PHILIPPINE LAW JOURNAL

Vol. III DECEMBER, 1916 No. 5

THE EFFECT OF THE CODE OF CIVIL PROCEDURE (ACT 190) UPON TITLE III, BOOK III, OF THE CIVIL CODE CONCERNING SUCCESSION

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The primary object of this thesis is to discover and point out what provisions of the Spanish law of succession are still in force in the Philippines and what have been abrogated, repealed or modified by subsequent legislation under American sovereignty. The plan adopted is to take up these provisions article by article in order to discover easily the effect wrought by subsequent laws passed since the American Occupation. The arrangement of the Civil Code is also followed to a great extent to preserve the relation of the articles, which are systematically arranged, and to facilitate the drawing of the proper conclusion as to their present force and validity.

SUCCESSION

Art. 657.

IN FORCE. Ilustre *vs.* Frondosa, 17 Phil. 323; Malajacan *vs.* Ignacio, 19 Phil. 435; Fernandez *vs.* Tria, 22 Phil. 619.

Art. 658.

IN FORCE. Irlanda *vs.* Pitargue, 22 Phil. 388.

Art. 659.

IN FORCE. Fabie *vs.* Yulo, 24 Phil. 245.

Arts. 660-661.

REPEALED. "An examination more specially of sections 597, 644, 695, 727, 729, 731, 733, 749 of the Code of Civil Procedure read together with the remaining provisions for the administration of the estates of the deceased, clearly indicates that the provisions of Arts. 660-661 have been abrogated." Suiliong & Co. *vs.* Chio Taysan, 12 Phil. 13.

Willard, in commenting on Art. 660, says: "The distinction between an heir and a legatee is preserved throughout the Code. Del Rosario *vs.* Del Rosario, 1 Phil. 239. In it the word 'heir' means not only a relative of the deceased who takes the property of one dying intestate but also the person, relative or not, who takes

what perhaps might be called the residuary estate by will. In the Code of Civil Procedure the word 'heir' is used in the first sense only, and in connection with intestate estates. As there used, the heir must always be a relative. A person taking by will is called, whether he be an heir or not, a devisee when real estate is in question and a legatee when personality is in question. This article must therefore be considered as abrogated."

In the case of Suiliong & Co. *vs.* Chio Taysan, *supra*, the same distinction was made. The Court says in part: "Under the provision of the Spanish Civil Code, the 'heredero' (heir) succeeded the deceased by the mere fact of his death in all his rights and obligations and became the owner of the property and was charged with the obligations of the deceased upon precisely the same terms and conditions as the property was held and the obligations had been incurred by the deceased prior to his death save only that when he accepted the inheritance 'with benefit of inventory' he was not held liable for the debts and obligations of the deceased beyond the value of the property which came into his hands. Under the provisions of the new Code the heir is not as such personally liable for the debts and obligations of the deceased so that he can not alienate or charge it free of such debts until and unless they are extinguished either by payment, prescription, or satisfaction in one or the other of the modes recognized by law.

"The term 'heredero' and 'legatario' as defined in the Civil Code Art. 660 are not synonymous with the words 'heir' and 'legatee' as used in the new Code; the word 'heir' in the new Code being technically applicable only to a relative taking property of an intestate by virtue of the laws of descent, devisee and legatee being reserved for all persons whether relatives or not, taking respectively real or personal property by virtue of a will; while heredero in the Civil Code was applicable not only to one who would be called an 'heir' under the provision of the new Code but also to one, whether relative or not, who took what might be called 'a residuary estate under a will.' "

WILLS

Art. 662.

IN FORCE. Justice Willard considers this article as repealed by the provisions of the new Code. While the latter Code has specific provisions with regard to the execution of a valid will, it does not by implication repeal other laws which are not inconsistent therewith. (Calderon *vs.* PP. Dominicos, 12 Off. Gaz. 1698, but see also Sec. 614 of the Code of the Civil Procedure.)

Art. 663.

MODIFIED. Paragraph 1—the age now is 18 years according to Act 1939 of the Philippine Legislature.

Paragraph 2—as to those who are temporarily not of sound mind they may execute valid will during lucid interval.

Art. 664.

IN FORCE. Nichols *vs.* Wentz, 78 Conn. 429.

Art. 665.

MODIFIED. This article is modified in so far as physicians and notaries public are concerned. According to the new Code the latter are no longer necessary. The law requires, both in civil and common law countries, that there must exist a particular character and intellect as the ability to make a certain effort of mind and memory. As a matter of testamentary test it is enough if he understands the nature of the business in which he is called to act freely and voluntarily.

Arts. 666-667.

IN FORCE. Sanchez Román defines will as follows: "Un acto jurídico *mortis causa* personalísimo y singularmente individual y unilateral otorgado por persona con capacidad especial legalmente necesaria y con sujeción estricta a las formas de la ley esencialmente revocable hasta la muerte por virtud del cual declara su última voluntad acerca de la disposición de todos o parte de sus bienes, derechos y obligaciones transmisibles y de cuantas otras manifestaciones de aquella se establezcan en el mismo aunque no tengan aplicación personal."

Art. 668.

IN FORCE. Del Rosario *vs.* Del Rosario, *supra*.

Arts. 669-670.

IN FORCE. There is, however, exception to this rule. In case of *sustitución pupilar* and *ejemplar*, other persons make the will for the testator. See Arts. 774 to 776 and Act 1934. In this particular case we can not say that it is a personal act.

Art. 671.

IN FORCE. But the court can intervene in case the third person disobeys or fails to follow the express direction of the testator.

Art. 672.

REPEALED. Holographic will is no longer in force. The new Code provides only one form of will. (Sec. 618 of the Code of Civil Procedure.)

Arts. 673-674.

IN FORCE. In connection with these articles see Art. 756 of the Civil Code and Sec. 634 of the Code of Civil Procedure.

Art. 675.

IN FORCE. This is the general rule of construction. In connection with this article see Secs. 286-690, and Secs. 615-616 of the new Code. The Civil Code, however, lays down some special rules to be followed in the disposition of the property. See Arts. 346-347, 668, 747, 749, 451, 767-770, 772-773, 779, 797-798, 1070, 1075. (Del Rosario *vs.* Del Rosario, *supra;* Morente *vs.* De la Santa, 9 Phil. 387; Benedicto

vs. Javellana, 10 Phil. 197. Sentencia del Tribunal Supremo de España de 24 de Marzo de 1863, 28 de Abril de 1882 y 16 de Diciembre de 1903. See, also, Postigo *vs.* Borjal, 13 Phil. 245.)

Arts. 676-731.

REPEALED. See Chapter XXXI of the new Code. Hernaez *vs.* Hernaez, 1 Phil. 719; Velasco *vs.* Lopez, 1 Off. Gaz, 113.)

ESSENTIAL ELEMENTS OF A WILL.

A. Who May Make a Will.

According to the new Code every person, 18 years of age or over and of sound mind, may devise, bequeath and dispose of his real and personal property and any right or interest which he has in his real and personal estate by his last will and testament. It is a general principle that the capacity to make a will depends entirely upon the statute for this is a matter of statutory act also. (Sahagun *vs.* Gorostiza, 7 Phil. 347.)

The Civil Code establishes several rules as to who can make a will according to its respective forms, but they are virtually repealed by the new Code. (See Sec. 614.)

According to the Penal Code a person suffering the penalty of civil interdiction can not dispose of his property by any act or any conveyance *inter vivos*. As to the capacity of infants, see Sec. 614 and Act 1934. Married women, 18 years old or over and of sound mind, can execute a valid will even without the consent of the husband.

B. Capacity of Testator.

Sec. 614 of the new Code reads as follows: "Every person eighteen years of age or over and of sound mind may devise, bequeath, and dispose of his estate, real and personal, and of any right or interest which he has in his real or personal estate, by his last will and testament; and the words 'every person' shall include married women: *Provided*, That no person can by will deprive a husband, or wife, or heir of such interest in his estate as the law provides shall appertain to such husband, wife, or heir, notwithstanding the execution of a will."

"The rule of testamentary capacity is that the testator must have sufficient mind and memory to intelligently understand the nature of the business in which he is engaged to comprehend generally the nature and extent of the property which constitutes his estate and of which he intends to dispose and to recollect the object of his bounty." (Drum *vs.* Capper, 240 Ill. 524; Bugnao *vs.* Ugag, 14 Phil. 163.)

