

# PHILIPPINE LAW JOURNAL

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## SUBSCRIPTION

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## NOTE AND COMMENT

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*Editor.*

### NOTES ON THE CODE OF COMMERCE, ESPIRITU

A work which should prove of great value to lawyers and law students is entitled "Notes on the Code of Commerce (*Apuntes sobre el Código de Comercio*) by José Espíritu, LL.B., Instructor in Mercantile Law, University of the Philippines (*Catedrático de Derecho Mercantil, Universidad de Filipinas.*)" The basis of the book is an article originally published in the August issue of the Philippine Law Journal. The article, however, proved so popular that copies of this number were soon exhausted. Mr. Espíritu has, therefore, revised and expanded his work, besides translating it into Spanish on alternate pages and published the same in this more convenient form. The Lawyers Co-operative Publishing Co., 110' Echague, Manila, are the publishers; price ₱3.50.

### DR. JOSE RIZAL'S PROSECUTION

*Proceso del Dr. José Rizal Mercado y Alonso con notas, apéndices é ilustraciones* is the full title of a valuable book which the well known writer Mr. Epifanio de los Santos Cristobal published some time ago. Though somewhat late, the purpose of this review is to impress upon our students, especially those of the College of Law, both the historical and the legal value

of the book. The author, a member of the *Real Academia de la Historia*, has with great ability collected in this small volume all documents which have more or less bearing upon that unfortunate prosecution, publishing, perhaps for the first time, in his *Notas Bibliográficas* and in the appendix, some letters which have incalculable value to the student of the different phases and tendencies of the Spanish colonial policy at the time. To the law student it shows how prosecution was conducted and justice administered here during the Spanish regime.

#### **A SUPPLEMENT TO THE PHILIPPINES REFERENCE DIGEST**

The Philippines Reference Digest published about a year ago has received a valuable addition in the first Supplement recently given to the public. It contains a digest of the decisions rendered by our Supreme Court since July 30, 1912, and reported in volumes 23 to 26 of the reports, and in the Official Gazette up to October, 1914, with references both to the paging of the reports in English and to the *Jurisprudencia Filipina*. As may be seen, the author, Mr. John Schofield Hineckley, a member of the Philippine Bar, has endeavored to bring his work as nearly up to date as practicable. Let us hope that the supplement will receive the same hearty welcome received by the book, supplying, as Mr. Justice Johnson says, "a long standing need of the bar as well as the Courts of the Philippine Islands."

#### **THE NEW INSURANCE LAW**

The Philippine Legislature enacted on December 11, 1914, the "Insurance Act," (No. 2427) to take effect on and after the first day of July, 1915. Sections 147 to 153, inclusive, of Act 1459, the Corporation Law; Title Eight of Book Two and section Third of Title Three, Book Three of the Code of Commerce are expressly repealed by this law. The full text is published in XIII Off. Gaz. 41.

#### **THE WISCONSIN EUGENICS LAW UPHELD**

The progressive state of Wisconsin, which has always shown keen interest in scientific legislation, has taken another step towards what might be the elimination of a social evil, which has occupied the attention of scientific men and social reformers all over the United States. In *Peterson v. Widule, County Clerk*, decided by the Supreme Court of that State and reported in 147 N. W. 966, it was held that the statute requiring all male persons applying for a marriage license to file with the county clerk a physician's certificate that they are free from acquired venereal disease 15 days prior to the application is neither an unreasonable restriction on the right to marry, nor a restraint of the right to enjoy life, liberty and the pursuit of happiness, nor is it based on an unreasonable classification be-

cause it does not require the same certification on the part of the women. "The question of the efficacy of this legislation is a very close one and cogent reasons to support both sides may be advanced. Its ultimate benefit or detriment is a question which can only be settled in the future by a close comparison of statistics before and after the enforcement of the law." See 13 Mich. Law Rev. 40.

## RECENT CASES

DECIDED BY THE SUPREME COURT OF THE PHILIPPINES

**MARRIAGE; IMPEDIMENTS TO; NATURAL CHILDREN; ACKNOWLEDGMENTS** OF.—There are no longer any impediments to marriage or causes of nullity in this jurisdiction, except those specified and enumerated in General Orders No. 68. Hence a priest *in sacris* may now contract a valid marriage.

