

**TRANSLATION. COMPILATION OF THE  
ORGANIC PROVISIONS OF THE  
ADMINISTRATION OF  
JUSTICE IN FORCE IN THE SPANISH  
COLONIAL PROVINCES, AND  
APPENDICES RELATING THERETO, 1891**

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**RAMÓN SÁNCHEZ DE OCAÑA**

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APPENDICES RELATING THERETO.

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## INTRODUCTION.

The legislation relating to the personnel of the administration of justice in the colonies and to the organization of its courts is so extensive, so varying, and so contradictory, that a full review of the subject, no matter how succinctly made, would require much more space than the limits of the present volume permit. We have, therefore, been obliged to confine ourselves to some of the more essential laws, which may serve as a preparation to the study of the modern compilation.

The first source of the law appears in the compilation of laws of the Indies, which established numerous provisions referring to the various officials administering or assisting in the administration of justice; but as practical needs went on demonstrating the deficiency of this compilation, new partial provisions were published from time to time, some by the department of grace and justice, until 1851, when the colonial department (Ministerio de Ultramar) was created; the latter issued some more provisions; and not a few were decreed by the governors-general of our possessions, as well as by the regents of the audiencias. In this way a confusion of legal texts bearing on the matter was created, so that it is difficult to classify them systematically, as they are too numerous to be mentioned in full. For these reasons, we mention only the most important provisions, in their chronological order.

The royal instruction of June 20, 1776, given to the regents of the audiencias of the Indies, contained various rules on the administration and attributes of audiencias and the manner of filling vacancies; the *Real cédula* (royal letters patent) of February 27, 1796, approved the statutes of the association of court clerks (*colegio de escribanos*) of Habana, and another, of April 16, 1815, provided for the formation of the list of the *escribanos* (court clerks) to reside in Cuba; and the circular one of November 10, 1818, established the annual distribution of commissions among the *oidores* (judges who hear pleadings and decide suits in audiencias).

On June 19, 1831, a *Real cédula* established the audiencia of Puerto Rico and six mayoralties (*alcaldías mayores*), and approved the division of that island into judicial subdistricts; another *cédula* being published on January 29, 1833, ordering the fulfillment of the royal decree of the 18th of the same month re-establishing law 2, title 6, of partida 3,<sup>1</sup> which fixes the age of seventeen years as the minimum for practicing law.

<sup>1</sup>Partida 3. Part of a code of Spanish laws compiled by the direction of Alfonso X, called "Las Siete (seven) Partidas."

From among the measures promulgated in 1835 we shall only mention the "*carta acordada*"<sup>1</sup> of the supreme court, dated January 9, 1834, on administering the oath to regents, secretaries, and *fiscales* (public prosecutors); the Royal decree of January 27, communicating to the government of the Indies, for fulfillment, the *Real cédula* of November 27, 1832, which provided that admission to the bar (*colegios de abogados*) of the Kingdom should be open to all lawyers making application; the regulation of November 26 for offices of notaries public (*escribanías públicas*) of Habana; and finally, the orders published on December 20, 1835, for the audiencias in Spain were extended to the colonies, to be observed in so far as they did not conflict with colonial legislation.

On May 5, 1858, a royal decree approved the by-laws for the government of the bar in Cuba; the royal order of August 22, of the same year, extended to Cuba the royal decree of the 16th of the preceding June, creating an audiencia in the capital of the island, this audiencia being afterwards given the name of "pretorial" and considered superior in rank to the other territorial audiencias of our Antilles and possessions in the Philippines, and on September 26, 1839, the said audiencia was declared competent to appoint judges of inquiry (*juces pesquisidores*).

In order to regulate representation in court, the regency of the Kingdom, by a decree of February 26, 1842, created two offices of solicitor (*procurador*) in every seat of a judicial subdistrict in Puerto Rico, issuing rules for filling the same and ordering the preparation of the corresponding regulations and schedules of fees; and in the next year the *auto acordado*<sup>2</sup> of October 5 approved the by-laws for the *Colegio de Escribanos* of Santiago de Cuba, in conformity with what was done in 1835 for those of Habana.

