LEGAL ETHICS

Appearance by attorney.

It appearing from the record that during one of the hearings of the case before the Municipal Court, the counsel for appellee made a verbal manifestation to the effect that he was one of the assistant attorneys of the law firm of "Peralta & Agrava," to whom the present case had been assigned, he has full authority to appear and represent said law firm, which is the attorney of record of the appellee, and in the absence of any showing that this manifestation is not true, the same stands. (SINGSON ET AL. *vs.* ARAGON ET AL., G. R. No. L-5164, Jan. 27, 1953.)

Disbarment; Making it appear he is a mere agent, when nature of attorney's services during suspension is that of a lawyer, is ground for disbarment.

FACTS: Under Administrative Case No. 35, respondent, due to malpractice, was suspended from the exercise of his profession for five years, 1949 to 1954.

In 1950 respondent filed a brief in a case before the Court of Appeals, signing same not as attorney but "for and in behalf of Tan Tek Sy", and in a motion for execution, he signed not as counsel but as agent of Tan. In another case, respondent filed several pleadings and received payments in his capacity as attorney. In still another case, respondent appeared as counsel without fees.

Prosecuted for violation of the order of suspension, respondent alleged that he had written the brief because there was no more time for the filing of same, and had signed it not as attorney, i.e., without designating that he was practicing as attorney-at-law. As regards the signing of the several pleadings, he averred that he had done so in order to collect fees earned prior to the suspension. And as regards the case where he appeared as counsel, he contended that he did not collect attorney's fees.

HELD: Knowing full well that he was and is under suspension, respondent cannot now justify his acts above-referred to, even in the capacity of agent. He should have advised his client that, due to his suspension, he could not appear as counsel before any court. As an officer of the court, he should have complied with the order of the Supreme Court over and above any consideration, not even attorney's fees, for even without making the pleadings, he could have collected his fees by direct action under Sec. 33, Rule 127, Rules of Court.

Exercising an attorney's profession is doing all the acts pertinent to the position. Preparing and filing motions, or asking for the execution of a judgment, are acts that constitute the practice of law; filing a brief before the Court of Appeals is exercising the profession because a mere agent cannot do so. The fact that he did not state in his motion asking for execution of judgment that he was an attorney but stated only that he was acting as agent and employee of the defendant does not change the nature of his services which were certainly those of a lawyer. It is for these reasons that he is barred from further exercising his profession in the Philippines. (IN RE DAVID, ADM. CASE NO. 98, July 13, 1953.)

POLITICAL LAW

CONSTITUTIONAL LAW

Disbursement of public funds belongs solely to the state.

FACTS: This is a proceeding to prohibit the Hon. D. Encarnacion from taking jurisdiction of, and hearing the case entitled, "Antonio Ojeda *vs.* Treasurer of the Philippines" wherein plaintiff Ojeda sought to compel the Treasurer of the Philippines to pay him by virtue of R. A. No. 724 the sum of ₱3,056.00, which he claimed was due him according to the graduated scale of said law for certain PNB notes deposited by him with defendant. After the above action had commenced, R. A. No. 831 was approved, amending or superseding R. A. No. 724. Sec. 5 of Act No. 831 provides that the Treasurer of the Philippines "is prohibited from redeeming any of the bank notes until he has made a master record of all the registrants all over the Philippines x x x" Under this law, the issuance of rules and regulations necessary to give force and effect to its provisions and the adoption of strict precautionary measures to prevent circumvention of said provisions are conditions precedent to the right of any holder of PNB notes to payment. The Treasurer alleged he was still in the process of assembling, compiling and tabulating the registered notes and claims of thousands of claimants. The Treasurer filed a motion to dismiss; overruled, he filed an answer and made a separate motion for preliminary hearing on the special defense of lack of jurisdiction, which also was denied. Hence this appeal.

HELD: Ojeda did not acquire any enforceable right or cause of action under Act No. 831. His demand, if allowed, would involve the disbursement of funds of the public treasury and the performance of an obligation that belongs to the state in its political and sovereign capacity. (TREASURER OF THE PHILIPPINES *vs.* ENCARNACION and OJEDA, G. R. No. L-6056, Aug. 11, 1953.)

Due Process; Requirements thereof satisfied upon notice and hearing.

FACTS: This is an appeal from an order requiring defendant to pay a certain sum for support within forty-eight hours or suffer imprisonment until payment thereof. Defendant claimed he had been given neither a notice of the trial nor the opportunity to be heard in defense.

HELD: The claim is without merit. Although notice had been by publication, defendant had sufficient notice since he filed an answer. As to a hearing, since defendant had filed a motion for reconsideration of the above order, that therefore showed that defendant had in fact been heard in defense. (EMBATE *vs.* PENOLIO, G. R. No. L-4942, Sept. 23, 1953.)

Defendant's right to a speedy trial; Not deprived thereof when delay due to himself.

An accused, especially when a detention prisoner, has the right to have his case tried and decided as speedily as possible, either for or against him so that if acquitted, he regains his liberty or is cleared of the charge, and if convicted, he may appeal the case or serve sentence.

Notwithsanding the accused's confinement for over eight years since his arrest, his right to speedy trial has not been violated where the delay was partly due to his escape from jail, being at large for several months, and his agreement with the prosecution as well as his own requests for postponements during the trial. (MANABAT *vs.* PROV. WARDEN OF NUEVA ECIJA, G. R. No. L-6483, Nov. 27, 1953.)

Moratorium Law—Validity.

Republic Act No. 342 and Executive Orders Nos. 25 and 32 are oppressive, unreasonable, unconstitutional and, therefore, null and void. (RUTTER *vs.* ESTEBAN, G. R. No. L-3708, May 18, 1953.)

Effect of sale of land to aliens during the Japanese occupation.

It is now well settled that the sale of land to aliens during the Japanese occupation is valid, since the Commonwealth Constitution was not then in force; consequently, the doctrine in the *Krivenko* case cannot be invoked. (RICAMURA ET AL. *vs.* NGO KI, G. R. No. L-5836, April 29, 1953.)

