As a general rule, the withdrawal of an appeal before the filing of the appellee's brief is allowed and granted. The presumption is that attorney Carlos Perfecto had the authority to appear for the appellant. The latter was given an opportunity to disown what his attorney had done but has failed to do so. His silence leans more towards confirmation than towards disavowal. Consequently, the motion for dismissal of the appeal is granted.

Appeal dismissed. (*People vs. Sergio Mendoza, G. R. No. L*-5563, Promulgated July 31, 1953.)

POLITICAL LAW

EXECUTIVE ORDER NO. 401-A IS NULL AND VOID IN SO FAR AS IT INTERFERES WITH THE JURISDICTION OF THE C. F. I. IN CASES ARISING UNDER THE INTERNAL REVENUE LAW, CUSTOMS LAW AND ASSESSMENT LAW.

FACTS: The University of Sto. Tomas was assessed the net sum of P574,811.41 as income tax for its income as an educational institution for the years 1946 to 1950. When the University of Sto. Tomas filed its memorandum on the correct interpretation of Sec. 27(c) of the National Internal Revenue Code in connection with its request for reconsideration after payment of the first installment as per agreement, the Secretary of Finance advised that it file a petition for review with the Board of Tax Appeals in accordance with the rules promulgated by said Board under Executive Order No. 401-A. When the University of Sto. Tomas filed its petition, which was docketed as B. T. A. No. 35, among others, it questioned the jurisdiction of the said Board to take cognizance of the petition for review arguing that Executive Order No. 401-A under which it assumes to act is of doubtful validity in that it deprives the courts of first instance of their jurisdiction to act on cases involving the recovery of taxes illegally collected under Sec. 306 of the National Internal Revenue Code.

HELD: From the provisions of Sections 8(1) and 20 of said

Executive Order No. 401-A, it is evident that said Order in effect deprives the courts of first instance of their jurisdiction in actions for recovery of taxes granted to them by Section 306 of the National Internal Revenue Code. Under Sec. 306, an aggrieved party could file an action in court for the recovery of tax paid within the period therein provided, and yet in view of the provisions of Executive Order No. 401-A, it cannot do so unless it first brings the matter before the Board of Tax Appeals whose decision is appealable to the Supreme Court, and if no appeal is taken, the decision becomes final and conclusive. Executive Order No. 401-A has the effect of depriving the courts of first instance of their jurisdiction to act on internal revenue cases, as well as those arising under customs law and assessment law.

Republic Act No. 422 was enacted to effect a reorganization of the different bureaus, offices, agencies and instrumentalities of the executive branch so as to promote simplicity, economy and efficiency and to improve the service in the transaction of the public business, hence is limited in scope. But as said Executive Order No. 401-A does not merely create the Board of Tax Appeals which, as an instrumentality of the Department of Finance, may come within the purview of Republic Act No. 422, but goes as far as depriving the courts of first instance of their jurisdiction to act on internal revenue cases, a matter which is foreign to it and which comes within the exclusive province of Congress, said Executive Order is null and void in so far as it interferes with the jurisdiction of the courts of first instance in cases arising not only under the internal revenue law but also under customs law and assessment law, but is valid with regard to the rest of its provisions in so far as they affect the organization and administrative functions of the Board of Tax Appeals.

Petition granted. (*University of Santo Tomas, Petitioner, vs. The Board of Tax Appeals, Respondent, G. R. No. L*-6512, Promulgated June 19, 1953.)

THE POWER OF SUSPENSION EXPRESSLY GRANTED BY SEC. 2188 OF THE REVISED ADMINISTRATIVE CODE TO THE PROVINCIAL GOVERNOR IS NOT EXCLUSIVE.

