

PHILIPPINE LAW JOURNAL

Published monthly, August to April, inclusive, during the academic year by the alumni and students of the College of Law, University of the Philippines

SUBSCRIPTION

Students P 4.00 per annum; all others P 5.00. Single numbers 75. ctvs.; Supplements 60 ctvs.

Managing Editor

ALEXANDER REYSS, 1914 LAW

Associate Editors

JOSE A. ESPIRITU, 1913 LAW	- - - - -	Alumni
VICTORIANO YAMZON, SENIOR	- - - - -	College News
AURELIO MONTINOLA, SENIOR	- - - - -	Note and Comment

Faculty Advisory Committee

GEORGE A. MALCOLM, Dean of the College of Law
CLYDE A. DEWITT, Professorial Lecturer on Corporations
JORGE BOCOBO, Assistant Professor of Civil Law

NOTE AND COMMENT

AURELIO MONTINOLA, Senior

Editor.

THE NECESSITY FOR A PUBLIC DEFENDER

The advisability of creating a public office designed to protect poor persons accused of crime has been of late the subject of investigation. Now that the Public Welfare Board has the matter under consideration, as an object of special study, it may not be amiss to quote from a recent article entitled as above which appeared in the November number of *Case and Comment* written by Mayer C. Goldman of the New York Bar. He concedes that there is some ground for the objections that "the administration of the criminal law is highly unsatisfactory, unnecessarily expensive, and un-ly protracted" by reason of the numerous presumptions and technicalities which surround those accused of crime. But the truth being the cardinal object of every trial, if the creation of such an office will facilitate, expedite and improve the administration of justice, such a step must be taken. He claims that with a public defender the following benefits; among others, will accrue: "1. That the rights of defendants in criminal cases would be better preserved. 2. That their cases would be more honestly and ably presented. 3. That there would be fewer unscrupulous and perjured defenses. 4. That our prisoners, poor or rich, would be placed upon a true equality before the law. 5. That the truth in any trial could

be more satisfactorily established. 6. That there would be less opportunity for disreputable attorneys to obtain delays in the trial of cases; in order to extract fees from an unfortunate defendant, or from his relatives or friends. 7. That the trials in criminal cases would be expedited. 8. That there would be fewer pleas of guilty by prisoners, at the instigation of attorneys who do not care to be burdened with trials in cases where they receive no fee. 9. And that the tone of the criminal bar and of the criminal courts would be uplifted."

His recommendations follow: "That the public defender be an elected officer; that his compensation should be large enough to make it possible to secure the services of a competent, high-class lawyer, with such staff of assistants as might be necessary to properly conduct such office; that he should have the right to employ detectives and investigators to aid in the ascertainment of the truth in cases wherein he is actively interested."

Mr. Walter J. Wood of Los Angeles, California, the first officer in America to hold the title of "Public Defender," writes interestingly to the same effect in a letter quoted in the Review of Reviews for December.

In view of the foregoing reasons we think such a reform should merit the attention of our criminologists who have always shown interest in the progress of criminal law and the elevation of our standard of justice.

RECENT CASES

DECIDED BY THE SUPREME COURT OF THE PHILIPPINES.

BANKS AND BANKING; BOARD OF MANAGERS; PERCENTAGE OF PROFITS; CONSTRUCTION OF THE BANK'S CHARTER.—"Keeping in view the indefiniteness of *profits* as used in the bank's charter, as well as the phrase *expenses of administration*; the fact that item (a) is a tax upon the capital stock of the bank rather than an expense of administration; the fact that that portion of the profits set off to cover uncollectible credits prevented the impairment of the large voluntary reserve fund which had been accumulated for precisely that purpose, and thus preserved the credit of the bank; the fact that the compensation received by the defendants was not at all excessive; the fact that the bank prospered remarkably under the management of the defendants; and the fact that the stockholders, at the end of each fiscal year, had an opportunity to examine the bank's books and ascertain for themselves how the defendants were computing their compensation and that, notwithstanding this, no objection was made thereto during the entire period of several years covered by the complaint; *Held*, An equitable construction

of the bank's charter justifies the method used for the computation of the profits of the board of managers." *Per Trent, J., in Candido Pascual v. Eugenio Del Saz Orozco et al.*, R. G. 7945, decided December 1, 1914.

