

TRANSLATION

28

OF

THE PENAL CODE

IN FORCE IN

CUBA AND PORTO RICO.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT.

July, 1900.

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ROYAL DECREE.

Upon the recommendation of the Colonial Secretary, with the advice and consent of the Council of Secretaries, and by virtue of the authority vested in my Government by article 89 of the Constitution of the Monarchy,

I hereby decree the following:

ART. 1. The amended Penal Code of June 17, 1870, shall be published and go into effect from the date of its publication in the territory within the jurisdiction of the islands of Cuba and Porto Rico, with the amendments recommended by the commission which has had charge of this work.

ART. 2. In the same manner there shall be published and observed in the islands referred to in the foregoing article the provisional law of criminal procedure for the application of said Code, with the changes recommended by the said commission.

ART. 3. The Government shall inform the Cortes of this decree and of the modified laws which are applied thereby to the colonial provinces.

Given at the palace on May 23, 1879.

ALFONSO.

SALVADOR DE ALBACETE,
Colonial Secretary.

PENAL CODE.

BOOK I.

GENERAL PROVISIONS REGARDING CRIMES AND MISDEMEANORS. THE PERSONS LIABLE, AND THE PENALTIES.

TITLE I.

CRIMES AND MISDEMEANORS, AND CIRCUMSTANCES WHICH EXEMPT FROM. EXTENUATE, OR AGGRAVATE CRIMINAL LIABILITY.

CHAPTER I.

CRIMES AND MISDEMEANORS.

ART. 1. Crimes or misdemeanors are voluntary acts and omissions punished by law.

Acts and omissions punished by law are always presumed to be voluntary unless the contrary shall appear.

Any person voluntarily committing a crime or misdemeanor shall incur criminal liability, even though the wrongful act committed be different from that which he had intended to commit.

ART. 2. In case a court should have knowledge of any act which it considers proper to repress and which is not punished by law, it shall abstain from any proceedings in the matter, and shall state to the Government the reasons which induce it to believe that the act should be the object of penal legislation.

The court shall apply to the Government in the same manner, stating what may be proper, without prejudice to immediately imposing sentence, when a strict application of the provisions of the code would result in an excessive penalty, taking into consideration the degree of malice and the injury caused by the crime.

ART. 3. Not only is a consummated crime punishable, but also a frustrated crime and an attempt.

A crime is frustrated when the guilty person performs all of the acts of execution which should produce the crime as their consequence, but nevertheless do not constitute it by reason of causes independent of the will of the perpetrator.

There is an attempt when the guilty person makes a beginning in the commission of a crime directly by overt acts, and does not perform all of the acts of execution which should produce the crime by reason of some cause or accident other than his own voluntary desistance.

ART. 4. A conspiracy and proposition to commit a crime are punishable only in the cases in which the law specially penalizes them.

There is a conspiracy when two or more persons act together for the commission of a crime and decide to commit it.

There is a proposition when the person who has decided to commit a crime proposes its execution to one or more persons.

ART. 5. Misdemeanors are punishable only when they have been consummated

Exception is made of frustrated misdemeanors against persons or property.

ART. 6. Crimes are considered "grave" which the law punishes by penalties which in any of their degrees are corporal.

Crimes are considered "less grave" which the law represses by penalties which in their maximum degree are correctional.

Misdemeanors are infractions for which the law establishes light penalties.

ART. 7. Crimes which are punished by special laws are not subject to the provisions of this code.

CHAPTER II.

CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY.

ART. 8. The following are not delinquent and are therefore exempt from criminal liability:

1. An imbecile or lunatic, except when the latter has acted during a lucid interval.

When the imbecile or lunatic may have committed an act which the law defines as a "grave crime" the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without the previous authorization of the same court.

If the act committed by the imbecile or lunatic is defined by the law as a "less grave crime" the court, according to the attendant circumstances, shall proceed in accordance with the provisions contained in the foregoing paragraph or turn over the imbecile or lunatic to his family, if the latter give sufficient security for his custody.

2. A person under 9 years of age.

3. A person over 9 years of age and under 15, unless he has acted with the exercise of judgment.

The court shall make an express declaration with regard to this point in imposing a penalty or in declaring said person irresponsible.

When the minor is declared irresponsible, in accordance with the provisions of this and of the preceding number, he shall be delivered to his family with a charge to guard and educate him. In the absence of a person to guard and educate him he shall be taken to a charitable institution for the education of orphans and foundlings, and he shall not leave said institution except at the time and under the conditions prescribed for its inmates.

4. He who acts in defense of his person or rights, provided there are the following attendant circumstances:

(1) Illegal aggression.

(2) Reasonable necessity of the means employed to prevent or repel it.

(3) Lack of sufficient provocation on the part of the person defending himself.

5. He who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided the first and second circumstances mentioned in the foregoing number are attendant, and provided that in case the party attacked first gave provocation, the defender took no part therein.

6. A slave acting in defense of his master, and a gratuitously emancipated freedman in that of his patron, and either when acting in defense of the spouses, ascendants, descendants, or brothers or sisters of the said master or patron, provided that in any of these cases the first and second circumstances mentioned in No. 4 of this article are attendant, and that in case there was provocation on the part of the party attacked the defender took no part therein.

7. He who acts in defense of the person or rights of a stranger, provided the first and second circumstances mentioned in No. 4 are attendant, and that the defender is not actuated by revenge, resentment, or other illegal motive.

8. He who in order to avoid an injury performs an act that causes damage to another's property, provided the following circumstances are attendant:

(1) Should the injury sought to be avoided really exist.

(2) Should it be greater than that caused to avoid it.

(3) Should there be no other practicable and less injurious means to prevent it.

9. He who while performing a legal act with due care causes some injury by mere accident without liability or intention of causing it.

10. He who acts by compulsion of an irresistible force.

11. He who acts under the impulse of an uncontrollable fear of an equal or greater injury.
12. He who acts in the fulfillment of a duty or in the legitimate exercise of a right, trade, or office.
13. He who acts by virtue of obedience due another.
14. He who is guilty of an act of omission, being prevented by legitimate or insuperable causes.

CHAPTER III.

CIRCUMSTANCES WHICH EXTENUATE CRIMINAL LIABILITY.

ART. 9. The following are extenuating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to exempt from criminal liability in the respective cases are not attendant.
2. When the culprit is under 18 years of age.
3. When the delinquent had no intention of committing so grave an injury as that which he inflicted.
4. When sufficient provocation or threat on the part of the injured party immediately preceded the act.
5. When the act was committed in the immediate vindication of a grave offense committed against the author of the crime, his spouse, ascendants, descendants, his legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees.
6. When the act was committed in a state of intoxication, if the latter were not habitual or subsequent to the plan to commit the crime.

The courts shall decide in view of the circumstances of the persons and of the acts when intoxication is to be considered habitual.

7. When the person has acted under such powerful excitement as would naturally produce entire loss of reason and self-control.

8. And, finally, any other circumstance of a similar nature and analogous to the foregoing ones.

CHAPTER IV.

CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY.

ART. 10. The following are aggravating circumstances:

1. When the injured person is the spouse or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.
2. When the injured person is the master or patron of the offender, or the spouse, ascendant, descendant, or legitimate brother or sister of the same.
3. When the act is committed with treachery.

There is treachery when the culprit commits any crime against persons employing means, methods, or forms in the execution thereof which tend to directly and specially insure it without risk to the person of the criminal arising from the defense the injured party might make.

4. When the crime is committed in consideration of a price, reward, or promise.

5. When it is committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage, derailment of a locomotive, or by the use of any other artifice involving great destruction.

6. When the crime is committed by means of printing, lithography, photography, or other similar means facilitating publicity.

Courts shall take this circumstance into consideration, qualifying it as aggravating or extenuating, according to the nature and effects of the crime.

7. When the evil accomplished by the crime is deliberately increased by causing other evils unnecessary for its execution.

