MEMORANDUM OF THE CODE COMMISSON

(Continued from the March Issue)

MEMORANDUM ON THE PROPOSED AMENDMENTS SUBMITTED BY THE MEMBERS OF THE BAR TO THE PROVISIONS ON SUCCESSION (BOOK III)

ARTICLES 779 *and* 780

Prof. R. C. Aquino of the College of Law, University of the Philippines, suggests the inclusion of a definition of legal or intestate succession. We have accepted this suggestion in our Memorandum on the Proposed Amendments Embodied in House Bill No. 1019.

ARTICLE 782

Prof. R. C. Aquino also asks for the definitions of "voluntary and legal heirs" The Code Commission deems this unnecessary, because the distinction is too elementary.

ARTICLE 789

Attorney R. M. Jalandoni suggests that "the oral declarations of the testator should not be excluded from the extrinsic evidence which may prove his intention." How can the testator clarify his intention when he may be ten feet below the ground? The rule is that the probate court should confine itself to the context of the will, and should consider the circumstances surrounding the execution of the same, in order to ascertain the intention of the testator. The admission of oral declarations of the testator before his death would create confusion and foster false claims.

ARTICLES 805 *and* 806

Prof. R. C. Aquino proposes the elimination of the attestation clause in case of ordinary wills and that the matters to be stated in the said attestation clause be embodied in the notarial acknowledgment. We maintain that the liberalization of the execution of ordinary wills as embodied in Article 809 of the new Civil Code if coupled with the proposed elimination of the attestation clause may open the door to fraud. It is a better safeguard to have both an attestation clause and a notarial acknowledgment, the former to be executed by the attesting witnesses and the latter by the notary public.

ARTICLES 823 *and* 1027 (4)

Attorney R. M. Jalandoni contends that Article 823 and Article 1027(4) are in conflict.

As an answer to this contention, we refer to our Memorandum on the Proposed Amendments of Mr. Justice Jose B. L. Reyes on articles 823 and 1027(4).

Prof. R. C. Aqiuno suggests that "to obviate any doubt, the Code should expressly disqualify an heir, including a compulsory heir, from becoming a witness to a will."

The suggestion may prevent a person from making a valid will because there may not be other persons around at the time when a testator makes his last wishes. The article refers only to devises and legacies that should be taken from the disposable portion of the estate of the decedent, and does not include the legitime of a compulsory heir. The purpose of the law is to forestall undue pressure and influence that may be exerted upon the testator in the disposition of the free portion.

ARTICLE 824

Attorney R. M. Jalandoni suggests that there should be no qualification as to the nature of the debts, and that creditors may be witnesses to the will in all cases. What article wants to avoid is the disqualification of a creditor who may have a real right in the thing devised or bequeathed, and that real right may be claimed to be such an interest as may disqualify a person from being a witness to the will. In other words, the provisions of this article make it clear that a mere charge on the real or personal estate of the testator, for the payment of debts, say either in the form of a mortgage or a pledge, shall not prevent his creditors from being competent witnesses to his will.

ARTICLES 878, 880 *and* 885

Prof. R. C. Aquino claims that these three articles are inconsistent with one another, and suggests that they be eliminated. By studying these articles a little more deeply, it will appear that they provide for different situations. Article 878 deals with a disposition subject to a suspensive term; Article 880 provides for *what shall be done with the estate* of a deceased pending the arrival of the suspensive term or condition; and finally Article 885 speaks of a *resolutory condition or term.* In other words, how can these articles be incompatible with one another, when they provide for different things?

We beg to oppose the proposed suggestion.

ARTICLE 882

Attorney R. M. Jalandoni proposes that the phrase "in this manner" in the first line of paragraph 2 of this article be replaced by "in this latter manner". It is a question of interpretation, whether the phrase "in this manner" refers to the "institucion modal" alluded to in the first part of the first paragraph of this article, or the said phrase refers to "unless it appears that such was his intention" (meaning condition). We maintain that a careful reading of the whole first paragraph of this article will show that [The phrase "in this manner" refers to the "institucion modal" because the heir or heirs so instituted are also obliged to give security for the compliance with the wishes of the testator in the same manner as the heirs subject to the fulfillment of a suspensive condition or term.] (See Manresa, Vol. 6, pp. 190-193).