SEARCH WARRANTS; PROSECUTION FOR WRONGFUL ISSUANCE; MALICE; PROBABLE CAUSE.—"The statute requires that both malice and the absence of probable cause must exist concurrently in order to justify a conviction. Malice cannot be inferred from the fact that the search warrant failed of its purpose. Probable cause required to justify the issuance of a search warrant is such antecedent facts and circumstances as would induce a cautious man to rely upon them and act in pursuance thereof." *Per Trent, J., in U. S. v. A. A. Addison*, R. G. 9951, decided December 3, 1914.

LIBEL; DISQUALIFICATION OF TRIAL JUDGE; MEASURE OF DAMAGES IN CIVIL CASE.—The basis of the alleged disqualification was simply that the Judge had theretofore tried the same defendants for the crime of libel and that the present action was based upon the same alleged libel. The objection is not based upon any of the grounds of disqualification stated in section 8 of Act 190. "Courts must take into consideration," says Johnson, J., "the standing and reputation of the person libeled in the community in which he lives, together with many other circumstances and relations, which are almost impossible of definition. The damage resulting can not be mathematically ascertained. Courts must do the best they can in an effort to be just to all the parties. The damage resulting from the libeling of a man living in a sparsely settled community, with no political or social relations, even though he might be equally aggrieved, would not be equal to the damage suffered under the same kind of a libel by one living in a thickly settled community, with a high standing socially and politically. In either case, however, the exact amount of damage suffered cannot be accurately computed. The amount which the courts must fix in such case, after having reached the conclusion that the publication was libelous, is largely dependent upon the opinion and discretion of the court." *Mariano Perfecto v. Fulgencio Contreras et al.*, R. G. 8894, decided December 2, 1914.

HOMICIDE; SELF-DEFENSE; REASONABLE MEANS EMPLOYED.—"The victim of an unlawful and unprovoked assault with a heavy club in the hands of a strong and powerful man, whose reputation as a dangerous man was well-known in the community in which he lived, the accused had a perfect right to defend himself, provided the means adopted to repel the attack were reasonably necessary to relieve him from the danger to which he was exposed. Unarmed, as he was, we are not prepared to say that in taking a knife from his pocket and stabbing his powerful assailant who had already struck him twice on the head, he did any more than was reasonably ne-

ecessary to protect himself from an assault which might well have resulted in the loss of his life, and could hardly fail to result in the infliction of grave personal injuries. There was no one present upon whom he could call for help. His assailant was a larger and more powerful man than himself, armed with a club and still pressing the unlawful and unprovoked assault." Defendant acquitted. *Per Carson, J., in U. S. v. Patoto*, R. G. 9259, decided December 1, 1914.

SALE AND SHIPMENT OF GOODS; RIGHT OF PURCHASER TO RETURN UNSATISFACTORY ONES AND BE CREDITED ON ACCOUNT FOR THEIR VALUE.—In the absence of an express agreement, we must look to the conduct of the parties and the nature of their business relations prior to and at the date of the return of the goods which are the subject of litigation. From the facts in the case, there can be no doubt that defendant had a right, acquiesced in and assented to by the plaintiff, to make returns of merchandise shipped her by the plaintiff which she believed to be unsuited for her business. This right was not an absolute unqualified right to return any or all goods received, and there being no express agreement in regard thereto, defendant could only exercise the right in a reasonable manner. This implied agreement practically left the plaintiff in the hands of the defendant, and if he has any just cause for complaint, it would seem that his inability to establish the loss or damage suffered by him must be attributed to the manifestly unbusinesslike arrangement under which he entered into and carried on mercantile relations with the defendant. *Per Carson, J., in Leon Juda v. Mrs. E. C. Clayton et al.*, R. G. 9287, decided December 4, 1914.

