

WATER RIGHTS IN THE PHILIPPINES

BY CARLOS TAN, LL. B., 1915

Given honorable mention for the best thesis presented for graduation from the College of Law.

PART TWO

NOTES ON THE LAW OF WATERS OF AUGUST 3, 1866

Art. 1. In force.—The word "Spanish" in paragraph 1 should be changed to "Philippine."

Paragraph 3. Shores.—Shores are not public property within the meaning of the Philippine Bill. The State is trustee of the same. Shores are not subject of appropriation and concession thereof cannot be granted by the Philippine Legislature under Act No. 426. They are subject to the power of Congress in its power over the foreign commerce. But "manglares," though tidal lands, can be appropriated if not used for public purposes or navigation; such lands are included in the term "public agricultural lands" of par. 6, sec. 54 of Act 926.—Montano *vs.* Insular Government, 12 Phil. 572.

Accretion.—Lands added to the shore by the action of the sea is property of the State. Ker *vs.* Cauden, 6 Phil. 732.

Arts. 3-5. In force.

Art. 6. Modified.

The Insular Collector of Customs is empowered to detail the presidents of municipalities, or other persons, as inspectors of customs. They may take possession of goods cast by the waves upon the coast and perform the functions required by Art. 6 and dispose of said articles in pursuance of the orders of the court, acting under its admiralty and maritime jurisdiction.

Art. 7-11. In force.

Art. 12. Modified.

Art. 13. There is no law limiting the right to load or unload ships in port to ship's crew of *registered seamen*: it is free to everybody.

Art. 14. The words "Exclusively to Spanish registered seamen and merchant sailors" must be stricken out. Act 82, section 43 (c), as amended, gives to municipalities the right to grant the privilege of fisheries within the three mile limit and in all streams, lakes and tidal streams included within the municipality, such privilege to be sold at public auction according to Act 1634. (See also 4 Opinions Attorney-General 168.) Municipalities have the power to regulate the use of the shores by

virtue of the right granted under this section (3 Op. Atty.-Gen. 262). (See also Op. Atty.-Gen. of Sept. 30, 1902, unpub.) A licensee of the privilege must seek remedy in the courts for a trespass on his privilege. (See Op. Atty.-Gen. of Sept. 24, 1907, unpub.)

Art. 15. In force.

Art. 16. In force.—But there are no special laws or regulations regarding the extraction of salt by the Treasury Department.

Art. 17. In force.

A municipal council may pass such ordinances and rules regulating and limiting the use of the shores as were granted by Articles 14 and 17 of the Law of Waters. 3 Op. Atty.-Gen. 262.

Arts. 18-19. In force.—As to who shall grant "proper permission" under Art. 18, at present it is the municipal council; and with regard to permission granted by governors and alcaldes in Art. 19, the municipal council is substituted for these officers by Sec. 39 (j) of Act 82, which provides that municipal councils shall have the power to "regulate the construction, care and use of wharves and piers in the municipality."

Provincial governors can not perform the administrative functions conferred by Spanish laws unless they have been authorized to that effect by the American laws. Consequently, the present provincial governors can not exercise the power conferred by the Law of Waters upon the old governors of provinces. 2 Op. Atty.-Gen. 405; 1 Op. Atty.-Gen. 282.

A municipality has jurisdiction over the three-mile limit for certain purposes; under its right to grant the privilege of fishing within that limit it has the power to grant permission to erect fish-traps. If it has the power so to do, I don't see why it should not also have the power to grant permission to erect huts or sheds on the shore for bathing purposes.

Art. 20. In force.—Strike out "Governor of the province, after consultation with the Naval Commanding Officer and the Chief Engineer," and substitute municipal council in place of the governor. (See notes on Arts. 18-19.)

Art. 21. In force.

Art. 22. In force.—The department to grant the permission is now the municipal council. Under the Municipal Code (Act 82) the municipal council may grant licenses for the building of houses or other structures within the limits of the municipality, and the municipality is likewise given jurisdiction over the shore. Sec. 39 (j) of said Act gives the municipal council the power to regulate the construction of wharves and piers.

