THE ADMINISTRATIVE CODE OF THE PHILIPPINE ISLANDS

(Continued from the August Number)

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1.

AVAILABLE MATERIAL FOR CODIFICATION WHEN THE CODE COMMITTEE WAS CONSTITUTED (ACT 1941) IN 1909

In May 1907, the Commission passed a resolution appointing nine persons to compile and codify the laws up to June, 1907. On September 30, 1907—a little over four months later—that Committee presented a report of their labors which we know as the "Compilation." On October 2, 1907, the report was accepted by the Commission and the Compilation Committee was discharged with thanks. By a small and final proviso in that Resolution it was declared that the printed Compilation "shall not have the effect of varying the meaning" of the laws so codified. The reason assigned was that the first Legislature would shortly convene and there was not time for the Commission to examine and adopt the Compilation as a statute. In the judgment of the writer this was very unfortunate. The work of the Compilation Committee and those who aided them was remarkably well done. It was prompt, loyal, lawyer-like, patriotic and most valuable public service performed gratuitously. Every man whose name was connected with it was, and many of them still remain and are, valuable servants of this Government. Without their work nobody, practically speaking, could know the body of our statute law, and the Compilation has been, and for some years hence may probably be an indispensable tool of the profession. It necessarily contained a few unimportant errors, but it is the key to our public laws down to Act 1800, and when the skill of its plan and the diligence with which that plan was pursued and executed is borne in mind, it remains a unique monument to its builders. The Code Committee at its inception in 1909 had as a guide this invaluable work by which to pursue their similar labors. It is appreciated that a revision is not a code, but the Compilation, like the Revised Statutes of Massachusetts or Connecticut, is substantially a code. It is a scientific arrangement, by subjects, of the statutes, properly revised, with valuable citations, marginal references, and an index far above the average for this country. The Compilation splendidly "blazed a trail" for the codifier.

2.

One of the most important functions of a modern Code is to furnish citations under various sections, whereby the judicial authorities construing such sections

may be conveniently consulted by bench and bar. As every judge and practitioner is aware, a code that fails to do this immediately imposes that labor on the user before it can be handled with confidence. The Compilation did this quite extensively. The Lawyers Cooperative Edition of the Code of Civil Procedure likewise does this. The Administrative Code unfortunately contains no such references; but instead gives references under each section to the section of the prior statute, or other source from which the Code section was drafted. The usual rule of revision is to print these last mentioned references marginally and to reserve the space under the printed section for judicial citations. Our Supreme Court for over fifteen years has been construing our laws and a knowledge of this case law is indispensable to an understanding of this Code. Not only does each volume of the Reports contain a table of references to the statutes construed, but a few years ago a complete "Table of References" covering Volume 1-12 of the Philippine Reports was published by the Bureau of Printing, so that half of the work approximately was already done. Hampered as we are in this country for want of an index-digest of our law reports, the inclusion of these references in the Code would have added immensely to its usefulness. It is not overlooked that the Code introduces changes, both verbal and substantial in the laws as construed but it will not be contended that those decisions are not the authoritative guide nevertheless. It is submitted that a perfect Code will have to include these annotations, and that a reprint by all means should do so. A word of caution to students may be proper concerning these statutory references. It would be very inaccurate to assume that such references mean that the old law has been retained or reprinted in the Code. This is generally so perhaps; but in a very large number of instances the Code has just "dropped" part of the old law as surplusage, and in not a few instances, has incorporated no substitute enactment either in the pertinent section or elsewhere. For typical specimens of whole provisions thus "dropped" and not elsewhere provided for, compare Section 335 with Act 1041; or Section 613 with Section 6 of Act 1792. (This last named Code section has been superseded by the "Jones" bill which re-enacts Section 6 of Act 1792.) In many cases naturally a change has been introduced, sometimes in form, sometimes in substance. These matters become readily apparent in using the Code. There are some cases where the reference is not to the first or earliest statute where the language adopted occurs, others where the last statute is not referred to, etc. This is not of any special importance ordinarily, but would be misleading if the history of the legislation were the subject of inquiry. There has been so much re-enactment of many of our laws that it is not surprising some references were omitted. The marginal statutory citations of the Compilation, however, were complete, and are of daily value in the work of interpretation. The sequence of changes which a provision undergoes is a valuable knowledge for those who are students of administrative law, or law of any kind. "The old law, the mischief and the remedy" must always be borne in mind.

3.

