

# PHILIPPINE LAW JOURNAL

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MARCH, NINETEEN HUNDRED AND SIXTEEN

## NOTE AND COMMENT

CONRADO BENITEZ, *Senior*

*Editor.*

The President's article entitled "Propensity to Crime" which appeared in the PHILIPPINE LAW JOURNAL, Vol. I, March, 1915, is reprinted in the *Journal of the American Institute of Criminal Law and Criminology*, for January, 1916, with this note: "An illustration of activity in which Attorney-Generals might well be encouraged to make contribution."

#### A NEW LAW MAGAZINE

*Southern Law Quarterly* is the name of a new law magazine published by the alumni and students of the College of Law, Tulane University, Louisiana. The first number, issued last January, contains two very luminous special articles:—"Louisiana: the Story of its Legal System," by Professor Wigmore, and "Liability of an Agent in Tort," by Professor Warren A. Seavey of Tulane University. Its editorials and the notes on cases recently decided are very ably prepared. But the Department of the publication which is of special interest to the student of Philippine law is that which gives condensed reports of cases decided by the Louisiana Court of Appeals. Among the cases summed up, we find a number which can assist us in finding the right solution of questions in our own Civil Law.—J. B.

## AID TO THE STUDY OF COMPARATIVE LEGISLATION

The following list of publications is submitted as a possible aid to those interested in comparative legislation:

*Annual Bulletin of the Comparative Law Bureau of the American Bar Association* (William W. Smithers, Philadelphia, Secretary).

*Societe de Legislation Comparee. Annuaire de Legislation Etrangere.* (1870—) vol—., Paris.

*Society of Comparative Legislation (London)? Journal*, v. 1—. 1897—.

*Internationale Vereinigung fur Vergleichende Rechtswissenschaft und Volkswirtschaftslehre. Jahrbuch* v. 1—. 1859—. Berlin.

*Institut de Droit Comparee. Revue.* v. 1—. Brussels, 1908.

Giron, Vicente Romero y Moreno, Alejo Garcia, *Coleccion de las Instituciones Politicas y Juridicas de los Pueblos Modernos.* Madrid.

*Instituto Iberico-Americano de Derecho Positivo Comparado. Revista de la Legislacion Universal y Jurisprudencia Espanola*, 1908.

*Revue Generale du Droit de la Legislation et de la Jurisprudence en France et a l'Etranger*, Paris.

*Revue de Droit International et de Legislation Comparee.* Bruxelles.

The following publications will also be found useful as sources of information about legislation.

*American Political Science Review. Annals of the American Academy of Political Science. Proceedings of the National Conference of Charities and Correction. American Economic Review. Journal of Political Economy. Political Science Quarterly. The Proceedings of the American Political Science Association. Proceedings of the Academy of Political Science in the City of New York. Proceedings and Addresses of the National Education Association. The Delinquent. The Quarterly Journal of Economics. The Survey. The Journal of American Institute of Criminal Law and Criminology. Proceedings of the National Prison Association. The Child Labor Bulletins of the National Child Labor Committee. American Law Review. Harvard Law Review. Central Law Journal. Carnegie Foundation Publications. Columbia University Studies in History. Economics and Public Law. Johns Hopkins University Studies in Historical and Political Science.*

## RECENT CASES

*Decided by the Supreme Court of the United States*

## ALIENS; CHINESE EXCLUSION; POWER OF THE INSULAR COLLECTOR

OF CUSTOMS.—The general supervisory authority of the Insular Collector of Customs over the enforcement in the Philippine Islands of the Federal immigration and Chinese Exclusion Acts was not exceeded by his action in giving to the board of special inquiry provided for by the Immigration Acts the power primarily to determine, subject to his review, the right of persons to enter the

Philippine Islands under the Chinese Exclusion Acts. There is no room for real contention that there was a want of power in the Collector to appoint the board instead of an examining agent as provided by the regulations in the United States under the Chinese Exclusion Acts, to aid him in the discharge of his duties. *Per White, C. J.*, in *Chieng Ah Sui vs. Henry B. McCoy*, Insular Collector of Customs of the Philippine Islands, U. S. Adv. Ops., 1916, No. 4, p. 95.

**APPEAL FROM THE PHILIPPINE SUPREME COURT; JURISDICTIONAL**

**AMOUNT.**—The requisite jurisdictional amount is involved so as to sustain an appeal to the Federal Supreme Court from the Philippine Supreme Court where, in addition to an allegation in the bill of the existence of such an amount of community or conjugal property owned by the litigant spouses as to give jurisdiction, an affidavit filed for the purpose of the appeal asserts that the value of the property in controversy exceeds that amount, there being no countervailing affidavit, and nothing in the record to demonstrate to the contrary.