The state of disorganization of the mayoralties in the Philippines caused the publication of the *real cédula* of October 3, 1844, relating to the reform and reorganization of the judiciary in the said islands; while in the next year, among other less important measures, there were published the royal decree of February 25, approving the by-laws for the Association of Public Solicitors of Habana, and the royal decree of July 24, creating several mayoralties in the island of Cuba, and fixing the salaries for each of the three categories, viz, entrance, promotion, and final, into which the same were divided for this purpose.

Subsequently there were published the royal order of February 2, 1846, explaining the rules governing the seniority in service of the *oidores*; the *auto acordado* of the audiencia of Habana, dated April 19, 1847, establishing rules for discharging the office of solicitor; the *real*

<sup>1</sup> *Carta acordada*: Letter from a superior to an inferior court, with secret orders or instructions.

<sup>2</sup> A decision of the supreme court to be observed as a precedent.



*cédula* of June 27, of the same year, ordering the observance of the royal decree of the 24th of the same month, which organized the *alcaldías mayores* in Puerto Rico; the royal order of October 1, of the same year, ordering the formation of graded lists, fixing the seniority in service of judicial officials, which royal order was declared by another royal order of December 6, 1849, as not retroactive; the royal order of April 3, 1848, which provided that applications of associate justices and judges to contract marriage should be submitted with a report of the Governor-General and of the regent of the *audiencia* and presented with the consultative vote of the *Real acuerdo*, and the royal order of February 6, 1849, providing that *audiencias* should make report of the officials who did not return to their duties at the expiration of their leaves of absence.

In 1851 many provisions of great importance were published, such as the *Real cédula* of January 20, ordering the enforcement of the royal decree of January 10, which established the precise conditions required to serve as advisors (*asesores*) to judges, and the forms and conditions necessary in filling vacancies in *alcaldías mayores*, according as to whether the places belonged to the entrance, promotion, or final category, and the royal decree of March 7, establishing rules governing applications for places in all the categories of the magistracy, the judiciary and the department of public prosecution in common law, and for suspensions, transfers, and retirement of the said officials, which decree established in its article 5 the various categories of the judiciary and of the department of public prosecution, and in article 9 the incompatibility of the same and ordered in article 12 the publication in the *Gaceta* of the decisions referring to the personnel, and in article 13 the formation of graded lists for all the categories.

Various provisions of interest were also published in 1854, of which the following are worthy of mention: The royal decree of January 27, reorganizing the *alcaldías mayores* in the Philippines; the royal decree of February 1, 1854, declaring the seniority in service, and precedence of the associate justices of the *audiencia* of Madrid and of the presidents of chambers of the other *audiencias*, who had been transferred as *oidores* to the pretorial one of Habana; the royal order of the 17th of the same month, ordering the application to Cuba of the regulations of October 14, 1852, as to the record of reports and on the manner of imposing correctional penalties on *audiencias* and inferior courts; the royal decree of March 15, creating in Cuba the offices of *abogados fiscales*<sup>1</sup> and abolishing the offices of agents of the department of public prosecution, and, finally, the royal order of July 31, on the substitution of *abogados fiscales* in cases of leaves of absence, vacancies, or sickness.

Notwithstanding this large number of provisions, great needs were noticeable in this important branch of legislation, and in order to fill

<sup>1</sup> *Abogado fiscal*. Official of the department of public prosecution next below in rank to *teniente fiscal*.

these needs and at the same time to uniform the precepts which had to be observed, a very important *Real cédula* was published on January 30, 1855, issued for the purpose of doing away with inveterate abuses and correcting illegal practices. It contained 12 chapters treating, respectively, of local judges, of ordinary subdistrict judges, of royal audiencias, of the supreme court of justice, of jurisdictions, and of special superior and inferior courts, of the powers of tribunals in matters of administration, of auxiliary offices and officials of the tribunals and judges, of the department of public prosecution, of challenges, of sentences, of appeals in nullity and cassation, and of liability and correctional penalties.

This *Real cédula*, which ceased to be in force first in Cuba and Puerto Rico and afterwards in the Philippines, was modified or supplemented by numerous provisions on the administration of justice in the colonies, of which the following may be mentioned: The royal order of the 1st of the following August, which extended to the colonial possessions the orders of August 29, 1843, November 14, 1853, and January 9, 1854, on the apparel and insignia of associate justices, judges, and officials of the department of public prosecution, and the royal order of August 19, 1855, establishing the judicial division of the island of Cuba.

