of premiums will cause its forfeiture, war does not excuse non-payment, and does not avoid forfeiture."

HELD: The lower court's decision being contrary to the rulings of the Supreme Court in the aforecited case and in others, must be held erroneous. However, the defendant-appellant is not entitletd to a reversal. The lower court declared that the premium had been tendered on or before April 15, 1942, the insurer refusing to accept it, "because the office was closing for the day on account of the threat of bombing by Japanese planes." This is a finding of fact which must not be disturbed. The refusal to accept payment was not justified. The insurer, therefore, may not assert non-payment of the premium as a defense to an action on the policy. (*Alicia S. Gonzales vs. Asia Life Insurance Company, G.R. No. L-* 5188, *Promulgated Oct.* 29, 1952) .

THE MUNICIPAL COUNCIL MAY DELEGATE ITS POWER TO INVESTIGATE CHARGES VS. A MUNICIPAL POLICEMAN UNDER R.A. 557; THE PROCEDURE ESTABLISHED BY R.A. 557 MAY BE GIVEN RETROACTIVE EFFECT.

FACTS: On Aug. 12, 1950, administrative charges were filed by Jose N. Layug, Mun. Mayor of Guagua, Pampanga (hereinafter to be referred to as resp. mayor), against the Chief of Police, Victorio D. Santos (hereinafter to be referred to as the petitioner), before the municipal council, as a result of which the resp. mayor suspended the Petitioner from his office on Aug. 16, 1950. The mun. council of Guagua referred the charges to the committee on police and public safety, composed of three of its own members, (hereinafter to be referred to as respondent committee) for investigation, reception of evidence, and recommendation and the investigation of the charge was set for Sept. 16. The date for investigation was postponed to Sept. 23, later to Sept. 30 and then to Oct. 10, 1950, at the instance of the Petitioner. Petitioner filed a motion to dismiss the charges against him, on the date last mentioned on the ground that the resp. committee has no jurisdiction to investigate him because: 1) the acts charged against him were committed prior to the passage of Act 557, 2) that the mun. council could not delegate its power to investigate to the resp. committee. The motion to dismiss having denied, the Petitioner filed a petition for prohibition in the CFI of Pampanga against the resp. committee

and Jose N. Layug, mun. mayor of Guagua, on Oct. 26, 1950.

On Oct. 27, 1950, petitioner requested the resp. mayor to reinstate him and the Mayor referred it to the resp. committee which denied it. On Nov. 9, 1950, Petitioner filed a petition for Mandamus in the CFI of Pampanga to compel the resp. mayor to reinstate him as Chief of Police, with the corresponding salary during the period of suspension, plus ₱500 as damages. On Nov. 22, 1950, the CFI of Pampanga, upon motion of the Petitioner, issued a writ of Preliminary Injunction in the Prohibition case restraining the resp. committee from proceedings with the investigation, which injunction was dissolved and petition for prohibition dismissed by the CFI of Pampanga on Jan. 23, 1951. On the same date, the CFI of Pampanga rendered a decision, in the mandamus case, ordering the resp. mayor to reinstate the petitioner within 24 hours, without prejudice to the continuation of the investigation against him. However, upon motion for reconsideration filed by resp. mayor, the CFI of Pampanga thru another judge issued an order on Jan. 23, 1951 vacating the decision of Jan. 23, 1951, insofar as it orders the reinstatement of the petitioner. From the decision in the prohibition case and from the last order in the mandamus case, petitioner has appealed:

I. With reference to the petition for prohibition, petitioner contends that a) he cannot be investigated under Rep. Act 557 because the acts imputed to him were committed before the approval of said act, and b) that the resp. committee has no jurisdiction to investigate him, because it is the mun. council that is empowered to conduct the necessary investigation. Petitioner maintains that he should be investigated by the Prov. Inspector of the Phil. Constabulary who shall submit a report for decision to the Commissioner of Civil Service according to Executive Order No. 175, series of 1938 in force at the time the alleged acts were committed.

II. In the petition for Mandamus, it is contended for the petitioner that from Aug. 16 (commencement of the petitioner's suspension) to Nov. 22, 1950 (when the writ of preliminary injunction was issued), 98 days had elapsed and that therefore, in accordance with Sec. 3 of Rep. Act 557, he should be reinstated because his suspension is more than 60 days.

