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JANUARY, NINETEEN HUNDRED AND SIXTEEN

NOTE AND COMMENT

CONRADO BENITEZ, *Senior*

Editor

EL DERECHO CIVIL BAJO LA BANDERA AMERICANA, por *Jorge Bocobo*. Such is the title of an article in the *Revista General de Legislacion y Jurisprudencia* for July-August, 1915. It is a summary of Professor Bocobo's article which appeared in this *Journal* some time last year.

LAWS GOVERNING WATERS IN THE PHILIPPINES

BY E. GARCIA

Law Clerk, Bureau of Public Works.

With the thesis of Carlos Tan on the Law of Waters in the Philippines, and published in the October and November (1915) numbers of this *Journal*, and the present article by another College of Law graduate, published in the October number of the *Quarterly Bulletin of the Bureau of Public Works*, there is presented to those interested in that phase of the law enough material to guide them in their study of it. Mr Garcia mentions all the laws upon the subject, and in dealing with the *Ley de Aguas* of August 3, 1886, annotates all the articles, telling which ones are repealed and which in force. The same thing is done with the provisions of the Civil Code dealing with water rights. The third section of the work gives the Acts of the Philippine Commission and Philippine Legislature upon the subject. The author tells us that he is revising and augmenting the work. It is to be hoped that he even would decide to publish it in a separate pamphlet.

RECENT CASES

Decided by the Supreme Court of the Philippines.

ACT No. 1699; SPECIAL FISCALS; DISMISSAL NOLLE PROSEQUI.—

The power to appoint special fiscals being expressly conferred upon judges of the Courts of First Instance, the mere fact that a judge acts unwisely or improvidently or under a misapprehension of facts, when he makes an appointment, in no wise affects the legality of the appointment (except, perhaps, for a manifest abuse of judicial discretion), and affords no ground for a contention as to a lack of jurisdiction in the trial court to entertain and decide a criminal action based on an information filed by a special fiscal legally appointed for that purpose.

In the event that criminal proceedings have been instituted and investigations of the fiscal have satisfied him that the accused person is innocent, or that the evidence sufficient to secure conviction will not be forthcoming at the trial, despite the exercise of due diligence to that end, it then becomes his duty to advise the court as to the results of his investigations and to move the court to dismiss the proceedings, leaving it to the court to take such action as may be proper in the premises. In this jurisdiction, fiscals are not clothed with power, without the consent of the court, to dismiss *nolle prosequi* criminal actions actually instituted and pending further proceedings. The power to dismiss is vested solely in the courts. (Per *Carson, J.*, in *United States v. Pedro Barredo et al.*, R. G. No. 9278, decided December 7, 1915.)

SECTION 1 OF ACT No. 1592; CONDEMNATION PROCEEDINGS; CERTIORARI.—While Section 1 of Act No. 1592 clearly empowers the court wherein expropriation proceedings are pending to fix the amount of the required deposit and to give possession of the land upon the making of deposit, it as clearly denies, by necessary implication, the power of the court to change or modify the amount thus fixed, or to disturb the possession of the railway, after the deposit thus fixed has actually been made by the railway corporation. Where the statute, by virtue of which a court of First Instance is clothed with power to render a particular judgment, discloses, either in express terms or by necessary implication, the legislative intent that the judgment should be executed forthwith upon its entry, the court loses control over such judgment immediately upon its entry, and has no power to annul, change or modify it thereafter.

In this jurisdiction, the constitutional prohibition against the taking of property without just compensation contains no provision requiring pre-payment; and following the weight of authority, there is no prohibition against the legislative enactment of a form of procedure whereby immediate possession of lands involved in expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owners. (Per *Carson, J.*, in *The Manila Railroad Co. and The Board of Public Utility Commissioners v. The Hon. Isidro Paredes et al.*, R. G. No. 10, 713, decided December, 17, 1915.)