The Code contains no index. I confess this is such a startling omission that mere mention thereof would seem to be a sufficient comment on that point. That a statute containing over 2750 sections, enacted as a Code for the specific purpose of convenient reference, should in these busy times, furnish no key by which the arcana of its treasures might be revealed to those whom it purposes to govern is—interesting. The semi-official announcement in this regard is that the Committee feels it is the duty of the Legislature to index its statutes, that the Code is only a statute and that any way, the preparation of an index is mechanical, i. e., in no sense technical work. I would be very loathe to believe that the Code Committee would endorse any one of these reasons, especially the last. One who has occasion to use our law reports must perceive that the notion is not entirely novel here that legal indexing is mechanical. If you are looking up a simple question on negotiable instruments in the reports you find that topic indexed in one volume under "bills and notes," under another as "negotiable instruments," under another as "promissory notes." This is only a typical illustration of what has occurred in indexing other topics like contracts, for example. The indexing in the published opinions of the Attorney-General has been very poorly done, and lacks uniformity of classification in the various volumes. These matters are mentioned to show that in the legal profession, above all others perhaps indexing, digesting, annotating, classification, head-notes, cross-references, and such work is highly technical, and when well performed is scarcely less valuable than the subject matter to which it refers. No one can know all the law; only the most foolish and hopeless of its devotees attempt to memorize save a tithe of its canon. Sharswood was right. Only the one who can *find* the law is the trained lawyer. He is also the joy of judges, the saver of time, the admired of his brethren, the real servant of those who retain him, and the adornment and hope of his profession. "Honest and faithful" indexing by a capable man is indispensable in codification, but like the writing of head-notes it is an art. Any one can prepare an expanded table of contents of any work. The preparation of a legal index with workable classifications and cross references is a different matter. Law book publishers in America have long since discovered that the index sells the book, or if poorly done discourages sales. The Philippine Code of Civil Procedure published a couple of years ago by an American law-publisher is splendidly indexed; and as has been stated, the Compilation was very satisfactorily indexed. The American official reprint of the Civil Code—already unfortunately becoming rare—only pretended to an "alphabetical index" but considering that it was done by those unfamiliar with the civil law terminology it is, quite satisfactory. One can quite easily reach any subject, or subdivision of a subject by consulting it.

The authority for the American reprint of the Penal Code in 1910 granted by the Secretary of Finance and Justice, with approval of the Insular Auditor, specified

that it should contain citations of the decisions, as well as proper cross-references, although the editor would no doubt have done so any way, as the work was performed by the Attorney-General, and it has been a most satisfactory and useful work. The Act creating the Code Committee (Act 1941) did not specify indexing and citations, etc., but it did require a Code in accordance "with the modern science of law," and to omit an index from a law book is about as allowable as to omit the cover; especially so in a book of constant reference, and which has a plan of arrangement that is not alphabetical.

4.

The Administrative Code in Section 3, purports to deal with the relation of the Code to prior laws incorporated in it. This is a very important matter and I have no hesitancy in venturing the prediction that this section will be one of the first to require and receive judicial interpretation. It provides:

> "Such provisions of this Code as incorporate prior laws shall be deemed to be made in continuation thereof and to be in the nature of amendments thereto, without prejudice to any right already accrued."

There is nothing novel about a provision of this kind in a law of this kind if it is clearly expressed, and is not in derogation of or repugnant to what I may term the structure or scheme of the new statute. The "Jones Bill" for instance contains such a final provision. Necessarily it means something different from the ordinary "repealer" or it would not be enacted. Its rational purpose, I should say, is that if by inadvertence the new Act has omitted a link, pin or wheel, etc., from its mechanism or gears, which the old law can supply this provision permits the use thereof, but you cannot use a link, pin, wheel, or any other part of the old machinery if a corresponding new part exists—you must use the new part. Also if a vested right of any kind which the old law gave or protected, would be lost by the repealing provisions of the new law (either express or implied) the provision preserves such right—always remembering that I am speaking of a technical vested right—and not simply any right, as manifestly the new Code will alter, amend, abridge and destroy many of these and create others, etc.

One of the difficulties, I apprehend, about the section in question is its use of the words "without prejudice to any right," etc., which make its meaning somewhat dubious. Without those words the section would mean what has been herein stated above. With them it may possibly mean that the whole section relates to vested or "accrued" rights and to nothing else. If it was intended to have this effect it will be a provision of small consequence in an Administrative Code, which deals largely with offices, salaries, and public expenditures and operations generally —all matters in which one can have no vested rights, save those contractually arising. Given the other interpretation, which it is hoped may be, the section would be regarded as preserving many provisions of the old law which the new Code has in dozens of instances already known, failed to incorporate.

