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ADULTERY AS A GROUND OF DISINHERITANCE

By HORTENCIO J. BRILLANTES *

1. *Definitions.*

Disinheritance is that testamentary disposition by which a forced heir is deprived of his legitime by virtue of a just cause expressly provided for by law.¹ Prof. Espejo de Hinojosa, defines disinheritance as "the act by virtue of which the testator can deprive, for just cause, the forced heir of his share in the inheritance, which is the legitime."² It is thus apparent that disinheritance can only take place: (1) as regards forced heirs, (2) for a cause provided by law, (3) expressed in the will.³ The Civil Code of Uruguay defines disinheritance as a testamentary disposition by which a forced heir is deprived of his legitime. The Civil Codes of Chile and Bolivia define the term in practically the same language.⁴

2. *Origin.*

A certain writer by the name of Roguin, says that disinheritance was first provided for by the Code of Babylon during Hammurabi 2000 B. C. But the direct and proximate origin of this institution came from Rome, and had two aspects. In its primitive aspect when it was necessary that the descendants be disinherited or instituted as heir, it was as Pastor Alvira said "the declaration of the testator which excludes from the state those persons who had no perfect right to the same." In its later aspect it was "the declarations made by the testator by which he excludes, for cause, from his estate, those persons who would otherwise have a perfect right to a part of the same."⁵

* LL.B. (University of the Philippines) ; member of the Philippine bar.

¹ Castan, *Codigo Civil*, p. 295.

² Espejo de Hinojosa, *Rudimentos del Derecho*.

³ Art. 849, *Civil Code*.

⁴ Barbout, *De Las Sucesiones*, vol. 1, p. 254.

⁵ Castan, *Codigo Civil*. p. 295.

3. *Its Basic Principle.*

It is the aim of disinheritance to moderate the system of legitime, and to maintain the good order and discipline of the family giving to the testator the means to penalize those who fail to do and observe those transcendental duties and obligations necessary for the existence of said order and discipline.⁶ It has for its aim, the vindication of an offense against parental authority, disturbing the good order and discipline within the family.

4. *Certain criticisms on the Doctrine of Disinheritance.*

The doctrine of disinheritance had been impugned and criticized by certain authors, principally by the great French jurist, Pothier,⁷ alleging (1) It being admitted that the right to the legitime is intangible, and being as it is an institution of the public law, it can not be left to the will of the testator for that would convert it into an institution of the private law; (2) that disinheritance is unnecessary from the moment unworthiness exist.

But the reasons advanced against the theory of disinheritance are not at all decisive. When the offense is against society, then the law intervenes and may decree as punishment, the disqualification of the guilty party to succeed; but when the offense is against the family, principally and primarily against the order of the family, then the law must leave the scene to the party offended in order that he may vindicate the offense committed.⁸

HISTORICAL BACKGROUND

For a history of the provisions of our law, we must look back into the history of the Spanish Civil Code, for it must be admitted that our Code is nothing more than a copy of the former with but few amendments.

1. *Roman Law.*

Roman Law, being the father of Civil Law, we must look into it for a history of our law. The subject of this work, has as a counterpart in the Civil Code of Italy, which provides (6) "si el hijo tuviese trato ilicito con la mujer o concubina de

⁶ Castan, *Codigo Civil*, p. 295.

⁷ Cited by Castan, p. 296.

⁸ Castan, *Codigo Civil*, p. 296, citing Scaevola.

su padre.”⁹ (If the son has carnal knowledge with the wife or concubine of his father)¹⁰ During the early days of Rome, the causes of disinheritance were left largely to the discretion of the court until Justinian fixed the causes in his Novela 115.¹¹

2. Spanish Laws

The Fuero Juzgo provided “E si faze adulterio o se casa cuemo non devé deve perder quantol diera el marido * * *.”¹² “If he commits adultery or marries while under prohibition, he shall lose what the husband should have given him * * *.”¹³ Later came the Fuero Real which provided “Si la mugier despues de muerte de su marido se casa con otro antes que cumpla el auno o fiziere adulterio la metad de todas sus cosas reciban los hijos della e del primero marido.”¹⁴ “If the wife after the death of her husband remarries within one year after his death, or she commits adultery, one half of her properties shall go to her heirs or to those of the first marriage.”¹⁵ The Fuero Viejo extended the cause of disinheritance to the unmarried woman who has carnal knowledge with a man or who marries without the consent of those persons who are by law authorized to give the same.¹⁶

