

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

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NOTE AND COMMENT

AURELIO MONTINOLA, Senior

Editor.

JUDICIAL RECALL

In the November and December (1914) issues of the Green Bag two articles on Judicial Recall are worthy of notice. Three or four months ago a proposed constitutional amendment, embodying the recall, was submitted to the people of the state of Minnesota, for adoption but was rejected by a majority of 40,000. On the occasion of the campaign waged, both in favor and against the measure, a contest was opened by those opposing the amendment, giving prizes to the best essays against judicial recall and the two articles above referred to are the winners of the first prize. "An Argument against Judicial Recall" is the title of the one written by Mr. Harvey S. Hoshour, of the Law School of the University of Minnesota, and Mr. Arthur O. Lee entitled his article "A High School Student's Essay on Judicial Recall." We will only give here the conclusions of both writers, referring those who desire to study the question more closely to the articles published in the above mentioned review.

Mr. Hoshour ends his article thus: "The conclusion of the matter may be stated briefly: (1) The recall of judges is a radical change in past policy; (2) such a change is not desirable: (a) because it is unfair to the judges; (b) because it will make our laws ineffectual; (c) because

it will have a devastating effect on the rights of the people; (d) because it cannot remedy any existing defects; (e) because it has failed where it has been tried; (f) because the opinion of capable and experienced observers is opposed to the recall of judges."

Mr. Lee, in an impassioned appeal to the people, concludes his essay in the following manner: "Voters of Minnesota, this is the recall and such its meaning. If you vote for the recall amendment you have got to take all that goes with it. Remember that the recall is not a panacea for the technical imperfections in our judiciary. Remember that it means the overthrowing of a representative government and the substitution for it of direct and unlimited democracy. Remember that it means the destruction of the independence of the judiciary and of the judicial department itself. Remember that, through the destruction of the independence of the judiciary, it means the nullification of the constitutional safeguards, thus establishing socialism, menacing every right of property and liberty which you now cherish, menacing even your very existence. Remember that it is impracticable and unworkable, a two-edged sword, destructive of the judiciary and destructive of the interests of the people. Remember that it is fundamentally and totally reactionary, subversive of all true government and repugnant to all the fundamental principles for which civilized men since the signing of the Magna Charta have fought."

RECENT CASES

DECIDED BY THE SUPREME COURT OF THE PHILIPPINES.

JUDGMENT; NECESSITY OF MAKING A FINDING OF FACTS BY JUDGES OF COURTS OF FIRST INSTANCE IN THEIR DECISIONS.—Under the provisions of section 133 of the Code of Procedure in Civil Actions, it is necessary for judges of Courts of First Instance, as well as the judges of the Land Court, to make a finding of facts upon which they base their conclusions. *Per Johnson J.*, in *Simon Ungson v. Macario Basco et al.*, R. G. 8813, decided February 23, 1915. *Trent, J.*, dissented on the ground that when the trial judge has left the judicial district to which the case must be remanded, it is contrary to the former decisions of this court and to the reasons of the practice to remand the case with directions to the new judge to formulate findings of fact without power to change the judgment entered by the trial judge. The new judge has no better facilities for making such findings than has this court. *Moreland, J.*, concurred, basing his opinion on the last clause of section 147 of Act 190 which has been held by the Supreme Court to be applicable even though the judge who retries the case is not the one

who tried it in the Court of First Instance and, as a necessary result, did not see or hear the witnesses that testified in the first trial. Many cases have been returned by the Supreme Court for a new trial, under the provisions of section 505 of Act 190, utterly regardless of whether the judge who conducted the first trial was to conduct the second. (*Cason v. Rickards et al.*, 5 Phil. 611; *Ortiz v. Aramburo et al.*, 8 Phil. 98).

INJURIAS GRAVES; USE OF INSULTING LANGUAGE.—The use of insulting language in the course of a wordy brawl is a misdemeanor and does not constitute the crime of *injurias graves* (grave insults) when there is reason to believe that the offensive language was not intended to be taken in its literal sense and that neither of the parties so understood it. *Per Carson, J.*, in *U. S. v. Crispina Ganzon*, R. G. 10319, decided February 26, 1915.