CONSTITUTIONALITY; SECS. 139 AND 140, ACT No. 2339; INJUNCTION; TAXATION.—Section 139 expressly forbidding the use of injunction to stay the collection of any internal-revenue tax is constitutional and is not violative of Section 5 of the Philippine Bill. In the system of taxation, the courts have been expressly forbidden in every act creating or imposing taxes or imports enacted by the legislative body of the Philippine Islands since the American occupation to entertain any suit assailing the validity of any tax or impost thus imposed until the tax shall have been paid under protest, and this on the ground of public policy. Nor are these sections contrary to Paragraphs 2 and 7 of Sec. 56 of Act No. 136, for the latter, construed in the light of prior and subsequent legislation and the legislative and judicial history of the same in the United States, do not empower Courts of First Instance to interfere by injunction with the collection of taxes in question in this case. "The Legislature has the constitutional authority where it has provided a plan, adequate, and complete remedy at law to recover back taxes illegally assessed and collected, to take away the remedy by injunction to restrain their collection."

POLICE POWER; ESTHETICS; BILLBOARDS AND SIGNS.—Esthetic sense is dissociated entirely from any relation to the public health, morals, comfort, or general welfare, and is therefore beyond the police power of the state. But unsightly advertisements or signs, sign-boards, or billboards which are offensive to the sight are not dissociated from the general welfare of the public. If the police power may be exercised to encourage a healthy social and economic condition in the country, and if the comfort and convenience of the people are included within those subjects, everything which encroaches upon such territory is amenable to the police power. A source of annoyance and irritation to the public does not minister to the comfort and convenience of the public. Therefore subsection (b) of section 100 of Act No. 2339, conferring power upon the Collector of Internal Revenue to remove any signs, billboards, advertisements and signboards upon the ground that it is a nuisance, is valid. (Per *Trent, J.*, in *Francis A. Churchill et al., v. James J. Rafferty, Collector of Internal Revenue*, R. G. No. 10592, decided December 21, 1915).

CO-OWNERS OF COMMUNITY PROPERTY; RIGHT OF REDEMPTION—The right of redemption as provided in Article 1522 of the Civil Code may be exercised by every co-owner; the law concedes to all the use of "redemption" in equal degree, provided they exercise it within the prescribed time and under the precise conditions as in the sale of the property or part thereof, if the said sale had been made to a stranger, who is not a co-owner. But such privilege, conceded with a view to give facility and means of destroying or ending a community of property and of vesting the ownership upon only one owner, is not in any manner a permission to exercise against another co-owner of the same property, to whom the law gives equal privilege, but only against a stranger. (Per *Torres, J.*, in *Ariston Estrada v. Cirila T. Reyes*, R. G. No. 10329, decided December 24, 1915.)

Decided by the Supreme Court of Porto Rico.

COMMERCIAL ASSOCIATION; ESTOPPEL. When a creditor of a member of a commercial association attaches the share of said member in the association, basing the attachment on the articles of association, he is thereby estopped from denying the existence of the association although it is not registered in the Commercial Registry (Sentence of July, 1915, in *Quintana Hermanos & Co., vs. Ramirez & Co. et al.*), and third persons who have made any contract with such association are thereby bound, though the association did not have legal personality (Sentence of July, 1915, in *Rodriguez v. El Registrador*).

LEASE OF SERVICES; DAMAGES FOR BREACH OF CONTRACT; PROOF BY THE DEFENDANT; DUTY OF THE PLAINTIFF. It is incumbent upon the defendant in an action for damages for breach of contract of services to prove that the plaintiff succeeded in securing another employment, or could have succeeded in finding such employment if he exercised proper diligence in the premises, and though it is the duty of the plaintiff to seek another employment, he is not bound to look for one of a different nature, in a different locality, or with a different person who does not suit him. (Sentence of July, 1915, in *Hardwin v. Krayuski Peasant Co.*)

ID.; AMOUNT OF DAMAGES; BASIS OF AMOUNT. In an action for breach of contract of services the salary stipulated is *prima facie* the amount of damages, though the defendant may claim the reduction of the same by showing that the plaintiff earned, or could have earned, certain amounts during the time the contract would have been in force (*Id.*).

LEASE; TRANSFER OF; EFFECT OF TRANSFER. When the lease is transferred by the lessee to somebody else, he is not thereby released from the payment of the rent, although the lessor assented to the transfer, except when he (the lessor) accepted the transfer and renounced the original contract of lease (Sentence of July, 1915, in *Becerril et al. v. Port et al.*)

ALUMNI

(Alumni are requested to contribute to this department.)

SERAFIN P. HILADO, 1913 Law

Editor.

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1913.

John C. MacMahon has resigned from the office of Private Secretary to Justice Moreland and has joined the firm of Bruce and Reed.

1914.