Rep. Act 557, approved June 17, 1950 provides—

Members of the municipal police cannot be removed or discharged except for misconduct or incompetency, dishonesty, disloyalty to the Phil. Gov't., serious irregularities in the performance

of their duties, and violation of law or duty, and in such cases, charges shall be preferred by the mun. mayor and investigated by the mun. council. (Sec. 1) When charges are filed against a member of the mun. police, the mun. mayor may suspend the accused, but said suspension shall not be longer than 60 days; and if during the period of 60 days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension (Sec. 3).

RULING: I. (a) Petitioner's contention is untenable since Rep. Act 557 in providing a new procedure by which charges against a member of the mun. police are to be investigated, may validly be given retroactive effect. It is not contended that by the new procedure, the petitioner is deprived of any substantial right or that his opportunity of defending himself is in any manner impaired.

(b) It is true that Sec. I of Rep. Act 557 expressly provides that charges filed against a member of the mun. police shall be investigated by the mun. council but this does not amount to a prohibition against the delegation by the mun. council of said function to a committee composed of several of its members. In practice the mun. council creates various committee for handling or studying matters that call for public hearing or reception of evidence which may not otherwise be conveniently handled by the mun. council as a body.

II. The 3 postponements asked by the petitioner, namely from Sept. 16 to Sept. 23, from Sept. 23 to Sept. 30, and from Sept. 30 to Oct. 10, 24 days were embraced. Deducting these from 98 days, 74 days are left. The delay from Oct. 10 to Nov. 22 is clearly chargeable against the petitioner. As already noted, Sec. 3 of Rep. Act 557, provides that reinstatement shall *ipso facto* follow after a period of 60 days when the case shall not have been finally decided, unless the delay is due to the fault, negligence, or petition of the accused, in which case the period of delay shall not be counted in computing the period of suspension.

Wherefore, the appealed decisions are hereby affirmed, and it is so ordered with costs against the petitioner appellant. (*Victorio D. Santos vs. Macario Mendoza Rosa, et al., G.R. No. L*-4700: *Victorio D. Santos vs. Jose N. Layug, et al., G.R. No L*-4701. *Promulgated Nov.* 13, 1952.)

HOW EXCLUSIVE OWNERSHIP OF LAND ALLEGED TO BE PART OF THE PUBLIC DOMAIN MAY BE ESTABLISHED.

CIRCUMSTANCES THAT MAY REBUT ALLEGATIONS OF FRAUD AND CAJOLERY.

EVIDENTIARY VALUE OF LETTERS WRITTEN LONG BEFORE A SUIT IS FILED OR EVEN CONTEMPLATED.

UNDISPUTED FACTS.—Chester A. Wenzel and Balbina Baguio were married in 1928. Chester died in 1930 while Balbina in 1942. The plaintiffs-appellants herein are their children. In 1925, Chester declared for taxation under Tax Declaration No. 2131 a parcel of mineral land consisting of 2 hectares whereon he located one mining claim known as the Boston Placer Claim. After his death, Balbina sold said claim to the defendant corporation on September 24, 1934. On July 13, 1935, Balbina, acting for herself and on behalf of her children, who were then minors, executed the deed of sale Exhibit "A" conveying to the defendant corporation a parcel of land of 33 hectares.

ISSUES.—

1. Is the land in question, the one referred to in the deed of sale Exhibit "A" which contains 33 hectares, the exclusive property of Chester Wenzel as claimed by plaintiffs, or is it a part of the public domain which Chester merely worked for mining purposes, as claimed by defendant?

2. In the supposition that the said land was acquired by Chester after his marriage to Balbina, has the deed of sale Exhibit "A" been validly executed by Balbina, as claimed by the defendant, or was it executed by her through cajolery and fraud as claimed by the plaintiffs?

RULING.—

1. The evidence of the plaintiffs to support their claim that the land in question is the exclusive property of Chester Wenzel is in utter confusion, a circumstance which casts doubt on the claim that the property in question is the one acquired by Chester from one Ambrosio Paqueros in 1916 and subsequently declared for