This provision of law is usually found at the end of the statute. Without referring to American Codes to prove this, which might readily be done, I will refer to similar statutes with which the students are familiar. See "Transitory provisions" immediately following "Final provisions" in Article 1976 of the Civil Code, Section 795, paragraph 6 of the Code of Civil Procedure, see final section of the new "Philippine Bill," or Section 611 of the Penal Code, which latter suggests a reference to U. S. *v.* Cuna in 12 Phil. Rep., where that section is discussed. Article 1976, *supra*, has been frequently cited and construed by our Supreme Court also. Having drafted the section almost at the beginning of the Code, it appears to have been lost sight of in the "Final article" which expressly, and without qualification repeals several hundred of the very statutes which Section 3 purports to preserve for the purposes mentioned, or for some purpose. To harmonize this express repealer with a section which expressly says that the Code shall be only a repeal *pro tanto* presents a paradox which does not admit of ready resolution, for manifestly you cannot repeal *in toto* and preserve *in partem* in the same statute. Without elaboration not proper within the purview of this paper I should say that as to any Act repealed by the final article, section three is meaningless. Vested rights, by the way, do not depend on either for their vitality. Vested rights cannot be constitutionally violated by any statute. I think section 3 should be embodied in the final article and the real intent of both made manifest; our language being admirably sufficient for the purpose. If this is done by an amendment to the Code, section 12 thereof states a familiar rule of construction which should be followed in so doing in order to accomplish any necessary revivor.

5.

The repeal of Act 222 by the Code was unconstitutional. The matter now is of no consequence since the "Jones Bill" has been passed. Act 222 was specifically incorporated in section 1 of the Act of Congress of July 1, 1902, which ordained that the same should be the law "until otherwise provided by law" meaning, of course, a later Act of Congress. It is elementarily true that a statute incorporated by title in another Act becomes a part of that Act and for the purposes of that Act remains the law even if the Act incorporated should be afterward repealed. This suggests another matter. The first Accounting Act was Act 90, which, so far as the powers of the Auditor and Treasurer were concerned, was expressly incorporated in Act 222 (See Act 222, Section 7). The repeal of Act 1792 by the Code therefore could not repeal or abridge in any respect the powers of those officers, though it attempts to do so (compare Section 613 with Section 6 of Act 1792, noting omissions; which have been supplied, however, by Congress in the "Jones Bill," Section 24 of which re-enacts Section 6 of Act 1792). This is only introduced as a matter for examination by students, as the recent Federal legislation has reduced it to an academic question, and, it is needless to add, the Code will necessarily in this and other respects require modification, in view of the new Organic Act of government.

6.

We will now consider some omissions which have been observed, in studying the Code.

PERJURY

After the American occupation it was found that the Spanish Penal Code in force here contained no provisions making perjury a penal offence, save that committed in open court (See U. S. *v.* Gutierrez, 12 Phil. Rep. 529 and 13 do, p. 428). In other words, false swearing in an affidavit was not a punishable crime; and there was like immunity for perjuries committed in administrative investigations and in divers other ways. To remedy this an Act was passed (Act 1697, section 3) which provided a perjury law for the Philippines. (It may be found also in the Penal Code at p. 237.) The Supreme Court held years ago that this statute repealed the Penal Code sections relating to perjury (13 Phil. Rep. 429). Its language was taken from the Federal perjury statute (U. S. R. S. secs. 5329-3.) As we know, perjury is one of the commonest crimes in the Philippines, and treason excepted, is perhaps the most dangerous to the State. The Code expressly repeals this indispensable statute, substituting nothing in its place. The new Penal Code, a Spanish copy of which I have seen, does not supply the omission—as might have been anticipated that Code appears to be simply the old Spanish Code edited and revised.

With reference to this perjury omission it might be remedied by taking Section 2638 (perjury at elections) incorporating it in that section and then placing the new section at head of "Book IV" where the penal provisions begin under Article 1 of Book IV—and changing the title of Article 1 to include it; or Sections 2625-6 could be consolidated into one section and the new perjury section numbered 2625.