CONTRACTS; INTERFERENCE BY STRANGERS; LIABILITY; INJUNCTION.—The interference with lawful contracts by strangers thereto, inducing one of the contracting parties to break the contract, gives rise to an action for damages in favor of the injured person. The law does not require that the responsible person shall have known the identity of the person injured. Courts usually grant an injunction where the profits of the injured party are derived from his contractual relations with a large and indefinite number of individuals, thus, reducing him to the necessity of proving in an action against the tortfeasor that the latter is responsible in each case for the broken contract or else obliging him to institute individual suits against each contracting party and so exposing him to a multiplicity of suits. As the profits of a lessee of a cinematograph film depended upon the patronage of the public and hence the task of estimating his damages with accuracy would be quite difficult, if not impossible, *held* that an injunction against further interference with the contract was properly issued. Judicial notice is taken of the general character of a cinematograph or motion picture theater. *Per Trent, J.*, in *C. S. Gilchrist v. E. A. Cuddy et al.*, R. G. 9356, decided February 18, 1915.

FRIAR LANDS: WHO ARE SETTLERS WITHIN THE MEANING OF SECTION 65 OF THE ACT OF CONGRESS, JULY 1, 1902.—Congress did not limit the beneficent provisions of section 65 of Act of Congress of July 1, 1902 to those lawfully in possession or occupation of the so-called Friar Lands acquired by the government, but extended the same to actual settlers, notwithstanding the fact that they might have no legal rights in the premises which the former or the new owner was bound to respect. Nevertheless mere usurpers who secured a precarious foothold on these lands by the ouster, by fraud, force or stealth of actual settlers or occupants during the unsettled conditions incident to and following upon the change of sovereignty in

these Islands, do not come within the provisions of the statute giving preference to actual settlers or occupants. The preference is not secured to those who, at the time of the purchase by the government, may have had a mere right to possession by virtue of rental contracts with the former owners or otherwise, which never had been exercised. The claimant must have been an actual settler or occupant, as distinguished from one who had a mere right of occupancy. *Per Carson, J., in Fernando Casañas v. Charles H. Walt*, R. G. 8101, decided February 19, 1915.

EXECUTION OF JUDGMENT; POWER TO REPRIEVE BY JUDGES OF THE COURT OF FIRST INSTANCE AFTER JUDGMENT OF CONVICTION AFFIRMED BY THE SUPREME COURT.—In criminal cases, after the sentence has been pronounced and the period for reopening the same has elapsed, the court cannot change or alter its judgment, as its jurisdiction has terminated, *functus est officio suo*, according to the classical phrase. When after an appeal, the cause has been returned thereto for execution, it performs a ministerial duty in issuing the proper order. But the particulars of the execution itself, which are certainly not always included in the judgment and writ of execution, in any event, are absolutely under the control of the judicial authority, while the executive has no power over the person of the convict except to provide for carrying out the penalty or to pardon. A postponement of the date of the execution under the common law, can be requested in three ways: 1. By command of the king. 2. By direction of the court. 3. By provision of law. If a circumstance arises that ought to delay the execution there is an imperative duty to investigate the emergency and to order postponement. Here the reason for postponement was the need of allowing time wherein to decide the petition for pardon or commutation presented to the Governor General. This comes under the first head. A reprieve is not a suspension of the judgment itself but only that of its execution. Under the common law every court which has the power to order an execution has also the power to order its postponement. *Per Curiam in Director of Prisons v. Judge of First Instance of Cavite*, decided January 23, 1915. *Johnson, J.*, dissenting, said that Courts have no right or jurisdiction to interfere in any manner whatever in a criminal case, after the decision in the same has become *final*, and its execution has passed into the executive department of the government. The power to pardon or to reprieve is expressly given to the Governor-General of the Philippines. The power to pardon includes the power to reprieve. If the only power to pardon is possessed by the executive department, then it also possesses the only power to reprieve. The moment a sentence in a criminal case becomes final the judicial department has lost its jurisdiction over the person of the defendant. If an injustice has been done, the executive department has authority, under the general pardoning power,

to correct it. The courts cannot assume that the executive department of the government will disregard any of the fundamental rights of men in the execution of a final sentence pronounced by the courts.

DECIDED BY THE SUPREME COURT OF SPAIN.