ARTICLE 891

Attorney T. M. Santiago wants that the provisions of the Civil Code on the rights and obligations of the "reservista" and the "reservatario" be restored to supplement the provisions of the article on "reserva troncal". We deem it unnecessary to have any comment on this subject inasmuch as the Code Commission does not believe in the "reserva troncal" and we have eliminated the same from our original draft of the new Civil Code.

ARTICLE 895

Prof. R. C. Aquino suggests that this article should expressly state that the legitime of an illegitimate child, other than a natural child, should be two-fifths (2/5) of the legitime of each legitimate child.

This express statement is unnecessary. Any person who has a little knowledge of arithmetic will not make a mistake. Article 895, paragraph 1, provides that the legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half (1/2) of the legitime of each of the legitimate children or descendants. Paragraph 2 of the same article provides that the legitime of an illegitimate child who is neither an acknowledged natural, nor a natural child by legal fiction (spurious child) shall be equal in every case to four-fifths (4/5) of the legitime of an acknowledged natural child.

To compute: If the share of an acknowledged natural child is 1/2 of that of a legitimate child, and the share of an illegitimate child other than the natural is 4/5 of that of the acknowledged, the share of that illegitimate child other than the natural is 4/5 of 1/2, or 4/10 or 2/5 of that of the legitimate child.

ARTICLE 891

Prof. R. C. Aquino recommends that Article 891 (reserva troncal) be repealed, to which the Code Commission concurs.

Attorney R. M. Jalandoni suggests that the provisions of the old law on "reserva viudal" be restored because of the revival of the "reserva troncal".

The Code Commission has never been in favor of these "reservas", and inasmuch as we have recommended the abolition of the "reserva troncal", we cannot very well accept the revival of the "reserva viudal".

LEGITIMES AND INTESTACY

Attorney R. M. Jalandoni gives an example of the application of Articles 895, 983 and 999 and concludes from his own example

that legitimate children may get only 4/9 of the estate of the decedent and therefore less than one-half (1/2) which should be their legitime. The conclusion arrived at by Attorney Jalandoni will necessarily be wrong because he mixed up the provisions of the law on testamentary succession with those on intestacy, citing Articles 895, 983, and 999. It should be borne in mind that in intestacy, *there is no legitime* inasmuch as the whole estate of the decedent shall be subject to distribution.

Article 886 of the new Civil Code provides:

> "Art. 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs."

In other words, if a person dies, intestate, there is no legitime at all, and the whole estate left by the deceased shall be subject to distribution in favor of persons entitled to the same under the law. If Attorney Jalandoni properly gives an example, confining himself to either testate or intestate succession, we may be able to solve the example.

However, in case of mixed succession or partial intestacy, we accept the proposed amendment submitted by Congressman Tolentino as shown by our memorandum commenting on his proposed amendments.

ARTICLES 904, 872 *and* 864

Prof. R. C. Aquino has the same suggestion as that of Mr. Justice Reyes with respect to these three articles which we have commented upon in our Memorandum on the Proposed Amendments submitted by Justice Reyes.

ARTICLE 892

Attorney A. S. Atienza proposes that this article be amended so as to give the surviving spouse only one sixth (1/6) of the hereditary estate in case she or he should survive with one legitimate child or descendant and an acknowledged natural child or children or a natural child or children by legal fiction, and that these illegitimate children should also be entitled to one-sixth (1/6) of the hereditary estate. In both cases, their shares (spouse and illegitimate children) shall be taken from the free portion.

He further suggests that if the testator leaves only one legitimate child or descendant and an illegitimate child or children, the surviving spouse shall be entitled to one-sixth (1/6) of the estate; and the illegitimate child or children to one-eighth (1/8) of the estate.

We beg to oppose the proposed amendment, not only because we do not see any reason for the change, but also because the division of the inheritance as suggested will destroy the mathematical symmetry of the division of the estate as provided in other articles of the Civil Code, aside from the fact that the surviving spouse under the proposed reform will get very little, which would be unfair and unjust.

