or foreclosure sale under Act 3135 as amended, begins not at the date of the sale when merely a certificate is issued by the sheriff or other offical, but rather on the day after the expiration of the period of repurchase, when the deed of absolute sale is executed and the property formally transferred to the purchaser. Decision affirmed. (PARAS *vs.* COURT OF APPEALS, G. R. No. L-4091, Prom. May 28, 1952.)

POLITICAL LAW

State immunity from suit; suit against an unincorporated government agency engaged in business.

FACTS: The Philippine Airlines, Inc. (PAL) is being sued by the Capitol Subdivision, Inc., as owner of the land used by the National Airports Corporation (NAC) as airport, for landing and parking fees. The PAL countered with a third-party complaint against the NAC, which by that time had been dissolved, and served summons on the Civil Aeronautics Administration (CAA). The PAL alleged that it had paid to the NAC the fees claimed by the Capitol Subdivision, Inc. The Solicitor-General filed a motion to dismiss the third-party complaint on the ground of lack of jurisdiction, first, because the NAC "has lost its juridical personality," and, second, because the CAA "being an office or agency of the Republic of the Philippines, unincorporated and not possessing juridical personality under the law, is incapable of suing and being sued."

HELD: The Supreme Court, after mentioning some of the powers of the CAA said: "These provisions confer upon the CAA, in our opinion, the power to sue and be sued. The power to sue and be sued is implied from the power to transact private business. And if it has the power to sue and be sued on its behalf, the CAA with greater reason should have the power to prosecute and defend suits for and against the NAC, having acquired all the properties, funds and choses in action and assumed all the liabilities of the latter. To deny the NAC's creditors access to the courts of justice against the CAA is to say that the government could impair the obligation of its corporations by the simple expedient of converting them into unincorporated agencies.

Not all government entities, whether corporate or non-corporate, are immune from suits. Immunity from suits is determined by the character of the objects for which the entity was organized.[1] The CAA comes under the category of a private entity. Although not a body corporate, it was created, like the NAC, not to maintain a

[1] Citing 59, C. J., p. 313.

necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being an exclusive prerogative of the state, may be undertaken by private concerns. The CAA may not, and should not claim for itself the privileges and immunities of a sovereign state.[2] (NATIONAL AIRPORTS CORPORATION *vs.* HON. JOSE TEODORO SR ET AL., G. R. No. L-5122, April 30, 1952.)

State immunity from suit; the principle of state immunity from suit does not apply in a suit against the Civil Aeronautics Administration when the purpose of the suit is to enforce the proprietary rights of the plaintiff.

FACTS: Action for the partition of a parcel of land allegedly owned in common by the plaintiffs and defendant Santos. Santos having sold said land to the National Airports Corporation, the predecessor of the Civil Aeronautics Administration, and the Administrator of the CAA being in possession of the lot, the latter was joined as defendant. Upon motion of the Administrator of the CAA, the trial court dismissed the complaint against him on the ground that the CAA not being a juridical person has no capacity to be sued.

HELD: When the state or its government enters into a contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights and obligations arise therefrom, and if the law granting the authority to enter into such contract does not provide for or name the officer against whom action may be brought in the event of a breach thereof, the state itself may be sued without its consent, because by entering into a contract the sovereign state has descended to the level of the citizen and its consent to be sued is implied from the very act of entering ino such contract.

The CAA, even if it is not a juridical entity, cannot legally prevent a party or parties from enforcing their proprietary rights under

[2] This case is distinguished from that of National Airports Corp. *vs.* Hon. V. Jimenez Yanson et al., G. R. No. L-3746 in that the latter case was a labor dispute wherein the matters raised by the petitioners (National Airports Corp. Employees) were outside the jurisdiction of the CIR, and of the Supreme Court on appeal, to entertain, the rights, privileges, hours of work, and rates of compensation of the petitioning employees, these being already governed by the Civil Service Law.

the cloak or shield of lack of juridical personality, because it took over all the powers and assumed all the obligations of the defunct National Airports Corporation which had entered into the contract in question. (TEODORO SANTOS ET ALS. *vs.* LEONCIO SANTOS ET ALS., G. R. No. L-4699, November, 1952.)

State immunity from suit: foreign state cannot be sued in our courts without the consent of the former.