It is not necessary that he be strong nor possess a solid understanding of all the matter. It is immaterial whether the testator is of great age or suffering from any desease. (Taylor *vs.* Kelly, 31 Ala. 59; Baker *vs.* Baker, 202 Ill. 595; In re Buren, 47 Oregon 307; Hernaez *vs.* Hernaez, *supra*; Bagtas *vs.* Paguio, 10 Off. Gaz. 775.)

Blind person unless otherwise incapacitated can execute a valid will. (Avelino *vs.* De la Cruz, 10 Off. Gaz. 691; Caguisa *vs.* Calderon, 9 Off. Gaz. 2192; Novísima Recopilación 2_a, tít. 18, libro 10; Partida 6_a, ley 14, tít. 1.°; ley 13, tít. 1.°.)

In the case of Bagtas *vs.* Paguio, *supra*, the Court held: "Para que puedan calificarse de sanos el juicio y la memoria no es preciso que el juicio esté intacto o sin merma por la enfermedad o de otro modo ni que el testador se halle en plena posesión de sus facultades discursivas. La pérdida de la memoria no es suficiente a menos que sea total o se extienda a los individuos mas próximos de la familia o a los bienes."

Total insanity renders one incapable of making a will. (Art. 663 Civil Code; Chandler *vs.* Ferris, 1 Harr (Del) 454.) But partial insanity will invalidate it when shown to affect its provision. (Hernaez *vs.* Hernaez, *supra;* In re Butalid, *supra;* Bagtas *vs.* Paguio, *supra;* Blough *vs.* Parry, 144 Ind. 463.)

It is immaterial whether he is illiterate or a drunkard provided his testamentary capacity exists at the time of the execution. (See Sec. 618 of the new Code; In the matter of Johnson, 7 misc. (N. Y.) 220; In the matter of Ely, 16 misc. (N. Y.) 228.)

C. Age.

According to the Civil Code those who are 14 years old can execute a will, except in case of holographic will, where the age of majority is required. At the present time only 18 years is necessary. Wills executed in foreign countries are regulated by the law of the place of their execution. (See Sec. 636 of the new Code, Art. 10 of the Civil Code and Act 1934.)

D. Formalities in the Execution.

The new Code has specifically provided that the legal formalities prescribed therein are absolute and imperative in the execution of a valid will. The object of this provision is to guard against fraud. The making of a will being a juridical act, the provisions of the new Code must be complied with, and no actual proof of good faith can avail or supply the requisites of the law. (Ex Parte Santiago, 4 Phil. 692; In re Benner, 155 Cal. 153; Kelly *vs.* Parker, 181 Ill. 49; Harbert *vs.* Berrier, 81 Ind. 1; Gaude *vs.* Baudoin, 6 La. 722.) Thus, where a will is not signed by the testator, but by some other person in his presence and under his direction who, however, signs his own name instead of the name of the testator, it is held to be a void will, for the law provides that it must be "signed by the testator or by the testator's name signed in his presence and by his express direction." (Castañeda *vs.* Alemany, 3 Phil. 426; Sec. 618, Act 190.)

It is immaterial to the validity of the will whether the person who was requested to sign for the testator signed also his name, provided the name of the testator appears there and is signed in the presence of the testator and three witnesses or more. (Barut *vs.* Cabacunga, 10 Off. Gaz. 401.)

It is immaterial whether the testator, not knowing how to write, put a sign of cross between his name and surname written by other person at his request. (Abaya *vs.* Zalamero, 10 Phil. 357; Gillesena *vs.* Menasalva, 13 Phil. 116; Ex parte Juan Ondevilla, 13 Phil. 470.)

It is also an essential requisite that the witnesses must be present at the time when the testator signs his name; but it is not necessary that the witnesses actually see the testator signing. It is enough that the witnesses could have seen each other sign had they chosen to do so, considering their mental and physical condition and their position with relation to each other at the moment of the inscription of each signature. (Jaboneta *vs.* Gustillo, 5 Phil. 541; In the matter of Siason. 10 Phil. 504.)

E. Witnesses.

The new Code provides that the will must be attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. They must be 18 years old, of sound mind at the time of the attestation, and not blind, deaf or dumb, and must be able to read and write. (Act 2057.) His becoming subsequently incompetent shall not prevent the allowance of the will. (Johnson *vs.* Johnson, 181 Ill. 83; See Sec. 620 of the new Code; Wiseheart *vs.* Aplegate, 1,72 Ind. 313; In re Holt, 56 Minn. 33; Holmes *vs.* Hollman, 12 Mo. 535.)

But a mere defect of sight or hearing does not render a person incompetent as a witness to a will, provided his perception is clear and he knows the work he is performing. (Sentencias del Tribunal de España, 11 de Junio de 1864 y 27 de Enero de 1870; Major *vs.* Snault, 7 La. Ann. 51.)

The Civil Code has specific provisions on the subject of competency of witnesses:

> Art. 681. The following can not be witness to wills:
>
> 1. Women with the exception of the provision of article 701.
> 2. Males under age, with the same exception.
> 3. Persons who are not residents or domiciled in the place of the execution, with the exception of the cases excepted by law.
> 4. Blind persons and those totally deaf and dumb.
> 5. Persons who do not understand the language of the testator.
> 6. Persons of unsound mind.
> 7. Persons who have been condemned for the crimes of forgery of public or private instruments, for perjury, and those suffering the penalty of civil interdiction.
> 8. The clerks, amanuenses, servants or relatives within the fourth degree of consanguinity or second of affinity of the notary who authenticates the will.
>
> Art. 682. Neither can the heirs and legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity, be witnesses thereto.
>
> There are not included in this prohibition the legatees and their relatives when the legacy is of some personal property of a sum of small importance compared with the amount of the estate.

The common law principle that the witnesses to a will must be personally acquainted with the testator or must satisfy himself of his identity and his testamentary capacity seems to be in complete accord with the Civil Law rule. (Brinkerhoof *vs.* Remsen, 37 Am. Dec. 251; Scribner *vs.* Crane, 27 Am. Dec. 81.)

> "Tenían también prohibición que podemos llamar relativa pues tan solo era con una relación a determinadas sucesiones y testamentos:
>
> 1. Los decendientes en los testamentos de sus ascendientes y vice versa excepto en los casos por personas que gozaban de fuero militar si estaban en campaña; y
>
> 2. El heredero y sus parientes hasta el cuarto grado civil por con anguinidad y afinidad en el testamento abierto en que se hubiese hecho la institución; pero podían serlo en el testamento cerrado. (Leyes 11, tít. 1. de la Partida 6.a, y 14, tít. 16 de la Partida 3.a.) Esta prohibición no regía respecto del legatario el cual a falta de los otros testigos podía serlo. Eran también testigos idóneos el fideicomisario y el testamentario particular con tal que el testamento se hubiere hecho en escritura pública y no fueran hereos."

In the new Code there is also "prohibición relativa." Sec. 622 of the Code of Civil Procedure reads as follows: "If a person attests the execution of a will, to whom or to whose wife or husband, or parent, or child, a beneficial devise, legacy, or interest, of or affecting real or personal estate, is given by such will, such devise, legacy, or interest shall, so far only as concerns such person, or the wife or husband, or parent or child of such person, or anyone claiming under such person or such wife or husband, or parent or child, be void, unless there are three other competent witnesses to such will, and such person so attesting shall be admitted as a witness as if such devise, legacy, or interest had not been made or given. But a mere charge on the real or personal estate of the testator, for the payment of debts, shall not prevent his creditors from being competent witnesses to his will." (See Arts. 752, 753, 754 of Civil Code; Valera *vs.* Purugganan, 4 Phil. 720; Calderon *vs.* PP. Dominicos, *supra.*)

By the common law principle, interest rendered a person incompetent as a witness to a will, and such is the rule except where it has been abrogated by statute. "The test of interest is whether the witness will gain or lose financially as a direct result of the proceeding or whether the record will be a legal evidence against him in some other action. The interest must be present, certain and vested interest and not one uncertain, remote or contingent. When the interest is of doubtful nature the objection goes to the credit and not to the competency of the witness." (Greenleaf on Evidence, Sec. 390; Jones *vs.* Greiser, 238 Ill. 183; Bacon *vs.* Bacon, 17 Pick. 134; Hawes *vs.* Humphrey, 20 Am. Dec. 481.)