CUSTOMARY LAW OF MINDANAO RELATING TO OWNERSHIP OF REALTY; POWER OF PETTY DATTOS.—"1. The tribal and patriarchal customs of the petty dattos in the Island of Mindanao examined and considered in relation to the claim of the petitioners for the registry of land alleged to have been purchased from one of them. 2. The provisions of the Code of Luwaran brought to the Island of Mindanao by the Mahometan Conquerors and by them amended so as to make it applicable to local conditions do not appear to contain any provision as to the acquirement of exclusive title to land by prescription, cession or purchase. 3. Act 718, making voids land grants from Moro Sultans or dattos or from chiefs of non-Christian tribes when made without governmental authority or consent, examined with relation to the tribal customs of the Moros touching the occupation and cultivation of lands. 4. It would appear from the evidence adduced in this case that according to the laws and customs of the Moros, as understood by them prior to the American occupation of the Philippines, a Moro datto was recognized as the owner of such parcels of land as were actually occupied and cultivated by him for

a long period of time, and upon which were located his home and the tomb of his ancestors, but he did not acquire an exclusive right in and to lands not in fact occupied or cultivated by him, although he may have exercised a certain jurisdiction over a considerable territory by virtue of which he succeeded in preventing others from entering or occupying it without his consent." *Per* Carson J., in *Demetria Cacho v. The Government of the United States*, R. G. 9408, decided December 10, 1914.

ALUMNI

(Alumni are requested to contribute to this department.)

JOSE A. ESPIRITU, 1913 Law *Editor*

Board of Directors, College of Law Alumni Association

MANUEL A. ROXAS, 1913 Law *President*

H. LAWRENCE NOBLE, 1914 Law *Vice-President*

JOSE A. ESPIRITU, 1913 Law *Secretary-Treasurer*

AURELIO A. TORRES, 1914 Law *Member*

JOSE YULO, 1914 Law *Member*

THE ENGLISH BAR

By an alumnus.

"With great respect, your Lordship, Yes!" These words may be heard frequently in the Courts of England and characterizes the deference shown to the judiciary by the members of the English Bar. It is interesting to note the effect of this upon American visitors. One writer states: "indeed the affectation of deference that is usually shown therein by counsel to the judge is sometimes depressing to one's sense of manhood." On other hand, another writer takes this critic to task, stating that "it is not any affectation of deference towards the judge or any feeling of his omnipotence that determines the respectful conduct of barristers towards the bench. The deference is real because it is generally merited and because at least some deference is necessary."

Such a fair and impartial statement of the case can hardly fail to win the approbation of all thinking men. The solemnity of proceedings in court should be encouraged all the world over, rather than ridiculed. It is from the deferential respect paid by lawyers to the court that the public takes its cue and if lawyers who are officers of the Court fail in this respect, what may in the end be expected from the public?

The legal profession is divided into two branches, the solicitor and the barrister. The amalgamation of these two professions has been a particularly vexed question in England and while it has been advocated by many eminent men there is little probability that it will ever be accomplished. The solicitor sees the client, prepares the briefs and generally takes charge of all the preliminary details, but he may not plead in Court. This can only be done by a barrister. There is no system of keeping

public records in England of deeds and mortgages, and accordingly the solicitors become the repositories of such records. Socially the profession of barrister is considered higher than that of a solicitor, although a solicitor can be called to the bar in one year, providing he passes the necessary examinations.

Ordinarily a barrister will not consider a case unless it is brought to him through the medium of a solicitor, and many foreign litigants have considerable trouble at first owing to their failure to recognize the distinction between the two branches of the profession.

It is argued by advocates of the English system that it raises the dignity of the bar, and eliminates many features of "sharp practice," indulged in by irresponsible lawyers just to win a case, because the public in general are oftentimes too apt to judge a lawyer's ability by the number of cases he wins. The barristers on the other hand are judged by the solicitors who employ them and who are themselves learned in the law. Consequently they are in a better position to judge the pleader's qualification and even though he may be unsuccessful in winning cases where the law is not on his side, no prestige is lost thereby.

COLLEGE NEWS

VICTORIANO YAMZON, Senior

Editor

Student Council

THE DEAN, College of Law,	<i>Chairman ex-officio</i>
JOSE TEODORO, President of the Senior Class,	<i>Chairman pro-tempore</i>
LORENZO CAMPO, Representative of the Sophomore Class,	<i>Secretary</i>
AURELIO A. TORRES,	Representative of the Alumni
JACINTO KAMANTIGUE,	Representative of the Senior Class
JOSE GIL,	President of the Junior Class
VICENTE VARELA,	Representative of the Junior Class
PEDRO YLAGAN,	President of the Sophomore Class
JOSE MELENCIO,	Representative of the Freshmen Class
FABIAN DE LA PAZ,	Chancellor, Philippine Barristers
PROCESO SEBASTIAN,	Master Musician, College of Law Musical Club
MARCELLIANO MONTEMAYOR, Board of Control, University Athletic Association	

JUDGE KINCAID LECTURES

"Some Suggestions for the Practice of Law in the Philippines," the title of the talk by Judge W. A. Kincaid, of the Manila bar, before the law forum on December 5, proved to be one of the most interesting addresses ever given before the student body of the College of Law.