The right of a riparian proprietor whose land is bounded by a navigable river to make a pier or wharf for his own use or for the use of the public, subject to such regulations as the Government may impose for revenue or police purposes, and provided that the structure does not

impede navigation, is an incident of the right of ownership." (See Op. Atty.-Gen., May 1, 1906, unp.) Private piers are subject to the payment of taxes (Op. Atty.-Gen., May 22, 1902).

Art. 23. In force.—See *Montano vs. Insular Government*, 12 Phil. 585.

Art. 24. Partly in force.—"Governor of province" must be substituted by "municipal council." That part of the article beginning with "During the months, etc." must be stricken out. (See notes on Arts. 18 and 19.)

Art. 25. Repealed.—It relates to procedure wholly inapplicable at present.

Art. 26. Partly in force.—Strike out "after consulting the Naval Officer * * * and the Advisory Board of Public Works in the Cabinet."

Par. 2. Substitute municipal council in the place of governor of province and strike out "Who shall issue, etc." Matters strictly municipal in character such as drainage of lands in the municipality are within the jurisdiction of the municipal council.

Art. 27. In force.—No "Concejo de Estado," however, exists in the Philippine Islands.

Art. 28. In force.

Art. 29. In force.—Substitute "municipal council" in place of "governor," and strike out "after consultation, etc."

Art. 30. In force.—Surface or rain waters which fall or collect upon an estate belong to the owner while flowing over said estate, and also after leaving its boundaries so long as no other person has acquired a right over them by prescription. For this reason, the owner of the estate may construct cisterns within the same for the purpose of retaining them.

Art. 31. In force.—This provision (as embodied in Art. 2 of the Law of Waters of 1879) is copied almost literally in Paragraph 5, Art. 407, Civil Code. This article has some relation with the preceding one: if the owner of the estate lets the rainwaters flow out of it and those waters run through sand-beds, forming a part of the public domain, such waters belong to the public for all its uses. As soon as rainwaters or waters springing continuously from private estates, flow out of such estates they belong to the public, notwithstanding any right of contingent use by an intermediate private owner. (3 Manresa 563.) See Art. 407 (5), Civil Code.

Art. 32. Paragraph 1, modified.—Strike out "after reporting to the governor." There is no provision to that effect in Act 82.

Paragraph 2. Repealed.—The procedure established is not applicable to present conditions.

Art. 33. In force.—This article (as embodied in Art. 4, Law of Waters of 1879) was copied literally in Art. 407, Civil Code. When a bank of the river crosses an estate of private ownership, it does not become private property, inasmuch as it remains a part of the river. (Sentence of the Contentious-Administrative Tribunal

of Nov. 22, 1888, cited in Danvila's "Aguas.") And when the waters of a river are artificially diverted from their natural course and they enter into land of private ownership, the bed and margin of the same remain of private ownership (Sentence, Sup. Court of Spain of May 27, 1896.) (See Art. 339, Civil Code; see also Op. Atty.-Gen. of June 28, 1906, unpub.)

Art. 34. In force.

This article and succeeding ones, to the end of the chapter, regulate the "contingent use" of waters (which is peculiar only to this kind of property on account of its special nature). We must first take as established that Paragraph 1 of this article determines the ownership of such waters. (See Arts. 408. (1), 407. (2) and 412, C. C.) The owner of the estate from which waters spring, intermittently or continuously, may appropriate, as owner, all such waters. However, as soon as these waters flow out of said private estate they become public (see notes on Art. 31, and Art. 512, C. C.) and are open to public use. If such waters, after having flowed out of said estate, before or after running through a public channel, naturally cross an estate of private ownership, they assume, until they leave said estate, a private character (Art. 36, L. W.) and are subject to the contingent use of the owner of said estate. But if said waters, after leaving said private estate, cross others belonging to different owners, in that case their contingent use shall be regulated by the provisions of Art. 34 (2), Art. 37, par. 2, and Art. 65, L. W. But the owner of the estate which is the source of the waters may, at any time before the lower estate has acquired any vested right in the use of such waters, interrupt their flow, using them wholly on his estate. This right of interruption is barred (1) when the estates lower down the stream have acquired the right of perpetual enjoyment of such waters by prescription of ten years (Art. 39, as modified by Sec. 41, Act 190); (2) by the fact that the owner of the estate of their source has allowed twenty years to pass, from the publication of the Law of Waters, without making use of the same, or after having commenced to use them in whole, or in part, desists from their enjoyment for a space of a year and a day continuously; in either case he loses his right over the whole of such waters, or the part thereof not used, said right vesting in a party or parties who for the same space of a year and a day shall have made use of the same. (Arts. 41, 42, L. W.)

