

The Effect of the Code of Civil Procedure upon the periods of prescription laid down by the Civil Code and the Code of Commerce

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INTRODUCTORY

The introduction of American legislation with its incidents of common and statutory law has wrought many changes both in the substantive and procedural laws continued in force in these Islands by proclamation of the Commanding General of the United States Army of Occupation on August 14, 1898. (1 *Off. Gaz.* 3; *American Ins. Co. v. Canter*, 1 Pet. (U. S.) 511; *Roa v. Collector of Customs*, 23 Phil. 315.) Some of these laws having since been repealed by express provision (*Code of Civil Procedure, or Act 190, sec. 795*) and others by necessary implication. (*Code of Civil Procedure, or Act 190; G. O. No. 58, re Criminal Procedure; G. O. No. 68, re Marriage; The Corporation Law, or Act 1459; The Bankruptcy Law, or Act 1956; The Negotiable Instruments Law, or Act 2031.*)

Among the twenty-three hundred and ten Acts (January 1, 1914) passed by the local legislature under the new régime, not a single one has created more important and far-reaching modifications on the old Spanish jurisprudence than the present Code of Civil Procedure. While it purports to be simply a "code of procedure in civil actions and special proceedings," it contains provisions of substantive law inconsistent with the prescriptions of the Spanish codes which it has thus largely modified and even repealed. This circumstance has placed certain branches of the law in a highly unsettled condition. Not the least among those affected in this manner is that relative to the periods of prescription laid down by the Civil and Commercial Codes. It is the purpose of this thesis to make a few suggestions towards the elucidation of this knotty phase of the law at the present time.

WHAT IS PRESCRIPTION?

Sánchez Román defines prescription as "a mode of acquiring or losing ownership and other real rights, or of exemption from the fulfillment of

obligations, by virtue of the lapse of time and other conditions imposed by law." (*Sánchez Román, Civil Law*, vol. 3, p. 252.)

Under the Civil Law the term prescription is invariably used to designate both the birth of rights and the extinguishment of actions by the running of a predetermined period of time. For this reason, the commentators classify it into *adquisitiva* or positive, and *extintiva* or *liberatoria*, negative. This idea is embodied in the Civil Code, wherein the title devoted to prescription is divided into (1) the prescription of ownership and other real rights and (2) the prescription of actions. (*Mauresa, Commentaries on the Spanish Civil Code*, vol. 12, pp. 716, 717; *Sánchez Román, Civil Law*, vol. 3, pp. 215, 252; *Escriche, Diccionario Razonado de Legislación y Jurisprudencia*, pp. 1433-1436; *Civil Code*, Arts. 1930-1975; *De Castro v. Echarrri*, 20 Phil. 23; *U. S. v. Serapio*, 23 Phil. 584.)

Under the common law, however, prescription is often distinguished from limitation, the former being generally limited to the Spanish *adquisitiva* (acquisitive), the latter having reference to the time within which suit must be brought after the right of action accrued. (*U. S. v. Serapio*, 23 Phil. 584; *Alhambra Addition Water Co. v. Richardson*, 72 Cal. 598; *Billings v. Hall*, 7 Cal. 1.) But as applied to easements or to the title to property, especially real estate, prescription and limitation are convertible terms. (*Murray v. Scribner*, 74 Wis. 602; *Churchill v. Louis*, 135 Cal. 608; *Muller v. Fruen*, 36 Minn. 273.) As such are the words prescription and limitation used in this thesis.

NATURE OF PRESCRIPTION

It would seem that positive prescription, at least, works a complete extinction of rights (*Civil Code*, Art. 1930), but the Supreme Court has declared, in *United States v. Serapio* (23 Phil. 584) that

"By prescription or limitation of actions, the right of action is not extinguished neither under the common nor under the civil law. Both the Civil and the Penal Codes provided when the action is extinguished and when it is prescribed simply. These statutes (of prescription or limitation) did not destroy the right. They simply provided, in effect, that after the lapse of the time prescribed by law, the defendant might object, if he desired, to being sued. If the defendant failed, in some proper way, to object, or, in other words, interpose the statutory defense, the action should be maintained. The statute provided a special defense simply. If the defense of prescription or limitation is not expressly raised, it is waived and is not available. It cannot be raised by demurrer. It must be expressly

pleaded. (*Aldeguer v. Hoskyn*, 2 Phil. 500; *Domingo v. Osorio*, 7 Phil. 405; *Marilon v. Tabotabo*, 9 Phil. 390; *Harty v. Luna*, 13 Phil. 31; *Sunico v. Ramirez*, 14 Phil. 500.)”

See also *Marzon v. Udtujan*, 20 Phil. 232; *Salunga v. Evangelista*, 20 Phil. 273.

ORIGIN OF PRESCRIPTION

The doctrine of prescription or the limitation of time within which an action may be brought is recognized by the legislation and jurisprudence of all civilized nations (*Bishop of Cebú v. Mangaron*, 6 Phil. 286, 293; *Sánchez Román, Civil Law*, vol. 3, p. 202; *Manresa, Commentaries*, vol. 12, p. 719; *Bushwell, Limitation, and Adverse Possession*, p. 6.), except perhaps among the Jews. (*Lev. XXV, 20* (providing that all lands should be restored to the actual owner at the jubilee) *Wood, Civil Law*, 125.) Its conception is everywhere the same, having a common origin both under the Anglo-Saxon law and the modern civil law in the Roman institute of *usucapio* (*usu rem capere*), *Twelve Tables*, VI, 3-5, from which the Spaniards have taken and incorporated it in all their known collections of written law, being admirably developed in the *Partidas* and reaching its final form in the present Spanish codes. (*Sánchez Román, Civil Law*, vol. 3, p. 253; *Manresa, Commentaries*, vol. 12, p. 719; *Bushwell, Limitations and Adverse Possession*, p. 2.) It did not exist either in the early civil or common law, under which a right of action never died by the mere lapse of time, but was of purely statutory origin. (*U. S. v. Serapio*, 23 Phil. 584; *Maeheldrey, Roman Law*, sec. 213; 4 *Gaius*, sec. 128; 25 *Cyc.* 985, II and cases cited.) In the absence of express law, courts are without authority to fix a period of prescription. Limitations are legislative and not judicial acts. (*U. S. v. Serapio*, 23 Phil. 584; *Missouri v. Illinois*, 200 U. S. 496; *Reist v. Heilbreunnen*, 11 Serg. & R. (Pa.) 131; *Battle v. Shivers*, 39 Ga. 405; *Buchanan v. Rowland*, 5 N. J. Law 721; *Gray v. Hartford Ins. Co.*, 6 Fed. Cases No. 3375; *Williams v. Jones*, 13 East (Eng.) 439; *People v. Gilbert*, 18 Johnson (N. Y.) 227; *Bell v. Morrison*, 1 Pet. (U. S.) 351.)

IS THE DOCTRINE OF PRESCRIPTION JUSTIFIABLE?

Strictly speaking, the law of prescription is not founded on natural justice. There are jurists who contend that it is nothing less than an unwarranted attack upon the right of ownership, a legalized deprivation of property without just compensation. But as *Manresa* says (*Commentaries*, vol. 12, p. 218), “it is a social necessity, based on public policy, in order to give firmness and stability to juridical relations susceptible of doubts and contradiction, limiting the uncertainty of the same to a deter-

minate period of time, so that ownership or patrimony and the rights of interested persons may not remain indefinitely uncertain." Indeed "all security would cease, if a right of ownership could be asserted without any limitation, for all time to come." (*Sohm, Institutes of Roman Law*, p. 318.)

The object of the law is to suppress doubts in the dominion of things and to punish the negligent with the natural consequences of their laches. A person who has abandoned property for a long time must be considered to have renounced his rights therein; the one who occupies it is rightly presumed to be the owner. The experience of mankind in this regard early manifested itself in the Roman maxim *melior est causa possidentis*.

