

IN RE APPLICATION OF MAX SHOOP FOR ADMISSION TO PRACTICE LAW.

. November 29, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

Application has been made to this court by Max Shoop for admission to practice law in the Philippine Islands under paragraph four of the Rules for the Examination of Candidates for Admission to the Practice of Law, effective July 1, 1920. The supporting papers show that the applicant has been admitted to practice, and has practiced for more than five years in the highest court of the State of New York.

THE RULES.

That portion of the rules of this court, in point, is as follows:

"Applicants for admission who have been admitted to practice in the Supreme Court of the United States or in any circuit court of appeal or district court, therein, or in the highest court of any State or territory of the United States, which State or territory by comity confers the same privilege on attorneys admitted to practice in the Philippine Islands, and who can show by satisfactory affidavits that they have practiced at least five years in any of said courts, may, in the discretion of the court, be admitted without examination."

The above rule requires that New York State by comity confer the privilege of admission without examination under similar circumstances to attorneys admitted to practice in the Philippine Islands. The rule of the New York court permits admission without examination, in the discretion of the Appellate Division in several cases, among which are the following:

"1. Any person admitted to practice and who has practiced five years as a member of the bar in the highest law court in any other state or territory of the American Union or in the District of Columbia.

"2. Any person admitted to practice and who has practiced five years in another country whose jurisprudence is based on the principles of the English Common Law."

This court is advised informally that under this rule one member of the bar of the Philippine Islands has been admitted to practice, without examination, in the State of New York, and one member of the same bar has been refused such admission, the latter being the more recent case. The rulings of the New York court have not been brought to the attention of this court authoritatively, but assuming that reports of such rulings by the New York court are true, in view of the apparent conflict, it seems proper to enter upon the consideration of whether or not under the New York rule as it exists the principle of comity is established. It must be observed that under the rules of both jurisdictions, admission in any particular case is in the discretion of the court. Refusal to admit in any particular case is not necessarily conclusive as to the general principles established by the rules.

THE PHILIPPINE ISLANDS-A TERRITORY.

Under paragraph 1 of the New York rule, practice for five years in the highest court in any "State or territory of the American Union" is the basic qualification. If the Philippine Islands is a territory of the United States within the meaning of the word as used in that rule, comity would seem to exist.

The word "territory" has a general and a technical meaning. It is clear that the Philippine Islands is not an "organized territory" incorporated into the United States under the constitution. (*Dorr vs. U. S.*, 195 U. S., 138.) It is likewise clear that the Philippine Islands is not a "foreign country." (*The Diamond Rings*, 183 U. S., 176.) In the language of that case it is a "territory of the United States over which civil government could be established." So also is Porto Rico (*De Lima vs. Bidwell*, 182 U. S., 1.) It has been held that Porto Rico is not a foreign territory and that the United States laws covering "territories," such as the Federal Employers' Liability Act, includes Porto Rico. (*American Railroad Co. of Porto Rico vs. Didricksen*, 227 U. S., 145.) Porto Rico, Hawaii, and Alaska are now incorporated, organized territories of the United States. (*Muratti vs. Foote*, 25 Porto Rico, 527; *Hawaii vs. Mankichi*, 190 U. S., 197; *Rasmussen vs. U. S.*, 197 U. S., 516.)

An opinion of the Attorney-General of the United States holds that-

"While, like Porto Rico, the Philippine Islands are not incorporated in the United States, they clearly are territory of the United States and to the extent that Congress has assumed to legislate for them, they have been granted a form of territorial government, and to this extent are a territory." (30 Op. Atty.-Gen., U. S., 462, reversing 24 Op. Atty.-Gen., U. S., 549.)

Further, the Philippine Islands have been held not to be "another country" within the meaning of the Cuban Commercial Treaty. (*Faber vs. U. S.*, 221 U. S., 649.) Chief Justice Marshall, in construing the phrase "United States" once observed:

"Does this term designate the whole or any particular portion of the American Empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of states and territories. The District of Columbia or the territory west of Missouri is not less within the United States than Maryland or Pennsylvania." (*Loughborough vs. Blake* 5 Wheat [U. S.], 317, at p. 319.)

This is the broad general view which would seem to have been the point of view of the New York courts in using the phrase "Any state or territory of the American Union." The New York rule contemplates "state," "territory," and "another country." It seems clear that the Philippine Islands is not "another country." It is not believed that the New York court intended the word territory to be limited to the technical meaning of organized territory, or it would have used the more accurate expression. The full phraseology, "any state or territory of the American Union," indicates a sweeping intention to include all of the territory of the United States, whatever the political subdivision might be, as distinguished from foreign country. Otherwise, the Philippine Islands would be in an anomalous position like unto Edward Everett Hale's "A Man Without a Country"-a land neither "another country," nor a "state," nor a "territory" a land without status.

Of course the construction of what is intended by the use of that phrase is for the New York courts finally to determine, but in the absence of any authoritative decision from the New York courts on the point, we feel justified in concluding that under paragraph 1 of the New York rule there exists between that jurisdiction and this, with reference to admission of attorneys without examination, a basis of comity sufficient to satisfy the requirement in the rule of this court in that regard.

A COMMON LAW JURISDICTION.

But assuming that comity is not permitted under paragraph 1 of the New York rule, we turn to a consideration of whether or not it exists by virtue of paragraph 2. This rule applies to "another country whose jurisprudence is based on the principles of the English Common Law." We have then further to assume that if the Philippine Islands is not a "state or territory," that it must be "another country." The question then presented is upon what principles is the present jurisprudence of these Islands based? This is a question which can properly be answered by this court. It is a problem, however, upon which books could be and have been written. We will endeavor to make a brief analysis of the situation.

What is "jurisprudence based on the principles of the English Common Law?" Jurisprudence is the ground-work of the written law, or, as Bouvier defines it, "The science of law. The particular science of giving a wise interpretation to the laws and making a just application of them to all cases as they arise." In an untechnical sense, it sometimes means Case Law.

COMMON LAW IN THE UNITED STATES.

We must assume that the New York court, in using this phrase, considered that the jurisprudence of New York State was based upon the principles of the English Common Law. We should, therefore, consider to what extent the English Common Law principles apply to New York. In a case in 1881 we find the following:

"And the Common Law of England was the law of the colony at that date (April 19, 1775), so far as it was applicable to the circumstances of the Colonists. And it has since continued so to be, when conformable to our institutions, unless it was established by an English statute which has since been abrogated or was rejected in colonial jurisprudence, or has been abolished by our legislation." (Cutting vs. Cutting, 86 N. Y., 522, p. 529.)

And again:

"This court has interpreted this provision of the constitution to mean not that all of the Common Law of England was the law of the Colonists at the time of the making of the Constitution, but only so much of it as was applicable to the circumstances of the Colonists and conformable to our institutions. Cutting vs. Cutting, 86 N. Y., 522, p. 529; Williams vs. Williams, 8 N. Y., 525, p. 541." (Shayne vs. Evening Post Publishing Co., 168 N. Y., 70, at p. 76.)

In *Morgan vs. King* (30 Barber [N. Y.], 9), the New York court said that in adopting the English Common Law, New York adopted:

The written law of England as a constantly improving science rather than as an art; as a system of legal logic, rather than as a code of rules,-that is, that the fundamental principles and modes of reasoning and the substance of the rules of the Common Law are adopted as illustrated by the reasons on which they are based, rather than the mere words in which they are expressed."

Once more, in 1903, the New York court said in connection with a question of the right of the public to use the foreshore:

"In adopting the Common Law of the Mother country we did not incorporate into our system of jurisprudence any principles which are essentially inconsonant with our circumstances or repugnant to the spirit of our institutions." (Barnes vs. Midland Railroad Terminal Co., 193 N. Y., 378, at p. 384.)

The above statements of the New York court clearly indicate the scope of the English Common Law in that state. In most of the States, including New York, codification and statute law have come to be a very large proportion of the law of the jurisdiction, the remaining proportion being a system of case law which has its roots, to a large but

not an exclusive degree, in the old English cases. In fact, present day commentators refer to American jurisprudence or Anglo-American jurisprudence as distinguished from the English Common Law.

Accordingly, in speaking of a jurisprudence which is "based on the English Common Law," for present purposes at least, it would seem proper to say that the jurisprudence of a particular jurisdiction is based upon the principles of that Common Law, if, as a matter of fact, its statute law and its case law to a very large extent includes the science and application of law as laid down by the old English cases, as perpetuated and modified by the American cases.

COMMON LAW ADOPTED BY DECISION.

The concept of a common law is the concept of a growing and ever-changing system of legal principles and theories, and it must be recognized that due to the modern tendency toward codification (which was the principle of the Roman and Civil Law), there are no jurisdictions to-day with a pure English Common Law, with the exception of England itself. In the United States the English Common Law is blended with American codification and remnants of the Spanish and French Civil Codes. There a legal metamorphosis as occurred similar to that which is transpiring in this jurisdiction today. Some of the western states, which were carved out of the original Louisiana territory, have adopted the Common Law by decision. (State vs. Twogood, 7 Iowa, 252; Barlow vs. Lambert, 28 Alabama, 704; Parsons vs. Lindsay, 41 Kansas, 336; McKennen vs. Winn, 1 Okla., 327.)

