

PHILIPPINE LAW JOURNAL

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NOVEMBER, NINETEEN HUNDRED AND FIFTEEN.

NOTE AND COMMENT

CONRADO BENITEZ, *Senior*

Editor.

Excerpt from a letter received from The *Harvard Law Review* Association:

"Your copy of the first part of the second volume of the *Philippine Law Journal* has arrived and I am happy to say that we will be very pleased to exchange with you during the coming year. Our magazine appears on the first of each month from November 1st to June 1st inclusive. I have accordingly placed your name on our subscription list and trust that you will do the same for the *Harvard Law Review*."

FAVORS USE OF CAP AND GOWN IN COURTS

The President of the Porto Rico Bar Association is in favor of requiring all lawyers to wear the cap and gown when in courts. "The Bar Association of Mayaguez," he says, "has passed a resolution asking that the use of the cap and gown be made obligatory in the Insular courts. I believe that the petition should be made a general one, and that the Porto Rico Bar Association should by this time be espousing it. There are many and obvious reasons." It is claimed that the proposed custom would enhance the respect for the court, and lend dignity and seriousness to all judicial acts. The Supreme Court of Cuba has just issued an order requiring the use of the cap and gown in all the courts. (*Revista de Legislacion y Jurisprudencia*, Porto Rico, September, 1915.)

COMMISSION-MANAGER PLAN GIVES GOOD RESULTS

The Commission-Manager plan is a very new thing in American municipal government, dating only from January, 1913, when it first went into effect in Sumter, South Carolina. Since that beginning twenty-four other towns and cities have taken it up, and five states have provisions enabling their cities to adopt the plan. The possibility of managing as a distinct profession seems likely. In December, 1914, the first annual City Managers' Convention was held. The state universities of Texas, California, and Michigan have projected courses of training for prospective city managers. Men who have made good in the office in one city are being called upon to serve other cities in the same capacity. So far, the communities which have adopted the plan have found an almost uniform experience of lowered cost for increased service. The longer possible tenure of office and the freedom from political complications coupled with a presumably expert preparation for the task make for a higher efficiency on the part of this official than can be expected of the untrained mayor who holds his office as a result of the turning of the wheel of politics. To maintain this efficiency the office must by no means be allowed to become a political plaything.—RICHARD S. CHILDS in *National Municipal Review*, July, 1915.

OFFICE OF DIRECTOR OF MARKETS CREATED IN IDAHO

In the last session of the Idaho legislature the office of director of markets was created. The duties of the director shall be "to promote, in the interest of the public, economical and efficient production and distribution of all farm commodities." The director is also empowered to establish a state-wide news service, or a bureau of information that will keep the producers in touch with prices of their produce everywhere.

"PROPERTY AND CONTRACT in their Relations to the Distribution of Wealth," by Richard T. ELY. 2 volumes. (New York: The Macmillan Company, 1914. \$8.00.)

Through the kindness of Philippine Education Company we are enabled to examine this new book of Professor Ely, of the University of Wisconsin. The work is the outgrowth of twenty years' lecturing on the subject of distribution, and has been very favorably commented upon by reviewers in the United States. While not dealing directly with the law of property and contract, the book should be of interest to lawyers, for in it the author shows the necessity of law to economic thought, and the social function of law.

There are two sides to property, the individual and the social; it is shown to be the first fundamental institution in the distribution of wealth. A whole chapter is devoted to illustrations showing the importance of property in wealth distribution. "Private property is established and maintained for social purposes." Hence, the idea of trusteeship arises, and also of police power. The theory of the social side of property is expressed, in the words of Professor von Ihering, thus: "It is, therefore, not true that property according to its idea carries with it an absolute right

of control. Property in such a form cannot be tolerated by society and never has been tolerated. The idea of property cannot carry with it anything which is contrary to the idea of society." The police power from the economic point of view, and so far as property is concerned, is "essentially the power to interpret property and especially private property, and to give the concept a content at each particular period in our development which fits it to serve the general welfare."

However, "the social theory is a conservative one because the institution finds its limitations in the social welfare." Private property should not be abolished; it must be maintained. It is the cement of society; it binds men together. The rest of Volume I is devoted to the discussion of the present and future development of property.

Volume II discusses contract and its conditions, and shows its economic significance, especially with respect to the distribution of wealth.

"THOMAS CARY WELCH, formerly Assistant Executive Secretary of the Philippine Islands, recently revised the Philippine Code of Civil Procedure (in English). This code has been adopted by the Government, and is officially used in the United States Supreme Court. It is published by the Lawyers' Cooperative Publishing Company. 400 pages. \$4." (*The Federal Reporter*, September 16, 1915.)

