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TENDENCY OF SPANISH LEGISLATION IN THE PHILIPPINES DURING THE SPANISH ADMINISTRATION

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CHAPTER I

INTRODUCTION

Upon the discovery of the new world, there arose a rivalry between Spain and Portugal over the boundary limits of their discoveries. They had to submit their differences before His Holiness, Pope Alexander VI, who in his bull of May 4, 1493, dividing the world into two hemispheres, decreed that all heathen lands discovered in the eastern half should belong to the Portuguese; in the western half to the Spaniards. According to this arrangement, the latter could only claim the Philippines under the pretext that they were situated in the western hemisphere. The demarcation line was to run from the north to the south, a hundred leagues to the southwest of all the so-called Azores and Cape Verde Islands. (1) This bull was adopted by the two nations, but in the Treaty of Tordecillas of July 7, 1494, between Spain and Portugal, it was agreed to transfer the meridional division 370 leagues westward off Cape Verde Islands, which agreement was confirmed by Pope Julius II in a bull promulgated on January 24, 1506.

On the 10th of April, 1495, the Spanish Government published a general concession to all who wished to search for unknown lands. Rich merchants of Cadiz and Sevilla, whose imagination was inflamed by the reports of the abundance of pearls and gold on the American coast, fitted out ships to be manned by the roughest class of gold-hunters; so great were the abuses of this common license that it was withdrawn by Royal Decree on the 2nd of June, 1497. (2)

Between King Charles and Magellan, an agreement was signed in Zaragoza by virtue of which, the latter pledged himself to seek the discovery of rich spice islands within the limits of the Spanish Empire. If he should not have succeeded in the

venture after ten years from the date of sailing he would thenceforth be permitted to navigate and trade without further royal assent, reserving one-twentieth of his net gains for the Crown. The King accorded to him the title of Cavalier and invested him with the habit of St. James and the hereditary government in male succession of all the islands he might annex. The Crown of Castile reserved to itself the supreme authority over such governments. If Magellan discovered so many as six islands, he was to embark merchandise in the King's own ships to the value of one thousand ducats as royal dues. If the islands numbered only two, he would pay to the Crown one-fifteenth of the net profits. The King, however, was to receive one-fifth part of the total cargo sent in the first return expedition. The King would defray the expense of fitting out and arming five ships of from 60 to 130 tons with a total crew of 234 men; he would also appoint captains and officials of the Royal Treasury to represent the State interests in the division of the spoil.

Orders to fulfill the contract were issued to the crown officers in the port of Seville, and the expedition was slowly prepared, consisting of the following vessels, viz.:—The commodore ship "La Trinidad," under the immediate command of Magellan; the "San Antonio," of Captain Juan de Cartagena; the "Victoria," of Captain Luis de Mendoza; the "Santiago," of Captain Juan Rodriguez Serrano, and the "Concepcion," of Captain Gaspar de Quesada. (3)

On the 10th of August, 1519, the expedition left the port of San Lucas de Barrameda in the direction of the Canary Island. Overcoming difficulties, set-backs, and dangers that presented before them in this perilous journey, Magellan arrived in the Strait which immortalized his name on November 1, 1520.

After navigating for thirty days, Magellan discovered beautiful islands which he named "De las Velas Latinas" because of the kind of vessels which the natives used, or else the "Ladrones Island" because one of Magellan's boats was stolen by the natives. (4)

When Magellan anchored at the Strait of Limasagua, the Prince of Limasagua offered cheerfully to accompany them, boarding the ship with his whole family and some of his most principal subjects. Following the coast between Leyte and Samar, beside the Camote Island, they reached the inlet of Mandawe, and landed at Cebu on April 7, 1521.

Hamabar, king of Cebu, made peace with Magellan and to seal the bond of friendship, they wounded themselves on their chest or arms, and drank each other's blood according to native customs.

The natives of Cebu were at war with their neighbors of Mactan Islands who were under the leadership of Calipulapo, and Magellan desiring to show his friendship with the Cebuans, fought against the Mactans. In the affray he was mortally wounded by an arrow, and thus ended his brief but lustrous career, which fills one of the most brilliant pages in Spanish annals.⁽⁵⁾ After the death of Magellan, that first expedition suffered various set-backs and the only ship that was able to return to Spain was the "Victoria" manned by Sebastian de Elcano with 17 sailors out of the 237 who composed the first expedition. The King gave him the privilege to use as his coat of arms, a globe with the motto: "Hic primus geometres, Hic primus circumdedit me."⁽⁶⁾

About the middle of the year 1525, the second expedition under the command of Juan Garcia Jofre de Loaisa, left Coruña. One of the ships was captained by Sebastian de Elcano. After passing through the Magellan straits, Commander Loaisa succumbed to the fatigues and privations of the stormy voyage. Elcano succeeded him, but only for four days, when he too expired. The expedition, however, arrived safely at the Moluccas Islands, where they found the Portuguese in full possession and strongly established, but the long series of combats, struggles and altercations which ensued between the rival powers, in which Captain Andres de Urdaneta prominently figured, left no decisive advantage to either nation.

The Spanish monarch then ordered another expedition for the conquest of the Moluccas Islands. This expedition under the leadership of Ruy López de Villalobos was despatched by the viceroy of Mexico in 1542, having discovered various small islands on the Pacific. On the way, Volcano Island (of the Ladrone Islands group) was discovered on the 6th of August, 1543. A most important event followed. A galiot was built and despatched to the islands (it is doubtful which), named by this expedition the Philippine Islands in honour of Philip, Prince of Asturias, the son of King Charles I heir apparent to the throne of Castile, to which he ascended in 1555 under the title of Philip II on the abdication of his father.⁽⁷⁾

The troubles and opposition which Villalobos received from the Portuguese who were in the archipelago of the Moluccas,

caused his death. His loss caused the disorganization of his expedition. By that time it was agreed between Portugal and Spain, that the latter should abandon her pretended rights to the Moluccas in favor of Portugal in consideration of 350 thousand ducats.

Philip II, in his desire to reduce under his dominion the rich islands of the Oceania, ordered the viceroy of Mexico, Don Luis de Velasco, to organize an expedition for that purpose. The expedition placed under the charge of the noted Miguel Lopez de Legazpi, left the port of Navidad on November 21, 1564. This expedition, it may be said in short, completed the discovery and conquest of the Philippine archipelago. With the aid of Captain Martin de Goiti and Don Juan Salcedo, Legazpi took possession of Mindanao, Cebu, Leyte, Samar, Bohol, the island of Panay, Mindoro, Manila, the central and northern provinces of Luzon.⁽⁸⁾ He declared Manila to be the capital of the archipelago and proclaimed the sovereignty of the King of Spain over the whole group of the Philippine Islands.

CHAPTER II

FIRST PERIOD: FROM THE DISCOVERY OF THE PHILIPPINES IN 1512 TO THE ESTABLISHMENT OF THE AUDIENCIA DE MANILA, 1583.

It is important to note that Legazpi by Royal Order of August 14, 1569, was confirmed by Philip II as the first governor and captain-general of the Philippine Islands.⁽⁹⁾

According to this document, Legazpi was vested with all the necessary authority to colonize the islands and to administer civil and criminal justice, either personally or by means of such officers who may be appointed by him in the islands. He was empowered to appoint to the offices of governor, captain-general, constables, and other offices annexed and suitable to the government. He was authorized to dismiss or remove, whenever he desire or consider it best to do so for the fulfillment of the service to the king or the execution of justice. He was also authorized to hear, examine, and decide any civil or criminal case that may arise in the islands.

In pursuance to the power given to Legazpi by said Royal Order, he proceeded to apportion the towns and settlements occupied by the Spaniards to those who worked for its conquest and tranquility, called the "encomenderos."^(9a)

The first encomiendas in the Philippines were granted by Legazpi in 1572.⁽¹⁰⁾ The encomenderos ruled the Indians un-

der their care with little interference from *alcaldes mayores*, *corregidores*, or governors. The laws of the Indies specified that the encomenderos were to protect, aid and educate them, seeing particularly that they were taught the Catholic Faith. (11)

The encomenderos, in the guise of benefactors, guardians, and protectors of the Indians, supervised the labor of the latter on the encomiendas, drawing remuneration and collecting tribute from them, and retaining a share of the latter. Aside from the very intimate relationship of the encomenderos as the guardians of the Indians in spiritual and temporal things, they were not considered as officials in the same sense as were the *alcaldes mayores* and *corregidores*. (12)

The "Relacion" of Miguel de Loarca, *alcalde mayor* of Arevalo, Panay, gives us a good idea of the rapidity with which this institution spread within ten years in the Philippines. It indicates the extent to which the encomienda was utilized as a means of opening up and settling the country. This report is dated June 12, 1582. At that time there were three principal centers of administration in the Islands: Manila, Cebu and Arevalo. About thirty encomiendas were located close to Manila, ten were near Cebu and fifteen near Arevalo under the jurisdiction of Loarca. The latter group consisted of about 20,000 Indians. Encomiendas varied in size from 250 to 1,500 natives, but the ideal encomienda was supposed to contain 500 souls. By cedula of August 9, 1589, royal authority was extended for the increase of the size of encomiendas in the Philippines to 800 or 1,000 persons, if necessary, in order to bear the greater expenses of instruction and defense. This was bitterly opposed by the churchmen on account of the additional missionary labors incumbent on the priests assigned to these larger encomiendas. (13) Philip II on November 30, 1568, had ordered that no encomienda should yield more than 2,000 pesos. (14)