Louisiana has long been recognized as the one State of the Union which retained a portion of the Civil Law. In a case in 1842 in Louisiana, the court considered the question of whether a protest on a promissory note had been made within the required time. The court rejected the straight Civil Code rule, and adopted the custom of New Orleans, which was the law of the sister States, saying:

"The superior court of the late territory of Orleans very early held that although the laws of Spain were not abrogated by the taking possession of the country by the United States, yet from that event the commercial law of the Union became the commercial law of New Orleans; and this court has frequently recognized the correctness of these early decisions, principally in bills of exchange, promissory notes and insurance." (Wagner vs. Kenner, 2 Rob. [La.], 120.)

In Xiques vs. Bujac (7 La. Ann., 498, at p. 504), the court after deciding a question involving the dedication of real property according to the Civil Code rules, said:

"I must add that the general doctrine laid down in Common Law courts has been admitted by our courts with some modification resulting from our different systems of law."

Louisiana, by statute, adopted certain common law rules, and with reference to these the court said, in State vs. McCoy (8 Rob. [La.], 545):

"We concur with the counsel in believing that the legislature in adopting the Common Law rules of proceeding, method of trial, etc., adopted the system as it existed in 1805, modified, explained and perfected by statutory enactment, so far as those enactments are not found to be inconsistent with the peculiar character and genius of our government and institution."

From this brief survey of the extent of the English Common Law basis in the States, we may conclude-(1) that the New York Court in referring to a jurisdiction whose jurisprudence is based on the English Common Law, uses the phrase in a general sense; and (2) that such Common Law may become the basis of the jurisprudence by decision of the courts where practical considerations and the effect of sovereignty gives ground for such a decision. If, in the Philippine Islands, a comparatively young jurisdiction, English Common Law principles as embodied in Anglo-American jurisprudence are used and applied by the courts to the extent that such Common Law principles

are not in conflict with the local written laws, customs, and institutions as modified by the change of sovereignty and subsequent legislation, and there is no other foreign case law system used to any substantial extent, then it is proper to say in the sense of the New York rule that the "jurisprudence" of the Philippine Islands is based on the English Common Law.

IN THE PHILIPPINE ISLANDS.

The extent of the English or the Anglo-American Common Law here has not been definitely decided by this court. But when the subject has been referred to by this court there has been a striking similarity to the quotations from the American decisions above cited with reference to the English Common Law.

In *Alzua and Arnalot vs. Johnson* (21 Phil., 308), this court, in passing upon an objection of counsel, that while a certain rule was universally recognized and applied in the courts of England and the United States, it was not the law in the Philippine Islands, said:

"To this we answer that while it is true that the body of the Common Law as known to Anglo-American jurisprudence is not in force in these Islands, 'nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law' (U. S. vs. Cuna, 12 Phil., 241); nevertheless many of the rules, principles, and doctrines of the Common Law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the Common Law from which they are derived, and that to breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty recourse must be had to the rules, principles, and doctrines of the Common Law under whose protecting aegis, the prototypes of these institutions had their birth."

* * * * *

"And it is safe to say that in every volume of the Philippine Reports numbers of cases might be cited wherein recourse has been had to the rules, principles and doctrines of the Common Law in ascertaining the true meaning and scope of the legislation enacted in and for the Philippine Islands since they passed under American sovereignty." (Pp. 331, 333.)

And later in speaking of the judicial system of the Philippine Islands (page 333):

"The spirit with which it is informed, and indeed its very language and terminology would be unintelligible without some knowledge of the judicial system of England and the United States. Its manifest purpose and object was to replace the old judicial system, with its incidents and traditions drawn from Spanish sources, with a new system modelled in all its essential characteristics upon the judicial systems of the United States. It cannot be doubted, therefore, that any incident of the former system which conflicts with the essential principles and settled doctrines on which the new system rests must be held to be abrogated by the law organizing the new system."

In *U. S. vs. De Guzman* (30 Phil., 416), the court spoke as follows:

"We have frequently held that, for the proper construction and application of the terms and provisions of legislative enactments which have been borrowed from or modelled upon Anglo-American precedents, it is proper and oftentimes essential to review the legislative history of such enactments and to find an authoritative guide for their interpretation and application in the decisions of American and English courts of last resort construing and applying similar legislation in those countries. (*Kepner vs. U. S.*, 195 U. S., 100; 11 Phil., 669; *Serra vs. Mortiga*, 204 U. S., 470; 11 Phil., 762; *Alzua and Arnalot vs. Johnson*, 21 Phil., 308.) Indeed it is a

general rule of statutory construction that courts may take judicial notice of the origin and history of the statutes which they are called upon to construe and administer, and of the facts which affect their derivation, validity and operation (2 Lewis' Sutherland on" Statutory Construction, sec. 309.)"

In *U. S. vs. Abiog and Abiog* (37 Phil., 137), this court made this further statement on the subject:

"To elucidate-the principles of the Anglo-American Common Law are for the Philippines, just as they were for the State of Louisiana and just as the English Common Law was for the United States, of far-reaching influence. The Common Law is entitled to our deepest respect and reverence. The courts are constantly guided by its doctrines. Yet it is true as heretofore expressly decided by this Court that-'neither English nor American Common Law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law.'" (*U. S. vs. Cuna* [1908], 12 Phil., 241.)"

"What we really have, if we were not too modes to claim it, is a Philippine Common Law influenced by the English and American Common Law, the *derecho comun* of Spain, and the customary law of the Islands and builded on a case law of precedents. Into this Philippine Common Law, we can properly refuse to take a rule which would estop other courses of reasoning and which, because of a lack of legal ingenuity would permit men guilty of homicide to escape on a technicality."

At this juncture, three years after the last quoted comment, the influence of English and American jurisprudence can be emphasized even more strongly. A survey of recent cases in the Philippine Reports, and particularly those of the last few years, shows an increasing reliance upon English and American authorities in the formation of what may be termed a Philippine Common Law, as supplemental to the statute law of this jurisdiction. An analysis will show that a great preponderance of the jurisprudence of this jurisdiction is based upon Anglo-American case law precedents,-exclusively in applying those statutory laws which have been enacted since the change of sovereignty and which conform more or less to American statutes, and-to a large extent in applying and expanding the remnants of the Spanish codes and written laws.

PHILIPPINE STATUTE LAW.

Introductory to analyzing what Spanish written laws remain in force today, we will consider in a general way those Spanish laws which were in force at the time of the change of sovereignty.

Spanish law became highly codified during the nineteenth century. All of the laws of Spain were, however, not made applicable to the Philippine Islands; only those were effective here which were extended by royal decree. The chief codes of Spain made effective in the Philippines were as follows:

Penal Code..... 1887

Code of Commerce..... 1888

Ley Provisional, Code of Criminal

Procedure, and Code of Civil Procedure..... 1888

Civil Code..... 1889

(Except portion relating to marriage,
thus reviving a portion of Marriage Law of 1870.)

Marriage Law..... 1870

Mortgage Law..... 1889

Railway Laws..... 1875 and 1877

Law of Waters..... 1866

In addition to these there were certain special laws having limited application: Las Siete Partidas; Las Leyes de Toro; Leyes de las Indias; La Novisima Recopilacion; Mining Law; Notarial Law; Spanish Military Code, and the Copyright Law.

The foregoing were written laws which, by change of sovereignty, acquired the force of statute law in the Philippine Islands. There was no properly called Common Law or Case Law of Spain to accompany and amplify these statutes, although there were, of course, the customs of the people of the Islands, which constituted, in a sense, unwritten law. Spanish jurisprudence does not recognize the principle of stare decisis; consequently, there could be no Common Law in any sense analogous to the English or American Common Law. Article 6 of the Civil Code provides:

"When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and in the absence thereof the general principles of law."

In order to determine the general principles of law "judicial decisions cannot be resorted to" * * *. (2 Derecho Civil of Sanchez Roman, pp. 79-81; 1 Manresa, p. 80.) A lower court of Spain is at liberty to disregard the decisions of a higher court. This is the general continental rule. (Holland's Jurisprudence, 11th Ed., pp. 68-70.) "The Partidas is still the basis of Spanish Common Law, for the more recent compilations are chiefly founded on it and cases which cannot be decided either by these compilations or by the local fueros must be decided by the provisions of the Partidas." (IV Dunham, History of Spain, p. 109.)

