

The Effect of the Paraphernal Law Upon the Capacity of the Married Woman to Contract Insurance

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I. INTRODUCTORY

THE development of the Filipino woman's capacity to enter into contracts particularly that of the married woman is of interesting note for it depicts the different stages through which she has lived and struggled in the social as well as commercial world. The Filipino woman was not given any personality of her own before the law. If she is still a minor or already above twenty-one years of age but still unmarried her person is represented by her father, the supreme ruler in the home, he being the sole personality of the family. If she is married and is still a minor, her property if any, remains under the guardianship of her guardian which is usually her parents. If she is above twenty-one years old and married, then that is the only time she is separated from the patria potestas of the parents but even this is no freedom for her, for then the husband assumes the kingship over her person and property in certain cases.

Sad as it may be the fate of the Filipino woman, she has the consolation of sharing this unpleasant treat with other women of the world. For we have seen in the early Roman law and also in Common law until the end of the 19th century that there was no personality of women then recognized. But then with the recognition of a few things for her daily use her personality distinct and separate

from that of her husband began to gain recognition. Then from the little few things recognized as her own developed recognition of her ownership over all other things she owns and brings to the marriage.

Under the Spanish Civil Code enforced in the Philippines, there still exist several articles providing for the power and authority of the husband over the wife thus restricting her actions and limiting her freedom. Under the same Code, the property of the wife which she brings to the marriage as her own known as paraphernal property is subject to the authority and control of the husband. She retains nothing but the naked ownership, she being prohibited by law from alienating, encumbering or mortgaging the same or appear in court to litigate with regard the same without the authorization of the husband or unless she has been judicially authorized to do so. (Art. 1387, Civil Code).

The married woman has always been subjected to such a law until the Philippine Legislature, perhaps seeing the injustice upon the married woman passed Act No. 3922, "an act to amend article 1387 of the Civil Code empowering married women, of age, to dispose freely of their paraphernal property, without the consent of the husband," approved September 12, 1932. In order to know the effects of said act upon the married woman's capacity to con-

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tract specially contract of insurance, a study of the Paraphernal Law is necessary.

II. MANAGEMENT OF PARAPHERNAL PROPERTY

Paraphernal property is defined in Art. 1381 of the Civil Code as that property which the wife brings in marriage without including it in the dowry and that which she may acquire after the creation of a dowry without adding it thereto. From this provision of law it is very clear that the paraphernal property of the wife consists of those which she brings to the marriage as her own not as a dowry and those she acquires after creating the dowry which is not included as such. So, if the wife inherited some property during the marriage, from her mother, which was not included in her dowry, that property is paraphernal and not conjugal. (*Alvaran v. Marquez*, 11 Phil. 263).

Act No. 3922 does not provide for the management and administration of the paraphernal property but Art. 1384, C. C. provides that the wife shall have the administration of it unless she has delivered the same to her husband before a notary with the intention of granting him the administration thereof. Thus, the paraphernal property may be administered by the husband or the wife may retain management as the case may be.

A. Administration retained by the wife:

If the wife chooses to manage and administer her paraphernal property she may do so and under such condition she has full authority to administer it and exercises the rights of ownership thereto with the following effects:

(1) The wife retains ownership of the paraphernal property (Art. 1382, C. C.) In both cases, that is whether the paraphernal property is administered by the wife or by the husband, the former retains ownership of said property.

(2) The wife has the power to alienate, encumber, or mortgage the paraphernal property. Art. 1387 as amended by Act No. 3922 provides that the married woman, of age, may alienate, encumber, or mortgage or otherwise dispose of her paraphernal property. Before the enactment of Act 3922, on September 12, 1932, the wife without the authorization of the husband had no power to mortgage, alienate, encumber, or otherwise dispose of said property.

The married woman was merely the naked owner of her paraphernal property, the owner of a thing which she cannot touch. The enactment of Act No. 3922 has recognized the married woman's rights of ownership and bestowed its effects upon her over her paraphernal property.

The law, (Act 3922) states, "the married woman, of age.

" It is then clear that only the married woman of age, that is, above the age of minority or at least twenty-one years of age can alienate or encumber her own property. The law therefore grants the powers only to the married woman, of age. With regards to the management of the paraphernal property of the wife not of age, the law (Act 3922) is silent but the management of the property of the minors is subject to the guardianship of minors regulated by the Code of Civil Procedure. For purposes of this study we shall only deal on the married woman of age for the minor one has no full capacity to enter into contracts.