The speaker emphasized the importance of strengthening the moral fiber of every law student, without which he said no one could be successful. He then spoke of his practical experiences, interspersing his remarks with anecdotes and little incidents that were listened to with the keenest interest by the audience. The talk by Judge Kincaid came straight from the heart; it was delivered with that careless abandon into which convincing speakers always throw themselves, and the outburst of applause that followed the close of his speech was an indication of the impression that his talk made on the students of the College.

"CHINESE IMMIGRATION" SUBJECT FOR JOINT DEBATE

"Resolved, That a law permitting Chinese immigration into the Philippines should be enacted . . ." this is the subject to be discussed by the speakers in the joint debate held annually between the Senior class and the Philippine Barristers. The debate will be given on the twenty-third of this month. The Barristers uphold the affirmative, while the Seniors sustain the negative.

"HORAS DE LUZ" BY VILLANUEVA

Horas de Luz (Hours of Light) is the title of a volume of poems recently issued by Francisco Villanueva, a member of the graduating class of this College. The poems are in Spanish, and have previously been published in numerous papers and magazines in the Islands. They are compiled for the first time by the author.

The following is a translation of the letter from the Governor-General, published in *La Vanguardia* of recent date:

"I have experienced great pleasure in reading, and I can add in re-reading, the charming verses which you were so good to send me last week. *Horas de Luz* is certainly a work most worthy of praise, and happy indeed is the country whose bards sing such sublime soul-stirring harmonies.

"I profoundly esteem and appreciate your generous verses, alluding to my person and to what I have endeavored to perform in these Islands since the President entrusted me with a mission in keeping with his policy; and to tell the truth I feel encouraged to persevere upon seeing with what indulgent appreciation you have judged my work, although I am yet far from being successful in giving realization to that high ideal, which day by day I endeavor to approach.

"Again thanking you, my dear Mr. Villanueva, for the good opinion which you have of myself and for the pleasure and the encouragement which your poems have furnished me, I remain.

"Yours sincerely,
"Francis Burton Harrison."

MONTEMAYOR WINS ORATORICAL CONTEST

The Carson gold medal and ₱75, symbolic of excellence in oratory, was won this year by Marceliano Montemayor, of the class of 1915, while the Carson silver medal and ₱25 went to Paulino Gullas, class of 1916. The contest was held December 16. The following is clipped from *El Ideal*:

Marceliano Montemayor, of Alaminos, Pangasinan, first prize; Paulino Gullas, of Cebu, Cebu, second prize; and Hilarion Elumba, of Surigao, Surigao, honorable mention—this is the result of the very brilliant oratorical contest held last night in the fine auditorium of the Normal School, under the auspices of the College of Law of the University of the Philippines. Last night's contest was the third given by the College.

The big hall was filled by a select and cosmopolitan audience, which numbered more than a thousand.

The act was presided over by His Grace Archbishop Harty, and the judges were Secretary Denison, former Secretary Araneta, Justice Trent, President Ortigas of the Code Committee, and Assemblyman Guvera. Justice Torres presented the prizes which are yearly offered by Justice Carson, consisting of a gold medal with fob attachment and ₱75, and a silver medal with fob attachment and ₱25.

The event opened with a fine overture by the Manila high school orchestra; then Dean Malcolm of the College of Law stood to explain the purpose of the oratorical contest and to thank all who had come to make the contest a success. He then introduced Archbishop Harty, who pronounced an address, brief but pregnant with helpful advice.

The first two contestants were Messrs. Felipe Estella, who spoke on The National Language of the Philippines, and Paulino Gullas whose subject was The Call for Filipino Leaders. With another musical piece rendered by Misses Amanda Morente and Teresa Yulo, the orations continued, Mr. Lorenzo Campo discussing Our Public Schools, and Mr. Hilarion Elumba, The Influence of Philippine Private Schools. Accompanied on the piano by Professor Carreón, Miss Teresa Padua sang a solo with exceptional grace and charm. The audience called for an encore.