Pari Delicto; *Law will aid neither party to an illegal agreement.*

FACTS: Petitioner sold to Gaw Chee Hun a parcel of land with improvements. In the same contract, the vendor remained in possession as lessee. Petitioner now seeks annulment of the sale on the ground that it was violative of the Constitution.

HELD: Contract was null and void because it violated the Constitution. However, petitioner was without a cause of action. Since both parties were in *pari delicto* the law leaves them where it finds them. (RELLOSA *vs.* GAW CHEE HUN, G. R. No. L-1411, Sept. 29, 1953.)

Civil Service; Removal of the occupant of a position formerly held by illegally suspended employee not unconstitutional.

The Auditor-General may be compelled by *mandumus* to restore to his former employment an employee of the N.D.C., a government-controlled corporation, who has been dismissed without cause and to pay his back salaries from the time of his suspension to his reinstatement. The fact that another employee is presently occupying the position of the suspended employee, which position the latter had vacated by reason of the suspension, is not a legal excuse why the suspended and subsequently exonerated employee should not be restored to his former post. The removal of the temporary occupant of the post will not be a violation of the Constitution on removal of civil service employees without cause, because, in legal contemplation, the office of the illegally suspended employee was never vacant. And even assuming that the incumbent's tenure were permanent and protected by the Constitution, still his removal to give way to the illegally suspended employee might be considered a removal for cause. (BATUNGBAKAL *vs.* NATIONAL DEVELOPMENT CO. and AGREGADO, G. R. No. L-5127, May 27, 1953.)

Court can decrease penalty imposed for violating R. A. No. 509.

FACTS: Defendant had retailed a can of milk ten centavos more than the selling price. He was sentenced to five years imprisonment and to pay a fine of ₱5,000.00, plus costs. He was also barred from further engaging in wholesale and retail business. Defendant appealed, contending that the punishment was wholly disproportionate to the offense and therefore unconstitutional, and that R.A. No. 509 should be invalidated insofar as it prescribed excessive penalties.

HELD: After considering the plight of a modest store-owner, who, with a family to support, will serve in Muntinlupa a stretch of five years for having attempted to earn a few extra centavos, it is fortunate that there is an area of compromise which skirts the constitutional issue, yet executes substantial justice; the penalty may be decreased in the exercise of that discretion vested in courts by the same statutory enactment. The sentence is therefore reduced to six months' imprisonment and a fine of ₱2,000.00. (PEOPLE *vs.* DE LA CRUZ, G. R. No. L-5790, April 17, 1953.)

TAXATION

When a taxing ordinance may be validly enforced; Com. Act No. 472 construed.

An ordinance which increases by more than fifty per cent the municipal license taxes in previous ones already in existence and which, pursuant to law, has been submitted to and modified by the Department of Finance may be validly enforced, without need of the adoption by the municipal council of another accepting or fixing the rates as modified. (SANTOS *vs.* AQUINO ET AL., G. R. No. L-5101. Nov. 28, 1953.)

Validity of ordinance levying property tax on motor vehicles operating within Manila.

FACTS: Ord. No. 3379, which was passed by the Municipal Board of Manila pursuant to authority conferred by Sec. 18, R. A. No. 409, endowing the Board with authority "to tax motor and other vehicles operating within the City of Manila," provides for an *ad valorem* tax of 1% per annum on all motor vehicles. The proceeds thereof are to be expended exclusively for the repair, maintainance and improvement of the City's streets and bridges.

HELD: Though termed *ad valorem*, the tax is not necessarily a property tax if, in its nature, it is an excise on a license tax, and if it is really imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation. The character of a tax is determined by its in-

cidents and the natural, legal effect of the language employed in the act or ordinance, not by the name by which it is described or by the mode adopted in fixing its amount.

The ordinance in question is a violation of the Motor Vehicles Law; cloaked as an *ad valorem* tax, it is really a license tax. It is moreover an infringement of the rule of uniformity, since it applies to all motor vehicles operating in Manila, without distinction as to whether they are for public or private use, whether registered in the City or the provinces, or whether they come to Manila only occasionally. The ordinance is, therefore, void and unconstitutional. (ASSOCIATION OF CUSTOMS BROKERS, INC. ET AL. *vs.* MUNICIPAL BOARD, G. R. No. L-4376, May 22, 1953.)

Requisites for recovery of erroneously or illegally assessed taxes; Sec. 306, *Com. Act No.* 466, *as amended, construed.*

FACTS: Plaintiff had overpayed the defendant Collector of Internal Revenue the sum of ₱7,356.70, representing a percentage tax. Plaintiff's action to recover said amount in court was brought on July 12, 1951, over two years after payment. The reason for the delay, according to plaintiff, was that the claim for refund filed with defendant on May 25, 1949, had not been acted upon until June 11, 1951, when it was formally denied.

The controversy here centers on the construction of Sec. 306 of the National Internal Revenue Code, as amended, which reads:

> SEC. 306. *Recovery of Tax erroneously or illegally collected.* No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress. In any case no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

HELD: There seems to be a conflict in the above-quoted section, but the conflict is only apparent and can be reconciled. By the first sentence is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake—if a mistake has been committed, before he is sued, but not, as plaintiff contends, that, pending consideration of his claim, the period of two years provided for in the second sentence shall be deemed interrupted. The filing of the claim with the Collector is to be understood as intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. (KIENER *vs.* DAVID, G. R. No. L-5163, April 22, 1953.)

ADMINISTRATIVE LAW

EXECUTIVE DEPARTMENT

Emergency Powers; All emergency powers delegated to the President can be for a limited time only; Repeal of law delegating emergency powers not necessary to a cessation of those powers; Congress may terminate emergency powers by means of a concurrent resolution; The emergency powers lasted only during the emergency resulting from the last world war.