REFUNDS

Money once covered into the Treasury as a payment of taxes or other public obligation can only be withdrawn pursuant to legislative appropriation. This is constitutional, and as to taxes, customs dues, etc., there is a further general rule, namely, that unless paid under protest the payment is legally a voluntary payment and refund would be unlawful. There are only one or two exceptions to this rule: 1. If the Auditor should accidentally or erroneously revert money into the general funds, the same can be restored to its lawful place on the books without legislative action. There is another case, more academic than practical, since it rarely or ever arises: If a constitution gave a Governor or a Judge a named salary there is a legal theory that such salaries could be paid, even if no appropriation therefor had been made. Of course if a *statute* only gave the salary, it could not be paid unless appropriation had been made, the theory being that if a constitution provides something it must be obeyed, while if a statute creates an office and a salary, but fails to appropriate therefor, the presumption is that the legislature does not deem it expedient or necessary to have the officer's services at this time. A mandate

of the Constitution is a mandate of the people—or the true sovereign, and must always be obeyed. Constitutions rarely fix the salary, however, but always provide for the office, so that constitutional officers likewise require appropriations in order to receive compensation. Another case exists in this country, viz: where the legislature adjourns without passing the annual appropriation Act. Having premised so much we are now confronted with the question: What shall we do for the citizen from whom we have erroneously collected money as a public obligation? Manifestly, he cannot sue the Government, for the sovereign cannot be sued, and to refer him to the legislature for relief, either by way of special appropriation or for the purpose of according him permission to sue, is to practically deny him relief, for reasons which are obvious. Years ago Mr. Taft, while Civil Governor, perceived this difficulty, because appeals were constant to the Commission in these cases. He referred the matter to Mr. Lawshe, the Insular Auditor, who prepared Act 357, which Judge Taft approved and which has never been modified or repealed. It provides a permanent appropriation for these cases. Refunds from the treasury are naturally matters direcly within the domain of Administrative Law, but the Code Committee has not included this statute, though they have not disturbed it. It should be enacted, I should say, in the Accounting Law as a new Section 689, and that section as at present might follow as section 690.

AUDITOR

Section 6 of Act 1792 should be embodied in Section 613 of the Code, so as to be in accord with prior Congressional legislation, as well as with the new Philippine Bill, neither of which the Code can in anywise alter or repeal. This has been already referred to.

Act 1041 authorized the Auditor to designate the next of kin of a deceased employee who might have at the time of his death a small sum due from salary or wages, leave, or a pension or gratuity. This is a function of this officer which in the United States has been exercised by the Comptroller since 1789. It was likewise exercised in this country from the American occupation, and until recently the Auditors and Comptroller of the United States would only approve such payments in cases of deceased Federal employees, occurring in the Philippines upon the certification of the Insular Auditor. The Code repealed this provision and substituted Section 335 whereby the Attorney-General is expected to examine each case and make the designation for the Auditor. The cases are practically of daily occurrence. The idea of the Comptroller consulting the Attorney-General of the United States about a matter of routine audit such as this would be unprecedented. Aside from this, it operates to take a function of audit from the Auditor and bestow it elsewhere, and in practice it has lead to curious results, as for instance, recently upon the death of a Moro employee,—a man governed by his tribal laws and usages—the Attorney-General advises that one part of the wages shall go to the widow, certain

other parts to the children, and then certain "usufructuary rights" of the widow must be calculated and deducted, etc., as if a landed estate were involved. Such recondite refinements over ₱6.75 are indeed a novelty aside from the needless correspondence, vexations and delays in closing accounts—all over a perfectly simple and wholly unimportant matter. Section 335 should be repealed, and nothing put in its place, or if deemed proper, the repealed provision of Act 1041 should be incorporated in the Accounting Law, or embodied in a new Section 335.

LARGE CATTLE

The Code leaves out the Cattle Registration Act. This is a purely administrative statute, of special importance in this country as an exercise of the police power. It enjoins specific duties on municipal officials. It was given a chapter in the Compilation (Chapter XI); it is found in Malcolm's Municipal and Provincial Code, and undoubtedly belongs in the Administrative Code; especially as it was thought proper to incorporate Act 1760 which only deals with cattle diseases and quarantine. It might be incorporated under the sections dealing with the Bureau of Agriculture, with suitable cross-references elsewhere.

CEDULA TAX

Act 1932 provided that where an increased cedula tax was levied in a province at least 30 per cent of such increase should be expended in the municipalities where collected. The Code repeals this Act and does not so provide. The omission is beneficial, as the Act involved troublesome accounting, and the collections being generally small, hindered rather than advanced the subject of road and bridge repairs to which it related. The subject is now governed by Section 588 and 2041.

IRRIGATION

This all important administrative subject is embodied in Acts 1854 and 2652. The Code omits this legislation save in a single small sub-section (Section 1126-i.) It should either be embodied in a separate chapter, or included under the Public Works chapter. Its omission overlooks its prime importance as a constructive work of administrative concern. It is quite as important as the keeping of fire-arms or notaries public, both of which have been extensively included. The Acts mentioned will need revision as they at present represent, in their entirety, somewhat conflicting or varying schemes of administration. The Code could harmonize these Acts readily.