The same rule is in force in the Philippine Islands but the fact that the notary who assisted in the execution of the will was a brother of the principal beneficiary under it will not invalidate it. (Sec. 622 Code of Civil Procedure; Valera *vs.* Purugganan, *supra.*)

F. Attestation Clause.

The new Code provides that the attestation shall state the fact that the testator signed the will or caused it to be signed by some other person under his express direction, in the presence of three witnesses, and that they have attested and subscribed it in his presence and in the presence of each other. But the absence of that form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as Sec. 618 provides. The primary object of attestation is to have a complete record of all the facts attending its execution so that in case of death of the attesting witnesses or a failure of memory on their part the fact may be still proved. (Farley *vs.* Farley, 50 N. J. 434.)

G. Form.

The law does not prescribe a definite form. All that is necessary is that it should clearly appear to be the intention of the testator that the will is to take effect after his death and not before.

Sec. 618, Code of Civil Procedure, reads as follows: "No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other." In all cases the will must be in writing. It is immaterial whether it was written in lead pencil or ink or printed or written on separate sheets of paper. (See Secs. 288-294, Code of Civil Procedure; Matter of Adams, L. R., 2 P. and D. 367.)

It is, also, material that the testamentary provisions be certain and clear. The courts will hold the will void in its entirety for being uncertain when after due consideration of all its provisions it remains to be obscure, indefinite and ambiguous so that no definite idea of the testator's intention can be found. (Art. 772-773, Civil Code.)

Art. 750 reads as follows: "Every provision in favor of an unidentified person shall be void unless is some way the person may become identified.". As we have seen in the previous discussion a will is a juridical and personal act with must be executed by the testator or by another in his presence and under his own direction. Such being the case, the making of it can not be left to the discretion of a third person nor can it be made through a trustee or agent. Nor can he leave to the discretion of a third person the continuance of the appointment of heirs or legatees nor the designation of portions to which they are to succeed when they are nominally instituted. (Art. 670 Civil Code.) However, the testator may intrust to a third person the distribution of the sum he may leave in general to specific classes such as relatives, the poor or charitable institutions, and also the designation of the person or institution to which such sum is to be paid. (Art. 671; see, also, Arts. 747-749 and 831, Civil Code.)

H. Probate of Will.

"The probate of a will is the judicial determination of its character and validity as such, and until it has been duly admitted to probate in the proper court it is wholly ineffectual as an instrument of title." (Inge *vs.* Johnston, 110 Ala. 650; Harris *vs.* Douglas, 64 Ill. 466.)

The new Code expressly provides that no will shall pass either the real or personal estate unless it is proved and allowed in the Court of First Instance or by appeal to Supreme Court; and the allowance by the court of a will shall be conclusive as to its due execution and the capacity of the testator, but not as to the validity of its content. (Montaño *vs.* Suesa, 14 Phil. 695; Sahagun *vs.* Gorosteza, 7 Phil. 347; See also Secs. 614 and 623, Code of Civ. Proc.; Pimentel *vs.* Palanca, 5 Phil. 436; Limjoco *vs.* Ganara, 6 Off. Gaz. 1054.)

The probate of a will is a proceeding *in rem* and being such it is necessary that the opposition as to its validity be made at the time of the probate; for such opposition can not, in subsequent litigation in the same proceeding, raise question relating to its due execution and the capacity of the testator. (Castañeda *vs.* Alemany, *supra;* see Secs. 630-633, Code of Civil Procedure, and Art. 675 of the Civil Code; Timbol *vs.* Manalo, 6 Phil. 263; Abello *vs.* Kock de Monesterio, 3 Phil. 571; Harris *vs.* Douglas, 64 Ill. 466; In re Davis, 151 Cal. 318.)

No ordinary action can be maintained to set aside the probate of a will or the appointment of the administrator. The remedy is by appeal in the proceeding in which the orders were made. (Pimentel *vs.* Palanca, *supra.*)

PRESUMPTION.

The presumption exists in favor of the testator of his sound judgment and testamentary capacity, and it is upon him who opposes the probate to prove the contrary. The certification of the two physicians or experts applies only to cases where the lunatics execute their wills during lucid interval. (Hernaez *vs.* Hernaez, 1 Phil. 694. But see Valera *vs.* Purugganan, *supra.*)

Sound judgment is always presumed, according to the principle adopted by the Civil Code, in favor of the persons who have never been judicially declared insane unless the contrary is proved, and that presumption could only be overcome by competent proof. (Cordero *vs.* Cabigting, *supra*; Bagtas *vs.* Paguio, *supra.*)

But that presumption occupies the same position as any other rebuttable one and is subject, therefore, to any direct and collateral attack. (Brins *vs.* Collier, 69 Ark. 245; Wileham *vs.* Montagne, 148 Iowa 476.)

The converse rule is also true that the presumption of continued insanity exists up to the time of the making of the will when the facts show that the testator has been insane and that insanity was of a general, fixed and habitual, and not a temporary, character, but this rule does not apply in cases where the testamentary provisions are unreasonable and unjust. (Murphee *vs.* Seun, 107 Ala. 424.)

Nor can insanity be presumed because the testator is a drunkard commits suicide, or makes unequal distribution of his estate. But the Court generally takes this circumstance into consideration in determining the testamentary capacity of the deceased. (Deas *vs.* Wandell, 1 Hon. (N. Y.) 120; Lee's Will, 46 N. J. 193.)

REVOCATION OF WILLS

Art. 737.

IN FORCE. A will being a personal act and taking effect only after the death of the testator, it is ordinarily ambulatory and revocable at any time. (Tilbol *vs.* Manalo, 6 Phil. 260; Moody *vs.* McComber, 159 Mich. 657; Nash *vs.* Burchard, 87 Mich. 85.)

Revocation is the act of the testator by which his will is rendered void. The law requires the same mental capacity to revoke as it requires to make a will, and any attempt to revoke without the required mental capacity will be of no effect. The same rule applies in determining his mental sanity to revoke as in the execution thereof. (Schoff *vs.* Peters, 9 S. W. 1037; Lang's Estate, 65 Cal. 19.)

General revocation is made by subsequent will, or codicil properly executed with all the formalities required by law. Sec. 623 Code of Civil Procedure: "No will shall be revoked, except by implication of law, otherwise than by some will, codicil, or other writing executed as provided in case of wills; or by burning, tearing, canceling, or obliterating the same with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction.

"If burned, torn, canceled, or obliterated by some other person, without the express direction of the testator, the will may still be established by the court, and the estate distributed in accordance therewith, if its contents, and due execution, and the facts of its unauthorized destruction, cancellation, or obliteration is established by full evidence to the satisfaction of the court." (Timbol *vs.* Manalo, 6 Phil. 260.)

In the United States the same rule obtains. There are statutes which permit the revocation of wills by tearing, burning, canceling, obliterating or destroying the same. Such act may be done by the testator himself or by a third person under his own direction and in his presence. The act of the third person without the testator's consent is of no effect and the same may be proved by competent evidence. In all these cases it is essential that there must be *animus revocandi* for mere destruction by accident will not defeat the intention of the testator. A mere intention to revoke is not enough. It must be coupled with due execution. (See Sec. 623, Code of Civ. Procedure; Land's Appeal, 106 Mich. 51; In re Olmsted, 122 Cal. 224.)

The Civil Code expressly provides that all testamentary provisions are essentially revocable even though the testator should state in his will his wish or resolution not to revoke them, and all clauses annulling future provisions shall be considered as not existing, as well as those the testator may order that the revocation should not be valid unless made with certain words or marks. (Timbol *vs.* Manalo, *supra*. Secs. 827 and 741, Civil Code.)

CADUCIDAD OR NULLITY

Caducidad may be defined as the loss of the legal force of the will by operation of law. It may arise from failure to comply with the statutory requirements or from a violation of the substantive law.