The owner of the estate where the stream has its source and the owners of estates below who have the contingent use of the waters thereof can not deflect the course by which they originally flowed, and such waters shall leave the estate of their source and the other estates through which they flow at the exact point of their natural and accustomed channel (Art. 35). The right of the owner having the contingent use of waters is subject to different limitations. In the first place, "contingent use" is a right dependent upon the peculiar condition of the waters; and secondly the provisions in the Law of Waters regarding the one year and a day of continuous use as a condition precedent to the preferential enjoyment of waters

do not provide for a period of prescription for the acquisition of ownership, because the right acquired over such waters is not a right of ownership, in the strict sense, for it is subordinate to other prior rights. (Art. 40, par. 2, L. W.)

The persons having the contingent enjoyment of waters under Chapter 4 must further observe the following limitations; (1) that in the enjoyment of such waters they do not use any other banking material than earth and loose stone, and (2) that the water consumed by each of them does not exceed ten liters per second. (Art. 37.) See Op. Atty.-Gen., June 28, 1906, unpub.

Art. 37. The provision about notice to the *alcalde* is repealed.—The purpose of the notice is to inform the governor. At present the provincial governor has nothing to do directly with matters of purely municipal concern.

Art. 38. In force.—See Op. Atty.-Gen., Oct. 15, 1908, unpub.

Art. 39. Period of prescription should be ten instead of twenty years.

Arts. 40-42. In force.

Art. 43. Par. 3.—Strike out “after consultation with the Provincial Board and Council of Health, and with the State Council.” No such procedure is provided for in Act 190 in condemnation proceedings. (Secs. 241-253, C. C. P.)

Art. 44. In force.—In case of lakes formed by rivers the owner cannot divert the course of the river to the prejudice of third parties (Danvila, “Aguas,” p. 27.)

Art. 45. In force.

Subterranean waters are those hidden under the ground and which have not been acquired by the occupation and work of man. Ordinary wells are such as are customarily used in the locality in contradistinction with artesian wells, which are made at extraordinary depths (Danvila, p. 28). See Art. 412, C. C.

Art. 46. In force.—Formerly, under the *Partidas*, a land-owner could freely sink ordinary wells and erect works for the raising of water, with the limitation that in so doing he should not act with malice towards his neighbors. Under that provision many litigations arose, and so instead of the condition of total absence of malicious intent that of distance (two meters) was provided for in this law (Danvila, p. 29).

Art. 47. In force.—Change “pueblos” to “municipalities.” (See Art. 417, par. 2, C. C.)

As to what are ordinary wells, perhaps the criterion given by the Spanish Law of Waters of 1879 will serve as an illustration. Section 20 of said law says: “For the purpose of this law, ordinary wells are those which are sunk exclusively for the purpose of providing for the domestic uses or other ordinary necessities of life, and in which the device used in their extension employs no motive power other than man.”

Arts. 48-50. In force.—See Arts. 418 and 419, C. C.

Art. 48. Par. 2 has reference to Art. 419.

Arts. 51-55. In force.—These articles refer to the investigation of subterranean waters. There is nothing in Act 2152 regarding the investigation of sub-

terranean waters. Sec. 14 of Act 2152 refers to appropriation and not to investigation. These articles must therefore be held to be still in force. However, instead of "provincial governor," put "municipal council" in Arts. 51 and 52 (See notes on Arts. 18-19).

Arts. 56-58. Repealed.—They regulate appropriation of water and this is covered by Sec. 14 *et seq.*, of Act 2152.