"But the basic principle most generally relied upon by the authorities is that statutes of limitation are statutes of repose, the object of which is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when all the proper vouchers and evidences are lost or the facts have become obscure from the lapse of time or the defective memory, or death, or removal of witnesses." (25 *Cyc.* 983, 984 and cases cited; *Sánchez Román, Civil Law*, vol. 3, pp. 248-257; *Escriche, Diccionario*, p. 1433; *Domat, Civil Law*, L. 8, T. 7, sec. 4; *Bushwell, Limitations and Adverse Possession*, pp. 7, 8; *Gomez Medel v. Arevilla*, 15 Phil. 465; *Lichauco v. Limjuco*, 19 Phil. 12.

STATUTES OF LIMITATION ARE CONSTITUTIONAL

Upon considerations of public policy, general and special laws of limitation are universally sustained as constitutional, except where they contain some feature specially liable to objection on other grounds. (*Nash v. Fletcher*, 44 Miss. 609; *Gospel Society v. Wheeler*, 2 Gallis (C. C.) 105; *Saloy v. Woods*, 40 La. Ann. 585; *Perry v. Turner*, 55 Mo. 418; *Smith v. Cleveland*, 17 Wis. 536; *Dash v. Van Kleeck*, 7 Johns. (N. Y.) 477; *Madden v. Lancaster County*, 65 Fed. 252; *Calder v. Bull*, 3 Dall. (U. S. 386.)

But the period laid down must not be so unreasonable as to work injustice or to bar a right of action without any allowance of time sufficient for the institution of process in future. (*José v. Commander of Philippine Squadron*, 16 Phil. 62; *Jackson v. Lamphire*, 3 Pet. (U. S.) 280; *Charles River Bridge v. Warren Bridge*, 11 Pet. (U. S.) 420; *Grin v. Brown*, 21 App. Cas. 295; *Central Bank v. Solomon*, 20 Ga. 408; *Norris v. Tripp*, 111 Iowa, 115; *Auld v. Butcher*, 2 Kan. 135; *MacNichol v. Spence*, 83 Me. 87; *Gilbert v. Ackerman*, 159 N. Y. 118, 45 L. R. A. 118; *Culbreth v. Downing*, 121 N. C. 205; *Osborn v. Lindstrom*, 9 N. D. 1, 46 L. R. A. 715; *Peterson v. Delaware, etc. R. Co.* 9 Kulp (Pa.) 552; *Stoddard v. Owings*,

42 S. C. 88; *Sohn v. Waterson*, 17 Wall. (U. S.) 591; *Pereless v. Watertown*, 19 Fed. Cas. No. 10,980.

THE TWO SYSTEMS OF PRESCRIPTION COMPARED

As in the case of a few other subjects originally derived by the Anglo-Saxon from the Civil Law, the doctrine of prescription split in two opposite directions hundreds of years ago, and circumventing the world, has now met again on common ground in the Philippine Islands. It is natural to expect that in the course of its progress through the ages and among such differently constituted peoples as the Teutons and the Latins the law of prescriptions should suffer changes of a radical nature. There are many notable differences between the two systems as they now exist in the Spanish Civil Code and the New Code of Civil Procedure. The peninsular legislator would ordinarily sanction the despoliation of private property through prescriptive possession only on proof of two primordial "conditions imposed by law," namely, *good faith* and a *just title* (*Civil Code*, Art. 1904; *Mauresa, Commentaries*, vol. 12, pp. 754 *et seq.*; *Sánchez Román, Civil Law*, vol. 3, pp. 255 *et seq.*; *Escrive, Diccionario*, p. 1434.) whereas, by the Code of Civil Procedure, title to land may be acquired through prescription by "ten years actual adverse possession in whatever way such occupancy may have commenced or continued" (Sec. 41), and "as to personal property nothing whatever is said except that an action to recover it must be brought within four years. If such an action is not brought within four years it seems that the owner has lost his title no matter what the title of the defendant may be." (*Willard's Notes*, 95).

GENERAL STATEMENT OF POSITION

In the construction of statutes of limitation the same general rule as to legislative intent is followed. (*People v. Newalgo*, Vir. Ct. 27 Mich. 138; *Ogden v. Blackledge*, 2 Cranch 272; *Davis v. Mills*, 121 Fed. 703.) Such intent is to be deduced from the language used by the legislator in drawing the statute (*Tynan v. Walker*, 35 Cal. 634; *Stout v. Grant County*, 107 Ind. 343; *Lahart v. Thompson*, 140 Iowa, 298; *Barron v. Kaufman*, 131 Ky. 642; *Gooden v. Police Jury*, 122 La. 755; *Geurfuss v. State*, 42 Md. 403; *Detroit v. Detroit United R. Co.*, 156 Mich. 100; *State v. Woodruff*, 68 N. J. L. 89; *Coxson v. Doland*, 2 Daly (N. Y.) 66; *State v. Barco*, 150 N. C. 792; *Slinglaff v. Weaver*, 66 Ohio St. 621; *Union Imp. Co. v. Com.* 69 Pa. St. 140; *Ex Parte Brown*, 21 S. D. 515; *State v. Montello Salt Co.*, 34 Utah 458; *U. S. v. Goldenberg*, 168 U. S. 95, 42 L. Ed. 349; *Marin v. Nacianceno*, 19 Phil. 238.) and where the language is general

and no exceptions are made, courts are not authorized to engraft thereon exceptions not clearly expressed in the statute itself, however equitable such exceptions are alleged to be. (*Howell v. Hair*, 15 Ala. 194; *Pryor v. Ryburn*, 16 Ark. 671; *Davis v. Hart*, 123 Cal. 384; *Strickward v. Bailey*, 3 Kan. 507; *Young v. Cook*, 30 Miss. 320; *Coady v. Reins*, 1 Mont. 424; *Bucklin v. Ford*, 5 Barb. (N. Y.) 393; *State University v. Campbell*, 5 N. C. 185; *Peak v. Buck*, 3 Ba t. (Tenn.) 71; *Woodbury v. Shackelford*, 19 Wis. 55; *Dulles v. Jones*, 9 How. (U. S.) 530; *Alabama Bank v. Dalton*, 9 How. (U. S.) 522; *Lewis v. Lewis*, 7 How. (U. S.) 776.)

The Code of Civil Procedure sets apart one chapter (III) exclusively devoted to the subject of "prescription; time of commencing action," which contains a system complete by itself and sufficient to cover civil actions of all kinds. Said Code provides:

"Sec. 38. This chapter shall not apply to actions already commenced or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form. . . . *Provided*, nevertheless, That all rights of action which have already accrued except those named in the last preceding paragraph must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this Act comes into effect. (October 1, 1901.)

"Sec. 39. Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues; but where a different limitation is prescribed by this Act that shall govern.

"Sec. 44. An action for relief not herein provided for can only be brought within ten years after the cause of action accrues."

The Philippine Commission could have expressed in no clearer terms an intention to provide for the prescription of all civil actions than in the language just quoted. It is submitted that the above provisions embrace the entire field of statutory limitations, as far, at least, as the periods of prescription are concerned. Indeed the Supreme Court has said, in the case of *Seoane v. Franco*, (24 Phil. 309, 314) that "this section (38) evidently covers all rights of whatever kind and nature except those which have special limitations and are referred to in subsequent sections."

If the manifest intention of the legislator is to be followed as shown by the language he has employed in enacting the law of prescription in the new Code, it would seem that chapter 3 of Act 190 has introduced an exhaustive system of prescriptive periods, superseding in all its parts

that found in the Spanish Codes. (*Jernigan v. Holden*, 34 Fla. 530, 16 So. 413.)