The Partidas is a code law and cannot in any proper sense be considered as Common Law. It specifically provided, however, for recourse to customs when the written law was silent. The customs to which resort is to be had are the customs of the particular place where the case arises; the customs of one locality in Spain having no effect on the application of law in another place. (1 Manresa, pp. 77, 79; Civil Code, art. 6; Code of Commerce, art. 2.) Accordingly, the Spanish customary law could not have any force here. The law or custom cannot be migratory. Manresa does not define what is meant by "general principles of law," but from his discussion under article 6 of the Civil Code it appears how far from a case law system is Spanish jurisprudence. He formulates the rule that courts are governed: first, by written law; second, by the customs of the place; third, by judicial decision; and fourth, by general principles of law. In fact, in urging that resort to judicial decisions should come before resort to general principles of law, Manresa rather implies that the practice of the courts is the contrary.

English Common Law is quite a different conception. While it grew out of the early Anglo-Saxon customs, it came in time to be a case law of binding force which controlled custom. In fact, it became so binding that it was found necessary, in order to effect justice in particular cases, to establish the Court of Chancery, which became the court of equity. The English Common Law recognizes custom only in so far as it does not conflict with the well settled principles of that law. Under the Spanish system, on the other hand, when the written law is silent, before considering precedents in the cases the court is governed by the customs of the locality at the time.

Consequently, by the change of sovereignty there was no body of case law or common law of Spain which could be considered as existing in connection with the written law retained in force in these Islands. The only amplification of that written law was the local customs of the people of the Islands. This is particularly true of Spanish decisions rendered since the change of sovereignty, which do not preclude the local courts from exercising an independent judgment. (Cordova vs. Rijos, 227 U. S., 375.)

SPANISH STATUTE LAW.

The Spanish statute law, as amplified by Spanish commentaries but without a background of Spanish precedent or case law, was by the change of sovereignty, severed from Spanish jurisprudence and made effective in this jurisdiction to the same extent as if Congress had enacted new laws for the Philippines modelled upon those same Spanish statutes. This retention of the local private law was merely in accordance with the principles of International Law in that regard. However, by the mere fact of the change of sovereignty, all portions of that statute law which might be termed political law were abrogated immediately by the change of sovereignty. Also, all Spanish laws, customs, and rights of property inconsistent with the Constitution and American principles and institutions were thereupon superseded. (*Sanchez vs. U. S.*, 216 U. S., 167.)

We will give a brief analysis of the further extent to which the Spanish statute law has been repealed and cut down since the change of sovereignty. The table in the note [1] below illustrates the situation in a general way.

Even the Spanish Civil Code has been largely modified as will appear from the table in the note [2] below.

CASES UNDER AMERICAN DERIVED STATUTES.

It thus appears that the bulk of present day Statute Law is derivative from Anglo-American sources; derivative within the sense of having been copied, and in the sense of having been enacted by Congress or by virtue of its authority. This court has repeatedly held that in dealing with the cases which arise under such statute law the court will be governed by the Anglo-American cases in construction and application. (*U. S. vs. De Guzman*, 30 Phil., 416, at p. 419; *U. S. vs. Cuna*, 12 Phil., 241; *Cerezo vs. Atlantic, Gulf & Pacific Co.*, 33 Phil., 245, 428, 429.)

To illustrate more clearly the scope of the use of Anglo-American cases in this connection, a brief analysis of some of the more recent decisions of this court is advisable. For convenience the cases will be taken up in the note [1] by subjects. In all of them, Anglo-American decisions and authorities are used and relied upon to a greater or less degree. Although in many cases the use is by way of dictum, nevertheless, the net result is the building up of a very substantial elaboration of Anglo-American case law.

From the foregoing selection of the more recent and typical cases, it appears how broad is the scope of the use of Anglo-American authorities and precedents in the field of law subjects affected by American derived legislation. In the application of those statutes in the many cases which come before the court, there is bound to be developed a substantial common law. There is no question that this exists. We are merely concerned with its extent and source.

CASES UNDER SPANISH STATUTES.

In addition to the subjects covered above, there is a wide field of use of Anglo-American cases in the interpretation and application of the remnants of the Spanish statutes. Such is of even greater importance in showing the real permanency of the hold which Anglo-American Common Law has fastened upon the jurisprudence of this jurisdiction. An analysis of the cases, particularly those of the later years, justifies completely the well-expressed opinion of former Attorney-General Araneta quoted below:

"We cannot say with certainty that the courts of the Philippine Islands will, in the absence of a statute, be guided by the common law. It has been said that the common law is expanded slowly and carefully by judicial decisions based on a standard of justice derived from the habits, customs, and thoughts of a people, and by this standard doubtful cases are determined; that the office of the judge is not to make the common law but to find it, and when it is found to affix to it his official mark by which it becomes more certainly known and authenticated. The announcement of the law comes from the courts after they have had the benefit of the learning of counsel, which

to be comprehensive and useful must embrace a knowledge of the people and their customs, as well as a knowledge of the principles established by prior decisions. It is, therefore, reasonable to assume that the courts of the Philippine Islands in cases not controlled by statute will lay down principles in keeping with the common law, unless the habits, customs, and thoughts of the people of these Islands are deemed to be so different from the habits, customs, and thoughts of the people of England and the United States that said principles may not be applied here." (4 Op. Atty.-Gen. P. I., 510, 511.) To illustrate the scope of the use of Anglo-American cases in connection with the remaining Spanish statutes, a brief analysis[1] of the more recent cases under a few of the principal subjects, will be appropriate. Frequently in these cases reference to Anglo-American precedents is for the purpose of showing that Spanish law and the Anglo-American law is the same, and frequently it is for the purpose of amplifying or extending the Spanish statutes. In most cases it is for the purpose of applying those statutes to the particular case before the court; but whatever the use, the fact remains that through the influence of these cases a broad exposition of American case law is made.

The last group of recent cases, which are but typical of many others in the Reports, illustrates clearly the fact that Anglo-American case law plays a very great part in amplifying and applying the law on those subjects which are still governed by the remaining portions of the Spanish statutes.

The foregoing two groups of cases in combination, those under the subjects covered by Spanish statutes and those under the subjects covered by American-Philippine legislation and effected by the change of sovereignty, show conclusively that Anglo-American case law has entered practically every one of the leading subjects in the field of law, and in the large majority of such subjects has formed the sole basis for the guidance of this court in developing the local jurisprudence. The practical result is that the past twenty years have developed a Philippine Common Law or case law based almost exclusively, except where conflicting with local customs and institutions, upon Anglo-American Common Law. The Philippine Common Law supplements and amplifies our statute law.

COLLATERAL INFLUENCES.

This conclusion is further justified by the practical situation which has surrounded the Bench and Bar of the Philippine Islands for many years and which there is every reason to believe will continue unabated in the future.

This court has, in an increasing degree during the past twenty years, cited and quoted from Anglo-American cases and authorities in its decisions. The following analysis of the citations of the last twenty volumes of the Philippine Reports show this graphically.

Cases cited.

Volume

U. S.

Philippines.

Spain.

England.

20.....

207

63

21

1

21.....

217

127

10

3

22.....

273

73

21

5

23.....

211

181

18

4

24.....

194

108

19

1

25.....

143

98

24

2

26.....

257

104

23

27.....

145

132

25

1

28.....

145

130

24

3

29.....

152

136

9

1

30.....

.98

85

11

31.....

159

103

8

1

32.....

311

176

15

33.....

121

137

6

5

34.....

214

163

34

35.....

109

159

17

4

36.....

125

217

21

2

37.....

340

242

23

5

38.....

161

175

19

8

39.....

228

143

13

6

3,810

2,752

361

52

The American citations are over ten times as numerous as the Spanish citations. (In Vol. 1 there were 63 Spanish to 53 United States.) Add to this the cumulative effect of perpetuating this ratio through the citations of Philippine cases in which American cases have been cited, and it is obvious that Spanish decisions have had comparatively slight effect in the development of our case law.

It is a fact of considerable practical importance that there are no digests of Spanish decisions to aid the study of Bench and Bar. On the other hand, the local libraries contain both digests and reports of the Federal Courts and Supreme Court of the United States, and of most of the State courts, and also many reports of the English courts. Added to this is a liberal supply of English and American text books. The foregoing not only has a natural influence on the results of the work of the Bench, but it has a very decided influence on the development of the present Bar of the Philippine Islands; each year adds to the preponderance of lawyers trained chiefly from a study of Anglo-American case law.

The fact that prolific use of Anglo-American authorities is made in the decisions of this court, combined with the fact that the available sources for study and reference on legal theories are mostly Anglo-American, present a practical situation at this moment from which this court can draw but one conclusion, namely, that there has been developed, and will continue, a common law in the jurisprudence of this jurisdiction (which for purposes of distinction may properly be termed a Philippine Common Law), based upon the English Common Law in its present day form of an Anglo-American Common Law, which common law is effective in all of the subjects of law in this jurisdiction in so far as it does not conflict with the express language of the written law or with the local customs and institutions.

CONCLUSIONS.