8. When the act is committed with evident premeditation.

9. When craft, fraud, or disguise is employed.

10. When advantage is taken of superior strength or means are employed to weaken the defense.

11. When the act is committed with abuse of confidence.

12. When advantage is taken by the culprit of his public position.

13. When means are employed or circumstances brought about which add ignominy to the natural effects of the act.

14. When the crime is committed on the occasion of a fire, shipwreck, or other calamity or misfortune.

15. When the crime is committed with the assistance of armed persons, or of persons who assure or provide immunity.

16. When it is committed at night, or in an uninhabited place or by a gang.

The court shall take this circumstance into consideration according to the nature and characteristics of the crime.

17. When the crime is committed in contempt of or with insult to the public authority.

18. When the culprit has been previously punished for a crime for which the law fixes an equal or greater penalty, or for two or more crimes for which it fixes a lighter penalty.

This circumstance shall be taken into consideration by the courts according to the circumstances of the delinquent and the nature and effects of the crime.

19. When he is a recidivist.

A recidivist is the culprit who being found guilty of one crime should have been sentenced for another crime included in the same title of the code.

20. When the crime is committed in a sacred place, in the palace of the Governor-General, or in the presence of the latter, or where public authorities are engaged in the discharge of their duties.

21. When the act is committed with insult or in disregard for the respect which may be due the aggrieved party on account of his rank, age, or sex, or when it is committed in his dwelling if he has not given provocation.

22. When the act is committed against a white person by one who is not white.

This circumstance shall be taken into consideration by courts according to the nature and characteristics of the crime.

23. When the act is committed by wrongful entry.

Wrongful entry is such as is effected through any way not intended for the purpose.

24. When it is committed by breaking through a wall, roof, or floor, or by forcing doors or windows.

25. When the culprit is a vagrant.

By a vagrant is understood a person who possesses no property or income, does not habitually exercise any profession, art, or trade, and has no employment, office, industry, lawful occupation, or any other legitimate or known means of earning a livelihood, even though he may be married and have a fixed domicile.

26. When the act is committed by the use of arms prohibited by the regulations.

TITLE II.

PERSONS LIABLE FOR CRIMES AND MISDEMEANORS.

CHAPTER I.

PERSONS CRIMINALLY LIABLE FOR CRIMES AND MISDEMEANORS.

ART. 11. The following are criminally liable for crimes:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for misdemeanors:

1. Principals.
2. Accomplices.

ART. 12.¹ The following are considered principals:

1. Those who take a direct part in the execution of the act.
2. Those who directly force or induce others to execute it.
3. Those who cooperate in the execution of the act by another act without which it could not have been accomplished.

¹ See Order No. 67, Headquarters Division of Cuba, June 1, 1899, page 135.

ART. 13. Accomplices are those persons who, not being included in the preceding article, cooperate in the execution of the act by other previous or simultaneous acts.

ART. 14. Accessories are those who, having knowledge of the commission of the crime, and without having participated therein either as principal or accomplices, subsequently take part in its execution in any of the following manners:

1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime.

2. By concealing or rendering useless the body, effects, or instruments of the crime in order to prevent its discovery.

3. By harboring, concealing, or assisting in the escape of the culprit, provided any of the following circumstances are attendant:

(1) When the accessory takes advantage of any public office he may be holding.

(2) When the delinquent is guilty of treason, regicide, parricide, assassination, attempt against the life of the Governor-General, or known to be an habitual criminal in any other crime.

ART. 15. Those who are accessories of their spouses, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees, are exempt from the penalties imposed upon accessories; also slaves and freedmen with regard to their masters and patrons or the spouses or other relatives of the latter in the degrees mentioned, with the only exception of such accessories as may be included in No. 1 of the preceding article.

CHAPTER II.

PERSONS CIVILLY LIABLE FOR CRIMES AND MISDEMEANORS.

ART. 16. Every person criminally liable for a crime or misdemeanor is also civilly liable.

ART. 17. The exemption from criminal liability declared in Nos. 1, 2, 3, 8, and 11 of article 8 does not include exemption from civil liability, which shall be enforced subject to the following rules:

(1) In cases 1, 2, and 3, the persons who are civilly liable for acts committed by a lunatic or imbecile, or a person under 9 years of age, or over this age and under 15, who has not acted with the exercise of judgment, are those who have them under their authority, legal guardianship, or power, unless they prove that there was no blame or negligence on their part.

Should there be no person having them under his authority, legal guardianship, or power, or if such person be insolvent, the said lunatics, imbeciles, or minors shall answer with their own property, excepting that part which is exempted for their support in accordance with the civil law.

(2) In the case of No. 7, those persons are civilly liable from whom the injury was warded off in proportion to the benefit they may have derived.

The court shall fix, according to its judgment, the proportional amount for which each interested party shall be liable.

When the respective amounts can not be equitably apportioned, even approximately, or when the liability extends to the State or the greater part of a town, and in any case, if the damage were caused with the assent of the authorities or their agents, indemnity shall be made in the manner prescribed by special laws and regulations.

(3) In the case of No. 11, those who caused the fear shall be principally liable, and subsidiarily, in the absence of the former, those who committed the act, reserving with regard to the latter the benefit of competency.

ART. 18. Innkeepers, tavern keepers, and any other persons or enterprises shall be civilly liable, in the absence of persons criminally so, for crimes committed within their establishments, whenever any infraction of general or special police regulations by them or their employees may have occurred.

Innkeepers are furthermore subsidiarily liable for the restitution of effects robbed or stolen within their houses from persons who are stopping therein, or for the indemnification of said goods, provided the persons have notified in advance either the innkeeper himself, or the person representing him, of the deposit of said effects in the inn; and provided furthermore, that they have heeded the warnings that said innkeepers or their substitutes may have given them with regard to the care and vigilance of their effects. There shall be no liability in case of robbery by violence or intimidation of persons, except it be committed by the employees of the inn.

ART. 19. The subsidiary liability established in the preceding article shall also apply to masters, teachers, persons, and enterprises engaged in any kind of industry, for crimes and misdemeanors committed by their slaves, pupils, officers, apprentices, or employees in the discharge of their obligations or service.

TITLE III.

PENALTIES.

CHAPTER I.

PENALTIES IN GENERAL.

ART. 20. No crime or misdemeanor shall be punished by a penalty which was not established by law prior to its commission.

ART. 21. Penal laws shall have a retroactive effect in so far as they favor the person guilty of a crime or misdemeanor, even though at

the time of the publication of said laws a final sentence should have been pronounced and the convicted person is serving his sentence.

ART. 22. The pardon of the offended party does not extinguish a penal action. This is not understood with regard to crimes which can not be prosecuted without the previous denunciation or consent of the injured party.

Civil liability with regard to the interests of the party condoning an offense is extinguished by his express renunciation.

ART. 23. The following shall not be considered as penalties:

1. Detention and temporary confinement of the accused persons.
2. Suspension from public employment or office ordered during proceedings, or in order to institute them.
3. Fines and other corrections which, in the use of their administrative or disciplinary powers, superiors may impose upon their subordinates or upon those under their direction.
4. Deprivation of rights and reparations, which the civil laws may establish in penal form.

CHAPTER II.

CLASSIFICATION OF PENALTIES.

ART. 24.¹ The penalties which may be imposed according to this code, and their different classes, are those included in the following general scale:

Corporal penalties.—Death; *cadena perpetua*; *reclusión perpetua*; *relegación perpetua*; perpetual expulsion; *cadena temporal*; *reclusión temporal*; *relegación temporal*; temporary expulsion; *presidio mayor*; *prisión mayor*; *confinamiento*; perpetual absolute disqualification; temporary absolute disqualification; perpetual special disqualification from public office, the right of suffrage, active and passive, and from the exercise of a profession or trade; temporary special disqualification from a public office, the right of suffrage, both active and passive, and from the exercise of a profession or trade.

Correctional penalties.—*Presidio correccional*; *prisión correccional*; banishment; public censure; suspension from public office, active and passive right of suffrage, and from the exercise of a profession or trade; *arresto mayor*.

Light penalties.—*Arresto menor*; private censure.

Penalties common to the three preceding classes.—Fine; caution.

Accessory penalties.—Degradation; civil interdiction; subjection to the surveillance of the authorities; forfeiture or confiscation of the instruments and proceeds of the crime; payment of costs.

