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A STUDY OF SOME SALIENT CONFLICTING OPINIONS OF TWO GREAT CIVIL LAW COMMENTATORS, MANRESA AND MAURA

(Discussion confined to certain provisions of the Philippine Law on Wills)

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INTRODUCTION

Perfect unanimity of opinion is an ideal, 'a consummation devoutly to be wished'. Great minds should flow thru the same channels, because in the search for truth the human intellect does react only to stimuli that manifest or guarantee the attainment of truth. Philosophers agree that truth is intrinsically one and indivisible, and man in his intellectual endeavours has always attempted to clearly visualize its naked essence.

The history of man, however, bears testimony not to one consistent system of philosophy, but to many diverse theories and opinions advanced and supported by able minds in every epoch of intellectual revival. Some have died with their authors, others have outlived their supporters, but a few have survived the ravages of criticism and time, demanding from us our credence as the system that best embodies or at least approaches the perfection of truth.

"There are always two sides to every question" is an accepted adage that has tolerated, if not justified, diversity of opinions. Voltaire's famous slogan, "I heartily disagree with what you say, but I will defend to the death your right to say it," is not only a recognition of man's freedom of thought and speech, but a recognition as well of the inevitability of two or more conflicting views and opinions. Thus we say: "todo depende del color del cristal de que se mira", for two persons contemplating one same object may receive different impressions.

The presence of conflicting opinions in the realm of philosophy and its abstract branches like metaphysics, is not surprising. But this state of uncertain conflict extends to practi-

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cal sciences as well manifested by the birth of hypothesis and new theories that with the advance of research and experiment ultimately render obsolete present accepted truths. It is precisely from this conflict—"only on the anvil of discussion that the spark of truth can be struck out" that we attribute progress and all the blessings we enjoy thru science.

Likewise we hear much discussion as to the advisability of adopting a measure for social uplift in the solution of our social problems. In legislation we devote ample time for the thorough discussion of the merits and defects of a proposed bill. While things are in the state of uncertainty and development, controversy and conflicting opinions should be welcome as conducive to progress and truth.

But this state of conflict extends further in the interpretation of laws, even if they be adequately couched in definite terms. Thus litigation involving a legal question usually centers in the interpretation of a phrase or a word. Our courts in their functions as interpreters of statutes must often choose between two equally logical constructions. Our supreme court has at times extended the scope of the law or resorted to judicial legislation for reasons of expediency and justice. But conflicting views arise many a time, and in fact, many dissenting opinions, of Justice Moreland here, and of Justice Holmes in the United States carry more weight in logical reasoning than those of the majority.

The existence of diverse opinions signifies study and intellectual exertion; it incites controversy which leads to clearer exposition, it means life and progress. For a justice of our supreme court to concur with his colleague 'the ponente' without judicial study, for a judge of our court of first instance to automatically follow decided cases without the least approach to legal logic and principles for perhaps a better doctrine, for a practicing attorney to rely exclusively on reported cases without formulating a logical working theory of his case—would naturally entail less work and effort, but it will likewise mean stagnation and inert jurisprudence. It requires courage, talent and conscientious study to formulate a new opinion in law (provided it is thoughtful and logical), especially if it conflicts with the accepted opinions of older jurists, or goes counter to accumulated but perhaps roughly prepared decisions of our supreme court. Originality in thought and devotion to research should be encouraged, for perhaps it is the attribute of mighty minds to vary and disagree.

It should not be surprising therefore, that the present thesis should study some of the salient conflicting opinions of a few recognized civil law commentators, among them Manresa and Maura in their varied interpretations of some specific provisions of our Civil Code in Wills. Spanish civilians concur in the nature, extent and scope of the essential provisions of our Civil Law, but it might be interesting to delve a little deeper in some of their personal views and determine exactly where their views conflict.[1]

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[1] Note: Jose Maria Manresa y Navarro, the author of the twelve famous volumes of commentaries on the Civil Code, whom every law student identifies with the principles of the Civil Law, had been justice of the (Spanish) Supreme Court, and was retired with honors as President of the same court. He was spokesman (vocal) of the general commission for codification, of the Institute of Social Reforms, and of the 'Consejo Penitenciario', and an illustrious attorney of the illustrious college of Madrid.

Felipe Sanchez Roman, a legal talent noted for his succinct classifications and comprehensive definitions, an exponent of Roman legal principles, had been professor of Civil Law in Central University, and ex-president of the Academy of Jurisprudence of Granada. He was 'vocal' of the general commission of Codes, and for the revision of the Civil Code; of the Royal academy of Moral and Political sciences, ex-counsellor of Public Instruction, Subsecretary of "Gracia y Justicia", Fiscal of the Supreme Court, Counsellor of State, Minister of State and an illustrious attorney. * * *

Jose Castan Tobeñas, a scholarly jurist who mastered the different views of his predecessors and himself wrote on the Spanish Civil Code, was Professor (Catedratico) of Civil Law in the University of Valencia.

Jose Morell, a recognized authority in Civil Law with particular emphasis on the Mortgage Law, had been for many years a register of deeds, and he gave us the benefits of his talent and study thru his commentaries on the Mortgage Law, his studies on specific subjects of Civil Law, like reservable property, and his articles published in the Revista General de Legislaciones y Jurisprudencia.

Antonio Maura y Montaner, orator, jurist and statesman, author of his famous Dictamenes, pursued the study of law thru the field of Justinian law and delved deep in Spanish classics. He was elected 'diputado a Cortes' in 1881 when he introduced reforms to the municipal and provincial laws. In 1887 he was elected president of the 'comision de jurado'; in 1893 Maura read in Congress his famous reforms (for Cuba), he accupied 'la cartera de gracia y justicia'. The failure to act on his reforms precipitated the crisis on May 16, 1898 as a consequence of the serious situation created by the rupture of diplomatic relations with the United States. On April 12, 1904 on the occasion of accompanying His Majesty the King to Barcelona, Maura was mortally wounded by the anarquist Artal; but he recovered soon, and it was said that 'ese atentado es la consegracion de su vida.' On 1907 he again occupied the presidency of the

THE WILL OF DON PEDRO ROXAS.

Maura's competence as a civil law jurist was recognized in Manila, when his learned opinion was sought by the Roxas family to interpret a far reaching clause in Dn. Pedro's will. Maura's dictamen No. 18—on the right of representation and accretion—averted a long family litigation.

In Clause 3 of the will—Don Pedro instituted as sole and universal heirs: his wife, Dña. Carmen, corresponding to her usufructuary rights as widow; and his children, Margarita, Consuelo, and Antonio, and to his grandson Enrique for four equal parts the total of the third of the strict legitime.

The mejora and free disposal were provided for in the will as to be divided equally to his descendants of the first degree.

Consuelo died in 1909 before the death of the testator, leaving three children.

The exact issue presented was: Should the children of Consuelo participate in the mejora by right of representation to the right of their deceased mother, or should that portion left vacant by her death be distributed to her living brothers by right of accretion?

The will of Dn. Pedro, Maura wrote, is its only law on succession. The strict legitime is divided into the four heirs mentioned. One fourth (1/4) part of the third destined *'ex lege'* to the strict legitime corresponds to the 3 children of Consuelo equally. Another fourth part of that third belongs to Enrique solely, subrogating another son of the testator.

The doubt arises in the third part of the hereditary property destined to majoras (betterment). According to 808—2/3 of the hereditary estate constitute the legitime of the legitimate children and descendants. Once the right of Consuelo has ceased by death, that portion becomes vacant, incorporated *ipso juro* to the legitime, divisible among the forced heirs concurring in the succession.