Jorge B. Vargas has been appointed Secretary to the Secretary of Commerce and Police with a salary of ₱4,800 per annum.

ALUMNI ASSOCIATION

At a recent meeting held by the Board of Directors of the College of Law Alumni Association it was resolved to recommend the formation of a club for the Faculty and the Alumni and the Students of the College of Law, for the purpose of bringing about closer relationship between them.

COLLEGE NEWS

PEDRO Y. YLAGAN, *Junior*

Editor.

THE STUDENT COUNCIL

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DAVID PARGAS	- - - - -	<i>Law Representative on the University Athletic Board of Control.</i>

DEBATERS OF BARRISTERS CHOSEN BY JUDGES

A debating contest was held among the members of the Philippine Barristers in order to choose the three debaters to represent the Association in the coming annual debate with the Seniors. In previous years the debaters were chosen by secret ballot by the members, but this year they were selected by three judges appointed by the Adviser. This new method of selection was adopted with the hope of turning the scale of successive victories won by the seniors and to oust them from the possession of the Del Pan cup. The three debaters chosen are Lorenzo Campo, Alejo Labrador and Emilio Javier.

Subject of the debate: "Resolved that the Philippine Government should own and operate a merchant marine."

FOURTH ANNUAL ORATORICAL CONTEST

MELENCIO, Winner of First Honor

José P. Melencio, 1917 Law, of Cabanatuan, Nueva Ecija, first prize.

Jesus de la Rama, 1917 Law, of Iloilo, Iloilo, second prize.

Alejo Labrador, 1918 Law, of San Narciso, Zambales, honorable mention.

Thus reads the result of the fourth annual oratorical contest of the College of Law, University of the Philippines, held in the Auditorium of the Normal School, on December 15, 1915, before a large audience.

The ceremonies were presided over by President Villamor, and the judges were: Newton W. Gilbert, former Vice-Governor and Secretary of Public Instruction; Mariano Cui, President of the Board of Public Utility Commissioners;

Lieutenant-Colonel Henry M. Morrow, Judge-Advocate, Philippine Department, U. S. A.;

Felix M. Roxas, President, Municipal Board, City of Manila; and
Filemon Perez, Delegate to the Philippine Assembly.

The prizes were presented by Commissioner Jaime C. De Veyra, who made an impressive address of presentation. The prizes offered by Justice Carson of the Supreme Court consist of a gold medal for the winner of the first honor and a silver medal for the second honor. Justice Carson also offered a silver cup on which will be inscribed every year the names of the winners.

COLLEGE OF LAW PARTICIPATES IN RIZAL DAY PARADE

The College of Law is the only department of the University of the Philippines that was represented in the Rizal Day Parade. The float of the College consisted of three white columns, modeled after those of University Hall, erected in a row supporting an upper structure. The columns were entwined with *cadena de amor*. Three beautiful ladies, one of whom was the Princess of Zulu, sat in front of those columns, portraying the three principal groups of Islands—Luzon, Visayas and Mindanao.

EXCERPTS FROM THE ADDRESS OF PRESIDENT VILLAMOR AT THE FOURTH ANNUAL ORATORICAL CONTEST OF THE COLLEGE OF LAW

The President, after explaining that the Annual Oratorical Contest represents one of the most practical aspects of the instruction in the University, discussed the benefits to be derived therefrom by the law students, and said:

"Whoever should consult the jurisprudence of tribunals would find that many cases are lost either through errors in pleading or through defective exposition of facts and of the law or through both causes at the same time.

"It is during the trial, especially in the period of arguments, that the lawyer feels most the need of oratory. A reasonable argument presented with precision and eloquence, at the psychological moment when the facts are still clearly impressed in the mind of the court, a brilliant argument, I repeat, is in many cases enough to bring about a favorable decision. But aside from this, the oral arguments produce another no less decisive result for the lawyer from a professional point of view. From them, the public which comes to the forum without reading the records, judges of the merits and ability of the orator; his ideas are commented upon by the professionals and his thoughts are communicated even to people not interested in the subject under discussion. In this way the lawyer not only helps justice in clearing the truth, but also sows in the community the seeds of sane ideas and noble thoughts which serve the citizens as standards of behavior in society. Thus it is seen how important is oratory as a part of the course of study in the College of Law of the University of the Philippines."



DON JOSÉ JUAN DE ICAZA