Art. 59. First par. In force.—Nos. 1 and 2 are repealed. Section 14 of Act 2152 does not set forth any period within which works for the appropriation of waters must be begun nor does it provide for forfeiture in case of suspension of works. No. 3 is in force. It refers to investigation and not to appropriation. Last paragraph is in force.

Arts. 60-62. In force.

Arts. 63-64. In force.—The prescription of twenty years is now ten years (Act 190, section 41).

Art. 65. In force.

Arts. 66-69. In force.—Art. 408, No. 5, C. C. provides that the beds of running waters, continuous or discontinuous, formed by rain waters, and those of brooks which run through lands which are not of public ownership, are private property. Art. 69 is embodied in article 413, C. C.

Arts. 70-89. In force.

With reference to Art. 75, L. W., see Art. 366, C. C.; Art. 77, L. W. has relation with Art. 367, C. C.; Arts. 81 and 82, L. W. with Art. 368, C. C.; Art. 83, L. W. with Art. 373, C. C.; Art. 84, L. W. with Art. 366, C. C. (See *Cortes vs. City of Manila*, 10 Phil. 567.) Article 87, L. W. is embodied in article 369, C. C.; and article 89 in 420, 421, C. C. As to Art. 86, see Op. Atty.-Gen. of Oct. 23, 1908.

Art. 90. In force.—But in place of "Government" and "provincial governor" put "municipal council."

Without prejudice to the right of the Insular Government with respect to the care and administration of the banks of rivers, it is within the powers of the municipality to provide for the preservation of said banks and to pass ordinances regulating the same. (Op. Atty.-Gen., Jan. 18, 1904, unpub.)

Arts. 91-95. In force.—Strike out "Engineer of the Province." Substitute "Municipal council" for "Governor." With reference to Arts. 93 and 94, L. W. see Arts. 422, C. C., providing for a contribution to the expenses by the land-owners benefited.

Art. 95. Par. 1. In force.—Par 2 is repealed. See notes on Arts. 18 and 19.

Arts. 96-99. In force.

Arts. 100, 101, 104, 105. Change the words "governor" and "government" into "municipal council."

Art. 105. Strike out "after Royal approval," etc.

Arts. 106-110. In force.

Art. 111 In force.

The compensation provided for in this article is for the reason that they are not produced by natural causes but by the work of men tending to aggravate the easement (Sent. Sup. Ct. of Sp., April 22, 1892). As supplemental to this article, see Arts. 552 and 563, Civil Code.)

See ante. The phrase "recently set up" in this article is not a correct translation. The Spanish text reads: " * * * 6 procedentes de establecimientos industriales que no hayan adquirido esta servidumbre."

Every owner may enclose his property by means of walls, dikes, fences, or any other device, but his right is limited by the easement with which his estate is charged. (*Lunod vs. Neneses*, 1 Phil. 128.)

Where a statutory easement exists between adjoining estates, the owner of the lower land must not construct any work that may impair or obstruct an easement which consists in receiving the waters which naturally and without intervention of man descend from the more elevated lands, neither shall the owner of the latter construct any work that may increase the easement. (*Id.*)

Arts. 112-115. In force.

Art. 117. See Art. 561, C. C.—Nature of the easement modified. Easement is property (*Eaton vs. Boston & Concord R. Co.*, 51 N. H. 504, *Thayer's C. L.*, p. 1064), and with regard to the determination of property rights, the courts and not the administrative authorities have jurisdiction.

According to the principles of administrative law regulating proper jurisdiction in matters of easement, as provided by the Civil Code and by the Law of Waters, the administrative authority does not *extend to the establishment of a new easement* upon private property, but *simply to the preservation of old ones*, when a recent and easily proven usurpation exists. "Ayuntamientos" have no authority to impose new easements upon private property; therefore the order issued for such purpose cannot be held to have been given in the exercise of lawful authority. (*Roxas vs. City of Manila*, 9 Phil. 216.)

Therefore the words "government" and "governor of the province" should be "Courts of First Instance." Strike out "Provincial Deputation."