Loarca states that there were also encomiendas in the Camarines provinces in southeast Luzon, and in Ilocos, in north of the same island. These encomiendas were under the jurisdiction of the *alcaldes mayores* and *corregidores* governing these provinces. (15)

On the other hand, a letter of Governor Dasmariñas to the King, dated May 31, 1591, gives a detailed account of the encomiendas in the island of Luzón and the other Filipinas Islands, both those belonging to his Majesty and to private individuals, pacified and hostile, with instruction and without it; with the

names of the encomenderos, the number of tributarios in each encomienda, the number of ministers of instruction in them, and the number they lack and need; the capitals and the *alcaldes-mayor* established herein, who maintain peace therein, and govern them in peace, justice, and civilization, in their present condition. From said letter it appears that in the city of Manila, along its coast and the coast opposite, and in the provinces of Pampanga, Pangasinan, Ylocos, Cagayán, La Laguna, Camarinez, Masbate, Zebú, Panay, Balayán, and Calilaya, which is all of Luzón and the other Filipinas Islands settled, there are one hundred and sixty-six thousand nine hundred and three whole tributes. There were thirty-one royal encomiendas, and private individuals had two hundred sixty-six. (16)

According to law (17) the encomenderos were placed under the jurisdiction of the *alcaldes-mayores* and *corregidores*. They were appointed by the governor and captain-general. Each *alcalde mayor* or *corregidor* resided at the chief town of his province and combined in himself the functions of judge, inspector of encomiendas, administrator of finance and police, collector of tribute, vice-patron and captain-general. (18) In financial matters the *corregidores* and *alcaldes-mayores* were responsible to the executive, but they acted as the agents of the treasury officials (*Oficiales reales*) in the collection of the revenue. In their provinces they supervised the building of ships, the construction of roads and bridges, the *repartimientos* or *polos* of Indians. (19) Tributes from the Indians, tithes from the encomenderos and other kinds of local taxes were collected by the *alcaldes mayores* and *corregidores*. (20) The provincial governors also had certain military duties. *Alcaldes mayores* and *corregidores* acted as lieutenants of the captains-general, exercising authority of a military character. They were required to defend their provinces and districts against invasions, insurrections, Indian outbreaks, and disturbances. They were authorized to impress men for military service. (21)

In point of legislation, it is not necessary to go into details enumerating each and every one of the ordinances and laws dictated by the king of Spain during the first period in accordance with the division which I have made in this work. Suffice it to say that said laws have been digested and form what is now known as the "Recopilación de las Leyes de Indias." The collection of said laws are contained in nine books, each book divided into titles, and each title into various laws. The nine books that I have consulted are found in two big volumes of

the fifth edition which was published by mandate of king Charles II and printed in 1841. The first edition of this book was published in 1563; the second in 1765; the third in 1774; the fourth in 1791; the fifth in 1841; and the sixth in 1889.(22) It is necessary to note that the citations of the laws found in this Recopilacion are made by indicating the number of the law, then the title, and lastly the book; for example, law 4, title 3, book 6. To verify said citations, the book is looked up first, then the title, and lastly the law. I found it convenient to make this explanation because not all the authors that I have consulted follow the same method as the one adopted by Spanish authors.

With regard to the Recopilacion de las Leyes de Indias, there have been found various and different opinions expressed by several authors. Jagor in his book of travels says: "The Spanish government have always acted in the Philippines in a humane manner, not only because the Laws of Indies are too mild for the natives whom they treat as if he were a minor, but also through lack of those causes that occasioned cruelties in Spanish America, notwithstanding the fact that the same legislation is enforced in both colonies."(23)

Sinibaldo de Mas, the able Philippine critic of the nineteenth century, says in regard to the above characteristic of the Recopilacion and its laws: "Since the Leyes de Indias are not a constitutional code, but a compilation made in the year 1754 (a footnote amends this statement with the information that the Recopilacion was first made in 1681) of royal orders despatched at various epochs and by distinct monarchs * * * there results * * * a confusion of jurisdictions.(24)

Dr. James Alexander Robertson, in his article on "Legazpi and Philippine colonization" characterizes the laws of the Indies as "that mass of contradictory legislation, are largely "ecclesiastical in tone, ill-digested, and utterly at variance with one another."(25) Dr. Robertson also states that "it is from a too close following of these laws and a too great neglect of actual conditions that writers on the colonial policy of Spain have at times fallen into error." Cunningham believes, after some attempt to harmonize the laws of the Indies with actual practice, that these laws were actually used as a basis of colonial government, and that while not always effectively enforced, they were by no means a deadletter until Spain actually lost her colonies, and surely are not today, for it is easy to see in the laws of the Indies the fundamentals of the institutions of present-day Spanish-American.(26) On the other hand, Mr. James. F. Tracey

who served in the Philippines in the capacity of Associate-Justice of the Supreme Court for three years, in his paper presented to the New York Bar Association in 1910, entitled "Law in the Philippines," has this to say: "The Leyes de las Indias, or Colonial laws, formed one of the most painstaking and humane codes ever promulgated, dealing generously with the relations of the white man to the native, restraining and punishing abuse of power by the one while solicitously protecting the weakness of the other."

Certainly, a perusal of the laws which direct the conversion of the natives to the Catholic Religion, the establishment of towns, the construction of churches, the marking out of pastures, grounds, mountains, and communal lands, the division and composition of lands, the education and good treatment for the natives, the freedom to trade their goods, movables and immovables, the abolition of slavery and involuntary servitude and the moderation in the collection of tributes,⁽²⁷⁾ induces me to believe that the laws of the Indies were promulgated to procure the well-being of the natives.

The same conclusion is reached if it be remembered that, although said Laws of the Indies were of general application in the colonies, it was however ordered that the old laws, usages and customs⁽²⁸⁾ practised by the natives for their government were to remain intact until they were changed, insofar as they were not contrary to the Catholic Religion and were not contradictory with the laws of the "Recopilacion"; that law suits between the natives be tried and decided according to the evidences presented; that the natives were to have "protectors" for their person and property as well as "defenders" for their cases; that no one could be condemned to any personal service for their crimes; that Spaniards residing in the Philippines could not keep slaves in no case whatsoever.⁽²⁹⁾

It may be admitted that some confusion exists in the recopilation of these laws, but this defect which some authors have noted, can be explained if we were to take into consideration the period when they were promulgated. In any way, the Recopilacion contains laws which are very efficient, such as those referring to the formation of towns and plazas, the designation of the legua comunal, the sale and composition of lands, which even in our present time are often invoked in judicial cases. It is worthy of notice that the laws referring to the construction of churches and convents in the towns of the Philippines, have often been invoked by our Supreme Court to de-

cide questions raised by the Independent Filipino Church on the ownership of those properties since the change of sovereignty in the Islands.⁽³⁰⁾

According to the system of government outlined in the Royal Decree of August 14, 1569, confirming the appointment of Legazpi as the first governor and captain-general of the Philippines, the governor-general exercised the three functions of government namely, the executive, judicial, and administrative powers. He had full powers over these matters subject only to appeal to the Audiencia of Mexico and then to the Council of the Indies, in cases involving a value of more than one thousand ducats. A few years experience have demonstrated that the absolute powers vested in the governor-general was the cause of general dissatisfaction.⁽³¹⁾ On the other hand, the institution of the encomenderos has developed in such a way that in a few years the encomenderos, in the words of Morga, "became the exploiters of the natives." Therefore several complaints and memorials were presented before the King of Spain asking him to remedy the situation, which complaints gave ground for the king to promulgate the Real Cedula of May 5, 1583, establishing the Audiencia de Manila.⁽³²⁾

CHAPTER III

SECOND PERIOD: FROM THE ESTABLISHMENT OF AUDIENCIA IN 1583 UP TO THE PUBLICATION OF THE SPANISH CONSTITUTION OF 1810

As a result of the complaints and memorials submitted to the King of Spain urging the establishment of an Audiencia, Philip II by decree of May 5, 1583, ordered the establishment of the Audiencia de Manila in the following terms:

Whereas in the interests of good government and the administration of our justice, we have accorded the establishment in the city of Manila in the Island of Luzon of one of our royal audiencias and chanceries, in which there shall be a president, three oidores, a fiscal, and the necessary officials; and whereas we have granted that this audiencia should have the same authority and preeminence as each one of our royal audiencias which sit in the town of Valladolid and the city of Granada of these our realms, and the other audiencias of our Indies: now therefore we order to be made and sent to the said Island our royal seal, with which are to be stamped our decisions which are made and

issued by the said president and oidores in the said audiencia.

The said decree consists of two hundred and fifty sections which deal with the following subjects.

House of the Audiencia.—The first two sections provide for the House of the Audiencia where the Regent should dwell and where the royal seal and register might be kept and in which should be the prison and its warden; the Audiencia should have as its district the said Island of Luzon and other Filipinas islands of the archipelago of China and the mainland of the same, whether discovered or yet to be discovered. (Secs. 1-2)

Jurisdiction of the President and Auditors in Civil and Criminal Cases.—The next thirty-six sections were devoted to the creation of the tribunal, to a definition of its jurisdiction over civil and criminal cases, and to a determination of the proper method of procedure in them. The audiencia was to have authority to try cases of appeal from gobernadores, alcaldes mayores, and other magistrates of the provinces; it also had jurisdiction over civil cases appealed from the alcaldes ordinarios of the city and original jurisdiction over all criminal cases arising within five leagues of the city of Manila. Appeals were to be tried by review (revista) before the tribunal. Cases of first instance (vista) were not to be tried in the tribunal, excepting those to which the government was a part, or the above-mentioned criminal cases. The judgment of the audiencia was usually to be final in ordinary suits, and always in criminal cases. Those involving the government, and civil suits exceeding a certain value were appealable to the Council of the Indies. Notice of appeal to the latter tribunal had to be served within one year after the objectionable decision was rendered, and the party appealing the case was obliged to post financial bonds covering the expenses of suits in case the final judgment was not favorable to him. The decision of the audiencia was to be executed in all cases, even though an appeal to the Council of the Indies had been made. The procedure followed in the chanceries of Valladolid and Granada was to be enforced in the Audiencia of Manila except when the contrary was especially ordered. Investigations might be made by one judge, but the concurrence of two was necessary for all decisions involving the reversal of a former judgment, or in cases wherein a certain amount was at stake. In the latter case, an assistant judge might be chosen from outside the audiencia to assist the regular magistrate.