FACTS: Pursuant to Sec. 26, Art. VI of the Constitution, the National Assembly passed on Dec. 16, 1941, C. A. No. 671 declaring (in Sec. 1) the national policy that "the existence of war between the United States and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency," and (in Sec. 2) authorizing the President, "during the existence of the emergency, to promulgate such rules and regulations as he may deem necessary to carry out the national policy."

Under the Emergency Powers Act, President Quirino issued on November 10, 1952, Executive Orders Nos. 545 and 546, which petitioners now seek to invalidate.

HELD: As the Emergency Powers Act was expressly in pursuance of the constitutional provision, it has to be assumed that the National Assembly intended it to be for a limited period

only. If it be contended that the Act has not yet been *duly repealed*, and such step is necessary to a cessation of the emergency powers delegated to the President, the result would be obvious unconstitutionality, since it may never be repealed by the Congress, or if the latter ever attempts to do so, the President may wield his veto. The situation would make the Congress and the President or either as the principal authority to determine the indefinite duration of the delegation of legislative powers,—in palpable repugnance to the constitutional provision that any grant thereunder must be for a limited period.

Although House Bill No. 727, repealing the Emergency Powers Act, was vetoed by the President and did not thereby become a regular statute, it might at least be considered as a concurrent resolution of the Congress, formally declaring the termination of the emergency powers. To contend that the bill needed presidential acquiescence to produce effect, would lead to the anomalous, if not absurd, situation that it would be easier for Congress to delegate its powers than to take them back. This is not and ought not to be the law.

The logical view consistent with constitutionality is to hold that the powers lasted only during the emergency resulting from the last world war which factually involved the Philippines when Act No. 671 was passed. That emergency naturally terminated upon the ending of the last world war. (RODRIGUEZ, SR., ET AL. *vs.* GELLA ET AL., G. R. No. L-6266, Feb. 2, 1953.)

Executive Order No. 401-A, Part IV, is null and void.

FACTS: This is a petition for *certiorari* and prohibition to enjoin the Board of Tax Appeals from hearing the petition filed by the University of Sto. Tomas to review the decision of the Collector of Internal Revenue. The only issue is whether Executive Order No. 401-A, issued by the President pursuant to the power vested in him by Republic Act No. 422, is null and void because it deprives Courts of First Instance of jurisdiction to take cognizance of cases involving the recovery of taxes.

HELD: Ex. Or. 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 R. A. No. 422, but it also, in a matter foreign to it, deprives Courts of First Instance of their jurisdiction to act on internal revenue cases. (UNIVERSITY OF STO. TOMAS *vs.* BOARD OF TAX APPEALS, G. R. No. L-5741, June 23, 1953.)

In seizure cases, a decision of Collector of Customs, if not protested on time to Commissioner of Customs, becomes final even against the Government.

FACTS: The Collector of Customs ordered the seizure of two shipments consigned to Sy Man. Subsequently, after due hearing, the Collector ordered the release of the goods. Fifteen days after notification to Sy Man, the decision became final. Pursuant to said final and executory decision, Sy Man twice asked the Collector to deliver the goods. The latter, however, notified Sy Man that the matter had been endorsed to the Commissioner of Customs. The latter, in reply to Sy Man's request for the delivery of the goods, issued a memorandum, declaring that, as in protest cases, decisions of the *Collector* in seizure cases, whether appealed from or not, were subject to review by the *Commissioner*, that such decisions, together with their supporting papers, were to be submitted to him, and that, pending such decisions' review, the final disposal of the goods seized could not be made. Hence, this action by Sy Man for *certiorari, mandamus* and prohibition.

HELD: Under the present law governing the Bureau of Customs, the decision of the Collector of Customs in a seizure case, if not protested and appealed from on time by the importer to the Commissioner of Customs, becomes final not only as to the importer but against the Government as well, and neither the Commissioner nor the Department Head has the power to review, revise or modify such unappealed decision. (SY MAN *vs.* COMMISSIONER OF CUSTOMS and COLLECTOR OF CUSTOMS, G. R. No. L-5612, Oct. 31, 1953.)

Purely administrative and discretionary functions may not be interferred with by the courts.

FACTS: Coloso took the examination for certified public accountants in 1941, and failed in two of four subjects. Soon after the outbreak of war, he evacuated to Negros Occidental where he stayed until November, 1945; that month, he asked to be allowed by the Board of Accountancy to take the examination in the two subjects he had failed in, but his request

was disallowed on the ground that his application therefor had not been made within one year after he had taken the examination. By reason of the Board's refusal to grant his request, Coloso took the examination in all four subjects in December, 1946, but made it understood that he was not waiving his right to claim the privilege of removal of the subjects he had previously failed in. In this last examination he failed in one subject which he had passed during the previous examination.

This is now an appeal from the decision of the CFI of Manila, dismissing Coloso's petition in which he had prayed for a writ of *mandamus* to compel the Board of Accountancy to register and issue to him a certificate as Certified Public Accountant in accordance with law.

HELD: There is no showing that the Board abused its discretion and, if for no other reason than that the privilege invoked is at most discretionary, the Board cannot be compelled by *mandamus* to grant petitioner's demand. It is a principle well recognized that purely administrative and discretionary functions may not be interferred with by the courts.

Moreover, petitioner's case does not even rest upon the Board's discretion. The Board has no authority whatever to give any special examination, unless an application therefor has been made within the period of one year after an examination. This petitioner failed to do. (COLOSO *vs.* BOARD OF ACCOUNTANCY, G. R. No. L-5750, April 20, 1953.)

Contempt against administrative officials or bodies.

Rule 64, Rules of Court, applies only to inferior and superior courts and does not comprehend contempt committed against administrative officials or bodies, unless said contempt is clearly considered and expressly defined as *contempt of court.*

Where the law desires and intends to punish any violation of, or disobedience to, any process or order issued by any administrative official or body, it clearly defines and terms such violation as *contempt of court,* or it authorizes said official or body to summarily punish for contempt, imposing at the same time the corresponding penalty; and where the aid of the courts is necessary, the corresponding penalty upon conviction is also prescribed. (PEOPLE *vs.* MENDOZA; PEOPLE *vs.* DIZON, G. R. Nos. L-5059 and L-5060, Jan. 30, 1953.)