Enrique can not invoke art. 808 to claim a part of the third for mejoras. Now the difficulty concerns the children of Consuelo. The right of representation (Art. 924) attributes to them the rights which their mother would have had if she were alive or could have inherited. Is such right of representa-

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government; as a statesman he created the Institute of Social reforms, regulated the expenses municipal and provincial, presented his plan for reforms of local administration. He is director of the 'Real Academia Española'; President of the permanent committee on Codes; President for the third time of the Academy of Jurisprudence.

tion proper? Maura held that the participation of Consuelo if alive, is established by virtue of the will and not by any other title. Art. 924 defining the right of representation is only available with respect to the inheritance strictly forced, the only portion transmitted by operation of law (herencia estrictamente forzosa, unica que se difiere por ministerio de la ley). Strictly 924 'es vocacion ex lege suceder'—'todos los derechos' refer to all those granted by operation of law. On the other hand, Art. 984 treating of the right of accretion provides that coheirs succeed to all the rights and obligations which those who did not wish or could not inherit would have had (que tendrian quien no quiso o no pudo heredar).

His conclusion follows: Grandchildren of the testator, estirpe of the daughter instituted who dies before him, enter to succeed by right of representation; but *only* to the portion of the hereditary estate that would have been granted them by provision of *law*, since the testator without favoring them with any liberality, disposed of the remaining third for mejoras as well as the third of free disposal in favor of the descendants of the first degree, and in terms which attribute to the living the right of accretion.

Therefore the third for mejora belongs to the two brothers living. (*Dictamen delivered on August 9, 1912.*)

Manresa in his commentaries on Article 924 seems to agree with Maura's principal basis to his dictamen, that the right of representation is a right granted by law, and therefore is limited to all the rights that are transmitted ex lege 'por ministerio de ley'. However, we should remember that when the right of representation is proper, it is preferred to the right of accretion.

Manresa explains 'el derecho de representacion' as a legal fiction, a right granted by law to determinate relatives, who must always be descendants of the person they represent. Although representation is a right, it does not mean, however, that the one who represents succeeds to the hereditary estate 'por derecho propio' in his own right. He succeeds because the law grants him the degree of relationship which he needs to inherit. The person referred to in art. 924 is the person represented. At his death or incapacity, the person representing acquires such grade of relationship, by which he obtains such hereditary rights which the person represented would have had, if his death or incapacity had not occurred.

The article presupposes three persons: the testator (causante), a relative who would succeed if alive or could inherit, and a descendant or relative who, representing him, obtains the succession. The doctrine of art. 924 well understood means that the representation is a right granted by law, that is, that the 'representante' receives his right, not from the 'representado' by a will of his, but by law, which prescinds absolutely of such will. "Sucede al causante, no al representado".

Jose Morell discussing Mejora in vol. 83 Revisto de Legislacion y Jurisprudencia, pages 267 et seq., arrived at the same conclusion as Maura, but stressing another point, not the ex lege of art. 924 but the necessity of express intention to mejorar.

La mejora is a part of the legitime. The legislator no longer speaks of children and descendants, but those legitimated (legitimarios) and their descendants * * * The grandfather can give betterment (mejorar) to his grandson, regardless of the life or death of the father (viva o no viva el padre). In effect the legitimate (legitimarios) are those who have, according to law, a right to the legitime.

The ascendants can 'mejorar'. Only the legitimate descendants can be bettered directly or indirectly. Art. 830 gives to the power of betterment a very personal character.

Mejoras are classified: those made by will and by contract; revocable and irrevocable, express and tacit * * *

Almost all mejoras today are express, whatever be the form in which they take place; but there is an exception, there is a tacit mejora, as can be deduced from arts. 825 and 828. But whatever be the form that is adopted to dispose of the property (bienes), it must be expressed in a clear and determinate manner that it is destined as mejora. Otherwise, the law never supposes it as such by general rule, but on the contrary it considers that such mejora does not exist.

The Civil Code in treating that the disposals of the testator (causante) shall not be considered as mejoras if such will does not clearly appear, distinguishes between disposals made by contract and disposals by will (art. 825 and 828). But in treating of the former it says: "the donations by contract intervivos" and in treating of the latter: "the bequest or legacy made by the testator".

The donations by reason of death * * * are to be imputed to the legitime according to art. 819. They can not be comprised in 828 which supposes the imputation to the free portion.

It is against the spirit of the law to consider as mejoras donations for being mortis causa if there is no such express intention (aclaracion expresa). The law obeys one idea—namely, to limit, if not to destroy absolutely tacit mejoras.

Mejora made by contract in an *express* manner is equivalent to mejora. If there is no such declaration in an express manner, a donation made in favor of children or descendants, who are forced heirs is imputed to the legitime; and if they have no right to the legitime it shall be imputed to the free portion.

Castan, writing on Mejora in page 252 et seq., agrees with Morell in the absolute necessity of mejora being clearly expressed.

From arts. 825 and 828 is inferred that for mejora to exist, it is necessary that the one constituting it should declare in an express manner his will to mejorar, for otherwise the donations intervivos or the bequests and legacies in favor of children and descendants shall not be considered as mejoras. The old distinction between mejoras express and implied (expresas y tacitas) has lost its importance in the present law, because according to the Code all the mejoras have to be express (art. 828) with only two possible exceptions: bequests made by will which can not be comprised within the free portion (828) and fideicommissary substitutions which fall on the third for mejora in favor of descendants (982). Castan revives another classical question: is succession by mejora thru singular or universal title?

Morell and Sanchez Roman who uphold the theory (tesis) of universal title base it on the fact that the mejora is a part of the legitime.

Scaevola and Lacoste uphold that mejora is a disposal by singular title, for 832 authorizes the descendant to accept the mejora and repudiate the inheritance.

Valverde while recognizing on principle that the mejora has the character of a universal succession, considers it as a legacy, art. 768, of a certain and determinate thing.

DECISIONS OF OUR SUPREME COURT ON MEJORA AND RIGHT OF REPRESENTATION:

Chico v. Viola, 40 Phil. 316.

There being but one legitimate child and one acknowledged natural child, and there being no descendant who may receive a betterment: *Held*: that the natural child is entitled to one third

(1/3) of the hereditary capital as long as it is comprised within the third part of free disposal after taking away the deductions mentioned by law.

Pavia v. Iturralde, 5 Phil. 176.

In an intestate succession a grandniece of the deceased can not participate with a niece in the inheritance, because the latter, being nearer relative, the more distant grandniece is excluded. In the collateral line the right of representation does not obtain beyond sons and daughters of the brothers and sisters. * * *

Irlanda v. Pitargue, 22 Phil. 383.

According to art. 925, the right of representation shall always take place in the direct descending line, but never in the ascending; and shall only be recognized in the collateral line in favor of children of brothers or sisters whether they be of whole or half blood.

Pecson v. Mediavillo, 28 Phil. 81.

Disinheritance of a lawful heir can only be made for one of the causes expressly fixed by law. Such disinheritance can only be affected by will. * * * As there was a descendant in the direct line surviving, the inheritance could not ascend. * * *

In re Tad-Y, 48 Phil. 557.

The acknowledged natural child is entitled only to one half of the portion pertaining to each of the legitimate children not bettered (art. 840). As in the instant case there is only one legitimate child who inherits together with the widow, he is entitled to a third constituting the short legitime in full ownership and only to the naked ownership of the third available for betterment, since the usufruct of this third belongs to the widow. * * * It is true that legitimate child has in addition the third available for betterment, but that is only in naked ownership.

THE THIRD DEGREE IN ART. 811.