The New York Public Library has just published *Economics and Social Aspects of War; a Selected List of References*.

The Bureau of Labor Statistics, Washington, D. C., has issued various bulletins of interest to those concerned with labor legislation. Bulletin Number 158, consisting of 451 pages, is on "Government Aid to Home Owning and Housing of Working People in Foreign Countries." Report Number 166 is on "Labor Legislation of 1914," by L. D. Clark, and contains 290 pages.

The Superintendent of Documents, Washington, D. C., has just issued Price List Number 28 on "American Finance."

RECENT CASES

Decided by the Supreme Court of the Philippines.

USUFRUCT; EXECUTION.—Under Section 450 of the Code of Civil Procedure, the right of usufruct is susceptible to be levied upon on execution and can be sold to satisfy a judgment against the usufructuary. (*Per Torres, J.*, in *Leoncio Barbin v. Narciso Alegre et al.*, R. G. No. 9,993, decided November 8, 1915.)

DAMAGES; LIQUIDATED OR PENALTY.—In any case wherein there has been a partial or irregular compliance with the provisions of a contract in which a special indemnification in the event of failure to comply with its terms is stipulated, courts will rigidly apply the doctrine of strict construction against the enforcement in its entirety of the indemnification, where it is clear from the terms of the contract that the amount and character of the indemnity is fixed without regard to the probable damages which might be anticipated as a result of the breach of the terms of

the contract; or, in other words, where the indemnity provided for is essentially a mere penalty and not as liquidated damages having for its principal object the enforcement of compliance with the contract. (*Per Carson, J.*, in *Felix Laureano v. Eugenio Kilayco et al.*, R. G. No. 10,419, decided Nov. 10, 1915.)

ADMIRALTY; SECTION 77, ACT NO. 355 APPLIED; MANIFESTED CARGO.—The penalty prescribed in Section 77 of Act No. 355 as amended may be imposed when unmanifested cargo is found on board a vessel "from a foreign port or place" notwithstanding the absence of affirmative proof that such unmanifested cargo was taken on board at some foreign port or place.

When a vessel from a foreign port engaged in a continuous voyage is "licensed for carrying on coasting trade," and touches various ports within the Philippine Islands, she is not relieved from the duty of having her cargo duly manifested when she enters any such port. (*Per Carson, J.*, in *The United States of America and the Insular Collector of Customs v. Rubi.*, R. G. No. 9,235, decided Nov. 17, 1915.)

CONDEMNATION PROCEEDINGS; IMPROVEMENTS UNDERTAKEN WITH KNOWLEDGE THAT EXPROPRIATION PROCEEDINGS ARE CONTEMPLATED.—The owner of property can not be divested of his title until compensation is made or security given. Act No. 1258 as amended, affords a method whereby a railroad company may, by the exercise of due diligence, protect itself from the payment of damages for improvements undertaken previously but with knowledge that condemnation proceedings are contemplated; and until it takes a decisive step towards expropriating the land, the owner can not be estopped from claiming damages for such improvements. (*Per Trent, J.*, in *The Manila Railroad Company v. Romana Velazquez et al.*, R. G. No. 10,278, decided Nov. 23, 1915.)

Decided by the Supreme Court of Spain.

1. **EFFECTS OF DIVORCE PROCEEDING UPON THE ADMINISTRATION OF THE CONJUGAL PROPERTY. ABANDONMENT OF THE FAMILY DOMICILE BY THE WIFE. LIABILITIES OF THE PARAPHERNAL PROPERTY. LITIS EXPENSAS.**—An action was brought by the wife for divorce, the wife leaving immediately the family domicile and obtaining at the same time from the court the administration of her paraphernal property. Under these circumstances two questions presented themselves for determination: (*a*) whether or not the administration of the conjugal property has been changed by the filing of the action for divorce coupled with a decree of the court granting the wife the administration of her paraphernal property; (*b*) whether or not the fruits of the paraphernal property are released from the family charges by the fact that the wife obtained the administration of the paraphernal property.

As to the first question, it was held that the administration of the conjugal property was not changed by the filing of the action for divorce until the determination of the case, and the rights and obligations of the spouses remained unaffected

because no right can be founded on the non-fulfilment of a duty, and the wife can not therefore be released from her obligations as such by her abandoning the family home, since that is her own fault.

As to the second question, it was held that the fruits of the paraphernal property continued to be liable to the family charges during the pendency of the action, because these charges were in existence during the proceedings. And as a consequence of this, the *litis expensas* to which the wife is entitled can be compensated with the fruits of the paraphernal property that the wife may have received during the litigation. And the sentences of March 1, April 7, and May 11, 1910, declaring that *if the husband lived separate* from the wife, all obligations contracted by him are personal obligations, do not apply here because it is the *wife* who lived separate from the husband, so that in this case his obligations can be paid out of the fruits of the paraphernal property. (Sentence of May 24, 1915.)