In an action against one of the parents for acknowledgment of a natural child, it is not necessary to show that both parents were capable of contracting a valid marriage at the time of the child's conception. It is sufficient to show that this was true of the parent against whom action was brought. The law presumes that such was the condition of the other parent, and this makes evidence as to the identity of the latter unnecessary. Evidence rebutting this presumption is incompetent.

In an action *contesting* the acknowledgment of a natural child, the presumption that the parents or either of them was competent to contract marriage at the time of the child's conception is rebuttable, and evidence tending to show their identity and status at that time is admissible. *Per Trent, J., in Rafael Aquino v. Fidente Atanasio Enriquez*, R. G. 9351, decided January 6, 1915.

**WITNESSES; PRIVILEGED COMMUNICATIONS; ATTORNEY AND CLIENT; COMPROMISE**.—Communications made by a client to his attorney for the purpose of being communicated to others are not privileged after they have been so communicated and may be proved by the testimony of the attorney. This rule applies to a compromise agreement perfected by the attorney under the authority and under the instruction of his client. As to whether a waiver of the client's privilege personally made in open court can be withdrawn before acted upon, *Quare*. *Per Trent, J., in Uy Chico v. The Union Life Assurance Society, Ltd.* decided January 6, 1915. R. G. 9231.

**BIGAMY; EVIDENCE; PUBLIC WRITINGS; CHURCH REGISTRIES**.—Church registries of births, marriages, and deaths made since the promulgation of G. O. No. 68 and the passage of Act 190 are no longer public writings nor are they kept by duly authorized public officials. They are private writings and their authenticity must therefore be proved as are all private writings

in accordance with the rules of evidence contained in the Code of Civil Procedure. The cases cited in the decision holding certificates from church registries to be public writings dealt only with records made prior to change of sovereignty. *Quare* if certificates or abstracts prepared from church registries by authorized church officials may be considered competent proof of the facts they recite when properly identified under section 324 of the Code of Civil Procedure. *Per Trent, J., in United States v. Juan Erangelista*, R. G. 9841, decided January 6, 1915.

DECIDED BY THE SUPREME COURT OF PORTO RICO.

DISINHERITANCE; INTERPRETATION OF WILLS; INTENTION OF TESTATOR; REFERENCE TO A DIVORCE SUIT AS A CAUSE FOR DISINHERITANCE.—The general rule that wills must be construed according to the intention of the testator, has no application to the disinheritance clauses, but in those cases the legal provisions allowing disinheritance must be strictly observed. Reference in the will to the grounds for divorce stated in a complaint filed in a court is not a sufficient expression of cause for disinheritance, as required by the Civil Code. *Per Wolf, J., in Mendez v. Celis*, No. 1984, decided June 3, 1914.

ELECTRICITY; VOLTAGE, NECESSARY TO CAUSE DEATH; EFFECTS PRODUCED BY THE ELECTRIC CURRENT.—Although it is true that there is no fixed rule as to the number of volts an electric current should have to cause the death of a person, it can be said that it must have more than 110 volts, which is generally harmless. And when an electric current produces the effect of lifting a big man violently and throwing him over the balcony to the house in front, causing grave burns in his body and finally his death, it can clearly be inferred that such a current has more than 110 volts and therefore more than is usually transmitted to furnish light to houses and the lower court erred in not considering it as such. *Per Del Toro, J., in Rosado v. Ponce Railway and Light Company*, No. 951, decided June 9, 1914.

PRELIMINARY INJUNCTION; RULE TO MAKE PERMANENT OR TO DISCHARGE; STAY OF EXECUTION OF A JUDGMENT.—Ratification or revocation of a preliminary injunction rests on the sound discretion of the court, regulated by wise and just rules, and unless it is shown that the lower court abused its discretion, it shall not be controlled by the appellate court. A stay of execution by injunction may be granted to avoid damages and further suits. *Per del Toro, J., in Leon et al. v. Colon et al.*, No. 1153, decided July 30, 1914.

DECIDED BY THE SUPREME COURT OF SPAIN.

LITIS EXPENSES IN DIVORCE SUIT; CHARGES OF THE CONJUGAL PARTNERSHIP; ABSENCE OF HUSBAND'S AND CONJUGAL PROPERTY.—The Supreme

Court of Spain has held, construing paragraph one of article 1408 of the Civil Code, that the husband's obligation of giving his wife the necessary expenses in a suit between them is generally recognized, when the wife has no private property (*Sentencia de 26 de Enero de 1897 y 9 de Octubre de 1907*), from which it may be inferred that this obligation of the husband is chargeable to the conjugal partnership. But when it is shown that there is no community property, comprised under paragraphs one and two of article 1401 of the Civil Code, and the husband has no private property, it is clear that the obligation to give his wife litis expenses, so that she may sue him for divorce does not exist and is not demandable. *Sentencia de 9 de Marzo de 1914*.