**ID.; REVIEW OF FACTS; REVIEW OF DECISION BELOW.**—Concurrent findings of fact by the two lower courts (Philippine Supreme Court and the Court of First Instance) will be accepted by the Federal Supreme Court in an appeal from the Philippine Supreme Court, unless clearly erroneous. And the local law, as applied by the court below to the facts, will also be accepted by the Federal Supreme Court unless constrained to the contrary by the conviction that error was clearly committed by the court below. *Per White C. J.*, in *Teodora Arana de Villanueva vs. Mariano P. Villanueva*, U. S. Adv. Ops., 1916, No. 4, p. 109.

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**RECENT CASES**

*Decided by the Supreme Court of the Philippines*

**VOLUNTARY INSOLVENCY; SECTION 68 OF ACT NO. 136 APPLIED;**

**COMPETENCY OF A JUSTICE OF THE PEACE.**—A justice of the peace of the capital of a province, who may assume the jurisdiction of a Judge of Court of First Instance, in a proper case under Section 68 of Act No. 136 is not authorized nor competent to take cognizance of voluntary insolvency proceedings. The cases which he is only empowered by the said section to take cognizance of are strictly of interlocutory character, and against the adjudications whereof the law does not permit an appeal. Insolvency proceedings is not interlocutory, nor urgent in character, and therefore a justice of the peace of the capital of a province can not exercise jurisdiction over such proceedings. *Per Moreland, J.*, in *Benito Africa v. Kent W. Groche et al.*, R. G. No. 10,649, decided on March 1, 1916.

**RECKLESS IMPRUDENCE; RAILROAD ACCIDENTS; DEGREE OF CARE.**

—An engine driver may fairly assume that all persons walking or standing on or near the railroad track, except children of tender years, or apparently incapacitated persons, are aware of the danger to which they are exposed, and that they will take reasonable precautions to avoid accident, by looking and listen-

ing for the approach of trains, and stepping out of the way of danger when their attention is directed to an oncoming train. Not in every case in which one accidentally injures or kills another is he criminally liable therefor, under the provisions of Article 568 of the Penal Code, even if at the time of the accident he happens to be guilty of a violation of some regulation. *Per Carson, J.*, in *United States v. Antonio Bonifacio*, R. G. No. 10,563, decided on March 2, 1916.

**CRIMINAL PROCEDURE; ARRAIGNMENT; PLEAS; BY WHOM ENTERED.**

—If the charge against the accused in a criminal case is for a felony, the plea of guilty can only be put in by the accused himself in open court. Such a plea entered by any other person is a nullity and no conviction can rest thereon.

**ID.; RETRIAL; NEW TRIAL; JEOPARDY.**—Where the accused is found guilty of a felony and upon appeal the record will not permit of a retrial of the case upon the merits, because a fatal error was committed during the progress of the trial and the trial was not completed on account of such error, the judgment will be set aside and a new trial ordered. Such new trial does not amount to placing the accused in jeopardy the second time for the same offense within the meaning of the double jeopardy provisions of the Philippine Bill. *Per Trent, J.*, in *United States v. Gregorio T. Guireng*, R. G. No. 11,262, decided on March 2, 1916.

**CONSTITUTIONALITY OF ACT No. 2017, SEC. 1; EMBEZZLEMENT; EXTENT OF JURISDICTION OF COURTS; INTERPRETATION.**—The question decided in this case is whether Section 1, of Act No. 2017 giving the Municipal Court of Manila concurrent jurisdiction with the Courts of First Instance in cases of criminal actions for the crime of estafa as provided in Articles 534 and 535 of the Penal Code is unconstitutional or not, for reducing the jurisdiction of the Courts of First Instance. The Philippine Bill having been approved while Acts Nos. 136, 183 and 267 of the Philippine Commission in which the jurisdiction that courts of First Instance is defined, and where that of the Municipal Court of the city of Manila is made concurrent with that of the former (by Act No. 267) in the case of embezzlement in which the value does not exceed two hundred pesos (₱200), it is undeniable that the Congress of the United States approved Act No. 267 at the same time as the other previous ones and conceded to the municipal judge of the city of Manila the same concurrent jurisdiction with Courts of First Instance of Manila in cases of embezzlement.

It is also undeniable that the Philippine Legislature, in approving Act No. 2017, has taken into consideration the provisions of Section 10 of Act No. 267 in relation with Section 40 of Act No. 183, which were approved by the Philippine Bill, and that in expressing that the word "embezzlement" used in such laws ought to be interpreted in the sense including the crime of *estafa* as punished in the Penal Code, Act No. 2017, has reference exclusively to these cases of embezzlement which under the designation of *estafa* are included in said code and to no others,

having been thus limited to that which in the above-mentioned Act No. 267 is established in respect to the concurrent jurisdiction of the Municipal Court of the city of Manila, in such cases of embezzlement. It can not therefore be said that Act No. 2017 is unconstitutional for being in conflict, as contended, with Act 136, for Act No. 2017 has not done more than to give the interpretation which shall be given to the word "embezzlement" used in Act 267, within the limits of defined and recognized jurisdiction given to the same. *Per Araullo, J.*, in *United States v. Adolfo Abaya*, R. G. No. 9,301, decided March 2, 1916.