EVIDENCE OF ORAL CONTRACT; APPRECIATION OF A PRIVATE LETTER TO PROVE IT.—It is error for the court to ignore the contents of an authentic and undoubted document, which is not the case where the question is the existence of an oral contract corroborated by a simple private letter, which, besides, was objected to. There was no error of law in proceeding in that way since the lower court considered the evidence as a whole, and based from it formed its conclusion, which falls within its exclusive powers. *Sentencia de 26 de Junio de 1914.*

EVIDENCE; RECIPROCAL OBLIGATION UNFULFILLED; CONDITIONAL SALE, RESERVING OWNERSHIP OF THING SOLD.—The sale of machinery with the express stipulation that, until the whole purchase price is paid, the full ownership of the thing is not transmitted to the vendee but only the usufruct, constitutes a simple reciprocal obligation, and not a right in usufruct. Even admitting this term which in reality is a misnomer, it is not to the law, as is contended, but to the contract itself where we must look to determine their contractual rights and obligations. *Sentencia de 30 de Septiembre de 1914.*

DONATION; NECESSITY OF ACCEPTANCE BY THE DONEE TO BE VALID.—A donation *inter vivos* made by means of a private document is not valid unless the acceptance is made in writing by the donee. It is not sufficient demanding its fulfillment, since by the *Sentencia of June 6, 1908*, it was held that acceptance might be inferred from the acts of the donee demanding its fulfillment, since by the *Sentencia of June 6, 1908*, it was held that the statute is mandatory on the point. A written acceptance, however, is unnecessary only in case the donor or his heirs ratified the donation, because they are the ones whose rights are protected by article 632 of the Civil Code. *Sentencia de 27 de Junio de 1914.*

ALUMNI

(Alumni are requested to contribute to this department.)

JOSE A. ESPIRITU, 1913 Law

Editor

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BRIEFS.

Black says that in American practice, a brief is "a written or printed document, prepared by counsel to serve as the basis for an argument upon a cause in an appellate court, and usually filed for the information of the court. It embodies the points of law which the counsel desires to establish, together with the arguments and authorities upon which he rests his contention." In the Philippine Islands the brief is even more; for it is the whole argument, as a rule, upon which counsel depends in the support of his contention. It is very seldom that an appealed case is argued beyond the covers of the briefs; for which reason it behooves every attorney at law to see that everything that should be brought to the attention of the appellate court is set out clearly, orderly, and in compliance with the law, rules, and regulations governing such matters.

The rules of the Supreme Court of the Philippine Islands contain specific provisions regarding briefs, their contents, time of filing, and other additional matter, which apparently are sometimes not considered. It is desired herein only to direct attention to the arrangement and contents of the brief.

First, there should be the statement of the errors assigned, and they should be printed in bold faced type, so as to be easily readable, and each alleged error should be plainly numbered. They may be divided into errors in making findings of fact and errors of conclusion of law; they should be separated and no two errors alleged in the same single assignment. Errors which are beneficial, or which are not detrimental, should not be assigned; neither should there be such a numerous assignment as to be highly improbable. Such matters attract the attention of the court and no doubt detract from the value of the brief and thereby

fail to help your cause, if in fact, it does not really injure your client's case.

After the full assignment of errors, there should be a short, clear, and concise statement of the facts of the case, in chronological order, for the sole purpose of bringing before the mind the main facts and issues of the case, and must in no sense be an endeavor to rehash evidence. The principle involved must be clearly deducible. The better arrangement is to state the facts of the case before the institution of the proceedings and then state the proceedings in the court up to the time of the appeal. This statement will occupy about one-third or one-half of a page in the printed brief.

Next will come the argument of the respective assignments of error in numerical order, and it is well to restate each alleged error at the beginning of its argument, and to discuss each error on its own merits and without dragging in references to other errors. If on a finding of fact, state the finding, the evidence upon which founded, the contrary or rebutting evidence; then sum up with your contention and the authorities supporting it. On each alleged error of conclusion of law, state the conclusion as rendered by the court, the proposition for which you are contending, and then cite your authorities with whatever argument is necessary to a proper understanding thereof.

For a review of the evidence by the appellate court, always allege as error, the giving of judgment in favor of the other party, and against your client, arguing, of course, that the evidence was insufficient to justify the decision.