Sec. 634, Code of Civil Procedure, provides that a will shall be disallowed in any of the following cases:

1. If not executed and attested as in that Act provided;
2. If the testator was insane or otherwise mentally incapable of the execution of such an instrument at the time of its execution;
3. If it was executed under duress, or the influence of fear, or threats;
4. If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
5. If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto. (Castañeda *vs.* Alemany, *supra.* Sahagun *vs.* Gorostiza, *supra.* Abaya *vs.* Zalamero, *supra.*)

The Civil Code provides that acts executed against the provisions of law are void. It clearly appears, therefore, that the law must be observed in the distribution of the estate, for persons living within the jurisdictional limits of a country must submit their right to the limitations imposed by the state. (Minor's Conflict of Laws.) The limitations established by the Civil Code which render the will partially or entirely void are the following:

1. Provision made under the condition that the heir or legatee shall make in his will some provision in favor of the testator or of another person. (Art. 794, Civil Code.)
2. Will made in favor of unidentified person unless in some way the person may be identified. (Art. 750.)
3. Will made in favor of a witness in the execution of the will or in favor of his wife, parent, or child. (Art. 754, Civil Code; Sec. 622, Code of Civil Procedure. Valera *vs.* Purugganan, *supra.*)
4. Will made in favor of a priest who took testator's last confession during his last illness, or relatives of said priest within the fourth degree, or his church, chapel, community or institution. (Art. 752, Civil Code. Calderon *vs.* PP. Dominicos, *supra.*)
5. Will made in favor of a guardian by his ward, unless the former be his parent, decendant, brother, sister or spouse, when made before the rendition of the final account. (Art. 753, Civil Code.)
6. Substitution in trust not made in express manner either by giving them this name or by imposing upon the substitute the absolute obligation of delivering the property to an heir beyond the second degree. (Art. 785 Civil Code.)

7. Prohibition to alienate, even though temporary, not within the limits fixed by Art. 781.

8. Those imposing upon the heir the obligation of paying certain income or pension to several persons successively beyond the second degree.

9. Those whose object is to leave a person the whole or part of the inheritance according to the secret instruction given by him by the testator. (Art. 785, Civil Code.)

10. Testamentary provisions in favor of incapacitated person though concealed under the form of a contract involving a valuable consideration or made in the name of a third person. (Art. 755, Civil Code.)

11. The pretention of one or all of the heirs by force of law in a direct line either living at the time of the execution of the will or born after the death of the testator. (Art. 814, Civil Code. See, also Act 2141 and the Thesis of Mr. Goyena, *Philippine Law Review*, June, 1914.)

12. Disinheritance made without statement of reason, or for reasons the truth of which if contradicted should not be proven, or one that does not come under Arts. 852-855, Civil Code.

13. Testamentary provision impairing the legal portion of heirs by force of law.

14. Legacy of things which are not marketable. (Art. 865.)

15. The legacy of things which at the time of the execution already belong to the legatee. (Art. 866, Civil Code.)

INHERITANCE

Arts. 744-745.

IN FORCE.

Art. 746.

IN FORCE. In the absence of statutory or constitutional provision prohibiting it, the State may be beneficiary under a will. (Deckinson *vs.* U. S., 125 Mass. 311.)

It can not take, however, under statute allowing only gifts to persons. (U. S. *vs.* Fox, 94 U. S. 315.)

Art. 747.

IN FORCE. However, the word "president" should be used instead of "governor" for under the present régime the former official is the one who has supervision over charitable institutions in the municipality. (See Escheat, Secs. 750-752 Code of Civil Procedure.)

Art. 748.

IN FORCE. This article must be construed in connection with the Art. 994, Civil Code, which provides that no public official establishment can either accept or repudiate an inheritance without the approval of the government.

Art. 749.

MODIFIED. The new Code does not regard the curate, mayor or municipal judge as natural administrator in the absence of the person designated by the testator. For that purpose the court appoints an administrator or executor as the case may be. Their duties are defined in Secs. 641-663 of the new Code.

Art. 750.

IN FORCE.

Art. 751.

IN FORCE. The legal reason of these preferences in favor of relatives nearest in degree is the same as that upon which succession *ab intestato* is founded. (6 Manresa 33.)

Arts. 752-753.

IN FORCE. According to Willard these articles are repealed by Sec. 627 of the new Code, there being no other prohibition than those that are provided against witnesses. Today all doubts about Art. 752 have been settled by the case of Calderon *vs.* PP. Dominicos, *supra*, which expressly sustains the force and validity of the same.

Art. 754.

REPEALED. According to the law now in force it is not necessary that the notary intervene in the execution of the will. In every case it is sufficient if the will is signed by the testator and by three credible witnesses in the manner prescribed by Sec. 618, Code of Civil Procedure. It follows, therefore, that this article has been repealed by said section.

Art. 755.

IN FORCE. According to Manresa the legislative intent is clear on this point, rendering incapable to succeed those persons specified by law, and any attempt to avoid such restriction is fraudulent and should never prosper before the law.

Art. 756.

IN FORCE. There are, however, still more serious acts or omissions which, in the absence of the statute, can be considered as sufficient ground for disinheritance, yet this being a statutory provision, it must be complied with. In the Philippine Islands parents usually threaten to disinherit their daughters if they marry without or against their consent. At first blush this seems to be a reasonable ground, but not being included under this article, it can not be a lawful ground for such parent to disinherit them. (See Sec. 227, Code Napoleon; MacKeldy, Roman Law, 530 and 550.)

Art. 757.

IN FORCE. It shall be presumed in the first case that the testator has pardoned him.

Arts. 758-761.

IN FORCE.

Art. 762.

REPEALED. The new Code, Chapter III, has specifically provided that action must be brought within the time prescribed therein.

DESIGNATION OF HEIRS

Art. 763.

IN FORCE. (Rodriguez *vs.* Ravilan, 17 Phil. 69; Escuin *vs.* Escuin, 11 Phil. 339 Irlanda *vs.* Pitargue, 22 Phil. 391.)

Art. 764.

IN FORCE. See Escuin *vs.* Escuin, *supra.*

Art. 765.

IN FORCE. Sec. 758 of the new Code, which directly affects this article, as it has been construed in the case of Marin *vs.* Nancianceno, 19 Phil. 241, was expressly repealed by Act 2141, for it is in flagrant violation of the fundamental principle of the Civil Code touching the right of representation, successional right by death, legitimate succession, right of accretion, and the right and obligation of voluntary heirs and legatees. See the elaborate discussion of Mr. Goyena in his thesis entitled "The Effect of Act 2141 on the Civil Code."

Art. 766-767.

IN FORCE.

Art. 768.

REPEALED. The modern conception of the term "legatee" as used in the new Code is different from that of the word "legatario" in the Civil Code. The distinction between an instituted heir and a devisee or legatee has been abolished. (See Willard's Notes on the Civil Code.)

Arts. 769-773.

IN FORCE. Del Rosario *vs.* Del Rosario, *supra.*

Art. 774.

IN FORCE.

At common law the term "substitution" is generally applied to limitations intended to provide for the death of the prior devisees or legatees before the period of distribution. According to Manresa substitution had its origin in the Roman Law where it was necessary in the institution of heir. He calls this "sustitución vulgar" for it can be made by any one who has legal capacity to make a will. It is a conditional institution of heir depending upon certain events or conditions.

Art. 775.

MODIFIED. Act 1934 makes the age 18 years instead of 14. Manresa calls this "sustitución pupilar" for it is made by a father in favor of his child. This kind of substitution seems to be an exception to the general rule that the making of a will is a personal act, for we find in this particular case that the parents make wills in which the right of the child is disposed of.

Art. 776.

IN FORCE. This is called "sustitución ejemplar" for it is made by the ascendant in favor of his descendant above 18 years who, by reason of incapacity, can not make a will. See Act 1934.

Arts. 777-780-781.

IN FORCE.

Art. 782.

IN FORCE. See *"Philippine Law Review,"* June, 1914, which contains the discussion of Mr. Goyena on the subject of "Legítima."

Arts. 783-784.

PARTLY MODIFIED. The new Code specifies the duties of the trustee. Sec. 590, Code of Civil Procedure.

Arts. 785-787.

IN FORCE.

Art. 788.

MODIFIED to the extent that the Court of First Instance has the exclusive original jurisdiction in question of trust, and administrative officers have no power to intervene according to the new Code.

Art. 789.

REPEALED. The duties and obligations of heirs and legatees are now regulated by the new Code. (Suiliong & Co., *vs.* Chio Taysan, *supra*. Del Rosario *vs.* Del Rosario, *supra*.)

Art. 790.

MODIFIED. The provision about universal and special title is no longer in force. (Suiliong & Co. *vs.* Chio Taysan, *supra*; Del Rosario *vs.* del Rosario, *supra*; Morente *vs.* De la Santa, 9 Phil. 388.)

Art. 791.

IN FORCE The conditions here referred to may be:

(*a*) Express or implied.
(*b*) Possible or impossible.
(*c*) Potestativa, casual y mixta.
(*d*) Positivas y negativas.
(*e*) Conjuntivas y disyuntivas.
(*f*) Suspensivas y resolutorias.
(See Arts. 1113-1124, Civil Code.)