2. TRANSFER OF THE USE OF PROPERTY TO A "SOCIEDAD ANONIMA" IN CONSIDERATION OF SHARES OF STOCK. ITS EFFECTS.—A person gave to a *Sociedad Anonima* the use of his land in consideration of certain shares of stock of the association, reserving to himself the bare ownership of the property. *Held*, That the association did not become an usufructuary of the property so transferred, and the rights of the transferrer and the association will not be governed by the rules regulating usufruct, because the use of the property transferred in this case must be considered as a capital placed by its owner in the common fund. (Sentence of May 29, 1915.)

3. THE CIVIL CODE, SUPPLEMENTARY TO THE CODE OF COMMERCE.—Judgment was rendered in an action for breach of a mercantile contract. The question arose as to the prescription of the action on the judgment. It was decided that the action on the judgment must have the same nature and character as the contract on which the judgment was rendered and therefore the action on the judgment must be a commercial one to be governed by the Code of Commerce. But as the Code of Commerce is silent on this matter, the common law, that is, the provisions of the Civil Code, must apply, because the "suppletory law by which all mercantile acts must be governed is what is contained in the provisions of such body of the law," that is, the Civil Code. (Sentence of April 22, 1915.)

ALUMNI

(Alumni are requested to contribute to this department.)

SERAFIN P. HILADO, 1913 Law

Editor.

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1915

Eugenio Baltao has been appointed Justice of the Peace of San Miguel, Bulacan.

Faustino Mañago y Topacio, of Imus, Cavite, who has recently been admitted to the Bar, is not the Faustino Mañago who has been sentenced by the Supreme Court to death.

Gaudencio García has been appointed clerk in the Miscellaneous Division of the Executive Bureau.

COLLEGE NEWS

PEDRO Y. YLAGAN, *Junior*

Editor.

THE STUDENT COUNCIL

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PEDRO SORRETA	- - - - -	<i>Master Musician, College of Law, Musical Club.</i>
DAVID PARGAS	- - - - -	<i>Law Representative on the University Athletic Board of Control.</i>

COLLEGE OF LAW HOLDS ANNUAL DANCE

The fourth annual law dance given in honor of President Ignacio Villamor and Dean George A. Malcolm was held in Manila Hotel on the evening of November fifth. The ball was a great success. The spacious piazza of the hotel afforded excellent place for the gliding "hesitations" and graceful "one-steps," and the refreshments were relished by all. The company broke up at half-past twelve and everybody went home happy to dream of the very pleasant evening.

SENIORS HOLD ELECTION

The Senior Class held an election of officers in anticipation of their coming graduation. The following were elected:

<i>President</i>	VICENTE VARELA.
<i>Vice-President</i>	JOSE GIL.
<i>Secretary</i>	PAULINO GULLAS.
<i>Treasurer</i>	JOSE GUINGONA.
<i>Class Representative</i>	JERONIMO SAMSON.
<i>Historian</i>	DIONISIO VILLANUEVA.
<i>Prophet</i>	SEBASTIAN PAMATMAT.
<i>Memorial Speaker</i>	BERNABE AQUINO.
<i>Alumni Banquet Speaker</i>	JOSE GIL.

FRESHIES ELECT OFFICERS

After a hard struggle in going through the preliminary ordeals of the first semester, the Freshies finally obtained a legal status in the College as a *bona fide* class. At the beginning of the second semester a meeting was called and presided over by Dean Malcolm, in which the following officers were elected:

<i>President</i>	RAMON SAN JOSE.
<i>Vice-President</i>	MARIANO AMPIL.
<i>Secretary</i>	JOSE MA. PAREDES.
<i>Treasurer</i>	MISS RUFINA SANTOS.

The Class Representative, CESAR BENGSON, was appointed by the Dean.

NEW OFFICERS OF THE PHILIPPINE BARRISTERS

The Philippine Barristers held an election of officers for the second semester. The new officers are the following:

<i>Chancellor</i>	JOSE P. MELENCIO.
<i>Vice-Chancellor</i>	GAVINO YAP-CHIONGCO.
<i>Secretary</i>	VICENTE R. YBIERNAS.
<i>Treasurer</i>	MANUEL GALLEGO.
<i>Bailiff</i>	CASTO JOSE DELGADO.