When referring to evidence of a witness always refer to the witness by name, and state the page of the record at which such statement as you ascribe to him may be found.

When referring to any pleading, order, judgment or anything contained in the printed bill of exceptions, refer to the page in such printed bill of exceptions, rather than to the page of the record at which the original may be found, unless there is a special reason for so doing.

When referring to an exhibit, state whether it is plaintiff's or defendant's, the number or letter of same, and the page of the record at which it may be found; if the exhibit is itself voluminous, continue the citation to such an extent that there may be no possibility of consulting any other than the part referred to.

In citing authorities, it should always be borne in mind that decisions of the Supreme Court of the Philippine Islands, not reversed by the Supreme Court of the United States, are most acceptable. The jurisprudence of States having similar law and of the United States, and also of Spain

in certain matters, must be considered in connection with the question. Cases on all fours are most acceptable as authorities in support of a contention, but it is often necessary to rely on cases in point, or analogous cases. However, when a case is cited, if it is intended to have it do the full work and duty of a citation, a mere statement of the name of the case, with the volume and page, is not sufficient; a concise statement of the facts involved, so as to show similarity with the case on appeal should be prefixed to the finding of the court and the verbatim statement of the law as culled from the opinion. Copying a syllabus, or a quotation from the opinion of the court, with nothing more to explain its application, is usually very unsatisfactory and frequently leads to citing and quoting a list of so-called authorities, which when investigated are not in point, and it has happened that such a citation has been directly against the contention of the brief writer.

An almost unpardonable act is to write a brief solely from an encyclopedia, without consulting the cases cited and quoted. One good case in support of a theory, properly set out as indicated above, means more sometimes than a page of unverified citations. Authorities should be discussed and differentiated, and connected by argument and reasoning. Neither a brief with all authorities, nor one with all argument, is attractive.

Finally, the conclusion should contain a recommendation for judgment founded on the argument contained in the body of the brief.

In criminal cases, there is no printed bill of exceptions, and reference must be made to the record.

Now, when the brief is for the appellee, and not the appellant, there is of course no assignment of errors, and the brief starts with the statement of facts or the adoption or approval of the statement of facts as set out by the appellant. The argument of the appellant is answered consecutively, each error separately, as argued; and authorities cited in refutation of those in support of appellant's argument. Also, after answering each alleged error, authorities should be cited to sustain the position of the appellee, as founded on the judgment of the lower court, the affirmance of which is being sought.

As has been said, a brief should be the last word on the subject, and when you come to the last word in the brief, there should be nothing more that could be said on the subject. A brief poorly constructed with a dearth of proper material therein, is a hindrance to the dispensing of justice, an injustice to the client, and an imposition on the appellate court.

J. C. M.

NEWS FROM THE CLASSES

1913

Alejandro de Guzman spent a few days in Manila during the Carnival week last month. During his stay here he visited the College several times. He appeared prosperous, and bought an automobile for his use in the province.

Emilio Y. Hilado, who has been for some time associated with Attorney Montinola of Iloilo, is now about to return to his home province, Occidental Negros, to open his own law office there.

Eutiquiano Garcia has tendered his resignation as law clerk of the Bureau of Public Works to take effect March 15. He has at the same time accepted the position of auxiliary justice of the peace of his home town, México, Pampanga, with the understanding that he will be made a full pledge justice of the peace later. In the meantime he expects to practice law in Pampanga.

1914

Manuel Goyenu is associated with Judge Southworth in the practice of law in this city.

Eusebio Lopez is now with the newly formed law firm of "Ledesma, Clarin, Gabaldón and Recto."

José Yulo devotes his mornings to legal work in the law firm of Bruce and Reed while he continues his work in the College of Law as Librarian in the afternoons.

ALUMNI BANQUET

The annual banquet of the Alumni Association will be held at the Manila Hotel on Sunday evening March 28, at 7:30 p. m. The guests of honor are to be President Bartlett of the University, Dean Malcolm of the College of Law, and Hon. Pedro Guevara, chairman of the Assembly Committee on Public Instruction and ex-officio member of the Board of Regents. Among the guests will be members of the faculty and of the judiciary. Graduates of the different classes are requested to notify the following of their intention to be present: Class of 1913, President Manuel Roxas, Supreme Court; class of 1914, President H. Lawrence Noble, University of the Philippines; class of 1915, President Jose Teodoro, College of Law. Covers will cost ₱5.00. For further information address Jose Espiritu, Secretary of the Alumni Association, College of Law. A full attendance of Alumni is earnestly desired. Officers of the association will be elected for the ensuing year besides the feast of speeches, music and joy.

