The formation of a database about Spanish Supreme Court judgements until the promulgation of the Civil Code (1838-1889)

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PRESENTATION

The legal system of the Civil Law countries is based in the supremacy of legislation. Judges played a secondary role as mere interpreters of the legislator's will.

However, the keys to understanding the legal transformation of Spain (and other Civil Law countries) during the 19th century will not be found only in the Codes. The judicial decisions of the Supreme Courts will also contribute significantly to the unification of Law and the formation of liberal legal concepts and categories.

In Spain, there are more than 50 years between the establishment of the appeal for nullity in 1838, as the immediate antecedent to the appeal in cassation in civil matters, until the promulgation of the Civil Code in 1889.

PALACIO DE LOS CONSEJOS
Location of the Spanish High Court until 1870
An engraving by José Gómez de Navia & Manuel Alegre (early 19th Century).

Throughout these decades, issues that could not be addressed from a technical or political perspective, had to be solved at a practical level. Hence the need to create a tool that allows us to analyze as a whole all the judgments delivered during the complicated process of transition between the Old Regime and the new liberal order.

This will not only facilitate access to those decisions, but also make information retrieval much more effective and will open up new research possibilities for both historians and jurists.

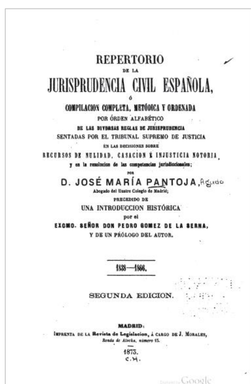
PALACIO DE JUSTICIA O DE LAS SALESAS REALES
Location of the Spanish High Court from 1870
An engraving from the *Guía de Madrid* by Ángel Fernández de los Ríos (1876)

SOURCES AND RESEARCH METHOD

DON JOSÉ MARÍA PANTOJA
Director que fué del *Diario de Sesiones* del Senado. Ex alumno de la Escuela Especial de Taquigrafía.

The documents that are going to be included in the Database are all the published judgments of the Spanish Supreme Court and the Council of State in the 19th century, covering civil, administrative and criminal jurisdiction.

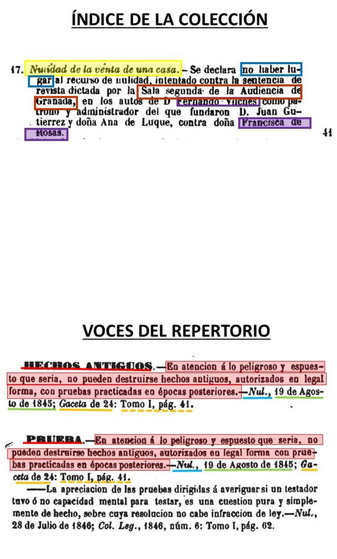
The project has been built on the same resources used by the jurists of the time, both official (*Gaceta de Madrid* and *Colección Legislativa*) and private (Law Reports of the *Revista General de Legislación y Jurisprudencia*).



REPERTORIO
DE LA
JURISPRUDENCIA CIVIL ESPAÑOLA,
Ó
COMPILACION COMPLETA, HISTÓRICA Y ORDENADA
POR ORDEN ALFABÉTICO
DE LAS DOTRINAS REGLAS DE JURISPRUDENCIA
SENTADAS POR EL TRIBUNAL SUPREMO DE JUSTICIA
EN LAS SESIONES SOBRE
RECURSOS DE NULIDAD, CASACION É INJUSTICIA NOTORIA,
y en la resolucion de las competencias jurisdiccionales;
POR
D. JOSÉ MARÍA PANTOJA, Regido
Abogado del Ilustre Colegio de Madrid,
PRECEDIDO DE
UNA INTRODUCCION HISTÓRICA
por el
EXCMO. SEÑOR DON PEDRO GOMEZ DE LA SERNA,
Y DE UN PRÓLOGO DEL AUTOR.
1838—1868.
SEGUNDA EDICION.
MADRID:
IMPRENTA DE LA Revista de Legislacion, á CARGO DE J. MORALES,
Senda de Jerusalen, número 15.
1873.
C. M.

The work developed by the jurist José María Pantoja y Agudo (1832-1914) during the second half of the 19th century has been fundamental for the research. Through different Law Reports he systematized the judicial jurisprudence in civil (1838-1882), administrative (1846-1868) and criminal (1870-1887) matters. In these Law Reports, in addition to including the TYPE OF APPEAL from which the resolution came and the LOCATION of the judgements in the *Gaceta* and in other collections, Pantoja associated the different RULINGS, gleaned from the decisions, with different TERMS, which he then collected in an ALPHABETICAL LIST. These terms have been divided, in the course of research, into DESCRIPTORS (terms with an associated ruling) and NON-DESCRIPTORS (terms without an associated ruling, but which refer to another term).

