

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

THESIS SUBMITTED BY JORGE B. VARGAS TO THE COLLEGE OF LAW, UNIVERSITY OF THE PHILIPPINES, FOR THE DEGREE OF BACHELOR OF LAWS, APRIL 1, 1914, GIVEN HONORABLE MENTION FOR THE LAWYER'S COOPERATIVE PUBLISHING COMPANY'S PRIZE FOR THE BEST THESIS.

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UNDER THE CODE OF COMMERCE

ARTS. 4, 5, 6, 11.—Not prescriptive.

ART. 49.—The time of the limitation of the actions which could be brought by virtue of the documents specified in this article is now to be found in chapter 3 of the Code of Civil Procedure and not in articles 942 to 954 of the Code of Commerce and Book IV of the Civil Code to which this article evidently refers.

ART. 60.—Not prescriptive.

ART. 62.—This article mentions the periods after which mercantile obligations become demandable, that is, the time the cause of action accrues, not limitations of the action itself. (*Floriano v. Delgado*, 11 Phil. 154).

ARTS. 76, 83, 85.—Not statutes of limitation.

ART. 98.—The period fixed in article 946 and incorporated into this has undoubtedly been increased by the provisions of chapter 3 of the Code of Civil Procedure (See *infra*, art. 946). Whether that change has had the effect of also augmenting the duration of the bonds mentioned in this article is a question foreign to the present inquiry. All the periods stated in this article are not statutes of limitations in any event.

ARTS. 108, 170, 171, 176, 178, 184 (2), 187 (2), 202 (3), 209, 210, 230, 260, 273, 280, 291, 299, 302.—Not statutes of limitation. (*Banco Español-Filipino v. Tan-Tongco*, 13 Phil. 628 (art. 178); *Reyes v. Compañia Maritima*, 3 Phil. 528 (art. 302); *Martinez v. Cordova & Conde*, 5 Phil. 545 (art. 302).)

ART. 313.—The effect of the period mentioned in this article is similar to that stated in article 62. It is not a statute of limitations. (*Behn Meyer & Co. v. Arnalot Hnos.* 7 Phil. 742; *Artady & Co. v. Sanchez*, 9 Phil. 11; *Mendoza & Co. v. Moreno*, 10 Phil. 144).

ARTS. 316, 323.—Not statutes of limitations.

ART. 336.—There would seem to be little difficulty in determining the effect of the Code of Civil Procedure on this article, not only because the expression used in limiting the exercise of the right recognized by it—“siempre que ejercite su acción dentro de los cuatro días de su recibo” (provided he brings his action within four days following its receipt)—is characteristic of the language of an ordinary statute of limitations, but also because it has been said by no less an authority than a justice of the Supreme Court (Mr. McDonough) in the course of his dissenting opinion in *McCullough v. Aenlle & Co.* (3 Phil. 285), by way of parenthesis, it is true, that “this time has been extended by the Code of Civil Procedure” (p. 303). It has been held by a full court, however, that article 366 which in many respects is similar to this one, does not fix a period of prescription but merely a condition precedent to the accruing of the right of action. (*Infra*, art. 366; *Ins. Gort. of the P. I. v. Ynchausti & Co.*, 24 Phil. 366.) It is submitted that no substantial difference is perceived between the periods laid down in article 366 and in this one, which must therefore be considered in force. In both cases the right of action is conditional upon the presentation of a claim within the designated period of time; without such demand there is no right of action at all. (*Estasen, Mercantile Law*, vol. 3, pp. 208, 213; *Blanco, Mercantile Law*, vol. 2, pp. 145, 146; *Viso, Mercantile Law*, p. 205).

This theory is reinforced by the further provision that the vendor may avoid the claim by demanding when making delivery that the merchandise be fully examined by the purchaser. The seller is thus placed in a position to prevent the accrual of the cause of action within the period prescribed, that is, to preclude the existence of any right in the buyer to demand damages.

The use of the terms “ejercitar” and “acción” is explainable when the provisions of the Spanish Code of Civil Procedure are taken into consideration. Said Code prescribed a special proceeding for the determination of claims like this (art. 2127). Such proceeding was, by its very nature, not an ordinary civil action.

The liability imposed upon the seller by this article is comparable to the guaranty of a thing for a certain time. (See art. 1591, *Civil Code*, *supra*.) The responsibility of the vendor lasts only during four days; after that no cause of action whatever can arise. (But see art. 1472, *Civil Code*, *supra*).

ART. 337.—Not prescriptive.