ART. 25. A fine, when imposed as the principal penalty, shall be considered as a corporal penalty if it exceeds 6,250 pesetas; as correc-

¹ See Order No. 26, Headquarters Division of Cuba, January 18, 1900, page 138.

tional if it does not exceed 6,250 and is not less than 325 pesetas, and light if it does not amount to 325 pesetas.

ART. 26. The penalties of disqualification and suspension from public office and the right of suffrage are accessory in those cases when, not being specially imposed by law, it declares that other penalties shall include them.

Costs of proceedings are understood to be imposed by law upon those criminally liable for any crime or misdemeanor.

CHAPTER III.

DURATION AND EFFECT OF PENALTIES.

SECTION 1.—*Duration of penalties.*

ART. 27. Persons condemned to *cadena*, *reclusión*, and *relegación perpetuas*, or to perpetual expulsion, shall be pardoned after having served thirty years of their sentence, unless on account of their conduct or for other serious reasons they shall not be worthy of pardon in the opinion of the Government.

The penalties of *cadena*, *reclusión*, and *relegación temporales*, and temporary expulsion, shall last for twelve years and one day to twenty years.

Those of *presidio* and *prisión mayores* and *confinamiento* shall last from six years and one day to twelve years.

Those of temporary absolute and temporary special disqualification shall last from six years and one day to twelve years.

Those of *presidio correccional* and *prisión correccional* shall last from six months and one day to six years.

That of suspension shall last from one month and one day to six years.

That of *arresto mayor* shall last from one month and one day to six months.

That of *arresto menor* shall last from one to thirty days.

That of caution shall last for the time the court may determine.

ART. 28. The provisions of the preceding article shall not apply to penalties imposed as accessory to others, in which case the accessory penalties shall have the duration respectively fixed by law.

ART. 29. When the guilty person is imprisoned, the duration of the temporary penalties shall commence from the day on which the condemnatory sentence was made final.

When the guilty person may not be imprisoned, the duration of penalties consisting in deprivation of liberty shall commence as soon as said person is at the disposal of the judicial authorities, in order to serve his sentence.

The duration of the penalties of expulsion, *confinamiento*, and banishment shall commence only from the day on which the guilty person commenced to serve his sentence.

If the guilty person should enter an appeal and it is refused, he shall not be allowed the time that has elapsed between the sentence appealed from and the one rejecting the appeal.

SECTION II.—*Effects of penalties according to their respective nature.*

ART. 30. The penalty of perpetual absolute disqualification shall produce the following effects:

1. The deprivation of the person punished of all honors which he may be enjoying, and of all public employments and offices which he may be holding, even though the latter come from popular election.

2. The deprivation of the rights to vote and to be elected to public offices of popular election.

3. The disqualification to acquire the honors, offices, employments and rights mentioned.

4. The loss of all right to retirement with pay, suspension with part pay, or any other pension for offices he may have previously filled, without prejudice to the pension for support the Government may grant him as a reward for distinguished services.

Under this provision are not included rights already acquired at the time of the condemnation by the widow or children of the person punished.

ART. 31. The penalty of temporary absolute disqualification shall produce the following effects:

1. The deprivation of the person sentenced of all honors he may be enjoying, and of all public employment and offices which he may be holding, although the latter be filled by popular election.

2. The deprivation of the right of voting and being elected to public office by popular election during the term of the sentence.

3. The disqualification of acquiring the honors, employments, offices, and rights mentioned in No. 1, likewise during the term of the sentence.

ART. 32. Perpetual special disqualification from public office shall produce the following effects:

1. The loss of the office or employment which it affects, and of the honors attached thereto.

2. Disqualification to acquire other similar ones.

ART. 33. Perpetual special disqualification from the right of suffrage shall perpetually deprive the person punished of the right to vote and being elected to the elective public office in question.

ART. 34. Temporary special disqualification for a public office shall produce the following effects:

1. Loss of the office or employment which it affects, as well as the honors attached thereto.

2. Disqualification to acquire other similar offices or employments during the term of the sentence.

ART. 35. Temporary special disqualification from the right of suffrage shall deprive the person punished of the right of voting and being elected during the term of sentence for the popular elective office affected by the sentence.

ART. 36. Suspension from a public office shall disqualify the person punished from exercising the same, and from obtaining other similar offices during the term of the sentence.

ART. 37. Suspension from the right of suffrage shall likewise disqualify the person for the exercise thereof during the term of the sentence.

ART. 38. When an ecclesiastical person is sentenced to the penalty of disqualification in any of its classes, or to that of suspension, the effects thereof shall be limited respectively to the offices, rights, or honors which he does not derive from the church, and to the salary to which he is entitled by reason of his ecclesiastical office.

ART. 39. Perpetual special disqualification for a profession or trade shall perpetually deprive the person punished of the privilege to exercise the same.

Temporary disqualification therefor shall deprive him in the same manner during the term of the sentence.

ART. 40. Suspension from the exercise of a profession or trade shall produce the same effect as temporary disqualification during the term of the sentence.

ART. 41. Civil interdiction shall deprive the person punished as long as he suffers it, of the rights of paternal authority, guardianship of person or property, participation in the family council, marital authority, the administration of property, and the right to dispose of his own property by acts *inter vivos*. Those cases are excepted in which the law explicitly limits its effects.

ART. 42. Subjection to the surveillance of the authorities imposes the following obligations on the persons punished:

1. That of fixing his domicile and giving notice thereof to the authority immediately in charge of his surveillance, not being allowed to change it without the knowledge and permission of said authority in writing.

2. To observe the rules of inspection prescribed.

3. To adopt some trade, art, industry, or profession, should he not have known means of subsistence of his own.

Whenever a person punished is placed under the surveillance of the authorities notice thereof shall be given to the Government and to the Governor-General.

ART. 43. The penalty of caution shall oblige the person punished to secure a sufficient bondsman, who shall guarantee that said person will not commit the injury which it is endeavored to prevent, otherwise binding himself to pay the sum which the court may have fixed in the sentence.

The court shall fix the term of the bond in its discretion.

If the person punished should not furnish bond, he shall incur the penalty of banishment.

ART. 44. Persons sentenced to the penalties of disqualification for public offices, for the right of suffrage, or for a profession or trade, perpetually or temporarily, may be rehabilitated in the form prescribed by law.

ART. 45. A pardon shall not produce rehabilitation for the discharge of public office and for the exercise of the right of suffrage, unless said rehabilitation be specially granted in the pardon.

ART. 46. Costs shall include fees and indemnifications incurred in judicial proceedings, whether consisting of fixed or unalterable amounts, by reason of being previously fixed by laws, regulations, or royal orders, or not fixed by any schedule.

ART. 47. The amount of fees and indemnifications not previously fixed in the terms prescribed in the preceding article shall be fixed by the court in the manner established by the law of criminal procedure.

ART. 48. In case the property of the person punished should not be sufficient to cover all the pecuniary liabilities, they shall be satisfied in the following order:

1. Reparation of the injury caused and indemnification of damages.
2. Indemnification to the State for the amount of stamped paper and other expenses which may have been incurred on his account in the cause.
3. The costs of the private accuser.
4. Other costs of procedure, including those of the defense of the person prosecuted, without preference among the persons interested.
5. The fine.

Should the crime have been of those which can be prosecuted only at the instance of a party, the costs of the private accuser shall be satisfied in preference to the indemnification to the State.

ART. 49. If the person sentenced should not have property to satisfy the pecuniary liabilities included in Nos. 1, 3, and 5 of the preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for every 12½ pesetas, according to the following rules:

1. If the principal penalty imposed is to be undergone by the criminal confined in a penal institution, he shall continue therein, although said detention can not exceed one-third of the term of the sentence, and in no case can it exceed one year.

2. If the principal penalty imposed is not to be undergone by the criminal in a penal institution and its duration is fixed, he shall continue subject, for the time mentioned in the preceding article, to the same deprivations of which said penalty must consist.

3. If the principal penalty imposed should be a censure, fine, or caution, the insolvent guilty person shall be confined in the district jail

for a term which can not exceed six months in any case, should he have been prosecuted for a crime, or fifteen days should he have been prosecuted for a misdemeanor.

ART. 50. The subsidiary personal liability on account of insolvency shall not be imposed upon the person condemned to a penalty higher in the general scale than that of *presidio correccional*.