The first salient conflicting opinion among the civil law authorities arises from the interpretation of reserva troncal—art. 811. The article provides: "Any ascendant who inherits from his descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister, is ob-

liged to reserve such of the property as he may have acquired by operation of law for the benefit of relatives within the *third degree* belonging to the line from which such property came".

Specifically the conflict in interpretation springs from the phrase "within the third degree." There are two main trends of opinion. Manresa and Morell believe in the generally accepted decision of the Spanish Supreme Court of Dec. 16, 1892, that the third degree must be counted from the *descendant* from whom the property immediately came. Maura holds a different opinion that the third degree must be counted from the *ascendant* from whom the property originally came as the personality determinative of the favoured line and degree.

We shall cite from Manresa's lengthy explanation of the reserva troncal a few excerpts that would shed light on the nature and extent of the reserva.

Persons to whom art. 811 refer: There is no doubt, whatever, that the one obliged to reserve is the ascendant who inherits from a descendant. The degree or line are not important for; every ascendant who inherits from a descendant, is obliged to reserve the property referred to by art. 811. Only upon the *legitimate* ascendant is imposed the obligation to reserve. The precept obeys a natural desire that property should not leave, by virtue of new marriages, the family to which it belonged, and we derive from this sistema troncal, the idea dominating the reserva for the troncalidad, that the property which it pretends to reserve is that of the legitimate family.

The property come immediately from the dead descendant without any legitimate posterity which gives motive to the legitimate succession of an ascendant.

Persons for whom the reserva is established.

Manresa realizes that this is a delicate point of interpretation of art. 811. The reserva is established in favor of relatives 'who are within the *third* degree, and belong to the line from which the property came'. Naturally it treats of relationship by *consanguinity* which is the one applicable in the matter of succession. The relationship by affinity is established by the marriage of one spouse to the family of another; and to admit it would be to favor the transmission of property of the family of one spouse to that of another, which is precisely what the article wishes to prevent. Likewise we treat of *legitimate* relationship. The one obliged to reserve is a legitimate ascendant who inherits from a descendant property which come from the

same legitimate family, and this fact (supuesto) having been established there can be no doubt, because the line from which the property came have to belong to that family, and only in favor of such line is the reserva established.

Art. 811 does not determine with clarity the person in relation to whom the third degree of relationship should be computed. It refers, as regards the line to the person from whom the property came in a mediate way (mode mediato), should we refer to the *same ascendant* as the one obliged to reserve, or from the *desendant* from whom he inherited?

On this point with very rare exception, Manresa says that the opinion of commentators is unanimous; namely, that the relationship should be computed with relation to the *descendant* whose succession we treat. Thus the decision of Dec. 16 of 1892 has resolved, according to which, art. 811 in establishing the reserva in favor of relatives within the third degree, 'has not referred with respect to the degree of relationship which it mentions, but that which mediates (mediare) between the person in whose favor the reserva should be made, and the descendant from whom the property *immediately* came, since it is from the death of the latter that are derived and spring (se derivan y arrancan) precisely the right and the obligation of reserving which the same article establishes.

The Code is concerned with the succession by death of a descendant of the property belonging to a determined line, and the persons who can allege any right in such succession are, by reason of the proximity of degree and preferred order, his ascendants, and by reason of the line whence the property came, according to the system of troncalidad, the relatives nearest to the descendant within that line. It is clear that the law refers to those relatives, being *strangers* to the reserva the relatives of the person from whom the property came more remotely, whose succession has been closed, and those of the ascendant, who in case of a more proper application of the article shall only find themselves within the preferred line by a tie of affinity.

Morell in vol. 4 of his commentaries to the Mortgage law, pages 397 et seq. agrees with Manresa in his interpretation of the phrase "within the third degree of art. 811.

The person obliged to reserve is the ascendant who inherits by force of law from a descendant. It refers to all ascendant who inherits from a descendant property which came from another ascendant or from a brother.

According to art. 811 the reserva is established in favor of relatives who are within the third degree and belong to the line from which the property came. It treats of relationship by consanguinity and legitimate.

Morell believes that of the three persons that come within the precept, the *third degree* should refer to the descendant whose succession we treat, being foreign to the reserva the relatives of the persons from whom the property came more remotely, whose succession has freely and finally terminated, and those of the ascendant reservista which in case of a proper application of the article will only come in to the preferred line by ties of affinity.

He also cites the decision of Dec. 16, 1892:

The word 'proceder' refers to the origin of the property.

Among the relatives (consanguineos y legitimos) of the descendant, are separated within the third degree, the lines to which they can respectively belong, serving to the effect as the point of separation—the person from whom the property come, the ascendant or brother from whom the deceased descendant had it. The line to which that person belonged should be preferred.

The line should be determined according to our opinion with relation only to the father or mother of the deceased descendant. * * *

Sanchez Roman writing on Derecho Civil in Tomo Sexto—vol. 2, p. 973 et seq. holds that art. 811 is applicable only to certain determinate property coming from other ascendants or brothers, thru the duty of reserving in favor of those embraced within the *third degree of the line from whom the property came.*

Sanchez Roman criticizes the art. because the legislator has not preserved in its fulness and vigor the criterion of the *troncalidad,* but it has established in art. 811 of the Civil Code a *reserva,* which if not *troncal,* is at least *lineal,* or better *familiar.*

The reserva imposed by our Code in Art. 811, and the requisite that the relatives for whom reserva should be made (hay que reservar), if only within the third degree, must be of the line from where the property came, does not have the extent of establishing a real system of troncalidad * * * for it does not require that that origin of the property be determined "remontandose al tronco', origin of the same. * * *

This reserva of 811 has the character of being merely *familiar,* and relative and limited to the third degree of kinship, thru the presence furthermore of other indispensable requisites, which still make this new juridical species more *circumstancial.* * * *

Sanchez Roman does not clearly explain the phrase third degree continuing: It is every person who receives in his patrimony the property of distinct lineal origin, in whom is determined a new and fundamental origin (procedencia) to which we should solely attend to fulfill the final disposition of said article.

The text of art. 811 does not authorize a search for the origin of the property, for the effect of determining the lineal relationship further than the ascendant or brother from whom the descendant of the one obliged to reserve had by lucrative title; because the provisions of said article obeys, rather than a principle of true troncalidad, to the foresight that persons strangers to a family would not acquire, by a special luck of life, property which, without it, would have remained within. He cites the Sentencia of 16 of January of 1901—the nature of this class of reserva limiting the legitimate rights of the ascendant does not arise from any principle of verdadera troncalidad, and constitutes a benefit granted by familiar considerations exclusively in favor of determinate persons (consideraciones familiares exclusivamente en favor de determinadas personas).

In the case of art. 811, the ascendants do not inherit the property. At least we do not see that art. 811 provides such a thing. What it does is to impose the obligation to reserve, to limit the power of disposal, to concede only the enjoyment to the ascendant, and to make by operation of law, at his death, that the troncal properties return to the line from where it came, if there are relatives, within the third degree, from the last individual who has enjoyed it (dentro del tercer grado, del ultimo individuo de ella que los disfruto).

Castan, writing on the reserva (art. 811) in p. 21 et seq., merely follows the prevalent opinion. He mentions the decision of June 10, 1918 which holds: that the extraordinary reserva of art. 811 of the Civil Code has been established in favor of legitimate relatives.

The relatives that unite these two conditions have a right to it: (1) they must be within the *third* degree, and (2) they must belong to the *line* from which the property came.

Now the question arises: How shall the third degree he computed? Shall it be computed in relation to the reservista, or to the descendant who transmitted the property by gratuitous title, or the ascendant causante of the inheritance? The Supreme Court (of Spain) has declared that the third degree shall be counted beginning from the *descendant* from whom the prop-

erty immediately came, because from his death are derived and spring (se derivan y arrancan) the right and obligation to reserve.