Art. 793.

IN FORCE. Morente *vs.* De la Santa, *supra*.

Arts. 794-796.

IN FORCE.

Art. 797.

IN FORCE. (See Scaevola, Vol. 13, page 646; Chiong Joc-soy *vs.* Vaño, 8 Phil. 119; Morente *vs.* De la Santa, *supra.*)

Art. 798.

IN FORCE.

Art. 799.

IN FORCE. According to Scaevola this article is copied from the Italian Code and the Spanish Legislature failed to distinguish the real significance and difference between "condition precedent" and "condición a término." Following his line of reasoning he concludes that the condition referred to means "condición a término" for in that case the event upon which its execution or its taking effect depends will surely come; while condition precedent, as it is contemplated by this article, includes an instance where the condition may not be fulfilled, yet the heir or legatee acquires his respective rights and transmit them to his heirs.

Arts. 800-804.

MODIFIED. Willard says that these articles must be considered repealed because under the present system the whole estate is administered by the executor. During that time he is entitled to the possession of the real and personal estate (Secs. 727, 754, Code of Civil Procedure). The Supreme Court has held, however, that when there are no debts the inheritance may be administered and distributed by the heirs among themselves if they are all of age. Hence under these cases the administration may still follow the provisions of the Civil Code. (Ilustre *vs.* Frondosa, 17 Phil. 321; Castillo *vs.* Castillo, 23 Phil. 364.)

LEGAL PORTION

Art. 806.

IN FORCE. Rodriguez *vs.* Ravilan, 17 Phil. 71.

The Code of Civil Procedure preserves intact the substantive law on the subject of succession as may be seen from Secs. 614, 687 and 753. (Escuin *vs.* Escuin, *supra.*)

Arts. 807-810.

IN FORCE. Irlanda *vs.* Pitargue, 22 Phil. 391.

Forcible heirs include adopted children, legitimized children and the children of a marriage subsequently declared null. (Art. 134, Civil Code; Sec. 768, Code of Civil Procedure; U. S. *vs.* Mata, 9 Off. Gaz. 867; Joc Sieng *vs.* Encarnación, 16 Phil. 145; Rodriguez *vs.* Ravilan, *supra.* Edroso *vs.* Sablan, 25 Phil. 299.)

Art. 811.

IN FORCE. Edroso *vs.* Sablan, 25 Phil. 299.

This is what the Spanish Code calls "reserva troncal." According to Manresa there are some essential elements in order that this reserva may take place. As to persons there must be four:

1. The ascendant who is obliged to reserve (*reservista.*)
2. Descendant from whom the *reservista* acquired the property.

3. Ascendant or brother from whom the property to be reserved comes.

4. Parents in whose favor the *reserva* is constituted.

a. The *reservista* may belong to any degree or line but must be legitimate because a natural ascendant is not obliged to reserve.

b. The descendant must be also legitimate.

c. The ascendant or brother must be also legitimate.

d. The beneficiary must be within the 3rd degree and belongs to the same line from which the property to be reserved comes. The computation of the degree must begin from the descendant; and the beneficiary must be related to the descendant by consaguinity. It is, however, a question still unsettled whether all the descendants within the third degree are entitled to this or only those who are nearer in degree. It is still an open question as no judicial decision has as yet been rendered on this point.

Arts. 812-814.

IN FORCE. Escuin *vs.* Escuin, *supra*. See Act 2141 and Thesis of Mr. Goyena, already cited.

Art. 815.

IN FORCE. Chinguen *vs.* Arguelles, 7 Phil. 399; Rodriguez *vs.* Ravilan, *supra*.

Arts. 816-817.

IN FORCE. Escuin *vs.* Escuin, *supra*.

Arts. 818-822.

IN FORCE.

BETTERMENTS

Arts. 823-833.

IN FORCE. *Mejora*, according to Marco Tulio, is that portion of the hereditary estate which the father or mother may take from the legitime of the children to be applied in favor of some of them or their descendants. The object of *mejora* is to reward the services and harmonize to a certain extent the natural or physical inequalities of the children.

The word "mejora" in successional term has three accepted meanings:

1. In a grammatical sense, it is synonymous with benefit or fruit.

2. In its juridical sense (but not accurate), it is equivalent to a portion of the estate that the ascendant leaves to the descendant besides his "legitima."

3. In the sense expressed by the above definition of Marco Tulio.

In its legal sense, according to the Civil Code, it is one of the two-thirds of the hereditary estate of the father or mother destined to be the "legitima" of the descendant, of which they can dispose in favor of any of their children or their descendants.

Grandparents can give betterment according to the decision of the Supreme Court of Spain, rendered on Dec. 1903. The fact that betterment can be given to children and their descendants according to the Civil Code makes it clear that grandparents can give betterment.

Arts. 834-835.

IN FORCE. "The validity and efficacy of a will is subject to the provisions of the Code governing the order of succession and the legitimate portions of the heirs at law, the surviving spouse being included among the latter with his or her usufructuary portion." (Sahagun *vs.* Gorostiza, 7 Phil. 347.)

Arts. 836-839.

IN FORCE. (Mijares *vs.* Nery, 3 Phil. 202; Sarita *vs.* Candia, 23 Phil. 448; Sahagun *vs.* Gorostiza, *supra.*

RIGHTS OF ILLEGITIMATE CHILDREN

Art. 840.

IN FORCE. But the burial and funeral expenses here are covered now by Secs. 728, 729 and 735, Code of Civil Procedure. Justice Willard says that the family expenses mentioned in the first two sections referred to probably mean the allowance made for the support of the widow and would not include funeral expenses, for it is evident from Sec. 735 that funeral expenses are in all cases to be paid from the mass of the whole hereditary estate. (Mijares *vs.* Nery, *supra;* Llorente *vs.* Rodriguez, 3 Phil. 697; Son Cui *vs.* Guepangco, 22 Phil. 220.)

Arts. 841-843.

IN FORCE. Mijares *vs.* Nery, *supra;* Escuin *vs.* Escuin, *supra.*

Art. 844.

REPEALED. The method of legitimation that this article speaks about has been impliedly repealed by the change of sovereignty.

Arts. 845-847.

IN FORCE. But with regard to the duty of the heir who is obliged to support, it is limited to the amount he inherited. This is the inference we can draw from the doctrine of the case of Suiliong & Co. *vs.* Chio Taysan.

DISINHERITANCE

Manresa defines disinheritance as follows: "It is an act by which the testator by virtue of a just cause deprives a possible heir of his right to the legitime."

The following are the essential requisites:

1. The cause must be legal.
2. It must be true and its existence capable of being shown.
3. Disinheritance must be made in a will, stating the cause.

Arts. 848-855.

IN FORCE. According to the doctrine established by the leading case of Benedicto *vs.* De la Rama, 3 Phil. 34, adultery is the only ground for divorce, and therefore Art. 105 cited in Art. 855 is no longer in force.

Arts. 856-857.

IN FORCE. According to Willard the father has no right to the administration or usufruct of the son's properties. As to the administration of the estate, the Code of Civil Procedure must be complied with. (Chapter XXXII.) With regard to the usufruct, I don't see any reason why the father should lose his right to it. The new Code does not expressly or impliedly repeal that portion of the article which must be taken then as still in force.

Prof. Bocobo, in his "Law of Persons and Family Relations," says: "Has the father or mother the usufruct of this kind of property? This is an open question. It has been maintained that the Code of Civil Procedure has abolished the right of usufruct given by the Civil Code to the father because the new law provides that the guardian shall apply the profits of the estate to the maintenance of the ward and his family and the payment of his debts. (Willard's Notes to the Civil Code, p. 29.) However, such conclusion may be doubted. The new Code is essentially procedural and while it prescribes rules for the management of a minor's property, it does determine the ownership of the net income. It is believed that as regards this subject, the two laws may coexist, the one stating how the estate shall be administered, the other indicating the person who is entitled to the usufruct of the estate. The fact that management has been taken away from the father does not perforce divest him of his usufructuary right, for the two things are distinct from each other. Implied repeals are not favored. (Lewis' Sutherland, Statutory Construction, Sec. 247.) Moreover, it is the duty of the father, under both codes, to protect, maintain and educate the child, and he is given the usufruct of the infant's estate in return for the benefits which he bestows upon his child. (2 Manresa 33.) It is true that the guardian must support the ward out of the latter's property, but should the estate be insufficient, the obligation to meet the deficit would devolve upon the father. Incidentally, it should be noted that in California, on whose Code of Civil Procedure the provisions of our code are based, "the father of a legitimate minor child is entitled to its custody, services and earnings" and "the proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper."