We may summarize our conclusions as follows:

- (1) The Philippine Islands is an unorganized territory of the United States, under a civil government established by the Congress.
- (2) In interpreting and applying the bulk of the written laws of this jurisdiction, and in rendering its decisions in cases not covered by the letter of the written law, this court relies upon the theories and precedents of Anglo-American cases, subject to the limited exception of those instances where the remnants of the Spanish written law present well-defined civil law theories and of the few cases where such precedents are inconsistent with local customs and institutions.
- (3) The jurisprudence of this jurisdiction is based upon the English Common Law in its present day form of Anglo-American Common Law to an almost exclusive extent.
- (4) By virtue of the foregoing, the New York rule, given a reasonable interpretation, permits conferring privileges on attorneys admitted to practice in the Philippine Islands similar to those privileges accorded by the rule of this court.

Accordingly, the supporting papers filed by the applicant in this case showing to the satisfaction of the court his qualifications as an attorney-at-law, his petition is hereby granted and he is admitted to the practice of law in the

Philippine Islands. Our decision is based upon our interpretation of the New York rule, and it does not establish a precedent which may be controlling on this court with respect to future applications if our interpretation is not borne out by the future enforcement of that rule by the New York court. So ordered.

Mapa, C. J., Johnson, Araullo, Street, Avanceña and Villamor, JJ., concur.

[1]

Subject of new legislation

Order or Act.

Spanish law affected.

Extent.

1. Judiciary----- G. O. No. 21, 29, 47, and Act No. 136.

Judicial system under Spanish Royal Decrees.

Superseded

2. Marriage Law----- G. O. No. 68

Marriage Law, 1870

Modified

3. Criminal Procedure----- G. O. No. 58

Code of Criminal Procedure and Ley Provisional.

Substantially superseded.

4. Civil Procedure----- Act No. 190

Code of Civil Procedure

Do.

5. Crimes----- Various Acts of Philippine
Commission and Legislature

Penal Code

Modified.

6. Divorce Law----- Act No. 2170

Civil Code

Sections applicable superseded.

7. Real Estate Titles----- Act No. 496

do

Modified.

8. Real and Chattel Mortgages Acts Nos. 496 and 1508.

Mortgage Law and Civil Code.

Do.

9. Corporation Law.----- Act No. 1459

Railways Laws

Do.

Bankruptcy and Insolvency Law Act No. 1956

Negotiable Instrument----- Act No. 2031

Warehouse Receipts Law----- Act No. 2137

Code of Commerce

Substantially Superseded.

Public Utilities Law----- Act No. 2307

Insurance Law----- Act No. 2427

Salvage Law----- Act No. 2616

10. Usury Law----- Act No. 2655

Mining Law----- Act of Congress, July 1, 1902

Leyes de Minas

Do.

11. Irrigation Act----- Act No. 2152

Law of Waters

Modified.

12. Administrative Code----- Act No. 2711

Notarial Law; political and Municipal Law; Penal Code

Incidentally superseded.

13. Public Land Law----- Act Nos. 926 and 2874

Civil Code

Superseded; sections affected.

[2] CIVIL CODE.

Book and title.

Subjects.

Status.

By what law affected.

BOOK I

Preliminary----- 1. General rules for the application of laws

Modified

Act No. 2711.

Title I----- 2. Citizenship...

Repealed

By change of sovereignty; Acts of Congress, July 1, 1902, Aug. 29, 1916; Act No. 2927.

Title II----- 3. Status of persons, natural or judicial

Slightly modified

Code of Civil Procedure

Title III----- 4. Domicile

In Force

Title IV----- 5. Marriage

Never in Force in Philippine Islands

See Marriage Law, 1870; G. O. No. 68; Act No. 2710

Title V----- 6. Paternity and filiation

Slightly modified

Code of Civil Procedure

Title VI----- 7. Support

In force

Title VII----- 8. Parental authority (with regard to persons and property of children)

Modified

Do.

9. Adoption Repealed Title

VIII----- 10. Absence

Modified

Do.

Title IX----- 11. Guardianship

Repealed

Do.

Title X----- 12. Family council

do

Do.

Title XI----- 13. Emancipation majority

Modified

Code of Civil and Procedure; Act No. 1891

Title XII----- 14. Registry of Civil status

Never in force in Philippine Islands

See G. O. No. 68 and Act No. 2711

BOOK II

Title I-III----- 15. Property, ownership, and its modifications

Slightly modified

Code of Civil Procedure

Title IV----- 16. Special properties

Modified

Act No. 2152; Act of Congress, July 1, 1902

Title V----- 17. Possession

Slightly modified

Code of Civil Procedure.

Title VI----- 18. Usufruct

do

Do.

19. Use and habitation

In force

Do.

Title VII----- 20. Easements

do

Title VIII----- 21. Register of deeds

Largely modified

Mortgage Law; Act Nos. 496 and 2711.

BOOK III.

Title I----- 22. Occupancy

In force

Title II----- 23. Donations

Slightly modified

Act No. 496.

Title III----- 24. Wills

Mostly repealed

Code of Civil Procedure.

25. Inheritance

Slightly modified

Do.

26. Executors

Repealed

Do.

27. Intestate succession

Slightly modified

Do.

28. Property subject to reversion

In force

Do.

29. Accretion (in succession)

do

Do.

30. Acceptance and repudiation of inheritance

Mostly repealed

Do.

31. Collation

Slightly modified

Do.

BOOK IV.

Title I----- 32. Partition

Modified

Do.

33. Obligations

Slightly modified

Do.

Title II and III. 34. Contracts (including also dowry, paraphernal property, conjugal property, separation of property of spouses)

Slightly modified

Code of Civil Procedure

Title IV and V---- 35. Purchase and sale, and barter

do

Do.

Title VI----- 36. Lease

do

Do.

37. Labor contracts

In force

38. Carriers

do

Title VII----- 39. Censos

do

Title VIII----- 40. Partnership

do

Title IX----- 41. Agency

do

Title X----- 42. Loans

do

Title XI----- 43. Bailments

do

44. Sequestration

Repealed

Do.

Title XII----- 45. Insurance

Modified

Act No. 2427.

46. Gambling

Repealed

Act No. 1757.

47. Life annuities

In force

Title XIII----- 48. Compromise

do

49. Arbitration

Repealed

Code of Civil Procedure.

Title XIV----- 50. Suretyship

In force

Do.

Title XV----- 51. Pledge

Modified

Act No. 1508.

52. Mortgage

do

Mortgage Law; Act No. 496; Code of Civil Procedure.

53. Antichresis

In force

Title XVI----- 54. Quasi contracts

do

55. Torts

do

Title XVII----- 56. Preference of credit

Mostly repealed

Act No. 1956.

Title XVIII----- 57. Prescription

do

Code of Civil Procedure.

[1]

- POLITICAL LAW.

The political and constitutional law of the Spanish sovereignty was entirely abrogated by the change of sovereignty.

- CONSTITUTIONAL AND FEDERAL LAWS.

Rubi vs. Provincial Board of Mindoro, 39 Phil., 660. Villavicencio vs. Lukban, 39 Phil., 778. Tan Te vs. Bell, 27 Phil., 354.

- POLICE POWER.

The police powers of the Government of the Philippine Islands and its political subdivisions are covered by the rules of American law. U. S. vs. Pompeya, 31 Phil., 245.

- STATUTORY CONSTRUCTION.

In re Will of Riosa, 39 Phil., 23, at p. 28. Statutes are presumed not to be retrospective.

In re McCulloch Dick, 38 Phil., 41.

The implication in a statute is a part of it (page 90).

U. S. vs. Pineda, 37 Phil., 456, at pp. 462 to 465.

Interpretation of the word "fraudulent" in the pharmacy law. This also includes a special theory of negligence.

U. S. vs. Bustos, 37 Phil., 731, at p. 740.

In referring to the Philippine Bill of Rights, the court says:

"The language carries with it all the applicable jurisprudence of great English and American constitutional cases."

H. E. Heacock Co. vs. Collector of Customs, 37 Phil., 970, pp. 978, 980.

Application of tariff law.

U. S. vs. Soliman, 36 Phil., 5, p. 10.

U. S. vs. Palacio, 33 Phil., 208, at p. 216.

Repeals by implication are not favored.

- JUDICIARY.

Anuran vs. Aquino and Ortiz, 38 Phil., 29, at p. 35.

The Philippine Judiciary system is substantially modelled upon English and American prototypes.

U. S. vs. Blanco, 37 Phil., 126, at p. 218.

The court will take judicial notice of municipal ordinances on appeals from a municipal court.

Lino Luna vs. Rodriguez, 37 Phil., 186, at pp. 189-194.

Dizon vs. Moir, 36 Phil., 759, p. 761.

In re Kelly, 35 Phil., 944, at p. 950.

Power of court to punish for contempt.

Zarate vs. Director of Lands, 39 Phil., 747, at p. 749.

Principle of "Law of the Case" recognized.

Aquino vs. Director of Lands, 39 Phil., 850, at p. 861.

Res Adjudicata and Stare Decisis.

- CIVIL PROCEDURE AND PLEADING.

Javellana vs. Mirasol and Nuñez, 40 Phil., 761, at p. 772.