FACTS: Mayor Jose D. Villena of Makati, Rizal, was charged

with falsification of a public document. After due trial, he was found guilty and sentenced to suffer eight years, eight months and one day to nine years and eight months imprisonment. Some time thereafter, one Catalina Esteban filed with the Office of the President administrative charges against said Mayor based on the falsification. On December 17, 1952, the Office of the President advised the Governor of Rizal of the complaint and on the same date Mayor Villena was suspended by the Governor. On January 16, 1953, after the expiration of the thirty days, the Governor reinstated him in accordance with section 2189 of the Revised Administrative Code. As the provincial board had not conducted any investigation of the charges, Catalina Esteban again called the attention of the Office of the President to the fact. On February 9, 1953, by authority of the President, Mayor Villena was again suspended from office and the Provincial Fiscal of Rizal was designated Special Investigator to conduct the investigation pursuant to Section 64(c) of the Revised Administrative Code in relation to Section 79(c) of the same Code.

Mayor Villena filed petition with the Supreme Court praying that the Provincial Fiscal of Rizal be ordered to desist from proceeding with the investigation and that his (Villena's) suspension be declared null and void, contending among others, that Sections 2188 and 2190 of the Revised Administrative Code vest the power to investigate a municipal official in the provincial board.

HELD: This power is not exclusive. "The fact, however, that the power of suspension is expressly granted by section 2188 of the Revised Administrative Code to the provincial governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar power." (*Villena vs. the Secretary of the Interior*, 67 *Phil.*, 451.) Section 2078 of the Revised Administrative Code clearly provides that the Governor-General (the President of the Philippines) has the power to suspend, and, if found guilty of disloyalty, dishonesty, oppression, or misconduct in office, after investigation, to remove any provincial officer including an elective governor (Sec. 2082). If he can do this with regard to provincial officers, it stands to reason that he has also the same power with regard to municipal officers.

Petition dismissed. (*Jose D. Villena, Petitioner, vs. Hon. Marciano Roque, etc., et al., Respondents, G. R. No. L-6512*, Promulgated June 19, 1953.)

THE LEGISLATIVE DEPARTMENT HAVING PROVIDED FOR AN OFFICE TENURE OF SIX YEARS FOR THE MAYOR OF ILOILO CITY, THE PRESIDENT CANNOT REMOVE HIM WITHOUT CAUSE AS PROVIDED BY LAW.

FACTS: On February 9, 1953, petitioner was appointed Mayor of Iloilo City and his appointment was confirmed by the Commission on Appointments on March 26, 1953. On June 28, 1953, petitioner was advised by the Secretary to the President by telegram followed by a letter both dated June 27, 1953, that he was relieved from office as Mayor and that in his place the respondent was designated by the President of the Philippines acting Mayor as of that date and that said respondent had taken his oath of office.

In the petition for *quo warranto*, testing the legality of the removal of the petitioner, he contends that under and pursuant to the charter of the City of Iloilo (Com. Act No. 158, as amended by Rep. Act No. 276) his tenure of office is six years and that for that reason he may be removed only for cause as provided by law.

The respondent sets up the defense that the office of Mayor of Iloilo City is policy-determining and primarily confidential so that petitioner is subject to removal at the pleasure of the President within his constitutional power to remove incumbents of such positions or offices.

HELD: Granting that the office of Mayor of Iloilo City is policy determining, still the appointment of this class of officers is an exception to the general rule that it "shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination."[1] The charter of Iloilo City, particularly Sec. 8 of Com. Act No. 158, as amended by Rep. Act No. 276 provides, among others, that the Mayor shall be the chief executitve of the city and shall hold office for six years unless removed. The fixing by Congress of a period of time during which the Mayor is to hold office is a valid and constitutional exercise of a legislative power. The legislative intent to provide for a fixed period of tenure of office for the mayor of Iloilo City and not to make him removable at the pleasure of the appointing authority may be inferred from the fact that while the appointment of the Vice-Mayor of the same city as provided for in Rep. Act No. 365, and those of Mayors and Vice-Mayors of other cities[2] are at pleasure, that of the Mayor of

[1] Sec. 1, Art. XII, Constitution of the Philippines; Sec. 668 Rev. Adm. Code.

[2] Sec. 2545, Rev. Adm. Code; Com. Acts Nos. 39, 51, 338, 520, 547 and 592; Rep. Acts Nos. 162; 170 as amended; 179 as amended; 183, 288 as amended; 305; 306; 327; 328; 521; 523; 525 as amended; 537, and 603.