(3) The wife may litigate in her own name regarding her own paraphernal property. Art. 1387 as amended by Act No. 3922 provides that "married woman, of age, may appear in court to litigate with regards to the same (Paraphernal property) without the necessity of the permission or presence of the husband."

It is one of the natural consequences and effects of ownership to defend and protect the property. As administrator, the wife consequently has the right to enter into contracts for the defense of the property and ultimately has also the right to sue in the courts of Justice for the enforcement of such contracts.

B. Management delivered to the husband

The management of the Paraphernal property may be delivered by the wife to the husband before a notary. In such case it shall be the duty of the husband to execute a mortgage for the value of any personality which may be delivered to him or otherwise secure it in the manner prescribed with respect to dowry property. (Art. 1384 Civil Code).

The law allows the wife to deliver the administration and management of her Paraphernal property to the husband. According to Art. 1384 the management must be delivered before a notary and the husband shall be obliged to create a mortgage if the property be movables.

The fact that the management of the Paraphernal property is bestowed upon the husband does not deprive the wife of her rights over it and transfers ownership to the husband. In the cases of *Pilapil v. Ponciano*, (8 Phil. 190) and *Rodriguez v. de la Cruz*, (8 Phil. 665), the Philippine Su-

preme Court held that "the mere fact that the administration of the Paraphernal property has been granted to the husband does not deprive the wife of her ownership thereof. The husband acting as the administrator has limited powers save those as created and granted to him by reason of their marital relation as husband and wife." The husband cannot maintain actions of any kind whatsoever with respect to the Paraphernal property without the intervention or consent of the wife (Art. 1383). So, even as an administrator, the husband cannot sue alone regarding the Paraphernal property. Thus, in a suit to recover the Paraphernal property of his wife the husband cannot appear as sole party plaintiff. The wife is a necessary party. (*Jacinto v. Salvador*, 22 Phil. 376).

Since the husband is neither the owner nor usufructuary of the Paraphernal property, his rights over the property are also limited. The only rights the husband exercises arises out of his authority as the husband and head of the family and not as administrator of his wife's property. Art. 1385 provides that the fruits of the Paraphernal property form part of the assets of the conjugal partnership and are subject to the payment of the debts and expenses of the household.

Even as the law provides that the fruits of said property belongs to the conjugal partnership over which the husband has full control, yet the law makes distinctions as to liability of the fruits to obligations between obligations of the conjugal partnership or those of the husband exclusively. As regards the first case, that is, the obligation of the conjugal partnership the fruits of the Paraphernal property are liable to full extent. (Art. 1385, par. 1) but

regards the personal obligations of the husband, the fruits shall be subject to the payment of such obligation only upon proof that such obligation redounded to the benefit of the family as a whole (Art. 1386).

However, the Paraphernal property shall be liable also for the usual daily expenses of the family when the conjugal property, the property of the husband, and the dowry have been exhausted.

Act 3922 does not make any distinction of the wife's authority to dispose of her Paraphernal property when she retains management thereof or when it is delivered to the husband.

Although Act 3922 grants the wife of age, the right to alienate, mortgage or otherwise, encumber her Paraphernal property without her husband's consent, yet it seems logical to infer that such power is granted her only when she retains management over said property. For, to deliver the management to the husband and ignore him when the wife thinks of alienating the property she entrusted him to manage sounds unjust and derogatory to the powers, limited as it may be of the husband as administrator. Thus, in the case of *Casalla v. Enage* (6 Phil. 475), the Supreme Court held that "the wife may dispose of her Paraphernal property and enter into contracts regarding the same, without the consent of her husband unless the right to administer such property has been formally granted to him." From this decision it appears that if the administration of the Paraphernal property is delivered to the husband, the wife may not alienate or bind it without the consent of the husband. This recognizes the right of the husband in his capacity as administrator and not as the head of the family and that the powers granted to the married

woman by Act 3922 applies only when she retains the management over her Paraphernal property.