LEGACIES AND BEQUESTS

The meaning of "legados" at the present time is that expressed by the English term "legacy and bequest." (Suiliong & Co. *vs.* Chio Taysan, *supra.*)

The Spanish word "legado" according to that case has lost its original meaning through the introduction of the Anglo-American system of wills and administration. (1 Bouvier's Dictionary 161-168.)

According to Manresa, "legacy is something taken from the inheritance. The testator separates from the general mass of the property which would otherwise belong to the heir a definite portion or thing or right to be given to any other person or devoted to special purpose." It is a means by which he can compensate the services of his friends and help some public institutions.

Art. 858.

IN FORCE. The liability of the *heredero* and *legatario* extends only to the value of the property received by them. (Suiliong & Co. *vs.* Chio Taysan, *supra;* Del Rosario *vs.* Del Rosario, *supra;* Benedicto *vs.* Javellana, 10 Phil. 202.)

Art. 859.

IN FORCE.

Art. 860.

REPEALED. The duties of executors are now regulated by the new Code. (See executor and administrator.) In all cases all acts of the executor in the performance of his duties are subject to the approval and order of the court; and such being the case, he can not be held liable for eviction. (See Willard's Notes.)

Art. 861.

IN FORCE. Willard says that the duty of buying falls on the executor. I don't see any provision of law in the new code where the executor is empowered to interfere in the purchase of the thing when the heir himself can do it. This being a condition imposed upon the heir, it naturally follows that the heir alone can make that purchase unless the testamentary disposition is violated, in which case the Court only can step in.

According to Manresa this kind of legacy must be made in favor of the wife or parent. (6 Manresa 63.)

Arts. 862-866.

IN FORCE.

Art. 867.

By the provisions of the new Code the executor or the administrator has the control over the property and is bound to follow the testamentary dispositions under the supervision of the Court. (Ilustre *vs.* Frondoso, *supra.*)

In fact there is no specific provision touching this article, but by the mere reading of Chapter XXII, XXXIII, and XXXIV of the new Code it seems evident that the executor or administrator is the person obliged to pay as such executor or administrator from the estate under administration.

Art. 868.

IN FORCE.

Art. 869.

IN FORCE. Willard says that paragraph three is abrogated. I don't find any provision of law which abrogated the first sentence, "If the thing bequeathed is lost

during the life of the testator or after his death without the fault of another." This portion of the paragraph is still in force. As to the other sentence, the executor according to the new Code is not liable for eviction.

Arts. 870-876.

IN FORCE. But the word "*heredero*" mentioned in any of these articles should be substituted by the word "executor" or "administrator" as the case may be.

Art. 877.

IN FORCE. According to Willard this article is in force only in so far as it applies to the legatee; the instituted heir has been abolished by the new Code.

Arts. 878-880.

IN FORCE. But the heir mentioned in Art. 878 should now be the executor of the estate. The rights mentioned in these articles are subject to the payment of legacies.

Art. 881.

IN FORCE. Chingen *vs.* Arguelles, 7 Phil. 302; Marin *vs.* Nancianceno, 19 Phil. 243.

Arts. 662-883.

IN FORCE. Chinguen *vs.* Arguelles, *supra*; Chiong Joc Soy *vs.* Vaño, 8 Phil. 124.

Art. 884.

IN FORCE. Chiong Joc Soy *vs.* Vaño, *supra;* Fuentes *vs.* Canon, 6 Phil. 117.

Arts. 885-886.

IN FORCE. Del Rosario *vs.* Del Rosario. But see Sec. 730, Code of Civil Procedure.

Art. 887.

IN FORCE. Sec. 729 of the new Code provides for the order of payment of debts and the liabilities, of legacies and devises, but that section applies only to cases between creditors and legatees and not to legatees alone when they determine the order of payment. (Benedicto *vs.* Javellana, 10 Phil. 202; Suiliong & Co. *vs.* Chio Taysan, *supra;* See, also, Sec. 753-754 of the new Code; Escueta *vs.* Sy Juilliong, 5 Phil. 407; Pimentel *vs.* Palangca, 5 Phil. 459.)

Arts. 888-889.

IN FORCE.

Art. 890.

IN FORCE. But the last paragraph is repealed by implication. See Suiliong & Co. *vs.* Chio Taysan, *supra.*

Art. 890..

REPEALED. See Sec. 729, Code of Civil Procedure; Del Rosario *vs.* Del Rosario.

EXECUTORS

Art. 892.

IN FORCE. The new Code recognizes the right of the testator to appoint executors. See Sec. 641, new Code.

Art. 893.

REPEALED. According to the new Code, Sec. 654, a married woman can be administratrix or executrix and her marriage shall not affect her authority under previous appointment. See also Secs. 647-648 of the new Code.

Art. 894.

MODIFIED. By the provisions of Secs. 645, 649, 653 of the Code it clearly appears that there is only one kind of executor. According to the California statute from which this Code is borrowed, the duties of the executor include the administration of the property and the settlement of the estate. He has charge of the debts, credits and obligations of the estate. The special executor, therefore is impliedly abrogated. As to the second sentence it is still in force, there being nothing to the contrary in the Code of Civil Procedure.

Arts. 895-897.

IN FORCE. The new Code acknowledges the power of the testator to appoint two or more executors. As to their powers the Code is silent. In this connection the court has discretionary powers for the interest of the estate.

In the case of Paterno *vs.* Solis, 15 Phil. 153, the Court held: "When three executors are authorized by the express term of the will wherein they were nominated to act as such executors, jointly and severally, and two of them execute a power of attorney to the third to act alone in instituting legal proceedings on behalf of the estate of the deceased it is not necessary for him to join his co-executors with him as parties plaintiff."

Art. 898.

REPEALED. Sec. 627 of the new Code provides in substance that a person named executor in a will shall within thirty days after he knows of the death of the testator signify to the court his acceptance of the trust, or make known in writing his refusal to accept it.

Art. 899.

IN FORCE. Willard says that this article is repealed. I don't see any inconsistency between this article and Secs. 643 and 653 of the new Code, though to a certain extent it is covered by said sections; as they are consistent with each other, it must be taken as in force. But once the executor accepts the office he can not resign without the consent of the court.

Art. 900.

IN FORCE. The new Code does not provide anything on this point. According to some Spanish authors, it takes the form of condition upon the executor, and his acceptance and non-acceptance therefore determines the status of the thing left to him as such executor, and other authors hold this as the consideration of the service.

Art. 901.

IN FORCE. The provision of this article is very clear and there is no provision in the new Code which affects the force of this article. However, the court has the supervision of all the acts of the executor.

Art. 902.

REPEALED. See Chapter XXXII of the new Code; Enriquez *vs.* Victoria, *supra*; Del Rosario *vs.* Del Rosario, *supra*.

Arts. 903-908.

REPEALED. See Secs. 714, 743-745, 672, 680 of the new Code· Del Rosario *vs.* Del Rosario, *supra*.

Art. 909.

REPEALED. Sec. 710 of the new Code shows that it can be delegated to a third person.

Arts. 910-911.

MODIFIED. Sec. 653 of the new Code provides for the removal of the executor. In fact there are some cases in this article which are practically the same as that provided in the new Code and to that extent this article is modified. As to the right of the heir to act as executor it is no longer in force for the power of appointment is in the court.

INTESTATE SUCCESSION

Art. 912.

IN FORCE. Sec. 684 of the new Code is not inconsistent with this article. On the contrary it is more or less a repetition of the contents of the Civil Code. These two provisions of law should therefore be construed together. (Ramos *vs.* Marquez, 10 Phil. 725.)

Art. 913.

IN FORCE. Rodriguez *vs.* Ravilan, 17 Phil. 71.

But as to the right of the State to succeed, see Secs. 750-752 of the new Code. Also, see In re Lao Sayco, 21 Phil. 445.

Art. 914.

IN FORCE. Willard says that this article is repealed. That was his deduction from his conclusion that Art. 756 is no longer in force. But in the new Code there is no provision expressly or impliedly repealing it, and it should be taken therefore as in force. See Calderon *vs.* PP. Dominicos, *supra*.

RELATIONSHIP

Arts. 915-921.