The audiencia was forbidden to act alone in the selection of judges of residencias (33) or pesquisidores; it was commanded not to interfere with governors of provinces, but it had the right, when charges had been made by private individuals, to conduct investigations of governors' official conduct. The audiencia was empowered to investigate the judges of provinces. Magistrates were forbidden to hear cases affecting themselves or their relatives, and when a case involving more than one thousand pesos was before the tribunal, and no order was eligible to try it, an alcalde ordinario might serve in the place of a regular magistrate, with appeal to the Council of the Indies. Criminal charges against the oidores were to be tried by the president, with the assistance, if need be, of such alcaldes ordinarios as the latter might select. No relative of the president or of an oidor could be appointed legally to a corregidorship or to an encomienda. Oidores were eligible for appointment by the president from time to time to inspect the administration of justice and government in the provinces.

Oidores were forbidden to receive fees from or to act as advocates for any private person, and they could not hold income-yielding estates in arable land or cattle. Oidores were forbidden to engage in business, either singly or in partnership, nor could they avail themselves of the compulsory services of Indians under pain of deprivation of office. Any person could bring suit against an oidor. As noted above, such cases would either be tried by the president or by an alcalde ordinario on the president's designation. Such cases might be appealed to the Council of the Indies. (34) Secs. 3-38.

Affairs of Government.—The Audiencia, according to the terms of its establishment, had extensive authority over matters of government. In case of the death or incapacity of the president, the audiencia was to assume control of affairs, the senior oidor filling the post of president and captain-general, with special charge over military matters. Under such circumstances the administrative and executive functions were to be administered by the audiencia as a body. The governor, who was also president of the audiencia, was ordered to make a complete report annually to the Council of the Indies on the state of the government and the finances of the colony, including an account of the gross income and expenditures, a survey of conditions of the encomiendas and corregimientos, as well as a report on the conduct of officials, including oidores. In fact, all matters that came regularly under the care of the executive

were to be covered in the annual report of the governor and captain-general of the islands.

The president was empowered to delegate the oidores, in turn, to make tours of inspection in the provinces. The magistrates, as visitors, were to inquire into the character of service rendered by the *alcaldes mayores* in the administration of government and justice. They were to note the state of the towns and their needs, the means taken for the construction and preservation of public buildings, and the condition of the Indians on the *encomiendas*. They were to see whether they were faithfully and efficiently instructed in religion, or whether they were permitted to live in ignorance and idolatry. Reports were to be made by the visitors on the state of the soil, the condition of the crops and harvests, extent of mineral wealth and timber in the provinces under investigation, weights and measures, and in fact, everything that had to do with the general welfare. On these trips the oidores were authorized to take such action as they felt to be necessary. Two oidores were also required to make weekly inspections of the prison of the colony. (Secs. 39-53) (35)

Ecclesiastical cases.—The decree of establishment also directed that certain phases of ecclesiastical affairs should claim the attention of the *audiencia*. The chief duty of the tribunal in that regard was to keep the ecclesiastical judges from exceeding their authority, and the practices of the *audiencias* of Spain were especially prescribed as a precedent for the local tribunal. The *audiencia* was charged with supervision over the assignment of benefices, and especially with the settlement of the property and estates of bishops and archbishops who died in the Islands. The *audiencia* was ordered to permit nothing to be done which would be in prejudice of the rights and prerogatives of the church. The tribunal was instructed to assist the prelates on all occasions when they petitioned for royal aid. It was also to see that properly accredited bulls were real and applied in the Spanish towns, but not in the native villages. (Secs. 54-58) (36)

Royal Treasury and its Officials.—As noted above, suits involving the royal treasury and the collection of money for the government were to be reviewed and decided before any other that might come up in the royal *audiencia*. It was the duty of the *fiscal* to prosecute these cases in the interest of the government. At the beginning of each year the president and two magistrates were to audit the reports of the *oficiales reales*,

and if these reports were not duly and properly rendered, the salaries of these officials were to be withheld. After auditing the accounts the committee was to count the money in the royal treasury. The oidores who did this extra work were to receive an allowance of twenty-five thousand maravedís (about 56 pesos) in addition to their regular salaries. The authorization of the audiencia was necessary for the payment of extraordinary expenses not appearing in the regular budget and these disbursements were made subject to the later approval of the Council of the Indies. The audiencia was held responsible in these matters by the Council. Full reports of expenditures made on the responsibility of the audiencia were to be made to the Council, and the oidores were held accountable in their residencias for their votes cast in the junta or acuerdo de hacienda, as the committee was called. (Secs. 59-69) (37)

Probate matters.—The audiencia was given supervision over the administration of the estates of deceased persons; it was to examine the accounts of executors and see that the wills of the deceased were faithfully executed and that all was done in accordance with the law. For this purpose an oidor was delegated each year with authority to dispose of these cases in the name of the audiencia. (Sec. 70) (38)

Indians, and Matters Relating to Them.—In nine sections the decree was devoted to prescribing the rules for the trial of cases involving Indians, with a view to securing justice both in their administration by the encomenderos and in the supervision which the alcaldes mayores exercised over the encomenderos. The provision was made that "our said president and oidores shall always take great care to be informed of the crimes and abuses which are committed against the Indians under our royal crown, or against those granted in encomiendas to other persons by the governors." The audiencia was directed to exercise care that "The said Indians shall be better treated and instructed in our Holy Catholic Faith, as our free vassals."

The audiencia was required to exercise care that suits involving Indians were neither lengthy nor involved, that decisions were reached promptly and without unnecessary litigation, and that the rites, customs, and practices to which the Indians had always been accustomed should be continued in so far as was practicable. The audiencia and the bishop were to see that there was a person appointed in each village to give instruction in religion. Alcaldes mayores were ordered not to dispossess native chiefs of their rule or authority; they were,

on the contrary, to appeal cases involving them without delay to the audiencia, or to the visiting oidor. The audiencia was to devote two days a week to hearing suits to which Indians were parties. Encomenderos were to be protected by the audiencia in the possession of their encomiendas. (Secs. 71-79) (39)

Fiscal.—Some attention in this cedula is devoted to outlining the duties of the fiscal, who, from many points of view, was the most important official directly connected with the tribunal. It was his function to appear as prosecutor for the government in all cases tried before the audiencia, and he was forbidden to serve as the advocate of any private person during his term of office. He should devote his attention especially to matters involving the exchequer. He was to prosecute all cases of appeal from the alcaldes mayores and corregidores on behalf of the government, and "he was to take care to assist and favor poor Indians in the suits that they have, and to see that they are not oppressed, maltreated, or wronged." The fiscal, ordinarily, was not to prosecute unless it were on the complaint of some person, but in cases of notorious injustice, or when judicial inquiry was being made, he would take the initiative on his own account. It was his duty to perform any and all legal acts which were consistent with his position, and which were designed to bring about justice or to secure the royal interests.

Part of this decree is devoted to establishing the duties of the minor officials of the audiencia, to fixing a tariff of fees to be charged for notarial and other legal work and the like. (Secs. 80-85) (40)

Alguazil-Mayor and his Deputies (Sheriff).—Among the minor officials attached to the audiencia were the alguacil mayor and his two deputies. These were to act as the executive officers of the court and were empowered to make arrests, serve papers and execute similar functions. Their duties, as a whole, were much like those of the English or American constable or sheriff. They might arrest, on their own initiative, persons whom they caught in crime, as, for example, those playing forbidden games of chance, or indulging in immoral practices, typical particularly of the Chinese. The alguacil was responsible for the maintenance of the prison of the audiencia; for this purpose he could appoint a certain number of jail-wardens. (Secs. 86-106) (41)

Clerks of the Audiencia.—There were also clerks of court and notaries, chosen by royal appointment. Their duties were

those customarily required of such officials, not differing from those of today. The *audiencia* likewise had official reporters, similar to the court reporters of the present day. Advocates and attorneys practicing before the *audiencia* had to fulfill certain prescribed requirements in regard to learning, training, and general ability. Receivers bailiffs, jail-wardens and interpreters each received their due amount of space and attention in this *cedula*. The interpreters were to assist the Indians who were defending themselves in a Spanish-speaking court. Among their duties was the translation of the testimony of witnesses, of the questions of attorneys and the rulings of the courts into the native dialects, or into the Spanish language, as the circumstances might require. These interpreters were also required to assist the natives in the formulation of legal documents. All these minor officials were to be regulated in the collection of fees by a legal tariff. Finally, the *audiencia* was provided with an archive within which were to be deposited and kept the great seal of the government, and all official papers, including records of cases and official acts. (Secs. 107-171) (42)

Official reporters.—The next thirty-three sections of this decree gave directions with regard to the duties and emoluments of the reporters (*relatores*), as minute and precise as those for the clerks with similar penalties. (Secs. 172-205)

Advocates and Attorneys.—The last twenty sections of this decree deal with the conduct of attorneys in court, and the procedure necessary to institute actions.