Art. 118. In force.—Section 3 of Act 2152 does not affect this article, for said Section 3 relates to priority of appropriation, whereas this article relates only to cases in which easements of conduit for private purposes may be declared. (See Art. 557, Civil Code.)

Art. 119. Modified.—Instead of "Governor of the province" should be "Court of First Instance."

Art. 120. In force.—See Art. 559, Civil Code.

Arts. 121-123. In force.

Art. 124. The word *Alcalde* should be "municipal council." The municipal council has the power to regulate the care and use of streets (Act 82, sec. 39 (j)). "Governor of the province" should probably be "provincial board." Governors, at present, have not powers they had under the Spanish government. See notes on Arts. 18 and 19, *ante*.

Art. 125. In force.—See Art. 558, Civil Code.

Art. 126. Modified.—Instead of "Provincial Council" and governor" put "Court of First Instance." There are no administrative courts at present.

Arts. 127-139. In force.

Art. 140. Modified. Par. (3). The period has been reduced to ten years. (See Act 190, sec. 41.)

With reference to Arts. 117-146, L. W., see Arts. 557-563, Civil Code.

Art. 142. In force.—(See 4 Man. pp. 696, 697.)

Art. 143. Modified.—Instead of "governor of province" put "Court of First Instance." (See notes on article 117.)

Arts. 144-145. In force.

Art. 146. Modified.—"Alcalde" and "Municipal Council" should be "Court of First Instance," and the appeal provided for by this article to the governor of the province, should be taken to the Supreme Court. (See notes on Art. 117; Sec. 18, Act 136.)

Art. 147. In force.—See Art. 555, C. C. The purpose of this kind of easement is to favor the rural population. (4 Manresa 698.)

Arts. 148-149. In force.—See Art. 556, Civil Code for a similar provision.

Art. 150. Modified.—"Governor of the province" should be "Court of First Instance." (See notes on Art. 117.)

Arts. 152-165. In force.—See Art. 73, L. W. and compare with Art. 553, C. C.

Art. 154. In force.

If the stream in question is a canal, though a navigable one, and held so to be by competent authority * * * and it is desired to establish a tow path * * *, it must be remembered that the law does not grant it along navigable canals (Art. 157), and at all events the establishment thereof must be preceded by the corresponding indemnity." (Roxas *vs.* City of Manila, 9 Phil. 315.)

Art. 161. Modified.—Instead of "governor of the province" should be "Court of First Instance." (See notes on Art. 117.)

Arts. 166-171. In force.

Art. 172. The governor of the province has no authority to grant permission. (See note on Art. 18 and 19.) The Insular Government is in charge of navigable rivers at present.

Arts. 173-174. In force.

Art. 175. Modified.—There is no royal decree or provision of law prescribing which are navigable or floatable rivers in the Philippines. (See Op. Atty.-Gen., June 3, 1907.)

Arts. 176-179. In force.

Art. 179. In force.—(See Op. Atty.-Gen., June 3, 1907, unp.)

Art. 180. In force.

Arts. 181-182. In force.

Art. 183. Modified.—From the language of this article and from the nature of the subject treated, it may be inferred that at present it is the Secretary of Commerce and Police who has jurisdiction over the matter.

Art. 184. Modified.—Since the governor of the province at present has not the same powers regarding this matter as he had during the Spanish control, (see notes on Arts. 18 and 19), I believe it is now the Insular Government acting through the Secretary of Commerce and Police that should authorize floatation in the case provided for in this article.

Arts. 185-191. In force.

Art. 192. Modified. **Arts. 225, 226, 233** referred to are repealed.

Art. 193. In force.—But the right may be lost by prescription of ten years. See Art. 411, Civil Code and Williard's Notes on said article.

Art. 194. Modified.—Should be ten years. See Sec. 41, Act 190, this section being applicable since waters are real property according to Art. 334 (8), Civil Code. See Art. 409 (2), Civil Code for a similar provision. (See Op. Atty.-Gen., Nov. 25, 1908, unp.)

Art. 196. Par 2. Modified.—Instead of "Governor" put "Court of First Instance." (See notes on Art. 117).