Pausing for a moment, it will be noted, that under the Roman Law, the ground of disinheritance was not only illicit intercourse with the wife, but also with the concubine of the father. Under the Fuero Juzgo disinheritance may be based not only on adultery, but also on marriage “cuemo non deve” (marriage while under prohibition) and under the Fuero Real, it may be based on adultery, and marriage within a year from the death of the deceased husband. And under the Fuero Viejo mere sexual intercourse by an unmarried woman with a man or marriage without the consent of those required by law to give consent was enough ground of disinheritance.

The Partidas provided; “Soys razones principales mostraron los sabios antiguos, que por cada una dellos deve perder el

⁹ McKeldey, Derecho Romano, p. 420.

¹⁰ Translation mine.

¹¹ Castan,Codigo Civil, p. 295.

¹² Fuero Juzgo, Ley 5.a, tit. II, lib. V.

¹³ Translation mine.

¹⁴ Fuero Real, Ley 1.a, tit. II, lib. III.

¹⁵ Translation mine.

¹⁶ Sanchez Roman, Codigo Civil, Tomo 5.o, vol. 2.o.

heredero la herencia del finado * * *. La quinta es: quando el heredero yoguiese con la mujer de aquel que le establecido por heredero.”¹⁷ The learned men of the ancients established six principal reasons for any one of which an heir should lose the inheritance of the deceased * * *. The fifth is: when the heir lies with the wife of the party who appointed him.¹⁸

These were the laws of Spain on the subject before the promulgation of the Civil Code. The final provision of the Code as it is now, was taken from the draft of the Proyecto de 1851 article 617; and art. 754 of the draft of 1862.¹⁹ Our law as it is, provides:

Act 756: The following are disqualified to succeed by reason of unworthiness:

5. The person convicted of adultery with the wife of the testator.

From a comparative study of Act 756 of the Code, it will be seen that said article has confirmed most of the admitted precepts of the previous laws, omitting others which in their judgment was of unjust foundation and of unreasonable application. On the other hand, new causes were incorporated in the article, thus giving indubitable proof of the noble sentiments of morality that inspired the minds of the codifiers.²⁰

IS ADULTERY A GROUND OF DISINHERITANCE?

The writer is of the opinion, that it is so. Adultery, under subsection 5 of Art. 756 of the Civil Code is a ground of incapacity by reason of unworthiness. Falcon says that all modern Codes agree that unworthiness is a ground of disinheritance, but no two of them agree as to the specific causes of the same.²¹ Article 852 of the Code provides: “They are just causes for disinheritance, in their respective cases, those of incapacity on account of unworthiness to succeed mentioned in Article 756 under Nos. 1, 2, 3, 5, and 6.”²² Article 853, aside from its main provisions refers to paragraphs 2, 3, 5 (about adultery) and 6 of Art. 756 as sufficient causes of disinheriting children and descendants. Article 854, aside from the causes it men-

¹⁷ Las Siete Partidas, Ley 13, tit. VII, Partida 6.a.

¹⁸ Translation and notes on the Siete Partidas by Samuel Parsons Scott.

¹⁹ Falcon, *Codigo Civil*, vol. 3, p. 176.

²⁰ Manresa, *Codigo Civil*, Vol. 6, p. 52.

²¹ Falcon, *Codigo Civil*, vol. 3, p. 176-177.

²² Civil Code of the Philippine Islands.

tions, also refers to paragraphs 1, 2, 3, 5 (about adultery) and 6 of Art. 756 as sufficient causes for disinheriting parents or ascendants. And again article 855 provides as a ground of disinheriting a spouse, "those which are causes for divorce according to Article 105. Turning then to Article 105, it says: "1. The adultery on the part of the wife in every case * * *." From the foregoing the conclusion follows that adultery is a ground of incapacity to succeed as well as a ground of disinheritance.