Provisions of law fully covered by subsequent enactments are repealed by the latter when it is evident that the legislature intended to provide not only a substitute for the earlier statutes, but to cover the whole subject then considered and to prescribe the only rules in respect thereto, even if the former acts are not in all respects repugnant to the new act. (*Murphy v. Utter*, 186 U. S. 95; *The Paquete Habana*, 175 U. S. 67; *Fisk v. Henarie*, 142 U. S. 459; *Tracy v. Tuffly*, 134 U. S. 206; *Cook County Nat. Bank v. U. S.*, 107 U. S. 445; *U. S. v. Tjnen*, 11 Wall. 88; *Davies v. Fairbanks*, 3 How. 636; *Gort. of the P. I. v. Inchausti & Co.*, 24 Phil. 315; *Pavia v. De la Rosa*, 8 Phil. 70; *Alonso v. Municipality of Placer*, 5 Phil. 71.)

The Supreme Court, however, has applied the fundamental requisites of good faith and proper title laid down by the Civil and Commercial Codes to numerous cases of prescription decided since the Code of Civil Procedure went into effect without adverting to the fact that the cause of action accrued before October 1, 1901. (*U. S. v. Cerna*, 23 Phil. 144; *Fortuna v. Corrales*, 17 Phil. 376; *Conde v. Abaya*, 13 Phil. 249; *Eudeisa v. Taleon*, 12 Phil. 336; *Maserampo v. Masecampo*, 11 Phil. 1; *Valera v. Finnick*, 9 Phil. 482; *Capistrano v. Gabina*, 8 Phil. 135; *Basa v. Arquiza*, 5 Phil. 187.)

Its attitude on this question is extremely conservative (*Garcia v. Hipolito*, 5 Phil. 503; *Cajuigan v. Natividad*, 14 Phil. 734) so much so, that it has gone to the length of basing its decision entirely on the Civil Code as to the period of prescription that should govern a case whose cause of action accrued more than two years after the passage of Act 190, merely because the defendant relied upon the Civil Code instead of upon the Code of Civil Procedure. (*Sideco v. Pascua*, 13 Phil. 342.)

The present law of prescription is thus made more complicated and more difficult of delimitation than it should be. The perplexing inquiry presents itself: Under the decisions of the Supreme Court, how far have the provisions of the Spanish Codes bearing on prescription been affected or repealed by recent legislation?

For the sake of clearness and convenience the articles of the Civil and Mercantile Codes in relation to periods of prescription will now be examined in their numerical order with a view to determining whether they are or are not in force at the present time.

At the threshold of this investigation it may be well to call attention to the fact that the Spanish Codes have numerous provisions containing periods of one kind or another, and it has been found necessary to consider all of them, in order to distinguish those articles which in a general

way prescribe limitations of time within which actions must be brought from those others which are either simply conditions precedent to the accruing of the right of action, or special periods akin to prescription, or rules of substantive law made necessary elements of a given juridical act or transaction, i. e., not statutes of limitations at all; in all of which cases, it is clear that the chapter on prescription of the Code of Civil Procedure has had no effect whatever. (*Buenaventura v. Urbano*, 5 Phil. 1; *Garcia v. Diamzon*, 8 Phil. 414; *Alano v. Babasa*, 10 Phil. 511; *Yadao v. Yadao*, 20 Phil. 260; *Lim Tico v. Cu Unjieng*, 21 Phil. 493; *Govt. of the P. I. v. Inchausti & Co.*, 24 Phil. 315.)

UNDER THE CIVIL CODE

ARTS. 1, 7, 15, 19, 30.—Not statutes of limitations. (*U. S. v. Tiqui*, 1 Phil. 306 (Art. 7); *Rakes v. Atlantic Gulf & Pacific Co.*, 7 Phil. 362 (Art. 19); *Roa v. Collector of Customs*, 23 Phil. 315 (Art. 19).)

ARTS. 44, 47, 48, 77, 78, 83 (1) 89, 91, 96, 102 (3).—These articles establish periods within which certain things should be done, but only articles 44 and 102 (3) are in any sense prescriptive. They are all inoperative, however, not being in force at the time the change of sovereignty in these Islands was effected. (*Benedicto v. De la Rama*, 3 Phil. 34; *Ibañez v. Ortiz*, 5 Phil. 325; *II Op. Atty. Gen.* 85; *Taylor v. M. E. R. & L. Co.*, 16 Phil. 8, 26 (Art. 83); *Sy Joc Lieng v. Sy Quia*, 16 Phil. 137, 254 (Art. 102).)

With reference to prescription, the matter covered by these articles is now governed by section 11 of G. O. No. 68.

ARTS. 108, 110.—Not prescriptive. (*Mijares v. Nery*, 3 Phil. 195, 199 (Art. 108).)

ART. 113.—The determination of the present applicability of the periods prescribed by this article is the crucial point in the solution of the question under investigation. Powerful reasons prompted the Spanish legislator in withdrawing the matter referred to in article 113 from the effects of ordinary prescription. It was rightfully conceived that the legitimacy of children should not be left uncertain for any considerable length of time, being as it is, an essential element in the personal status of the citizen. The State looks with disfavor upon the creation of bastard children; hence, the exceedingly short and special periods of limitation in which to contest legitimacy allowed to parents by the Civil Code. (*Sánchez Román, Civil Law*, vol. 5, pp. 975, 976.)

There is much plausibility in the argument that being founded on the best of public policy article 113, a provision of substantive law, should

not be held impliedly repealed by any of the provisions of Act 190, a law avowedly procedural, the more so, because repeals by implication are not favored. (*People v. San Francisco, etc. R. Co.* 28 Cal. 254; *Snell v. Bridgewater Cotton Mfg. Co.* 24 Pick. (Mass.) 296; *People v. Metz*, 189 N. Y. 550; *McCool v. Smith*, 1 Black (U. S.) 459, 17 L. Ed. 218; *Allen v. U. S.* 40 Ct. Cl. 170 (affirmed in 204 U. S. 581); *Buenaventura v. Urbano*, 5 Phil. 1, and other authorities too numerous to cite.) Indeed, so to hold would impute to the legislator an intention to discriminate in favor of the parents by lengthening the time in which they may contest legitimacy from two, three and six months to four or perhaps ten years (*Civil Code*, Article 113; *Code of Civil Procedure*, sections 43, 44), as against the children by shortening the limitation of their action to claim legitimacy or compel acknowledgment from a lifetime to a paltry number of years (*Civil Code*, Arts. 118, 137; *Code of Civil Procedure*, secs. 43, 44). when by the most elementary principles of the substantive law of the family the child has always been considered a favorite of the law and should be entitled to preferential remedies in the protection of his rights. (*Manresa, Commentaries*, vol. 2, pp. 168, 169; *Sánchez Román, Civil Law*, vol. 5, pp. 1243-1244); *Tiffany, Persons and Domestic Relations*, p. 381; 22 *Cyc.* 512-519.)

Still, the language the legislator has used is clear, unequivocal, imperative—"Civil actions can *only* be commenced within the periods prescribed by *this* chapter after the cause of action accrues"—and "there is no rule better settled in the construction of statutes of limitation, than that effect must be given to them according to their language. If they made no exceptions in favor of infants, *femmes couverts*, or non-residents the courts can make none. And when the exceptions of a statute of limitation are repealed, the act stands as though it had been originally passed without them." (*Lewis v. Lewis*, 7 How. (U. S.) 776, and cases cited in the statement of position.)

It cannot be doubted that the action mentioned in article 113 of the Civil Code is within the meaning of the term "civil action." (*Sánchez Román, Civil Law*, vol. 5, pp. 975-978; *Manresa, Commentaries*, Art. 113). Such being the case the conclusion is unavoidable that at the present time the action must be exercised within the period limited by Chapter 3 of the Code of Civil Procedure. If the action does not fall under subdivision 3, section 43 of the said Code, fixing a limit of four years for "an action for an injury to the rights of the plaintiff not arising on contract and not hereinafter enumerated," it is certainly included in the catch-all clause, "an action for relief not herein provided for can only be brought within ten years after the cause of action accrues." (Sec. 44).