Advocates are required to take an oath to the effect that they are to obey the laws and will not give their assistance in unjust causes, or counsel the parties to injustice; and that as soon as they discover that their client is not suing for justice for that reason alone, they must abandon the cause. Losses caused to their clients through their negligence or ignorance deducible from the record, is punishable with payment to his client for the damages resulting therefrom. Counsel are prohibited to make a bargain with his client for a part of the property to which he lays claim, under penalty of losing his authority to act in the said office. Advocates are to be examined and approved by the president and auditors and entered in the list of advocates; only those persons with a degree may appear in a court, except the party in his own behalf. Advocates are required to use care and diligence in behalf of their clients and conduct their cases honorably under pain of suspension and that in the exaction of fees they must have agreed to before

examining the documents of the parties. Advocates who have pleaded on one side of a case cannot plead later on the other side of the same case; they are not to betray secrets or advise both parties under pain of fine and removal from office. Bachelors cannot plead or sit with the doctors and licentiates.

Attorneys must be examined and licensed by the court. Attorneys and counselors must not agree to prosecute cases at their own expense under penalty of fifty thousand maravedis. They must not retain money sent to pay fees and court costs, and must transmit documents to counsel within three days. Attorneys and all officials are prohibited to ask for documents beyond what the interests of the parties require under pain of fine and imprisonment. Attorneys cannot receive for their fees, more than that fixed by the president and auditors especially in cases where the Indians are plaintiffs or defendants; neither can they receive gifts to protract causes. (Secs. 206-250)

The synopsis of the provisions contained in the decree of May 5, 1583 as above mentioned will show that said decree creating the Audiencia de Manila constitute what may be called the code of civil procedure to be enforced by the Audiencia.

When the Audiencia de Manila was created, Santiago de Vera, the recently appointed governor and captain-general of the Islands and president of the new tribunal, arrived at Manila on May 28, 1584. In accordance with the new law, it was his duty to govern the Philippines in the capacity of executive and military commander, and at the same time preside over the audiencia in its respective judicial, advisory, and administrative capacities. The first session of the audiencia was held on June 15, 1584.

The creation of the audiencia with its powers and duties mentioned in the decree of May 5, 1583, would seem to remedy the evils alleged for the creation thereof; the organization of a new department in the government and the checking of one official against another seemed to remedy the despotism that was attributed to the governor-general. This was not the case however. The powers given to the Audiencia de Manila soon produced rivalries which gave rise to a general dissatisfaction. I shall not mention here the complaints and memorials that were presented to the King of Spain against the newly created Audiencia.⁽⁴³⁾ Suffice it to say that the same persons, like Bishop Salazar and Fray Lorenzo Sanchez, who worked for its creation, were the very ones who exerted much influence for the abolition of the same.

In pursuance to the demands of the various organizations and individuals of Manila as communicated by their respective envoys, the king abolished the Audiencia de Manila by royal cedula on August 9, 1589, ordering the viceroy of New Spain to take the residencias of all officials who had been identified with the Manila government. To carry out these orders Licentiate Herver del Coral was sent from Mexico to Manila, where he arrived in May, 1590, in company with the new governor, Gomez Perez Dasmariñas. Santiago de Vera, the ex-governor, was promoted to a magistracy in the Audiencia of Mexico; the oidor, Pedro de Rojas, was made teniente and assessor to the governor, while the former oidor, Rivera, and Fiscal Ayala, were left without office.⁽⁴⁴⁾ In order to determine matters of justice, it was then decreed the manner in which lawsuits shall be tried and decided in the Philippine Islands, to wit:

All the suits that were pending in the said Audiencia, and were not concluded on trial, shall be resumed in the condition in which they were left, and shall be prosecuted before the licentiate and lieutenant-governor. He shall pass sentence upon them; and if appeal is made by the parties, or either one of them from his decision, he shall submit the appeal to the president and auditors of his Majesty's royal audiencia in the city of Mexico, in Nueva España. He shall likewise refer to the said audiencia of Mexico the suits that may have sentence on trial in the said Audiencia, if appeal has been made from the sentence, so that the cases may be prosecuted before it, and sentenced in review.

And if any suits were sentenced in review in the said Audiencia of the said Philippine Islands, and the execution of the sentences is demanded, then the licentiate is authorized to have them executed, as well as the sentences given on trial in the said Audiencia in suits pending therein, and on which no appeal was made, and if the said sentences on trial were passed in a case where judgment was rendered.

Likewise the licentiate may hear and try cases regarding Indians which shall be moved in the said islands henceforth, and those which might come before him in appeal from the corregidores that are and were in the said islands.⁽⁴⁵⁾

Thus the audiencia of three magistrates and a fiscal was replaced by a governor, who was both captain-general and sole judge. He was assisted in the latter capacity, as above noted, by a teniente and assessor, a lawyer, who advised him in legal affairs and prepared his judicial decisions for him. This re-

form was made on the representation of Fray Sanchez, that Manila had no need of a judicial system more pretentious than that of any Spanish provincial town. The city was accordingly reduced to the rank of a city or district, with dependence in judicial and administrative matters on New Spain, in whose *audiencia* appeals from the governor of the Philippines were heard. (46)

This reform was followed shortly by the *cedula* of August 18, 1593, by which the title of "Teniente de capitán-general y Asesor de gobernador y capitán-general de las Islas Filipinas" was bestowed on Dr. Antonio de Morga, who conducted the *residencia* (47) of his predecessor, Pedro de Rojas. This reform, however, did not last long, for new complaints were filed against the governor which led the king, Philip II, to promulgate the *cedula* of November 26, 1595 (48) re-establishing the *Audiencia* in the following terms:

"I established an *audiencia* in that city and province in order that everything might be governed by means of it, and that justice might be administered with the same universal equality, mildness, and satisfaction desirable; after its establishment I ordered it suppressed as experience proved it unnecessary in a land so new and unsettled; in its place I sent a governor, and though his administration was excellent, yet, inasmuch as that community had grown, and I hope that it will continue to grow, I have thought it advisable to found and establish the said *audiencia* again."

"You (the governor) (49) may find it advisable to have by you persons whom to take counsel, in order that matters may be considered with the requisite conformity and by a sufficiently large body of advisers; for these reasons I have decided to form an *audiencia*; * * * you shall be its president, holding that office with those of my governor and captain-general."

The *Audiencia* as newly created began its life in Manila on May 8, 1598. For a period of three hundred years the *Audiencia* exercised its functions with general satisfaction. I believe it advisable to quote here the opinion of Mr. Cunningham, oftentimes cited in this work, regarding the *Audiencia*. He says: "The *audiencia*, from the time of its renewal onward, typified and represented the royal authority, and its tenure was more continuous than the governorship. Eight times subsequently did the *audiencia* assume the reins of government in lieu of the governor. It became the most reliable channel

through which the royal authority made itself felt in the Islands, and it was especially utilized by the court as a check on the governor. Whenever occasion arose, the *audiencia* interposed as the intermediary and arbiter between dissenting parties in the name of the sovereign, and its decrees were listened to with respect. It was no longer a temporary organization, and so firmly established was it henceforth that no person seriously considered its recall a possibility. Through a period of three hundred years the *audiencia* exercised its functions. It was first and always a judicial body. It shared executive and administrative duties with the governor. It frequently exercised attributes of an advanced legislative character. It participated in the government of the provinces. It shared the authority of the royal patronage in the control of ecclesiastical affairs." (50)

During the second period there continued in force the *Leyes de la Recopilacion*. Without mentioning those decrees which are of purely religious character published after the inauguration of the new *audiencia*, I shall note only the Royal Ordinances of June 1, 1599, which gave instruction to the royal officers for the collection of taxes and the good administration of the same. It is composed of sixty-one sections and it was applied by Dr. Morga in the *residencia* of Francisco de la Misa, factor of the royal treasury of Manila. (51)

As to those decrees published during the seventeenth century, I find it worth mentioning the following:

1609—The decree of May 26 regulated the distribution of Indians for public works. It ordered that, if there be a lack of Chinese and Japanese voluntary workers, then the Indians may be forced to work in these occupations under certain conditions, but in no other manner; That this repartimiento shall be made only for necessary and unavoidable affairs; That the Indians in the repartimiento shall be lessened in number as the voluntary workers shall be introduced, whether the latter be Indians or those of other nations; That they shall not be taken from distant districts, and from climates notably different from that of their own villages; That the governor assigns the number of hours that they will work each day, taking into consideration the lack of strength and weak physical constitutions; That they be given in full the wages that they earn for their work. And they shall be paid personally each day, or at the end of the week, as they may choose; That the repartimientos be made at a time that does not embarrass or hinder the sowing and harvest.

ing of land products, or the other occasions and periods upon which the Indians have to attend to the profit and management of their property; That, granting the poor arrangement and plan of the caracoas, and that when remanded to them many Indians generally perish, because of sailing with a deck exposed to the inclemencies of storms, it was ordered that these crafts be improved and built in such a manner that the Indians may manage the crafts without risk to health and life.

In all the above, and in all that may touch their preservation and increase, the decree provided that the governor shall proceed with care and vigilance and that he must punish signally and rigorously the ill-treatment received by the Indians from their caciques or from the Spaniards—especially should the latter be officials, upon whom the penalties must be more rigorously executed. (52)

1620—The Decree of May 29 has reference to the redress for the wrongs committed by the religious on the Indians. The decree ordered the royal fiscal of the Audiencia to prosecute as he may deem best the guilty parties so that the impositions and injuries inflicted to them may cease. The visitors and corregidores of the district were also required to take special care to prevent them, and shall reform those who are found to be guilty. This likewise, was charged upon the archbishop and bishops of those islands, and on the provincials of the orders therein. (53)

1686—The Royal Cedula of March 20 ordered the establishment of elementary school for the teaching of Spanish language.