Leung Ben vs. O'Brien, 38 Phil., 182, at p. 189.

"The Code of Civil Procedure * * * speaks the language of the common-law and for the most part reflects its ideas."

Ramirez vs. Orientalist Co. and Fernandez, 38 Phil., 634, at pp. 642-644.

Rules of pleadings.

Banco Espanol-Filipino vs. Palanca, 37 Phil., 921, at p. 931. Judgment upon constructive or substituted service against a non-resident is invalid.

"The doctrine established by the Supreme Court of the United States on this point, being based upon the constitutional conception of due process of law, is binding upon the courts of the Philippine Islands." (Page 932.)

Mortera and Eceiza vs. West of Scotland etc., 36 Phil., 994.

- CRIMINAL PROCEDURE.

U. S. vs. Lahoylahoy and Madanlog, 38 Phil., 330.

U. S. vs. Bagsic, 35 Phil., 327, at p. 336. See also- U. S. vs. Balaba, 37 Phil., 260, at p. 268.

Re inclusion of several offenses in one information on the ground that this jurisdiction is not bound, since jury trials do not exist here. The court declines to follow certain English and American cases but it goes on to point out that the American practice is not uniform.

- EMPLOYERS' LIABILITY LAW.

Tamayo vs. Gsell, 35 Phil., 953, at pp. 966 to 986.

Cerezo vs. Atlantic, Gulf & Pacific Co., 33 Phil., 425, at pp. 428-443.

- TORRENS SYSTEM-REAL ESTATE TITLES.

De los Reyes vs. Razon, 38 Phil., 480.

Registered titles are conclusive and binding upon all the world. Title is determined judicially by action in rem.

Aitken vs. La O, 36 Phil., 510, at p. 516.

De la Cruz vs. Fabie, 35 Phil., 144, at p. 166 et seq.

Franciscan Corp. vs. Archbishop of Manila, 35 Phil., 295. Referring to title by equitable estoppel.

- INSURANCE LAW.

Harding vs. Commercial Union Assurance Co., 38 Phil., 464, at p. 471 et seq.

Insurable interest.

Young vs. Midland Textile Insurance Co., 30 Phil., 617. Interpretation of insurance contract, and effect of increase of risk.

- LIBEL.

U. S. vs. Cañete, 38 Phil., at pp. 253, 260. P
rivileged communications.

The Libel Law is supplemented by the "fundamental law of the land" as incorporated in the Philippine Bill of Rights.

U. S. vs. Bustos, 37 Phil., 731, at p. 742.

Privileged communications and malice.

U. S. vs. O'Connell, 37 Phil., 767, at pp. 772, 774. Innuendo may be libel.

- UNFAIR COMPETITION AND TRADE MARKS.

Ubeda vs. Zialcita, 226 U. S., 452; 40 Phil., 1109.

The rule that under Act No. 666, an infringing plaintiff cannot have relief against another infringer. Clarke vs. Manila Candy Co., 36 Phil., 100, at p. 111.

"* * * Our own statute, Act No. 666, is in itself a clear recognition of the more modern attitude of the law-maker with relation to these practices. Mr. Justice Holmes said, twenty-five years ago: 'The law has got to be stated over again. And I venture to say that in fifty years we shall have it in a form of which no one could have dreamed fifty years ago. Our statute crystallizing as it does the more modern view as to what the law should be on this subject, is a striking realization of that prophecy.'"

The court goes on to cite American authorities with reference to the definition of unfair competition. Alhambra Cigar, etc., Co. vs. Companfa General de Tabacos, 35 Phil., 62, at p. 73. Application of the rule respecting similarity calculated to deceive.

- NEGOTIABLE INSTRUMENTS.

Green vs. Lopez, 36 Phil., 1.
Right of a holder for value.
U. S. vs. Solito, 36 Phil., 785, at p. 788.
Effect of alteration of check.

- INSOLVENCY LAW.

Mitsui Bussan Kaisha vs. Hongkong & Shanghai Banking Corp., 36 Phil., 27, at pp. 37, 38, and 42. "The legislative history of that part of Act 1956, which deals with voluntary and involuntary insolvency, and which is essentially a bankruptcy law, clearly shows that the legislature intended to establish in this jurisdiction the essential features of the American system of bankruptcy. This being true we may look to the decisions of the Supreme Court of the United States for guidance in determining the extent of the title to the insolvent's estate which is vested in the assignee by the clerk's assignment." (P. 41.)

- MARRIAGE AND DIVORCE.

Vina vs. Villareal, 41 Phil., 13.
In divorce cases neither old nor new statutes covered the question, and the court relies on American cases for the rule that a wife can obtain separate domicile for the purpose of divorce.
Siman vs. Leus and Leus, 37 Phil., 967.
Consideration of the Civil Code, and Code of Civil Procedure and the Marriage Law for the purpose of construing them together. Goitia vs. Campos Rueda, 35 Phil., 252, at pp. 254, 260. General Orders No. 68 govern the solemnities required for the marriage contract. The law of marriage under the Civil Code as in force in Spain at the time of American occupation, is not in force in these Islands.

- USURY.

U. S. vs. Constantino Tan Quingeo Chua, 39 Phil., 552, at pp. 555, 559.
The court holds that the Philippine statute on the subject:
"*** * *** is a drastic law following in many respects the most advanced American legislation," *** * *** and refers to American and English cases, analyzing the offense of usury.

- CORPORATIONS.

Government of P. I. vs. Philippine Sugar Estates Dev. Co., 38 Phil., 15, at pp. 26 and 27.
Quo warranto as applied to corporations. Ramirez vs. Orientalist Co., and Fernandez, 38 Phil., 634, at pp. 644, 654.
Defense of lack of authority of officer considered. Contracts must be made by directors and not by stockholders. Velasco vs. Poizat, 37 Phil., 802, at p. 805 et seq.
Rights and liabilities under stock subscription.
Viuda e Hijos de Pedro P. Roxas vs. Rafferty, 37 Phil., 957, at p. 965.
The court holds American authorities to be controlling for the proposition that municipal corporation is liable for interest upon illegally collected taxes.

- EVIDENCE.

U. S. vs. Agatea, 40 Phil., 596; at p. 600.

Ruling Case Law cited for conclusion with reference to the admissibility of extrajudicial confessions. Ed. A. Keller & Co. vs. Ellerman & Bucknall Steamship Co. and Collector of Customs, 38 Phil., 514. The court cites American cases for the proposition that a single objection to a line of evidence is sufficient (p. 519); and for the rule that a judgment of conviction cannot be admitted in evidence in a civil suit. (P. 520.)

Henry W. Peabody & Co. vs. Bromfield & Ross, 38 Phil., 841, p. 854.

Parol Evidence Rule.

U. S. vs. Razon & Tayag, 37 Phil., 856.

U. S. vs. Virrey, 37 Phil., 618, at pp. 624-5.

Leung Yee vs. F. L. Strong Machinery Co. and Williamson, 37 Phil., 644, pp. 651, 652.

U. S. vs. Antipolo, 37 Phil., 726.

Competency of witnesses.

Canuto vs. Mariano, 37 Phil., 840.

Asencio vs. Bautista, 36 Phil., 470.

U. S. vs. Sy Toon, 36 Phil., 736.

Cuyugan vs. Santos, 34 Phil., 100.

In this case the court considers the parol evidence, rule with reference to the admission of evidence to alter, vary, or defeat the terms of a written deed. On page 106 and following the court observes that the Code of Civil Procedure is based upon American laws, and analyzes it with the help of extensive reference to American cases. It then considers whether or not under the Spanish law there is any reason why the courts of these Islands should not have power to enforce the equitable doctrine of the English and American cases. The court quotes a broad equitable rule of the Partidas: "No man may wrongfully enrich himself at the expense of another," and concludes that the elementary and basic principles of the Civil Code in the absence of express statutory prohibition permits the application of the equitable doctrine announced by the English and American cases. (Followed in Villa vs. Santiago, 38 Phil., 157, p. 162.)

- ARREST.

U. S. vs. Santos, 36 Phil., 853.

The court says (page 854):

"The powers of peace officers in the Philippines, generally stated, are the same as those conferred upon constables under the Anglo-American Common Law."

[1]

- CONTRACTS.

In construing the application of the rules affecting contracts this court has frequently resorted to American cases or American principles for its authority, although the general subject of contracts is still largely governed by the provisions of the Civil Code. It would be fair to say that the law of contracts has been as little affected by new legislation as any other subject:

Hanlon vs. Haussermann and Beam, 40 Phil., 796; at p. 825.

Time essence of contract.-Question whether or not contract between an engineer and a mining company providing for the rehabilitation of the company's property was a joint adventure and created a fiduciary relationship. The

court says on page 816.

All parts of contract must be construed together.-"We have no criticism to make against this salutary doctrine when properly applied, and would be slow to assume that our civil law requires any less degree of good faith between parties so circumstanced than is required by the court of equity in other countries."