ART. 118.—This article in connection with article 137, *infra*, presents the greatest obstacle in the way of the position taken and already explained, that the Code of Civil Procedure having provided a complete system of statutory limitations, has replaced all periods of prescription found in the Spanish Codes, in view of the important decision rendered by the Supreme Court in the case of *Conde v. Abaya* (13 Phil. 249) in which it is said without qualification that “the right of action that devolves upon the child to claim his legitimacy lasts during his whole life, while the right to claim the acknowledgment of a natural child lasts only during the life of his presumed parents.” (p. 257).

In the Spanish jurisprudence anterior to the Civil Code the action to claim legitimacy was considered imprescribable. (*Ley de Matrimonio Civil*, art. 62; *Manresa, Commentaries*, art. 118; *Sánchez Román, Civil Law*, vol. 5, p. 983.)

“Legitimacy,” says Sánchez Román, *supra*, “which affects so much the personality of the child, constituting as it does, the civil status of his filiation and the basis of all his civil rights, cannot be subject to limitation nor extinction by the lapse of time, because, it is an essentially personal right.”

The Civil Code sets a definite limit to the action, preserving however the fundamental idea of imprescribability while the child is not in a position to exercise it by giving him his whole lifetime in which to bring the action. (*Civil Code*, art. 118).

The legislature in enacting chapter 3 of the Code of Civil Procedure must be presumed to have had the previous law and the reasons on which it is founded in mind (*Eusly v. State*, 88 N. E. 62 (Ind.); *Sikes v. St. Louis, etc. R. Co.* 127 Mo. App. 236; *Little v. Bowers*, 48 N. J. L. 370; *State v. Southern R. Co.*, 145 N. C. 495; 13 L. R. A. (N. S.) 966; *In re McKenzie*, 142 Fed. 383; *Alzua v. Johnson*, 21 Phil. 308.) and in putting a maximum limitation of ten years for “all rights of whatever kind and nature” (*Code of Civil Procedure*, secs. 38, 40, 41, 44), determined beyond the control of the courts the law and policy that must control. It is a familiar rule of statutory construction that matters of policy are in the exclusive domain of the legislative department. The courts are bound to apply the law as they find it and not as they may think it ought to be. (*Merchant's Bank v. Cook*, 4 Pick. (Mass.) 405; *Gorham v. Steiman*, 10 Ohio S. & C. Pl. Dec. 131; *Rossmiller v. State*, 114 Wis. 169, 58 L. R. A. 93; *Ohio Nat. Bank v. Berlin*, 26 App. Cas. (D. C.) 218; *Ellis v. Boer*, 150 Mich. 452; *State v. Rat Portage Lumber Co.*, 115 N. W. 162 (Minn.); *State v. Permenter*, 50 Wash. 164, 19 L. R. A. (N. S.) 707.) There seems

to be no escape from the conclusion that if the action to claim legitimacy is a civil action, and there is no question that it is a civil action, "it can only be commenced within the periods prescribed by this chapter" (3 of Act 190).

The Supreme Court in declaring in *Coule v. Abaya*, *supra*, that the action to claim legitimacy lasts during the whole life of the child based its decision entirely on the Civil Code. It does not appear that the provisions of the Code of Civil Procedure regarding the prescription of actions were insisted upon by counsel on either side, nor was this the principal point for determination by the court. In fact, it was not before the court at all, the main issue in dispute being whether an action to compel acknowledgment of an alleged natural child survives in favor of his mother when both the child and the presumed natural father are dead, the former dying during minority but after the demise of the latter. That part of the opinion which relates to the prescription of the action can only be an *obiter dictum*. At all events, the presumed father in this case having died in 1899, the children must have been born before that date, and the cause of action had therefore already accrued when Act 190 went into effect (1901). By the terms of section 38 of said Act the periods of prescription therein provided did not apply to this case. (*Araneta v. Garrido*, 5 Phil. 137; *Magallanes v. Cuñeta*, 7 Phil. 161; *Tubucon v. Dalisay*, 7 Phil. 183; *Palacio v. Sudario*, 7 Phil. 275; *Fianza v. Reavis*, 7 Phil. 613 (affirmed in 215 U. S. 16); *Villarruz v. Azárraga*, 15 Phil. 108; *Paterno v. Aquila*, 22 Phil. 428; *Villanueva v. Claustro*, 23 Phil. 54.)

And it is always to be remembered that the defense of prescription must be expressly pleaded, otherwise it cannot be subsequently raised. (See also *Basa v. Arquiza*, 5 Phil. 187).

ARTS. 133 (3), 137.—For the reasons stated under article 118 the periods of prescription laid down by these articles have been repealed by the provisions of chapter 3 of the Code of Civil Procedure.

The Supreme Court, however, has said that articles 129 to 141 being "devoted to the declaration of the substantive rights of illegitimate children. . . . are in no sense adjective law, but purely substantive," and have therefore not been repealed by the Code of Civil Procedure (*Buenaventura v. Urbano*, 5 Phil. 1).

The language here used could have only been intended to mean in a general way, and it is not to be inferred therefrom that in cases of direct conflict between the provisions of the Code of Civil Procedure and those of the Civil Code the latter continues merely because it is substantive law.

There may be much wisdom in the prohibition against instituting an action to compel acknowledgment after the death of the presumed parent for it is said "to be inspired in the plausible object to avoid malicious litigation, more probable of success without the intervention of the father or mother against whom it is directed, besides involving the imputation of such an important personal condition as paternity or maternity, the declaration of which is sought" (*Sánchez Román, Civil Law*, vol. 5, p. 1039), but the Philippine Commission in legislating on the same subject—the prescription of civil actions—did not make any exceptions of this sort, and, as elsewhere noted, none can be made by the courts.

For additional cases construing these articles, see *Capistrano v. Gabino*, 8 Phil. 135; *Masecampo v. Masecampo*, 11 Phil. 1 (holding that the action to compel acknowledgment survives where it is commenced during the lifetime of the presumed parent who dies pending suit.)

ARTS. 148, 156 (2)—Not statutes of limitation. *Lerma v. Mamaril*, 9 Phil. 110 (art. 148).

ARTS. 173, 180.—Article 173 does not prescribe a period of limitation. Article 180 does, but besides the effect which the chapter on prescription in the Code of Civil Procedure may have had on said article 180, it seems clear that both articles are no longer in force, the whole chapter in which they appear in the Civil Code having been superseded by sections 765 to 772 of the new Code, making up one division devoted exclusively to adoption, the same matter covered by the articles in question.

ARTS. 184, 186, 191, 192.—Not prescriptive.

ART. 197.—The "time fixed for prescription" referred to in this article is now to be found in the new Code.

ARTS. 240, 247 (2), 248, 249, 254, 264 (3), 269 (6), 282, 285, 287, 288, 292.—Not prescriptive except article 287, but they seem to have all been repealed by the provisions of the Code of Civil Procedure relating to guardianship. The new Code devotes one whole chapter (27) to guardianship and it is evident that the legislature intended to provide a complete system of guardianship and administration of estates based on principles of American law and jurisprudence in substitution of the old Spanish laws on the subject. Moreover these articles are highly procedural. (*Code of Civil Procedure*, sec. 795; *Buenaventura v. Urbano*, 5 Phil. 1; *Alemany v. Moreno* 5 Phil. 172; *Tria v. Ortiz*, 14 Phil. 551; *Rosario v. Manila Railroad Co.*, 22 Phil. 140; *Rafols v. Rafols*, 22 Phil. 236.)

ARTS. 320, 321, 400 (2).—Not statutes of limitations.