III. PARTIES TO THE CONTRACT OF INSURANCE

In a contract of insurance there must be at least two parties, the insured and the insurer. However, there may be a third party, the assured or beneficiary. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is the insured (Sec. 6, Act 2427 or Insurance Law). The beneficiary is the person designated by the terms of the contract as the one to receive the proceeds of the insurance. (Vance, p. 537). A. In general, anyone except a public enemy may be insured. (Sec. 8, Act 2427). In order that a person may be the party insured in an insurance contract two essential requisites must exist: (1) The person must be competent to make a contract; (2) He must possess an insurable interest in the subject of insurance.

Now we come to the capacity of the married woman to contract insurance. If a married woman is competent to enter into contracts then she can also validly contract an insurance. Generally, a married woman cannot give consent, hence she cannot also enter into contracts. Article 1263 C. C. provides: "The following cannot give consent:—3. Married women in the case provided by law." Article 61 of the same Code further provides: Neither may the wife, without the consent of her husband contract obligations except in the cases and with the limitation established by law." However, Article 1387, as amended by Act 3922 provides that the "married woman, of age, may alienate, encumber, or mortgage or other-

wise dispose of her Paraphernal property and appear in court to litigate with regard to the same, without necessity of the permission or presence of the husband." From this provision of law it is understood that the wife may enter into contracts without her husband's consent with regards to her paraphernal property. However, the Insurance Law (sec. 3) provides that "the consent of the husband is not necessary for the validity of an insurance policy taken out by a married woman on her life or that of her children." This has modified Art. 49 of the Spanish Law of Civil Marriage which provides that "a married woman may not contract obligations without the consent of her husband." With Act 3922 and Sec. 3, Act 2427, as amended, the married woman has capacity to enter into contracts in the cases provided therein even without the consent of the husband.

1. *Life Insurance:*

With the cited provisions of law in mind, we see how limited are the powers of the married woman to enter into contracts. The first question before us is, what can the married woman insure?

a. The wife naturally can insure her own life. Life policies fall into two general classes: (1) those taken out by the insured on his own life, either for the benefit of himself or his estate in case it matures only at his death, or for the benefit of the person who may be designated as his beneficiary; (2) those policies that are taken out upon the life of another. In the first class of policies the question of insurable interest is of so little importance as to merit scant consideration. It is ordinarily said that every man has an insurable interest in his own life. The pre-

sence of insurable interest is really required as evidence of the good faith of the parties and it is contrary to human experience that a man should insure his own life for the purpose of speculation, or to be tempted to take his own life in order to secure payment of money to some other. (Vance, sec. 151-154). Consequently, it is uniformly held that the mere fact that a man of his own motion insures his life for the benefit either of himself or another is sufficient evidence of good faith to validate the contract. It is not at all necessary that the person designated as beneficiary in such policy should have an insurable interest in the life insured. (Elkhart Mut'l Aid B & R Assoc. v. Houghton, 53 Am. Rep. 514).

Sec. 11 (Act 2427) provides that "every person has an insurable interest in the life and health of himself." This provision does not make any distinction between the husband and wife so it applies to both of them. But can the wife insure her life without the consent of her husband? As was seen in the previous citations of provisions of law and court decisions, the wife cannot in general give consent, hence cannot enter into contracts. However the exceptions to this rule which are pertinent to this work are: (1) when the contracts with respect to her paraphernal property, (Act 3922) (2) contracts of insurance on her own life, (3) contract of insurance on the life of her children, (section 3, Act 2427, as amended).

There is evidently a disposition at the present day on the part of some of the courts to formulate a rule that the mere relation of the parties, in case of parent and child gives an insurable interest in the life of the parent or child, on the ground of morals and natural affection. In the case of Washing-

ton Central Bank v. Hume (128 U. S. 195) an insurance policy was upon the father's life, made by the wife for the benefit of herself and their children, and it was declared that the wife and children had insurable interest. So, it is held that a mother has an insurable interest in her son's life. (Joyce, Sec. 1063).

b. Our law on insurance (Act 2427) expressly empowers the wife to insure the life of her children even without the consent of the husband. There seems to be two reasons for this provision: First, as the parent has the obligation to protect and support his children, it is a natural consequence of such an obligation, to insure their life even by their mother alone for the children's benefit and in case the child insured survives the policy the premium will be for his own benefit and security; second, the parent is given by law the right of support from his children (Art. 143 par. 2, C. C.) and the right of succession (Art. 935, C. C.).