LEGAL COUNSEL FOR MUNICIPALITIES

Section 40 (d) of the old Municipal Code authorized a municipality to retain legal counsel when necessary. The Administrative Code repeals this provision. Section 1302 requires the Fiscal to act for the municipality save in cases where he is disqualified. Acts 1443 and 1639 also obliged municipalities to employ special

counsel in certain cases. A prominent class of these cases concerns litigations with the Roman Catholic Church (which Act 1376 regulates). Act 1443 has been repealed by the Code as also the pertinent section in Act 1699. In Mindanao and Sulu the right has been preserved under the enumerated powers of the Department Governor. It so happens that frequently a Fiscal cannot act for all the municipalities in his province, aside from the cases where he is statutorily disqualified. Section 1302 of the Code intended obviously to regulate this, but cases have already arisen where the Attorney-General has held that the municipalities no longer have this privilege. It is an important matter for a municipality at times and the express re-enactment of Section 40 (d) of Act 82 would restore it. The Attorney-General has also recently held he is no longer required to represent a municipality in the Supreme Court in view of Section 1302. See in this connection Section 1304 (c) which seems, by implication at least, to enact the contrary. This last matter should be affirmatively dealt with as in former laws.

SALE OF ANIMALS, BUREAU OF SCIENCE

Act 735 authorized the private sale of public animals purchased for scientific experimentation. It referred to Act 215 which was later repealed by Section 73 of Act 1792. The said privilege in Act 735, of course, was left undisturbed by Act 1792 under a familiar rule of construction. Section 953 of the Code suppresses the right of private sale so that those sales are now regulated the same as in the case of other public animals. This repeals unnecessarily a useful and convenient statute and Section 935 should be amended accordingly.

TRANSPORTATION TO THE UNITED STATES

Acts 697 and 1425 (Sections 3904-8 Comp.) have never been repealed. There was a printed Transportation Circular issued by the Executive Bureau in 1910 and Executive Order No. 1 series 1912 also relates to the subject. The Code makes no mention of these laws and regulations, and as they are obviously pertinent, they should be revised and incorporated in it.

POWERS OF ATTORNEY

There should be a provision of law whereby a valid power of attorney (we have an official form) authorizing warrants to be drawn in favor of the attorney in fact as payee in all cases whether for salary, accrued leave, pensions, gratuities or legal claims of any sort which have been settled in audit. In the United States the rule is that no valid assignment of a claim against the United States can be made until after a warrant in payment thereof has been drawn. In this country, however, special conditions would often ordinarily warrant a somewhat different rule. Officers leaving Manila for remote points, personnel going to the United States or abroad, etc., leaving those dependent upon them should have an unequivocal legal right to

designate payees of accrued salary, etc., provided it would not introduce needless assignments in favor tradesmen, or split the compensation due, or practices of that sort which would be objectionable. This could readily be accomplished by leaving the matter of suitable regulation to the Auditor, as in like cases; but it is a lawful and equitable right of allotment which should be recognized.

FIDELITY FUND

Under Section 13 of the Fidelity Fund Act (Act 2436) and also under Section 15 of the Revised Civil Service Act, both of which were in agreement, any unbonded officer or employee temporarily occupying a bonded position, in the absence of the regular incumbent, paid no part of the bond premium while so substituting. The rule was founded on the obvious equities of the case, as the employee gets no extra compensation. Administrative Code Section 408-d, however, by not using the language of those sections now preserves this immunity only in those cases where the salary applicable to the bonded position is greater than the regular salary of the substituting officer or employee. It so happens, however, and frequently, that the substitute's regular salary is *greater* than that of the bonded position he temporarily fills, and in those cases the Code section does not preserve the exemption because it reads:

> "Persons who by way of substitutionary service temporarily discharge the duties incident to a bonded office *without the full compensation incident thereto.*"

As the employee does receive more than the full compensation in the case lastly supposed, he is required now to pay his share of the bond premium, which was probably not intended to be so. Excising the underscored words in the quotation will correct the matter.

EMINENT DOMAIN

The exercise of the right of expropriation by provinces or municipalities required formerly Executive approval (Act 2249). The Code omits this requirement (Secs. 2032-e and 2191, also 80-h.) The Code is in accord with the American rule or practice, but it is a subtraction from the general Executive control, which of course is retained in several less important matters than this. Act 2249 was enacted only three years ago and was calculated to give the Executive general control Insular, provincial and municipal. It is thought proper to call attention to it, as it possibly has introduced a change unintentionally.

In the next installment conflicting code provisions and typographical errors in references, etc., will be discussed.

(To be continued.)