LEGAL REDEMPTION; FROM WHAT TIME PERIOD BEGINS WHERE THERE ARE TWO INSTRUMENTS, THE ONE MODIFYING THE OTHER; TITLE NECESSARY TO EXERCISE RIGHT.—The Supreme Court held that where an instrument was executed by which vendors held themselves to be the owners of the whole property, and a second instrument was executed to modify the first, and this second instrument recognized a part ownership in the person now bringing suit for redemption under Book IV, Chapter VI, Section 2 of the Civil Code, both instruments may be considered as one for the purpose of fixing the legal term for redemption, which may be computed from the execution of the last instrument. Not only the owner but the possessor, in the capacity of an owner, and any other person who bases his action even in titles not registered, may exercise the right of redemption. *Sentencia de 25 de Febrero de 1914*.

# ALUMNI

(Alumni are requested to contribute to this department.)

JOSE A. ESPIRITU, 1913 Law

*Editor*

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## A YEAR'S EXPERIENCE IN THE PRACTICE OF LAW

*By Alejandro de Guzman Floirendo*

Without exaggerating the little importance of the progress which I have achieved during my first year, in the practice of law, I will relate the way I have conducted myself in order to attain success in the legal profession. Familiarity with the law and courts' decisions and sympathy towards the people are the main elements that lead to the lawyer's success, things I never lost sight of since I began to practise.

The first case I had was criminal. It was rather a difficult one for a young practitioner to handle inasmuch as it dealt with marriage celebrated in disregard of "diriment impediment" (arts. 472 *et seq.*, Penal Code). To have a clear understanding of the case, one had to make a thorough investigation of the canonical law applicable to the subject. It fell within my lot to lose the case, as, in fact, I did lose it. Then some of my friends prophesied that I would lose all my subsequent cases for I had lost my first one, or, in other words, I failed in my "debut." But others said that it was a splendid way of starting the profession for it meant that I would win all the rest. Of course much could be said on both sides, but I know that none of them was right.

After having tried my first case in the court of first instance of Pangasinan, at the invitation of Governor Ortiz, I went to La Union for the January court's session in that province. Indeed, I made a fine start in the said province. I appeared in a dozen or more criminal cases and strange to say, at the close of the session, the Fiscal, taking me by surprise, said that I had made more acquittals than anybody else. I asked him how he knew it, and he answered me by saying that the court's record was his authority.

From that time I have kept on practising within the sphere of my activity which embraces the provinces of Pangasinan, La Union, Tarlac and sometimes also Benguet, having Lingayen for a permanent location.

Whenever I have time to do so I go out to the municipalities for justice of the peace cases, thus making trips throughout the whole province of Pangasinan or La Union. In the trial of these justice of the peace cases, the lawyer often-times finds himself confronted with several difficulties. He may appear before a stubborn justice of the peace who favors one side or another, and who sometimes has to completely disregard the provisions of the law for political or financial reasons, or because of his intimate relation of friendship with one of the parties, which the law, however, does not make a sufficient ground for the justice's recusation. The young lawyer may happen to have a *procurador judicial* for an adversary who does nothing but boasts himself, if he has beaten the lawyer, saying that he has beaten the man with the degree. So that the highest degree of care should be exercised by the young lawyer in accepting justice of the peace cases. The following must not be left out of consideration. He must be sure to be on the right side of the law. He must have at least some idea of the way the justice of the peace has conducted himself as such, or else must have learned the art of making the justice of the peace believe in what he (the lawyer) says.

In trying cases in the court of first instance such degree of care need not be exercised for there is only very little danger, if any, for the judge to be subjected to the influence of some political party, or to any of the influences above referred to, taking into consideration his upright moral standing, his sterling integrity and the qualifications prescribed by law for holding such position. He decides questions in accordance with strict justice and leaves the gate of professional reputation wide open to the young practitioner.

During my first year's practice in law I handled many administrative cases before provincial boards as well as judicial cases, and I succeeded in winning about 75 per cent of them. Sometimes, I go out to a municipality to defend before the provincial governor the whole body of public municipal officials charged with negligence or irregularities in the performance of their duties.