The law does not make any distinction between minors and children above twenty-one years old. As regards the minors, there seems to be no question with respect to the parental authority of the mother over them and is in every case under obligation to support and protect them and give them an elementary education. Hence, she can no doubt contract insurance on the minor child's life. As regards the children above twenty-one years of age, the mother still exercises parental authority over them unless, by marriage they are already living apart and independent from her. In the case of *Mitchell v. Ins. Co.* (71 Am. Dec. 529) it was held that "a parent may insure the life of a minor child to whose services he is entitled but not that of an adult

child unless perchance he has under some statute a right to look up to such child for support, or actually receives support from him." In our law (Civil Code) the parent is entitled to support from her child, and as such is therefore vested with the power to contract insurance on the life of her children above twenty-one years old. The next question this work endeavors to answer is, can the wife insure the life of her husband? This question could be answered in the affirmative if the wife has an insurable interest in the life of her husband.

c. A wife has an insurable interest in her husband's life, (May, sec. 107-b) and many of the States provide for such insurance by statute the policy insuring to the benefit of the wife or child wholly or in part, exclusive of creditor's claims against the husband and may be generally taken out by the wife herself, in her name or in the name of a third person, with his assent, as her trustee, for the husband's life or a definite period. (Joyce, Sec. 1054).

Our law on insurance defines those who have an insurable interest in the life and health of a person. Section 11 provides: "Every person has an insurable interest in the life and health (b) Of any person on whom he depends wholly or in part for education or support." The wife is entitled to support from her husband, (Art. 143, C.C.) hence she has an insurable interest in his life and therefore may insure him. The extensive powers given by law to the husband as the head of the family carries with it the duty to support and protect his wife. The duty to support is imposed mutually upon the spouses by Art. 143, of the Civil Code which provides that "the following are

bound to support each other to the full extent of the term: (1) Husband and wife." The duty to support rests primarily upon the husband because he is charged with the duty to keep his wife in his company and protect her. (Art. 45, Civil Marriage Law). With this duty of the husband he is further charged to support her in accordance with Art. 142, C. C. which provides: "by support is understood all that is indispensable for food, shelter, clothing, and medical attendance, according to the social standing of the family. Support also includes the education of the person receiving it when he or she is a minor." So, if the wife is still a minor the husband is also charged with the obligation of educating her in accordance to the social standing of their family. For these reasons the wife has an insurable interest on the life of her husband and may contract insurance on the same.

Another reason why the wife looks up to the husband for support is that, he is the head of the family and as such he is the administrator of the conjugal property which according to Art. 1408, C. C. is chargeable for the support of the family. Again, the incapacities of the wife, by virtue of the husband's marital authority over her hampers her to find means for her support so that the law gives her the relief of depending upon him for support. There seems therefore to be no proper question as to the right of the wife to insure the life of her husband, since she has a legal right to support from him.

In *Mut. Life Ins. Co. v. Allen* (52 Am. Rep. 245) it appeared that the wife had taken out a policy on the life of her husband and even assigned it to the plaintiff. The policy was enforced, the court

assuming without discussion that the wife had an insurable interest on the life of her husband. In the case of *Rombach v. Ins. Co.* (48 Am. Rep. 239), Justice Manning said: "It is thoroughly settled, because universally held, that a wife has an insurable interest on the life of her husband, and although in that case specially, it might be assumed that love and affection furnished a sufficient basis for it, the decisions do not place it on that ground but rather on the support she is entitled to from him." In the case of *Equitable Life Assoc. Soc. v. Paterson*, (5 Am. Rep. 535) the following doctrine was laid down: "It seems to be generally agreed that a woman living with a man in the bona fide belief that she is his wife, though they are not lawfully married, has an insurable interest in the life of the man."

2. *In Property Insurance:*

What can the wife insure? The law on insurance provides that an insurable interest in property may consist in an existing interest. (Sec. 13, Act 2427). The same law defines an insurable interest as every interest in property whether real or personal, or any relation thereto, or liability in respect thereof of such a nature that a contemplated peril might directly damnify the insured. Having this provision in mind, on what property then has the wife an existing interest?

a. She naturally has an existing interest on everything she owns and consequently on her paraphernal property. Act 3922 empowers the wife, of age to alienate, encumber or mortgage or otherwise dispose of her paraphernal property and appear in court to litigate with regard the same, without the consent or presence of the husband.