In addition to the data that we obtain from the Law Reports and the indexes of the collections of judgements, there is a lot of information that can be systematized in the decisions themselves that may be relevant as criteria for future searches, such as, for example, the Court of origin, the members of the Court, invoked laws, process parts... In this way, through the Database, all these contents can be dumped into a single file per resolution, which is explained in more detail in the diagram below.



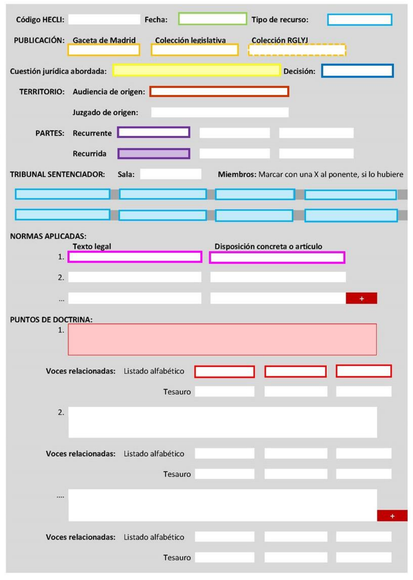
ÍNDICE DE LA COLECCIÓN

17. *Nulidad de la venta de una casa.* – Se declara no haber lugar al recurso de nulidad, intentado contra la sentencia de revista dictada por la Sala segunda de la Audiencia de Granada, en los autos de D. Fernando Vilches como patrono y administrador del que fundaron D. Juan Gutierrez y doña Ana de Luque, contra doña Francisca de Rojas. 41

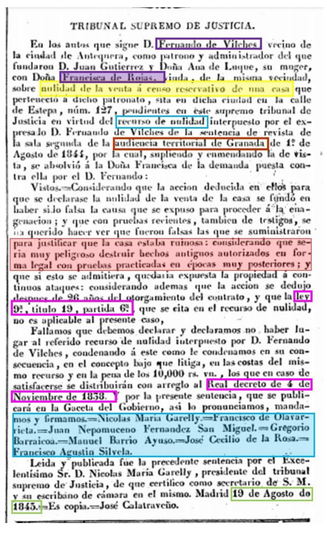
VOCES DEL REPERTORIO

HECHOS ANTIGUOS.—En atencion á lo peligroso y espuesto que seria, no pueden destruirse hechos antiguos, autorizados en legal forma, con pruebas practicadas en épocas posteriores.—*Nul.*, 19 de Agosto de 1845; *Gaceta* de 24: Tomo I, pág. 41.

PRUEBA.—En atencion á lo peligroso y espuesto que seria, no pueden destruirse hechos antiguos, autorizados en legal forma con pruebas practicadas en épocas posteriores.—*Nul.*, 19 de Agosto de 1845; *Gaceta* de 24: Tomo I, pág. 41.
——La apreciacion de las pruebas dirigidas á averiguar si un testador tuvo ó no capacidad mental para testar, es una cuestion pura y simplemente de hecho, sobre cuya resolucion no cabe infraccion de ley.—*Nul.*, 28 de Julio de 1846; *Col. Leg.*, 1846, núm. 6: Tomo I, pág. 62.



Código HECLI: Fecha: Tipo de recurso:
PUBLICACIÓN: Gaceta de Madrid Colección legislativa Colección RGLYJ
Cuestión jurídica abordada: Decisión:
TERRITORIO: Audiencia de origen:
Juzgado de origen:
PARTES: Recurrente
Recurrida
TRIBUNAL SENTENCIADOR: Sala: Miembros: Marcar con una X al ponente, si lo hubiere
NORMAS APLICADAS:
Texto legal Disposición concreta o artículo
1.
2.
...
PUNTOS DE DOCTRINA:
1.
Voces relacionadas: Listado alfabético
Tesauro
2.
Voces relacionadas: Listado alfabético
Tesauro
....
Voces relacionadas: Listado alfabético
Tesauro



TRIBUNAL SUPREMO DE JUSTICIA.