ART. 51. The personal liability which the criminal may have incurred by reason of insolvency shall not exempt him from the reparation of the injury caused and indemnification of damages if his pecuniary circumstances should improve, but it shall exempt him from the other pecuniary liabilities included in numbers 3 and 5 of article 48.

SECTION III.—*Punishments which include other accessory penalties.*

ART. 52. The death penalty, when it is not carried out because the criminal has been pardoned, shall include perpetual absolute disqualification and subjection of the criminal to the surveillance of the authorities for the term of his life, unless said accessory penalty has been specially remitted in the pardon.

ART. 53. The penalty of *cadena perpetua* shall include the following accessory penalties:

1. Degradation, in case the principal penalty of *cadena perpetua* is imposed upon a public official by reason of abuse committed in the exercise of his office, if said office is one of those which confer a permanent character.

2. Civil interdiction.

3. Subjection to the surveillance of the authorities during the life of the person punished.

Even though the latter should obtain pardon from the principal penalty, he shall suffer that of perpetual absolute disqualification and subjection to the surveillance of the authorities during his life, unless this accessory penalty has been remitted in the pardon of the principal one.

ART. 54. The penalties of *reclusión perpetua*, *relegación perpetua*, and perpetual expulsion shall include that of perpetual absolute disqualification and subjection to the surveillance of the authorities during the life of the person punished, said accessory penalties being suffered by the latter even though he may have been pardoned as to the principal one, if they have not been remitted in the pardon.

ART. 55. The penalty of *cadena temporal* shall include the following accessory penalties:

1. Civil interdiction of the person punished during the term of the sentence.

2. Perpetual absolute disqualification.

3. Subjection to the surveillance of the authorities during the life of the person punished.

ART. 56. The penalty of *presidio mayor* shall include those of absolute temporary disqualification and subjection to the surveillance of the authorities for a term equal to that of the principal punishment, which shall begin to be counted from the date of the fulfillment of the same.

ART. 57. The penalty of *presidio correccional* shall include suspension from any public office, profession, trade, or from the right of suffrage.

ART. 58. The penalties of *reclusión temporal*, *relegación temporal*, and temporary expulsion shall include temporary absolute disqualification during their term and subjection to the surveillance of the authorities during the term of the sentence and as long again, which shall be counted from the time the sentence is fulfilled.

ART. 59. The penalty of *confinamiento* shall include that of temporary absolute disqualification and subjection to the surveillance of the authorities during the term of the sentence and as much again, which shall begin to be counted from the completion of the former.

ART. 60. The penalties of *prisión mayor* and *prisión correccional* and *arresto mayor* shall include suspension from any office and from the right of suffrage during the term of the sentence.

ART. 61. Every penalty which may be imposed for a crime shall include the forfeiture of the proceeds of the crime and of the instruments used in its execution.

Both shall be confiscated unless they belong to a third party who is not responsible for the crime.

Things thus confiscated shall be sold if they are of licit commerce, the proceeds thereof being applied to cover the liabilities of the person punished, or shall be rendered useless if they are illicit.

CHAPTER IV.

THE APPLICATION OF PENALTIES.

SECTION 1.—*Rules for the application of penalties to principals in a consummated crime, frustrated crime, and attempt, and to accomplices and accessories thereto.*

ART. 62. Upon the principals in a crime or misdemeanor the penalty shall be imposed which may have been prescribed by the law for said crime or misdemeanor.

Whenever the law shall establish the penalty for a crime in general terms it shall be understood as being imposed upon the consummated crime.

ART. 63. In cases in which the crime committed is different from that which the culprit had intended to commit the following rules shall be observed:

1. If the penalty prescribed for the accomplished crime should be higher than that corresponding to the crime which the culprit had intended to commit, the penalty corresponding to the second shall be imposed on the culprit in its maximum degree.

2. If the penalty prescribed for the accomplished crime should be lower than that prescribed for the one which the culprit had intended to commit, the penalty corresponding to the former shall be imposed on him, also in its maximum degree.

3. The provisions of the preceding rule shall not be applicable if the acts committed by the culprit should constitute, besides, an attempt to commit another crime or another frustrated crime, if the law should punish these acts with a higher penalty, in which case that corresponding to the attempt or frustrated crime shall be imposed in its maximum degree.

ART. 64. Upon the principals in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by the law for the consummated crime.

The same rule shall be observed regarding the principals in frustrated misdemeanors.

ART. 65. Upon the principals in an attempt to commit a crime shall be imposed a penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 66. Upon the accomplices in a consummated crime shall be imposed the penalty next lower in degree than that prescribed by law for the consummated crime.

ART. 67. Upon the accessories in a consummated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the consummated crime.

ART. 68. Upon the accomplices in a frustrated crime shall be imposed the penalty next lower in degree than that prescribed by law for the frustrated crime.

ART. 69. Upon the accessories in a frustrated crime shall be imposed the penalty lower by two degrees than that prescribed by law for the frustrated crime.

ART. 70. Upon the accomplices in an attempt to commit a crime shall be imposed the penalty next lower in degree than that prescribed by law for the attempt to commit the crime.

ART. 71. Upon the accessories in an attempt to commit a crime shall be imposed the penalty lower by two degrees than that prescribed by law for the attempt to commit the crime.

ART. 72. There are excepted from the provisions of articles 67, 69, and 71 the accomplices mentioned in No. 3 of article 14, in whose

cases the first circumstance mentioned in said number is attendant, upon whom the penalty of perpetual special disqualification shall be imposed if the delinquent harbored should have been guilty of a grave crime, and that of temporary special disqualification if he should have been guilty of a less grave crime.

ART. 73. The general provisions contained in articles 64 to 72, inclusive, shall not be applicable to cases in which the frustrated crime, the attempt, the complicity, or the participation after the fact (*encubrimiento*) are specially penalized by law.

ART. 74. In order to graduate the penalties which, in accordance with the provisions of articles 64 to 72, inclusive, should be imposed on the principals in a frustrated crime and in an attempt to commit crime, and upon the accomplices and accessories, the following rules shall be observed:

1. When the penalty prescribed for the crime is a single and indivisible one, the penalty next lower shall be that following in number the indivisible penalty in the respective graduated scale.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties imposed to their full limit, the penalty next lower shall be that which follows in number the lesser of the penalties imposed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum degree of another divisible penalty, the penalty next lower shall consist of the medium and minimum degrees of the said divisible penalty and the maximum degree of that following in number in the respective graduated scale.

4. When the penalty prescribed for the crime is composed of various degrees, corresponding to several divisible penalties, that next lower shall consist of the degree that follows the minimum of those constituting the penalty imposed, and of the two others next immediate, which will be taken from the penalty imposed, if it should have any, and otherwise from the penalty following in number in the respective graduated scale.

5. When the law prescribes the penalty for the crime in a form not specially mentioned in the four preceding rules, the courts, proceeding by analogy, shall impose the penalties corresponding to principals, accomplices, and accessories in a frustrated crime and in an attempt to commit a crime.

ART. 75. When the penalty prescribed by law for a crime should have been included in two scales, the graduation prescribed in the preceding article shall be made according to the scale which includes the penalties by which are punished the greater part of the crimes referred to in the section, chapter, or title in which the crime is contained.

Demonstrative table of the provisions of this chapter

| Penalty prescribed for the crime. | Penalty pertaining to the principal in a frustrated crime and the accomplice in a consummated crime. | Penalty pertaining to the principal in an attempt at consummated crime, accessory in the same crime, and accomplices in a frustrated crime. | Penalty pertaining to an accessory in a frustrated crime and accomplices in an attempt. | Penalty pertaining to an accessory in an attempt to commit a crime. |
|--|--|---|--|---|
| First case, death.... | <i>Cadena perpetua</i> ... | <i>Cadena temporal</i> | <i>Presidio mayor</i> | <i>Presidio correccional</i> |
| Second case, <i>cadena perpetua</i> to death. | <i>Cadena temporal</i> ... | <i>Presidio mayor</i> | <i>Presidio correccional</i> | <i>Arresto mayor</i> |
| Third case, <i>cadena temporal</i> in its maximum degree to death. | <i>Presidio mayor</i> in its maximum degree to <i>cadena temporal</i> in its medium degree. | <i>Presidio correccional</i> in its maximum degree to <i>presidio mayor</i> in its medium degree. | <i>Arresto mayor</i> in its maximum degree to <i>presidio correccional</i> in its medium degree. | Fine and <i>arresto mayor</i> in its minimum and medium degrees |
| Fourth case, <i>presidio mayor</i> in its maximum degree to <i>cadena temporal</i> in its medium degree. | <i>Presidio correccional</i> in its maximum degree to <i>presidio mayor</i> in its medium degree | <i>Arresto mayor</i> in its maximum degree to <i>presidio correccional</i> in its medium degree. | Fine and <i>arresto mayor</i> in its minimum and medium degrees. | Fine. |

SECTION II.—*Rules for the application of penalties with regard to extenuating and aggravating circumstances.*

ART. 76. Extenuating or aggravating circumstances shall be taken into consideration in reducing or increasing the penalty in the cases and in accordance with the rules prescribed in this section.