The court thereafter cites American cases but no Spanish cases. On the question of time being of the essence of the contract, the court (on page 823) says:

"* * * To illustrate: The rule has been firmly established from an early date in courts of equity that in agreements for the sale of land, time is not ordinarily of the essence of the contract; that is to say, acts which one of the parties has stipulated to perform on a given date may be performed at a later date." (Citing from American cases and authors on various ramifications of this principle.)

U. S. vs. Varadero de la Quinta, 40 Phil., 48. Impossibility of performance.-The court considers the defense of impossibility of performance of a contract, and relies exclusively on English and American cases; and concludes:

"From these authorities and facts we can reach no other conclusion than that since impossibility of performance was not known to both parties at the time of making the contract, since performance has not been prevented by the acts of the United States, since the contract related to nothing which was unlawful, and since the modificatory rules growing out of war conditions did not affect the same, the contractor and his guarantors are not excused from the consequences of non-performance." (p. 58.)

Cruz vs. Alberto, 39 Phil., 991.

Consideration and mutuality.-The court, in passing upon the interpretation of a lease, alleged to contain an agreement for extension of the term, cites, on page 995, R. C. L. and Cyc, with reference to consideration and mutuality, and the presumptions with reference thereto. No reference is made to Spanish cases.

Allen vs. Province of Tayabas, 38 Phil., 356, pp. 362 and 364.

Requirements of certificates of approval subject to rule of reasonableness.-The court, in holding a contract, providing for the approval of performance by the certificate of a third party, binding in the absence of a showing of fraud, cites liberally Federal and State cases. And in the midst of these citations, on page 362, makes the following observation:

"The old common law rule required a strict or literal performance of contracts. The modern rule sanctions a substantial performance of contractual relations. The law now looks to the spirit of the contract and not to its letter. Even though a plaintiff is not entirely free from fault or omission, the courts will not turn him away if he has in good faith made substantial performance. * * * But when the terms, or the nature of the contract, or the circumstances are such as to make it doubtful whether the contractor has made any such unwise agreement, the courts will ordinarily construe the contract as an 'agreement to do the thing in such a way as reasonably ought to satisfy the defendant.' (Parlin & Orendorff Co. vs. City of Greenville [1904], 127 Fed., 55; Swain vs. Seamens [1870], 9 Wall., 254,)"

Arbitration agreements.-Again on page 364, referring to an arbitration clause in the agreement, the court says: "The New York theory of refusal to uphold such agreements, because of the opinion that they violate the spirit of the laws creating the courts, is hardly agreed to by more progressive jurisdictions. (See U. S. Asphalt Refining Co. vs. Trinidad Lake Petroleum Co. [1915], 222 Fed., 1006.)"

The provisions of the Civil Code are not even referred to in the opinion. De la Cruz vs. Capinpin and Albea, 38 Phil., 492, p. 497.

Contract annulled for misrepresentations inducing signature.-"It may be proved by parol evidence that a contract was fraudulently misread to one not able to read, and that he was thus induced to give his signature, and when such facts are fully established the contract should be annulled and set aside. (McKessons vs. Sherman, 51 Wis., 303; Kranich vs. Sherwood, 92 Mich., 397.)" Only authority cited for the decision.

Uy Soo Lim vs. Tan Unchuan, 38 Phil., 552.

Right of infant to disaffirm; obligation to return consideration.-Right of infant to disaffirm his contract upon reaching maturity; minor must act promptly in exercising his election in the matter. Obligations of such minor to return the consideration upon the rescission of a contract; the court cites American cases (p. 567-572). No Spanish cases referred to. Provisions of Civil Code quoted (p. 570). Ollendorff vs. Abrahamson, 38 Phil., 585.

Negative covenant by employee in employment contract; public policy.-Construction of a contract whereby an employee agreed to refrain for a given time, from engaging in competitive business. "Public order" of the Civil Code is the same as "public policy" of the Anglo-American law. Quoting from and citing U. S. Supreme Court cases, this court said:

"Following this opinion, we adopt the modern rule that the validity of restraints upon trade or employment is to be determined by the intrinsic reasonableness of the restrictions, in each case, rather than by any fixed rule, and that such restrictions may be upheld when not contrary to the public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed." (Page 592.)

Thereafter the court cites Cyc. and U. S. and English cases at some length. There is no reference to a Spanish case in this decision, and the only reference beyond that of the language of the Civil Code are the general statements of Manresa's Commentaries. (Followed in G. Martini, Ltd., vs. Glaiserman, 39 Phil., 120.)

Behn, Meyer & Co. vs. Yangco, 38 Phil., 602.

Substantial breach; terms of sale.-With reference to the proper construction as to the place and time of delivery under contract of sale, the court cites freely American writers and American and English cases; but no Spanish cases.

Manila Railroad Co. vs. Compañía Trasatlantica and Atlantic, Gulf and Pacific Co., 38 Phil., 875.

Obligations under contract of carriage.-The court, in citing generally the obligations of the carrier under a contract of carriage, and in construing the responsibilities of the carrier, and the validity of a provision limiting liability, cites various articles of the Civil Code and quotes from Manresa, and at the same time quotes from English and American cases; and, on page 892, after concluding a quotation from an English case, says:

"Though not stated in so many words, this decision recognizes that from the mere fact that a person takes the property of another into his possession and control there arises an obligation in the nature of an assumpsit that he will use due care with respect thereto. This must be considered a principle of universal jurisprudence, for it is consonant with justice and common sense, and, as we have already seen, harmonizes with the doctrine above deduced from the provisions of the Civil Code.

" Negligence ex contractu.-In reference to the article of the Civil Code and Manresa's comments thereon, the court construes his general observations with reference to negligence. In applying these generalities the court includes a quotation from Manresa, reference to two Spanish cases, but the court does not analyze nor quote from those cases, as it has done with the American and English cases.

Songco vs. Sellner, 37 Phil., 254.

Voidability for misrepresentation.-The court, in considering whether or not the, sale was voidable for

misrepresentation of opinion as to the subject-matter, cites freely from American cases and makes no reference either to the Civil Code or Spanish decisions. *Matute vs. Cheong Boo*, 37 Phil., 372.

Specific performance re chattels.-This case involves the principle of specific performance of a contract for the sale of chattels.

The court refers to a former rule of the Code of Commerce, superseded by the Code of Civil Procedure, but holds that the principle of the right of a plaintiff seller to deposit in the court, still exists, and that, therefore, under equity rule of the American and English courts, to which it refers at length, the court by virtue of its control of the chattel can compel the transfer. This case is an interesting illustration of the amalgam of the principles of the two systems of law. *Allen vs. Provinces of Albay and Ambos Camarines*, 35 Phil., 826.

Waiver; penalty clause.-Questions considered, whether or not the definite time for performance has been waived by the other, and the effect of a liquidated damage clause in the contract. The court cites exclusively American cases, it holding that penalty clause is not enforceable where performance has been prevented or waived by the complaining party. (See also dissenting opinion relying on American cases.)

Macondray & Co. vs. Sellner, 33 Phil., 370.

Brokerage market value; reasonable time to perform.-In passing upon the question of when a real estate commission is earned, and of what is time for performance, in absence of express stipulation, the court cites State and Federal authorities.

Centenera vs. Garcia Palicio, 29 Phil., 470.

Relief for mutual mistake.-Question of whether or not relief should be granted for mutual mistake as to the contents of a written contract setting forth the terms of an oral contract previously entered into. On pages 478 to 486 the court discusses the law on the point, and quotes and cites profusely from American authors and cases. No reference is made to the Civil Code nor to Spanish cases. *Leung Ben vs. O'Brien*, 38 Phil., 182.

Contracts implied in law; quasi-contracts.-Case to recover a sum of money lost at play. The court says with reference to the Code of Civil Procedure: "It therefore speaks the language of the common law and for the most part reflects its ideas" * * * and then proceeds to a lengthy review of the English Common Law theories of contract. The court finds an implied contract by operation of law to return money won at gambling: "It is thus seen that the provisions of the Civil Code which might be consulted with a view to the correct theoretical classification of this obligation are unsatisfactory and confusing." (Page 195.) "We believe that it could, without violence of the doctrines of the Civil Law, be held that such obligation is an innominate quasi-contract." (Page 196.) The authorities cited, however, are English and American.

Daywalt vs. Corporation de PP. Agustinos Recoletos, 39 Phil., 587.

Interference by third parties in performance.-Action for damages for interference with the performance of a contract between the plaintiff and another. The court goes at great length (pp. 596-601) into the development of the English and American cases since *Lumley vs. Gye*. Unfortunately, the court does not definitely adopt the principle as it denies relief on another ground. However, the case is interesting in showing how the doctrines of the Common Law have been expounded in the Philippine cases.

Uy Tam and Uy Yet vs. Leonard, 30 Phil., 471.

