

# PHILIPPINE LAW JOURNAL

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## SUBSCRIPTION

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## PLANS FOR NEXT YEAR

With this number, we finish our first year. Considering the financial situation due to the war, and our own lack of experience, we are fairly well satisfied. But, next year, we plan to progress. For example, our frontispieces will be pictures of leading legal institutions with appropriate descriptive articles, as the Supreme Court, the Bureau of Justice, etc. Then, besides the usual run of articles, attention will be given to practical subjects, such as the Election Law, Compiled and Annotated to date, Notes on the Spanish Law of Waters, etc. Any suggestions looking to betterment will be appreciated.

## NOTE AND COMMENT

AURELIO MONTINOLA, Senior

Editor.

### LIABILITY OF AGRICULTURAL SOCIETY OR FAIR ASSOCIATION IN TORT

What would be the liability of the Philippine Carnival Association or the Iloilo Fair Association if while seated in a grand stand and while watching the last inning of an even game between Cebu and Leyte, the stand collapses as a result of negligent construction and you are injured? (1)

All fairs can be classified generally into two groups: (1) fairs held by the government, or under its supervision or by some department thereof;

(1) These questions are doubly interesting and important if we bear in mind that, aside from the Manila Carnival, almost every province has its Fair Association and every town its annual fair.

and (2) fairs held by private persons, associations, or corporations. In the United States the general rule, in the absence of statute, is that a state is not liable in damages for the torts of its officers (*Robertson v. Sichel*, 127 U. S. 507), and the same rule applies to those agencies through which the government or state acts in the different departments of its administration of government. (*Lane v. Minnesota State Agri. Soc.*, 62 Minn. 175) In *Berman v. Minn. Agri. Soc.*, 93 Minn. 125, the court said " that the exhibition of the arts and products of the commonwealth has a direct tendency to enhance its agricultural, mechanical, and material interests, and is to the highest degree of practical utility in the development and progress of the state; and it may be said with reason and propriety that lawful amusements and attractions provided for by the management are not useless, nor without advantage to secure these general purposes, but calculated to subserve the main objects contemplated by the act."

In the United States the doctrine is well settled that fairs held by private persons are liable for their torts. (*Plaskett v. Benton-Warren Agri. Soc.*, 45 Ind. App. 358.) In *Thornton v. Maine State Agri. Soc.*, 97 Me. 108, the court held that the society was liable for the death of a person who was killed by a stray bullet from a shooting gallery on the fair grounds, although the deceased, at the time, was standing on a platform which was just outside the fair inclosure, but was used as an approach and entrance to the fair grounds.

The following cases will be found interesting on the general rule that it is the duty of an agricultural society when conducting a fair to provide for the safety and protection of those who come on invitation and as visitors: *Brown v. South Kennebec Agri. Soc.*, 47 Me. 275; *Agricultural & M. Asso. v. Gray*, 118 Md. 600; *Logan v. Agricultural Soc.*, 156 Mich. 537; *Roper v. Ulster County Agri. Soc.*, 136 App. Div. 97, 120 N. Y. Supp. 644; *Smith v. Cumberland County Agri. Soc.*, 163 N. C. 346; and *Philipps v. Wisconsin Agri. Soc.*, 60 Wis. 401. The duties and liabilities of the fair association towards competitors in the races or events are to furnish a reasonably safe place, and keep it clear, on which the races and such events will be held. (*Warren County Agri. Soc. v. McKinley*, 94 Ill. App. 664; *Fairmount Union Joint Stock Agri. Soc. v. Downey*, 146 Ind. 503; *North Manchester Tri-County Agri. Soc. v. Wilcox*, 4 Ind. App. 141; *Goodale v. Worcester Agri. Soc.*, 102 Mass. 401; *Benedict v. Union Agri. Soc.*, 74 Vt. 91. In the case of *Vigo Agri. Soc. v. Brumfield*, 102 Ind. 146, a fair association was held liable for the loss of exhibits stolen by reason of the negligent failure of the association to adequately police the grounds.

Due to the already difficult question of the status of tort under the

Spanish law, it would be hard to determine what the liability of Fair Associations is in the Philippines. There seems to be ground for sustaining their liability under the general rule laid down by articles 1902 and 1903 of the Civil Code, and the fifth paragraph of the latter would seem to cover the government's liability, if any, when conducting a fair. (See Case and Comment, February, 1915, pp. 731 *et seq.*)

## RECENT CASES

DECIDED BY THE SUPREME COURT OF THE PHILIPPINES.

