

NOTE AND COMMENT

CONRADO BENITEZ, *Senior*

Editor.

THE CIVIL LAW AND THE COMMON LAW—A WORLD SURVEY

This is the title of the interesting and instructive lecture delivered by Professor R. W. Lee of McGill University of Montreal before the Michigan Chapter of the Order of the Coif at its annual public meeting in 1915, which has been reproduced in *Michigan Law Review* for December, 1915. It treats in the first place of the historical survey of both the civil law and the common law all over the world, and then follows a comparative study of the law of person, law of property, law of obligation, law of succession, law of procedure under both systems, pointing out the difference and the superiority of each system. The lecturer concludes that the final outcome of the rivalry between the civil law and the common law will be the diffusion of these two great legal systems over the earth surface, and points out how the common law is every day gaining more and more influence over the civil law.

"THE PHILIPPINE REVIEW," A NEW MONTHLY MAGAZINE

The first number of the *Philippine Review*, a monthly publication of serious import, edited by Gregorio Nieva, private secretary to Speaker Osmeña, with a distinguished staff of collaborators, is off the press and bids fair to become one of the leading publications of the Islands.

Typographically, the magazine is exceedingly attractive, while the contents are well written, timely, and designed to give the reader a very good idea of events and conditions in the Philippines and the entire Far East. Some attention is also devoted to Latin America. Among the articles in the January issue are contributions by Former Acting Director of Education Charles H. Magee, Director of Public Works E. J. Westerhouse, Dr. J. D. Long, Stephen Bonsal, Y. Mikami, Conrado Benitez, and the editor, who outlines a non-partisan policy and the magazine's function in general.

The publication is well and profusely illustrated, the frontispieces, photographs of Governor-General Harrison and Speaker Osmeña being particularly good and striking. Its literary standard is high and the magazine should prove a valuable addition to the periodical literature of the Philippines. It is beyond a doubt the most ambitious publication of its kind yet attempted here and is deserving of the support of the public. The articles are in English and Spanish.

RECENT CASES

Decided in the Supreme Court of the Philippines.

PROCEDURE; DUTY TO PRESENT RECORD TO COURT.—It is elementary that a court cannot base its decision on evidence not of record or take into consideration matters not judicially before it, and the proceeding below not being a part of the record, the court had no authority to consider it. The fact that it may have been the duty of the government to bring up the record of a case does not alter the rule stated. If the appellant desired to have the proceedings of the board of special inquiry considered by the Court of First Instance, it was his duty to take such proceedings as would bring them before that court. The fact that it may have been the duty of the government to bring that record up would not relieve the appellant from the duty of making some effort to bring it properly to the attention of the court, if he desired the benefit which would follow from a consideration thereof. *Per Moreland, J.*, in *Go Paw vs. The Insular Collector of Customs*, R. G. No. 10,989, decided January 24, 1916.

CONTRACTS; REPAIRS; TIME CLAUSE; WAIVER.—Where a contract requires certain repairs on a vessel to be completed within a specified time, additional repairs made in pursuance of another contract long after the expiration of such time estop the owner from claiming damages for the delay. *Per Trent, J.*, in *Dio Contino vs. Novo and Company*, R. G. No. 10,057, decided January 27, 1916.

ACT No. 702; COMPLAINT; TIME TO OBJECT THERETO.—While it is true that the law requires the complaint in case of the deportation of Chinese aliens under Act No. 702 like the present, to be signed by particular persons or class of persons defined by the law, yet in the absence of a proper objection, made in the proper time, the objection to the complaint three months after the sentence against the defendant, will not be allowed. The action is not a criminal action, the procedure under Act No. 702 is a summary proceeding. The order of deportation is not a punishment. So, another rule which may be the one proper in a criminal action does not apply here. *Per Johnson, J.*, in *United States vs. Juan de los Santos*, R. G. No. 10,841, decided February 2, 1916.

EMPLOYER'S LIABILITY ACT (ACT No. 1874) INTERPRETED; DAMAGES; NOTICE.—In those cases either within or without the words of the act, in which the law, as it stood prior to the passage of the Act, gives an employee a remedy, he still has a right to sue under the same conditions and to recover damages to the same extent as if the Act had not been passed. So far as Section 1 of Act No. 1874 is concerned, the provisions giving the employees the same rights to compensation and to action as if they had not been employees, the requirement of notice as a condition to maintaining the action, that relating to the time within which the action must be brought, and that requiring the employee to give notice to his employer within a reasonable time after he becomes aware of the defect or negligence, only apply to those extremes lying outside of the Civil and allied Codes, but embraced

by the Act, unless a case shall arise in which the plaintiff, although he has a remedy under the Civil Code, insists upon relying upon the Act alone. *Per Trent, J.*, in *Clara Cerezo vs. The Atlantic, Gulf and Pacific Company*, R. G. No. 10,107, decided on February 4, 1916.