ART. 77. Aggravating circumstances which in themselves constitute a crime specially punished by law, or which the law has mentioned in describing and penalizing it, shall not have the effect of increasing a penalty.

Nor shall this effect be produced by aggravating circumstances that are inherent in such manner to the crime that without the attendance thereof the crime could not be committed.

ART. 78. The aggravating or extenuating circumstances that consist in the moral condition of the delinquent in his private relations with the injured party, or in any other personal cause, shall serve to aggravate or diminish the liability of only the principals, accomplices, or accessories who may be affected thereby.

The circumstances which consist in the material execution of the deed or in the means employed to accomplish it shall serve to aggravate or diminish the liability of those persons only who were acquainted with them at the moment of the commission of the crime or of their cooperation therein.

ART. 79. In cases in which the law prescribes only one indivisible penalty the courts shall apply it without consideration of the aggravating or extenuating circumstances attending the deed.

In cases in which the law prescribes a punishment composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. If an aggravating circumstance alone should have attended the deed, the higher penalty shall be applied.

2. If neither extenuating nor aggravating circumstances should have attended the deed the lesser penalty shall be applied.

3. If an extenuating circumstance and no aggravating one should have attended the deed the lesser penalty shall be applied.

4. If both aggravating and extenuating circumstances should have attended the deed the courts shall make reasonable allowance therefor, with regard to their number or importance, in applying the penalty in accordance with the foregoing rules, according to the result produced by such allowance.

ART. 80. In cases in which the penalty prescribed by law contains three degrees, whether it be a single divisible penalty or composed of three different penalties, each of which forms a degree, in accordance with the provisions of articles 95 and 96, the courts shall observe for the application of the penalty the following rules, according as to whether there are or not extenuating or aggravating circumstances:

1. If neither aggravating nor extenuating circumstances should have attended the deed they shall impose the penalty prescribed by law in its medium degree.

2. If only an extenuating circumstance should have attended the deed they shall impose the penalty in its minimum degree.

3. If only an aggravating circumstance should have attended the deed they shall impose the penalty in its maximum degree.

4. If both extenuating and aggravating circumstances should have attended the deed they shall make a reasonable allowance in the designation of the penalty by counterbalancing the weight of the one and the other.

5. If two or more very marked extenuating circumstances and no aggravating circumstance should have attended the act the court shall impose the penalty next lower to that prescribed by the law, in the degree that it considers proper, according to the number and importance of such circumstances.

6. Whatever may be the number and importance of the aggravating circumstances, the courts shall not impose a higher penalty than that prescribed by law in its maximum degree.

7. Within the limits of each degree the courts shall determine the extent of the penalty, in view of the number and importance of the aggravating and extenuating circumstances and the greater or lesser extent of the evil produced by the crime.

ART. 81. In those cases in which the penalty prescribed by law is not composed of three degrees the courts shall apply the rules contained in the foregoing article, dividing into three equal periods the term embraced in the penalty imposed, forming one degree of each of the three periods.

ART. 82. In the application of fines the courts may go to the full limit within which the law permits their imposition, taking into consideration, in order to determine their amount in each case, not only

the aggravating and extenuating circumstances of the act, but chiefly the wealth or means of the culprit.

ART. 83. If all the conditions necessary to exempt from liability in the case of No. 9 of article 8 should not be attendant, the provisions of article 590 shall be observed.

ART. 84. Upon a person under 15 but over 9 years of age, who is not exempt from liability by reason of the court having declared that he acted with the exercise of judgment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

Upon a person over 15 and under 18 years of age the penalty shall always be imposed in the proper degree which is next lower than that prescribed by law.

ART. 85. A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the lack of some of the conditions required to exempt from criminal liability in the respective cases mentioned in article 8, provided that the greater number thereof be attendant, the penalty being imposed in the degree the courts may consider proper, taking into consideration the number and importance of the requisites absent or present.

This provision is understood without prejudice to that contained in article 83.

SECTION III. *Provisions common to the two preceding sections.*

ART. 86. Upon a person guilty of two or more crimes or misdemeanors shall be imposed all the penalties corresponding to the various violations of the law, to be simultaneously served if possible, in view of the nature and effects of such penalties.

ART. 87. If all or any of the penalties corresponding to the various violations of the law could not be simultaneously served by the person condemned, the following rules shall be observed with regard thereto:

1. In the imposition of the penalties, the order of their respective severity shall be observed for their successive fulfillment, so far as possible, by the person condemned by reason of having obtained pardon for, or served out, those first imposed.

For the observance of the provisions of the preceding paragraph, the respective severity of the penalties shall be determined in accordance with the following scale: Death, *cadena perpetua*, *cadena temporal*, *reclusión perpetua*, *reclusión temporal*, *presidio mayor*, *prisión mayor*, *presidio correccional*, *prisión correccional*, *arresto mayor*, *relegación perpetua*, *relegación temporal*, perpetual expulsion, temporary expulsion, *confinamiento*, banishment.

2. Notwithstanding the provisions contained in the preceding rule, the maximum duration of the sentence of the culprit shall not exceed three times the time which the most severe of the penalties that he

may have incurred should have imposed on him; and there shall not be imposed on him other proper penalties when those already imposed shall have covered the maximum of the aforementioned term.

In no case shall such maximum term exceed forty years.

For the application of the provisions of this rule, the duration of a perpetual penalty shall be reckoned at thirty years.

ART. 88. The provisions of the foregoing article are not applicable to a case in which a single act should constitute two or more crimes, or if one of them should be a necessary means for committing the others.

In such cases, only the penalty corresponding to the more serious crime shall be imposed in its maximum degree.

ART. 89. Whenever the courts should impose a penalty that includes other punishments by provision of law, according to the prescriptions of Section III of the preceding chapter, they shall also specifically sentence the culprit to the said penalties.

ART. 90. In cases for which the law prescribes a penalty lower or higher by one or two degrees than another given penalty, the rules prescribed in articles 74 and 75 shall be observed in graduating it.

The lower or higher penalty shall be taken from the graduated scale in which the given penalty may be included.

If a penalty higher than that of *arresto mayor* is to be applied, it shall be taken from the scale including the penalties prescribed for the graver crimes of the same character as that punished with *arresto mayor*.

The courts shall bear in mind, in making application of a lower or higher penalty, the following graduated scales:

Scale No. 1.—(1) Death, (2) *cadena perpetua*, (3) *cadena temporal*, (4) *presidio mayor*, (5) *presidio correccional*, (6) *arresto*.

Scale No. 2.—(1) Death, (2) *reclusión perpetua*, (3) *reclusión temporal*, (4) *prisión mayor*, (5) *prisión correccional*, (6) *arresto*.

Scale No. 3.—(1) *Relegación perpetua*, (2) *relegación temporal*, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 4.—(1) Perpetual expulsion, (2) temporary expulsion, (3) *confinamiento*, (4) banishment, (5) public censure, (6) caution.

Scale No. 5.—(1) Perpetual absolute disqualification, (2) temporary absolute disqualification, (3) suspension from public office, right of suffrage, active and passive, profession or trade.

Scale No. 6.—(1) Perpetual special disqualification, (2) temporary special disqualification, or (3) suspension from public office, right of suffrage, active and passive, profession and trade.