ARTS. 409 (2), 411.—The second paragraph of article 409 establishes a period of prescription. It is therefore repealed. As waters are, under

the civil law, considered real estate (*Civil Code*, art 334 (4); *Partidas V*, 529; *Manresa, Commentaries*, vol. 3, p. 27.), the prescriptive provision of the article is now superseded by sections 40 to 42 of the Code of Civil Procedure. The rest of the article is in force. (*Montano v. Ins. Govt.*, 12 Phil. 572; *Mantile v. Cajucom*, 19 Phil. 563.) So is the first part of article 411. But the right to use public waters may now be extinguished by non-usage during ten years.

ART. 460 (4).—Paragraph 4 of this article states a period after which the right of possession may be lost. In effect, the term is a limitation of the action to recover possession.

“The right acquired by the person who has been in possession for one year and one day,” says the court in the important case of *Bishop of Cebu v. Mangaron* (6 Phil. 286), “is the right that the former possessor lost by allowing the one year and one day to expire. The right is lost by the prescription of the action. And the action which prescribes upon the expiration of the year is ‘the action to recover or retain possession;’ that is to say, the interdictory action. (Art. 1968, par. 1). Then the only right that can be acquired now, as before, by the person who was in possession for one year and one day is that he can not be made to answer in an interdictory action, but this is not so in a plenary action unless he had some title in good faith.” (p. 297).

This action would have undoubtedly been covered by chapter 3 of the Code of Civil Procedure had not the same Code in section 80 thereof provided a special remedy by means of which the action to recover possession may be exercised within exactly the same period of time as that mentioned in this article. The Supreme Court has construed and applied this article in connection with said section 80 of the Code of Civil Procedure (as amended by Act 1778, sec. 1) and has declared it in force as a whole.

“So that the loss of possession dealt with in article 460 of the Civil Code may only be recovered within one year and one day by means of the action for the recovery of possession prescribed by section 80 of the Code of Civil Procedure, but when it is a question of real property its restitution may nevertheless be claimed in a Court of First Instance even after one year and one day by means of the proper plenary action for the recovery of possession, that is, the old action known as *publiciana*.” *Rodriguez v. Taiño*, 16 Phil. 301, 305.

See also *Limpao v. Dizon*, 1 Phil. 261, 264; *Veloso v. Ang Seng Teng*, 2 Phil. 622; *Patricio v. Aragon*, 4 Phil. 615, 618; *Alonso v. Mun. of Placer*,

5 Phil. 71; *Bago v. Garcia*, 5 Phil. 524; *Muyco v. Mantilla*, 7 Phil. 498, 505; *Evangelista v. Ver*, 8 Phil. 653, 661, 663, 665; *Ty Laco Gioco v. Muro*, 9 Phil. 100, 103; *Roxas v. Mijares*, 9 Phil. 252, 259; *Priolo v. Priolo*, 9 Phil. 566; *Ledesma v. Marcos*, 9 Phil. 618; *Roman Catholic Church v. Familiar*, 11 Phil. 310; *Devesa v. Arbes*, 13 Phil. 273, 289; *Gutierrez v. Rosario*, 15 Phil. 116; *Lao-Simbieng v. Palencia*, 18 Phil. 325, 329; *Aragon v. Ins. Govt.*, 19 Phil. 223; *Padin v. Humphreys*, 19 Phil. 254; *Gumiran v. Gumiran*, 21 Phil. 174; *Peñalosa v. Tuason*, 22 Phil. 303.

ARTS. 462, 468, 474, 480, 513 (7), 515, 516, 520, 521.—Not periods of prescription. (*Waite v. Williams, Chandler & Co.*, 5 Phil. 571 (art. 474); *Eleizegui v. Lawn Tennis Club*, 2 Phil. 309, 314 (art. 513); *Manila v. Monte de Piedad*, 5 Phil. 234, 239 (art. 513); *Chingen v. Arguelles*, 7 Phil. 297, 300 (art. 513).)

ARTS. 537, 546 (2).—Easements are real property. (*Civil Code*, art. 334 (10).) They may therefore be acquired and extinguished by prescription or non-use during ten years. (*Code of Civil Procedure*, sec. 41; *Cortez v. Yu-Tibo*, 2 Phil. 24 (art. 537).)

ARTS. 538, 548, 598, 609.—Do not establish prescriptive periods. (*Fabie v. Lichauco*, 11 Phil. 14 (art. 538).)

ARTS. 612, 615.—These articles indicate the manner in which private property may become *nullius* again by abandonment after the lapse of a certain time without the owner claiming the same. They do not impose limitations on civil actions in the legal sense of that expression and may therefore be regarded in force. (*Catabian v. Tungcul*, 11 Phil. 49; *E. S. v. Cerna*, 21 Phil. 144; *I Op. Atty. Gen.* 158; *I Op. Atty. Gen.* 252; *I Op. Atty. Gen.* 405; *III Op. Atty. Gen.* 374.) Act 1147, however, now regulates the sale of stray or stolen animals recovered from thieves.

ART. 633.—Not a statute of limitations. (*Camagay v. Lagera*, 7 Phil. 397; *Barreto v. City of Manila*, 7 Phil. 596, 601; *Lopez v. Olber*, 15 Phil. 540; *Velasquez v. Biola*, 18 Phil. 231; *Castillo v. Castillo*, 23 Phil. 364.

ARTS. 646, 652.—These articles are statutes of limitations. They may therefore be considered repealed in so far as they prescribe periods of prescription. The term now in force is probably ten years if real property or a gift in writing is the subject matter of the action (*Act. 190*, secs. 40, 43), or four years in case of personal property (sec. 43), or it may possibly be ten years in any case (sec. 44). The other provisions are convenient rules imposed by substantive law for the computation of the period in these particular cases and possibly still remain in force.

ARTS. 653, 663 (2), 681 (2), 688, 689, 690, 701, 703, 712, 719, 730, 756 (4), 758 (2).—Not prescriptive. (*In the matter of the Will of Cabigting*,

14 Phil. 463 (art. 663); *Hernaez v. Hernaez*, 1 Phil. 689 (art. 681); *Velasco v. Lopez*, 1 Phil. 720 (art. 688); *Fernando v. Villalon*, 3 Phil. 386 (art. 688).)

ART. 762.—This period is a limitation of time within which the action for the declaration of incapacity to succeed may be instituted. It therefore falls within the provisions of chapter 3 of the Code of Civil Procedure and may be regarded as repealed. The manner of computing it probably still subsists.

ARTS. 775, 776, 793 (2), 795, 805, 816, 841, 869 (3) 879 (1 & 2), 880, 893, 898, 904, 905, 906.—Not statutes of limitations. (*Morente v. De la Santa*, 9 Phil. 387 (art. 793); *Mijares v. Nery*, 3 Phil. 195, 202 (art. 841); *Llorente v. Rodriguez*, 10 Phil. 585, 587 (art. 841); *Paterno v. Solis*, 15 Phil. 153 (arts. 904, 905).)

ART. 962 (2).—This period is similar in character to those mentioned in article 113 and is based on the same reasons. For the considerations stated in connection with said article 113 the limitation herein prescribed has been superseded by those provided for in the Code of Civil Procedure.

ARTS. 965, 966, 967, 968, 974, 975, 977, 978, 979, 980, 982 (2), 989.—Not statutes of limitations. (*Del Rosario v. Del Rosario*, 2 Phil. 321, 326 (art. 982); *Ramos v. Marquez*, 10 Phil. 722 (art. 989).)

ARTS. 1004, 1005, 1014, 1015, 1016, 1017, 1018, 1019, 1021, 1022.—Repealed.

“The provisions of this law of procedure (Act 190) have abrogated among others the provisions of article 1003 of the Civil Code and others in relation to the same article with regard to the simple acceptance of the estate of a deceased person, or to that made with benefit of inventory and the consequences thereof.” (*Paria v. De la Rosa*, 8 Phil. 70, 75. See *Alfonso v. Natividad*, 6 Phil. 240; *Ortiz v. Aramburo*, 8 Phil. 98.)