ACT No. 190, SECTION 735 APPLIED; DEBTS OF INSOLVENT ESTATE; ORDER OF PREFERENCES OF PAYMENT.—There is nothing in the language of Section 735 of the new Code of Civil Procedure which would justify the holding that it was the intention of the legislators to provide that upon the death of the owner of an insolvent estate, the mere fact of his death has the effect of destroying all liens or preferences, created by statute or by act of parties and already in existence at the time of his death. The classification and order of payment of debts of deceased persons set out in Section 735 was intended to include merely debts against the estate not otherwise secured, and not to include debts otherwise secured. *Per Carson, J.* in *Smith, Bell & Co., Ltd. vs. The Intestate of Mariano Maronilla et al.*, R. G. No 8,769, decided February 5, 1916.

Decided by the Supreme Court of Spain.

NOVATION; BOND; RIGHTS OF THE SUBROGATED SURETY.—A borrowed money from B, and to secure the payment of such debt, C executed a bond undertaking to pay A's debt in case A fails to pay it at the date stipulated. After the execution of the said bond A, the debtor, mortgaged his real estate to B to guarantee the payment of all the debts he then owed B, including that for which C's bond was executed. The debt guaranteed by the bond became due, but A was unable to pay. Then the creditor demanded of C the payment of the debt according to the term of the bond, but C refused to pay, alleging that the mortgage executed by the debtor was a novation of the obligation guaranteed by his bond and he was, therefore, released.

Action was brought by the creditor on the bond; but it was held that the mortgage did not release him from the obligation and that it was not any novation at all of the guaranteed obligation, since the new contract had nothing to do with the old one.

In the same action, the surety claimed that if he was not released from his obligation, he was entitled to be subrogated in the rights of the creditor with regard to the mortgage, that is, the right to enforce the mortgage against the debtor for the recovery of the amount he might be compelled to pay on account of the debt, but the court denied the claim on the ground that no connection existed between the bond and the mortgage. (Sentence of June 5, 1915.)

NEGLIGENCE.—In a certain factory there was a room where entrance was prohibited. But in spite of such prohibition an employee entered there, as it was his business to do so. When he was already in the room, he happened to come in contact with certain cables there whereby he died immediately. His widow

brought action for damages, and it was held that she was entitled to recover on the ground that the prohibition did not apply to the deceased as he had the duty to enter the room. (Sentence of April 16, 1915.)

PATRIA POTESTAS.—The second marriage of the widower does not extinguish his parental authority over his children begotten in his former marriage, because Article 164 of the Civil Code applies only to the mother. (Res. of September 3, 1915.)

BILL OF LADING; DELIVERY C. I. PAYMENT OF FREIGHT.—In a bill of lading it was stated that the delivery of the goods should be made upon payment of the freight. The shipper claimed that the goods should be first delivered before he could be compelled to pay. But it was held that the terms of the bill of lading can not be interpreted in any other way than that payment should be made before delivery. (Sentence of June 12, 1915.)

Decided by the Supreme Court of Porto Rico.

REGISTRATION OF ATTACHMENT IN THE REGISTRY OF PROPERTY. EFFECTS OF PREFERENCE OF CREDITORS.—At the commencement of the action a writ of attachment was issued by the Court on the real estate of the defendant, and notice thereof was ordered to be registered in the Registry of Property to abide by the consequences of the action.

The registration was made as ordered by the court. At the termination of the case, the plaintiff claimed satisfaction of his judgment out of the said real estate, but it was held that the effect of the registration of the attachment was only to give the judgment creditor a preference over subsequent creditors with regard to such estate, and not a real or hypothecary right. (*Longpre et al. v. Wolff et al.* and *Rucachado*; Sentence of July, 1915.)