How should the relatives within the third degree inherit?

Scaevola believes that all the relatives within the third degree are jointly reservees, but Manresa, Valverde and others to whom Castan joins hold the contrary—for the general rule in intestate succession applies, that the relative nearer in degree excludes those more remote.

Maura has had various occasions to interpret art. 811. He has logically differed from the orthodox meaning of the third degree as upheld by the foregoing authors. We shall dwell at length on his dictamen No. 8, wherein he gives many good legal reasons for differing in the construction of the third degree (tercer grado).

The *reservatarios* half brothers (hermanos de padre) should only participate in equal parts in the reservable property * * * Dictamen 5.

Concurring in the death of the reservista his sons and grandsons, these should inherit 'por stirpes', even if they be embraced within the third degree of the relatives reservatarios of art. 811. Dictamen 6.

On page 101 Maura continues: Art. 811 pertains to the section in the Code which treats of the legitime; forced succession which operates ex lege which can not even be a matter of will 'testamentificacion'. The law on this class of succession provides (*preceptua*) that in the direct descending line the right of representation should *always* take place, and that to this right is *always* foreign (ajeno) to divide the herencia per estirpes, so that the (representante) can not inherit more than what his (representado) would inherit if he were alive.

In his Dictamen No. 7 his opinion was solicited to decide a definite problem: A marriage had two sons; one died before his mother leaving a legitimate child; the other died after inheriting from his mother, but was in turn inherited by his surviving father. Maura held that the surviving father should reserve the property coming from the maternal line in favor of the exclusive grandson, notwithstanding the existence of two brothers of the wife of the reservista.

On page 107 he cites a decision of the Tribunal Supremo of January 16, 1901—proclaiming the doctrine that such reserve is a right or benefit personalisimo, peculiarly personal to those designated expressly by the law, of restrictive interpretation,

which does not admit of representation which art. 924 and 925 of the Code establish for another order of rights.

Likewise in Dictamen No. 8, Maura held: that a father has the duty to reserve in favor of a first cousin of his son the property which he had from the latter, who in turn had inherited it *ex lege* from his mother, (tia carnal) of the one interested in the reserva.

Herein Maura explains the very doubtful phrase of art. 811—within the *third degree.* The third degree can refer: (1) to the common trunk, (2) to the descendant from whom the one obliged to reserve inherits by operation of law, (3) to the other original ascendant, from whom the descendant had by lucrative title the property, or (4) lastly to the same ascendant subject to such obligation. The first conflicts with the text of art. 811 and to the rules which art. 918 gives to count the degrees. The last, the person (sujeto) obliged to reserve, very often does not belong to the same line from which the property came, and where line does not exist, the possibility of computing the grade is wanting. Besides this reserva has been introduced to restore the estate (caudal) to the original *tronco,* leaving the property only during life in the hands of an ascendant of another line * * * The tribunal Supremo on Dec. 30, 1898 held: 'that what is provided for in art, 811 obeys not only a principle of true *troncalidad,* but to a foresight so that persons foreign to a family would not acquire by a special luck of life, properties that without it they would not acquire.

That relative *within the third degree*—should he be of the deceased *descendant,* from whom proceed immediately the property whose reserva is asked? That seems to be the doctrine of the Tribunal Supremo on Dec. 16, 1892 (which is cited by Manresa to uphold this interpretation): 'Art. 811 refers with respect to the degree of relationship (parentesco) which it mentions, that which exists (al que mediare) between the person in whose favor the reserva should be made, and the *descendant from whom directly came the property.*'

But Maura holds a very different opinion as regards the computation of the third degree and advances fearlessly his own view despite the accumulated opinion of other jurists.

He is not unmindful of the reserva troncal injected in art. 811. * * * It treats clearly at the time of the legitime of the ascendant in the succession of the ascendant. The Legislator commanded then the succession to the ascendant, it can be understood that to this *same ascendant* is referred the degree of re-

lationship with the persons for whom it reserves the attributes of ownership embraced within (atributos dominicales cercenadas in) the legitime of the ascendant.

To drive his opinion clearer he gives an example thus: A mother having died, a grandchild inherits from her grandmother, and to the grandchild succeeds the grandfather; Now according to the doctrine of 1892, the carnal brothers of the grandmother, from whom originally came the property and with more reason all the other relatives of that line are outside the third degree and of the reserva. Such interpretation denotes disagreement (desacierto), for to prefer the second wife of the widower, the children of the second marriage or a stranger, postponing and excluding from the reserva the first cousin of the person from whom the property proceeded, who would have inherited thru their father or mother if these had lived, seems to be contrary to the spirit of the Code.

On page 113, Maura gives his interpretation: I deem it more logical and reasonable to think that having taken the subject *from whom the property proceeded* as the characteristic note, and as the personality determinative of the favored line, to the same subject (person) the law refers when it speaks of the *third degree* as the measure to reach (de alcance of) the reserva within the line. It seems natural to think in implanting the reserva to grade it in connection with the person, who for having brought the property in his marriage with a distinct family, gave way to the trouble (trastorno) which the reserva wishes to prevent. Just as it is the touchstone (piedra de toque) that determines who form the favoured line, so it should also be in my judgment, the limit (termino) for the computation of the degree.

As a conclusion to his dictamen No. 8 Maura holds: the property which the father of the (incapaz) inherited from the latter, who in turn had it ab intestado from his mother, are subject to the reserva of art. 811 in favor of a first cousin of the incapaz, sobrina carnal and relative within the third degree of the mother.

DECISIONS OF OUR SUPREME COURT ON RESERVA TRONCAL—ART. 811.

Edroso v. Sablan, 25 Phil. 295.

The ascendant who inherits from a descendant, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All these attributes of the right of ownership belong to him ex-

clusively—use, enjoyment, disposal and recovery. This absolute ownership, which is inherent in the hereditary title, is not altered in the least, if there are no relatives within the *third degree* in the line whence the property proceeds. * * * If there should be relatives * * * then a limitation to that absolute ownership would arise.

'* * * the relatives within the third degree, after the right that in their turn may pertain to them has been *assured,* have only an *expectation,* and, therefore, they do not even have the capacity to transmit that expectation to their heirs' (Manresa).

'* * * the ascendant acquires that property with a condition subsequent, to wit, whether or not there exist at the time of his death relatives within the *third degree of the descendant* from whom they inherit in the line whence the property proceeds' (Morell).

Justice Arellano: Property which an ascendant inherits by operation of law from his descendant and which was inherited by the latter from another ascendant of his, must be reserved by the ascendant heir in favor of uncles of the descendant from whom the inheritance proceeded, who are his father's brothers, because they are relatives within the third degree, if they belong to the line whence the property proceeded according to the provisions of Art. 811 of the Civil Code.

The owner of property subject to reservation may register the same in accordance with Act 496, in his own name, provided its reservable character be duly noted in the registry.

De los Reyes v. Paterno, 34 Phil. 420.

The right of a person having a reservable right (derecho reservable) in a parcel of land is lost upon his failure to oppose the registration of such land or to have the judgment reopened within one year, for the purpose of having said right noted as a lien against the property. (Note: from the standpoint of the doctrine of trust, this doctrine is indefensible, because a trustee can not register land as owner in his own name.)

Florentino v. Florentino, 40 Phil. 480.