LEGITIMES OF ILLEGITIMATE CHILDREN

Attorney L. G. Formentera claims that illegitimate children other than natural should not be given any legitime because it is not in accord with the tradition of the Filipino people. We beg reference to our arguments on the Successional Rights of Illegitimate Children embodied in a Memorandum submitted to the Joint Committee of Congress on Codes, dated July 20, 1950, and published in the Lawyers' Journal in its issue of December, 1951.

ARTICLES 983 *and* 990

Prof. R. C. Aquino asks for clarification of these two articles. These two articles of the Civil Code should be read in connection with Articles 995, 998 and 999 which all refer to the rights of the surviving spouse concurring with illegitimate children.

ARTICLE 994

In answer to the question of Prof. R. C. Aquino on this article, we beg reference to our Memorandum on the Additional Amendments Proposed by Congressman Tolentino

ARTICLES 986 *and* 993

Prof. R. C. Aquino suggests that in connection with Article 986, a provision similar to that of Article 887, be formulated to the effect that the parents may concur with illegitimate children and surviving spouse of the deceased. These suggestions are already embodied in Articles 991, 993, 994 and 1000.

With regard to his suggestion on Article 993, we would like to invite attention to our comments on the same in our Memorandum on the Proposed Amendments of Justice Reyes.

Respectfully submitted,
PEDRO Y. YLAGAN
Member, Code Commission

Manila, February 21, 1951.

MEMORANDUM
ON THE
ADDITIONAL AMENDMENTS PROPOSED BY CONGRESSMAN TOLENTINO TO THE PROVISIONS ON SUCCESSION
(BOOK III)

ARTICLE 959

The Code Commission has no objection to have this article 959 transferred to the Section on Institution of Heirs ,and it should be placed between articles 847 and 848.

ARTICLE 880

It is suggested that this article 880 be replaced by the provisions of article 801 of the old Civil Code.

The Code Commission regrets to disagree with the suggestion, because the old law speaks of "suspensive condition" in article 799 upon which article 801 is based, and the new Civil Code changed the term "suspensive condition" mentioned in article 799 to "suspensive term" in article 880. Hence, the change in article 799 of the old law (now 878) should also change article 801 (now 880).

If article 801 of the Civil Code should be restored as suggested it would throw article 878 of the new Civil Code out of gear.

NEW ARTICLE

Congressman Tolentino proposes that a new article be inserted between articels 961 and 962 which should read as follows:

> "In mixed succession, the devises, legacies, bequests and other testamentary dispositions shall be taken from the shares of the intestate heirs to whom the rules hereinafter set forth give more than their respective legitimes, but without impairing the latter, or who are not compulsory heirs."

The Code Commission accepts this proposed amendment inasmuch as it clarifies the provisions of the law on mixed succession.

ARTICLE 983

It is proposed that this article be amended to read as follows:

> "If illegitimate children survive with legitimate children, they shall, in addition to their legitimes, share in the free portion in the same proportions prescribed in article 895."

We believe that the proposed amendment is not necessary because in intestate succession, the whole estate of the deceased is subject to distribution, and it follows that the illegitimate children shall always share in the free portion by operation of law in the same proportions prescribed in article 895. In intestate succession, there is no legitime nor free portion to speak of, because legitime exists only in testamentary succession.

ARTICLE 894

The Code Commission does not see any substantial difference between the provisions of this article of the new Civil Code and the proposed amendment. Hence, we beg to disagree with the proposed amendment.

ARTICLE 988

Article 988 is proposed to be amended by adding the following:

> "in the proportion established in the second paragraph of article 895."

We believe that this proposed amendment is not necessary because the term "illegitimate children" used in paragraph 2 of this

article 988 includes acknowledged natural children proper, natural children by legal fiction, and other illegitimate children not having the status of natural children (spurious children) whose filiation is duly proven. If they concur in the succession, they shall share in the proportions prescribed in article 895.

ARTICLE 993, *Par.* 2

We have accepted this amendment in our Memorandum to the Proposed Amendments of Mr. Justice Reyes under the same article.