En los autos que sigue D. Fernando de Vilches, vecino de la ciudad de Antequera, como patrono y administrador del que fundaron D. Juan Gutierrez y Doña Ana de Luque, su muger, con Doña Francisca de Rojas, viuda, de la misma vecindad, sobre nulidad de la venta á censo reservativo de una casa que pertenecia á dicho patronato, sita en dicha ciudad en la calle de Estepa, núm. 127, pendientes en este supremo tribunal de Justicia en virtud del recurso de nulidad interpuesto por el expresado D. Fernando de Vilches de la sentencia de revista de la sala segunda de la audiencia territorial de Granada de 1º de Agosto de 1844, por la cual, supliendo y enmendando la de vista, se absolvió á la Doña Francisca de la demanda puesta contra ella por el D. Fernando:

Vistos.—Considerando que la accion deducida en ellos para que se declarase la nulidad de la venta de la casa se fundó en haber sido falsa la causa que se expuso para proceder á la enagenacion; y que con pruebas recientes, tambien de testigos, se ha querido hacer ver que fueron falsas las que se suministraron para justificar que la casa estaba ruinosa: considerando que seria muy peligroso destruir hechos antiguos autorizados en forma legal con pruebas practicadas en épocas muy posteriores; y que si esto se admitiera, quedaria esputesta la propiedad á continuos ataques: considerando ademas que la accion se dedujo despues de 26 años del otorgamiento del contrato, y que la ley 9ª, título 19, partida 6ª, que se cita en el recurso de nulidad, no es aplicable al presente caso,

Fallamos que debemos declarar y declaramos no haber lugar al referido recurso de nulidad interpuesto por D. Fernando de Vilches, condenando á este como le condenamos en su consecuencia, en el concepto bajo que litiga, en las costas del mismo recurso y en la pena de los 10,000 rs. vn., las que en caso de satisfacerse se distribuirán con arreglo al Real decreto de 4 de Noviembre de 1838. Y por la presente sentencia, que se publicará en la Gaceta del Gobierno, así lo pronunciamos, mandamos y firmamos.—Nicolas María Garelly.—Francisco de Quevedo.—Juan Nepomuceno Fernandez San Miguel.—Gregorio Barraicoa.—Manuel Barrio Ayuso.—José Cecilio de la Rosa.—Francisco Agustin Silvela.

Leida y publicada fue la precedente sentencia por el Excelentísimo Sr. D. Nicolas María Garelly, presidente del tribunal supremo de Justicia, de que certifico como secretario de S. M. y su escribano de cámara en el mismo. Madrid 19 de Agosto de 1845.—Es copia.—José Calatraveño.

PRELIMINARY FINDINGS: 1838-1866

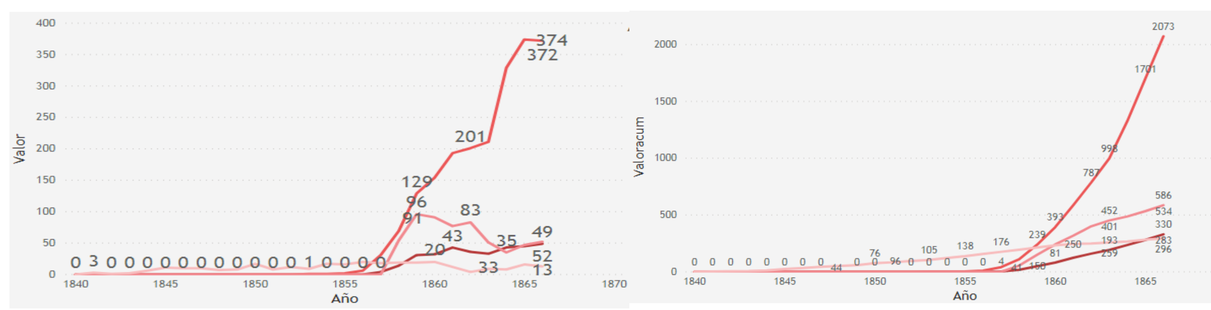
This research, which has been going on for more than four years, has made sufficient progress to be able to present some initial results that show the many research possibilities that the existence of a database of these characteristics would open up.

The sample includes all the decisions issued by the Spanish Supreme Court between 1838 and 1866, which are the ones included in José María Pantoja's first Repertory.