IN FORCE. Pavia *vs.* Ituralde, 5 Phil. 578; Sarita *vs.* Candia 23, Phil. 447.

Arts. 922-923.

IN FORCE.

REPRESENTATION

Arts. 924-929.

IN FORCE. The right of representation is defined in the Civil Code, as one in which the relatives of a person have to succeed him in all his rights which he would have if alive, or which he might have inherited.

Llamas defines it as a right by virtue of which the sons occupy the place of their father perpetually in the direct line, and in the collateral up to the second degree, to divide the estate of the ascendant belonging and common to all relatives of nearer or equal or more remote degree in the direct line.

"La representación puede hacer subir al representante varios grados al representante; pero no tiene lugar por salto. Así, el nieto no representa *directamente* al abuelo, sino al padre, y el padre al abuelo; de modo que si el padre hubiese renunciado la herencia del bisabuelo, el nieto no podría heredar, suponiendo que representaba el abuelo." (7 Manresa 55.)

The right of representation takes place either in case of incapacity to succeed, disinheritance or death before the distribution of the property.

A. RIGHT OF REPRESENTATION IN INTESTATE SUCCESSION.

Under this heading natural and legitimate parents should be distinguished from each other, and also direct and collateral lines.

In the case of legitimate parent the right of representation takes place only in the direct descending line but never in the ascending. In the collateral line it takes place only in favor of the sons or daughters, either of full or half blood, if they survive with uncles. But if they alone survive they shall inherit in equal shares except in cases provided for with regard to full blood. Arts. 925, 927, 951, 954. (Sarita *vs.* Candia, *supra.*)

In the case of natural father it also takes place in the direct descending line, but a natural or legitimized child has no right to succeed *ab intestato* the legitimate children and relatives of the father or mother who has acknowledged him, nor do such children or relatives inherit from the natural or legitimized child. (Llorente *vs.* Rodriguez, 10 Phil. 588; Sentencia del Tribunal Supremo de España de 24 de Junio de 1897.)

B. RIGHT OF REPRESENTATION IN TESTATE SUCCESSION.

The right of representation in testate succession and in direct descending line only takes place in cases of disinheritance, incapacity to succeed and death of the sons or descendants of the testator, but this shall not take place with respect to the portion at his free disposal, and in case of voluntary heir representation will not take place in case of repudiation. See Arts. 761, 857, 766, 729, 923 and 929, Civil Code.

In the collateral line, if the institution of the heir is made in favor of the brothers, or in their absence their sons, it will be understood as made in favor of the grandchild

or other direct descendants by right of representation. (Sentencia del Tribunal Supremo de España de 31 de Diciembre de 1895. See also Marin *vs.* Nancianceno, *supra.* Sec. 758, Code of Civil Procedure and Act 2141 and Thesis of Mr. Goyena.

ORDER OF SUCCESSION

Art. 930.

IN FORCE. Ramirez *vs.* Bautista, 7 Off. Gaz. 3047.

Under this group are included the sons of a marriage subsequently declared void. (Art. 69, Civil Code; Sy Joc Lieng *vs.* Encarnación, 16 Phil. 145.) Those children who are legitimized by subsequent marriage. (Art. 122, Civil Code) and adopted children.

Arts. 932-934.

IN FORCE. Llorente *vs.* Rodriguez, *supra*; Ramos *vs.* Marquez, 10 Phil. 724.

Arts. 935-938.

IN FORCE. Bautista *vs.* Jimenez, 24 Phil. 117; Edroso *vs.* Sablan, 25 Phil. 298; Llorente *vs.* Rodriguez, *supra.* In this connection see Arts. 936-937, 942, 841, 836 and 925, Civil Code.

Arts. 939-945.

IN FORCE. This section has been fairly treated already under right of representation. As to the legitimation by royal concession, it is no longer in force. (Llorente *vs.* Rodriguez, *supra.* Del Rosario *vs.* Del Rosario, *supra.* Escuin *vs.* Escuin, *supra.*)

Arts. 946-953.

IN FORCE. Rodriguez *vs.* Ravilan, *supra.*

Arts. 954-955.

IN FORCE. Sarita *vs.* Candia, 23 Phil. 443.

Arts. 956-958.

REPEALED. See Escheat, Secs. 750-752, Code of Civil Procedure. In re Lao Sayco, 21 Phil. 447.

Arts. 959-961.

IN FORCE. The justice of the peace or the Judge of the Court of First Instance, as the case may be, takes the place of the Municipal Judge that Art. 961 speaks about.

Art. 962.

The first paragraph is in force. As to the second paragraph, it is now governed by Secs. 43, No. 4, and Secs. 44-45 of the new Code. (See Vargas' Thesis, *Phil. Law Review,* Oct. 1914; Persons and Family Relations, Outline XII, B-3, by Prof. Bocobo.

Art. 963.

IN FORCE. Notice is not also necessary in case the widow is the only heir.

Art. 964.

IN FORCE. In this connection, see Sec. 684 of the new Code.

Art. 965.

REPEALED.

Art. 966.

The first paragraph is repealed by the provision of the new Code relating to the administration of the estate. The second paragraph is still in force but instead of "may" after administrator, put "must."

Art. 967.

REPEALED. See Executor and Administrator, Chapters XXXI and XXXII of the new Code.

Arts. 968-977.

IN FORCE. Edroso *vs.* Sablan, 25 Phil. 305; Art. 109 of the Mortgage Law; Opinión de la Dirección General de Registros, Junio 26, de 1892.

Arts. 978-980.

IN FORCE. But with regard to the appraised and unappraised dowry, see Prof. Bocobo's Law of Persons and Family Relations, Outline VIII. Edroso *vs.* Sablan, *supra.*

Arts. 981-986.

IN FORCE. Willards says that Art. 982 is modified by section 758 of the new Code. That section is now repealed by Act 2141. See Goyena's Thesis. Del Rosario *vs.* Del Rosario, *supra.*

Art. 987.

Willards says that this article is repealed because of the fact that Art. 660 of the Civil Code is repealed by the Code of Civil Procedure. I do not know how can that change affect the subject matter of this article. However, the words "heir" and "legatee" mentioned in this article should be construed according to the present understanding of their meanings. (Suiliong *vs.* Tayson & Co., *supra.*)

Arts. 988-991.

IN FORCE. Ramos *vs.* Marquez, 10 Phil. 75.

Art. 992.

The first paragraph is in force. Hinlo *vs.* De Leon, 18 Phil. 228.

As to the second paragraph the duties of the Administrator are found in Chapters XXXI and XXXII of the new Code. All the provisions about acceptance with or without the benefit of inventory are repealed. An inventory is now required by Sec. 668 of the new Code to protect only the interest of the ward and not for the purpose of determining the liability of the heirs.

Art. 993.

MODIFIED. With regard to repudiation the judicial approval is no longer necessary. That provision is inconsistent with the spirit of the Corporation Law (Act 1459.)

Arts. 994.-996

IN FORCE. As to the consent of the husband, or in his absence, that of the court, it is consistent with the principle established by the case of Gavieres *vs.* Peña, 13

Phil. 449, though not directly in point. With regard to the deaf and dumb, the duties and obligations mentioned in this article are now governed by the new Code. See Administrator and Executor.

Art. 997.

IN FORCE.

Art. 998.

REPEALED. At present there is no such acceptance with the benefit of inventory or acceptance pure and simple. As far as the liability is concerned it is presumed that it is accepted with the benefit of inventory. (Hinlo *vs.* De Leon, *supra;* Pabia *vs.* De la Rosa, *supra;* Suiliong & Co. *vs.* Chio Taysan, *supra.*)

Art. 999.

IN FORCE. This article is in force except the words "pure and simple." (Hinlo *vs.* De Leon, *supra;* Ortiz *vs.* Aramburo, *supra;* Aramburo *vs.* Ortiz, *supra.*)

Arts. 1001-1002.

IN FORCE.

Arts. 1003-1005.

REPEALED. "The provisions of this law of procedure (Act 190) have abrogated among others the provisions of Art. 1003 of the Civil Code and others in relation to the same article with regard to the simple acceptance of the estate of a deceased person or to that made with benefit of inventory and consequences thereof." (Pabia *vs.* De la Rosa, 8 Phil. 70; Alfonso *vs.* Natividad, 6 Phil. 240; Ortiz *vs.* Aramburo, 8 Phil. 98.)

Art. 1006.

IN FORCE. Ramos *vs.* Marquez, 10 Phil. 725.