ARTICLE 994

The Code Commission believes that the proposed amendment to article 994 which reads as follows:

> "but if the latter alone survive, they shall be entitled to the entire estate,"

is not necessary because of the provisions of articles 1004 and 1005 giving brothers and sisters, nephews and nieces who alone survive, the right to succeed to the entire estate.

Respectfully submitted,
PEDRO Y. YLAGAN
Member, Code Commission

Manila, February 20, 1951.

MEMORANDUM ON THE AMENDMENTS TO SUCCESSION PROPOSED BY MR. JUSTICE JOSE B. L. REYES

ARTICLE 782

Mr. Justice Reyes contends that Article 782 does not give a clear distinction between heir and legatee. The word "heir" as used in this article includes testamentary legatees or devisees to whom gifts of personal and real property are respectively given by virtue of a will.

The distinction between "heredero" and "legatario" under the old Civil Code is unimportant now because of the new system of payment of debts under the Rules of Court.

ARTICLE 794

The Code Commission has no objection to the proposed amendment by substituting the word "different" in the place of the word "less" in the last line of the said article.

ARTICLES 802-803

These articles speak only of married women in order to clarify and supplement the provisions of Article 1414 of the old Civil Code (Art. 170, new Civil Code) which expressly gives the husband the power to make a will without mentioning that of the wife. These Articles 802 and 803 are inserted in the new Civil Code to make the law on the subject more comprehensive, and to correct the impression on the part of many people that a married woman cannot make a will without the consent of the husband.

ARTICLE 805, *par.* 2

It is proposed that the last page of the will shall also be signed by the testator and by the instrumental witnesses on the left margin. This article of the new Civil Code provides that the last page need not be signed on the left margin by the testator and the instrumental witnesses because they are already required to sign the end of the will by virtue of the provisions of the first paragraph of the same article. Inasmuch as their signatures already appear on the same page (at the end of the will), there is no necessity that they should further sign the left margin. With the other safeguards mentioned in the same article, insertions and substitutions of new pages can hardly take place.

ARTICLE 808

The Code Commission has no objection to the proposed amendment to the second sentence. So that as amended, that sentence shall read, thus:

> "once by a subscribing witness *before the will is executed,* and again by the notary public *before the will is acknowledged.*"

ARTICLE 809

The proposed amendment reads as follows:

> "If such defects and imperfections can be supplied by *an examination of the will itself and* it is proved that the will was in fact executed and attested."

There is no necessity for this proposed amendment because the court in determining whether or not the will was executed in substantial compliance with the law will necessarily *examine the will itself* and shall also consider the circumstances surrounding its execution. The rules of interpretation embodied in Articles 788 to 792 are deemed sufficient.

ARTICLE 810

Mr. Justice Reyes doubts the revival of the holographic will because "its simplicity is an invitation to forgery". That contention may be true because even the most complicated handwriting may be forged. But the law should favor testacy, and should give a person greater freedom to dispose of his property subject to the limitations imposed by law. Hence a person should be allowed to make his will in his own handwriting without the necessity of complying with the complicated requirements of an ordinary will. Without the holographic will, even a person of college or university education may not make an ordinary will without resorting to the aid of another who may not know the formalities himself. Many wills are thus disallowed. Besides, the testator should be given a choice to make a holographic will if he wants to keep his dispositions a secret. Such secrecy is often essential to conserve family harmony and to guaranty freedom to the testator.

ARTICLE 811, *par.* 1

This article requires that if a holographic will is contested, the testimony of at least three witnesses who know the handwriting and signature of the testator is required. The purpose of the article is to counteract the simplicity required in the execution of holographic wills, and is complained of by Justice Reyes, and to prevent the allowance of a will based on the testimony of only one witness which may be perjured at that. True, a witness can be very convincing, but suppose he is a consummate liar?

ARTICLE 815

Mr. Justice Reyes asks whether a Filipino who is abroad can make a will in the form prescribed by our Civil Code. Article 815 provides:

> "Art. 815. When a Filipino is in a foreign country, *he is authorized to make a will in any of the forms* established by the law of the country in which he may be. Such will may be probated in the Philippines."

From the reading of the provisions of the above article, *it does not appear that he is obliged or compelled* to follow the forms of the foreign law. He is merely *authorized,* and that does not preclude his right to make a will according to the law of his own country if he happens to know the same.