**PARDONING POWER WHOLLY WITHIN DISCRETION OF THE EXECUTIVE; ITS EFFECT ON ONE OF TWO CO-PRINCIPALS NOT PARDONED.**—The power to extend executive clemency in favor of persons convicted of public crimes is unlimited; the exercise of that power lies in the absolute and uncontrolled discretion of the Chief Executive; and the grounds upon which it is exercised are not open to judicial inquiry or review. The exercise of executive clemency in favor of one of two persons convicted of the crime of adultery does not necessarily accrue to the benefit of the other nor extinguish the latter's criminal liability for the commission of that crime. *Per Carson, J., in U. S. v. Patricio S. Guarin*, R. G. 9002, decided March 15, 1915.

**LIBEL; NEWSPAPER REPORT OF JUDICIAL PROCEEDING; WHEN ACTIONABLE.**—The foundation of the right of the public to know what is going on in the courts is not the fact that the public, or a portion of it, is curious or that what goes on in the court is news, or would be interesting or would furnish topics of conversation, but is simply that it has a right to know whether a public officer is properly performing his duty. Unless the statute plainly confers that right, a newspaper or an individual has no right to spread baseless charges of fraud or corruption made by one man against another, wherever such charges may be found. Their publication is actionable unless justified.

The privilege to publish the contents of any paper, constituting ultimately a part of judicial proceedings, naturally and logically, begins at the same time and for the same reasons that the right of the public begins, namely, when the court begins to act judicially and publicly on the contents of the paper for the purpose of determining the truth or falsity of the allegations therein set forth with an opportunity to the parties interested to be heard.

In order that the publication of a portion of what may be subsequently a part of a judicial proceeding be privileged, the proceeding must be, in reality, a judicial proceeding, that is, a proceeding in open court,

at which both parties have an opportunity to be present and to be heard and not *ex parte* statements made entirely without responsibility, without assurance that its truth or falsity will ever be decided or even contested and without the party against whom it is made having an opportunity to be heard.

There is no distinction between a complaint and an answer, before the judicial proceedings properly begin. An answer may contain entirely new matter which may be as libelous as any that would be included in the complaint. The allegations to be placed there are within the control of the defendant, as much so as those in the complaint are within the control of the plaintiff.

Privilege can not be established by custom or the general practice of newspapermen even for many years. *Per Moreland, J.*, in *A. M. Barretto v. Philippine Publishing Company*, R. G. 9476, decided March 17, 1915.

LEGAL USUFRUCT OF WIDOWER; DUTY TO GIVE SECURITY; WHEN EXEMPTED.—In order that a widower, usufructuary of his wife's property, may be exempted from giving security in favor of the wife's heirs, in case he marries a second time, he must show the existence of special circumstances by which it can be inferred that no prejudice will result to the heirs; otherwise the security and mortgage provided by articles 491 and 492 of the Civil Code is obligatory and it is not within the discretion of the court. *Per Arellano, C. J.*, in *Arsenia Tambunting v. Ildelfonso Tambunting*, R. G. 9382, decided March 22, 1915.

DECIDED BY THE SUPREME COURT OF SPAIN

SUPPORT; WHEN CAN A PERSON ENTITLED TO SUPPORT NOT BE COMPELLED TO LIVE WITH THE PERSON OBLIGED TO GIVE SUPPORT.—It has already been held that the rule in article 149 of the Civil Code is not absolute but that there may be exceptions based on the legal, moral or material impossibility of the "alimentista" living with the "alimentante." (*Sentencias de 11 de Mayo de 1897, 5 de Julio de 1901, 31 de Enero de 1902, 5 de Diciembre de 1903 y 22 de Abril de 1910*).

Recognizing the above doctrine, the Supreme Court, in a decision dated November 17, 1914, held the mere allegation not proven that it is impossible for the "alimentista" to live under the same roof with the "alimentante," does not bring the case within the exceptions to article 149 of the Civil Code.

RESCISSION OF RECIPROCAL OBLIGATION; DAMAGES NOT AWARDED WHEN NO ACTUAL INJURY PROVEN.—The Supreme Court has held in a decision dated November 14, 1914, that where a reciprocal obligation is rescinded on account of failure to perform by one of the parties, the other entitled to rescission must prove actual injury before he can recover damages. This doctrine is parrently in conigiet with article 1124 of the Civil Code.

# ALUMNI

(Alumni are requested to contribute to this department.)