ARREST WITHOUT WARRANT. ARREST BY A POLICE OFFICER. AGGRESSION.—If a police officer, after having seen the commission of a misdemeanor by a person in a certain place, leaves that place for some other purposes, he cannot afterwards come and arrest the person without warrant, and if he does so, and is resisted, the aggression is but a simple aggression. (*People v. Hernandez*; Sentence of July, 1915.)

CERTIORARI. APPEAL. ADEQUATE REMEDY.—The fact that in an action, an appeal can be taken from the judgment, and the said appeal was taken, does not preclude the superior court from granting the writ of *certiorari*, if it is satisfied that the interest of justice requires the exercise of its jurisdiction. (*Sánchez et al. v. Cuevas Zequeria*, Judge of the District Court, and *Goffinet et al.*, sentence of July, 1915.)

WORKING HOURS. JUDICIAL NOTICE OF.—The Court will take judicial notice of the fact that generally men will not and can not work nineteen hours a day. (*People v. García and García*, Sentence of July, 1915.)

PAYMENT OF MONEY. EVIDENCE. LETTER AS PROOF OF DEMAND OF PAYMENT.—When a letter is introduced in evidence to prove that in several occasions the plaintiff demanded from the defendant the payment of the debt, there being no proof that such letter refers to any other claim, the letter is admissible evidence between the parties. (*Hermida and Palos v. Gestera*; sentence of July, 1915.)

COSTS. FEES. CULPABILITY. JUDICIAL DISCRETION.—The court has discretionary power to assess the costs of the action against the defeated party, taking into consideration the degree of culpability and also the attorney's fees, and unless there is abu. of such discretion, the proceeding of the court will not be disturbed.

DEPOSITION. SUFFICIENCY OF CERTIFICATION OF. APPEARANCE OF WITNESS BEFORE THE COMMISSIONER. PRESUMPTION. SEPARATE EXAMINATION OF WITNESSES.—When it appears at the bottom of the deposition that the same was read by the commissioner to the witness before the latter signed it, the certification is sufficient.

And when the commissioner certifies that the witness appeared before him, and was sworn, and the declaration was read to the witness and the latter ratified it, presumption is that the deposition was taken in the presence of the commissioner, unless the contrary is proven.

In case there are several witnesses, though the regular way is to take their deposition separately, yet it is not improper to permit one witness to adopt the declaration of the other as his. (*Hermida and Palos v. Gestera*; Sentence of July, 1915.)

ID. ABSENCE OF STATEMENT AS TO WHO WROTE THE DEPOSITION. ASSUMPTION. ADMISSIBILITY.—When the certification does not contain any statement as to who wrote the deposition, the presumption is that it was written by the commissioner in the absence of proof to the contrary; the mere fact that the handwriting is not similar to that of the commissioner is not sufficient to render the deposition inadmissible. (*Ibid., Ibid.*)

CONSTITUTIONAL LAW. WORKING HOURS. RESTRICTION ON. EXEMPTION OF PARTICULAR CLASSES OF WORK FROM THE OPERATION OF THE ACT. WORKS OF ABSOLUTE NECESSITY.— When under the Act one is free to work for eighteen or nineteen hours, the requirement of the Act to suspend work for a period of five hours is a justifiable restriction on the liberty to contract.

The fact that the Act exempts certain particular works from the said restriction does not render the Act invalid if such classes of work are of such nature that would cause immediate loss to the business if not exempted, or are of absolute necessity. Nor can the Act be declared unconstitutional, on the ground that its application is an obstacle to the free operation of the business if it gives reasonable facility to carry on the business, and does not constitute a prohibition, but merely a regulation thereof. (*People v. García and García*; Sentence of July, 1915.)

ALUMNI

(Alumni are requested to contribute to this department.)

SERAFIN P. HILADO, 1913 Law

Editor.

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1913

Feliciano Ocampo was recently married to Miss Amanda Roque.

1914

Benedicto M. Javier has been appointed Justice of the Peace of Catbalogan, Samar.

1915

Vicente del Rosario is now associated with Attorney Diokno.

Felipe Natividad, formerly in the Bureau of Justice, was appointed private secretary to Justice Moreland to succeed John C. McMahon.

ALUMNI ASSOCIATION

At a meeting held by the Board of Directors of the College of Law Alumni Association it was resolved:

1. That the Alumni Association participate in the publication of the *Philippinensian*;
2. That letters be sent to the alumni asking them whether they would co-operate in the establishment of a club for the faculty, alumni, and students of the College of Law.



Arsenio Cruz Herrera
Dean of the Academia de Leyes