First of all, the judgments that were delivered and published over these years amount to a total of 3473 decisions. The most outstanding types of appeal during this period are:

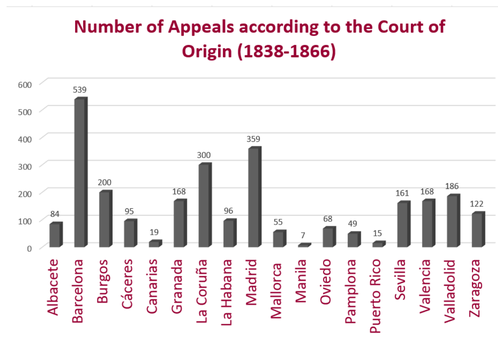
Type of Appeal		Implementation	Date of 1st published decision	Number of decisions
Nulidad	Appeal for nullity	Royal Decree of 4 November 1838	12/08/1839	253
Casación de Hacienda	Appeal in cassation for crimes against the Treasury	Royal Decree of 20 June 1852	12/11/1853	47
Cuestiones de Competencia	Questions of jurisdiction	Royal Decree of 30 September 1853	14/10/1853	781
Casación de Ultramar	Appeal in cassation in overseas civil matters	Royal Charter of 30 January 1855	6/10/1857	111
Apelación	Appeal against the refusal of an Appeal	Law of 5 October 1855 (LEC)	28/03/1857	330
Casación civil	Appeal in cassation in civil matters	Law of 5 October 1855 (LEC)	13/10/1856	1903
Injusticia Notoria	Appel of notorious injustice in commercial matters	Royal Decree of 12 January 1859	27/01/1859	36

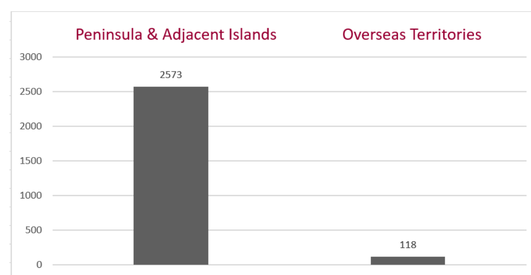
The following graphs reveal the progressive growth of the appeal in cassation in relation to other types of appeal and issues lodged before the Supreme Court. One of them shows the actual number of appeals per year and the other one, the accumulated value between 1838 and 1866:



Appeal against the refusal of an Appeal · Appeal in cassation in civil matters · Questions of jurisdiction · Other types of Appeal

Secondly, if we leave aside questions of jurisdiction, a brief analysis of the graph on the origin of the various appeals lodged before the Supreme Court during this period (2691 decisions) shows the wealth and importance of some territories over others. The contrast between the Overseas Territories is particularly striking.





Thirdly, each of these decisions is linked to one or more RULINGS through the different TERMS included in the ALPHABETICAL LIST. In the period 1838-1866, there is a total of 10778 rulings ("puntos de doctrina"). The average number of rulings associated with a resolution is 3.5, although the number varies between 0 and 17.

ABANDONO DE SERVICIO.—El abandono de servicio cometido por un carabinero es un delito puramente militar y que puede juzgarse con separacion de los demás escesos que hubiere cometido el mismo.—*Comp.*, 27 de Marzo de 1866; *Gaceta* de 7 de Abril: Tomo XIII, página 397.

DESCRIPTOR

The terms related to these rulings amount to 2054: of these, 1362 are DESCRIPTORS and 692 are NON-DESCRIPTORS.

EXPROPIACION.—V. PERITO.

NON DESCRIPTOR

The existence of these terms allows for a more efficient search of the legal information contained in these judgments and will help to build a THESAURUS in which reiterative or superfluous terms will be redirected and the different matters dealt with will be given structure, but without suppressing the original alphabetical list.

CONCLUSION AND RESEARCH OBJECTIVES

The INSTRUMENTAL OBJECTIVES of this proposal are basically two:

- To create a database that facilitates the consultation of the decisions issued by the Supreme Court and the Council of State throughout the 19th century, which will allow a better knowledge of the period from multiple historical and legal perspectives.
- To create a hierarchical thesaurus based on the alphabetical list of terms that were generated during the period, which will make the search for decisions more efficient.

On the other hand, the FUNDAMENTAL OBJECTIVE will be to determine the way in which the judicial jurisprudence contributed decisively both to the (partial) unification of the Law in Spain: Regional Civil Laws (Derechos forales), Overseas Laws...; and to the construction of the liberal legal concepts and categories. In this sense, the judgements contribute to understand, through the casuistry, the dismantling of the Old Regime in Spain, the adaptation of some historical institutions to the liberal context, and the delimitation of the new institutions beyond the mere interpretation of the laws.

In this way, we will have a fundamental tool to understand a process of legal, but also political, economic and social transformation of Spain in the 19th century through the mass analysis of the set of decisions issued during more than half a century.