DISTINCTIONS BETWEEN DISINHERITANCE AND UNWORTHINESS

Under the preceding topic it was stated that adultery is both a ground of incapacity to succeed by unworthiness as well as disinheritance. How is one distinguished from the other? (1) Disinheritance is voluntary, proceeding from the will of the testator, while unworthiness is obligatory being imposed by law, (2) disinheritance takes place only in testate succession while unworthiness may take place in both testate and intestate succession.²³ The causes of unworthiness does not affect the legitime except in case of paragraph 2 of Art. 756 while disinheritance affects the legitime.²⁴

SCOPE OF THE PROVISIONS OF OUR LAW

1. *Adultery with the Wife of the Testator*

Subsection 5 of Art. 756, of the Civil Code which is the subject of this thesis provides: "The person convicted of adultery with the wife of the testator." It will be necessary to know what is meant by adultery. "Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void."²⁵ This cause of unworthiness to succeed punishes not only the immorality and debasing nature of the act, but also the ingratitude committed by the one who does such a lowly act and the abuse of the confidence which the testator had reposed in him.²⁶ How appreciable and wise is this provision of the law! For it is but logical and natural that a person whose honor, integrity, and feelings, had been

²³ Martinez Ruiz, ElCodigo Civil, vol. 5, p. 90.

²⁴ Bocobo, Outlines on Wills, Descent and Administration, p. 55 (Fourth edition)

²⁵ Art. 333, Revised Penal Code.

²⁶ Manresa, Codigo Civil, p. 56.

shocked, mocked at, and wilfully outraged, should be given the means to vindicate the shadow of dishonor and discourtesy that had been cast on him. It is but human too, that a person who does an offense should be made to bear and suffer whatever consequences his act or acts might entail. True indeed, the person of the husband is not directly and strictly injured or offended. But surely his honor is, and as is often said, honor is the dearest treasure one can possess. Besides in the eyes of the law, the husband and wife are one, the person and identity of the latter being merged with that of the former. So that an offense against the wife is an offense against the husband, for although they are physically distinct and apart, yet in law they have only one personality, which is that of the husband.

It may be argued, that to empower the testator to disinherit the person convicted of adultery with his wife, would be investing him with prerogatives which should only pertain to the courts. And that since the law penalizes the person so convicted, it would be unjust and superfluous to penalize him further by means of disinheritance. Apparently, the argument seems plausible. But if we take into account the very nature of the act of an heir committing adultery with the wife of the testator, it shall at once be realized that the argument is without merit. For by the act of adultery, the penal laws of the state are violated and the public order is disturbed. By the same act, too, the parental authority of the testator is assailed and family order and discipline are set at naught. The act inflicts a wound on two distinct entities, each with diverse interests to protect. The penalty imposed by the state has for its object the protection of society to deter the wrongdoer and to guard public order and morality, operating on all persons who are subject to the protection of its laws; while disinheritance has for its objective the vindication of an offense against family order and discipline, limited in its operation to the members of, and within, the family circle alone. After the law has done its part, it must abdicate in favor of the party offended who, then, shall mete out the corresponding punishment for the fault or misgiving committed. Further, if we bear in mind the differences between unworthiness and disinheritance, all objections to the latter shall be readily dismissed.

2. May not the Wife be disinherited?

The provision of the Code says, "*The person convicted of adultery with the wife of the testator.*" That is if an heir of

the testator is convicted of adultery with the wife of the person of whom he is heir, such heir is thereby unworthy to succeed. The justice of this law is easy to conceive. For as has been stated, previously it has for its object not only the vindication of an outrageous offense against the person and family of the testator, but also the protection and maintenance of public order, discipline and morality. But then the inquiry arises: Cannot the wife be disinherited by the testator? Can he (the testator) not deprive his guilty spouse of her share in the inheritance? Why should not the law declare her to be unworthy to succeed? Why could she not be disinherited?

The writer is of the opinion that the wife may be disinherited. Disinheritance as we have seen applies only as against forced heirs for the deprivation of his legitime. Under Article 807, paragraph 3, the widow or widower * * * is a forced heir, her legitime being defined by Articles 834, 836, and 837 of the Civil Code in the different cases in which it may arise. Therefore the wife may be disinherited for cause as other forced heirs.