* * *When there are relatives of the descendant within the third degree, the right of the nearest relative, called *reservatario,* over the property which the *reservista* (person holding it subject to reservation) should return to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree be-

longing to the line from which such property came, inasmuch as the right granted by the Civil Code in art. 811 is in the highest degree *personal* and for the exclusive benefit of designated persons who are the relatives, within the third degree, of the *person* from whom the reservable property came. * * *

* * * Nevertheless there is a right of representation on the part of reservatarios who are within the third degree mentioned by law, as in the case of nephews of the deceased person from whom the reservable property came. (Note: It is not clear *who* is the person from whom the reservable property came—whether the original ascendant or the descendant.)

Cabardo v. Villanueva, 44 Phil. 186

The person upon whom the property last devolved by descent in the line from which the property is derived, must be taken as the *propositus*, or the person from whom the degree of kinship are to be reckoned.

The estate possessed by Cornelia at the time of her death, and which is thus passed to her father, Lorenzo Abordo, was derived by inheritance from two sources: * * * from her mother Basilia and her grandmother Isabel. * * * The present claimant and plaintiff, Rosa, was a sister to Basilia in life and, therefore, aunt to Cornelia. * * * It is evident that the properties in question were, upon the decease of Cornelia, impressed with the reservable character in the hands of Lorenzo Abordo, and that upon his death the plaintiff was entitled to succeed thereto, she being the only living person within the limits of the third degree belonging to the line from which the property came. The case, therefore, falls precisely under art. 811. * * *

Is plaintiff within the third degree belonging to the line from which the property was derived? Appellant suggests that Lorenzo Abordo should be treated as the propositus or person from whom the degrees are to be reckoned, with the consequence that the plaintiff would be in the fourth degree reckoning thru Cornelia, Basilia and Isabel, successively to the plaintiff. This contention is * * * untenable, as the person from whom the degrees should be reckoned is clearly Cornelia herself, since she was at the *end* of the line from which the property came and the person upon whom the property last devolved by descent. Lorenzo Abordo was a stranger to that line and not related by blood to those from whom the property is reserved. That the degrees are to be thus reckoned is understood by Manresa; and our own decisions as well as those of the Supreme court of Spain are ac-

cordant. (Note: Clearly the third degree can not be counted from the inheriting ascendant who is obliged to reserve. But is this decision final as to the opinion of Maura, that the degrees should be counted, not from the deceased descendant, but from the original ascendant, from whom the property originally came as the person determining the favoured line?)

Maghirang v. Balcita, 46 Phil. 551.

The contract of conveyance by a minor owner before the reservable right attaches was given full effect as against the reservees. The title to parcel A passed out of Gertrudis and became vested in Gregorio (purchaser) before her death; and although Gertrudis was then a minor, the conveyance was only voidable and not void. * * * The inchoate reservable right asserted by Sergia (aunt of Gertrudis on her mother's side) never came into existence.

Lunsod v. Ortega, 46 Phil. 664.

A mother who, by operation of law, inherits property from her daughter, who in turn has acquired the same by inheritance from her father, is obliged under Art. 811, Civil Code, to reserve such property in favor of the uncles of said daughter.

The reservista is not merely a usufructuary; he is the owner, subject only to a resolutory condition, and may therefore alienate the property provided the right of the reservatarios is saved.

The mother is owner thereof subject to the resolutory condition, to wit, the existence at her death of relatives of her *daughter* within the third degree belonging to the *line where said property came.*

Dizon v. Galang, 48 Phil. 601.

The rules established for reservation by a widowed spouse to secure the value of the property sold by the widower, before becoming reservable, are not applicable to the *reserva troncal* where the property goes to the ascendant already reservable in character. A sale in the case of reserva troncal might be analogous to a sale made by the widower after contracting a second marriage in the case of reservation by the widowed spouse.

Riosa v. Rocha, 48 Phil. 737.

Inasmuch as the reservation from its inception imposes obligations upon the reserver (reservista) and creates rights in favor of the reservees (reservatarios) it is of the utmost importance to determine the *time* when the land acquired the character of reservable property.

Provisions of law referred to in art. 968 tending to assure the efficacy of the reservation by the surviving spouse are applicable to the reservation known as 'reserva troncal' referred to in art. 811. According to art. 977, reservor is obliged to have the reservation noted in the registry of deeds in accordance with the provisions of the Mortgage Law which fixes the period of ninety days for accomplishing it. The time must be computed, not from the acceptance of inheritance, but from the adjudication of the property by the court of the heirs.

In the transmission of reservable property the law imposes the reservation as a resolutory condition for the benefit of the reservees. (art. 975) The fact that the reservable character of the property was not recorded in the registry of deeds at the time that it was acquired * * * can not affect the right of the reservees, for the reason that the transfer was made at the time when it was the obligation of the reservor to note only such reservation and the reservees did not then have any right to compel her to fulfill such an obligation.

Nieva v. Alcala, 41 Phil. 916.

The obligation to reserve created by this article (811) does not arise with respect to illegitimate relatives.

The place which article 811 occupies in the Code is proof that it refers only to legitimate ascendants. And if there were any doubt, it disappears upon considering the text of art. 938, which states that the provisions of art. 811 apply to intestate succession, which is just, established in favor of the *legitimate* direct ascending line. * * *

"Persons in whose favor the reservation is established: This is one of the most delicate points in the interpretation of art. 811. According to this article, the reservation is established in favor of the parents who are within the third degree and belong to the line from which the properties came. * * * It treats of blood relationship. * * * It also treats of *legitimate* relationship. The person obliged to reserve is a legitimate ascendant who inherits from a descendant property which proceeds from the same legitimate family, and this being true, there can be no question, because the line from which the property proceed must be the line of that family and only in favor of that line is the reservation established. (Manresa)

The reservation in art. 811 is a privilege of the legitimate family. (Scaevola)

Centeno v. Centeno, 52 Phil. 322.

Art. 811 of the Civil Code which provides that 'any ascendant who inherits from his descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister, is obliged to reserve such of the property as he may have acquired by operation of law for the benefit of relatives within the third degree belonging to the line from which such property came, does not apply to illegitimate relatives.

Art. 843 and 941 specifically provide that the portion corresponding to natural children in the hereditary estate of parents who acknowledged them, is transmitted upon the death of these children to their legitimate or natural descendants. The latter's right, however, to represent their natural father in hereditary estate of their grandfather is not admitted, because they are not called by law to participate in their grandfather's estate. (Decision of Supreme Court of Spain—June 16, 1918.)

Comments on page 248 of Sinco's Civil Code, vol. 2:

'The persons in whose favor the reservation is made must also be *legitimate* relatives within the third degree of *consanguinity,* not affinity. This degree of relationship must be computed from the *descendant* whose succession is in question. The reason is that his death is the factor which creates the right and obligation to reserve.

'As to the line, the starting point is the ascendant or the brother or sister from whom the property came. It is the line to which such person pertains which is preferred.' Note: (If the person who determines the favoured line is the ascendant or brother from whom the property came, is it not more logical to side with Maura as against Manresa and his array of commentators and decisions, that the law has likewise referred to the original ascendant as the characteristic note to measure the third degree within the line?)

WHAT ARE COLLATABLE DONATIONS?

The second and perhaps a more important conflicting opinion between these civil law jurists arises in the interpretation of arts. 818 and 1035 as to the determination of what are collationable donations for the proper determination of the hereditary estate and the legitime.

In vol. 99 of Revista General de Legislacion y Jurisprudencia, Morell and Manresa engaged in a debate as to what were col-

lationable donations for the proper computation of the legitime. Morell believes that all donations made by testator during life, whether to forced heirs or to strangers must be collated. This view is shared and strengthened by Maura's brilliant dictamen No. 4. Manresa holds the opposite view that only donations to forced heirs must be collated and relies strongly in art. 1035, Sanchez Roman supports this interpretation.