FACTS: This case stems from an order issued by Major General George F. Moore revoking the initial recognition granted to petitioners as guerrilla officers on the ground that they failed to attain the standards required to substantiate their recognition as officers of the Philippine Army.

HELD: It is apparent that the present action has for its purpose to have the order of General Moore reconsidered and set aside and a new one entered recognizing petitioners as guerrilla officers so that they may be entitled to their emoluments or back pay. In the final analysis, therefore, the aim of petitioners is to press a claim against the Treasury of the United States which is tantamount to an action against the government of that country. Since this government cannot be sued without its consent, unless there is an express legislation on the matter, it is evident that this Court has no jurisdiction to entertain this case. (CORNELIO S. RUPERTO ET AL., ETC. *vs.* MAJOR GENERAL GEORGE F. MOORE, ETC., G. R. No. L-3745, April 30, 1952.)

Executive Department: Constitutionality of Executive Proclamation suspending privilege of writ of habeas corpus.

An Executive Proclamation suspending the writ of habeas corpus does not violate the constitutional prohibition against bills of attainder or ex post facto laws because the prohibition applies only to statutes. (MARCELO D. MONTENEGRO *vs.* GEN. MARIANO CASTAÑEDA and COL. EULOGIO BALAO, G. R. No. L-4221, August 30 1952.)

Executive Department: finality of President's decision as to existence of exigency requiring suspension.

Authority to decide whether an exigency has arisen requiring suspension of the writ belongs to the President and his decision is final and conclusive upon the courts and upon all persons. (MAR

CELO D. MONTENEGRO *vs.* GEN. MARIANO CASTAÑEDA and COL. EULOGIO BALAO, G. R. No. L-4221, August 30, 1952.)

Executive Department: Effect of order of suspension of writ.

An order of suspension of the writ of habeas corpus affects the power of the courts and operates immediately on all petitions therein pending at the time of its promulgation. (MARCELO D. MONTENEGRO *vs* GEN. MARIANO CASTAÑEDA and COL. EULOGIO BALAO, G. R. No. L-4221, August 30, 1952.)

Executive Department: Effect of inclusion of "sedition" in proclamation as ground for suspension of writ.

Sedition is not a ground for the suspension of the privilege of the writ of habeas corpus; the term "sedition" in Proclamation No. 210 should be deemed a mistake or surplusage that does not invalidate the entire proclamation.

Sec. 10, par. 2, Art. VII of the Constitution applied. (MARCELO D. MONTENEGRO vs. GEN. MARIANO CASTAÑEDA and COL. EULOGIO BALAO, G. R. No. L-4221, August 30, 1952.)

Executive Department: Effect of absolute pardon on political rights.

Absolute pardon for any crime for which one year or more of imprisonment was meted out restores the prisoner to his political rights. Where, however, the penalty is less than one year, there is no disqualification except in crimes against property in which case pardon is necessary. Sec. 99, R. A. No. 180 as amended by R. A. No. 599 applied. (SIMPLICIO PENDON *vs.* JULITO DIASNES, G. R. No. L-5606, August 28, 1952.)

Executive Department: Effect of violation of a penal law by a person who was conditionally pardoned ten years since.

FACTS: Petition for a writ of habeas corpus. Petitioner was convicted of murder and sentenced to 17 years, 4 months, and 1 day of *reclusión temporal*. On March 6, 1939, after serving 15 years, 7 months, and 11 days, he was granted a conditional pardon, the condition being that "he shall not again violate any of the penal laws of the Philippines."

On April 25, 1949, petitioner was found guilty of driving a jeep without a license. By virtue of the authority conferred upon

the President by sec. 64 (i) of the Rev. Adm. Code, petitioner was recommitted to jail for breach of the condition of his pardon to serve the unexpired portion of his term.

HELD: Under the facts and circumstances of the case, the petition was granted.[1] (ANTONIO INFANTE *vs.* THE PROVINCIAL WARDEN OF NEGROS OCCIDENTAL, G. R. No. L-4164, December 12, 1952.)

Administrative Law: "To promote simplicity, economy and efficiency" is a sufficient standard to constitute a valid delegation of legislative powers to executive.

FACTS: In a petition to review the decision of the Auditor General denying him quarters allowance, the petitioner assailed the validity of Executive Order No. 93 because it is based on a law that is unconstitutional as an illegal delegation of legislative power to the executive.