Generally, the complainants in these cases are some discontented members of the political party which has been defeated in the last elections. In trying administrative cases, taking into consideration the quasi-judicial nature of the provincial board, practically the same rules of procedure prescribed for the court of first instance are being followed. In this con-

nection let me suggest that Judge Villamor's work on municipal and provincial governments is of remarkable value and a splendid guide to the lawyer.

Familiarity with the law and courts' decisions is an essential requisite to the attainment of success in the legal profession. This requisite can be easily complied with by a continuous reading of the acts of the Philippine Legislature, the codes and the Official Gazette. But this requisite alone, unaccompanied by good logical reasoning and sympathy towards the people would be of no use to the lawyer. It would be nothing but a mere accumulation of knowledge that in no way may benefit him. No matter how learned the lawyer is, if he stands alone without a client, he is out of luck in the profession. Clients to the lawyer for the purpose of acquiring professional and political distinction are as pure air is to humanity. How to acquire and retain clients is the next problem which confronts the lawyer.

Let me impress upon the mind of every law student and everyone of my "compañeros" that the most important factor in the attainment of success and reputation in the practice of law, according to my own personal experience is sympathy. It is sympathy that makes the lawyer popular, loved by all alike and makes him a statesman. It is sympathy that constitutes the silver link between him and his clients. And finally, it is the lawyer's sympathy with the judge that turns the case in behalf of the former, where there is an equally divided preponderance of evidence on both sides. This usually occurs in *reivindicación* cases where in the absence of documentary proofs or any clear-cut provisions of law that govern the case, the oral proof or testimony adduced by the parties decides the case.

#### ESPIRITU ON THE CODE OF COMMERCE

The first alumnus to blossom out as a real live author is José Espiritu, 1913. Notes on the Code of Commerce! Thus is there born a peer of Manresa, Blackstone, and the other great commentators on the law. However, seriously speaking, every alumnus needs the book in his practice.—*G. A. M.*

#### VARGAS NAMED LAW CLERK

We clip the following from the Cablednews of January 26:

George B. Vargas, a graduate of the University of the Philippines and of the College of Law, and for some time a practicing attorney in Iloilo, has been appointed law clerk in the office of the secretary of the Commission. He commenced his duties on Monday.

Sr. Vargas comes from a prominent family in Iloilo and has been chosen because of his legal training and his knowledge of English and Spanish.

## COLLEGE NEWS

VICTORIANO YAMZON, Senior

Editor

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### Student Council

THE DEAN, College of Law,	<i>Chairman ex-officio</i>
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VICENTE VARELA,	Representative of the Junior Class
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FABIAN DE LA PAZ,	Chancellor, Philippine Barristers
PROCESO SEBASTIAN,	Master Musician, College of Law Musical Club
MARCELIANO MONTEMAYOR, Board of Control, University Athletic Association	

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### JUNIOR MEETING OF JUNIOR ASSEMBLY AND BARRISTERS

The joint meeting of the Junior Philippine Assembly and the Philippine Barristers, representing respectively the Philippine Normal School and the College of Law, University of the Philippines, was held on January 9, in the Normal School auditorium. There was a big crowd present to listen to the addresses by the guests of honor, Assemblyman Pedro Guevara, chairman of the committee on public instruction of the Philippine Assembly and ex-officio member of the Board of Regents of the University, and Frank L. Crone, director of education. In addition to the moot court featuring a criminal case, and the discussion of a bill by members of the Junior Philippine Assembly, there were fine musical selections by the students of the two institutions.

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### COLLEGE DECORATED AUTO FOR RIZAL DAY

Only the absence of a prize offered by the Rizal Day committee for 1914, for the best decorated automobile, prevented the College of Law from repeating the success the year before, when first prize went to this institution for the float that it used in the parade. This college has set the precedent of participating in celebrations commemorating the anniversary of the death of the Filipino martyr-hero, and the interest in these yearly festivities grows keener as the college progresses.