1686—The Royal Cedula of December 12, authorized the governor presidents to issue title to offices.

During the eighteenth century the most important decrees issued by the King of Spain were:

1705—The Royal Cedula of September 6 provided that the laws existing against those persons giving false testimony and false denouncers be enforced.

1754—The Royal Cedula of October 15 authorized the appointment of sub-delegate officers for the sale and composition of unappropriated lands and provided the mode of their acquisition.

1766—The Royal Cedula of July 24 dealt with the procedure to be followed in cases of nullity of matrimonies.

1768—The Decree of February 26 enforced the ordinances promulgated by the Superior Gobierno y Real Acuerdo of these

Islands for the good government of the governors, corregidores, and alcaldes mayores, as well as for the protection of the natives and observance of the laws promulgated by the Real Auto of the same date.

1770—The Royal Cedula of October 4 disposed that in those cases involving local or personal immunities, the judges and Defenders of the Royal Jurisdiction should exert all efforts to know and proceed to the Real Audiencia of the district.

1776—The Royal Cedula of March 23 has reference to the betrothals and matrimonies of sons of families.

1777—The Decree of July 2 declared that the laws of war shall not be binding in the exercise of its police power and good government of the towns, which violations should always be subject to the ordinary jurisdiction.

1782—The Decree of April 27 disposed that the practices observed in the noting of mortgages should continue to be enforced in the Philippine Islands.

1788—The Royal Cedula of October 19 reiterated that of August 29, 1768, which orders the Audiencia to regulate the fees for judges, clerks of courts, and sheriffs in the trial of "residencias."

1788—The Royal Order of October 23 authorized the Governor and Captain-general of the Philippines to grant in cases of sickness, leave of absence for four or six months.

1790—The Royal Decree of November 17 penalizes those persons who misappropriate public funds entrusted to their custody.

1792—The Royal Cedula of June 11 prohibits students and individuals of universities, seminaries and colleges subject to the Royal patronage, to contract marriages without the corresponding license.

1795—The Royal Cedula of December 26 authorizes the Governor and Captain-general of the Philippines to extend for a period of three years the term of office of alcaldes mayores in those cases expressed.

1796—The Royal Cedula of July 13 endorsing that of August 22, 1789, and dictating among other things, rules relative to the succession to office of viceroys, presidents of the audiencias, and political military governors of the colonies.

1796—The Royal Cedula of October 7 dealt with the number of oidores that ought to concur in the imposition of the death penalty and other corporal punishments, and the degree of proof necessary for such imposition.

1797—The Royal Order of September 21 dealt with the sale and composition of unappropriated lands.

1797—The Royal Order of September 21 regulates the gratuitous use of lands, water, and pasture lands.

1798—The Royal Cedula of March 23 dealt with the composition and application of unappropriated lands, excepting them from the necessity of certification from the Superior Board.

1798—This Royal Order of August 8 dealt with the reduction of penalties for the prisoners.

1798—The Royal Order of August 29 determines those cases when the military jurisdiction should take cognizance of testamentary executions and abintestates of soldiers who die in America and in the Philippine Islands.

1798—The Royal Order of September 15 decreeing that military men are subject to the ordinary jurisdiction when they commit a crime in any political position they held and in anything pertaining to the civil government.

1798—The Royal Cedula of October 27 authorizes the captain-generals of the colonies to reduce the terms of imprisonment of the prisoners.

1799—The Royal Cedula of August 24 dealt with residencias. (54)

Many royal decrees were promulgated during the second period, but I only noted those which I considered the most important. Summarizing these decrees, special mention should be made of those of May 5, 1583, that of June 1, 1599, and those royal ordinances of good government dated October 1, 1696 modified later by the decree of February 26, 1768.

As I have already noted, the decree of May 5, 1583, with its two hundred and fifty sections, may be considered as a good basis for a Procedural Code.

The decree of June 1, 1599, consists of sixty one sections, and it seems to me that they were sufficient to regulate the collection of taxes and to safeguard the custody of public funds. (55)

The Decree of October 1, 1696, as modified by that of February 26, 1768, (56) with the ninety-four sections into which it is divided, embodies all the necessary regulations for good government. Some of its dispositions constitute a legal interpretation of the laws of the *Recopilación*, as for example, those regarding the protection, instruction and progress of the *Indios*; many others were intended to correct the abuses to which the *Indios* were often subjected; and other dispositions even go as

far as to forbid and nullify certain transactions wherein the *Indios* suffered injustices, for example, these ordinances fix the price of chickens which the *Indios* were obliged to give to the *alcaldes mayores* and to the parish priests. The same ordinances condemned the practice of lending money to the *Indios* more than five pesos, declaring null and void those contracts of debt with mortgage of real property under the color of *retro-vendendi*, as this kind of contract was considered usurious. These ordinances contain prohibition to employ the *Indios* in the cleaning of the house of the governor and the convents. They also forbid under penalty the practice among *timawas*, of rendering services in the house of the girl in order to marry her, as well as to pay certain amount of money for the same purpose.

The ordinances also provided for the election of the *gobernadorcillo* with certain formalities and under the supervision of the governor of the provinces and the advice of the parish priest. They also forbid the practice of asking contribution by government officials from the *Indios* under penalty of restitution and dismissal. In suits among the *Indios* the ordinances provided for a summary method of procedure tending to expedite their cases and avoid expenses among the litigants. (57)

If we take into consideration the fact that during this period, Book XII of the *Novísima Recopilación* which treat of crime and its penalties and of the criminal trial, was enforced in the Philippines until the publication of the present Penal Code, it will be seen that the Spanish Legislation had advanced to a great extent as to meet the conditions and progress of the Filipino people. The laws of the *Recopilación* were made more definite. Government officials were subjected to a great vigilance in their dealings with the *Indios*; the collection of taxes were made more regular and the public funds were kept with greater care; the trial of civil and criminal cases were more expedited. In short, I believe that the legislation at the end of this period were more appropriate to the conditions of the *Indios* at that time in their different aspects of life.

I thought it convenient to close the second period at the end of the eighteenth century, for, although the codification of our laws were carried into effect only during the middle of the nineteenth century, yet the necessity of uniforming and compiling them have already been felt at the beginning of this century because of the great variety of royal dispositions which caused much difficulties and no little confusion in their application.

CHAPTER IV

THIRD PERIOD: FROM THE PROMULGATION OF THE SPANISH
CONSTITUTION OF 1810 TO THE TREATY OF PARIS
OF AUGUST 13, 1898

The Spanish legislation reached its climax in this period as may be seen from the exceedingly great number of superior dispositions dictated for the Philippines. The Audiencia de Manila ordered to be published in 1861 the collection of Autos Acordados and other superior dispositions which affect the judicial branch, the knowledge of which is indispensable for those judges with the qualification of a provincial governor. The total number of Autos Acordados, proclamations, ordinances and other superior dispositions compiled in the five volumes of the Collection, amount to one thousand one hundred and thirty.

I should now mention the book of Rodriguez San Pedro, entitled, "Legislación Ultramarina," published in 1865, which embodies the legal dispositions dictated for the ultramarine possessions.⁽⁵⁸⁾ The compilation is contained in sixteen volumes and is divided into five parts: the first part deals with the organization of the central Superior Administration; the second with government; the third with public works, education, agriculture and commerce; the fourth part with Grace and Justice and Ecclesiastical affairs; and the last part with the Treasury. The book contains an index in chronological order of all the superior dispositions, proclamations, and ordinances promulgated from the 3rd of May, 1493, up to December 31, 1868.

Such was the variety of those dispositions that Miguel Rodriguez Berriz, old and learned chief of the administration of revenue, property and custom-house, calculated in 1887 that the total number of dispositions or decrees amounted to from eight to ten thousand.⁽⁵⁹⁾ And this encouraged him to publish in that year a book entitled, "Diccionario de Administración de Filipinas," to facilitate the search and exact understanding of all legal dispositions concerning any branch of the administration. It should be noted that Berriz's Diccionario only contains those royal decrees, ordinances, proclamations, and circulars published during the third period, or, that is to say, during the nineteenth century.

The well-known author D. Marcelo Martinez Alcubilla gave a decisive step further in matter of compilation of laws, when

he published his "Diccionario de la Administración española," the fifth edition of which was edited in Madrid in 1892. The work is composed of fifty big volumes and contains all the superior dispositions regarding all the different branches of the administration in the Peninsula as well as in ultramarine possessions. This work is distinguished from the others above mentioned, in that, while the "Collección de Autos Acordados" only contains those dispositions which affect the judicial branch in the Philippines; while the "Legislación Ultramarina" contains all kinds of dispositions applicable to each of the ultramarine possessions; and while the "Diccionario de Administración de Filipinas" contains only those applicable to the Philippines, the "Diccionario de Administración española" contains all kinds of superior dispositions applicable to Spain as well as those dictated for the different ultramarine possessions.

Only for the purpose of regulating the acquisition and sale of public lands, there were dictated seventy superior dispositions from 1803 to 1897, which were compiled in mimeograph form in 1913 by the extinct Office of the Code Committee.