The last two speakers were Messrs. Bernabe Aquino, whose subject was The Philippines on the Threshold of Emancipation, and Marceliano Montemayor who pronounced A Tribute to Napoleon Bonaparte. After another musical selection, consisting of a quartette by Messrs. Padilla, Azarraga, Fresnidos, and De Jesus, the decision of the judges was announced by Archbishop Harty. Justice Torres then presented the prizes to the winning speakers, after congratulating the youth of the Islands on being educated in the public schools.

Last night's contest was a most brilliant affair. The speeches of elevated thought, of careful preparation, captured the attention of all. The oration by Mr. Montemayor was a fine specimen of literary composition.

We congratulate Messrs. Montemayor, Gullas, Elumba, and the other speakers.

A TRIBUTE TO NAPOLEON BONAPARTE

Winning Oration by Montemayor.

Every crisis brings forth a hero. The French Revolution was the greatest crisis in history; so, it brought forth to the world the grandest hero, not only of France but of all mankind,—the man who in the words of Lamartine was "the greatest of the creations of God."

Let us turn back to the closing years of the 18th century, when France was in the throes of a mighty revolution, an era of chaos, anarchy and

horror. The king and the queen were executed, and there was a wholesale butchery of the nobility. The Reign of Terror was in full sway. Paris was in the hands of a lawless and licentious mob which controlled a weak and irresponsible legislature. Enemies were pouring from every border into France, threatening her very existence. The Convention, attempting to frame a new constitution, incurred the displeasure of the rabble which straightway started towards the legislative building for another butchery. On its way it was repulsed and swept away by the well trained guns of a young Corsican artillery officer, Napoleon Bonaparte.

The mob had at last met its master, and the Revolution had found a worthy leader, a man of the rarest genius and patriotism, who was to restore order from chaos, and change an aimless and bloody revolution into a mighty and sublime struggle for liberty and equality—A man who was to reorganize France from a people weak with dissensions, stricken with poverty and ignorance, and trodden down with oppression, into a prosperous, free and powerful nation, that single-handed was to contend with the leagued powers of Europe, and for twenty years to hold them at her feet.

His reforms and undertakings proved to the world that he was not a mere soldier of fortune, but a consummate statesman, a social reformer and a constructive genius. Christianity, which under the radicals had been abolished, was by him restored. The fundamental rights of the people were guaranteed by a liberal constitution. He constructed public buildings and monuments which to this day remain the pride of the French nation. But the most famous, the most permanent, as well as the most far-reaching in its influence upon the world's civilization of all his achievements was the compilation of what was known as the Code Napoleon, which has entitled him to rank with Justinian as one of the greatest law-givers of mankind. His code secured the work of the Revolution for Western Europe, and is now used even by those nations that conspired to bring about his downfall.

The cabinets of the continent saw in him a powerful champion of democracy and a dangerous enemy of despotism and aristocratic privilege. When he offered peace to Europe, he was answered with a declaration of war from all sides. Coalition after coalition was formed by all the great powers of the continent to crush him. Napoleon with his devoted marshals and soldiers proved to Europe what genius inspired with a noble cause could accomplish,—achievements which have no parallel in history, and which still amaze and dazzle the world to the present day. But after his invasion of Russia, where three hundred thousand of his Grand Army

were left buried in the snows, a grand coalition was formed, for the seventh and last time. He met the allies on the memorable field of Waterloo.

The whole continental struggle exhibited no sublimer spectacle than this last effort of Napoleon to save his sinking empire. The fate of Europe depended upon the issue of that battle, which was watched with anxiety by monarchs upon their tottering thrones. His military genius would again have carried the day, but his marshal Grouchy failed to aid him, and at the critical moment when Wellington's squares were wavering, Blücher arrived with thirty thousand Prussians and turned the tide of battle. The Old Guard that never recoiled before a human foe made its last charge, and left its hitherto invincible ranks upon that bloody field.