Contracts for the benefit of a third party.-A material man sought to enforce liability on a contractor's bond to the city of Manila. The court goes at length into the development of the principles of law with reference to this type of contract, and observes that the old Roman Civil Law was contrary to the English Common Law, but concludes

that the rule under the Civil Code is akin to the New York doctrine announced by *Lawrence vs. Fox* and the American cases following it. (Page 489, et seq.) *Gilchrist vs. Cuddy*, 29 Phil., 542.

Injunction against interference with the contract rights of plaintiff with third party, relies exclusively on English and American cases.

- CRIMES.

Crimes are governed chiefly by the Spanish Penal Code. Nevertheless, in the application of the provisions of that Code, American and English authorities are referred to liberally-in some cases as corroborative of the code provisions, and in many cases as furnishing a more accurate analysis.

The cases under Contracts and Crimes are particularly typical of the manner in which Anglo-American case law creeps into the judicial precedents of this court. The following are a few of the recent cases:

U. S. vs. Aviado, 38 Phil., 10, at pp. 13, 14.

Justifiable homicide.-The rule of justifiable homicide in the defense of another is referred to first as established by English and American cases, and thereafter the general language of the Penal Code is cited.

U. S. vs. Domen, 37 Phil., 57, at pp. 59, 60.

In a case of justifiable homicide, the court, without referring to the Penal Code, refers to the common law rule denominated "Retreat to the wall," and observes: "This principle has now given way in the United States to the 'Stand ground when in the right' rule" and cites American cases, and holds that the homicide in question was justified under the rule of the United States cases cited.

U. S. vs. Abiog and Abiog, 37 Phil., 137, at pp. 141, 143.

Homicide.-On the question of whether or not a person, who inflicts a blow which would otherwise be mortal upon a dying person is guilty of homicide, the court analyzes the American cases without reference to the Penal Code. *U. S. vs. Guendia*, 37 Phil., 337.

Insane-at court's discretion to try or commit.-The defendant was found to be insane and, therefore, exempt from criminal liability under the Penal Code. Objection was made that in view of the insanity it was improper to try the defendant, and the court examines at length English and American authority and concludes it is within the court's discretion to make a preliminary investigation, and to permit the trial to proceed.

U. S. vs. Rubal, 37 Phil., 577, at p. 580.

Malicious prosecution.-On the incidental question of what constitutes the crime, the court said: "What is here termed the crime of false accusation or complaint (Penal Code) is practically identical with the crime of malicious prosecution as known to the Anglo-American law.

" *Buchanan vs. Viuda de Esteban*, 32 Phil., 363.

An action for malicious prosecution. The court cites two U. S. Supreme Court cases and one Spanish Supreme Court case.

"The Philippine law does not differ in any substantial feature from the American law on this subject." (Page 366.) "Under the Spanish law the element of probable cause was not treated separately from that of malice, as under the American law." (Page 367.)

U. S. vs. Albao, 29 Phil., 86, at pp. 107, 108.

Elements of robbery.-The court cites American and English authorities for a fuller definition of the crime of robbery.

U. S. vs. Sotelo, 28 Phil., 147.

Estafa.-Case of estafay which is governed by the Penal Code. The court, in applying the rules of the Civil Code regarding divesting a person of his property without his consent, cites American cases and sets forth the two exceptions to the general rule, coming under the head of negotiable paper and estoppel, which go further than the Code exception.

U. S. vs. Suan, 27 Phil., 12.

Application of rules on crime of seduction.-Crime of seduction. The court quotes from Viada to the effect that good reputation of the woman is an essential element; thereupon the court cites at length from the American authorities that chastity is an essential element. The Penal Code uses the word "virgin." The court repudiates the definition of Viada in concluding (page 17) after citing American authorities:

"The authorities seem unanimous that prior absolute chastity on the part of the woman is an essential element of the crime of seduction, expressly so when made a requisite by the express words of the statute. As we have seen from the authorities cited above, the reputation of the woman is not the test; it is a matter of physical condition, of past conduct, of actual purity."

- EQUITY.

The court has sometimes said (Cuyugan vs. Santos, 34 Phil., 100, at p. 116; Repide vs. Afzelius, 39 Phil., 190, at p. 195) that this court does not have an equity jurisdiction. Nevertheless, principles of equity are in force and are repeatedly applied. The Code of Civil Procedure is a fulcrum on which Anglo-American principles of law are being forced into our jurisprudence.

Philippine Sugar Estates Dev. Co., Ltd., vs. Government of P. I., 62 Law Ed. (U. S.), 1177.

Reformation for mutual mistake.-In reversing this court, the United States Supreme Court has authoritatively said: "Here the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The Supreme Court erred in refusing to consider the evidence of mutual mistake, and its judgment must be reversed."

Hanlon vs. Haussermann and Beam, 40 Phil., 796.

"Under the doctrine" of American authorities the court denies the right of specific performance where default exists and time is of the essence. (Page 825.)

San Miguel Brewery vs. Law Union and Rock Insurance Co., 40 Phil., 674.

In passing upon right to reformation of a contract to correct a mistake, after citing American cases, the court denies relief because the evidence is insufficient.

De la Cruz vs. Capinpin and Albea, 38 Phil., 492.

Annulment of contract procured through fraud.-The court cites American cases in support of the rule that a contract executed through fraud may be annulled.

Enage vs. Vda. e Hijos de F. Escano, 38 Phil., 657.

The court, in applying certain provisions of the Code of Civil Procedure, with reference to the right to redeem

under contract held to be a mortgage, says (page 664) : "It is true that there are many of the earlier decisions of the American courts which hold that redemption statutes, being in derogation of the Common Law, must be strictly construed. The modern tendency, however, is to give a liberal construction to such statutes * * *." The court quotes with approval from an Illinois case, and adopts the rule of liberal construction.

Franciscan Corporation vs. Archbishop of Manila, 35 Phil., 295.

Equitable estoppel.-The court, in support of the principle of law, that no one may validly repudiate his own acts, cites and quotes American authorities with reference to equitable estoppel. There is no reference to the codes in this connection.

- SURETYSHIP-GUARANTY.

U. S. vs. Varadero de la Quinta, 40 Phil., 48.

Guarantor's liability is secondary.-The court cites American authorities for the proposition that "The obligation of the surety is primary; the obligation of the guarantor is secondary;" and modifies the judgment of the lower court as to eliminate so much of it as to make the guarantor liable as principal.

La Insular vs. Machuca Go-Tauco and Nubia Co-Siong, 39 Phil., 567.

Variation of obligation.-On page 570 the court says:

"The rule is settled that the obligation of the surety cannot be extended by implication beyond its specified limits. Article 1827 of the Civil Code so declared (Uy Aloe vs. Cho Jan Ling, 27 Phil., 427); and with this doctrine the Common Law is accordant," and cites and quotes American authority for this and further ramifications of the doctrine. The court relies exclusively on American cases for its decision that a statute increasing the amount of tax, for the payment of which bond in question was given, is not a variation of the obligation such as to discharge the surety. (Pages 574-576.)

Government of the Philippine Islands vs. Herrero, 38 Phil., 410.

Obligation of suretyship strictly construed.-The court held, on a bare citation from Cyc, that a surety bond should be strictly construed; no provision of the Civil Code nor Spanish case is referred to.

- INJUNCTION

Ollendorff vs. Abrahamson, 38 Phil., 585.

Negative covenants.-On page 593 the court recognizes the right to injunction on negative covenants, and after quoting from the English and American authorities and cases governing this principle, affirms judgment enjoining the employee from violating the covenant of his contract. The court makes no reference to any of the codes nor to any Spanish cases.

Golding vs. Balabat, 36 Phil., 941.

Trespass.-The court analyzes fully the right to injunction to prevent repeated trespass, and cites exclusively American cases, explaining the equitable grounds upon which the right rests.

Liongson vs. Martinez, 36 Phil., 948.

Based on inadequacy of other remedy.-The court cites American authorities for the proposition that injunction may not be used for the purpose of trying title to real property, nor to accomplish any purpose for which an adequate remedy exists in another form. De Ayala vs. Barretto, 33 Phil., 538. Nuisance.-The court cites American

cases to assist in analyzing what is a "nuisance."

- SPECIFIC PERFORMANCE.

Gutierrez Repide vs. Afzelius and Afzelius, 39 Phil., 190.

Must be reciprocal.-The court considers the question of specific performance with reference to its common law and civil law status. It refers to the articles of the Civil Code which provide that the contracting parties may reciprocally demand the fulfillment of a contract, and to certain decisions of the Supreme Court of Spain, and of this court.

The court then cites certain of the American cases, announcing the rules of specific performance, mutuality of the remedy, and "Rules of equity jurisprudence."

Matute vs. Cheong Boo, 37 Phil., 372, at p. 378.

Court can compel specific performance through control of the res.

- NEGLIGENCE.

Cangco vs. Manila Railroad Co., 38 Phil., 768, at p. 780.

This case turns on the rule here which is Spanish and not Anglo-American that the master is not liable for negligence of his servant, if he has been prudent in selecting his servant, and the situation is not ex-contractu. However, when the court considers what is negligence and contributory negligence, it adopts the rule of an American authority.

