obviously refer to its outstanding policies, i.e. policies on which no claim has as yet arisen, because the risk insured against has not yet happened. In other words, the first refers to accrued liabilities (outstanding claims) to be discharged; the second and third to contingent liabilities (outstanding risks) to be re-insured.

This case is governed by the first part—not by the second nor the third, that expressly relate to "policies insuring residents". The third, permitting "cancellation" obviously contemplates outstanding policies on which the risk has not yet happened, because evidently the insurer may not cancel a policy on which a claim has already accrued by the occurence of the risk. Wherefore, the inference becomes unavoidable that "policies insuring residents" in the second and third parts imply policies as to which the risk insured against has not yet happened. And the requirement that the foreign insurer "reinsure", backs this interpretation because, usually the subject-matter of the original insurance "must be *in existence* at the time the contract of reinsurance is made" (32 C.J. 46)

The Commissioner claims that the petitioners' liabilities to Yu Hun & Co. may be considered as "primary liabilities" in the second part of Sec. 202-C, which provides in part as follows:

> "x x x In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. x x x"

The quoted provision requires the foreign insurer to "reinsure". Our insurance act defines reinsurance as "one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance" (Sec. 88). This kind of reinsurance is not what Sec. 202-C contemplates, because the foreign insurer is not thereby relieved of local responsibility. The term reinsurance is also "applied to a contract between two insurers by which the one assumes the risks of the other and becomes substituted to its contracts, so that *on the assent* of the original policyholders, the liability of the first insurer ceases, and the liability of the second is substituted" (46 CJS 196). This is the "reinsurance" contemplated in the second part of section 202-C. The original insurer will be released only when the insured agrees with the insurer and reinsurer that he will accept the reinsurer. Yu Hun & Co. has not agreed. It is therefore improper to permit the foreign insurer, without the consent of the insured, to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil laws (Art. 1293, New Civil Code) that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (policyholder).

The motion for reconsideration was denied. (*Scottish Union & Scottish Assurance Corporation, Ltd.; and St. Paul Fire & Marine Insurance Company, Petitioners vs. The Hon. Higino Macadaog, Judge of the Court of First Instance of Manila and Yu Hun & Company, Respondents. G.R. Nos. L-*5717*, L-*5751 *and L-*5756*, Promulgated Nov.* 19, 1952.)

UNJUSTIFIABLE REFUSAL TO ACCEPT PAYMENT OF PREMIUM IS FATAL TO DEFENSE OF NON-PAYMENT IN AN ACTION ON AN INSURANCE POLICY.

FACTS: On April 15, 1940, the defendant American corporation issued an endowment policy insuring the life of Celso R. Gonzales and designating the plaintiff as beneficiary. The premium was payable annually on or before April 15. The premiums for the first two years were duly paid. The premium accruing April 15, 1942 was not actually paid. The lower court however found as a fact that "On or before April 15, 1942 the premium for the third policy year was tendered to the branch office of the company in Iloilo City, but was not accepted because at the time it was tendered the office was closing for the day on account of the threat of bombing by Japanese planes." On September 22, 1942, Celso R. Gonzales died. Under the terms of the policy, non-payment of premiums on time would cause the lapse thereof.

The lower court rendered judgment in favor of the plaintiff on the following grounds: (1) That the premium for April 15, 1942 had been tendered on or before that date but was refused, and (2) because non-payment of that premium was excused by the occurrence of the war, the American Insurance company having closed its Iloilo office on and before April 16, 1942.

ISSUE: Whether or not, under the foregoing facts, the defendant-appellant is entitled to a reversal of the lower court's decision on the ground that the policy lapsed by reason of non-payment of premiums, as held in Constantino vs. Asia Life Insurance Company, 47 OGS 428 that "When the life insurance policy provides that non-payment

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 P500 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