So numerous and important were the reforms introduced by the Spanish legislation during this period relative to the public treasury, commerce, agriculture, education, industry and administration of justice that, even only to have an idea of the progress of said legislation, it would be indispensable to consult the said compilations. As an illustration, I will mention the following:

1852.—Decree of the Superior Government of September 13 on the enlistment of Chinese for the collection of their contributions.

1858.—The Royal Decree of September 20, approving the program of the Schools of Commerce, Drawing, Sculpture, Painting and Architecture.

1861.—The Royal Order of January 26, providing the San Jose College with classes in Latin and Philosophy.

1863.—The Royal Decree of December 20, establishing the Normal School for teachers in Manila.

1864.—The Royal Decree of May 29, organizing the School of Agriculture.

1867.—The Royal Order of January 26, approving the regulations for the establishment of secondary schools.

1870.—Decree of the Superior Government of April 7, approving the by-laws of an Association to promote the teaching of Arts and Trades in these Islands.

1870.—The Royal Cedula of April 16, prescribing the teaching of the Spanish language and its use by the natives.

1870.—Decree of the Superior Government of December 5, prescribing regulations for the study of the Faculties of Theology, Law, Medicine and Pharmacy in the University of Sto. Tomas.

1871.—The Royal Order of February 15, holding the certificates issued by the Nautical School valid.

1878.—The Royal Decree of June 14 on industrial tax.

1879.—The Royal Decree of December 19 on urban property tax.⁽⁶⁰⁾

EPOCH OF CODIFICATION OF LAWS

The codification of the laws of the Philippines was made through the same vicissitude as those of the metropolis. In Spain, notwithstanding the publication of their old codes such as the *Fuero Juzgo*, the *Siete Partidas*, and the *Novísima Recopilación*, etc., still the juriconsults never ceased to point out the defects of these codes and the necessity of unifying and codifying the laws enforced in the Peninsula.

The Cortes of 1810 initiated the most advanced epoch in the codification of laws in their different branches, political, administrative, mercantile, penal, civil and procedural.

Penal Codes.—The idea of codifying the penal laws was due to the Cortes of 1810, and this was carried into effect by the publication of the first Penal Code in 1822 which was promulgated in 1848. The Penal Code of 1848 was reformed in 1850, which reform continued to be enforced in the Philippines until the publication of the new Penal Code with respect to public officials. The Penal Code of 1850 was again reformed in 1870.

By Royal Decree of May 23, 1879, it was ordered that the Penal Code of 1870 as reformed, was to be published and observed in Cuba and Porto Rico, and in the Philippines, as well as the Provisional Law for its application, and the report of the Commission in conformity with Art. 89 of the Constitution which authorized the government to apply to these Islands only those laws promulgated or to be promulgated for the Peninsula.

The Penal Code enforced in the Philippines was compiled with but slight modification under the basis of the Code of '70, approved by Royal Decree of September 4, 1884, and communicated for its application by Royal Order of December 17,

1886, wherein were cleared some doubts consulted before its application. The Penal Code was published in the *Gaceta de Manila* of March 14, 1887 and commenced to be enforced throughout the archipelago, with the exception of the islands of Marianas and Batanes, on July 14, and for the latter on September 14.

The Penal Code is divided into three books, the books into titles, the titles into chapters, and the chapters into articles. Book I deals with the general dispositions relative to crime and misdemeanors, the persons responsible, and their penalties; Book II deals with crimes and their penalties; and Book III of misdemeanors and their penalties. The Code contains 611 articles including the final disposition which repealed all those general penal laws existing previous to the promulgation of the Code, save only those laws relative to crimes which are punishable by special laws.

The Provisional Law for the application of its dispositions repealed those laws or dispositions on criminal procedure enforced in the Philippine Islands in so far as they were contrary to the present law, and furthermore declared that the procedural law enforced in the Peninsula of which I shall speak later, would continue to be applicable in a supplementary character.

In applying the Penal Code, beside the Provisional Law, consideration should be given to the following:

1. The Circular of the *Presidencia de la Real Audiencia de Manila* of June 21, 1887, establishing rules for the guidance of Judges of First Instance, Justices of the Peace and *Gobernadorcillos*, signifying that the Compilation of October 16, 1879, which was reformed by another of May 6 of the following year should be observed as a supplementary legislation, without losing sight of the *Auto Acordado* of September 4, 1860, and those enforced by the *Real Cedula* of January 30, 1855;

2. The ordinance for the regulation and government of the *Audiencia de Manila* which were extended to that of Cebu;

3. The Compilation of October 16, 1879, as reformed by the Royal Decree of May 6, 1880;

4. The *Ley Provisional de Enjuiciamiento Criminal* of December 22, 1872 applicable in the Philippines "para el recurso de casación" in accordance with the rules of the Provisional Law for the application of the Penal Code.

5. The *Autos Acordados* of August 21 and September 4, 1860, approved by the Royal Order of January 18, 1855, establishing rules of procedure in criminal cases;

6. The Royal Decree of June 20, 1852, concerning the procedure to be followed in cases of fraud and smuggling in accordance with Art. 7 of the Penal Code;

7. The Royal Decree of May 29, 1885, creating Justices of the Peace throughout the archipelago; and another of the same date, which treats of the substitution of Judges of First Instance by those of the Peace in cases of absence, illness or other similar causes, with the formularies for the trial of misdemeanors, now of great utility for said Justices of the Peace and the Gobernadorcillos. (61)

Code of Commerce.—The codification of the mercantile laws was made by means of various projects prepared by Commissions appointed to that effect in 1810, 1820 and 1823. The last project was approved by the Royal Decree of October 5, 1829. This Code has been the object of important modifications until the promulgation of the new one by Law of August 22, 1885, which began to be enforced in the Peninsula on January 1, 1886; and by Royal Decree of August 6, 1888, the same Code with slight modifications was extended to the Philippines.

The Code is divided into four books; each book is subdivided into titles, the titles into sections and these into articles. Book I treats of merchants and commerce in general; Book II of special commercial contracts; Book III of maritime commerce; and Book IV of suspension of payments, bankruptcy, and of prescriptions. The total number of articles of this Code amount to 955.

Civil Procedure.—The procedural laws were also codified during this period, harmonizing the judicial solemnities, simplifying the procedure, and reforming parts that needed correction.

The first law on civil procedure was sanctioned by Royal Decree of October 5, 1855, which law was adapted to the basis contained in the decree of May 13 of the same year, drawn up by eminent juriconsults who composed the Codal commission.

The Law of Civil Procedure has lately been reformed in the Peninsula by the law of June 21, 1880, definitely approved in the year 1881.

In the Philippines, the law of civil procedure relating to ordinary cases was contained in the Real Cedula of September 30, 1855; autos acordados of the Real Audiencia de Manila; forensic practice exposed by old juriconsults; doctrines compiled in the Enjuiciamiento Civil de 1855; Book XI of the Novísima Recopilación and Partida III.

But the law of civil procedure of 1881 enforced in the Peninsula, with slight modifications, was extended to these Islands by Royal Decree of February 3, 1888, which was published in the *Gaceta de Manila* of March 12, 1888, and commenced to be enforced after six months, or to be exact on November 12, 1888. By the final disposition of this law contained in its Art. 2162, all laws, Royal Decrees, rules and orders wherein are contained rules of civil procedure, were abolished save only those that were found in special laws.

Criminal Procedure.—The laws of criminal procedure were codified in the same way as that of the laws of civil procedure, the reform being based on title 5 of the Constitution of 1812, some dispositions of the Cortez, and the Rules of 1855 before cited. The juriconsults being divided into two schools, those of the tribunals of Law and those of Fact or Jury, the Penal Code of 1850 had to be supplemented with a Provisional Law for its application.

The law of Criminal Procedure enforced in the Peninsula, was sanctioned on September 14, 1882, and its tendency has been to reconcile the two schools above mentioned by retaining the Tribunal of Law and taking from those of Fact the oral and public and the *unica instancia*. This law was not extended to the Philippines, but by the Provisional Law accompanying the Penal Code it was disposed that the compilation of 1880 of those dispositions relating to the criminal procedure were to continue to be enforced in these Islands in a supplementary character. (62)

Civil Code.—The codification of the Civil Code has been the fruit of various years of labor carried on by the Code Committee composed of the most eminent Spanish juriconsults. (63)

For the definite compilation of this code, the law of May 11, 1888, was promulgated, establishing the basis for the new Code. They were twenty seven in all and expressed in a precise manner all the ideas which each and every one of them contained.

The basis of this new code were derived from the dispositions of the project of 1851. They were formed with the legislation of Castile, a little part of Cataluña, and the jurisprudence of the Supreme Tribunal of Justice.

It is composed of a preliminary title which is devoted to laws, of its effects, and the general rules for its application; four books, forty-one titles, and one thousand nine hundred and seventy-nine articles.

Book I deals with persons; Book II of properties, ownership and its modifications; Book III of the different modes of acquiring ownership and Book IV, of Obligations and Contracts.

By the Royal Decree of October 6, 1811, its publication was authorized, and the first publication was made in the *Gaceta de Madrid* on October 9, 1888, and ended on December 8, 1888. This was enforced in the Peninsula on May 1, 1889.

By the Royal Decree of the 31st of July, 1889, the Civil Code of Spain was extended to the Philippines. The "cúmplase" of the Governor General was affixed to this Royal Decree of the 12th day of September, 1889. The Code was published in the *Gaceta de Manila* on the 17th of November, 1889, and took effect on the 8th day of December, 1889.

By Order of this Majestic Government of December 29, 1899, Titles 4 and 12 of the Civil Code were suspended.⁽⁶⁴⁾

Aside from the codes to which reference has been made, there were enforced in the Peninsula during this period, other important laws which were applied to the Philippines.