JOSE A. ESPIRITU, 1913 Law

*Editor*

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## THE NEW ALUMNI

- Baltao, Eugenio, San Miguel, Bulacan.  
Belmonte, Gabriel, Zaragoza, Nueva Ecija.  
Binag, Miguel, Cabagan Nuevo, Isabela.  
Chase, H. E., Manila.  
Clemencia, Engracio F., B. A., Ateneo de Manila, Polo, Bulacan.  
Concepcion, Hermogenes, Cabanatuan, Nueva Ecija.  
Cuyugan, Antonio, San Fernando, Pampanga.  
Del Rosario, Vicente, Lipa, Batangas.  
Esquivel, Cecilio R., Jaen, Nueva Ecija.  
Estella, Felipe E., Masinloc, Zambales.  
Garcia, Gaudencio, Tanauan, Batangas.  
Gonzalez, Javier, Apalit, Pampanga.  
Jamison, Edwin C., Manila.  
Jimenea, Ramon, Jaro, Iloilo.  
Kamantigue, Jacinto M., B. A., University of Wisconsin, Imus, Cavite.  
Laurel, José P., Tanauan, Batangas.  
Leaño, Melecio, Boac, Marinduque.  
Legaspi, Paz A., Manila.  
Luna, Juan L., Calapan, Mindoro.  
Mañago, Faustino, Imus, Cavite.  
Montemayor, Marceliano, B. A., University of the Philippines, Alaminos, Pangasinan.  
Montinola, Aurelio, B. A., Ateneo de Manila, Iloilo, Iloilo (with honors.)  
Natividad, Felipe, San Mateo, Rizal.  
Nepomuceno, Ricardo, Boac, Marinduque (with honors.)  
Padilla, Pablo R., Peñaranda, Nueva Ecija.

Padilla Sabino, B. A., Ateneo de Manila, Manila.

Palileo, Aurelio, Pagsanjan, Laguna.

Quirino, Elpidio, Vigan, Ilocos Sur.

Sarenas, Juan A., Cabanatuan, Nueva Ecija.

Sebastian, Proceso E., B. A., University of the Philippines, Clavería, Cagayan.

Tan, Carlos, Ormoc, Leyte.

Teodoro, José, Mariquina, Rizal.

Villanueva, Francisco, Manila.

Yamzon, Victoriano, B. A., University of the Philippines, Manila.

#### LAW ALUMNI HOLD REUNION

The alumni of the college of Law held a reunion at the Manila hotel, on the evening of Sunday, March 28th. Fully 70 graduates and alumni were present to do honor to Dr. Bartlett, who was one of the guests of honor. After the banquet Manuel Roxas, '13, acting as toastmaster, presented Juan L. Luna, who spoke for the Class of 1915; Manuel G. Goyena, who welcomed the new members on behalf of the Class of 1914; and Wm. F. Mueller, who spoke for the Class of 1913. Toasts were also responded to by Vice Governor Henderson S. Martin, Assistant Attorney Jose A. Santos, Justice E. Finley Johnson, Judge George R. Harvey, Dean George A. Malcolm, and President Murray Bartlett.

After the banquet there was a business meeting. H. Lawrence Noble, '14, was elected president, Jose A. Espiritu, '13, vice-president, and Serafin P. Hilado '13, secretary-treasurer. Associated with them on the board of directors are Pablo Lorenzo, '14, and Marceliano Montemayor, '15.

#### FACULTY AND ALUMNI BASEBALL CHAMPS

For lack of a better name, the Faculty and Alumni of the College of Law of the University are by these presents declared as the "disputed champs" of the indoor baseball world, having mercilessly caused warrants of arrest, orders for contempt of court, and the like to issue while the game was on. The victims of this poor ball but good head work were the players representing the graduating class, and strong as their players were they succeeded in scoring only eight runs. By scoring one run every time Dean Malcolm pulled the legs of a '15 player safe on first, the Faculty wrought untold havoc upon the '15 aggregation. His Highness G. M. Cassidy acted as "ump" and his decisions, all told, favored the Faculty aggregation. The final score stood 11 against 8 in favor of the Faculty and the Alumni.

## COLLEGE NEWS

VICTORIANO YAMZON, Senior

Editor

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### 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
MARCELIANO MONTEMAYOR, Board of Control, University Athletic Association	

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### Commencement Week a Busy One for Members of Class of 1915 of College of Law

#### FACULTY RECEPTION

Two hours after the grades of the members of the graduating class were announced on March 25 the Faculty of the College of Law gave a reception in honor of the graduating class. The reception was held at University Hall, and standing in the reception line were Dean Malcolm, Mrs. De Veyra, Mrs. Burton, and Judge Abreu. Each candidate for the degree of Bachelor of Laws was required to answer any eleven questions propounded to him in the form of waltzes or two-steps. Refreshments were served in the verendahs adjoining the assembly hall.