Morell on pages 323 et seq. discusses the question thus: Imputar is to attribute some quality, to compensate one quantity for another, or to deduct one quantity from another. * * * Donations made to forced heirs shall be imputed (se imputaran) to the portion of the legitime. Donations made to strangers shall be charged to the free portion.

It should be observed that the law in art. 819 speaks of imputing both (unas y otras) donations, such that the operation has to be made in the *same* manner in *both* cases; for if to impute the donations to forced heirs to the legitime, they are added to the mass or are included therein for considering them as collationable, so likewise to impute the donations to strangers to the free portion, they must be added or included also (agregarlas o incluirlas) and consider them as collationable for that effect.

Art. 818 covers the whole estate (caudal) which the testator could have disposed (pudo disponer) by lucrative title, by acts inter vivos or by reason of death, in favor of forced heirs or of strangers. * * * That mas (fondo) is composed of two fractions which make it: the portion for the legitime and the portion of free disposal.

'Colasionar' is to bring to the mass, to add to it in a real or fictitious manner, property that left (salleron) the same; but which lert only as an advance of inheritance, that is, on account of the legitime or of the free portion.

Art. 818 speaks of: The value of *all* the collationable donations shall be added* * * and this word all (todas) shows that the legislator did not want to limit the precept. To the mass (of the estate) shall be added all the donations, whether they were made to strangers or to forced heirs, with only one limitation, that they be collationable, that is, that the law does not prohibit in any other article the collation.

Manresa in the same volume—99 Rev. Gen. de Leg. y Juris. on pag. 334 et seq. attempts to impugn the theory and doctrine of Jose Morell. Manresa repeats the theory of his commenta-

ries on art. 818 and 1035, for he is convinced that legally only those donations defined by art. 1035 are collationable.

He states succinctly the juridical question debated thus: 'to fix the legitime according to art. 818, should there be added to the net value of the hereditary estate only those donations made to forced heirs (art. 1035) (upheld by Manresa) or should there be added *all* the donations inter vivos made by the testator of the inheritance, be they made to forced heirs or to strangers (upheld by Morell)?

Manresa sticks to his commentaries and concludes that * * * such is the law, and thus it must be fulfilled, although it may appear hard. (Esta es la ley, y asi ha de cumplirse, aunque parezca dura.)

Manresa in his commentaries explains that from art. 818 are deduced three important consequences: (1) the herencia of a person consists of the properties which remain at the time of his death, deducting previously the debts and charges * * *; (2) that all the property donated, which are collationable, have to be considered as forming part of the estate of the testator at the moment of his death; (3) that nevertheless the property donated that are only brought to the estate are those real or existing after having made the deduction of the debts, so that the creditors might not take advantage of them.

He admits that the object of the operation established in art. 818 is to enable us to fix the amount of the legitime. The true object is to arrive at, to know exactly the total sum of the herencia of one person so as to be able to deduct the portion which he could have disposed, and that which being indisposable constitute the legitime.

The properties of a person are those which he leaves at the moment of his death.

Donations are understood to have been made with the limitation established in art. 636. The acts of the testator are only respected within the limits in which they could have validly made the donations. But to fix or know such limits, it becomes necessary to aggregate the property donated to the existing properties; but it is not necessary (preciso) that the donnee should really relinquish (desprenda) such property making its delivery to the representatives of the herencia; it is enough that the total amount of the donations be known, and it be added fictitiously to the real mass of property.

The procedure for computation follows: Masa activa of property—this consists of all the property belonging to the testator at the moment of his death.

2. Masa pasiva—it consists of the debts and charges existing against the 'testamentaria,' also attending to the death of the testator.

3. Addition of the value of donations:

Art. 818 expresses that the collationable donations of the same testator shall be added.

The all important question is: What are the collationable donations? According to Manresa, art. 1035 expresses it with full clarity—they are all that a forced heir, who concurs with others that are likewise forced heirs, to a succession, has received of the 'causante' of the herencia during the life of the latter, by dowry, donations or other gratuitous title. * * * Such donations are the only ones to which the name or 'colacionables' are given. * * *

Therefore, he holds that the donations given to strangers are not comprised within that provision, or those not collationable, even if they be inofficious, for these are governed by other rules. The total value of the same do not belong to the herencia. * * *

From the comments on page 558 of Sinco's Civil Code, quoting Manresa in art. 1035, appear: 'Donations made to strangers are not collatable. Only donations made to forced heirs are. Inofficious donations, as so defined under articles 636 and 654, may be recovered from the donee after the death of the donor. It may only be done when the liquidation of the estate has terminated, inasmuch as the determination as to whether the donation is inofficious or not is based on the net value of the estate on the death of the donor. Only forced heirs may demand recovery of the inofficious portion of a donation.

'Donations to forced heirs are collatable because the law presumes that the intention of the testator or predecessor in interest in making a donation to a forced heir is to give him something in advance on account of his share in the estate, and the presumption is that the predecessor's will is to treat all his heirs equally, in the absence of any expression to the contrary. This assumption does not hold true with respect to strangers.'

In art. 1035 Manresa again repeats and confirms his theory of collationable donations being strictly limited to those made by

the testator to his forced heirs. He excludes donations to strangers.

Art. 1035 speaks of forced heirs and of the legitime, from which we can deduce that it establishes collation of property between persons whom it considers forced in art. 807. * * *

* * * Roman law and our preceding legislations established collation only among legitimate descendants.

Collationable and those properties and values transmitted by the causante to any of the persons who * * * are their forced heirs, by gratuitous title and acts inter vivos, or they produce effect during the life of the donor (transmitente) provided always that the donee concur in the herencia with another or others who are likewise forced heirs.

Donations to be collated: (1) the gratuitous renunciation made in favor of a determinate person; (2) remission (perdon) of a debt to a forced heir, when it is a voluntary and gratuitous act on the part of the creditor or causante, either made clearly or expressly or not demanding its collection. Partial remission, in case of bankruptcy is not a donation. (3) the repairs, constructions, plantings and improvements made on the estates of forced heirs by the testator, and the purchase of real property in the name of the same * * * etc.

'La agregacion' to the mass of those received by gratuitous title during the life of the testator has for its object and purpose to compute it in the determination of the legitime and in the account for partition (computarlo en la regulacion de las legitimas y en la cuenta de particion). *Computar* means to take into account, to include * * * as forming part of the herencia. *Regular* the legitime is to fix them, according to the rules of the law.

Should we not compute with the same object of regulating the legitime the donations inter vivos made to strangers?

Morell holds with emphasis the affirmative. He supposes that the collations referred to by art. 818 and 1035 are distinct, limiting the latter to the donations made to forced heirs, and this should be included in the precept of the former, giving it an extensive interpretation, all classes of donations inter vivos, deeming it thus necessary for the liquidation of the herencia, to fix the legitime and determine if the donations are or are not inofficious. * * * We can not concur with this opinion, for we believe it to be devoid of legal foundation.

In art. 818 we determined what are the collationable donations. Only the value of these should be brought to the heredi-

tary mass to regulate the legitimes of forced heirs * * * and in art. 1035 in no case should such donations made to strangers be collated, which do not have such character, even if they be inofficious, because these are governed by other rules.

The net amount of the property constitute the herencia, and according to art. 659 'the herencia comprises all the property, rights, and obligations of a person that are not extinguished by death'. Are such donations included within those rights and property? No. 'Donation is perfected from the moment that the donor knows of the acceptance of the donee (art. 623) and it is consummated with the delivery of the thing donated, the ownership of which is transferred from that moment to the power of the donee. * * * Therefore, the property of the donations inter vivos, be they collationable or not, are not embraced within those of the herencia of the donor.

