention set forth in this count is not that the title given Christ Church is questionable or that the present vestry are not what they profess themselves to be, that is, of the same church to which the grant was made in 1866 and natural successors, but rather that, the grant having been made at the time when Christ Church was not incorporated, the right of succession cannot legally inure to this present vestry who are functioning under an act of incorporation instituted after the grant of the land in question in 1866. In support of this contention, counsel cited the following authority, which we quote:

> "The doctrine in relation to *de facto* corporations does not prevent a collateral attack on the right of a corporation to exercise a franchise separate and distinct from the franchise of being a corporation; nor

does it prevent an attack upon the power of a corporation, assuming its corporate existence to exercise a particular power, such as the power to take and hold real estate, or upon the validity of a contract entered into by it." 14 C.J. 211–212 *Corporations* § 218.

It does not appear to us that this citation of law has any relevant and pointed bearing upon the issue involved in Count 2 of appellants' brief. However, for the purpose of what we are counterposing, we deem it necessary to state that, generally, corporations are classed into two divisions: corporations *de facto* and corporations *de jure;* and the distinction made between them is as follows:

"A corporation may exist in fact without being legally constituted. Such a corporation is called a corporation de facto, as distinguished from a corporation de jure. A corporation de jure is a corporation which is in all respects legal; a body which has a right to corporate existence, and to exercise corporate powers, of which it cannot be deprived, even by the state in a direct proceeding, contrary to the terms of its charter. A de facto corporation, on the other hand, is an association which actually exists for all practical purposes as a corporate body, but which, because of failure to comply with some provision of the law, has no legal right to corporate existence as against a direct attack by the state. It may be ousted in a direct proceeding brought by the state for that purpose, but with a few exceptions which will be explained later it has a corporate existence even as against the state on a collateral attack, and as against individuals and other corporations, whether they attack its right to corporate existence collaterally or directly." 14 C.J. 204 *Corporations* § 215.

Further, we have:

"The general rule, supported by an almost unanimous consensus of judicial opinion, and sometimes expressly declared by statute, is that the legality of the

existence of a de facto corporation can be questioned only by the state in a direct proceeding, and cannot be collaterally attacked or litigated in actions or proceedings between private individuals or other corporations or between them and the alleged corporation itself.

"The doctrine in relation to de facto corporations is based upon the principle that the state, which alone has the power to incorporate, may waive irregularities in the organization of corporations, and so long as the state remains inactive in the premises others must acquiesce." 14 C.J. 204–207 *Corporations* § 216.

It follows therefore that in 1886, Christ Church, Crozierville, was a *de facto* corporation to which the State, which could only directly raise the issue of its legal character, granted property through her wardens and vestry with the right "to have and to hold the above granted premises with all and singular the buildings, improvements and appurtenaces thereof and thereto belonging to the said wardens and vestrymen of said Church and their successors in Office." If the said Christ Church, Crozierville, was at the time of the grant an unincorporated religious society or church, the state must have recognized its existence as a *de facto* corporation in making this grant and thereby it waived any and all possible irregularities in its organization; and, as long as said state remains inactive in the premises, others must acquiesce.

It is a legal conclusion that *de facto* corporations are capable of acquiring, holding, and possessing property both real and personal.

"Since the legality of the existence of a de facto corporation cannot be questioned except in a direct proceeding by the state, a de facto corporation is a reality and has a substantial legal existence, and the general rule is that such a corporation can make contracts, purchase, hold, and convey property, incur liabilities ex contractu and ex delicto, and sue and be sued, to the same extent and in the same manner as if it were a cor-

poration de jure." 15 C.J. 208 *Corporations* § 217.

Coming to count 3 of the appellants' brief, we have the following:

> "Appellants submit further that the deed upon which appellees claim title to said land is both voidable and void because said deed is contradictory, that is to say, in the premises of said deed the property was granted to certain persons named as wardens and vestrymen of Christ Church, Crozierville, which was not at the time a corporate body so as to give succeeding wardens and vestrymen of Christ Church a right to said title. Hence, if at all the grantees in said deed had any title, it was a life estate or an estate for as long as they were wardens and vestrymen of said Christ Church, Crozierville. But in the habendum of said deed, the grantees are not only shown to have been given title, but title with remainder to their successors, which conditions could not have legally obtained in face of the circumstances surrounding the execution of said deed, and which circumstances, the premises of said deed confirm and harmonize with."