ART. 91. The fine shall be considered as the last penalty in every one of the preceding graduated scales.

If it should be imposed in this character, the subsidiary liability corresponding thereto by reason of the insolvency of the culprit, established in article 49, can not exceed the duration of the term pertaining to the penalty immediately higher in the respective scale.

ART. 92. In cases to which the law prescribes a penalty higher than another determined penalty, without specifically designating what it may be, if there should be no higher penalty in the respective scale, or if the former should be that of death, the following shall be considered as penalties immediately higher:

1. If the penalty determined were that of *cadena* or *reclusión perpetua*, or perpetual, absolute, or special disqualification, the same penalties, with the proviso that the condemned person shall not enjoy the benefit established in article 27 of this code until the completion of forty years.

2. If it should be that of *relegación perpetua*, the penalty of *reclusión perpetua*.

3. If it should be that of perpetual expulsion, the next higher penalty shall be that of *relegación perpetua*.

ART. 93. Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced respectively for each degree by the fourth part of the maximum amount prescribed by law, and in order to reduce it the reverse operation shall take place.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but of a proportional amount.

ART. 94. When women shall commit crimes which this code punishes with the penalties of *cadena perpetua* or *cadena temporal*, or with those of *presidio mayor* or *presidio correccional*, there shall be respectively imposed upon them those of *reclusión perpetua* or *reclusión temporal*, *prisión mayor* or *prisión correccional*.

ART. 95. In the divisible penalties the legal term of duration is understood as distributed into three parts, forming the three degrees: that is, the minimum, medium, and maximum, in the manner shown in the following:

Table showing the duration of divisible penalties and the time which each one of their degrees embraces.

| Penalties. | Time included by the penalty in its entirety. | Time included in its minimum degree. | Time included in its medium degree. | Time included in its maximum degree. |
|---|---|---|---|---|
| Temporary <i>cadena</i> , <i>reclusión</i> , <i>relegación</i> , expulsion. | From 12 years and 1 day to 20 years. | From 12 years and 1 day to 14 years and 8 months. | From 14 years, 8 months, and 1 day, to 17 years and 4 months. | From 17 years, 4 months, and 1 day to 20 years. |
| <i>Presidio</i> and <i>prisión mayor</i> , <i>confinamiento</i> , temporary, absolute, or special disqualification. | From 6 years and 1 day to 12 years. | From 6 years and 1 day to 8 years. | From 8 years and 1 day to 10 years. | From 10 years and 1 day to 12 years. |
| <i>Presidio</i> and <i>prisión correccional</i> , and banishment. | From 6 months and 1 day to 6 years. | From 6 months and 1 day to 2 years and 4 months. | From 2 years, 4 months, and 1 day, to 4 years and 2 months. | From 4 years, 2 months, and 1 day to 6 years. |
| Suspension..... | From 1 month and 1 day to 6 years. | From 1 month and 1 day to 2 years. | From 2 years and 1 day to 4 years. | From 4 years and 1 day to 6 years. |
| <i>Arresto mayor</i> | From 1 month and 1 day to 6 months. | From 1 to 2 months. | From 2 months and 1 day to 4 months. | From 4 months and 1 day to 6 months. |
| <i>Arresto menor</i> | From 1 to 30 days. | From 1 to 10 days. | From 11 to 20 days. | From 21 to 30 days. |

ART. 96. In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a degree; the lightest of them the minimum, the next the medium, and the most severe the maximum degree.

Whenever the penalty prescribed does not have one of the forms specially provided for in this book, the degrees shall be distributed by applying by analogy the rules fixed.

CHAPTER V.

EXECUTION OF PENALTIES AND THEIR FULFILLMENT.

SECTION I.—*General provisions.*

ART. 97. No penalty shall be executed unless by virtue of final sentence.

ART. 98. Nor shall any penalty be executed in any other form than that prescribed by law, or with any other circumstances or incidents than those mentioned in its text.

Besides the provisions of the law, the prescriptions of the special regulations for the management of the institutions in which the penalties are to be undergone shall also be observed with regard to the character, time, and other circumstances of the labors, the relations of the convicts among themselves and with other persons, the relief they may receive, and their diet.

The regulations shall provide for the separation of the sexes in different institutions, or at least in different departments.

ART. 99. If a delinquent should become insane or an imbecile after final sentence should have been pronounced upon him, the execution thereof shall be suspended only with regard to the personal penalty, the provisions of the second and third paragraphs of No. 1 of article 8 being observed in the respective cases.

At any time when the delinquent shall recover his reason he shall complete his sentence, unless the penalty should have prescribed in accordance with the provisions of this code.

The proper provisions of this section shall also be observed if the insanity or imbecility should occur while the convict is undergoing his sentence.

SECTION II.—*Principal penalties.*

ART. 100. The penalty of death shall be executed by the garrote upon a scaffold.

The execution shall take place twenty-four hours after the notification of sentence, by day, in public, and in the place generally set aside for the purpose, or in the one the court may determine, when there are especial reasons therefor.

This penalty shall not be carried out upon religious or national holidays.

ART. 101. Until there shall be a place provided in the jails for the public execution of the death penalty, the person sentenced thereto, who shall be dressed in a black cassock, shall be taken to the scaffold in the carriage provided for that purpose, or in a cart in the absence of the former.

ART. 102. The corpse of the person executed shall be exposed on the scaffold for four hours, after which it shall be buried; being delivered to his relatives or friends for this purpose if they should solicit it. The funeral must be held without display.

ART. 103. The penalty of death shall not be inflicted upon a woman while she is pregnant; nor shall she be notified of the sentence that has been imposed upon her until forty days after her delivery.

ART. 104. The penalties of *cadena perpetua* and *cadena temporal* shall be served in any of the places provided for such purpose, to the exclusion of the islands of Cuba and Porto Rico.

ART. 105. Those sentenced to *cadena temporal* or *cadena perpetua* shall labor for the benefit of the State; they shall always carry a chain at the ankle, hanging from the waist; they shall be employed in hard and painful labor and shall receive no assistance whatsoever from without the institutions.

Nevertheless, if the court, taking into consideration the age, health, condition, or any other personal circumstance of the delinquent, should believe that he should undergo his penalty in labors within the institution, it shall so declare in the sentence.

ART. 106. Those sentenced to *cadena temporal* or *cadena perpetua* can not be assigned to private works or to public works that are executed by business enterprise or by contracts with the Government.

ART. 107. A person condemned to *cadena temporal* or *cadena perpetua* who should have attained the age of 60 years before the passing of sentence, shall serve his sentence at a prison for serving the penalty of *presidio mayor*.

If he should attain said age while undergoing his sentence, he shall be transferred to the latter penal institution, in which he shall remain for the time prescribed in the sentence.

ART. 108. *Reclusión perpetua* and *reclusión temporal* shall be served in institutions within or without the islands of Cuba and Porto Rico.

Those condemned thereto shall be subject to forced labor for the benefit of the State within the precincts of the institution.

ART. 109. The penalties of *relegación perpetua* and *relegación temporal* shall be served without the islands of Cuba and Porto Rico, at the places provided therefor by the Government.

Those undergoing this sentence may devote themselves freely, under the surveillance of the authorities, to their profession or trade within the radius to which the limits of the penal institution extend.

ART. 110. A person sentenced to expulsion shall be expelled from Spanish territory forever, if the sentence were perpetual, and for the term of the sentence if temporary.

ART. 111. The penalties of *presidio* shall be served in the institutions provided therefor, which are situated, those for *presidio mayor* within the islands of Cuba and Porto Rico and adjacent islands, and for *presidio correccional* within the islands of Cuba and Porto Rico respectively.

Those sentenced to *presidio* shall be subject to forced labor within the institution in which they are serving their sentence.

ART. 112. The product of the labor of those condemned to *presidio* shall be devoted:

1. To meet the civil liabilities of the prisoners arising from their crimes.

2. To indemnify the institution for the expenses they may occasion.

3. To provide them with some advantage or savings during their detention, should they deserve it, and to create a reserve fund, to be delivered to them upon their discharge from the *presidio*, or to their heirs should they die there.