PUBLIC OFFICERS

Injunction against public officers.

It is not the proper function of the writ of injunction to restrain a public officer from performing a duty specifically imposed by law or to permit the doing of that which is declared unlawful. (WONG *vs.* AQUINO, G. R. No. L-3602, Jan. 30, 1953.)

Removal and Suspension of public officers; Meaning of "Misconduct in Office."

FACTS: Following the acquittal of Manila's Deputy Chief of Police Juan, in a criminal prosecution for malversation of public property instituted at the instance of Mayor Lacson, the latter made a radio broadcast in which he criticized the court's decision, stating: "I have nothing but contempt for certain courts of justice x x x. If I have the power to fire Judge Montesa [the trial judge] I will fire him for being incompetent, for being an ignorant . . . an ignoramus."

As a consequence, a complaint for libel, signed and sworn to by Judge Montesa as complainant, was filed against Mayor Lacson. Thereupon, the President suspended Lacson for misconduct in office.

HELD: Misconduct in office is a misconduct such as affects a public officer's performance of his duties and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer. The alleged libel imputed to Mayor Lacson was not misconduct in office. Mayor Lacson acted as a private individual when he made those remarks. (LACSON *vs.* ROQUE ET AL., G. R. No. L-6225, Jan. 10, 1953.)

Removal of appointive officers with fixed tenure; Limitations.

FACTS: This is a petition for *quo warranto* to test the legality of petitioner's removal from the office of Mayor of Iloilo City and the designation of respondent as Acting Mayor of said city. Petitioner claims that under and pursuant to the charter of Iloilo City, his tenure of office is for six years,

was disallowed on the ground that his application therefor had not been made within one year after he had taken the examination. By reason of the Board's refusal to grant his request, Coloso took the examination in all four subjects in December, 1946, but made it understood that he was not waiving his right to claim the privilege of removal of the subjects he had previously failed in. In this last examination he failed in one subject which he had passed during the previous examination.

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Removal of appointive officers with fixed tenure; Limitations.

FACTS: This is a petition for *quo warranto* to test the legality of petitioner's removal from the office of Mayor of Iloilo City and the designation of respondent as Acting Mayor of said city. Petitioner claims that under and pursuant to the charter of Iloilo City, his tenure of office is for six years,

and for that reason he may be removed only for causes specified by law.

HELD: The legislative intent to provide for a fixed period of office tenure for the Mayor of Iloilo City, and the intent not to make him removable at the pleasure of the appointing authority may be inferred from the fact that, whereas the appointment of the vice-mayor of the same city, and those of the mayors and vice-mayors of other cities, are at pleasure, that of the Mayor of Iloilo City is for a fixed period of time. Since, therefore, the legislature provided for a six-year period of tenure, the President may not remove petitioner without cause. (JOVER *vs.* BORRA, G. R. No. L-6782, July 25, 1953.)

Abolition of office; For existence thereof there must be intent to permanently do away with the office.

FACTS: Plaintiff had been toll collector for a bridge destroyed by flood. When the bridge was rebuilt, another was appointed in plaintiff's position. Plaintiff, therefore, sought reinstatement by *quo warranto.*

HELD: Plaintiff should be reinstated. Because the bridge was rebuilt, the office of toll collector was not thereby permanently abolished. The destruction of the bridge merely suspended the existence of the office but did not abolish it. (SUSACAY *vs.* BUENAVENTURA ET AL., G. R. No. L-5036, Sept. 23, 1953.)

Provincial boards' power to investigate municlpal officials not exclusive; Sec. 2190, *Rev. Adm. Code construed.*

FACTS: Mayor Villena was suspended from office by order of the President pending investigation of administrative charges filed against him. The provincial fiscal of Rizal was appointed special investigator. Mayor Villena filed this petition, praying that the provincial fiscal be ordered to desist from proceeding with the investigation and that his suspension be declared null and void. One of the points raised by petitioner is that Sections 2188 and 2190 of the Rev. Adm. Code vest the power to investigate a municipal official in the provincial board.

HELD: Section 2190 which vests in the provincial board the power to investigate a municipal official is not exclusive.

As was held in the case of *Villena vs. The Secretary of Interior, 67 Phil. 451,* the fact that the power of suspension is expressly granted to the provincial governor does not mean that the grant is necessarily exclusive. (VILLENA *vs.* ROQUE, G. R. No. L-6512, June 19, 1953.)

R. A. No. 732 *increasing salaries of provincial fiscals is mandatory.*

The provincial board of Rizal has no discretion to appropriate or not the amount necessary to pay the increased salaries of provincial fiscals. It is duty-bound to make the proper appropriation, there being sufficient funds. Moral obligations or other political considerations should not stand in the way of the fulfillment of duties imposed by legislation, which duty provincial boards are not at liberty to ignore. (BERNARDO ET AL. *vs.* PASCUAL ET AL., G. R. No. L-6534, June 16, 1953.)

It is Provincial Fiscal's duty to give course to criminal cases if the evidence on hand so warrants.

FACTS: On April 14, 1951, Amansec, a tax examiner of the Bureau of Internal Revenue submitted to his office a report that Pedrosa had committed irregularities in the disclosure of his income and assets. This imputation appeared in the "Evening News." As a result, Pedrosa filed a complaint with the City Fiscal of Manila for falsification with libel against Amansec. Meanwhile, two local periodicals printed a couple of items to the effect that Pedrosa had sent letters to the Commissioner of Civil Service, the Secretary of Education and the Executive Secretary, asking that Amansec be discharged from his office, banned from teaching, and expelled from the Association of Certified Public Accountants, because, Pedrosa said, Amansec was either thoroughly dishonest or a mental case. Amansec, considering the news items to be defamatory, lodged a complaint against Pedrosa with the City Fiscal. The latter, however, recommended that action on Amansec's complaint be deferred until after termination of the case filed by Pedrosa.