Neither are they included in the rights because the donor can not ask for the reduction of inofficious donations; for according to art. 655 only the forced heirs have such right, with the prohibition of renouncing it during the lifetime of the donor.

Continuing Manresa discusses what donations are not collatable. He answers: Those made to strangers, that is to persons who have no right to the legitime in relation to the donor.

Art. 636 establishes the principle that no one can give nor receive by way of donation more than he can give or receive by will, declaring that it will be inofficious all that exceeds such limit. Therefore the father who leaves descendants can only give by will to other persons the 'tercio liquido' of the property which he has at the time of his death, and, therefore, donations made to strangers shall be inofficious in so far as they exceed that limit. This is confirmed by art. 654 in ordaining that to determine if donations are inofficious or not the net value of the properties of the donor at the time of his death must be computed, (se atendera al valor liquido de los bienes del donante al tiempo de su muerte) reducing them as to their excess * * * Further confirmed by art. 818, par. 1, 'to fix the legitime it shall be computed upon the value of property remaining at death of the testator (se atendera al valor de los bienes que quedaren a la muerte del testador) with the reduction of the debts and charges * * * and par. 2 which provides that 'donations made to strangers shall be imputed to the free part which the testator could have disposed by last will.

Manresa's concrete example to illustrate his commentary: The property left by a father at the time of his death, inventoried

and assessed, deducting the debts and charges, are valued at ₱30,000; the legitime of the children constitute ₱20,000; the third of free disposal ₱10,000. The donation or donations to strangers shall be reduced to this amount, and if they exceed the ₱10,000 in the hypothetical case, the donee is obliged to restore to the children the difference or excess resulting. (Therefore if the donation was ₱12,000, according to Manresa, the donation is inofficious by the excess of ₱2,000.)

The same hypothetical case according to the computation of Maura and Morell would give a different result. The ₱12,000 donation to stranger must be collated and therefore added to the ₱30,000, value of the property left by the deceased—such that the basis of computation will not be ₱30,000 (of Manresa) but their sum of ₱42,000. Therefore the third of free disposal is ₱14,000. Consequently, the ₱12,000 donation to stranger is not inofficious, since it does not exceed the third of free disposal, which is ₱14,000. (Manresa's free disposal is only ₱10,000 because the donation to stranger was not included in the computation.)

Sanchez Roman—Derecho Civil—Tomo sexto—vol. 2, p. 946 et seq. discusses the nature and scope of art. 818 thus:

The first or initial operation, according to the text of art. 818, to fix the legitime, is 'to attend to the value of the property that remain at the death of the testator, without the Code adding any rule whatever for the procedure of determining the values. * * * Having made such valuation (avaluo) of the property and rights left by the testator, which form his active patrimony, at the time of his death, the second operation, which art. 811 provides is the determination of his passive patrimony. This is represented by what the Code calls with the double name of debts and charges. * * * The third operation consists in deducting the total of the passive from the activo—the difference, or excess determines the value or total sum of the herencia. The fourth operation, to which the second paragraph of art. 818 refers, is that to that net value of hereditary assets * * * shall be added, says the Code, the value 'which all the collationable donations of the same testator had at the time in which he made them'.

* * * That incorporation of values coming from collationable donations, that is, those made during life by the testator to some of the forced heirs, are considered as *advances* of the legitime or mejora, when it is made with the latter express character;

and from the date they are made they are considered *outside* (fuera) of the patrimony of the testator. * * *

They are considered collationable donations, according to art. 1035, all that a forced heir who concurs with others, likewise forced heirs to a succession, should bring to the hereditary mass, the properties and values which he had received from the causante of the herencia, during the life of the latter, thru dowry, donation or other gratuitous title, to compute it in the determination of the legitime and in the account for partition. * * *

Therefore, for donations to be considered as collationable, Sanchez Roman considers two circumstances as necessary: first, that to the herencia should concur forced heirs, because if these do not exist, the testator would be free to dispose of all his property in whatever form, and the determinative basis for collation would be wanting, for those inofficious in donations, are only understood as such in relation to the legitime, when the same can be prejudiced; and second, that one or more of those had received during life of the testator, and from him, property or values thru the concept of dowry, donation, or other gratuitous title, which are these that have the character of colacionables.

Sanchez Roman answers squarely the important question of whether the aggregation of the collationable donations should be understood as applicable to all the herencia liquida for distribution, according to the dispositions of the will, among all the diverse participants to the succession, the same for forced heirs by universal title as legatees or by singular title, or only and exclusively among the first?

The juridical concept of collation, with application to this matter in succession, is equivalent to take into account, or bring into account or compute the sum of value of the property, at the time the donation was made, which by gratuitous title, passed from the ownership of the causante to that of the heir of *certain character*—that of the *forced* (forzoso) in the life of the former, and in advance to the supposition of his hereditary succession and participation of his herencia among heirs of equal juridical condition in succession (igual condicion juridica sucesoria)—that is to say, forzosos, who have received such donations as advances on account of the legitime, which should be collated afterwards, at the death of the causante, in the partition of the properties of the same.

Thus in effect it was made as regards the legal concept of collation which art. 1035 establishes, without any other dif-

ference that one important to extend its application to all the forced heirs, who are enumerated as such by art. 807. * * *

Computo de las Legitimas Maura realizes has divided the opinions among the commentators of the Civil Code.

In his Dictamen No. 4 on vol. IV, p. 33 et seq. he upholds the interpretation of Morell as against Manresa's. The problem presented was: To fix the amount of the legitime, and therefore the amount of free disposal, should we take into account the value of a house which has been donated, or only should we attend to the value of the rest of the property (estate)?

Maura holds that to calculate the amount of the legitimes, there should be added to the remaining estate the value at the time of the donation of a house.

Art. 818 provides that for the purpose of determining the amount of the legitime, it shall be computed upon the value of the property remaining at the death of the testator, after deducting all debts and charges * * * and that to the net value of the hereditary estate shall be added the value at the time they were made of all the collationable gifts bestowed by the testator.

Art. 1035 et seq. define all the collationable donations.

A jurist (tratadista) as respectable as Manresa believes and holds that the legitime should be fixed disregarding the value of the donations made to strangers, that is to persons distinct from the forced heirs who concur in each succession. Therefore according to this opinion, with the sum of the remaining net estate (liquido haber relicto) plus the donations obtained by forced heirs, without any other addition, should be determined the amount of the legitime.

Los legitimarios must return as additional sum by reason of being inofficious, the donee to whom the causante should have favored in excess.

The difficulty lies in harmonizing the different provisions of the Civil Code—especially 818 and 1035.

Maura believes that there is a natural impossibility of separating and submitting to a different rule the determination or liquidation of the forced herencia and the third of free disposal. The legitime as well as the free disposal being aliquot parts of the hereditary estate, according to 808 * * * constitute an indissoluble connection, and its equality is broken against fundamental precepts, with the system of computing the legitime without having brought to account the donations made to strangers and distribute besides the inofficious excess.

Art. 636 provides: No person can give or receive by donation more than that which he can give or receive by will, and the donation shall be inofficious in so far as it exceeds these limitations.

Art. 819 provides: Donations, which do not have the concept of mejoras made to children shall be imputed to their legitime, and donations made to strangers shall be charged to the free part which the testator might have disposed by his last will, provided they be reduced in so far as they be inofficious or they exeeeed the disposable portion.

The licit matter of donations to strangers is the same licit matter of testamentary disposition. * * * The licit matter of donation to children is no other than the third destined to mejoras. If we do not bring to collation the sums which the testator gave in favor of strangers, it would be impossible to determine the amount of each third, and it is no less impossible to embrace within this forced limit the acts of free disposal and the acts of predilection between legitimate heirs.