The wife as owner of said property has the right to enter into contracts for the defense of the same, (*Eliot v. Montemayor*, 9 Phil. 693) and consequently, with the right to defend goes the right to contract for its protection. As owner therefore the wife may enter into contracts of insurance with respect to her property. May she do so without the consent of her husband? Act 3922 says "may encumber, alienate without the consent of her husband" therefore, she may contract with respect the same without his consent. It seems logical that an interpretation of the law extends to the right of the wife to contract insurance. If she can validly alienate it without his consent she may also insure it, an act not as burdensome to the property as mortgaging or alienating it.

May the wife insure her paraphernal property the management of which has been formally transferred to the husband? Act 3922 gives no distinction between management by the wife and that by the husband and has only expressly amended Art. 1387, C. C. The privilege of management by the husband as provided by Art. 1384 of the same code is not affected by the amending Act. When the management of the paraphernal property has been given to the husband he must be consulted to in matters pertaining to it specially contracts relating thereto. In the case of *Casalla v. Enage* (6 Phil. 475) it was held that the wife may dispose of her paraphernal property, enter into contracts regarding the same, without the consent of the husband unless the right to administer such property has been formally granted to him." So, drawing an inference from this decision the consent of the husband as the administrator of the property of the wife, is necessary in con-

tracts by the wife concerning the same. Act 3922 gives but a limited power to the married woman, of age, over her own property. It does not completely empower her to enter into contracts concerning the said property.

A wife may insure her own property donated to her by her father during the marriage, (*Breard v. Mech. & Traders' Ins. Co.* La. Ann. 764) and it would necessarily be true, where by force of statute the wife has control of her sole and separate estate, no matter how acquired, that she is so far interested in its preservation, that she has an insurable interest therein, the same as in other cases where an insurable interest exists. And she can invest money which is part of her separate estate in an insurance policy independently of any enabling statute, and may also give her notes for the premium. (*McQuitty v. Continental Life Ins. Co.* 10 Atl. 635). But when the statute gives to the husband during marriage the sole management of his wife's property she cannot insure her personality without his consent so as to bind him or avoid his insurance thereon. (*Nat'l Fire Ins. Co. v. Wagley*, 68 S.W. 819). These decisions are in harmony with our provisions of law and decisions, all respecting the right of the wife to contract insurance with respect her own property without the consent of the husband subject to the limitation that she retains management over it, otherwise the husband's consent is necessary for the validity of such contracts.

b. May the wife insure her dowry property? The law gives a distinction between an appraised and unappraised dowry. (Art. 1384, C.C.). As regards the appraised dowry, the ownership over it has been transferred to the hus-

band (Art. 1347) and as such the wife cannot insure it without his consent. With respect to the unappraised dowry the wife retains ownership over it (Art. 1346) and the husband is the manager and usufructuary with the rights pertaining to administration and usufruct (Art. 1357). Consequently, the wife, of age, may with her husband's consent alienate, encumber or mortgage the property of the unappraised dowry, or should she be a minor with judicial authorization. (Art. 1361).

c. May the wife insure the conjugal property? Art. 1412, C.C. gives the management of the conjugal property to the husband, and generally, the wife cannot bind it without his consent. (Art. 1416, C.C.). The wife may bind the partnership property only to the extent of liabilities for the usual daily expenses of the family incurred by her or by her order but even under such circumstance, it must be with the tacit consent of the husband. (Art. 1362). Should management be transferred to the wife because (1) she is the guardian of her husband, (2) he is adjudged an absentee, or (3) he is under civil interdiction, (Art. 1441) still she cannot alienate or encumber it without judicial authorization. (Art. 1444). In the case of *Samson v. Carratala* (50 Phil. 647) the Supreme Court held that "while coverture continues, the wife without judicial authority or consent of her husband cannot alienate or encumber real property allotted to her in case of separation or the management of which may have been granted to her." With this limitation set upon the married woman even while acting as manager and administratrix of the conjugal property, she cannot bind it without the required requisites. Therefore, without judicial authorization, she may not insure

the conjugal property even if she has management over it.

If the husband may dispose by will of his half only of the property of the conjugal partnership, (Art. 1414) may not the wife do the same? The law expressly states "the husband," and is silent as to the wife. But may she not insure her interest in said property without the consent of her husband? This cannot be done, as could be inferred from the provision of Art 1416 which provides that the wife cannot bind the partnership without the consent of the husband. It could be clearly seen that the wife has practically no power at all over the conjugal property wherein she is entitled to its half upon the dissolution of the partnership. The limited power granted to the married woman by Act 3922 is limited only to the disposition or encumbrance of her paraphernal property and has not at all affected nor modified her incapacities as a whole, not even with respect to her restricted interest in the conjugal property.