On September 28, 1951, Amansec filed with the JP Court of San Fabian, Pangasinan two complaints for libel against Pedrosa, based upon the same above-mentioned news items. These cases were later forwarded to the CFI of Pangasinan for

further proceedings. On March 20, 1952, the Provincial Fiscal filed with the CFI in Pangasinan a petition in which he prayed for the temporary dismissal of the cases until after termination of Pedrosa's case against Amansec pending in the CFI of Manila. Amansec vigorously opposed the petition, but the respondent judge granted it. Hence this petition for *certiorari* and *mandamus* by Amansec.

HELD: While the administration of justice might be better served if the two cases were held in abeyance until the final termination of the criminal case in Manila, the action that should have been taken was not to ask for the temporary dismissal of said two cases, but rather to give them due course, and then ask the court for their temporary suspension to avoid duplication of work and a resultant conflict of opinion between courts of justice on the same subject matter. The Fiscal should have filed the corresponding informations, after which he could have asked for suspension of trial until the cases in Manila were finally terminated. (AMANSEC *vs.* DE GUZMAN and PABALAN, G. R. No. L-6007, Oct. 19, 1953.)

Contracts made in Department of Mindanao and Sulu between non-Christian inhabitants are void.

FACTS: This is an action to quiet title to land. By way of defense, defendants alleged that the land in question had been sold by plaintiff Pauki to defendant Sa Raya, and by the latter resold to the other defendant Alonto; the allegations were supported by corresponding deeds of sale. Objection to the deeds was planted on the proposition that the same were void for not having been approved by the proper authority as required by law.

Holding the first deed of sale valid on the theory that the legal provisions requiring the approval of the provincial governor of contracts relating to real property, executed by any person with any Moro or other non-Christian inhabitant of the Department of Mindanao and Sulu are not applicable to contracts where all the parties are non-Christians, the trial court dismissed the action.

HELD: The deeds in question are for money payments affecting privately-owned real property in the province of Lanao and the parties thereto are all non-Christians. Sec. 145 of the Administrative Code of Mindanao and Sulu provides that no

contract of that kind shall be made in the Department by any person with any Moro or other non-Christian inhabitant of the same unless, among other things, it shall bear the approval of the provincial governor or his duly authorized representative, while Sec. 146 of the same code declares every contract made in violation of that provision null and void. The evident purpose of these sections is to safeguard the patrimony of the less developed ethnic groups in the Philippines by shielding them against imposition and fraud when they enter into agreements dealing with realty. And it is to be noted that the law makes no distinction between a contract entered into between a Christian and a non-Christian and one where both parties are non-Christian, for the obvious reason that imposition and fraud are possible in both cases. In construing the law as not applying to contracts where all the parties are non-Christian, the trial court arbitrarily curtailed its scope instead of extending it. (MADALE *vs.* PERSEYANAN BAY SA RAYA ET AL., G. R. No. L-3813, Jan. 30, 1953.)

ELECTION PROTESTS AND CONTESTS

Board of Canvassers may be ordered to do its ministerial duty; Sec. 2, Art. X, Constitution; Sec. 3, Rev. Election Code applied.

Where the Board of Canvassers failed to do its ministerial duty in the canvassing of votes when it excluded from the canvass the returns coming from a precinct, the Commission on Elections is justified in ordering the Board to reconvene and make a new canvass by including the returns in said precinct. (ABENDANTE *vs.* RELATO, G. R. No. L-6813, Nov. 5, 1953.)

Lepers have the same voting rights as other citizens.

Notwithstanding the repeal of Secs. 14 and 15 of the Revised Election Code by R. A. No. 599, patients confined in different leprosaria may still exercise the right of suffrage as enjoyed by citizens as a whole, for there is nothing in the law which disqualifies them from voting simply because of their ailment. (MACOLOR *vs.* AMORES, G. R. No. L-6806, Nov. 5, 1953.)

Votes made by mistake on sample ballots valid. Sec. 128, R. A. No. 180 construed.

FACTS: In the elections held in 1951, fourteen votes in the Municipality of Angat, Bulacan, were found to have been made on colored (sample) ballots and in a protest on appeal, were rejected by the Court of Appeals.

HELD: The injunction contained in the law against the use of sample ballots (Sec. 128, Rev. Election Law) is addressed mainly to election officials and their innocent mistake should not be used as a means to deprive likewise innocent voters of their right to vote. In a situation such as the one at bar, the above Sec. 128 may be held to be merely directory. (FRANCISCO ILLESCAS *vs.* COURT OF APPEALS ET AL., G. R. No. L-6853, Dec. 29, 1953.)

Jurisdictional facts; Necessity of proof.

Where the first three paragraphs of a motion of protest alleged that the protestant had filed his certificate of candidacy in due time, that he had been voted for in the elections, and that the protestee had been proclaimed elected by the board of canvassers and these three paragraphs were *expressly admitted in the protestee's answer*, it is unnecessary for protestant to *prove* those allegations. The rules of procedure applicable to ordinary civil cases are also applicable generally to election contests when they do not conflict with the Election Law. As to the filing of the protest within two weeks after the proclamation, where the time of filing is a matter of record, and the court knows it, there is no obligation on the part of the protestant *to prove or allege* the time of filing. (The jurisdictional facts are: (1) That the protestant has duly registered his candidacy and received votes in the election; (2) that the protestee has been proclaimed elected in said election; (3) that the motion of protest was filed within two weeks after such proclamation.) (SAN JUAN *vs.* CALDERON ET AL., G. R. No. L-5654, Jan. 30, 1953.)

Where the election statements of the inspectors are already present, the production of the ballots is not necessary.

FACTS: Petitioners presented evidence consisting of thirty election statements submitted by the inspectors in the contested thirty election precincts of Donsol. A decision was rendered against them on the ground that since the ballots had not been presented as evidence, the court lacked jurisdiction to entertain the protest.

HELD: The view entertained by the judge that the election law contains a mandatory provision requiring production of the ballot boxes in an election contest so that the ballots may be examined is not correct. The only pertinent provision that may be invoked is Sec. 175, Rev. Election Code, and said section contains no such mandatory provision. (MADRID *vs.* MAÑALAC, G. R. No. L-5770, April 17, 1953.)