Law of Waters.—The Law of Waters of August 3, 1866, enforced in the Peninsula, was applied to the Philippine Islands by Royal Decree of August 8, 1866, and was published in the Official Gazette with the "cúmplase" of Governor-general Izquierdo on October 21, 1871.⁽⁶⁵⁾ This Law is composed of seven titles; the titles are divided into chapters and these into 300 articles. Title I deals with the waters of the sea; title II with territorial waters; title III with beds and channels of waters, banks or margins; title IV with easements concerning waters; title V with the general use of public waters; title VI with the concessions and special use of public waters; and title VII with the control and police of waters and jurisdiction thereover. This Law has on several occasions been invoked by our tribunals of justice in order to solve important questions as that in the case known as "Punta Sangley," Cavite, Cavite.⁽⁶⁶⁾

Notarial Law.—The Notarial Law of May 28, 1862, enforced in Spain, was extended to the Philippine Islands with certain modifications by Royal Decree of February 15, 1889.⁽⁶⁷⁾ According to this Law, the notary exercised two functions, public and private. His public function consisted in drawing up and authorizing documents wherein are contained the contractual obligations and other acts of individuals and to bear testimony to the due execution thereof in his presence; and his private function was to lead and counsel individuals in the contracting of obligations, in the making of wills and other extra-

judicial acts, for which a notary aside from possessing good moral conduct, legal age, and without any physical disability, must also be an attorney, or at least must have finished the notarial career. (68)

Mortgage Law.—The Mortgage Law with its system of land registration enforced in Spain since December 3, 1869, was extended to the Philippines with some modifications by Royal Decree of May 10, 1889, and began to be enforced in these Islands on October 1, 1889.

According to this decree, the application of this law involved an evident progress and filled a necessity deeply felt in these Islands, the satisfaction of which could not be delayed without causing great injustice and inconvenience to the interests of the people.

Dispositions Regarding Judiciary.—Of the various superior dispositions dictated regarding the judicial branch during the third period, special mention should be made of the Royal Decree of July 4, 1861, articles 3 and 8 of which ordered that the Reales Audiencias de Ultramar would be titled with Excellency and their Regents were the only Chiefs and Presidents of said tribunals, without prejudice to the supreme inspection and extraordinary faculties vested in the Superior Governor.(69) Since then, the office of President of the Audiencia which has from the very beginning been annexed to that of the Governor General, was conferred to the Regent.

The Audiencia de Manila was reorganized as to its personnel, many times since 1596, one of the most important reorganization being that introduced by Royal Decree of May 23, 1879, whereby the Audiencia de Manila was placed on a similar footing with like court of last resort in Spain, Cuba, and Porto Rico.

On February 20, 1886, the Audiencia Territorial de Cebu was created by a royal decree and was given jurisdiction over civil and criminal matters from the courts of first instance of the provinces of the Visayan Islands, Mindanao, and Sulu Archipelago.

The Audiencia de Manila was reorganized according to the Decree of May 19, 1893, and was composed of one Chief Justice, two presidents of chambers, eight associate justices, an attorney-general, an assistant attorney-general, three attorneys, a secretary of the Audiencia, and a secretary for each of the two chambers. Under said decree the Audiencia de Manila was given appellate jurisdiction throughout the Archipelago in civil

matters, and in criminal matters over the Courts of First Instance of Binondo, Intramuros, Quiapo, Tondo, Albay, Batangas, Bulacan, Laguna, Pampanga, Bataan, Camarines Norte, Camarines Sur, Mindoro, Nueva Ecija, Tayabas, Zambales, Cavite, Lipa, Tarlac and the Comandancia Politico-Militar de Masbate and Ticao.

The Audiencia Territorial de Cebu, as originally created in 1886, was composed of a Chief Justice, a president of chamber, four associate justices, an attorney-general, an assistant attorney-general, one attorney, a secretary of the Audiencia, and a secretary of chamber. This Audiencia had appellate jurisdiction over civil and criminal matters from courts of first instance of the provinces of the Visayan Islands, Mindanao, and Sulu. Subsequently, by virtue of the above-mentioned royal decree of May 19, 1893, the Audiencia Territorial de Cebu was abolished and instead two Audiencias de lo Criminal were created, one in Cebu and another in Vigan, Ilocos Sur. The Audiencia de lo Criminal de Cebu began operation on August 1, 1893. Its personnel consisted of a Chief Justice, two associate justices, an attorney-general, an assistant attorney-general, and a secretary, with the necessary number of subordinate employees. The appellate jurisdiction of this court included all criminal cases from the following provinces: Cebu, Ilo-ilo, Antique, Barili, Barotac Viejo, Bohol, Capiz, Dumaguete, Bacolod, Leyte, Misamis, Samar, Zamboanga and the Comandancias y Gobiernos Politico-Militares de Balabac, Calamianes, Cotabato, Davao, Jolo, La Paragua and Surigao.

The Audiencia de lo Criminal de Vigan had an organization similar to the Audiencia de lo Criminal de Cebu, and its appellate jurisdiction included all criminal cases from the Courts of First Instance of Pangasinan, Ilocos Norte é Ilocos Sur, La Union, Abra, Cagayan, Isabela, and the Comandancias and Gobiernos Politico-Militares de Islas Batanes, Carolinas Orientales, Carolinas Occidentales, Islas Marianas and Nueva Vizcaya.

The Audiencias established in the Philippine Islands were provided with additional justices (magistrados suplentes), equivalent in number to one-third of the number of justices of the respective Audiencias; these were appointed by the Governor-general upon the recommendation of the respective chambers; their term of office was one year, and they were eligible for re-appointment. It was the duty of such justices to act for and in the place of the regular justices of the Audiencias in cases of absence or disqualification of the latter. (70)

Other superior dispositions would make the scheme of Judicial system complete, such as those of the Royal Cedula of January 30, 1855, which among other things fixed the duties of the Ministerio Fiscal; of the Royal Decree of October 18, 1870 ordering that in each province there should be a court of first instance, and of the Royal Order of May 29, 1885, which ordered the appointment of a Justice of the Peace for each municipality.

Dispositions of a Political Character.—During the constitutional government of Spain, the Supreme Consejo de Regencia published a decree on February 14, 1810, creating the "Representation of the Philippines in the Spanish Cortes," and establishing rules for its election. The Representation of the Philippines in the Spanish Cortes had a languishing existence due to the instability of the Spanish government at that time, and as a matter of fact, on June 18, 1837, the political Constitution of the Spanish monarchy, decreed and sanctioned by the Cortes on the 8th of the same month, was promulgated, and by art. 2 of the Adicionales it was ordered that the provincias de ultramar were to be governed by special laws. Since then, the Philippines lost her representation in the Cortes. (71)

The Royal Order of May 12, 1848, approved the Decree of the Governor-general of October 5, 1847, ordering the election of gobernadorcillos and other ministers of justice in these Islands.

By Royal Decree of May 19, 1893, commonly known as the Maura Law, a new municipal regime was established in the Philippines, fundamentally based on the municipal law enforced in the Peninsula on April 2, 1877. This Decree is composed of three chapters, and these are divided into fifty-three articles. Chapter I in its section 1 treats of the municipal tribunals, and in section 2 of provincial councils; Chapter II deals with the Administration and Treasury of towns, and Chapter III of general dispositions. This Law has been annotated by Dn. Pedro Paterno, the expresident of the Malolos Congress. (72)

Without making reference to the various Royal Decrees and Orders issued during this period, solving the many conflicts of jurisdiction that arose among the ecclesiastical, military and civil authorities, for they have no special bearing on the topic under discussion, it remains for me to note the last and the most far-reaching disposition made by Spain regarding the Philippines, which consisted in the signing of the Treaty of

Paris of August 13, 1898, as a consequence of the war between Spain and America, by virtue of which, Spain ceded her sovereignty over these Islands to the United States of America through an indemnification of twenty million dollars. (73)

CHAPTER V

CONCLUSIONS

The conclusions that can be rightly inferred from the brief statement hitherto made of the Laws, Royal Decrees, Royal Orders, Ordinances, and other superior dispositions, are the following:

1. During the first period the legislation is characterized by its tendency to establish the Spanish Sovereignty in these Islands, considering their inhabitants as minor persons needy of aid and protection. Superior dispositions ordered that the natives, then called Indios, be converted into the Catholic Religion, that they should live in towns and be instructed in the acquisition of habits of labor and order, but without being subjected to an involuntary servitude. In lieu of this, the Indios were required to pay tribute of vassalage and to render other personal services to the *encomenderos*, governors, *alcaldes mayores*, *corregidores*, and religious missionaries. (74)

2. The legislation during the second period is characterized by its tendency to promote the progress of the natives of the land in the various aspects of social life. Commerce, agriculture, instruction both elementary, superior and university, were the objects of appropriate legislation. This encouraged the natives in the acquisition of lands as the basis of their material prosperity. Certain old practices oppressive to the natives were either suppressed or prohibited. The collection of public taxes was best regulated and the custody and disposition of public funds were safe-guarded. The administration and government of the town were improved. Important reforms in the administration of justice and judicial proceedings were introduced not only in the Audiencia de Manila but also in the *alcaldia mayores* or Courts of First Instance, and in the Justices of the Peace Courts.