ARTICLE 816

The Code devotes an article to a will executed by an alien abroad to make the law on the subject more complete. It can readily be seen that *Article* 815 provides for wills executed by *Filipinos who may be in a foreign country;* Article 816 speaks of *wills executed by an alien abroad;* and Article 817 deals of will *made in the Philippines by a citizen or subject of another country.*

ARTICLE 823

This article speaks of a witness to the will and other persons who may claim interest under him, and who are disqualified from succeeding. Whereas Article 1027 mentions the persons who are disqualified from succeeding not only because of their participation in

the execution of the will, but also because of the undue pressure and influence that they may exert on the testator. In other words, Article 1027 provides for the general rule, and Article 823 deals only with specific persons.

Moreover, Article 1027 (pars. 1 and 2) refer to priests and ministers, whose moral influence on the testator is greater than other persons, so the prohibition should extend as far as the 4th degree. Pars. 3 and 5 do not refer to relatives of the disqualified person because their moral influence is not as great as the priest or minister.

ARTICLE 827

The Code Commission has no objection to the proposed amendment suggested by Mr. Justice Reyes in line 2, first paragraph of the article, and in No. 4, of the same article.

With respect, however, to the elimination of the provision on incorporation by reference, we believe that the same is necessary for the convenience of the testator so that instead of embodying in the will itself the contents of a document he may incorporate the same by reference, provided that the safeguards required by law are present.

ARTICLE 829

This article provides for the law under which the revocation should be made in order that said revocation be valid. Mr. Justice Reyes claims that in revoking a will, the Code applies the law of the place where the will was executed or the law of the testator's domicile, while in the execution of testaments, it applies the law of the place of its execution, or the law of the testator's country, and thereby creates a double standard. The Civil Code in allowing a testator to revoke his will according to the law of his domicile has in mind a situation where a testator may not be residing in his own country or nation when he revokes his will. Therefore, to give that freedom to revoke his will any time during life, he may do so either according to the law of the place where the will was made, or according to the law of his domicile at the time of revocation, or according to the provisions of the new Civil Code. In all these cases, the revocation shall be valid in the Philippines.

ARTICLE 836

The proposed amendment is unnecessary because it is clearly stated in the preceding article (835) that "the testator can not republish *without reproducing in a subsequent* will," etc. Therefore, under Article 836 the previous will must necessarily be a valid one in form.

ARTICLE 851

This article deals with mixed succession. Mr. Justice Reyes says:

> "There seems to be no reason why intestate succession should be limited only to the remainder of an estate of which an *aliquot portion* is disposed of by the testator. Whether the will covers an *aliquot portion or not*, the property not disposed of should pass by intestate succession. How else could it be inherited?"

If a testator has disposed of only a portion of his estate, necessarily the rest shall be disposed of according to the provisions of the law on intestacy. The provisions of the article explain what shall be done with the rest of the estate. If these provisions are not found in this article, it would not be surprising if critics would ask this question: "What shall be done with the rest of the estate of the decedent?" Now that the provisions make the matter clear, it is alleged that the same is not necessary.

ARTICLE 856

The Code Commission maintains that the provisions of Article 856 are proper, as they should be read together with those of Article 977. The first paragraph of this article speaks only of *voluntary heir* who dies before the testator. The second paragraph deals with the following: (a) *A compulsory heir* who dies before the testator; (b) A person incapacitated to succeed; and (c) *one* who renounces the inheritance. The word "person" used in the second case includes both compulsory and voluntary heirs, and so is the word "one" used in the third case. If these words are properly understood, they amount to the same thing as the proposed amendment of Mr. Justice Reyes.

However, we agree to the addition of a disinherited compulsory heir. Therefore the first line of the second paragraph should read: "A compulsory heir who dies before the testator *or is disinherited.*"

Express reference to the legatees is not necessary. See our comment under Art. 782.

ARTICLE 858

This article of the new Civil Code provides that substitution of heirs may be: (1) Simple or common; (2) Brief or compendious; (3) Reciprocal, or (4) Fideicommisary.