It is again difficult to understand what the appellants seek to contend, in this count of their brief, which would harmonize with their answer and rejoinder on record. For this reason, after pointed questions to their counsel whilst arguing before this Court, the said count was not stressed. However, we desire to point out that since the existence of Christ Church, Crozierville, at the time of the granting of the deed in 1866, as a *de facto* corporation has been shown, this would warrant property grants to it. And it could hold such property through its wardens and vestrymen, with remainder of succession in them. The later incorporation by an act of the Legislature of the said *de facto* corporation indicates the lack of successors and a want of existence, or that, under the circumstances, a grant of land made by the government previous to the incorporation must subsequently and consequently revert to the Republic.

Further, under the law cited *supra* this Court cannot favorably pass upon attacks made collaterally upon the legal existence of Christ Church, Crozierville, in these proceedings.

Count 4 reads as follows:

> "And also because appellants further submit that the ruling which discarded Counts 6, 7, 8, and 9 is erroneous because as appellants contended in said count: (1) the deed was executed contrary to the principle of law controlling the execution of deeds; (2) appellees, plaintiffs below, were guilty of laches when they sat down for 50 years or more without objections; and (3) the bond executed by the appellees in the court below was insufficient to indemnify appellants, defendants below, since the sum of $200 named therein was far too small."

Following the method of appellants' counsel who argued this case in disposing of such issues in reverse order, we say that the question of the bond given by the appellees, plaintiffs below, in point of indemnification is so unfounded and the principle involved so elementary, that even the trial judge declined passing upon it. In injunction proceedings, there is no set scale whereby the amount of an injunction bond to be given by a plaintiff is to be computed but, rather, the requiring and giving of said bond, together with the amount to be inserted as indemnification is left discretionary with the judge.

It is therefore our opinion that if defendants considered the amount of $200 as named in the said bond insufficient to indemnify, they should have moved the court for justification of bail instead of moving the dismissal of the action because of this claimed defect or insufficiency.

It does not appear to us that plaintiffs, now appellees, have been guilty of any laches in the manner asserted in defendants' answer and rejoinder. Plaintiffs took the position that defendants had buried their dead on the said tract of land with plaintiffs' consent, but that for reasons shown in their resolutions passed in the year 1927 and

pleaded in their complaint, they subsequently decided to withhold the continuation of this permission and so informed the defendants. It cannot be said that a person who has the right to grant a privilege or to give a permission has not the same right to withdraw said grant of privilege or permission except where precluded by some contract or mutual understanding.

The contention that the deed in question was issued and executed contrary to the principles of law controlling the issuance of deeds savors of a collateral attack upon the validity of said deed, which is not permissible under the law and circumstances shown already in this opinion.

The fact that appellants did treat with the church in seeking to get permission to bury their dead on this tract of land which was deeded to said church by the Government, as was pleaded but not controverted or denied, is sufficient to estop against said appellants from now questioning or attacking the legal character of Christ Church at the time the grant was made to it through its wardens and vestrymen.

Under the circumstances, we feel ourselves with no alternative but to affirm the decree of the lower court perpetuating the injunction with costs against appellants. And it is hereby so ordered.

Judgment affirmed.

OPENING ADDRESS OF CHIEF JUSTICE A. DASH WILSON, SR., AT THE MARCH TERM, 1965

BRETHREN OF THE BENCH AND
GENTLEMEN OF THE BAR:

Just about two months ago, in a spectacular, history-making event, the first Temple of Justice in the Nation was dedicated. This was followed by fraternal feasting among jurists and lawyers, honored by the presence of President Tubman, who is also a lawyer and jurist, and by what appeared, most encouragingly, to be an awakening of a renewed life in the National Bar Association. We desire to record here our appreciation and thanks for the noticeable cooperation given to the President of the National Bar Association, particularly by Counsellor C. L. Simpson, Sr.

