Besides, Justice Reyes fails to grasp the method of the new Civil Code in Sec. 2 — "Order of Intestate Succession". By Articles 978, 985, 988, 995, 1001, and 1103, the Code names the relatives who, in the order stated, inherit the *whole estate*. Article 978 assumes that there is no surviving spouse.

(To be Continued)

A CRITICAL STUDY...

(Continued from page 219)

CONCLUSIONS AND RECOMMENDATIONS

Much of the possible difficult situations we have endeavored to present which cannot be adequately solved by the present provisions of the Code without absurd results may be remedied by eliminating the conclusive presumption of legitimacy provided for in Article 258 of the present Civil Code in any of the three cases therein mentioned. This will make the present rigors of the law more flexible to permit its rigidity yield to the realities of life.

The *prima facie* presumption of illegitimacy provided for in Article 257 (C. C.) should be reversed. The presumption of legitimacy should be the rule, but its rebuttal should be allowed under the conditions and circumstances mentioned in Article 257 (C. C.) and adding thereto the case of rape of the wife during the same period of time. Articles 255 and 259 may remain as they are subject to a modification of Article 259 (C. C.) for clarity only by incorporating to the opening paragraph thereof the following phrase, "notwithstanding the provisions of Article 255".

It is, therefore, recommended that Articles 257, 258 and 259 of the Civil Code be redrafted to read as follows:

"Art. 257. In case of the commission of adultery by the wife or rape of the wife at or about the time of conception of the child, but there was no physical impossibility of access by the husband to the wife as set forth in Article 255, the presumption of legitimacy therein provided, may be overcome by proof that it is highly improbable for ethnic reasons that the child is that of the husband. For purposes of this Article the adultery or the rape as the case may be need not be proved in a criminal case." (Patternod after House Bill No. 1019; Francisco, I Civil Code of the Philippines 683).

"Art. 258. A child born within one hundred eighty days following the celebration of the marriage is *prima facie* presumed to be legitimate."

"Art. 259. If the marriage is dissolved by the death of the husband, and the mother contracted another marriage within three hundred days following such death, these rules shall govern, notwithstanding the provisions of article 255:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is disputably presumed to have been conceived during the former marriage, provided it be born within three hundred days after the death of the former husband;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is *prima facie* presumed to have been conceived during such marriage, even though it be born within the three hundred days after the death of the former husband."

* * *

DECISION OF THE...

(Continued from page 248)

of time on a particular style of packages any registration which might issue upon its application would not be limited to use upon such packages, and the packages used could be changed by either party at any time. Ambrosia Chocolate Co. v. Myron Foster, 603 O. G. 545, 74 USPQ 307. *Under well settled authority* (General Food Corporation v. Casein Company of America, Inc., 27 C.C.P.A. 797, 108 F.2d 261 (44 USPQ 33); Barton Mfg. Co. v. Hercules Powder Co., 24 C.C.P.A. 982, 88 F.2d 708 (33 USPQ 105); Sharp & Dohme, Incorporated v. Abbott Laboratories, 571 O.G. 519, 64 USPQ 247), *the differences in packaging can not affect the right to registration.*" (underscoring supplied)

In view of the well-settled principle that an opposer need not own a trademark; a registered trademark; or have exclusive rights to a trademark, registered or unregistered; all he needs being something which is analogous to a trademark, and a showing that he would probably be damaged by the registration sought; and in view of the equally well-settled principle that the appearance of the labels bearing the rival trademarks cannot affect the right to registration of one of them, the motion to dismiss the Opposition is rejected, and the Respondent-Applicant is directed to answer the same within fifteen (15) days of his receipt of a copy hereof.

SO ORDERED.

Manila, Philippines, October 31, 1952.

(SGD.) CELEDONIO AGRAVA
Director of Patents

FOR THE SAKE OF TRUTH

BY PORFIRIO C. DAVID

I wish to make a vigorous exception to Mr. Federico B. Moreno's article ROLL OF HONOR (of judges of First Instance) as published in the Sunday Times Magazine of May 9, 1954.

I do not question Mr. Moreno's right to praise a particular judge or group of judges. For the consumption of the public, he can even raise them to the level of an Arellano, a Cardozo or Holmes. But, he has no right to do so at the expense of other judges whom he had degraded and ridiculed by publishing his conclusions about their efficiency on the basis of half-truths and mis-truths.

The proficiency of a judge cannot be correctly measured by the precise action of the Supreme Court on his appealed decisions and orders for only one year (last year) and on the applications for writs of certiorari, prohibition and mandamus decided in the preceding three years and on the basis of important cases settled by the Court of Appeals in 1952 and 1953 as published in the Official Gazette. One who is familiar with the machinary of justice, like Mr. Moreno, who is a lawyer, should know that *not* all decisions are published in the Official Gazette. Hence, to rate a judge on what might have been published of his appealed decisions in the Official Gazette alone would be the height of irresponsibility.

Take, for instance, the particular cases of Judges Barot, Moscoso and Ocampo, who are represented to have had no affirmed decisions of any sort during the period given. This is unbelievable. I regret that I do not have offhand the records of Judge Moscoso, who is in the Visayas, and of Judge Barot, who is in Pampanga. But from the records alone of Judge Ocampo as available in the Office of the Clerk of Court of the Court of First Instance of Manila, where said judge has been presiding since 1951, I can say that the conclusions of Mr. Moreno about these judges are at once preposterous and gratuitous, if not libelous.

In this connection, I am supporting my stand with the facts and figures appearing on the correct copies of Reports of Cases decided by Judge Ocampo and brought to the Appellate Courts, duly certified by the clerks in charge, which are self-explanatory.

Summarizing, I find:

Criminal cases appealed	34
Affirmed	8
Modified	3
Appeal abandoned	8
Reversed	2
Pending	13
Civil cases appealed to Supreme Court	4
Pending	2
Affirmed	2
Reversed	None
Civil cases appealed to the Court of Appeals	19
Pending	13
Appeal dismissed or abandoned	4
Affirmed	2
Reversed	None

If only to set the record straight and to correct any wrong impression which Mr. Moreno's article may have produced on the readers' minds, I have taken pains to dig up the above facts and figures.