Art. 1007.

MODIFIED. This artice is modified to the extent that when the inheritance is accepted by the heir it is presumed that it is accepted with the benefit of inventory. Therefore, pure and simple acceptance is no longer in force.

Arts. 1010-1013.

REPEALED. According to the present law the heirs are liable only to the extent of the property they received.

Arts. 1013-1022.

REPEALED. These articles are related to Art. 1003, and according to the case Pabia *vs.* De la Rosa are repealed.

Art. 1023.

MODIFIED. This article is in force in so far as the liability of the heir is concerned

Arts. 1024-1025.

REPEALED. The new Code provides for the payment of legacy when there are other creditors, but in case of the existence of legatees only Art. 887 of the Civil Code must govern.

Arts. 1026-1027.

IN FORCE. These articles are consistent with the provisions of the new Code and are therefore in force. (Pabie *vs.* Yulo, 24 Phil. 247; Del Rosario *vs.* Del Rosario, *supra;* Ortiga *vs.* Enage, 10 Phil. 251.)

Art. 1028.

MODIFIED. As to the preference of legacy, Art. 887 of the Civil Code must be followed. But see Secs. 735-736 of the new Code.

Arts. 1029-1030.

REPEALED. The right of creditors over the estate is determined before the commissioners. As to the sale of the property when necessary, Chapter XXXVI of the new Code governs.

Arts. 1031-1032.

IN FORCE. These articles are not in conflict with Secs. 678 and 753 of the new Code, respectively.

Arts. 1033-1034.

REPEALED. The new Code provides for the payment of the costs. See Secs. 679 of the new Code. Garcia *vs.* Palomar, 11 Phil. 84.

COLLATION AND DIVISION

Art. 1035.

IN FORCE. Willard makes a long comment on this article and tries to harmonize the conflict between Sec. 760 of the new Code and other articles of the Civil Code touching legitime. By the passage of Act 2141 expressly repealing Sec. 760 of the new Code it becomes apparent that the original force and meaning of this article are restored. See Art. 654 of the Civil Code. (Hernaez *vs.* Hernaez., 1 Phil. 719.)

Art. 1036.

IN FORCE. In case of repudiation, this can only take place at the time of the distribution of the estate as provided in Sec. 753 of the new Code.

Arts. 1037-1039.

IN FORCE. Before the passage of Act 2141, Sec. 760 of the new Code was in conflict with many of the provisions of the Civil Code touching collation. These provisions are now restored to their original status. See Goyena's thesis.

Art. 1050.

REPEALED. All the advances made to heirs by the deceased are now determined by the court. Sec. 761 of the new Code.

Art. 1051.

REPEALED. According to the new Code the distribution of the estate takes place after the payment of all the debts and obligations. See Secs. 753, 754 and 762 of the new Code.

Art. 1052.

IN FORCE. In connection with the duties of the legal representative, see Secs. 195 and 566 of the new Code. (Bautista *vs.* Tiongson, 11 Phil. 583.)

Art. 1053.

MODIFIED. Sec. 115 of the new Code reads as follows:

"When a married woman is a party her husband must be joined except:

"1. When the action concerns her property in which her husband can have no interest nor right.

"2. When for just cause she is separated and apart from her husband or by reason of an agreement in writing entered into between them."

Art. 1054.

IN FORCE.

Art. 1055.

MODIFIED. The new Code provides for the distribution of the estate and the procedure to be followed. Secs. 753-754.

Art. 1056.

IN FORCE. Aramburo *vs.* Ortiz, *supra;* Perizuelo *vs.* Benedicto, 9 Phil. 623; Montaño *vs.* Suesa, 14 Phil. 695. See, also, Sec. 614 in connection with Act 496, Sec. 89.

Art. 1057.

MODIFIED. The new Code provides for the partition of the estate either judicially or extra-judicially. (Secs. 596 to 598, 181 to 196, Civil Procedure.) In either case it is the duty of the guardian, executor or administrator to represent the minor or ward. Chapters XXXI and XXXII. (Del Rosario *vs.* Del Rosario, *supra;* Perizuelo *vs.* Benedicto, *supra.*)

Summary settlement of the estate without legal proceeding may be approved by the court and the record of the case shall be conclusive evidence of the agreement. (Alonzo *vs.* Lagdameo, 7 Phil. 774; Albano *vs.* Agtarap, 22 Phil. 351.)

See, also, Acts 290, 448, 599, 871, and 1041, which empower the Insular treasurer to administer the estates of the employees without proceeding in Court.

Arts. 1058-1059.

MODIFIED. The partition proceedings as provided for in Secs. 596 to 598, and 181-196 of the new Code should be taken into consideration. Either party can appeal to the Supreme Court in the same manner and to the same extent as in other actions (Albano *vs.* Agtarap, *supra;* Alonzo *vs.* Lagdameo, *supra;* Del Rosario *vs.* Del Rosario, *supra.*)

Arts. 1060-1061.

IN FORCE. See specially Madamba *vs.* Talon, 18 Phil. 87; Del Rosario *vs.* Del Rosario, *supra;* Salunga *vs.* Evangelista, 20 Phil. 300.

Art. 1062.

REPEALED. Secs. 181-196 determine the procedure in partitions.

Art. 1063.

IN FORCE. Irlanda *vs.* Pitargue, *supra.*

Art. 1064.

REPEALED. This article is covered by Secs. 192 to 193 and 763 of the new Code.

Art. 1065.

IN FORCE. In connection see Secs. 186 to 197, and 194 of the new Code.

Art. 1066.

MODIFIED. This article is modified to the extent that no preference is given to the male heir. All heirs are treated alike. (Sec. 186 of the new Code.)

Art. 1067.

IN FORCE. Broce *vs.* De la Viña, 20 Phil. 425.

According to Willard the right was limited to an heir as distinguished from a legatee. A legatee has no right of repurchase under this article.

Art. 1068.

IN FORCE. Rodriguez *vs.* Ravilan, 17 Phil. 68.

Arts. 1069-1070.

MODIFIED. The warranty that these articles speak about is no longer in force. Willard says that it being a substantive law and not inconsistent with the new Code it must be taken as in force. From the provisions of the Code of Civil Procedure it seems to me that the heirs are now free from such obligation. In the partition of real estate the heir acquires his own share free from incumbrances that the co-heirs may have created on them. One co-heir can not dispose of more than what is due him from the hereditary mass. The right of third party over the estate arising from an obligation of a co-heir is subordinate to that of the other co-heirs with regard to their share in the inheritance.

Arts. 1071-1072.

IN FORCE.

Art. 1073.

REPEALED. In case of judicial partition the order of the court is conclusive when no appeal is taken and the same is registered in the registry of property. This rule equally applies to extra-judicial partition in case the parties are competent and have bound themselves by their contracts, provided there be no fraud.

Arts. 1074-1076.

IN FORCE. Willard says that these articles are repealed. In the case of Garcia *vs.* Tolentino, 25 Phil. 105, the Court held: "In order that an action for rescision made may lie the 'lesion' must exceed the fourth part of the value of the property awarded and the action must be brought within four years counting from the time the division was made. (Arts. 1074 and 1076 of the Civil Code.) When the object of the action for the recovery of realty by the administrator of an hereditary estate is the judicial partition thereof, but it appears at the hearing that an extra-judicial partition has already been made, and the only objection alleged against said parti-

tion is the disproportion in the value of the property adjudicated, the action really is that of rescision by reason of 'lesion.' " (Salunga *vs.* Evangelista, *supra.*)

Arts. 1077-1079.

IN FORCE. Chengen *vs.* Arguelles, 7 Phil. 301; Salunga *vs.* Evangelista, *supra.*

Art. 1080.

REPEALED.

See Sec. 896 of the new Code, Willard's Notes.

Art. 1081.

IN FORCE. Salunga *vs.* Evangelista, *supra.*

Arts. 1082-1087.

MODIFIED. It seems to me that these articles are modified by Chapters XXXIII and XXXIV of the new Code, where the order of payment is prescribed. I believe that this article must govern and the provisions of the new Code apply only to cases where the property is put under administration at the instance of the creditors of the deceased. The case of Aramburo *vs.* Ortiz, *supra*, does not make any distinction but it seems to me that it upholds the validity and force of this article. See Ilustre *vs.* Frondosa, *supra;* Castillo *vs.* Castillo, 23 Phil. 364; Fabie *vs.* Yulo, 24 Phil. 249.