The dedication ceremonies were marked by very important and illuminating addresses. Highlighting them all was that made by President Tubman, in his formal acceptance of this magnificent building from the Secretary of Public Works and Utilities and in turning same over to us.

These addresses were replete with commitments and promises, especially the address by us in which we pledged to use our best endeavors to make this building worthy of the name it bears.

Perhaps the congestion under which we were formerly compelled to work, the unsuitable and inadequate office space and facilities, the lack of privacy even for conferences on major judicial matters, and the alarming shortage of qualified personnel contributed in some degree to the very slow progress in the implementation of the many plans we have continuously recommended and suggested

over the seven years since our elevation to the position we now hold. Setbacks have not deterred us, but rather have inspired us to a new determination and a greater sense of responsibility; and the enviable comfort we now enjoy in our new official home has actually more than compensated for the sacrifices and discomforts.

Although we decided that the adjournment ceremonies of the October 1964 term of this Court should be suspended until after the dedication ceremonies took place, we meet today for the first time since occupying this building, to formally open a term of the Supreme Court and review *en banc* cases on appeal.

The admonitions, warnings, and appeals for cooperation, with corresponding responses recorded at our dedication ceremonies are so fresh in our minds that there is no need for repetition in a lengthy opening address at this time. I can only express the hope that we will subordinate our personal desires, likes and dislikes, and cooperate in an unrelenting endeavor to make easy, cheap, and expeditious the avenue of social justice to all.

This cannot be accomplished if our deliberations and decisions are swayed by interest either for or against a party.

Syntax and prosody go to the classical amplification of the issues involved in a case; but the law and facts in the case go more substantially to a fair and impartial admeasuring of justice. This, I hope, will be our future guide and the banner under which we must operate in disposing of issues brought before us on appeal from our subordinate courts.

Since our last adjournment, a situation has developed in our circuit courts which has brought under our consideration several complaints and requests for intervention. I refer to the Tenth Judicial Circuit, where jurors who served during the November 1964 term were again summoned into service at the February 1965 term (notwithstanding the statute which prohibits a citizen from

serving as a juror more than once in a year) because presentments made by the grand jury at the November term of court could not be finalized by return of the indictments drawn on these presentments. Since the presentments had not been timely returned to the county attorney after clearance by the Department of Justice at Monrovia before the adjournment of the November term, it was felt that only the grand jury which had made the presentments was authorized to present the indictments to court.

In this confused state of affairs, the assigned judge at the February term (though the resident judge of the circuit) disclaimed responsibility and charged the blame to the judge who presided at the November 1964 term of court. Such accusations and counteraccusations did not serve to clear up the prevailing confusion. A very interesting and embarrassing situation could develop if a presentment was venued before the judge who presided over the November 1964 term of court and the indictment which was drawn on said presentment, but presented at the following term of court, was venued, or could not but be venued, before a different judge presiding over the February 1965 term.

I prefer not to make any further comment on this, since it is obvious that such a situation cannot but invite confusion and embarrassment to the circuit courts.

Unless it is true, though denied by the judge who presided over the November term of court, that the judge, before retiring from his assignment, gave instructions that the same grand jurors must again be summoned to attend upon the February term of court, the clerk of court cannot escape responsibility for this situation since, because of many irregularities complained of to me against clerks of courts in summoning persons to attend upon court, they have been ordered and instructed to forward the proposed venire to our administrative office at least a month in advance of service so that, with the aid of records made in this office of previous venires, we can determine whether

or not any of the persons so listed are elibible to serve at that term of court. Some of the clerks have avoided complying with these instructions, obviously for the purpose of perpetuating some of the irregularities from which they materially benefit. I give this as a final warning; and I promise disciplinary measures against any clerk of court who neglects promptly and regularly to carry out the instructions previously given concerning the drawing of venires for attendance upon as jurors.

Statistics furnished us by the clerk of the Supreme Court show that most of the cases determined at the last term of this Court have gone without returns on the calendar indicating whether or not the mandates of this Court have been carried out by judges of subordinate courts. This is an act of disobedience and therefore contemptuous. Circuit judges who have not made returns to mandates sent down to them since the adjournment of our last term of Court must have such returns in the clerk's office before the end of the current month. Failure to do so will subject the delinquent judge to a penalty.