#### NORMAL HALL LADIES HOSTESSES

The evening following the young ladies of Normal Hall, the residence of the women who were to graduate from the Normal School and the University, were hostesses to their fellow graduates and to their instructors and professors. There was a lively scene in that building on the night in question, and the guests enjoyed themselves to the utmost.

#### DR. BARTLETT GIVEN RECEPTION

The members of the graduating classes acted as one of the hosts on March 27. Dr. Murray Bartlett, retiring president of the University,

was the guest of honor at the reception given by the Regents, Faculties and Students of the University, in University Hall. Preceding the reception there were speeches made by Dionisio de Leon, '16, Liberal Arts, speaking for the student body; by Miss Josefa Desiderio, '12 Liberal Arts, speaking for the alumni; by Professor Jorge Bocobo, of the Law faculty, representing the Faculty; and by Hon. Jose Escaler, on behalf of the Board of Regents. Mr. Escaler presented the President with a solid gold watch, suitably inscribed. Then Dr. Bartlett addressed the big crowd present, and with much feeling spoke of the accomplishments of the University during his administration, and urged the faculty and the student body to give his successor whoever that man might be, the same love and the same loyalty that they had shown the retiring executive. Dean Wrenmore acted as master of ceremonies.

#### POINSETTIA PLANTING BY '15 LAWS

Following the precedent established by the Class of 1914, this year's graduating class on the afternoon of March 29th, planted poinsettia on the grounds of the University. Edwin C. Jamison, chairman of the class tree committee, was presiding officer. He introduced Melecio Leano, class tree speaker; Assistant Attorney Jose A. Santos; Dean Malcolm, and President Bartlett. After these talks the members of the class betook themselves to the half-dozen shovels awaiting them and, without further ceremony, planted the shrubs bearing the colors of the University.

#### CLASS DAY EXERCISES AT MARBLE HALL

In the evening the class day program was held at Marble Hall. Jose Teodoro, president of the class, was chairman. After giving his address of welcome to the big crowd that filled the historic hall, he introduced Miss Paz A. Legaspi, the class historian, who gave a brief history of the graduating class. Then came Elpidio Quirino, the prophet, whose visions proved as laughable as the daily stories that grace one of the Manila papers. Victoriano Yamzon, as class orator, spoke of The Mission of the Law Graduate, and with his address concluded, everything was ready for the presentation of the memorial to the University.

Felipe Natividad delivered the presentation speech. José Escaler, of the Board of Regents, accepted the painting for the University. The memorial is an oil painting by Respal, copied from one of the notable works of art that hang in one of the rooms of the Capitol at Washington. It is symbolic of the Law.

After the presentation of the prizes to Aurelio Montinola and Ricardo Nepomuceno for the best scholastic records, and to Jose P. Laurel, as

author of the best thesis, the valedictory was given by Ricardo Nepomuceno.

#### UNIVERSITY ALUMNI HONOR DR. BARTLETT

The following article is clipped from the Manila Daily Bulletin of March 31st:

Dr. Murray Bartlett, retiring president of the University of the Philippines, was the guest of honor last night at the third yearly reunion given by the alumni association that bears the name of the government university, at the Hotel de France. More than 40 representative graduates from the various departments of the University of the Philippines gathered at the festive board to make merry and bid farewell to the departing executive, and the loud applause that greeted Dr. Bartlett as he rose to deliver his last address to the alumni was an indication of the feeling that unites them to their alma mater. Other guests of the evening were Mrs. Alma H. Burton, dean of the young ladies residing at Normal Hall, and representatives of the faculty.

After the banquet, there were informal talks. First in order came the welcome to the new alumni by Attorney Alexander Reyes, who acted as toastmaster; then there was a response by Miss Emiliana Villamayor, of the college of liberal arts. Dean Malcolm, of the college of law, invited all to join him in drinking to the health of the retiring president, and so did Victoriano Yamzon, who holds the unique distinction of receiving one of the first degrees handed out to graduates by Dr. Bartlett, and one of the last degrees bearing the signature of the retiring university head.

After the parting word of President Bartlett, a business meeting of the association was held. Victoriano Yamzon was elected president for the next term, and associated with him are Dr. Primitivo Elizalde, vice-president; Miss Pilar Hidalgo, secretary-treasurer; and Dr. Rafael M. Santos, Dr. Teodulo Topacio, Attorney Jorge Vargas, Engineer Ricardo Nostratis, Vicente M. Hilario, Dionisio Llamas, and Segundo Labayen as members of the board of directors. It is proposed to follow a different scheme next year for the annual reunion, the idea being to hold a spread on the University Campus for the alumni and the graduates, immediately after the commencement exercises.