3. Tendency to uniformity and codification is the characteristic of the legislation during the third period. The movement for reforms originated in the Peninsula, but their results happily reached the Philippines. The Codes: Penal, Civil, and Mercantile, and the Civil and Criminal Procedure, with a slight

modification, were applied to the Philippines, as well as the important laws enforced in the Peninsula, such as the Mortgage Law, the Law of Waters and the Notarial Law. In this period, the judicial power was completely separated from the Executive Power. The mechanism of the Judicial system in the Peninsula was implanted in the Philippines, with the only exception of the Jury. The Audiencia Territorial de Manila and the Audiencias de lo Criminal in Cebu and in Vigan, as well as the Courts of First Instance in Manila and in every province, and the Justices of the Peace in every municipality exercised their functions in civil and criminal matters within their respective jurisdictions. The Codes and Laws lastly enforced in these Islands regulated the acts and the juridical relations of the inhabitants thereof without discrimination as to the nationality.

4. In return for the subjection which Spain imposed upon the Philippines for more than three centuries, the former gave the latter the best she had: her Religion and Language, her Laws as well as her Sciences and Arts.

CITATIONS

- (1) Craig, "The Former Philippines Thru Foreign Eyes" page 3;
Foreman, "The Philippine Islands," note to page 19;
Montero y Vidal, "Historia General de Filipinas," Vol. 1, page 5;
Blair and Robertson, "The Philippine Islands," Vol. 1, p. 122-129.
- (2) Foreman, "The Philippine Islands," p. 18;
- (3) Foreman, "The Philippine Islands," p. 20;
- (4) Montero y Vidal, "Historia General de Filipinas," Vol. 1, p. 14.
- (5) Foreman, "The Philippine Islands," p. 23;
Montero y Vidal, "Historia General de Filipinas," Vol. 1, p. 18;
Rodriguez, Eulogio B: "De Mollucis Insulis."
- (6) Montero y Vidal, "Historia General de Filipinas," Vol. 1, p. 21.
- (7) Foreman, "The Philippine Islands," p. 28.
- (8) Legazpi died on August 20, 1572. His remains lie in St. Augustine's Church.
- (9) Blair and Robertson, "The Philippine Islands," Vol. III, p. 26-69.
- (9a) See Retana's note to Morga, No. 27, p. 381.
- (10) Montero y Vidal, "Historia General de Filipinas," Vol. 1, p. 42-43.
- (11) Recopilacion, Law 8, Title 6, Book 6; Law 1, Title 9, Book 6.
- (12) Cunningham, "The Audiencia in the Spanish Colonies" note on p. 33.
- (13) Cedula of August 9, 1589, A. I., 105-2-11.
- (14) "Recopilación," Law 30, Title 8, Book 6.
- (15) Blair and Robertson, "The Philippine Islands," Vol. V, p. 35-187,
Relation of Loarca.
- (16) Report of Governor Dasmariñas on the encomiendas of the Philippines, May 31, 1591, in Blair and Robertson, "The Philippine Islands," Vol. VIII, p. 96-141.

- (17) "Recopilación," Law 3, Title 2, Book 5.
- (18) Cunningham, "The Audiencia in the Spanish Colonies" p. 27.
- (19) *ibid.*
- (20) *ibid.*
- (21) *ibid.*
- (22) Retana, "Historia General de Filipinas," Vol. 1, p. 161.
- (23) *ibid.*, p. 147.
- (24) Sinibaldo de Mas, Internal Political Condition of the Philippines, in Blair and Robertson, "The Philippine Islands," Vol. 52, p. 32.
- (25) American Historical Association, Annual Report, 1907, Vol. 1, p. 150 and note.
- (26) Cunningham, "The Audiencia in the Spanish Colonies, note on p. 130.
- (27) "Recopilación," Law 5, Title 1, Book 1; Law 1, title 3, book 6; Law 1, title 2, book 1; Law 2, title 2, book 1; Law 2, title 6, book 1; Law 3 and 11, title 2, book 1; Law 4, title 3, book 6; Law 1, title 16, book 1; Law 5, title 17, book 4; Law 9, 12, 17 to 20, title 12, book 4; Law 1 to 19, title 12, book 4; Law 18, title 1, book 6; Law 5, 8, title 4, book 4; Law 26, title 1, book 6; Law 31, 32, title 1, book 6; Law 9, title 2, book 6.
- (28) See pre-Spanish law, Concepcion, "Historia de Filipinas," Vol. 1, p. 29;
Loarca, "Relacion de las Islas Filipinas;"
Romualdez, "Ligero Bosquejo de la Legislacion Pre-Hispana."
Pardo de Tavera, "Las Costumbres de los Tagalos en Filipinas,"
Araneta, "Ley Penal Consuetudinaria,"
Morga, "Sucesos de las Islas Filipinas," p. 191-199.
- (29) Law 4, Title 1, Book 2; Law 10, Title 10, Book 5; Law 1, title 9 book 6; Law 8, title 6, book 6; Law 5, title 12, book 12; Law 9, title 2, book 6.
- (30) Barlin vs. Ramirez et al., 7 Phil. 41.
- (31) Cunningham, "The Audiencia in the Spanish colonies," p. 34 et seq.
- (32) Blair and Robertson, "The Philippine Islands," Vol. V. p. 274-318; Vol. VI, p. 35-43.
- (33) By "residencia" is meant the investigation of charges filed against government officials, the Governor-general included, for misconduct in office during their incumbency. See Juicios de residencia in San Pedro's "Legislacion Ultramarina," Vol. 1, p. 275 et seq.
- (34) Cunningham, "The Audiencia in the Spanish colonies," p. 49.
- (35) *ibid.*, p. 51.
- (36) *ibid.*
- (37) *ibid.*, p. 53.
- (38) *ibid.*
- (39) *ibid.*
- (40) Cunningham, "The Audiencia in the Spanish colonies," p. 54.
- (41) *ibid.*, p. 55.
- (42) *ibid.*
- (43) *ibid.*, p. 56 et seq.
- (44) *ibid.*, p. 71.

- (45) Blair and Robertson, "The Philippine Islands," Vol. VIII, p. 312.
- (46) Cunningham, "The Audiencia in the Spanish colonies," p. 72.
- (47) See note 33.
- (48) Blair and Robertson, "The Philippine Islands," Vol. IX, p. 189-191.
- (49) Governor Tello, the successor of Dasmariñas.
- (50) Cunningham, "The Audiencia in the Spanish colonies," p. 81.
- (51) Morga, "Sucesos de las Islas Filipinas," p. 312 etc.
- (52) Blair and Robertson, "The Philippine Islands," Vol. XVII, p. 79.
- (53) Blair and Robertson, Vol. XLX, p. 40.
- (54) The above cited decrees and Cédulas are included in the Colección de Autos Acordados de la Audiencia de Manila, Vol. I, with the exception of Royal Cédula of December 12, 1686, which is found in San Pedro, while Royal Ordinances of June 1, 1599, is in Morga's "Sucesos de las Islas Filipinas," p. 312 et seq.
- (55) See note 51.
- (56) "Colección de Autos Acordados," Vol. 1, p. 29-70.
- (57) Blair and Robertson, "The Philippine Islands," Vol. 50, p. 191-264.
- (58) Cuba, Porto Rico, San Fernando Póo, Santo Domingo, and the Philippine Islands.
- (59) Berriz, "Diccionario de Administracion de Filipinas," Vol. 1, prologue.
- (60) Some of the above cited Decrees and Orders are found in San Pedro's "Legislacion Ultramarina." Those from 1870 may be seen in Berriz's "Diccionario de Administracion de Filipinas."
- (61) Perez Rubio's Código Penal, Apéndice.
- (62) U. S. vs. Antonio, 1 Phil. 251; U. S. vs. Mendoza, 2 Phil. 272; U. S. vs. Navarro, 3 Phil. 143; U. S. vs. Leño, 6 Phil. 368; U. S. vs. Montaner, 8 Phil. 620; Grattage vs. Standard Fuel Corp. 20 Phil. 460.
- (63) Wals y Merino, "Historia de la Legislacion Española," p. 191.
- (64) See the order of the General Government of the Philippines signed by Weyler, Manila, December 29, 1889, in Williard's Notes to the Civil Code.
- (65) The reason for the delay given in the order of the Governor-General is because the decree was found pigeon-holed without formalities of any kind in the Bureau of General Inspector of Public Works.
- (66) Ker vs. Cauden, 6 Phil. 732, affirmed by the U. S. Supreme Court on February 19, 1912.
See "The Spanish Law of Waters of August 3, 1866" translated by F. C. Fisher and published by G. A. Malcolm; Bentabol y Martinez, "Legislacion de Aguas," p. 179.
- (67) As to the origin of Notarial Institution, see "Manual de los Notarios Públicos," by Feria, p. 6.
- (68) The Notariado was one of the professional careers taught in the University of Sto. Tomas.
- (69) Montero, "El Procedimiento Criminal," p. 175.

- (70) Montero, "El Procedimiento Criminal," p. 141;
Harvey, "The Administration of Justice in the Philippine Islands,"
found in the Philippine Law Journal, Vol. 1, p. 336;
Albert, "The Law of Criminal Procedure," p. 13-15.
- (71) Montero y Vidal, "Historia de Filipinas," Vol. II, p. 395-572.
Blair and Robertson, "The Philippine Islands," Vol. 51, p. 279-297.
- (72) "El Regimen Municipal en las Islas Filipinas," edited in Madrid
in 1893;
The Roman Catholic Apostolic Church vs. The Municipality of Ce-
bu, 36 Phil. 517.
- (73) See the Treaty of Paris in Malcolm's "The Government of the
Philippine Islands," p. 167 et seq.
- (74) "Recopilacion," Law 65, Title 5, Book 6; L. 40, 41, t. 12, b. 6;
San Pedro, "Legislacion Ultramarina," Vol. VIII, p. 395.