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>
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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
MARCELIANO MONTEMAYOR, Board of Control, University Athletic Association	

JUDGE LOBINGIER'S LECTURE

Judge Charles Summer Lobingier, of the United States Court for China, who is professorial lecturer on civil law in the University, gave a lecture to the freshmen and the sophomores on February 9th. His subject was The Institutes of Gaius. Judge Lobingier was a visitor in Manila during the Carnival week. The day following the judge left for his district to resume his court's session.

CHINESE STATESMAN ADDRESSES STUDENTS

Honorable Cheng Ting Wang, former vice-president of the Chinese senate and member of the Nanking constitutional convention that elected Sun Yat Sen to the presidency of the Chinese Republic in 1911, was a speaker at the law forum held on February 10th. Mr. Wang was introduced to the audience by Dean Malcolm as the national secretary of the Chinese Y. M. C. A., and in the presence of several hundred University students Mr. Wang gave an address on the new ideals of the Chinese republic.

Mr. Wang touched on the various factors that make for progress in his land, after conveying the message of the Chinese people, who he said were eagerly awaiting the day when the Filipinos would become masters of their own destinies. He touched on the industrial awakening in his

country, referred to the great Christian movement in China, and speaking of the eagerness of his people for education, he said something of the numerous educational institutes that are accommodating the youth of his land.

The earnestness and the fire with which the speaker delivered his address were highly liked by his audience, and the numerous interruptions during his speech when he was applauded were the proof of this fact. Mr. Wang entertained his audience at the same time that he delivered a great message, and the loud applause that greeted the close of his remarks indicated the impression that his address made on the University students. Mr. Wang, who is a Michigan and Yale graduate, was accompanied by Dr. Tee Han Kee and Attorney Albino Z. Sy Cip.

SENIORS HOLD ORATORICAL CONTEST

The Senior Class held its oratorical contest for the selection of class orator on February 20th. The Seniors who took part in the contest were Juan Luces Luna, Marceliano Montemayor, Elpidio Quirino, and Victoriano Yamzon. Acting as judges were Mr. Justice Johnson of the Supreme Court, Executive Secretary Villamor, Judge Juan Sumulong, Dean Malcolm, and City Attorney Escaler. Jose Teodoro, the class president, was presiding officer. Victoriano Yamzon was adjudged winner of the contest. The contest was a close one, the participants having all won honors in former oratorical contests.

The Sampaloc Intermediate School orchestra furnished music for the occasion. Miss Adela Maceda, accompanied on the piano by Miss Amanda Morente, sang the *aria* from *La Forza del Destino*. Justice Johnson announced the decision of the judges.

FIELD DAY AND JUNIOR RECEPTION

Two important events marked the 22nd day of February, as far as the College of Law was concerned. In the morning there was the Field Day, in which the College participated, and while winning no honors at all, the indoor baseball team put up what Director Cassidy termed "a most creditable fight." In the evening the Junior Reception, thus far the most splendid and successful ever given by any class of the College, was given in the University Hall, in honor of the Senior Class. In the reception line stood José Gil, president of the class, Mrs. Conrado Benitez, and Dean Malcolm.

The assembly room was tastily decorated. There was a bevy of young ladies from Normal Hall, and with a slight sprinkling of outsiders there were more than enough to occupy the room during dancing hours.

Dancing was indulged in until a late hour. Refreshments were served in the veranda adjoining the assembly hall.

DR. ANGELES TO LECTURE

Dr. Sixto de los Angeles, assemblyman from Rizal, chairman of the committee on hygiene of the lower house and member of the Board of Regents, was to deliver a lecture before the class in Medical Jurisprudence in the Assembly, on Friday, March 6. Dr. Angeles has made a name for himself as a practising physician of this city, and his experience along that line will doubtless be of interest to the legal and medical professions alike.

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