B. *Who can be beneficiaries?*

The beneficiary is the person designated by the terms of the contract as the one to receive the proceeds of the insurance. Such beneficiary may be the (1) the person insured or his personal representatives, (2) some one other than the insured who may be the assured, or the one procuring and maintaining the contract; one whom the insured has designated as beneficiary for a valuable consideration or one whose nomination as beneficiary is due to mere bounty of the insured. (Vance, p. 537).

1. Under a policy of life insurance taken by a wife upon her life, providing that the insurance money shall be payable to and for the sole and separate use of her

husband and children, he and they do not take insurance by inheritance, but upon her death, the insurance money must be divided per capita between the husband and surviving children. The only effect of the death of one of such children before that of the insured is to reduce the number of parts into which the insurance fund is to be divided. (Vance, Sec. 787-a).

2. If a policy of insurance is made payable to the children of the insured and at the time of the insured's death there are no surviving children, no action can be maintained by the personal representative of the insured to recover the money, as the children only were intended to be benefited.

"As a general rule, the designation 'children' should be taken in its primary meaning and as such it will not be extended to include grandchildren unless it is clearly the intent of the policy that they should be included. The designation by the insured of her children and husband will not include his children of his first marriage. If one's life is insured for the benefit of her children all her surviving children are entitled to take, whether born before or after the policy issues, and after-born children of a subsequent marriage are entitled to share in the benefit of a policy of life insurance taken for the benefit of the insured's children. If 'children' are designated as the beneficiaries of a life insurance policy, an adopted child will share in the proceeds equally with the other children where it is the apparent intent of the parties that such child should receive the benefit of the fund." (Vance, Sec. 766-768).

3. In a Florida case, (*Pace v. Pace*, 10 Fla. 438) it was held that "when one insured her life for the benefit of her estate, the creditors have no interest in the

policy. In the absence of a statute prohibiting the payment of the policy to the estate as beneficiary, the policy may be properly paid to the estate of the assured." (Joyce, Sec. 776).

4. The family of the assured may also be the beneficiary of the insured, but it is difficult to state definitely what constitutes the family as the word is used in this connection. The immediate family of the insured includes the children or a brother living with him. (Joyce, Sec. 779).

The beneficiary to an insurance policy taken out by the wife may be the following: (1) the estate of the insured, (2) her children and husband, (3) her children alone, (4) her family, and not that of the husband's.

IV EFFECT OF ACT 3922

It is evident from the provisions of law stated above that the married woman in general, cannot give consent and under such circumstances the consent of the husband is indispensable for the validity of contracts entered into by her. With this condition of the law the Legislature passed Act No. 3922. Did this enactment of the Philippine Legislature effect such a change in the standing of the married woman as to remove her incapacities before the law? I do not think Act No. 3922 has effected such a change.

A. *Scope of the Amending Act:*

Before the enactment of this Act, the married woman, without the authorization of the husband cannot alienate, encumber or mortgage the paraphernal property, or appear in court to litigate with regard to the same, unless she has been judicially authorized to do so. (Art. 1387, C.C.). To dis-

pose of her own property she needed a special authorization from her husband. (*Mercado v. Tan Lingo*, 27 Phil. 852). Neither could she bind herself without the permission of her husband, except in the cases and limitations provided by law. (*Caratala v. Samson*, 43 Phil. 751). The incapacity referred to in the amended article is merely with respect to the power of disposing of the paraphernal property and litigating with respect to the same. The amending Act therefore authorizes nothing but that which was prohibited by the amended article for the wife to do. The amendment cannot be given a broader interpretation than this because there is no provision in the Act which show the intention of the Legislature to make its scope extend beyond the provisions of the amended article. The authority given by the Act is very limited. It does not even enable her to dispose of, encumber, or mortgage her unappraised dowry property without her husband's consent as required by article 1361. The authority given by the amendment therefore is limited to the disposition of the paraphernal property and litigation with respect to the same so that the wife is still under the former incapacities and as yet cannot contract in all cases. That limited authority granted her by that Act has not made her *sui juris* for all purposes and has not placed her on equal footing with her husband.