Paragraph 3. Superseded by Sec. 43, Act 2152, which provides:

No appropriator of water shall at any time make use of the same for any other purpose than that for which it was appropriated, * * * except upon the approval of the Secretary of Commerce and Police in the manner prescribed in Sec. 40 hereof: Provided, however, That no such change shall at any time be approved when the same shall act to the detriment of existing rights * * *

Art 197. Repealed by Sec. 14, Act 2152.

Art. 198. In force.

Art. 199. Instead of "governor of the province" put "municipal council."

Arts. 200, 201, 202. In force.—The provisions of these articles are not covered by Act 2152. These articles provide for cases where the States or the community has an interest in the use to be made of the waters, this being the reason for the procedure provided for.

Art. 203. Superseded by Sec. 21, Irrigation Act.

Art. 204. Repealed.—It provides for forfeiture of work referred to in preceding article. Arts. 17 *et seq.* of Act 2152 attempt to cover the whole procedure relating to concessions of public waters and do not provide for forfeiture of the work done in pursuance of the appropriation.

Art. 205. Superseded by Articles 18 and 19 of Act 2152.

Art. 206. In force.

Art. 207. Superseded by Sec. 3 of Act 2152.

Art. 208. Repealed.—It refers to preceding articles where the uses specified are more or less affected with public interest to which the term "public utility" in this article is applicable. But the uses specified in Sec. 3, Act 2152, are not for public utility. Therefore no right of expropriation can be claimed by one against the other, the right to make compulsory expropriations existing only in those cases in which the public interest is subserved.

Arts. 209, 210. In force.

Arts. 211, 212, 213, 214. In force.

Art. 215. Modified.—Instead of "Governor of the Province," it should be "Court of First Instance." (See notes on Arts. 17, 18 and 19.)

Art. 216. Repealed by Sec. 14, Irrigation Act.

Art. 217. In force.—No provision is made in Act 2152 regarding the fixing of prices to be charged by the concessioner, this being a just provision which is not in conflict with any of the provisions of said Act.

Art. 218. Repealed.—Section 18 of the Irrigation Act does not specify the time for which the concessions are granted, the language of said section implying that the concessioner shall be the owner forever of the waters appropriated. Besides, the Law of Waters makes a distinction between concessions to towns and villages and to private individuals and from that distinction arises the provision regarding the time of concession in this article, whereas the Irrigation Act does not make any such distinction.

Art. 219. In force.

Arts. 220, 221, 222. Superseded by Sec. 14 *et seq.*, Irrigation Act. This section does not make any special provisions in the case of railroads.

Arts. 223-224. In force.

Arts. 225-227. Repealed by Sec. 14, Irrigation Act.

Art. 228. Should be "ten years." (See Sec. 41, Act 190.) Water is real property according to Art. 334 (8), Civil Code.

Art. 229. In force.

Arts. 230-231. Repealed by Sec. 14, Act 2152.

Art. 232. Repealed inasmuch as it refers to the preceding article which is also repealed.

Arts. 233-235. Repealed.—They provide for the free use of public waters and concessions by the governor. This is clearly covered by Sec. 14, Act 2152.

Art. 236. Repealed.—No distinction is made by Act 2152 between concessions to private individuals and concessions to corporations.

Arts. 237-240. Repealed.—They relate to procedure regarding appropriation of waters which is regulated by Secs. 14 *et seq.*, Irrigation Act.

Art. 241. In force.—This article refers to appropriation of waters of which the one appropriating them is the owner. It has reference to Article 194, where a person has acquired ownership by prescription. This being so, it is clear that the government cannot impair his rights by concessions tending to limit the water used by the owner. (See Danvila "Aguas.")

Art. 242. Not applicable here.

Art. 243. Repealed.—The mere artificial development of public waters is not sufficient to give one any right to said waters. The procedure for acquiring public waters is prescribed by Secs. 14 *et seq.*, Act 2152.

Art. 244. Repealed.—The words "under the provisions of this Law" refer to preceding articles, and, as we have seen, all such provisions referring to the diversion of waters in connection with appropriation are all repealed by the Irrigation Act.