Besides has she not betrayed the trust reposed in her by the husband? Has she not failed to maintain fidelity to her marriage vow? Has she not committed an offense against her husband? Again the fiction of law regarding the oneness of the personality of husband and wife may be brought forth forward it being possible to contend that the wife being merged in the person of the husband, and she being at fault the husband himself is also at fault; thus resulting that he is at fault to himself and since he must of necessity pardon himself he too is deemed to have pardoned the wife. But all rules have their exceptions, and the writer holds the opinion that in this case the fiction does not apply. For if we are to hold that the fiction admits of no exception, and that the wife cannot commit an offense against the husband, or vice versa, then the provisions of our Penal Code penalizing the commission of parricide would be a dead law, a provision without meaning, being a mere medley of words.

Moreover the wife is not less guilty than her co-principal. The act of one is essentially of the same nature as that of the other. The act cannot be committed by one alone. From its very nature, it is bilateral. If unworthiness attaches to "the person" convicted of adultery with the wife of the testator why should it not also attach to the wife herself? If "the person" convicted of adultery with the wife of the testator has abused

the confidence reposed in him by the person of whom he is an heir, the wife herself has not only abused but also betrayed, misused and disabused that trust and confidence which her husband unqualifiedly reposed in her. Her guilt is at least as grave as, if not graver than, that of her co-principal. If her co-principal is declared unworthy to succeed, then why should she not be brought within the radius of the unworthiness. Besides, a married woman who lies with a man not her husband, is always responsible, thus differing from her accomplice who will or will not be responsible, according to his knowledge or ignorance of her condition.²⁷ If the one who may or may not be responsible may be disinherited if convicted, why not the wife who is in any event responsible? The writer, therefore humbly submits that under subsection 5 of Article 756, the wife herself who is convicted of adultery may be disinherited in the same manner as "the person" convicted with her.

3. *Is Concubinage a Ground of Disinheritance?*

Art. 334 of the Revised Penal Code provides: Concubinage. —Any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The law regards adultery on the part of the wife as a graver offense than concubinage, because the former is punished by *prision correccional* in its maximum and medium periods, while the latter, by *prision correccional* in its medium and minimum periods.²⁸ The law regards concubinage as a lesser offense, and perhaps this is the reason why our law simply speaks of adultery. But is not concubinage of the same nature as adultery? Is not the character of one offense the same as the other? Is not the marriage vow as much disregarded in one as is in the other? Is not concubinage, as offensive, as shocking, and as outrageous to the conscience and feelings of the innocent wife as is adultery to the husband? Is not infidelity shown in both cases? What difference is there between the two offenses, except in the sexes of the persons involved?

²⁷ Albert, *Law on Crimes* (1925 edition) citing 5 Groizard 28.

²⁸ Arts. 333 and 334, Revised Penal Code.

If disinheritance may take place as a result of adultery, then why may it not also take place as a consequence of conviction of concubinage?

Martinez Ruiz in commenting on subsection 5 of Article 756 of the Civil Code of Spain says: The precept of the law presents no doubt, notwithstanding those expressed by certain commentators as to whether or not the law may be made applicable to the adultery committed by the husband of the testatrix. (This may also mean concubinage under our law. *De Jesus v. Palma*, 34 Phil. 483) And this in reality is no doubt at all because the article is so clear in its terms that it does not admit of such a broad interpretation, and because of the great difference which exists between the adultery committed by the husband and that committed by the wife. From the viewpoint of moral law, both are indeed equally censurable, but from the point of view of society and of law, there exists a chasm of consequences respecting succession which one or the other may occasion.

It is contended that adultery whether by the wife or by the husband being a ground of divorce and in accordance with article 855 of the Code, it may also be a ground of disinheritance; this may be true indeed but here we repeat and we will never get tired of repeating it, that disinheritance and unworthiness are not the same. * * *

From here, we conclude and maintain that the woman or concubine convicted of adultery (in our law it is concubinage)²⁹ with the husband of the testatrix may be disinherited but she (the concubine)³⁰ is not thereby rendered incapacitated to succeed by reason of unworthiness.³¹

The worthy commentator concludes and admits that concubinage is a ground of disinheritance as is adultery, but maintains that it is not a ground of unworthiness to succeed. But our Supreme Court has said that the fact of concubinage of the husband with a woman other than his wife was anciently qualified as adultery by the laws of Titles 2, 9, and 10 of the Fourth Partida; hence it is that the article which treats of concubinage is found in the chapter of the Penal Code that relates to adultery.³² The codifiers of the Code, therefore must have had in mind the two offenses (adultery and concubinage) for in both

²⁹ Those in parenthesis mine.