ART. 342.—The present status of the period mentioned in this article is still more difficult of determination than that laid down in article 336,

supra, for it seems that the actions herein referred to correspond to the civil law "rehabitoria" and "quanti minoris" (*Blanco, Mercantile Law*, vol. 2, p. 146; *Viso, Mercantile Law*, p. 203; *Civil Code*, arts. 1483, 1490), which, as intimated elsewhere, have been modified by the Code of Civil Procedure. The phraseology used in this article, however, is quite different from that employed in article 1490 of the Civil Code. Here the action or right to damages is made to depend upon the making of a claim within the thirty days following delivery—"el comprador que no haya hecho reclamación alguna fundada en los vicios internos de la cosa vendida dentro de los treinta días siguientes a su entrega, perderá toda acción y derecho a repetir por esta causa contra el vendedor" (*Code of Commerce*, art. 342)—while the Civil Code speaks of the extinction of the actions after six months: "las acciones que emanan de lo dispuesto en los cinco artículos precedentes se extinguirán a los seis meses, contados desde la entrega de la cosa vendida" (art. 1490). The distinction is not very sharply drawn but on the authority of *Govt. of the Phil. Is. v. Ynchausti & Co.*, *supra*, and *Kelly Springfield Road Roller Co. v. Sideco* (16 Phil. 345), the article is probably in force as a whole.

It is worthy of notice that the commentators on the Spanish Code of Commerce giving a general survey of the periods of prescription do not include the thirty days mentioned in this article. (*Blanco, Mercantile Law*, vol. 2, pp. 94-96; *Estasen, Mercantile Law*, vol. 5, pp. 290-294; *Viso, Mercantile Law*, pp. 502-504;; *Moret, Code of Commerce*, pp. 550-551.)

ART. 358.—There is direct authority from the Supreme Court of the Philippine Islands to the effect that

"Article 366 and the last paragraph of clause No. 2 of article 952 of the Code of Commerce do not relate to the prescription or limitation of actions. They create conditions precedent to the accruing of the right of action against carriers for damages caused to merchandise and have not been repealed by section 43" (of the *Code of Civil Procedure*). (*Govt. of the P. I. v. Ynchausti & Co.*, 24 Phil. 315, 318, *Cordova v. Warner, Barnes & Co.*, 1 Phil. 7. Cf. arts. 336 and 342, *supra*.)

ARTS. 370, 374.—Not statutes of limitations.

ARTS. 375, 376.—These articles create a lien in favor of the carrier for transportation charges on the goods transported, said lien to last during a certain time (eight days). The period fixed is thus not a period of prescription, but is regulative of a substantive right in the common carrier over the subject-matter of his contract with the shipper.

ARTS. 389, 401, 402, 414.—Conditions precedent, not statutes of limitations. Without giving the required notice within the periods specified herein, there is no right of action. (See art. 366, *supra*.)

ARTS. 409, 411, 416, 418.—Not prescriptive. (*Chang v. Assurance Corporation*, 8 Phil. 399 (arts. 409, 411).)

ARTS. 431, 436.—Similar to articles 389 *et seq. supra*. Not statutes of limitations, conditions precedent only. See article 366, *supra*.

ARTS. 451, 452, 453, 454, 455, 469, 470, 471, 472, 474, 478, 482, 483, 488, 493.—Not prescriptive. (*Pyle v. Johnson*, 9 Phil. 249 (art. 483); *U. S. v. Bedoya*, 14 Phil. 397 (art. 483).

ART. 499.—The period of prescription referred to in this article, if it is in force (see *Act 2031*), is to be found in chapter 3 of the Code of Civil Procedure.

ARTS. 504, 505, 507.—Not prescriptive. (*Hongkong & Shanghai Bank v. Peters*, 16 Phil. 284).

ART. 517.—Creates a condition precedent. Not prescriptive. (*Banco Español-Filipino v. Tan-Tongco*, 5 Phil. 208; *Pyle v. Johnson*, 9 Phil. 249; *Hongkong & Shanghai Bank v. Peters*, 16 Phil. 284).

ARTS. 525, 537, 538.—Not statutes of limitations. (*Hongkong & Shanghai Bank v. Peters*, 16 Phil. 284.)