Tratadistas usually note different expressions (locuciones) of the Code which speaks in some articles of imputing (*imputar*) to one or other hereditary portion; and in others it speaks of collationing (*colacionar*) or to bring to the hereditary mass, property which the deceased alienated during life thru donations. We can not impute (*imputar*) a thing or its value which has not been brought to the hereditary mass, nor can we bring to the mass values or properties which will not be imputed to one or other form of the estate, the free portion or the legitime.

Art. 1035 provides: The forced heir * * * must bring into the mass of the estate * * * to compute it in the determination of the legitime and in the account of partition.

Art. 1036 dispenses the collation to a forced heir * * * except cases in which the donation should be reduced as inofficious.

Art. 1040—neither shall donations made to the spouse of the son be collated. * * *

According to art. 636 and 819—the power to 'testar' shall cease over that free hereditary portion, in proportion as that same power has been used in advance in the form of donations.

820—donations shall be respected while the legitime can be covered.

Therefore—636, 819, 820 require to account in the partition the above mentioned (aludidas) donations bringing their value to the hereditary mass, in the same analogous manner that dona-

tions in favor of legitimarios are brought according to art. 1035 et seq. Only thus can we determine (integrar) the entity of every third, of free disposal, of betterment, and of the forced strict legitime.

Art. 1035 et seq. would not have to repeat what is already ordered in art. 636, 819, 820, limiting the former to treat of collationable donations of forced heirs.

For the sake of clarity, it would have been preferable that these provisions would stand jointly or near each other, which usually come in simultaneous and concerted practical application, but a doctrinal criticism does not alter positive statutes, (la critica doctrinal nada altera en los estatutos positivos).

According to art. 818—to fix the legitime, to the net value which the hereditary property have, shall be added that which the collationable debts of the same testator had at the time in which he made them. Therefore the precept does *not distinguish*, therefore it is not licit for us to distinguish, between the donations which are mentioned in art. 636, 819 and 820 and those which are treated by art. 1035 et seq.

Maura cites a decision of May 4, 1889 of the Tribunal Supremo de Justicia. 'The right of the heirs forced that it be counted as part of the hereditary estate of the deceased (causante) imputable to the hereditary portion (cuota) of free disposal, the value of the donations made by the same to strangers, a right expressly declared in art. 618 and 819.

Salvo mi respeto hacia otro parecer mejor fundado—Feb. 13, 1913, Madrid.

Castan on Bienes Colacionables, p. 409.

Castan repeats the classification of Sanches Roman thus:

Absolute collationable donations: (1) property received by the heir by virtue of dowry, donation or other gratuitous title (1035); (2) amounts paid by father to redeem their sons * * * (1043); (3) gifts of marriage consisting of jewels. (1044); (4) donations made jointly to son. (1040)

Relative collationable donations: (1) expenses which father incurred to give their children a professional or artistic career (1042); (2) property left by will, when the testator has so disposed or when they prejudice the legitime (1037).

Castan gives his own views on the subject of collation; Following the above classification into absolute and relative, he enumerates the property *not* subject to collation: Absolutely: (1) the donations made by ascendants to grandsons, when the

latter do not inherit but their parents (1039); (2) donations made to the spouse of the son (1040); (3) expenses for support, education, cure of sickness * * * and customary gifts (1041).

Relatively: expenses for a professional or artistic career (1042); gifts for marriage consisting of jewels (1044) and those left by will (1937).

It seems clear from the above classification of donations that are not subject to collation either absolutely or relatively, that Castan does not agree with Manresa in his theory that only those donations made to forced heirs (1035) are collationable to the exclusion of all others, especially those made to strangers.

DECISION OF OUR SUPREME COURT ON COLLATION—ART. 1035

(Note: The decisions of our supreme court on collation are scarce and they do not involve the issue of whether the donations made to strangers are collationable or not.)

Hernaez v. Hernaez, 1 Phil. 719.

An heir is not under obligation to bring to collation any of his property, unless it is proved that he acquired it gratuitously from the deceased.

The legal principle * * * established by art. 1035 of the Civil Code, in accordance with which a forced heir in certain cases is required to bring into the mass of the succession properties or moneys which he may have received gratuitously from the decedent during the lifetime of the latter.

It not having been proved that the property which is sought to require one of the forced heirs, the defendant herein, to bring into collation was acquired gratuitously, from the intestate, the action can not be maintained.

Del Val v. Del Val, 29 Phil. 534.

The proceeds of an insurance policy payable to one of the heirs do not belong to the estate of the deceased, and are not subject to collation.

The proceeds of the life-insurance policy belong exclusively to the defendant as his individual and separate property * * * it belongs exclusively to the beneficiary and not to the estate of the person whose life was insured, and such proceeds are the separate and individual property of the beneficiary, and not of the heirs of the person whose life was insured.

The contract of life insurance is a special contract and the destination of the proceeds thereof is determined by special laws.

Guinguing v. Abuton, 48 Phil. 144.

Disputes between heirs with reference to the obligation to collate may be determined in the administration proceedings upon the estate of the ancestor without the institution of a separate action.

CONCLUSION

Our law on wills as can be gathered from the discussion of some intricate and disputed points is a logical and comprehensive system on succession. It follows the philosophy underlying the Civil Code and settled Spanish jurisprudence, in rewarding family cohesion and unity with the consequent protection of the rights of children. Thus besides the system of conjugal partnership, the mutual right for support, provided for by other articles of the Code, it has established the system of the legitime and its legal safeguards, the usufructuary rights of the surviving spouse, etc. There are many provisions in our substantive law on wills that require careful and thorough study—as the different shares of acknowledged natural child, the surviving spouse, the reservas, (troncal legal and viudal) the institution of intestate succession, the rights of representation, accretion, which due to the limited scope of this thesis, we have not been able to touch.

Our law, however, is not perfect, especially if we take into account the changing circumstances and the Filipino appreciation of family ties. For example, the widow occupies the fifth place in the order of intestate succession, coming after descendants, ascendants, acknowledged natural children, brothers, sisters, nephews and nieces. Actually by right of affection and mutual help, a wife during life holds a much higher degree, certainly above brothers and natural children; and likewise the widow should hold in the order of family intestate succession the third place.

Again art. 756 which enumerates the different causes of disinheritance by reason of unworthiness provides in par. 2 that a person who has been found guilty of a crime against the life of the testator, his spouse, descendants or ascendants, would deprive the guilty of every hereditary right including the legitime if he is a forced heir. Now in that same article are enumerated as serious and unpardonable causes, or perhaps more dishonor-

able, but which according to Manresa do not deprive the forced heirs of his legitime because of the basic principle of construction: "inclusio unius, exclusio alterius". Thus sec. 5 which provides as reason for unworthiness the fact that a person has been convicted of adultery with the wife of the testator—a crime that shocks the conscience of upright men and disturbs the stability of family life, especially to our people who believe in the purity of marital state and the sanctity of the home—does not deprive the culprit of his legitime. Sec. 756 should be more consistent.

Aside from these possible but minor defects of our law, the difficult interpretation of some of its provisions, as for example art. 912, which is a cross section of the whole law on intestate succession—may lead to conflicting opinions. Many of Manresa's opinions are generally accepted as authoritative and accurate interpretations of the law. Some of Maura's dissents, logically based on legal principle, embody good law in themselves. Until our local supreme court should render an authoritative decision, facing squarely the disputed points raised in this thesis—every law student can have his own choice.

But one thing is sure—whichever way we lean, we can claim with right that we are correct provided we know the reasons behind the opinion of each jurist—'for he that knowest not the reason of the law, knowest not the law'.