ART. 113.¹ The penalties of *prisión* shall be served at the institutions provided for this purpose, which will be situated, those for *prisión mayor* within the islands of Cuba and Porto Rico and adjacent islands, and those for *prisión correccional* within the territorial jurisdiction of the audiencia (court) which imposed the sentence.

Those condemned to *prisión* shall not go outside of the institution in which they are undergoing their punishment, during the term of their sentence, and shall engage, for their own benefit, in such works as they may choose, provided they be compatible with the discipline established by the regulations. They shall be, nevertheless, subject to the labors of the institution until they shall have met their liabilities mentioned in Nos. 1 and 2 of the preceding article. Those having no trade or known and honest means of livelihood shall be also subject thereto.

ART. 114. Those sentenced to *confinamiento* shall be taken to a town or district situated in the adjacent islands, where they shall remain at complete liberty, under the surveillance of the authorities.

The courts, in designating the place where this penalty is to be served, shall take into consideration the trade, profession, or means of livelihood of the condemned person, in order that he may earn his living.

Those who, by reason of their age, health, and good conduct, should be fit for military service, may be, with their consent, assigned thereto by the Government.

¹See General Order No. 152, Headquarters Department of Porto Rico, September 29, 1899, p. 147.

Those sentenced to banishment shall be precluded from entering the place or places designated in the sentence or within the radius therein designated, which shall include a distance of 25 kilometers at least and 250 kilometers at most from the place designated.

ART. 115. The person sentenced to public censure shall receive it in person at a sitting of the court, with open doors.

The person sentenced to private censure shall receive it in person at a sitting of the court and in the presence of the secretary, behind closed doors.

ART. 116. *Arresto mayor* shall be served in the public building provided for the purpose in the seats of judicial districts.

The provisions contained in the second paragraph of article 113 are applicable in their respective cases to those condemned to this penalty.

ART. 117. *Arresto menor* shall be served at the town halls or other public buildings, or in the house of the culprit himself, if the sentence shall so declare, without his being allowed to leave the same during the entire period of the sentence.

Apprentices, serfs (*colonos*), and slaves shall suffer the penalty at the house of their master, patron, or owner on the same terms as those expressed in the preceding paragraph.

SECTION III.—*Accessory penalties.*

ART. 118. A person sentenced to degradation shall, at a public sitting of the court, be stripped by a bailiff of his uniform, robes of office, insignia, and decorations.

The stripping off shall be carried out at the command of the presiding judge, who shall order it, in the following manner: "Strip (*the name of the person sentenced*) of his insignia and decorations, to wear which the law declares him unworthy. The law degrades him because he has degraded himself."

TITLE IV.

CIVIL LIABILITY.

ART. 119. The civil liability established in Chapter II, Title II, of this book includes: (1) Restitution, (2) reparation for the damage caused, (3) indemnification for losses, (4) enforced manumission.

ART. 120. The restitution of the thing itself must be made, if possible, with payment for deteriorations or diminutions of value, to be appraised by the court.

Restitution shall be made, even though the thing may be in the possession of a third person who had acquired it in a legal manner, reserving, however, his action against the proper person.

This provision is not applicable to a case in which the third person has acquired the thing in the manner and with the requisites established by law to make it unrecoverable.

ART. 121. The reparation shall be made by the appraisal of the amount of damage by the court, taking into consideration the value of the thing whenever possible, and the value as a keepsake to the party aggrieved.

ART. 122. Indemnification for losses shall include not only those which may have been caused the aggrieved party, but also those that may have been inflicted upon his family or upon a third person by reason of the crime.

The courts shall regulate the amount of such indemnification upon the same terms as prescribed for the reparation of damage in the foregoing article.

ART. 123. The obligation to make restitution, to repair the damages or indemnify the losses, is transmitted to the heirs of the person liable.

The action to demand restitution, reparation, or indemnification is also transmitted to the heirs of the person injured.

ART. 124. If there are two or more persons civilly liable for a crime or misdemeanor, the courts shall determine the share for which each shall be liable.

ART. 125. Notwithstanding the provision contained in the preceding article, the principals, accomplices, and accessories, each within their respective class, shall be held jointly liable among themselves for their shares, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals, next against that of the accomplices, and finally against that of the accessories.

In cases in which the joint liability has been enforced as well as the subsidiary liability, the right of action is reserved by the person who has paid, against the others for the shares due from each.

ART. 126. Whosoever may have gratuitously shared in the proceeds of a crime or misdemeanor is obliged to make indemnification in so far as he may have participated therein.

TITLE V.

PENALTIES INCURRED BY THOSE WHO VIOLATE THEIR SENTENCE, AND BY THOSE WHO COMMIT A NEW CRIME WHILE SERVING SENTENCE.

CHAPTER I.

PENALTIES INCURRED BY THOSE WHO VIOLATE THEIR SENTENCE.

ART. 127. Persons serving a sentence who should violate it, shall suffer an aggravation of their punishments, subject to the provisions of the following rules:

1. Those sentenced to *cadena* or *reclusión* shall complete their respective terms, and be made to suffer, during a space of time not exceeding three years, the greatest deprivations authorized by the regulations, and shall be assigned to the most painful tasks.

If the penalty should be perpetual, they shall not enjoy the benefit granted by article 27 until after having served the aggravation of penalty imposed upon them.

If the penalty should be temporary and the aggravation of penalty could not be served within the term fixed in their original sentence, they shall continue subject thereto until the period of the aggravation has expired.

2. Those sentenced to *relegacion* or expulsion shall be condemned to *prisión correccional* for a period not to exceed three years, which must be served, in case of those sentenced to *relegacion*, at the place of *relegacion* if possible, and, otherwise, at the nearest possible place thereto; and those sentenced to expulsion, at one of the penal institutions of the Kingdom.

When these sentences have been served, they shall serve out their original sentences.

3. Those sentenced to *presidio*, *prision*, or *arresto* shall suffer an increase of the said penalties, not to exceed the one-sixth part of the time still lacking for the completion of their original sentence.

4. Those sentenced to *confinamiento* shall be condemned to *prison correccional* not to exceed two years; and after this penalty is served, they shall serve out that of *confinamiento*.

5. Persons banished shall be condemned to *arresto mayor*, after serving which they shall serve out their term of banishment.

6. Those disqualified from office, from the right of suffrage, profession, or trade, who shall obtain or exercise the same shall be condemned to *arresto mayor* and a fine of from 250 to 2,500 pesetas, if their act should not constitute a special crime.

7. Those suspended from office, the right of suffrage, profession, or trade, who shall nevertheless practice it, shall suffer an increase for a period equal to that of the original sentence and a fine of from 150 to 1,500 pesetas.

8. Those placed under the surveillance of the authorities who fail to observe the rules they ought to observe shall be condemned to *arresto mayor*, having completed which term they shall continue subject to the surveillance of the authorities until the expiration of such penalty.

ART. 128. The aggravations prescribed in the preceding article with regard to those deprived of their liberty shall not be applied to those who escape from penal institutions or the stations thereof without violence, intimidation, or resistance, without breaking doors or windows, walls, roofs, or floors, without the use of picklocks or false keys, without scaling walls, and without an understanding with other convicts or attendants of the institution.

The violation of a sentence without one or more of these attendant circumstances shall be punished with one-fourth of the penalty respectively prescribed in article 127.

CHAPTER II.

PENALTIES INCURRED BY THOSE WHO COMMIT ANOTHER OFFENSE AFTER HAVING BEEN CONDEMNED BY FINAL SENTENCE, EITHER BEFORE OR WHILE SERVING IT.

ART. 129. Those who should commit any crime or misdemeanor after having been condemned by a final sentence before beginning to serve it, or during the time of their punishment, shall be punished in accordance with the following rules:

1. The maximum degree of the penalty prescribed by law for the new crime or misdemeanor shall be imposed upon them.

2. The courts shall observe, in so far as applicable to this case, the provisions contained in article 86 and rule 1 of article 87 of this Code.

3. The prisoners mentioned in this article shall be pardoned at the age of 70 years if they should already have served out their original sentences, or when they shall have completed their terms after attaining said age, unless they should not be worthy of this act of grace, on account of their bad conduct or any other circumstances.

TITLE VI.

EXTINCTION OF PENAL LIABILITY.