ARTS. 552, 553, 554, 556, 561, 562, 565.—These articles prescribe the method to be followed in case instruments of credit payable to bearer are lost, stolen or destroyed for any cause whatsoever. The proceeding is a special one, not unlike that provided for in the Civil Code regarding property found without a known owner. (*Supra*, arts. 612, 615). Numerous periods are mentioned, but they cannot be statutes of limitations in the technical sense of that expression. Such periods are nothing more than different steps in the proceeding, somewhat similar to the different degrees of absence. (See *Landa v. Sanz*, 8 Phil. 13, for actual application of the procedure described in these articles.)

ART. 572.—Not a statute of limitations.

ART. 573.—The prescriptive provisions of the Code of Civil Procedure do not distinguish civil from commercial acts, objects, transactions or obligations. To determine the statute of limitations that governs vessels regard is only necessary to the character thereof as property—whether it is real or personal.

Under the Spanish jurisprudence vessels are considered *bienes muebles* (personalty) for all purposes except hypothecation. (*Code of Commerce*, art. 285; *Blanco, Mercantile Law*, vol. 2, pp. 21-23; *Ley de Hipoteca Naval de 1893*, art. 1). They may now therefore be acquired by prescription of four years (sec. 43, *Act 190*). But see *Endiesa v. Toleon*, 12 Phil. 336.

ART. 575.—Not a statute of limitations. See article 1067, *Civil Code, supra*.

ARTS. 579, 580 (4 & 6).—Not prescriptive. (*Ivaneich v. Odlin*, 1 Phil. 284; *Heath v. "San Nicolas,"* 7 Phil. 532; *McMicking v. Banco Español-Filipino*, 13 Phil. 439).

ART. 582.—The period of three months mentioned in this article is not, properly speaking, a statute of limitations, although in a sense it is a time on the rights of creditors against *the vessel*. It is rather a substantive regulation of rights and obligations arising from the sale of vessels in order to avoid fraud against persons having claims thereon. (*Blanco, Mercantile Law*, vol. 2, p. 171; *McMicking v. Banco Español-Filipino*, 13 Phil. 429).

ARTS. 612 (8), 619, 624 (1), 636, 637 (7), 638, 639, 641, 645, 646, 658.—Not prescriptive. (*Guzman v. X & Behn, Meyer & Co.*, 9 Phil. 112 (art. 624); *Garcia v. Ruiz*, 1 Phil. 638 (art. 636); *McMicking v. Banco Español-Filipino*, 13 Phil. 249 (art. 646).)

ART. 667.—Similar to articles 375, 376, *supra*. Not statute of limitations.

ARTS. 670, 675, 688, 689, 698 (2), 720, 728, 733, 761, 765.—Not prescriptive.

ARTS. 770, 774.—Here again are mentioned periods within which certain acts must be performed as a pre-requisite to the accrual of the right of action. (See art. 336, *supra*). Why it should be ten days in one case and eight in the other is not apparent. (*Romero y Giron, Code of Commerce*, p. 533).

ARTS. 781 (6), 787, 792, 793, 795.—Not statutes of limitations.

ARTS. 798, 801, 804 (3), 805.—Conditions precedent to the accrual of the right of action.

ARTS. 806, 809, 811.—No periods of prescription mentioned.

ARTS. 835, 843 (2).—Not prescriptive.

"This provision (art. 835) of the Commercial Code, requiring protest to be made and presented to the proper authority within twenty-four hours after the collision or after the arrival of the injured boat in port, is a pre-requisite to the bringing of an action for damages." (*U. S. v. Smith, Bell & Co.*, 5 Phil. 85).

ARTS. 849, 851, 853, 867, 871, 872, 879, 880, 881, 882, 888 (4 & 5), 902, 913 (c), 933, 934, 936, 938 (1).—Not statutes of limitations. (See *Act 1956*).

ARTS. 942, 943, 944, 948.—These articles relate to prescription but do not fix periods of any kind. (See, however, articles 1930 *et seq.*, *Civil Code, supra*). (*Delgado v. Bonnie & Arandez*, 23 Phil. 308 (art. 943); *Lichauco v. Limjuco*, 19 Phil. 12 (art. 944)).