Registry list is conclusive as to who had the right to vote in an election; Section 176 (f), Revised Election Code applied.

FACTS: The question in this election contest is whether the trial court erred in ruling out evidence to prove the contestant's allegation that no less than 100 minors were registered in the voters' list and that these minors actually voted in the election, the trial court being of the opinion that the qualifications of electors registered in the voters' list, having already been finally determined either by the board of election inspectors or by the corresponding circuit judges during the period for the inclusion and exclusion of voters, could no longer be inquired into.

HELD: There was no substantial error in the decision appealed from. Section 176 (f) of the Revised Election Code says that "In election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election." (NAVAL *vs.* SANA, G. R. No. L-5899, Feb. 28, 1953.)

Sec. 177, Revised Election Code is directory in nature.

FACTS: This is an original petition instituted in the Supreme Court to compel the respondent Judge of the CFI to dismiss the election protest filed by Cordero against Cachola, on the ground that the Judge had failed to decide the case within six months after its presentation. The protest involved the position of municipal mayor.

HELD: Petition dismissed. Sec. 177, Revised Election Code, which provides that "the court shall decide the protest within six months after it is presented in case of a municipal office," is directory in nature. (CACHOLA *vs.* CORDERO ET AL., G. R. No. L-5780, Feb. 28, 1953.)

Protests—Costs and incidental expenses thereof; Who shall pay them? Art. 180, Rev. Election Code construed.

FACTS: In an election protest filed by Torres against Ribo, the lower court declared Ribo elected to the post of Provincial Governor. The court also sentenced Torres to pay the "*costas y gastos incidentales.*" Upon appeal by Torres, the decision was affirmed by the Court of Appeals. The judgment became final, and Ribo filed in the CFI of Leyte a bill of expenses and costs for various items. After Torres had replied thereto, the court issued an order disallowing attorney's fees and the expenses for Ribo's brief, but approved his bill's other items. When his motion for reconsideration was denied, Torres interposed the present appeal, contending that (1) the lower court erred in allowing the items for the commissioner's fees and for the transcript of stenographic notes on the ground that these items are not recoverable as costs under Secs. 10 and 11, Rule 131, Rules of Court, and (2) the lower court should have ordered the parties to pay their respective costs, in view of the fact that, although Ribo had been declared elected, his majority was reduced—an indication that the protest had not been entirely without merit.

HELD: (1) The commissioner's fees are proper expenses incident to the necessity of recanvassing the ballots, and taxable under Sec. 180, Revised Election Code. By analogy, the fees of commissioners in an election contest must be decreed to be embraced within the terms "expenses and costs" used in Sec. 180, and hence, collectible against the losing party. However, the item for the stenographic transcript is not in order. (2) The second contention is untenable because under said Sec. 180, in relation to Sec. 1, Rule 131, Rules of Court, the costs are generally assessed against the losing party, although for special reasons they may be divided equitably. In the latter case the court is vested with discretion. While it is true that Ribo's majority was reduced, the fact is that he won by a majority still of 423 votes. (TORRES *vs.* RIBO, G. R. No. 5394, April 29, 1953.)

MUNICIPAL CORPORATIONS

Culion Leper Colony is an entity distinct and separate from the municipality; Secs. 1066-1068, *Rev. Adm. Code applied.*

The Culion Leper Colony has been established as a national reservation, under the exclusive jurisdiction of the Department of Health, with an administrative organization separate and distinct from the municipal government of Coron, Palawan, not only for purposes of government but for political purposes such as the exercise of the right of suffrage. (MACOLOR *vs.* AMORES, G. R. No. L-6806, Nov. 5, 1953.)

Bicol Leprosarium, though segregated for lepers, is still part of the municipality.

Although the Bicol Treatment Station was segregated, by virtue of an administrative order of the Department of Health, from a municipality for the treatment of lepers in the Bicol region, this segregation cannot have the effect of separating the leprosarium from the territory and government of the municipality comprising it. (ABENDANTE *vs.* RELATO, G. R. No. L-6813, Nov. 5, 1953.)

Suspension and removal of members of police force under R. A. No. 557.

FACTS: Petitioner-appellant, a member of the Manila Police Department (MPD), was charged administratively before, and investigated by, the summary court of the MPD for gross misconduct, and based on said investigation, respondent Mayor ordered his dismissal from the service.

HELD: It being admitted that the procedure followed by respondents in investigating, suspending and dismissing appellant was not in conformity with R. A. No. 557 which, as we have already held, has repealed or modified Sec. 22, R. A. No. 409, insofar as the power of investigation over members of the MPD is concerned, the investigation conducted by the summary court of the MPD and the appellant's suspension and removal premised on said investigation are of no force and effect. (NUVAL *vs.* DE LA FUENTE ET AL., G. R. No. L-5695, Jan. 2, 1953.)

Effect of filling a position in the classified civil service with one not a civil service eligible.

FACTS: Petitioners were members of the police force of Ozamiz City, appointed under Sec. 682 of the Rev. Adm. Code, without civil service qualifications. Subsequently, respondent City Mayor issued a general order relieving all temporary em-

ployees of the city and thereafter appointed others in their stead. Consequently, this action for *mandamus* was instituted.

HELD: The charter creating Ozamiz City (R. A. No. 321) does not provide for the appointment of the chief and members of the police department. Hence, appointments by the mayor may be made only in accordance with the Civil Service Law. Pursuant to the above Sec. 682, when a position in the classified civil service is filled by one who is not a qualified eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible and in no case for a longer period than three months. Hence, the mayor's act was lawful. (PAÑA ET AL. *vs.* CITY MAYOR, ANGEL MEDINA ET AL., 50 O. G. 146.)

CITIZENSHIP AND NATURALIZATION

QUALIFICATIONS

"Proper and irreproachable conduct" construed.