ART. 1049 (1).—Not prescriptive.

ART. 1067.—The right of redemption granted by this article is an exceptional one, an additional limitation upon the untrammelled disposition of private property, and the legislator deemed it necessary to require immediate notice to the interested parties of its intended exercise by prescribing the short period of one month in which such notice must be given. If demand is not made within said month there is no right to redemption. The existence of the right depends upon the performance of a certain act within a certain time (*Mauresa, Commentaries*, art. 1067).

The article then creates a condition precedent to the accrual of the right of action, not a statute of limitations. As such it is in force for

there can be no inconsistency between such a period as the article prescribes and the periods of prescription found in the Code of Civil Procedure (*Gort. of the P. I. v. Inclausi & Co.*, 24 Phil. 315).

ART. 1076.—It is doubtful whether the right referred to in this article is demandable at the present time in view of the fact that the settlement and distribution of estates of deceased persons are now effected by decree of court. If the right to bring a rescissory action for *les'au* in the division of an inheritance exists at all, its limitation must be looked for in chapter 3 of the Code of Civil Procedure. (See *Salunja v. Evangelista*, 20 Phil. 273).

ARTS. 1221, 1246 (3), 1280.—Not prescriptive. (*A'degner v. Hoskyn*, 2 Phil. 500 (art. 1221); *Timbol v. Mavalto*, 6 Phil. 254 (art. 1221), 1 Phil. 671 (art. 1280); *Tipton v. Adereza*, 5 Phil. 477 (art. 1280); *Mojica v. Fernandez*, 9 Phil. 403 (art. 1280).

ARTS. 1299, 1301.—The periods of prescription mentioned in these articles are evidently covered by sections 43 to 45 of the Code of Civil Procedure, and may properly be considered repealed. All actions based on contract must now be brought within ten or six years depending on whether the contract is in writing or not. (*Act 190*, sec. 43). The rules laid down for the computation of time do not seem to be in substantial conflict with any provision of the Code of Civil Procedure, being somewhat substantive in nature, and would seem to continue in force. (*Naral v. Enriquez*, 3 Phil. 669; *U. S. v. Milla*, 4 Phil. 391; *Tipton v. Velasco*, 6 Phil. 67; *Boydton v. Felix*, 9 Phil. 597; *City of Manila v. Luck*, 19 Phil. 324; *Ibañez v. Hongkong and Shanghai Bank*, 22 Phil. 572.)

ARTS. 1309, 1314, 1329, 1345, 1352, 1361, 1363, 1370, 1379, 1393, 1410 (1).—Not statutes of limitations.

ART. 1472.—The reason why the Civil Code limited the actions referred to in this article to the comparatively short period of six months springs from the principle that the efficacy of civil transactions should not be left open to attack by rescissory actions for any length of time. Persons who purchase property must examine to their peril whether the object corresponds in all respects with the conditions of the agreement. To give them a long term in which to exercise the action of rescission would be to subject values to uncertainty. (*Manresa, Commentaries*, vol. 10, pp. 152-153). Still, as the rescissory action is none the less a civil action for the above considerations, and as all actions must now be brought within the time prescribed by the Code of Civil Procedure, it is apparent that article 1472, as far as the period of prescription is concerned, has been repealed by chapter 3 of said Code.

ART. 1482.—Not a statute of limitation, but a condition precedent. In force. (*City of Manila v. Lack*, 19 Phil. 324, 343; *Ahag v. Cabilig*, 18 Phil. 415.)

ART. 1483.—The last paragraph of this article establishes periods of prescription for the action for rescission and the action for damages for a specified cause. The terms stated are thus statutes of limitations, pure and simple, and must be considered repealed. (*Manresa, Commentaries*, vol. 10, pp. 205-206).

As to the rules laid down for the computation of the statutory period of prescription, the courts in the United States being divided on the question of the accrual of the action for breach of warranty (25 *Cyc.* 1091 and cases cited), the local courts will probably accept and apply these positive provisions of the Civil Code, the more so, considering that repeals by implication are avoided if possible, and because courts endeavor to construe all statutes as a general and uniform system of jurisprudence. (*McDougal v. Dougherty*, 14 Ga. 674; *Robertson v. State*, 109 Ind. 79; *State v. Roswell*, 104 Ind. 541; *Brooks v. Fitchburg, etc. R. Co.*, 200 Mass. 8, 21 L. R. A. (N. S.) 970; *Chappell v. Lancaster County*, 84 Neb. 301.)

ARTS. 1490, 1496.—The redhibitory actions to which these articles attached a limitation may now be exercised only in accordance with the provisions of chapter 3 of the Code of Civil Procedure for the reasons stated under article 1483.

ART. 1497.—Condition precedent. In force. (*Manresa, Commentaries*, vol. 10, p. 237; *Gort. of the P. I. v. Ychausti & Co.*, 24 Phil. 315).

ART. 1499.—The effect of this article is to give the vendee the right to bring an action on a *quantum meruit* or to rescind the contract described by it within the time limited for the rescissory action. (*Manresa, Commentaries*, vol. 10, p. 241). This time having been increased by the provisions of the Code of Civil Procedure it is evident that the latter clause of this article goes along with such extension. (See articles 1490, 1496).

ARTS. 1504, 1505.—Contractual; not prescriptive.

ART. 1508.—For the reasons stated in connection with article 1067 this article is in force, although it has been said that "the said four years constitute a special period of prescription." (*Alano v. Babasa*, 10 Phil. 511, 517; *Garcia v. Diamzon*, 8 Phil. 414.) The Supreme Court has construed and applied this article in numerous cases: (*Patricio v. Arayon*, 4 Phil. 615; *Lafont v. Pascasio*, 5 Phil. 391; *Garcia v. Diamzon*, 8 Phil. 414; *Albert v. Punsalan*, 9 Phil. 294; *Alano v. Babasa*, 10 Phil. 511; *Buenacaminio v. Nisco*, 13 Phil. 97; *Mortera v. Martinez*, 14 Phil. 541; *Reyes v. Limhap*,

15 Phil. 420; *Heirs of Jumero v. Lizares*, 17 Phil. 112; *Augao v. Clavano*, 17 Phil. 260; *Tuason v. Goduco*, 23 Phil. 342; *Davis v. Neyra*, 24 Phil. 417.)

ART. 1519.—Not prescriptive.

ART. 1524.—In force: a condition precedent. (*Lim Tuico v. Cu Un-jieng*, 21 Phil. 493).

ART. 1530.—Not prescriptive.

ART. 1535.—In force: condition precedent. See article 1067, *supra*. (*Aldeguer v. Hoskyn*, 5 Phil. 584; *Robinson v. Garry*, 8 Phil. 275).

ARTS. 1548, 1558, 1566, 1571, 1577, 1581, 1583, 1584.—Not statutes of limitations. (*Tipton v. Adereza*, 5 Phil. 477 (art. 1548); *Tipton v. Martinez*, 5 Phil. 477 (art. 1548); *Enriquez v. Watson & Co.*, 22 Phil. 623 (art. 1548); *Eleizegui v. Lawn Tennis Club*, 2 Phil. 309 (art. 1566, 1577, 1581); *Gonzalez v. Crisanto*, 2 Phil. 404 (arts. 1566, 1577, 1581); *Soriano v. Heirs of Roxas*, 4 Phil. 638 (arts. 1566, 1581); *Co-Tiongco v. Go-Guia*, 1 Phil. 210 (arts. 1571, 1581); *Saul v. Hawkins*, 1 Phil. 275, 280 (art. 1571); *Ventura v. Miller*, 2 Phil. 22 (art. 1571); *Iturralde v. Garduño*, 9 Phil. 605, 607 (art. 1577); *Sitia Teco v. Ventura*, 1 Phil. 497, 499, (art. 1581); *Cruz v. Co-Cuaco*, 4 Phil. 489, 490 (art. 1581); *Gsell v. Kock*, 16 Phil. 1, 4, 5, (art. 1583); *De los Reyes v. Alajada*, 16 Phil. 499, 503, (arts. 1583, 1584).