Iloilo City is for a fixed period as provided for in the original charter (Com. Act No. 57), and this has continued unchanged despite subsequent amendatory acts (Com. Act No. 158; Rep. Acts Nos. 276 and 365).

The legislative department having provided for an office tenure of six years for the Mayor of Iloilo City, the President cannot remove the petitioner without cause as provided by law.[3] The petitioner not having been removed in accordance with the provisions of the Revised Administrative Code referred to, his relief or removal from office is unauthorized and illegal. Hence the designation of the respondent as acting Mayor is also without authority of law.

Petition granted. (*Dominador Jover, Petitioner, vs. Juan Borra, Respondent, G. R. No. L-6782*, Promulgated July 25, 1953.)

LAND REGISTRATION

PETITION UNDER SEC. 112 OF ACT NO. 496 WILL BE GRANTED WHERE THERE IS NO OPPOSITION BUT CONFORMITY ON THE PART OF THE CO-HEIRS.

FACTS: In 1932 Ortigas, Madrigal & Co. sold to Simeon de la Cruz, married to Nicolasa Santos, a parcel of land described in Transfer Certificate of Title No. 17035 on a ten-year installment basis. Simeon de la Cruz died in 1939 and Nicolasa Santos in 1942, leaving Apolinaria, Eufemia, Cornelia and Regino Cruz as legal heirs. After full payment, the Transfer Certificate of Title No. 17035 was issued in the name of the deceased buyer, Simeon de la Cruz and recorded in the Registry of Deeds on January 23, 1950. Two years after the registration, Regino Cruz filed a petition with the Court of First Instance of Rizal, under the same case in which the original decree was issued, praying that the Court order the Register of Deeds of Rizal to correct, under Sec. 112 of Act No. 496, the Transfer Certificate of Title No. 17035, substituting the name of Regino de la Cruz as owner of said lot sold by Ortigas,

[3] Sec. 4, Art. XII, Consttitution of the Philippines; Secs. 64-b, 694 and 2078, Rev. Adm. Code.

Madrigal & Co., in lieu of Simeon de la Cruz, for the reason that he acquired said lot by purchase prior to the death of his father and that he continued paying the installments until its full payment. Said petition bore at the bottom thereof the conformity of Apolonia, Eufemia and Cornelia Cruz to the petition.

The Court denied the petition as well as the motion for reconsideration, saying that the substitution cannot be made under the law invoked, but in an ordinary action.

Hence, this appeal.

HELD: The petitioner made a mistake in asking for the substitution of his name to that of Simeon de la Cruz. He should have prayed for the cancellation of the transfer certificate of title and the issuance of another in its place.

The danger mentioned by the lower court that other interested parties may be deprived of their rights, hence the necessity of an ordinary action, is remote, for the three co-heirs of the petitioner have expressed their conformity to the petition. The institution of an intestate proceeding is unnecessary if the co-heirs can amicably make the partition and the deceased has no known debts; they are not obliged to institute an intestate proceeding (Sec. 1, Rule 74). Neither is it necessary to institute an ordinary civil action (Cavan *vs.* Wislizenus, 48 Phil. 671).

Sec. 112 of Act No. 496 authorizes the Court, on petition and with notice to interested parties, to order the cancellation of a transfer certificate of title and the issuance of another. This was the prayer of the petitioner and there having been no opposition but conformity by the co-heirs, instead, the petition should have been granted.

The order appealed from is therefore annulled and the lower court is ordered to issue another in conformity with the prayer of the petitioner. (*Regino Cruz, Petitioner, vs. Hon. Bienvenido Tan, etc., Respondents, G. R. No. L-5704*, Promulgated June 17, 1953.)

SUMMARY PROCEDURE CONTEMPLATED IN SECTION 112 OF ACT NO. 496 NOT AVAILABLE WHERE PETITION IS NOT FREE FROM CONTROVERSY.

FACTS: Vicente Miraflor died intestate in 1927, survived by his