FACTS: This is an appeal from a judgment of the CFI of Cotabato approving the petition for naturalization of petitioner Yu Singco, a Chinese citizen. The Government, in opposition, presented evidence to the effect that petitioner had had relations with Concepcion Cua, as a result of which they had five children. Petitioner admitted this. Petitioner also has ten children with Chua Hoc Ty whom he had married in Amoy, China in 1924.

HELD: The Solicitor General contended that petitioner had not conducted himself "in a proper and irreproachable manner during the entire period of his residence in the Philippines x x x," as required by section 2 of the Revised Naturalization Law. We uphold this contention. What constitutes "proper and irreproachable conduct" within the meaning of the law must be determined not by the law of the country of which petitioner is a citizen (polygamy is allowed in China), but by the standards of morality prevalent in this country, and these in turn by the religious beliefs and social concepts existing here.

This country is predominantly Catholic and universally Christian in religious belief. Both seduction and bigamy are punished as crimes. Society may pardon the sins of their members, but such pardon should not be confused with approval.

Under no circumstances can petitioner's conduct be considered "proper and irreproachable" within the meaning of the law, even if he actually gives support to his children. (IN THE MATTER OF THE PETITION OF YU SINGCO *vs.* REPUBLIC, 50 O. G. 104.)

What is considered as a principal dialect.

FACTS: Applicant testified that he could "speak and write English, *Chavacano* and Moro." By this last he meant the *Tausog*. The Solicitor General contends that *Chavacano* and *Tausog* do not come under the category, "principal dialects."

HELD: A dialect that is spoken by a substantial portion of the population of the country would no doubt come under the category of "principal dialects." To that class should, therefore, belong the *Tausog*, which is the Moro dialect in the Province of Sulu, and the *Chavacano*, a well-known dialect in the Philippines, spoken in Cavite, Zamboanga and other parts of Mindanao. (WU *vs.* REPUBLIC, G. R. No. L-4688, Feb. 16,

Enrollment of minor children of school age in prescribed schools; Effect of absence of children from the Philippines.

FACTS: Applicant contends that the lower court erred in holding that he has not complied with the provisions of the Revised Naturalization Law. He argues that his two minor children had lived in China from birth, and for that reason they never entered any school in the Philippines, a thing physically impossible; that those who drafted the Constitution could not have had the intention of requiring an impossible condition, and for that reason it was not necessary for the applicant to comply with said condition.

HELD: The naturalization law grants to aliens the privilege of obtaining Philippine citizenship under certain conditions; these conditions must simply be complied with. (BANGON DU *vs.* REPUBLIC, G. R. No. L-3683, Jan. 28, 1953.)

Requisite regarding children's education strictly interpreted.

It is the policy of the Philippine Government to have the children of applicants for naturalization learn and imbibe the customs, traditions and ideals of the Filipinos as well as their democratic form of government. The fact that all the children of school age of the applicant are in China or otherwise outside the Philippines is not a valid excuse or reason for non-compliance with this requirement. (*In Re* PETITION FOR PHILIPPINE CITIZENSHIP OF OSCAR ANLO, G. R. No. L-5104, April 29, 1953.)

What government recognition of a private school necessarily implies.

FACTS: The Solicitor-General opposed the petition for naturalization of Uy Yu on the ground that the latter failed to prove that he had enrolled his child in a school where Philippine government, history, and civics were taught.

HELD: Under the present law, one of the requirements for government recognition of a private school is that said school fulfill the minimum standard requirements of instruction, which includes the teaching of Philippine government, history, and civics. The record in this case shows that the school wherein Yu had enrolled his child was duly recognized. (*In re Petition of Uy Yu* alias *Ignacio Uy Sechum to be admitted a citizen of the Philippines.* UY SECHUM *vs.* REPUBLIC, G. R. No. L-5592, Dec. 21, 1953.)

When property or occupational qualification fulfilled.

A commission agent or an employee on a salary basis, whose annual average income is ₱3,600.00, possesses the property or occupational qualification required by the Rev. Naturalization Law; the fact that he alleged in his residence tax certificate that he was a student by occupation is no proof that he does nothing else but study. Furthermore, his enrollment as a commerce student in a university of good repute negatives the possibilty he may be an economic burden to the Philippines when he becomes a citizen. (VELOSO *vs.* REPUBLIC, G. R. No. L-5117, May 15, 1953.)

Violation of important provision of Rev. Election Law disqualifies an alien applicant for citizenship.

FACTS: Appellant applied for naturalization. One of his character witnesses, attempting to prove that applicant had identified himself with the Filipinos, testified that Ho took part in two electoral campaigns, not only persuading voters but even contributing to the campaign fund of the Liberal Party.

HELD: The violation of Sec. 56 of the Rev. Election Law regarding active intervention by foreigners in Philippine elections is considered a serious election offense and as such disqualifies the offending alien from applying for citizenship, even though the latter acted in ignorance of the law and at the instance of Filipino friends. (*In re Matter of the Petition for Naturalization of Leoncio Ho Benluy.* BENLUY *vs.* REPUBLIC, 50 O. G. 140.)

Applicant's length of residence requirement shortened by marriage and service in Philippine Army.

FACTS: Corbett filed an application for naturalization, setting forth that he was born in 1891 in St. Petersburg, Russia; that at the time of the filing of the application he was single; and that he claimed the benefits of Sec. 3, C. A. No. 473, for the reason that he had served in the Philippine Army from September, 1943 to October, 1945. These facts were supported by the affidavits of two Filipino citizens under oath. Pending hearing of his application, Corbett married a Filipino woman; the application was duly amended to state this fact. Subsequently, the application was approved.

On appeal, it is contended by the Government that the petition is defective because the affidavits of the two Filipino citizens do not state that they have personally known the applicant to be a resident of the Philippines for the period required by the Naturalization Act.