Because of the creation of four additional counties and magisterial areas within those new counties and in some of the old counties, the volume of work in the service of judiciary has considerably expanded. According to a very comprehensive report by our statistician, James G. Mooney, the following situation exists.

There are four additional circuit courts added to the six that were already in existence, thereby bringing the number to ten, plus one tax court, operating in Monrovia.

For the information of the public, it is only in the County of Montserrado that civil and criminal jurisdiction are exercised by separate circuit courts; the circuit courts of all the other counties exercise both civil and criminal jurisdiction.

The magisterial courts have now increased to 20 in number—an increase of four over the previous year—although we understand that there are other magistrates function-

ing in areas about which we have not officially been informed.

The report of the statistician also discloses that clerks of courts in the four new counties have neglected sending in reports as the rule requires and that this also applies to returns from some of the circuit judges in these counties.

Our attention has also been drawn to failure on the part of revenue justices to submit reports. It will become necessary, if this delinquency continues, to hold up the salary checks of these officials until their reports are received.

To give a correct picture of the trend in the disposition of cases docketed in our courts from September to December, 1964, we note the following:

Criminal courts: cases docketed 829; decided 43; still pending 786; fines $252.

Civil cases docketed: 2,183; decided 92; pending 2,091; fines and taxes, $385.55.

Magisterial courts: cases docketed 499; decided 308; pending 191; fines $1,893.50.

Probate courts: cases docketed 993; decided 860; pending 133; fines and taxes $24.

Traffic courts: cases docketed 328; decided 273; pending 55; fines $4,119.50.

Revenue tax court: cases docketed 839; decided 56; pending 781; fines and taxes $10,305.12.

At the commencement of the October 1964 term of this Court, there were 46 cases on our docket; 24 of them were disposed of; 15 with opinions and judgments; nine judgments without opinions; leaving still 22 cases which, when added to the cases that have since reached the Supreme Court, total 34 on the trial docket and four on the motion calendar. The returns calendar lists 51 cases, most of them without returns from the subordinate judges; hence the warning already struck in this opening address.

Following the resignation of Associate Justice James A. A. Pierre, it pleased the President of Liberia to prefer

and commission Counsellor Clarence L. Simpson, Jr. to fill this vacancy. In a very impressive and formal ceremony, this very brilliant accession to the bench was gowned, was capped, and seated on the bench of the Supreme Court on March 9, 1964. This was in the old building on Broad Street from which we moved into this Temple of Justice.

For the short period we have had the pleasure of associating with Mr. Justice Simpson, he has demonstrated qualities of studiousness, intelligence, and humbleness of character; a willingness to cooperate which has indeed contributed considerably in bringing about continued brotherhood and friendly accord on this bench. I wish, for the members of the bench, and for myself in particular, to record our special appreciation for this attitude of our colleague and entertain the hope that our association and brotherhood will become more closely cemented and continue in an atmosphere that admits of no ill-will toward each other, but that we will cooperate continuously in the furtherance of justice and thereby conserve the interest of the general public.

Before closing this address, I wish to make special mention of the extraordinary service performed in the fulfilment of his assignment by Mr. Justice Lawrence E. Mitchell who, in less than 5 weeks since his assignment as Chambers Justice, has reduced the Chambers docket by about 28 cases, the highest number of cases disposed of in such a short period of time by any Chambers Justice since my connection with this bench. Mr. Justice Mitchell is deserving of congratulations for the extraordinary time and labor put into this assignment whilst at the same time sacrificing the companionship of his relatives at home in the discharge of the duties that his loyalty to this administration, the judiciary service, and the general public demanded of him.

The belated passage of the 1965 budget has delayed ascertainment of the exact amount that will be available for

the judiciary service for the current year. The staffing of this new building and the readjustment and reallocation of our staff remains yet to be completed; but we hope to be able to do so very soon and in a manner that will secure greater efficiency.

I call upon members of the bar to cooperate and promptly discharge their duties towards their clients and the Court so that this session will be characterized with speed, fairness, and impartiality.

God save the State and prosper justice and fairness toward and amongst all men!

I now declare the March 1965 term of the Supreme Court duly opened for the transaction of business.