## FIRST JURY TRIAL IN ISLANDS

The first jury trial in these Islands was held in the court room of the College of Law on the 16th of January. A jury of twelve was impaneled the day before, to hear the case of the United States vs. Martin Creso, charged with murdering his friend in Imus, Cavite. There was a select crowd present when the court convened for the trial of the case, and with Judge George R. Harvey, presiding, and Professor E. B. Conant in the clerk's chair, the trial began. Aurelio Palileo and Juan L. Luna prosecuted the case, while Creso was defended by Eugenio Baltao, Hermogenes Concepcion and Victoriano Yamzon. There was grave silence as the judge read his instructions to the jury. The jurors then retired to the jury room to deliberate, and then through their foreman Patricio Fernandez, a student of the College of Liberal Arts, announced that they found the defendant not guilty. Juan L. Luna argued the government's case to the jury, while the argument for the defense was given by Victoriano Yamzon. Creso was acquitted on the ground of self-defense.

## RECITAL BY DR. SNOW

Professor Dr. Louis Franklin Snow, head of the department of English of the University, gave a recital in the auditorium of the Normal school on the evening of January 22. He recited *The Vision of Sir Launfal* and *King Robert of Sicily* with a grace of manner and charm of expression seldom seen in this country. Miss Purificación Varona and Miss Isabel Estrada, of the Centro Escolar, sang *Mignon* and *La Forza del Destino*, accompanied by Miss Magdalena Marasigan, also of the Centro Escolar. Other interesting numbers were the native chorus from Tío Doroy, in which Normal Hall ladies took part, and a native song, *Mariposa*, and an instrumental trio by Messrs. Jose Suarez, Tomas Barba and Emeterio Roa.

## SENIORS WIN DEL PAN DEBATING CUP

For the third time the joint debate held yearly between the Philippine Barristers and the Senior Class, was won by the latter. The subject of this year's debate was: Resolved, That a law permitting Chinese immigration into the Philippines, be enacted. The Barrister team, composed of Jesus de la Rama, Jose P. Melencio and Paulino Gullas, ably maintained their side, favoring the law, while the speakers of the Senior Class, Felipe Estella, Gaudencio Garcia, and Victoriano Yamzon, held that such a law should not be enacted. The judges of the debate were Honorable Rafael Alunan, Dr. Fernando Calderon, Honorable A. P. Fitzsimmons,

Judge Richard Campbell and Honorable Teodoro M. Kalaw. The exercises were presided over by Dr. Bartlett.

By winning the debate this year the senior class has scored its third victory in the fight for the Del Pan Cup. The negative won the debate on a unanimous verdict.

#### WHO WILL BE SENIOR CLASS ORATOR?

This is the question that the contest of the Senior Class on February 13 will decide. The Class of 1915 has four honor orators, and in order to decide who should have the honor of being orator of his class, the Seniors decided to hold a contest. An appropriate program is being prepared, and those who are to take part are Felipe Estella, Bernabe Aquino, Marceliano Montemayor, Elpidio Quirino, Juan L. Luna, and Victoriano Yamzon. The contest will be only a "family affair."

#### COLLEGE OF LAW ADMITTED TO MEMBERSHIP IN ASSOCIATION OF AMERICAN LAW SCHOOLS

The College of Law has received official and authoritative recognition of its standing by being unanimously admitted as a member of the Association of American Law Schools. Mr. Serafin P. Hilado, 1913 L., instructor in law, now taking post graduate work at the University of Michigan, writes interestingly of the meeting as follows:

"Ann Arbor, Mich.

Jan. 4, 1915.

"Mr. George A. Malcolm,  
Dean, College of Law,  
Manila.

"My dear Mr. Malcolm:

"In compliance with the instructions received from you, I attended the meetings of the Association of American Law Schools. I went to Chicago on the same train as Dean Bates, Prof. Beale, the President of the Association, and Prof. Pound. They were three of the five members of the Executive Committee of the Association. After a short conversation the three agreed to recommend our admission to membership in the Association, and at the first meeting our College was unanimously admitted, on the recommendation of the Executive Committee.

"I had the privilege of meeting the deans and professors of many law schools, and I was delighted to find how interested they were in our College of Law. It surprised some of them to learn that we require two years of College work for admission, and that all of our instruction is carried on in the English language. The one thing in which every

one seemed most interested is the peculiar blending of the Roman and Anglo-American laws in the Islands.

"Dean Vance of Minnesota was chosen President for the coming year.

"The next meeting will be held at the same place, and at the same time as that of the American Bar Association. Probably it will be held in S. Francisco on or about June of this year.

"Very truly,

"SERAFIN P. HILADO'

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**RAMON AVANCEÑA**  
Attorney-General