Neither has the Act repealed the third paragraph of Art. 1263 providing: "The following cannot give consent: (3) Married women, in the cases provided by law." This incapacity still remains true. In this connection, "a surety bond in an election contest executed by the wife without the consent of the husband was held to be defective." (*Lucero v. De Guzman*,

45 Phil. 852). It could not be inferred from the power to dispose of her property the power to enter validly into all kinds of contract with or without the consent of the husband whether concerning her property or not. It is because the philosophy of the law limiting the capacity of the married woman is that she has no personality except only in the cases expressly provided by law. The authority must be expressed, for in the case of *Scott v. Cotten*, (91 Ala. 623) it was held that "the provisions of law granting certain rights to the married woman with or without the authorization of her husband are enabling in nature." And in the case of *Gavieres v. Adm. of Pena* (13 Phil. 449), it was enunciated that the married woman has a limited personality and an abolition of any incapacity must be expressly made. She must be expressly enabled or given capacity to do any particular act. The power which is expressly forbidden by law cannot be given by mere presumption.

B. *Act No. 3922 and the Insurance Law (Act 2427)*

Neither has the amending act effected any change in the Insurance Law except only with respect to the paraphernal property of the wife. Again, the Act does not provide that the wife may insure her separate property without the consent of her husband but I think it is not unlogical to include the power to encumber, alienate, mortgage or otherwise dispose of it, the power to insure such property. If the law gives the power to do an act which is burdensome to the property, it is not unwise to do an act beneficial to it, even without the husband's consent. If the wife as owner, can freely dispose of her property, can she not also contract for its insurance?

The power of the married woman to insure without the necessity of the consent of the husband, of her life and that of her children is a power granted her by a separate law and not an effect of the amending act. This provision relates only to the life of the wife and that of her children and has nothing to do with the power of the wife to insure her separate property. Therefore, the amending act has only affected the Insurance Law with respect to the power of the married woman to dispose, or encumber her paraphernal property, the implied power to insure the same. Prior to the enactment of Act No. 3922 the wife cannot even contract with regards her own property without the consent of the husband. This particular incapacity has been cured or removed by the amending act so that it is not unlogical to imply the power of the wife to enter into contract of insurance with respect to her own property even without the consent of her husband.

C. *Comparison between the Filipino married woman's capacity to contract with that of other women:*

According to Blackstone, "by marriage, the husband and the wife are one person in the law. The very being or legal existence of the woman is suspended during marriage, or at least, is incorporated and consolidated into that of the husband, under whose wing, protection, and cover she performs everything and is therefore called, in our law (French), "feme covert"; is said to be convert baron or under the protection and influence of her husband, her baron, or lord; and her condition during marriage is called her "coverture." Upon this principle of a union of

person of husband and wife depend almost all the legal rights, duties, and disabilities that either of them acquire by marriage." (Tiffany, *Persons and Domestic Relations*, p. 53).

Under the Civil Code of Spain and those of the Latin countries (Italy, France, Roumania, Chile, Portugal, Belgium, Holland, etc.) "the wife cannot act without the authorization of the husband, even if the regime of separation of property is adopted. This is because the husband is given the obligation of protection, and such obligation cannot be performed unless he is given the means." (1 Manresa, 329-30).

Under the statutes of Louisiana, "married woman could not contract without the consent of her husband" until 1916. The Supreme Court of Louisiana laid down the following ruling: "Act 94 of the Acts of 1916, providing that a wife may sue and be sued alone to the same extent and the same manner as though she were a "feme sole" did not repeal the provisions of the Civil Code declaring the married woman incapable of mortgaging or pledging her separate property for the debt of her husband, and merely permits a married woman to do without the authorization of the husband what she was therefore capable of doing only with his authorization." (Lorio v. Gladvey, 147 La. 930). Following the same line of reasoning, Act 3922 merely permits the married woman to do without consent of the husband what was prohibited by the amended article, for her to do. It cannot be construed to repeal the other articles in the Civil Code providing for the incapacities of the married woman to contract. The construction by the courts in the United States of statutes similar in provisions and nature to

that of Act 3922 shows that the scope of the authorization given the married woman is also limited.

The Supreme Court of the United States, in the case of *Seitz v. Mitchel* (94 U. S. 580), held: "The 729th section of the Revised Statutes of the District of Columbia gives a married woman power to contract, to sue and to be sued in her own name in all matters having relation to her sole and separate property. No other power to contract is given her."