That infamous coalition completely triumphed over its unfortunate foe. Despotism settled back in its ancient places, but the ideas for which Napoleon fought and died became deeply rooted in the minds of the people, and greater political upheavals were soon to drive back the wave of oppression, and carry to reality his dream of a liberal and democratic Europe. Robert Hall, that Christian divine and Englishman, said, "When I heard of the result of the battle of Waterloo, I felt as if the clock of the world had gone back six ages." That genuine sentiment, true then and truer now as viewed by the light of our liberal institutions, shows the mission of that immortal liberator, and the falsity of the accusations of his notorious critics.

Let those who regard Napoleon as a monster and as the scourge of Europe go and ask those peoples of Lombardy, Venetia, Saxony and Finland to whom he gave popular governments, and who have been divided like a herd of cattle by the commissioners of Vienna, what they gained by the triumph of that shameful coalition. Let them ask the people of Poland groaning under Russian tyranny, whose last hope for independence was shattered at the field of Waterloo, what they gained by Napoleon's downfall. Let them ask the people of France who idolize him, and the lovers of democracy and human progress the world over, what man and liberty gained by the overthrow of that power which shed terror into the hearts of despots, and flinging aside the broken idol of the "Divine Right of Kings" set up in its stead the "Divine Right of the Individual." Listen to the voice of those peoples before rendering verdict whether Napoleon's career is a blot, or rather an embellishment on the pages of history.

The dynasties of the continent condemned him as the disturber of the peace of Europe, little dreaming that a century later, in the midst of all their vaunted civilization, they would draw their peoples into the

most tremendous war in history, besides which the Napoleonic wars sink into insignificance; a war not for liberty and social reform, but for greed and power. Let the Kaiser of Germany and the Emperor of Austria, the King of England and the Czar of Russia stand before the high tribunal of injured Humanity and plead to the charge of disturbing the peace not of Europe alone, but of the whole world. Let them stand before God and before man, and answer for the bloody devastation and untold suffering into which they have plunged a whole continent, and be judged by the same standards by which their ancestors had unjustly condemned the dying captive of St. Helena.

Napoleon as a soldier and leader had no equal. As a statesman, he ranks with Caesar, and as a lawgiver, his name is linked with that of Justinian. Napier believed him to be the greatest man of whom history makes mention. "Never," says Alison, "were talents of the highest, genius of the most exalted kind, more profusely bestowed upon a human being." Born as an obscure provincial, through merit he rose to the fairest heights of power and to the pinnacle of fame. Some heroes are born only for a crisis, but Napoleon was born to be a world factor. In the words of Professor Sloane of Columbia, "Napoleon's career was a historic force, not a mere meteoric flash in the darkness of the Revolution."

Nineteen years after his tragic death at St. Helena, by universal request his body was brought to France. Never was such a funeral paralleled in history. One hundred fifty thousand soldiers and more than a million citizens assisted at the royal ceremonies. At the funeral service three hundred musicians played Mozart's Requiem in the Church of the Invalides, where now that great hero lies. His last wish of resting "by the banks of the Seine among the French people whom he had loved so well" was at last carried to fulfillment. That vast multitude was moved to tears. Could Napoleon have foreseen all this love and sympathy of his people; could he have foreseen how thousands of people of every race from all parts of the world, would every year make a pilgrimage to his fatherland, just to stand by his tomb under that sacred dome of the Invalides to pay homage and do honor to that wonderful soldier, genius and patriot, that bitter exile and death perhaps might not have been quite so desolate and pathetic.

O, thou noble heart, whom Heaven has blessed with such rare endowments, mankind can never repay thee for all thy work so grand and sublime! Centuries may pass; the monuments erected to thy memory may crumble to dust, and pass into oblivion, but thy work shall ever live, and future generations will cherish thy name. Thy star which so

brightly rose at Marengo, blazed in all its ancient glory on the plains of Austerlitz, and set upon the field of Waterloo, has left in its path in the heavens a glorious light, that shall forever shine as a symbol of genius and greatness, to impel men to self-sacrifice and noble endeavor, till time has passed into eternity.



MARCELIANO MONTEMAYOR, 1915 Law,
winner of the Carson first prize for
excellence in oratory and of the Villa-
mor first prize for being the best
athlete in the College.

Pages 319-326 (inclusive) include advertisements and are omitted from this reproduced copy.