Mr. Justice Reyes contends that the compendious and reciprocal are merely varieties of the simple or vulgar substitution. We agree with him specially when he says that "there is no incompatibility between a brief or a reciprocal substitution and a simple one". That is the reason why the three ways of substitution can stand together and are embodied in Article 858 of the new Civil Code. The four-fold enumeration clarifies the subject.

ARTICLE 863

Mr. Justice Reyes claims that the commentators of Article 781 of the Spanish Civil Code differ as to the meaning of "degree" in connection with fideicommissary substitution. May we add that they also differ as to the person from whom the degree shall be computed. But in connection with the "degree" mentioned in Article 863 of the new Civil Code, there is no doubt that the law means "degree of relationship" and this is made clearer by the phrase following the same which says "from the heir originally instituted."

ARTICLE 864

The Code Commission accepts the elimination of Article 864 whose provisions are covered by Article 872 and 904, par. 2.

ARTICLE 867 (2)

The limitations mentioned by this article that the fideicommissary substitution shall not go beyond one degree from the heir originally instituted, and that the fiduciary or first heir and the second heir should be living at the time of the death of the testator are imposed to prevent the property from being locked up in the family, with the end in view of complying with the philosophy of socialization of ownership of property.

In other words, aside from the limitation imposed by Article 870, the limitations mentioned in Article 863 must also be observed in fideicommissary substitutions.

ARTICLE 878

It is suggested that the provisions of Article 759 of the Spanish Civil Code be revived. Said Article provides:

> "Art. 759. An heir or legatee who dies before the condition is fulfilled, even though he survives the testator, transmits no right whatsoever to his heirs."

This article of the old Civil Code was eliminated because of the provisions of Article 884 of the new Civil Code which ordain:

> "Art. 884. Conditions imposed by the testator upon the heirs shall be governed by the rules established for conditional obligations in all matters not provided for by this Section."

According to the above mentioned article, if an obligation is subject to the fulfillment of a condition, and the condition is not fulfilled, no right arises. The same rule may be applied in case of an heir or legatee who dies before the condition is fulfilled. He acquires no right and hence transmits nothing to his own heirs.

ARTICLE 880

It is proposed that this article be amended by eliminating the words "or term" in line 2, and "or until the arrival of the term" in lines 4 and 5 (end of the first paragraph).

We beg to disagree with the proposed amendment because this article provides for what shall be done with the estate of the deceased pending the fulfillment of a suspensive condition or the arrival of a suspensive term.

By eliminating the words mentioned in the proposed amendment, the article would cover only one case, when it should cover both the testamentary dispositions subject to the fulfillment of a suspensive *condition* and dispositions with *term*.

ARTICLE 883

The Code Commission accepts the suggested amendment to paragraph 2, of Article 883, so that it will read, thus:

"If a person interested should prevent its compliance, without fault of the heir, the requirements of the testator shall be deemed complied with. This rule shall likewise apply to suspensive conditions."

GENERAL OBSERVATIONS

The increase of legitime to one-half enlarges the free portion to one-half, thus giving more freedom of disposal. The *mejora* is suppressed because the testator may, if he desires, express his preference to any of his children by giving him a part of all of the free half.

ARTICLE 886

This article uses the words "compulsory heirs" instead of "forced heirs". The Code Commission believes that the former is more appropriate and better, because the word "forced" may imply the use of violence or intimidation. Moreover, these two terms have been and are still used interchangeably by the bench and bar. The German Civil Code in its translation uses the terms "compulsory beneficiary" and "compulsory portion".

It is not a question of "amending itch", but a question of choice of terms. With the proposed amendment, may we return the "amending itch" with our compliments? (See also our comment under Art. 887, No. 3).

ARTICLE 887 (3)

The proposed addition of the phrase "who has not given cause for legal separation" to No. 3 of this article is superfluous, not only because of Article 892, par. 1, but also of Article 176. By adding the proposed amendment, criticism may be made on the ground of repetition.

ARTICLE 888

Mr. Justice Reyes suggests that a third paragraph be inserted in Article 888 which should provide, thus:

"The legitime of an adopted child shall be the same as that of a legitimate, except as provided in Articles 342 and 343."