ART. 1591.—This article (paragraph 2) does not establish a period of prescription of actions as has been suggested. (Willard's Notes, p. 87). The periods stated are nothing more than time limits on the duration of the building contractor's and architect's liability in damages for faulty work. If the damage occurs within the periods designated, the contractor or architect, as the case may be, is liable and action may be brought thereon before it is barred by ordinary prescription. Should the damage arise afterwards there is no liability, no right of action. In force. (*Mauresa, Commentaries*, vol. 10, pp. 700-703; *Sanchez Roman, Civil Law*, vol. 4, pp. 794, 795; *Choy v. Herredia*, 12 Phil. 259; *Bosque v. Yu Chipco*, 14 Phil. 95.)

ARTS. 1608, 1609.—Conditions precedent: in force. See article 1067.

ART. 1614.—Not statute of limitations.

ART. 1620.—Title 18, Book IV of the Civil Code, relates to prescription. It seems that the language used was simply a convenient way of incorporating the then existing rules of prescription to the subject under consideration. Said rules having been modified by subsequent laws it is clear that the article can now refer only to the subsisting law of prescription. With this modification the article is in force.

ARTS. 1637, 1638, 1640.—Conditions precedent, not statutes of limitations for reasons analogous to those explained under article 1067. Sections

463 to 469 of the Code of Civil Procedure may however have repealed all provisions of the Civil Code relative to redemption in judicial sales. (*De la Rosa v. Santos*, 10 Phil. 148; *Martinez v. Campbell*, 10 Phil. 626; *Joaquin v. Arellana*, 11 Phil. 249; *Busas v. Infante*, 13 Phil. 217; *Fabros v. Filla*, 18 Phil. 336; *Aldecoa & Co. v. Navarro*, 23 Phil. 203.)

Art. 1646.—The Civil Code has expressly withdrawn the action to claim *laudemio* from the operation of ordinary prescription in certain cases. The Code of Civil Procedure, however, makes no exceptions of any sort. It is therefore believed that the action in question may only be commenced within the periods prescribed by chapter 3 of the Code of Civil Procedure.

Arts. 1647, 1648, 1649, 1650, 1655, 1656, 1660 (2).—Not prescriptive.

Arts. 1771, 1796.—Conditions precedent, not periods of prescription. In force.

Arts. 1802, 1804, 1806, 1843 (5), 1909, 1924.—Not statutes of limitations. (*Banco Español Filipino v. Donaldson, Sim & Co.*, 5 Phil. 418, 424 (art. 1843); *Saenz v. Yap Chuan*, 16 Phil. 76 (art. 1843); *Kuenzle & Streiff v. Tan Sanco*, 16 Phil. 470 (art. 1843); *Johnson v. David*, 5 Phil. 663, 667 (art. 1909); *Banco Español Filipino v. Peterson*, 7 Phil. 409, 413 (art. 1922); *Ropert & Guamis v. Luengo & Martinez*, 8 Phil. 554 (art. 1922); *Heinszen & Co. v. Peterson*, 10 Phil. 339, 345 (art. 1922); *McMicking v. Tremoya*, 14 Phil. 253 (art. 1922); *Torres v. Genato*, 7 Phil. 204 (art. 1922); *Banking Corporation v. Corrales*, 10 Phil. 435 (art. 1922); *Martinez v. Holliday, Wise & Co.*, 1 Phil. 194, 197 (art. 1924); *Olivares v. Hoskyn, & Co.*, 2 Phil. 689 (art. 1924); *Peterson v. Neuberry*, 6 Phil. 260 (art. 1924); *Gochuico v. Ocampo*, 7 Phil. 15, 19 (art. 1924); *Fidelity & Deposit Co. v. Wilson*, 8 Phil. 51, 58 (art. 1924); *Soler v. Alzua*, 8 Phil. 539, 543 (art. 1924); *Strong v. Van Buskirk-Crook Co.*, 10 Phil. 190 (art. 1924).)

Arts. 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938.—Although they do not prescribe periods within which actions must be commenced these articles deal exclusively with the law of prescription. It would be a highly profitable inquiry to determine the effect of chapter 3 of the Code of Civil Procedure on them, but such investigation is beyond the scope of this thesis. This much should be said, however. It may not be readily admitted that title 18, Book IV of the Civil Code has been wholly repealed, for only a necessary and irresistible implication will be held to operate as a repeal of a statute (*Alabama Branch Bank v. Kirkpatrick*, 5 Ga. 34; *Pratt v. Atlantic, etc. R. Co.*, 42 Me. 579; *State v. Wells*, 210 Mo. 601; *Jesse v. De Chong*, 105 S. W. 1011 (Texas); *Wood v. U. S.*, 16 Pet. (U. S.) 342; *U. S. v. Ten Thousand Cigars*, 28 Fed. Cas. No. 16451), especially so as some of the provisions are of an essentially substantive character. (*Buenaventura*

r. Urbano, 5 Phil. 1). But there can be no question that so much of these articles as are in substantial conflict with the provisions of the Code of Civil Procedure have been abrogated by implication, since the latter Code contains the latest expression of the legislative will in the premises. (*Henrietta Min. etc. Co. v. Gardner*, 173 U. S. 123; *State v. Sawyer*, 139 Ala. 138; *Hogane v. Hogane*, 57 Ark. 508; *People v. Auburn etc. Turnpike Co.*, 122 Cal. 335; *Union Branch R. Co. v. East Tenn. etc. R. Co.*, 14 Ga. 327; *People v. Lytle*, 1 Ida. 143; *Washingtonian Gomez v. Chicago*, 157 Ill. 414, 29 L. R. A. 798; *Heogy v. State*, 85 Ind. 260; *Edgar v. Greer*, 8 Iowa, 394, 74 Am. Dec. 316; *Elliott v. Lochuane*, 1 Kan. 126; *Com. v. Godshaw*, 92 Ky. 435; *Smith v. Sullivan*, 71 Mo. 150; *State v. Northern Cent. R. Co.*, 90 Md. 447; *Johnson v. Quincy*, 198 Mass. 411; *Merriman v. Great Northern Express Company*, 63 Minn. 543; *Gibbons v. Brittenum*, 56 Miss. 232; *Pool v. Brown*, 98 Mo. 675; *Territory v. Gilbert*, 1 Mont. 371; *Allen v. Kennard*, 81 Neb. 289; *Mulligan v. Kavanaugh*, 46 N. J. L. 45; *Baca v. Bernalillo County*, 10 N. M. 438; *People v. Bull*, 46 N. Y. 57, 7 Am. Rep. 302; *Cambridge v. Smallwood*, 27 Ohio Circuit Ct. 302; *Hurst v. Hawk*, 5 Oreg. 275; *Spees v. Boggs*, 204 Pa. St. 504; *Lawrens v. Crawford*, 55 S. C. 594; *Wells v. State*, 3 Lea (Tenn.) 370; *Hogaboom v. Highgate*, 55 Vt. 412; *Haynes v. Com.*, 31 Gratt. (Va.) 96; *Bann v. Sweeney*, 5 Wash. 712.)

See also *Arnedo Cruz v. De Leon*, 21 Phil. 199 (Art. 1930); *Alano v. Babasa*, 10 Phil. 511 (Art. 1932); *Harty v. Municipality of Victoria*, 13 Phil. 152 (art. 1936); *Ins. Gort. v. Aldecoa & Co.*, 19 Phil. 505 (art. 1936).