ARTS. 945, 946, 947, 949, 950, 951, 952, 953, 954.—These articles constitute the body of the special statute of limitations found in the Code of Commerce. The periods herein specified are exceptions to the general and ordinary prescriptions of the common law ("derecho común") existing in the Civil Code. (*Code of Commerce*, art. 943; *Delgado v. Bonnevie & Arandez*, 23 Phil. 308). They are applicable only to mercantile transactions so-called, and are generally much shorter than the corresponding civil law limitations in conformity with the requirements of a rapid and progressive commerce. (*Viso, Mercantile Law*, p. 502; *Blanco, Mercantile Law*, vol. 2; *Éstasén, Mercantile Law*, vol. 5, pp. 290 *et seq.*; *Moret, Code of Commerce*, p. 548). But, as heretofore indicated, the Code of Civil Procedure ignores the distinction so well-footed in the Spanish law between civil and commercial acts or transactions. All rights of actions, whether arising from civil or mercantile causes, must be vindicated within the terms prescribed in chapter 3 of the Code of Civil Procedure. It is therefore clear that the above articles, as far as the periods of prescription are concerned, have been repealed by the last statute of limitations provided for by the legislature in Act 190. (*Govt. of the P. I. v. Ynchausti, & Co.*, 24 Phil. 315 (art. 952); *Delgado v. Bonnevie & Arandez*, 23 Phil. 308 (art. 950); *Lichauco v. Limjuco & Gonzalo*, 19 Phil. 12 (art. 950); *Azarraga v. Rodriguez*, 9 Phil. 637 (art. 950); *Miller v. Jones*, 9 Phil. 148 (art. 950); *Irribar v. Millat*, 5 Phil. 362 (art. 950); *Rodriguez v. Lasala*, 5 Phil. 357 (art. 950); *Noel v. Lasala*, 5 Phil. 260 (art. 950); *Compañía Gral. de Tabacos v. Molina*, 5 Phil. 142 (art. 950).)

CONCLUSION

The conclusion to be derived from the foregoing investigation is that, as a result of the insertion in the Code of Civil Procedure of a statute of limitations covering all rights of action known to the law, the periods of prescription laid down in the articles hereinafter enumerated of the Civil and Mercantile Codes have been repealed or superseded by those prescribed in chapter 3 of the Code of Civil Procedure together with other provisions or acts complementary thereto. [See sections 80, 211, 212, 216, 443, 447, 465, 578, 597, 689, 690, 695, 748, 749, 752, *Code of Civil Procedure*; section 46, *Land Registration Act (No. 496)*; section 6, *Act 267*; *Alfonso v. Commanding General*, 6 Phil. 600; *Cariño v. Ins. Govt.*, 8 Phil. 151; sections 2, 3, *Act 648*, *Omo v. Ins. Govt.*, 11 Phil. 67; *Jones v. Ins. Govt.*, 6 Phil. 122; sections 54 (6), 67, *Public Land Law (Act 926)*; *Valenton v. Murciano*, 3 Phil. 537; *Tiglaio v. Ins. Govt.*, 7 Phil. 80; *Order of Dominicans v. Ins. Govt.*, 7 Phil. 98; *Cariño v. Ins. Govt.*, 7 Phil. 132 (reversed in 212 U. S. 449, 53 L. Ed. 594); *Boardman v. Ins. Govt.*, 9 Phil. 679,

Montano v. Ins. Govt., 12 Phil. 572; *Municipality of Tacloban v. Director of Lands*, 17 Phil. 201; *Ins. Govt. v. Aldecoa & Co.*, 19 Phil. 505; sections 1, 2, *Act 1138*; *Altman v. Commanding Officer*, 11 Phil. 517; *Jose v. Commander of Phil. Squadron*, 16 Phil. 62; section 52, *Internal Revenue, (Act 1189)*; sections 6, 7, 8, *Gambling Law (Act 1757)*; section 4, *Act 1874*; sections 73, 76, *Insolvency Law (Act 1956)*; *Fianza v. Reavis*, 7 Phil. 610 (affirmed in 215 U. S. 16, 54 L. Ed. 72).]

CIVIL CODE.

ARTS. 44, 102 (3), 113, 118, 133 (3), 137, 180, 287, 409 (2), 411, 537, 546 (2), 646, 652, 762, 962 (2), 1076, 1299, 1301, 1472, 1483, 1490, 1496, 1499, 1646, 1939, 1955, 1957, 1959, 1962, 1963, 1964, 1966, 1967, 1968.

CODE OF COMMERCE.

ARTS. 537, 945, 946, 947, 949, 950, 951, 952, 953, 954.

Some of the conclusions herein arrived at may not be accepted with general approval, particularly in those cases where, in order to secure consistency and uniformity, an attempt has been made to distinguish or criticize certain decisions of the Supreme Court (see art. 118, *Civil Code, supra*), and to disregard others (see art. 973, *Code of Commerce, supra*). But they are all here given, not without much diffidence, for what they are worth, in the hope that they may serve as pointers, at least, to a more satisfactory solution of the problem at hand.