Picart vs. Smith, 37 Phil., 809.

This case is interesting as it cites only Philippine cases. The question was whether or not the facts in the case constituted negligence and contributory negligence. The court (on page 813) says: "The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of a discreet pater familias of the Roman law," and then the court discusses this rule in the language of the well-known common law doctrine of the "reasonably prudent man." Carlos vs. Manila Electric Railroad & Light Co., 34 Phil., 55, at p. 58.

Question of negligence.-The court quotes from the general provisions of the Civil Code providing damage when there is "fault or negligence" but not when "events could not be foreseen." The court refers freely to American cases in analyzing whether or not there was negligence under the facts.

Mestres vs. Manila Electric R. & Light Co., 32 Phil., 496.

With reference to the rules regarding the rights of way of street cars and the responsibility of pedestrians, as bearing on the ascertaining of what is negligence and contributory negligence. The court cites voluminously from American cases.

U. S. vs. Barias, 23 Phil., 434.

The court had before it the question of "reckless negligence."

On page 437 et seq., the court cites American cases and authors, including Cooley on Torts for definitions of negligence and reckless negligence. It also quotes from Spanish authors defining the same terms, but no Spanish cases are cited.

Rakes vs. Atlantic, Gulf & Pacific Co., 7 Phil., 359.

This is one of the leading cases in this jurisdiction on the question of negligence. Action is for injuries to workmen, but was before Employers' Liability Act, so general principles governed. The court considers the various provisions of the Spanish Code, quotes from Spanish authors, and observes (page 366):

"Spanish jurisprudence, prior to the Working Men's Accident Law of January 30, 1900, throws uncertain light upon the relation between master and workmen * * *." The court follows the rule of liability ex contractu, and then undertakes consideration of the effect of contributory negligence, and, not finding any satisfactory authority, rather seems to adopt a rule of its own which is not clearly deducible from any particular source: "Whatever may prove to be the doctrine finally adopted in Spain or in other countries under the stress and counterstress of novel schemes of legislation, we find the theory of damages laid down in this judgment the most consistent with the history and the principles of our law in these Islands and with its logical development." (Page 374.)

This was an early case. The later cases show that the court has come to rely more and more on Anglo-American authorities for the definition of negligence and contributory negligence and the relative effect thereof.

- DAMAGES.

This subject is also covered in the cases dealing with contracts and torts elsewhere referred to theories dominate. It will be well, however, to note a few additional cases.

Compagnie Franco-Indochinoise vs. Deutsch-Australische Dampschiffs Gesellschaft, 39 Phil., 474.

Measure; market value; penalty clauses.-Action against vessel for damages to cargo. The court declares the measure of damages after a review of American cases and Sedgwick on Damages. No reference is made to the Civil Code nor to Spanish authorities. In passing upon the penalty clause in the charter party, the court observes, on page 493, that the law in force in these Islands is more favorable to penalties than the law of England and the United States, but that:

"This charter party is not to be construed exclusively by the law of the Philippine Islands, nor even by the local law of the country in which it was executed. It must be considered as governed by the general maritime law," citing with approval, English and American cases which make the same observations.

Daywalt vs. Corporacion de PP. Agustinos Recoletos, 39 Phil., 587, at p. 602.

Question of damages in connection with the breach of contract of sale of real estate; without referring to the Civil Code, the court develops the rule by citation from American and English cases, including Hadley vs. Baxendale, and also Sedgwick on Damages.

Cerrano vs. Tan Chuco, 38 Phil., 392, at p. 398.

Mitigation of damages.-Breach of contract of bailment. The court cites American cases for the rule that the damages shall be mitigated by so much as could have been avoided by a reasonably prudent plaintiff; and also cites Sedgwick on the rule that burden of proof rests upon the defendant to show that the plaintiff might have reduced the damages. The Civil Code does not furnish any definite basis for these Anglo-American refinements of the rule of damages.

Sun Life Insurance Co. of Canada vs. Rueda Hermanos & Co. and Delgado, 37 Phil., 844.

Speculative profits.-The court, on page 849, cites American cases for the proposition that "Speculative profits are too remote to be included in an accurate estimate of damages."

Hicks vs. Manila Hotel Co., 28 Phil., 325, at pp. 338, 342, and 344.

Loss of profits; anticipatory action.-Lost profits are allowable by the Civil Code, but the court cites American cases on question of what are allowable lost profits. It also relies exclusively on American cases for the rule that full damages may be recovered in an anticipatory action; and for the rule that mitigation under earning power of plaintiff must be proved by defendant.

- AGENCY.

Jimenez vs. Rabot, 38 Phil., 378.

Agency to sell realty.-Question of sufficiency of power-of-attorney contained in letter. The court considers collateral requirements of Civil Code and of Code of Civil Procedure, and holds the power in this case sufficient under American cases, although such would seem to be questionable under the indefinite language of the Civil Code. Behn, Meyer & Co., Ltd., vs. Nolting & Garcia, 35 Phil., 274.

Broker.-The court, in connection with taxability under the Revenue Laws, considered what constitutes a "Real estate broker" and cites American cases, Story on Agency, and the Civil Code.

- WILLS.

In re Will of Riosa, 39 Phil., 23, at p. 26.

Validity of execution.-Question of the effect of the new statute regulating execution upon a will executed prior to its enactment and testator dying afterwards. The court relies upon American and English cases for the proposition that the validity of the execution must be tested by the statute in force at the time of its execution. No Spanish cases referred to.

- CARRIERS.

G. Martini, Ltd., vs. Macondray & Co., 39 Phil., 934.

Bill of lading.-The court, in passing upon the liability of steamship company for damage to cargo shipped "deck load," cites American and English cases exclusively. Neither the Civil Code nor any Spanish cases are referred to.

Compagnie de Commerce, etc., vs. Hamburg Amerika, etc., 36 Phil., 590.

Rights and obligations under charter parties; effect of war; Maritime Law.-The court, in a lengthy opinion, considers the effect of war upon obligations of carriers, refers to American and English authors with reference to the rules of International Law which are applicable, and, on page 625 et seq., cites exclusively American and English cases and authors, including, principally, Carver on "Carriers," for the obligations under charter party generally.

- MASTER AND SERVANT.

Yamada vs. Manila Railroad Co. and Bachrach Garage & Taxicab Co., 33 Phil., 8.

Question whether plaintiff was barred from recovery on the theory that negligence of a driver of a rented automobile was imputable to him. The court rejects this theory as not consonant with the weight of authority, and cites American cases. As to the main point of the case, the liability of the owner of the hired car for negligence, the court relies upon interpretation of the Civil Code rules.

- PUBLIC POLICY.

Ollendorff vs. Abrahamson, 38 Phil, 585, at p. 590.

Under the Civil Code, prohibition of agreements contrary to "law, morals, or public order." The court interprets this to mean-the term "public policy" as used in the United States, and cites American cases for a definition thereof.

Hibberd vs. Rohde and McMillian, 32 Phil., 476, at pp. 482-486.

The court cites exclusively American authority for the rules relating to public policy and invalidity in regard to agreements for concealing public offenses.

- SALVAGE.

Fernandez vs. Thompson & Co., 38 Phil., 683. The court, in defining the rule in reference to salvage, relies exclusively upon American, English, and Philippine authorities. See also- Manila Railroad Co. vs. Macondray. Co., 37 Phil., 850, and Erlanger & Galinger vs. Swedish East-Asiatic Co., Ltd., 34 Phil., 178.

- SALES.

Ocejo Perez & Co. vs. International Banking Corporation, 37 Phil., 631, 637. Villa vs. Santiago, 38 Phil., 157. The court cites American cases freely in passing upon whether or not a particular transaction was a sale or mortgage.

- ASSIGNMENTS.

Sison and Sison vs. Yap Tico and Avanceña, 37 Phil., 584. Effect of recording.-The court relies upon American authorities for the rule that, if a document is not required by law to be recorded, the recording thereof is not constructive notice. In support of the Civil Code it cites American authorities for the rule that payment to original creditor, before notice of assignment, is good.

- EMINENT DOMAIN.

City of Manila vs. Chinese Community of Manila, 40 Phil., 349. For the rule that courts may pass upon whether or not a particular expropriation is within the right of eminent domain, in the absence of specific legislative direction, the court cites American authorities exclusively and also, in citing and quoting from American cases, discusses the theory and scope of the right of eminent domain. Municipality of Antipolo vs. Domingo, 37 Phil., 13. For the rule that the courts have power to amend the findings of commissioners in expropriation proceedings, the court relies upon American authorities. De Ynchausti vs. Manila Electric R & Light Co., 36 Phil., 908. The court, in considering the right of the land owners under expropriation proceedings which is covered by the Civil Code, except as in this case amended by the charter of the railroad company, relies upon American cases for the rule that a land owner is entitled only to compensation for the damages under condemnation proceedings where land has been occupied without opposition and before expropriation proceedings.

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