ORATORICAL CONTEST

As a result of the semi-finals held last month, the following orators took part in the final contest which was held this month:

<i>Senior</i>	VALENTIN ALCID.
<i>Senior</i>	VICENTE VARELA.
<i>Junior</i>	JESUS DE LA RAMA.
<i>Junior</i>	JOSE MELENCIO.
<i>Junior</i>	ENEQUEL SANTOS.
<i>Sophomore</i>	ALEJO LABRADOR.
<i>Junior, Alternate</i>	VICENTE YBIERNAS.

The judges were all alumni of the College of Law: Eulogio Benitez, '13; William C. Brady, '13; Eusebio Lopez, '14; Jorge B. Vargas, '14; and Victoriano Yamzon, '15. Mr. H. Lawrence Noble, '14, presided the contest.

INTER-CLASS ATHLETIC MEET

FRESHIES WIN PENNANT

Thanksgiving Day was a busy day for the law students. The longed-for inter-class athletic meet was pulled off, in which the whole series of games was marked by great enthusiasm and excitement. The meet was the most successful ever held. In spite of the many restrictions imposed by the College Athletic Board, the Freshmen won an easy victory over their adversaries, by piling up 48 points in their favor. The Seniors, who showed an exceptional class spirit, finished second with 28 points. Then came the Sophs with 21 points, and the Juniors had to get the fourth place.

Francisco Albert, of the Freshman Class, captured President Villamor's silver medal for having secured 18 points, which made him the star of the entire meet. Paulino Gullas, of the Senior Class, captured Dean Malcolm's bronze medal for having stood second to Albert in individual points.

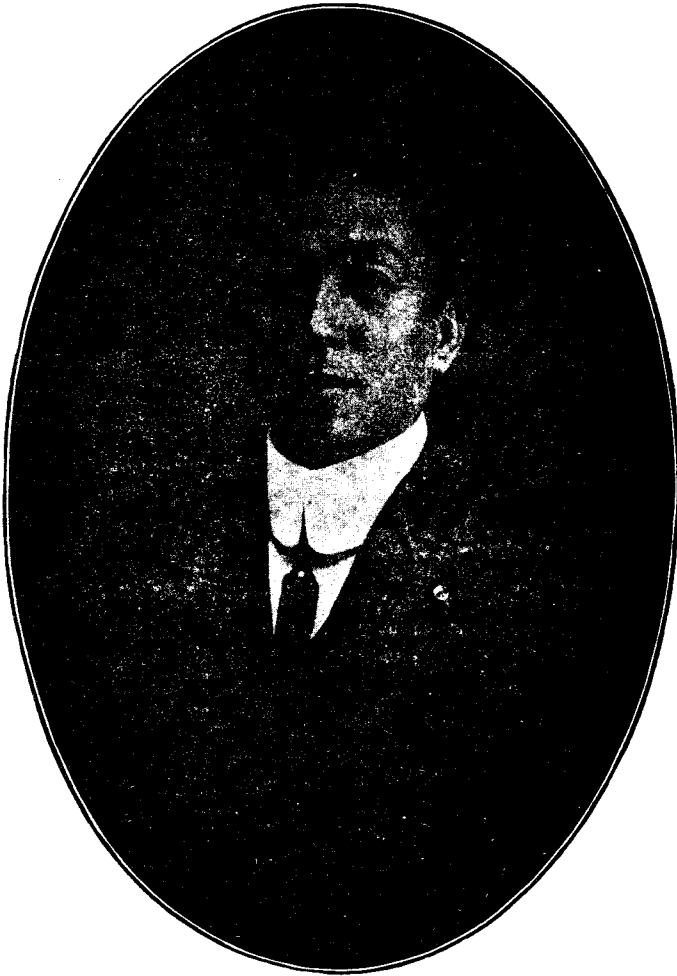
The presence of a large crowd, especially of the Normal Hall girls, added very much to the animation and success of the meet. Refreshments were served by the Dimas-Alang Restaurant.

THE FRESHMAN SPREAD

The champions of the meet celebrated their brilliant victory by giving a spread at the Dimas-Alang Restaurant on the evening of the same day. Although this was the first social function the Freshies ever got up, yet being inspired by their success in the first semester work and in the athletic meet, they showed a splendid spirit of co-operation. After the dinner, short speeches were delivered, in which the day's victory was made much of.

PRESIDENT VILLAMOR LECTURES BEFORE LAW FORUM

Before a large audience composed mainly of law students, President Villamor gave a lecture at University Hall, on Saturday, November 27. "The Effects of Hereditary Tendencies in Criminology" was the theme. The discussion of the subject disclosed the unusual ability and learning of the lecturer, coupled with an untiring zeal for statistical research.



FELIPE AGONCILLO
President of the Philippine Bar Association