Art. 245. In force.—The only provisions relating to irrigation companies or associations are those contained in Sec. 12 of said Act 2152, which define the powers of an irrigation association, but do not cover the subject covered by this article. That section merely refers to the *internal organization* of the association but not to its privileges. It cannot be claimed that the Irrigation Act attempts to cover the whole subject of irrigation, for Sec. 51 of said law provides that "The existing *Ley de Aguas* and the provisions of the Civil Code in the matter of waters and all other existing laws dealing with waters and irrigation systems shall continue in force in so far as they are not incompatible with the provisions of this Act. * * *"

Art. 246. In force.

Art. 247. Superseded by Secs. 17, 18, 19, Irrigation Act.

Art. 248. Repealed.—This article is wholly based on the preceding one.

Art. 249. Superseded by Sec. 12 (c), Irrigation Act.

Art. 250. In force.—The word "appropriation" in this article is not an exact translation of the Spanish "aprovechamiento." As used in this article, the appropriation referred to is only the "contingent use" mentioned in articles 34 *et seq.*

Art. 251. In force.

Art. 252. Superseded by Secs. 17, 18, 19, Irrigation Act.

Arts. 253-258. In force.—But in Art. 255 instead of "Cortes" it should be "Philippine Legislature." There are no provisions pertaining to this matter in the Irrigation Act, nor is there anything in the title to suggest that the particular subject treated in this article (concession of public waters for navigation canals) is attempted to be covered by said Act. This must therefore be held to be in force according to Sec. 51 of Act 2152.

Arts. 259-260. In place of "Alcalde" in the former and "governor of the province" in the latter article, substitute "municipal council." The right to establish ferries is reserved to municipal councils, who shall have the right to grant the same to the highest bidder. (See Act 1634, Sec. 1.)

Arts. 263-264. In force.—The word "governor" in the latter article must be substituted by "municipal council." (See notes on Arts. 18, 19.) These articles do not have reference to the appropriation of waters for power purposes covered by Sec. 20 *et seq.*, Irrigation Act, for there is no need of such appropriation for the purpose of exercising the right referred to in these articles.

Art. 265. In force.

Art. 266. Superseded by Sec. 14 *et seq.*, Irrigation Act.

Art. 267. Superseded by Sec. 20 *et seq.*, Irrigation Act.

Art. 268. Modified.—"Municipal council" instead of governor." The municipal council is intrusted with the local police power, of which the governor has nothing to do. See Sec. 39 (jj), Municipal Code.

Art. 269. Repealed.—The Law of Waters recognizes a distinction in the duration of different concessions, which the Irrigation Act does not.

Art. 270. In force.—The provisions of this article is not covered by, nor is it repugnant to, any provision of the Irrigation Act.

Arts. 271-274. Repealed.—They are entirely covered by Section 14, Irrigation Act.

Art. 275. In force. This article and that part of the next one giving the local authorities police jurisdiction over waters, are perfectly in accord with our present laws.

Art. 276. "The police of wharves on rivers and lakes, and in ports, shall be within the province of the local civil authorities, * * * *." This much is in force, the rest is inapplicable to the Philippine Islands.

Art. 277. The procedure established in this article is repealed by Sec. 4 of Act 2152. There is no doubt that in every case touching property rights appeal may be had to the courts, and not to the immediate hierarchical superior. But where the case merely involves an exercise of the police jurisdiction, the decision of the officers intrusted with the power is final and conclusive. (See *Raymond vs. Fish*, 51 Conn. 80; *Hilton vs. Merritt*, 10 U. S. 97.)

Art. 278. This is repugnant to the spirit of Sec. 4, Act 2152. Besides, it may be regarded as obsolete, for it refers to "orders issued by the administration," meaning the orders of "*alcaldes*, governors, and administrative courts." As we have seen, the former two do not have the powers upon them vested by the Spanish government and the latter institution does not exist.

Arts. 274-294. Repealed by Secs. 12, 13, Act 2152.

Arts. 295-297. Repealed by Sec. 4, Irrigation Act.

Arts. 296-298. In force.

Arts. 299-300. In force.