# ALUMNI

(Alumni are requested to contribute to this department.)

SERAFIN P. HILADO, 1913 Law

*Editor.*

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1914

*Emilio P. Virata* is now the Director of Instituto Burgos.

1915

*Victoriano Yamzon* has been appointed Instructor in Law in La Jurisprudencia. At the next election for members of the Municipal Board, Yamzon will be a candidate.

*Aurelio Palileo* is having a lucrative practice in La Laguna. He recently came to Manila to argue an important case in the Supreme Court.

## ALUMNI BANQUET

The Annual Banquet of the College of Law Alumni Association will be held on April 2nd. Those desiring to be present will please inform the Secretary-Treasurer of their intention to do so. After the Banquet the Association will hold a meeting for the purpose of electing officers and of considering the advisability of establishing a club for the Faculty, Alumni, and Student Body of the College of Law. The attendance of every one is urged.

## THE GOVERNMENT OF THE PHILIPPINE ISLANDS UNIVERSITY OF THE PHILIPPINES

COLLEGE OF LAW  
OFFICE OF THE DEAN

Manila, March 4, 1916.

## MEMORANDUM CIRCULAR FOR THE ALUMNI OF THE COLLEGE OF LAW

My attention has been brought officially to, at least, one graduate of this College who is announcing himself as "Licenciado en Derecho por la Universidad de Filipinas" (Abogado). In this connection, it should be noted: (1) that the Spanish "Licenciado en Derecho" is not the equivalent

of the English Bachelor of Laws degree received from this University, but is rather the equivalent of the American Master of Laws degree, which is not granted by the University of the Philippines; (2) that there is, and should not be, any deviation from the exact degree granted, which is LL. B. (Bachelor of Laws); and (3) that this College, and probably the University does not favor the use of a translation in Spanish for a degree which is granted in English.

G. A. MALCOLM,  
*Dean.*

# COLLEGE NEWS

PEDRO Y. YLAGAN, *Junior*

*Editor.*

## THE STUDENT COUNCIL

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PEDRO SORRETA	- - - - -	<i>Master Musician, College of Law, Musical Club.</i>
DAVID PARGAS	- - - - -	<i>Law Representative on the University Athletic Board of Control.</i>

## JUDGE LOBINGIER LECTURES BEFORE FRESHMAN AND SOPHOMORE CLASSES

Honorable Charles S. Lobingier, Judge of the United States Consular Court at Shanghai, was in the City during the Carnival days, and the Freshman and Sophomore classes of the College of Law had the opportunity to hear from him a series of lectures upon topics on which he is an authority. The series consists of three lectures on the following subjects:

1. The Revival of Roman Law.
2. The Reception of Roman Law in the North.
3. The German Civil Code.

## UNIVERSITY IS CHAMPION OF CARNIVAL BASEBALL SERIES

The University of the Philippines, after being declared the champion of the Inter-collegiate baseball league in the Islands with the defeat of Silliman at the recent dual meet, has further demonstrated its superiority in baseball by winning the championship in the open carnival baseball series. The team has done some creditable work, backed up by a growing University spirit among the students. During the entire series the team was never defeated, and it stuck to its standard down to the last inning of the last game.

## ENGINEERS CAPTURE DR. KEMP'S TROPHY

The track and field meet of the various colleges of the University of the Philippines was held last February 22nd on the Wallace field. The contest was hard-

fought and full of excitement. The College of Engineering, as was expected, easily won the championship by getting 54 points in their favor. The College of Agriculture got the second place with 40 points and the College of Medicine and Surgery the third with 34 points. Silver and bronze medals were awarded the winners of the first and second prizes. The beautiful silver cup donated by Dr. Kemp now adorns the hall of the Engineers.

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#### NEW COURSES TO BE OPENED IN THE COLLEGE OF LAW

Special courses for Peace Officers and Justices of the Peace will be opened in the College of Law, University of the Philippines, under the directorship of Mr. Paredes. The registration days for these courses will be on April 28<sup>th</sup> and 29<sup>th</sup>, at the office of the Secretary of the Law Faculty. Fees, ₱15, payable in advance.

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#### GRADUATE REVIEW COURSE

As usual, a graduate review course will be offered in the College of Law next April. The course is open to graduates of the College of Law, University of the Philippines; to graduates of law schools which are members of the American Law School Association, and to graduates of a law school or university in the Philippines recognized and approved by the Secretary of Public Instruction, the applicant being otherwise qualified for admission to the bar examination and able to satisfy the Director that he possesses sufficient knowledge of English to take the work to advantage. Fees, ₱40, payable in advance. Assistant Professor Bocobo, Director.



GEORGE A. MALCOLM  
Dean, College of Law, University of the Philippines