ART. 1939.—This article is necessarily obsolete, but the Philippine Reports abound with cases decided on the strength of the rule laid down by it. (*Araneta v. Garrido*, 5 Phil. 137; *Pineda v. Gasataya*, 5 Phil. 139; *Garcia v. Diamzon*, 8 Phil. 414; *Albert v. Punsalan*, 9 Phil. 294; *Alano v. Babasa*, 10 Phil. 571; *Concepcion v. City of Manila*, 11 Phil. 552; *Veloso v. Fontanosa*, 13 Phil. 79; *Sunico v. Ramirez*, 14 Phil. 500; *Obras Pias v. Devera Ignacio*, 17 Phil. 45; *Heirs of Jumento v. Lizares*, 17 Phil. 112.)

ARTS. 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954.—These articles do not prescribe periods of prescription. (*Cumagun v. Alingay*, 19 Phil. 415 (art. 1940); *De Castro v. Echarri*, 20 Phil. 29 (art. 1940); *Villanueva v. Claustro*, 24 Phil. 55 (art. 1940); *Villaruz v. Acavraya*, 15 Phil. 108 (art. 1941); *Delgado v. Bonnerie d' Araudez*, 23 Phil. 308 (art. 1941); *Cortex v. Yu Tibo*, 2 Phil. 2 (art. 1942); *Ayala de Roxas v. Maglouso*, 8 Phil. 745 (art. 1942); *Pascual v. Angeles*, 13 Phil. 411 (art. 1942); *San Carlos v. Mun. of Cebu*, 19 Phil. 132 (art. 1942); *Nueva Caceres v. Director of Lands*, 24 Phil. 485 (art. 1942); *Aranjo v. Celis*, 16 Phil. 329 (art. 1945); *Dolindo v. Biarnesa*, 7 Phil. 232 (arts.

1950, 1952, 1953); *Wolfson v. Reyes*, 8 Phil. 365 (art. 1953); *Lacuerta v. Guerrero*, 8 Phil. 719 (art. 1946); *Gabriel v. Bartolome*, 7 Phil. 699 (art. 1950); *Arriola v. Gomez de la Serna*, 14 Phil. 627 (art. 1950); *Santiago v. Cruz*, 19 Phil. 145 (art. 1950).)

ART. 1955.—Section 43, paragraph 3, of the Code of Civil Procedure relates to the same matter covered by the first two paragraphs of this article and has therefore repealed the same, (*Gort. of the P. I. v. Yuchausti & Co.*, 24 Phil. 315) although the Supreme Court, in a spirit of extreme conservatism, has applied it in at least two cases in which the causes of action accrued after the passage of Act 190. (*Sideco v. Pascua*, 13 Phil. 341; *Cajuigan v. Natividad*, 14 Phil. 734). For additional cases on this article see *Valera v. Finnick*, 9 Phil. 482; *Arenas v. Raymundo*, 19 Phil. 46; *U. S. v. Cerna*, 21 Phil. 144; *Delgado v. Bonnerie & Arandez*, 23 Phil. 308.

ART. 1956.—Not a statute of limitations. (*Sideco v. Pascua*, 13 Phil. 342; *U. S. v. Cerna*, 21 Phil. 144.)

ART. 1957.—Ownership and other property rights in real property may now prescribe by adverse and continuous possession for ten years in accordance with sections 40 and 41 of the Code of Civil Procedure as to all persons whether present or absent. "in whatever way such occupancy may have commenced or continued." The whole article is therefore repealed. But see *Yelosa v. Naguit*, 3 Phil. 604; *Yuchausti & Co. v. Commanding General*, 6 Phil. 556, 565; *Dolindo v. Biarnesa*, 7 Phil. 232; *Garchitorea v. Postigo*, 12 Phil. 374; *Arriola v. Gomez de la Serna*, 14 Phil. 627; *De Castro v. Echarri*, 20 Phil. 23.

ART. 1958.—Contains no period of prescription.

ART. 1959.—Repealed in the same way and by the same provisions of the Code of Civil Procedure as article 1957, *supra*. But see *Cortez v. Yu Tibo*, 2 Phil. 24; *Veloso v. Naguit*, 3 Phil. 604; *Garcia v. Hipolito*, 5 Phil. 503; *Caenio v. Baens*, 5 Phil. 742; *Perez v. Cortes*, 15 Phil. 211; *Mun. of Catbalogan v. Director of Lands*, 17 Phil. 216; *Municipality of Taclohan v. Director of Lands*, 17 Phil. 426, 442; *Arnedo Cruz v. De Leon*, 21 Phil. 199; *I. Op. Atty. Gen.* 218; *III Op. Atty. Gen.* 260.

A89: 1960, 1961.—No periods of prescription mentioned.

ART. 1962.—The prescriptive periods provided for in this article must be considered repealed in the same way and for the same reasons as those mentioned in article 1955, *supra*. See cases cited under said article 1955 for construction of this article, specially *Sideco v. Pascua*, 13 Phil. 342.

ART. 1963.—The statute of limitations fixed by this article has been reduced to ten years by the express provisions of section 40 of the Code of Civil Procedure.

A89. 1964.—A mortgage action is one brought to recover a debt secured by mortgages (*Manresa, Commentaries*, vol. 12, p. 869), that is, a real action to foreclose a lien or mortgage. (*Sunico v. Ramirez*, 14 Phil. 500; *Noriano v. Enriquez*, 24 Phil. 584). As such it is based on contract and its limitation is now to be found in section 43 of the Code of Civil Procedure.

The latter part of this article is similar to the other relief clause of the Code of Civil Procedure (section 44) although the classes of actions covered are different. For the application of this clause, see *Somes v. Gorricho*, 4 Phil. 713; *Pineda v. Gasataya*, 5 Phil. 139; *Benedicto v. Perizuelo*, 5 Phil. 632; *Albuo v. Villanueva*, 7 Phil. 275; *Azarraga v. Rodriguez*, 9 Phil. 637; *Veloso v. Fontanosa*, 13 Phil. 79; *Villarruz v. Azarraga*, 15 Phil. 108; *Gomez Medel v. Avecilla*, 15 Phil. 465; *Marzon v. Udtujau*, 20 Phil. 232; *Delgado v. Bonnerie & Arandez*, 23 Phil. 308.

ART. 1965.—No period of prescription stated. (*Alvaras v. Alcantara*, 16 Phil. 489; *De Castro v. Echarrri*, 20 Phil. 23; *Irlauda v. Pitargue*, 22 Phil. 383, 392).

ARTS. 1966, 1967, 1968.—The various periods of prescription provided for in these articles have been replaced by those prescribed in the Code of Civil Procedure. There is a strong dissimilarity in the classification of the different actions between the two Codes, but as elsewhere observed, it is believed that Act 190 has made provisions for the limitation of each and every right of action known to the law and contains exclusive rules as to all periods of prescription of actions. Cases construing these articles: *Somes v. Gorricho*, 4 Phil. 713 (art. 1966); *Osmeña v. Gorordo*, 5 Phil. 37 (art. 1966); *Benedicto v. Perizuelo*, 5 Phil. 632 (art. 1966); *Domingo v. Osorio*, 7 Phil. 405 (art. 1967); *Alonso v. Municipality of Placer*, 5 Phil. 71, holding that section 29 of Act 190 has repealed paragraph 1 of article 1968; *Rodriguez v. Taiño*, 16 Phil. 301, *supra*, (art. 460); *Bishop of Cebu v. Mangaron*, 6 Phil. 286 (art. 1968).

ARTS. 1969, 1970, 1971, 1972, 1973, 1974, 1975.—Do not state periods of prescription. (*In re Estate of Mijares de Fariñas*, 13 Phil. 79 (art. 1973); *Veloso v. Fontanosa*, 13 Phil. 79 (arts. 1973, 1974); *Lichauco v. Limjuco*, 19 Phil. 12 (art. 1973).)

(Concluded, as to the Code of Commerce, in the next issue.)