HELD: This contention is devoid of merit. In the original petition, the applicant claimed he had served in the Philippine Army, and in the amended petition he reiterated the same allegation of service, and also declared he was married to a Filipino woman. Hence, the period of not less than ten years' continuous residence in the Philippines required by Sec. 2, Par. 2, was reduced to five years pursuant to Sec. 3, Pars. 1 and 3 of the Naturalization Act. And even if the fact of marriage were to be laid aside, the applicant could still invoke the benefit of a reduction because of his service in the Philip-

pine Army. As to his ability to speak a native dialect, *Chavacano* is one of the principal dialects of the Philippines and to speak and write it is sufficient compliance with the law. (CORBETT *vs.* REPUBLIC, G. R. No. L-4144, April 29, 1953.)

PROCEDURE

Applicant may be allowed to present proof regarding his Philippine citizenship.

FACTS: Petitioner filed a motion praying that his case be set for hearing on the ground, among others, that he had discovered new evidence which proved that he was a Filipino citizen. After hearing, the court issued an order dismissing the petition because petitioner was already a Filipino citizen. The Solicitor General contends that the lower court erred in allowing the appellee to adduce proof regarding his alleged citizenship.

HELD: There was no error on the part of the lower court in allowing the appellee to present proof regarding his Philippine citizenship when the evidence in his possession proved that he already had that status, making it unnecessary to press further his petition for naturalization. There is nothing in the law which could prohibit this alternative procedure. (LEON RATUNIL SY QUIMSUAN *vs.* REPUBLIC, G. R. No. L-4693, Feb. 16, 1953.)

Substantial compliance; Sec. 7, C. A. No. 473 construed.

The requirement of Sec. 7 of Commonwealth Act No. 473, covering the affidavit of two credible persons who know the applicant to be a resident of the Philippines is satisfied if the supporting witnesses swore to having known the applicant for more than ten years, even though the length of residence required of the applicant is thirty years. (CHUA TIONG CHIA *vs.* REPUBLIC, G. R. No. L-5029, May 22, 1953.)

Residence is not lost by mere absence.

FACTS: On July 26, 1946, petitioner applied for naturalization in the CFI of Misamis Oriental. The oppositor filed a petition for dismissal on the ground that petitioner had not resided in Misamis Oriental for at least one year immediately preceding the filing of his petition. It appears that petitioner was caught by the Japanese invasion in Cotabato while there on business, and returned to Misamis Oriental around March or April, 1946. The oppositor contended that such absence resulted in the loss of his residence in said province.

HELD: This contention is untenable, because such absence was sufficiently caused by the war. As claimed by petitioner, he was compelled to stay in Cotabato for the reason that, being a guerrilla, he was afraid to come out in the open, and that there was no available transportation from Cotabato to his town. More than mere absence is necessary for one to lose his residence. (CHAN *vs.* REPUBLIC, G. R. No. L-4551, Jan. 30, 1953.)

Applicant must fulfill all requirements.

The Government is not duty-bound to specify its ground for opposition. Neither is it bound by the pleadings relative to the presence or absence of qualifications. Even without any objection from the Government, it is the duty of an applicant for citizenship affirmatively to establish all requirements, and the court *motu propio* may deny his application if from the evidence he is found lacking in any of those requirements. (YAP CHIN *vs.* REPUBLIC, G. R. No. L-4177, May 29, 1953.)

Declaration of Intention; Exemption from filing of declaration; Applicant must have received his primary and secondary education.

FACTS: Applicant was born in Manila, finished his primary course, and has reached second year high school in the San Juan de Letran College, a school recognized by the Government, which admits students of any race or nationality. Consequently, he claims to be exempted from the requisite of filing his "Declaration of Intention."

HELD: The fact that he has reached second year high school does not entitle him to such exemption, for he who has studied only up to second year high school has not received a secondary education; he has only studied one-half of the same. (MARIO DE LA CRUZ *vs.* REPUBLIC OF THE PHILIPPINES, *infra.*)

Effect of filing of declaration during pendency of proceedings.

FACTS: Petitioner filed his "Declaration of Intention" with the Office of the Solicitor General after he had filed his petition for naturalization in court, but before the hearing of the same was finished, contrary to the provisions of Sec. 5, Revised Naturalization Law.

HELD: Petitioner contended that he had substantially complied with the law by presenting his "Declaration of Intention" during the pendency of the proceedings. This contention cannot be sustained. An alien who seeks political rights as a member of this nation can rightly obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in a matter so vital to the public welfare.

Petitioner argued that the failure of the Solicitor General to object to the introduction in evidence of the document evidencing the filing of petitioner's "Declaration of Intention" amounted to a waiver of the requisite of filing of declaration. This contention is untenable because the competency of the court is conferred by law, not by the will of the applicant, nor by the acquiescence of the fiscal, nor by the condescension of the judge who presides. (DE LA CRUZ *vs.* REPUBLIC, G. R. No. L-4589, Feb. 27, 1953.)

REMEDIAL LAW

CIVIL PROCEDURE

COMMENCEMENT OF ACTIONS

Accrual of cause of action.

FACTS: This is an action to recover damages arising from the alleged unlawful possession by defendants of three parcels of land belonging to plaintiff. The three parcels of land had been the subject of a previous registration proceeding wherein Bough, deceased husband of plaintiff, was the applicant and defendants were the oppositors. Plaintiff contends that it was premature to bring any action for damages against defendants before the final termination of the registration proceeding.

HELD: Plaintiff's contention that an action for damages against defendants was not yet in order during the pendency of the registration proceeding is untenable. (VDA. DE BOUGH *vs.* SINGSON, G. R. No. L-5155, Feb. 16, 1953.)

PARTIES TO CIVIL ACTIONS

Indispensable parties.

In an action for the annulment of a sale of property, the vendees are indispensable parties. Being indispensable parties, they should be joined in the proceedings for annulment. As that was not done, it was error for the lower court to order the annulment of the sale and to have its transfer certificate of title, already issued in favor of the vendees, canceled. (INTESTATE ESTATE OF TAN SIN AN, G. R. No. L-5303, June 30, 1953.)

Judgment cannot be rendered against persons who have not been impleaded.

Judgments must be responsive to the issues presented by