In California, "all the property of the wife owned by her before marriage, and that acquired by gift, bequest, devise or descent, with the rents, issue, and profits thereof, is her separate property. The wife may without the consent of her husband convey her separate property." (sec. 112, California Civil Code).

In South Carolina, Art. 14, sec. 8 of the Constitution provides in part: "The real and personal property of a married woman, held at the time of her marriage, or that which she may acquire thereafter, either by gift, grant, inheritance, devise, or otherwise, shall not be subject to levy and sale for her husband's debts, but shall be held as her separate property, and may be bequeathed, devised, alienated by her the same as if she were unmarried. She can bind herself by contracts made by herself for the preservation, maintenance, improvement or productive development of her separate property, and may constitute her husband, or anyone else, her agent in her behalf. So a married woman can, with a view to enlarge or increase her separate property, and create a lien on that already owned by her; or, if she has no separate property, can create it by borrowing money for that purpose."

All these provisions and decisions of the courts of the States of the Union are similar to the law and its construction by our Court. From the cited provisions of law in the different States we see that the married woman in those States are not exercising a more liberal privilege neither are they enjoying a much broader capacity nor are they unhampered by no less conservative incapacities, than the Filipino married woman. Even with this state of the Filipino woman, we should not content ourselves and leave her with all her incapacities.

CONCLUSION

A married woman can enter into a contract of insurance with respect to her paraphernal property and nothing more. It has not even affected her incapacity to dispose or encumber her dowry property without the consent of the husband. Neither has it modified her incapacity to contract without her husband's consent save that which concerns only such Paraphernal property, nor has it cured her incapacity to give consent. In other words, Act 3922 has not made the wife *sui juris* for all purposes nor placed her on equal footing with her husband. Consequently, Act 3922 has only amended Article 1387 of the Civil Code to read as follows: "The married woman, of age, may alienate, encumber or mortgage or otherwise dispose of her paraphernal property, and appear in court to litigate with regard to the same, without necessity of the permission or presence of the husband." It has only affected the Insurance Law with respect to her right to insure her paraphernal property implied from her power to encumber or even dispose of the same. The authority given her has not

affected her right to insure her life or that of her children because this is expressly granted to her in section 3 of Act 2427, as amended.

A. *Suggestion:*

With the progress of civilization it seems that the legal situation of the married woman has become antiquated and behind the times. Act 3922 has given her the freedom to dispose of her Paraphernal property without the consent of her husband, an act which has started the march towards granting the married woman more freedom and greater rights. But the march should not stop there. It should advance with the progress of the times and it would be a progressive step to modify our laws so as to give the married woman with Paraphernal property the full capacity to contract without the consent of her husband and to give her the exclusive and full ownership of the fruits and earnings of said Paraphernal property. This would give the married woman entire freedom in the disposition of her property and fruits and would encourage her to enter into contracts for the benefit of her property and would also encourage her to enter into commercial transactions for profit which will redound to the benefit of her children who are also her husband's children. This would not endanger nor bring discord to the family ties, for as long as the husband and wife remain true and faithful to their marital vows, the harmonious relations between them shall also subsist, and the fact that the wife improves her

Paraphernal property and profits thereby should be no reason for the husband to feel belittled nor the wife feel superior. A provision of the Statutes of Louisiana, concerning the capacity of a married woman to contract worth quoting as a model for our National Assembly in giving broader capacities and greater civil rights to the married woman, provides:

"Sec. 1. All married women, including non-residents, so far as they may be affected by the laws of this State, shall be and are hereby fully emancipated from all disabilities and relieved from all incapacities to which, as such, they are now subject, and they are hereby empowered to make contracts of all kinds, or to assume or to stipulate for obligations of all kinds, in any form or manner now permitted, or which may hereafter be permitted by law, for any person, married or unmarried, of either sex, and in no case shall any act, contract, or obligations of a married woman, require for the validity or effectiveness thereof, the authority of her husband or of the judge.

"Sec. 2. Married women shall have capacity to institute or defend suits, or otherwise appear in judicial proceedings, and to stand in judgment, without the authority of their husbands or the judge." (Louisiana, Acts of 1928, No. 283).

Should a similar law be enacted by our National Assembly, the authority of the husband over his wife's contractual obligation will be abolished. It is not too early to effect such a law.