³⁰ Idem.

³¹ Martinez Ruiz, *El Código Civil Reformado*, vol. 5, p. 90.

³² *De Jesus v. Palma*, 34 Phil. 483.

cases the bonds of affection between the offending and the offended spouse are set asunder and only an oversight of the expression has given rise to the doubtful precept of the law.³³ The writer therefore holds, that the person convicted of concubinage with the husband is also tainted with unworthiness and hence may also be disinherited.

MAY NOT THE HUSBAND BE DISINHERITED FOR CONCUBINAGE

The writer is of the opinion that he too may be disinherited. For, like the wife in adultery, the husband too has abused the confidence and trust reposed in him by his wife. And if in adultery, the laws of family and order of society are disregarded and disrespected the same cannot be said not to take place in concubinage. If the wife shows her infidelity to her marriage vow if she lies with a man other than her husband, the husband too shows the same degree of infidelity and unfaithfulness if she lies with a woman other than the woman with whom he is in lawful wedlock.

Besides what was said as regards the person convicted of adultery with the wife of the testator, as well as of the wife herself, applies to the same extent as to the concubine and the husband himself. The writer therefore submits that the husband too may be disinherited if he is convicted of concubinage.

EITHER SPOUSE MAY THEREFORE DISINHERIT THE OTHER

From all the foregoing discussions which the writer has, to the best of his ability undertaken, the conclusion is crystalized that either spouse may disinherit the other convicted of adultery or concubinage as the case may be. And this humble opinion has the fortune of being in accord and harmony with Articles 855 and 105 of our Civil Code. Article 855 provides:

Art. 855—In addition to those mentioned in paragraphs 2, 3, and 6 of Article 756, the following shall also be sufficient cause for disinheriting a spouse:

1. Those which are causes for divorce according to article 105;

Article 105 provides:

Art. 105—The legal grounds of divorce are:

1. The adultery of the wife in every case and of the husband when public scandal or disgrace to the wife results therefrom.

³³ Scaevola, *Codigo Civil*, vol. 13, pp. 302-303.

Our Divorce Law (Act 2710) as amended by Act 2716 in 1917, and lately by Article 334 of the Revised Penal Code, has extended the grounds of divorce on the part of the husband to the keeping of a mistress in the conjugal dwelling; the fact of having sexual intercourse with a woman not his wife under scandalous circumstances; and the mere fact of cohabiting with a woman not his wife in any other place. Therefore the scope of Article 105 of the Civil Code has been made more extensive by means of expanding the meaning of concubinage. Our local Supreme Court has pronounced that "in the Philippine Islands, the causes for divorce are prescribed by statute. The grounds for divorce are two: Adultery on the part of the wife and concubinage on the part of the husband."³⁴ Since Article 855 of the Civil Code provides that the causes giving rise to divorce are sufficient causes for disinheriting a spouse and since adultery on the part of the wife, and concubinage on the part of the husband, are legal grounds for suing for divorce, the conclusion necessarily follows that the innocent husband or wife, may disinherit the spouse guilty of adultery or concubinage as the case may be.

EFFECT OF DISINHERITANCE

1. *Is the Person Disinherited Perpetually Incapacitated?*

There is a current theory among authors that the infamy is transmitted with the blood and that he who commits such an act of grave treachery transmits a stain of penalty to his heirs.³⁵ Some authors are of the opinion that the person so disinherited remains perpetually incapacitated to succeed. The writer cannot subscribe to any of these theories. For as regards the first theory, to render incapacitated the heirs of the person so disinherited would be inflicting a punishment on the young and innocent as a consequence of which they may be forced to lead a life of nothing else but misfortune, anguish, and suffering. To the second theory it may be said, that before the Civil Code was drafted, the old laws of Spain included heresy, treason, and deportation, as causes for absolute and perpetual disqualification to succeed to anyone.³⁶ The omission of these causes in the Civil Code could lead to no other conclusion than that the insti-

³⁴ Francisco v. Tayag, 50 Phil. 42.

³⁵ Pacheco, Comentario a las Leyes de Toro, vol. 2, p. 446.

³⁶ Manresa, Código Civil, vol. 6, p. 59.

tution of perpetual disqualification had been abolished and that the person so disqualified to succeed remains so only as regards the person disinheriting.