Again, the insertion proposed is not necessary because of the effects of adoption which are specifically stated in Article 341, paragraphs (1) and (3), which ordain:

"(1) Give to the adopted person the same rights and duties as if *he were a legitimate child* of the adopter;

"(3) Make the adopted person a *legal heir* of the adopter."

ARTICLE 891

It seems that Mr. Justice Reyes agrees in the abolition of the "reserva troncal" provided that the right of representation be extended to the direct ascending line. The original draft of the Code Commission eliminates the "reserva troncal" and all other "reservas" provided for in the old Civil Code, such are the "reversion legal" (Art. 812) and the "reserva viudal" (Arts. 968, et. seq.) The main purpose of eliminating all these "reservas" is to let the property go out of the family, to prevent the occurrence of suspended ownership, and to carry out the fundamental principle embodied in the law of succession leading to the socialization of ownership, not in the sense of "socialism", but in the sense of effectively adapting the property to the needs of society.

By abolishing the "reserva troncal" and establishing a right of representation in both the paternal and maternal ascending lines, it will necessarily produce the same result which the new Code attempts to avoid. It is the same thing but done under a different cover.

Non-representation in the ascending line is based on the deep-rooted sentiment of parents that they do not expect any material reward from their children and grandchildren.

ARTICLE 892

Mr. Justice Reyes suggests that the following shall be added to the first paragraph of Article 892:

"The result of the suit shall be awaited."

The insertion of the sentence is not necessary for the proper understanding of the provisions of paragraph 1 of this article. The last sentence of the said article reads:

"In case of a legal separation, the surviving spouse may inherit if it was the *deceased who had given cause for the same.*"

A careful reading of the above provisions shows that the right of the surviving spouse to inherit from the decedent shall depend upon the result of the action for legal separation, and a person would be too presumptuous to claim a right when the same has not yet accrued.

ARTICLE 899

If the surviving spouse concurs with legitimate parents or ascendants, the former shall be entitled to one fourth (1/4) of the estate, and the other fourth is at the free disposal of the testator (Art. 893). Article 899 provides for the share of the surviving spouse who may concur with legitimate parents or ascendants and illegitimate children (natural and spurious). In the latter case, the share of the surviving spouse together with that of the illegitimate children shall be taken from the free portion. It necessarily follows that the legitime of the spouse should be smaller because he or she succeeds with another class of heirs. Whereas ,in Article 893, there are no illegitimate children with whom he or she may concur. The free portion consisting of one-eighth (1/8) may be given by the deceased to his or her surviving spouse, and thus, his or her share shall be the same as the global share of all illegitimate children.

ARTICLE 900

The purpose of Article 900, par. 2 which provides for the legitime of the surviving spouse in case of marriage in "articulo mortis" where the testator died within three months after the marriage is to forestall the possibility of a marriage with some ulterior motive. In other words, a person may marry another who is on the verge of death and the former may take advantage of that condition. In intestate succession, however, the law makes no distinction with respect to the circumstances surrounding the celebration of the marriage, because the possibility of undue pressure and influence in the making of a will is eliminated, and the surviving spouse inherits by operation of law.

ARTICLE 902

Mr. Justice Reyes contends that the provisions of Articles 902, 989 and 998 confer the right of representation upon *the illegitimate issue of an illegitimate child;* while the *illegitimate issue of a legitimate child* is denied the right of representation by Article 992, and therefore unfair and unjustified.

In answer to this claim of unfairness and injustice, we would like to cite the provisions of Articles 982:

"Art. 982. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

If the provisions of the above article are correctly interpreted and understood, do they exclude the illegitimate issue of a legitimate child? The terms "grandchildren and other descendants" are not confined to legitimate offspring.

We submit that not only legitimate but also illegitimate descendants should be included in the interpretation of Articles 902, 989 and 998. In cases of this kind, where the Code does not expressly provide for specific rights, and for that matter, all codes have gaps, equity and justice should prevail ,taking into consideration the fundamental purpose of the whole law on succession which, among other things, gives more rights to illegitimate children, thereby relaxing the rigidity of the old law, and liberating these unfortunate persons from the humiliating status and condition to which they have been dumped.

(To be continued)