ART. 130. Penal liability is extinguished-

1. By the death of the culprit always, in so far as personal penalties are concerned; and with regard to pecuniary liabilities, only when no final sentence had been imposed at the time of his death.

2. By the completion of his term.

3. By amnesty which completely extinguishes the penalty and all its effects.

4. By pardon.

A person freed by a pardon can not reside in the place of residence of the offended party without his consent during the time that the sentence would have lasted had it not been for the pardon, said pardon granted being otherwise void.

5. By condonation granted by the offended party, should the penalty have been imposed for crimes in which public prosecution can not be instituted.

6. By prescription of the crime.

7. By prescription of the penalty.

ART. 131. Crimes prescribe twenty years after their commission, when the law fixes the penalty of death or of *cadena perpetua* for the crime.

After fifteen years, when the penalty fixed is any other corporal penalty.

After ten years, when the penalties fixed are correctional.

The crimes of calumny and contumely are excepted, the first of which shall prescribe after one year and the second after six months.

Misdemeanors prescribe two months after their commission.

When the penalty prescribed is a compound penalty, the higher penalty shall be observed in the application of the rules contained in the first, second, and third paragraphs of this article.

The term of the prescription shall commence to run from the day on which the crime was committed; and if not known at the time, from the day of its discovery and the beginning of the judicial proceedings for investigation and punishment.

This prescription shall be interrupted from the commencement of the proceedings against the culprit, and the term of prescription shall commence to run again from the time when such proceedings terminate without the culprit being convicted or the proceedings have stopped, unless it be through the default of the culprit being tried.

ART. 132. The penalties imposed by final sentence prescribe:

Those of death and *cadena perpetua* after twenty years.

The remaining corporal penalties after fifteen years.

The correctional penalties after ten years.

Light penalties after one year.

The term of this prescription will begin to run from the day on which the culprit was personally notified of the final sentence; or from the day of his breaking the sentence, if he had begun to serve it.

It shall be interrupted, the time which has elapsed remaining without effect, in case the culprit should present himself or be captured, if he should have gone to a foreign country with which Spain may not have celebrated extradition treaties; or if, although she should have them, his crime should not be included in their provisions; or if he should commit a new crime before completing the term of the prescription—without prejudice, however, to the latter beginning to run anew.

ART. 133. Civil liability arising out of crimes or misdemeanors shall be extinguished in the same manner as other obligations in accordance with the rules of civil law.

BOOK II.
CRIMES AND THEIR PENALTIES.

TITLE I.

CRIMES AGAINST THE EXTERNAL SECURITY OF THE STATE.

CHAPTER I.

THE CRIME OF TREASON.

ART. 134. A Spaniard who shall induce a foreign power to declare war on Spain, or shall plot with it to the same end, shall be punished with the penalty of *cadena perpetua* to death if war should actually be declared, and otherwise with the penalty of *cadena temporal* in its medium degree to that of *cadena perpetua*.

ART. 135. The following shall be punished with the penalty of *cadena perpetua* to death:

1. A Spaniard who shall facilitate the enemy's entrance into the Kingdom, the capture of a fortified place, military post, national vessel, or stores of military or food supplies.

2. A Spaniard who shall seduce Spanish troops or troops in the service of Spain to go over to the enemy's ranks or to desert their flag while in the field.

3. A Spaniard who shall recruit people in Spain to make war upon the country under the flag of a hostile power.

Frustrated crimes of the character specified in the preceding numbers shall be punished as though consummated, and the attempts shall be punished with the penalty next lower by one degree.

ART. 136. The following shall be punished with the penalty of *cadena temporal* in its maximum degree to death:

1. A Spaniard who shall take up arms against his country under hostile flags.

2. A Spaniard who shall recruit people in Spain for the service of a hostile power in case such recruits were not to take a direct part in the war against Spain.

3. A Spaniard who shall furnish troops of a hostile power with money, arms, transports, articles or munitions of war, food, or other means, direct and effectual, for carrying on hostilities against Spain, or who shall favor the progress of the hostile arms in a manner not specified in the preceding article.

4. A Spaniard who shall furnish the enemy with topographical maps, or plans of fortifications, documents, or information which shall directly lead to the same end of committing hostilities on Spain or favoring the progress of the hostile arms.

5. A Spaniard who in time of war shall prevent the national troops from receiving the assistance referred to in No. 3 or the data and information referred to in No. 4.

ART. 137. Conspiracy to commit any of the crimes mentioned in the three preceding articles shall be punished with the penalty of *presidio mayor*, and the proposition to commit the said crimes with that of *presidio correccional*.

ART. 138. A foreigner residing in Spanish territory who shall commit any of the crimes specified in the preceding article shall be punished with the penalty next lower than that fixed therein, reserving the provisions of treaties or international law relating to diplomatic officials.

ART. 139. Those who shall commit the crimes specified in the preceding articles against a power allied to Spain, in the case of said power being in the field against the common enemy, shall be punished with the penalties lower by one degree than those respectively prescribed.

ART. 140. The ministers of the Crown shall incur the penalty of *cadena perpetua* to death who, in violation of article 55 of the constitution, shall authorize a decree to any of the following ends:

1. Alienating, ceding, or exchanging any part of the Spanish territory.

2. Authorizing the entrance of foreign troops into the Kingdom.

3. Ratifying treaties of offensive alliance, which may have brought about war between Spain and another power.

ART. 141. The persons mentioned in the foregoing article shall be punished with the penalty of *cadena temporal* in its medium degree to *cadena perpetua*, who, in violation of article 55 of the constitution, shall authorize a decree:

1. Ratifying treaties of offensive alliance which may not have brought about war between Spain and another power.

2. Ratifying treaties in which the stipulation is made to give subsidies to a foreign power.

CHAPTER II.

CRIMES THAT ENDANGER THE PEACE OR INDEPENDENCE OF THE STATE.

ART. 142. The ecclesiastical minister who, in the performance of his office, shall publish or enforce bulls, briefs, or dispatches from the Holy See, or other provisions or declarations that attack the peace or independence of the State, or that oppose the observance of its laws, or encourage their nonobservance, shall incur the penalty of temporary expulsion.

Any layman committing such acts shall incur the penalty of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas.

ART. 143. Any person who shall introduce, publish, or enforce within the Kingdom any order, provision, or document emanating from a foreign government, that attacks the independence or security of the State, shall be punished with the penalties of *prisión correccional* in its minimum and medium degrees, and a fine of from 625 to 6,250 pesetas, unless such crime directly produces others of greater gravity, in which case he shall be punished as the principal therein.

ART. 144. If any of the crimes mentioned in the two foregoing articles should be committed by any official of the State taking advantage of his character or duties, there shall be imposed upon him, in addition to the penalties established in said articles, that of perpetual absolute disqualification.

ART. 145. He who by unlawful acts or not duly authorized should provoke or furnish a pretext for a declaration of war against Spain on the part of another power, or should expose Spaniards to annoyance or reprisals on their persons or property, shall be punished with the penalty of *reclusión temporal* if he be a State official, and otherwise with that of *prisión mayor*.

If the war be not actually declared, or the reprisals or annoyances do not take place, the respective penalties shall be imposed in the next lower degree.

ART. 146. The penalty of *reclusión temporal* shall be imposed on any person violating a truce or armistice agreed to between the Spanish nation and a hostile nation, or between their belligerent forces, land or naval.

ART. 147. A public official who, taking advantage of his office, should in any way not specifically mentioned in this chapter endanger the dignity or interests of the Spanish nation, shall be punished with the penalties of *prisión mayor* and perpetual disqualification from the office he may hold.

ART. 148. He who, without sufficient authorization, shall raise troops within Spain for the service of a foreign nation for any object or purpose whatsoever, whatever be the nation against which hostility be contemplated, shall be punished with the penalties of *prisión mayor* and a fine of from 12,500 to 125,000 pesetas.

He who, without sufficient authorization, should send out vessels for privateering shall be punished with the penalties of *reclusión temporal* and a fine of from 6,250 to 62,500 pesetas.

ART. 149. He who in time of war holds correspondence with the hostile country or territory occupied by its troops shall be punished:

1. With the penalty of *prisión mayor*, if such correspondence is carried on by ciphers or codes agreed on between the parties.