2. *May the Paramour or Concubine as the Case May be Succeed to the Guilty Spouse?*

Goyena who was the father of the Project of 1851 upon which the Code was based is of the opinion that the paramour or concubine as the case may be is disqualified to succeed to the guilty spouse.³⁷ The writer is again constrained to part from the opinions of so noble a jurist as was Goyena. True indeed the person disinherited is guilty of a grave and treacherous act of immorality deserving the condemnation of every man. But the guilty spouse too is just as guilty as the paramour or the concubine. But they being *in pari delicto*, the guilt of one should be allowed to off-set the guilt of the other, in the same manner as the bad faith of one possessor off-sets the bad faith of the other.

In this connection let me cite Amandi who in reply as to whether or not the person convicted of adultery is incapacitated to succeed to his co-principal said: The phraseology given to subsection 5 of Article 756 refers solely to the inheritance of the husband, so that if it was intended to embrace both the inheritance of the wife as well as of the husband, it should have said that the person convicted of adultery with the wife of the testator is incapacitated to succeed to his co-principal and to the offended husband, and not simply referring to the succession of the husband.³⁸ This proceeds on the maxim that the inclusion of one, means the exclusion of the other. The aforementioned writer refers to adultery simply, but in consonance with the burden of this work, the writer again submits that what Amandi says as to adultery applies as well to concubinage.

REQUISITES OF DISINHERITANCE

Disinheritance for any cause whatsoever, to be valid must be (1) made in a will, (2) expressly; and (3) for a cause recognized by law.³⁹ Therefore more knowledge of the testator of the existence of cause of disinheriting a forced heir is not sufficient to deprive said heir of his share in the inheritance.

³⁷ Cited by Manresa, *Codigo Civil*, vol. 6, p. 60.

³⁸ Amandi, *Cuestionario de Codigo Civil Reformado*, vol. 3, p. 206.

³⁹ *Civil Code*, Art. 849.

Disinheritance must be expressed, not presumed. On the contrary the omission of a provision in the will disinheriting an heir for cause, will give rise to the presumption that the testator had condoned the offense; so that the heir stands in full capacity to succeed.

It may happen that at the time of the death of the testator, the heir had already committed the act which if proved would constitute a ground of disinheritance. If such a case happens, can the testator disinherit the person who committed the act? The writer is of the opinion, and so holds that the testator may do so. Then the efficacy of the disinheritance shall depend upon the proof required in each particular case. In cases of adultery or concubinage, then the final judgment of conviction will of course constitute the best evidence, and if conviction by final judgment does not take place, then the disinheritance for such a cause cannot be upheld because conviction is a necessary basis for disinheritance grounded on adultery or concubinage.⁴⁰

EXTINCTION OF DISINHERITANCE

Disinheritance being an act emanating from the free will of the testator, and this being variable until death, he may by order revoke the disinheritance. As cause of extinction the same may be alleged: (1) reconciliation between the testator and the heir (2) subsequent institution of the disinherited heir after his disinheritance (3) revocation of the will in which disinheritance was provided, and (4) the living together of the spouses subsequent to their separation by divorce decree.⁴¹

CONCLUSION AND SUGGESTIONS

The preceding discussion may not meet the approval of those more fitted and qualified to deal with the subject, but the writer humbly presents the following conclusions: (1) That the wife in case she is found guilty of adultery may be disinherited by the testator (husband); (2) that the husband if guilty of concubinage may likewise be disinherited by the testatrix (wife); (3) that the person convicted of adultery with the wife of the testator, or of concubinage with the husband of the

⁴⁰ Art. 756, CC. subsection 5 provides "the person convicted" etc. conviction can only take place by judicial proceedings.

⁴¹ Oyuelos, Digesto. Tomo IV. p. 70.

testatrix, is nevertheless not disqualified to succeed to his or her partner-in-guilt; and (4) that the person so disinherited is disqualified to succeed only to the person disinheriting him. The writer submits, in accordance with the foregone conclusions, that subsection 5 of Article 756 of the Civil Code should be amended to read thus—

Article 756: The following are disqualified to succeed by reason of unworthiness:

5. The guilty spouse and the person convicted of adultery or concubinage with the wife or husband of the testator or testatrix as the case may be.