In the period intervening between the last year above cited and the year 1875, when by the royal decree of April 12 a complete reorganization of colonial courts and tribunals was effected, the following measures, as of greater interest, deserve to be recorded: The royal order of January 17, 1857, increasing the salary of *promotores fiscales*;<sup>1</sup> that of March 30, 1858, creating the office of *secretario de acuerdos*<sup>2</sup> in the audiencias of Habana, Puerto Rico, and Manila, the duties of which had formerly been performed by the court notaries (*escribanos de cámara*); the orders issued in the same year by the regent of the first of the above-mentioned audiencias on the registry of rulings (*providencias*) and books of assignments and secret votes; the royal decree of October 1, increasing the personnel of the audiencia referred to above; the royal order of the 3d of the same month, ordering that associate justices discharge the duties of assistant auditor and, provisionally, the duties of auditor in case of vacancies; the royal order of the 3d of the following December, fixing the allowances of judicial reporters (*relatores*) in the Philippines; that of June 2, 1860, prescribing the number of public clerks' offices (*escribanías*) in Puerto Rico, and establishing rules for filling the same; the royal decree of the 9th of the following July, reorganizing the chambers of the audiencia of Puerto Rico and of the audiencia of chancery of Manila; that of the 30th of the same month, on the organization of mayoralties in the Philippines; that of July 4, 1861, on the powers of colonial audiencias; the royal order of the fol-

<sup>1</sup> *Promotor fiscal*. Official of the department of public prosecution, next below in rank to the *abogado fiscal*.

<sup>2</sup> *Secretario de acuerdos*. Secretaries of sessions *in banco* for the adoption of resolutions of general application.

lowing day, determining the personnel of the office of the *Secretario del Real Acuerdo* in the audiencia of Puerto Rico; that of October 1, fixing the salary of the employees in the office of the secretary of the audiencia of Habana; that of December 4, fixing the annual salary of regents of the colonial audiencias; and that of the 5th of the same month relating to the salaries to be paid to substitute *promotores fiscales*.

The royal order of March 20, 1862, regulated the granting in advance of leaves of absence to judicial officials and to those of the department of public prosecution in the colonies; another of the 4th of the following June, provided that court clerks should prove their efficiency before obtaining the office. On July 20 it was declared that the public department should communicate with the colonial department directly; on November 26, 1863, an allowance of daily salary was fixed for judges and other officials, when discharging their duties; the regulations of the peninsular audiencias, dated December 25, 1865, were extended to the colonial possessions; and many other measures were issued which are omitted here, in order not to prolong this review too far.

Subsequently to the important reform accomplished by the royal decree of April 12, 1875, there were published: the royal order of February 22, 1878, which abolished the chambers of war and navy of colonial audiencias; the royal decree of May 23, 1879, fixing the number and the categories of audiencias, as well as provisions for filling offices in the judiciary and in the department of public prosecution; that of November 24 of the same year, giving to the civil chambers of audiencias the cognizance of matters arising from the suppression of the courts of war and navy, and of questions of competency arising between ordinary and military courts; that of July 20, 1882, ordering the observance in Cuba and Puerto Rico of the law of civil cassation, which remained in force until the publication of the law on procedure of September 25, 1885; the royal decree of June 22, 1883, abolishing the general probate court (*juzgado general de bienes de difuntos*), which existed in the Philippines, and returning to the ordinary jurisdiction the cognizance of matters which had been heard by the suppressed court; an important royal decree of January 15, 1884, reorganizing the municipal courts in Cuba and Puerto Rico, and prescribing regulations for their operation; that of May 29, 1885, on appointment of judicial and of public prosecution officials, which fixed the conditions for entering upon either of these careers, and for filling vacancies; and another of the same date, organizing the personnel of the auxiliary officials of superior and inferior courts for a more perfect enforcement of the law of civil procedure in the Philippines.

The law of August 19, 1885, the principal object of which was to uniform the judicial and public prosecution careers in the Peninsula and in the colonies, before that time distinct and independent, determined the various categories, making them correspond with each other,