HELD: The rule is that so long as the Legislature "lays down a policy and a standard is established by the statute" there is no undue delegation. Republic Act No. 51 in authorizing the President of the Philippines, among others, to make reforms and changes in government-controlled corporations, lays down a standard and the policy that the purpose shall be to meet the exigencies attendant upon the establishment of the free and independent Government of the Philip-

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[1] Three justices held that "the condition of the pardon which the prisoner was charged with having breached was no longer operative when he committed a violation of the Motor Vehicle Law." This statement was based on the following grounds:

(1) The duration of conditions subsequent, annexed to a pardon, would be limited to the period of the prisoner's sentence unless an intention to extend it beyond that time was manifest from the nature of the condition or the language in which it was imposed. The petitioner's pardon does not state the time within which the conditions thereof were to be observed. (According to the dissenting opinion, the weight of authority is opposed to the principle above stated.)

(2) Although the penalty remitted has not, in strict law, prescribed, re-imprisonment of the petitioner for the remainder of his sentence, more than ten years after he was pardoned, would be repugnant to the weight of reason and the spirit and genius of our penal laws. If escaped prisoners are granted immunity from punishment after a period of hiding, there is at least as much justification for extending this liberality through strict construction of the pardon to one who, for the same period, has lived and comported as a peaceful and law-abiding citizen.

Not improper to consider in this connection is the circumstance that the prisoner's general conduct during his long confinement has been "excellent."

Four other justices concurred in the result of the opinion. Three justices dissented.

pines and to promote simplicity, economy and efficiency in their operations. The standard was set and the policy fixed. Petition dismissed. (CERVANTES *vs.* AUDITOR GENERAL, G. R. No. L-4043, May 26, 1952.)

Administrative Law: Doctrine of exhaustion of administrative remedies.

FACTS: This is a petition for certiorari and/or mandamus against the Import Control Commission. Respondent board sets up the defense, among others, that petitioner has a plain and adequate remedy which is an appeal to the President.

HELD: This defense seems to be valid. These special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief. (ANG TUAN KAI & Co. *vs.* THE IMPORT CONTROL COMMISSION, G. R. No. L-4427, April 21, 1952.)

Administrative Law: Doctrine of administrative finality; non-interference in administrative discretion unless there is gross abuse.

FACTS: The office of plantiff having been abolished, plaintiff applied for retirement with gratuity. Secretary of Interior disapproved said application on the ground that in addition to requirements of law, department policy set further requirements which plaintiff had not met. Lower court held that it will not interfere with discretion of the Secretary. Hence, plaintiff appealed.

HELD: Judgment reversed. Rule is that in the performance of an official duty or act involving discretion, court will not interfere unless there is gross abuse of discretion, manifest injustice, or palpable excess of authority. There is gross abuse of discretion in reading additional requisites into the law.

NOTE: Four justices dissented on the ground that the Secretary of Interior was not palpably wrong and that there is no gross abuse of discretion, unless it is palpable. (CORNELIO ANTIQUERA *vs.* HON. SOTERO BALUYOT, MANUEL DE LA FUENTE, and MACARIO OFILADA, G. R. No. L-3318, May 5, 1952.)

Administrative Law: Public officers; effect of lack of age qualification on elibigility.

FACTS: J. Y. further claims that the lower court erred in declaring him ineligible for the office of municipal mayor although neither public nor private interest would be served thereby.

HELD: Age requirement for public officers is based on public policy. No specific damage or harm need be shown. (MARIA J. CASTAÑEDA *vs.* JOSE V. YAP, G. R. No. L-5379, August 22, 1953.)

Administrative Law: Public officers; right of de facto officer to compensation while in office.

FACTS: Plaintiff seeks to collect from defendant the sum of ₱18,400 as salaries and allowances, and the sum of ₱35,524.55 as damages, upon the plea that the latter usurped the office of Senator of the Philippines which rightfully belonged to the former from December 30, 1947 to December 27, 1949.

In the Senatorial elections held in 1947, defendant was proclaimed as one of those elected as Senators, took the oath of office and discharged the duties of Senator, and received the salaries and emoluments of said office. The issue is whether he can be ordered to reimburse the salaries and emoluments he received while a *de facto* senator.

HELD: One who has been elected to an office, and has been proclaimed by the corresponding authority, has a right to assume the office and discharge its functions notwithstanding a protest filed against his election and as a necessary consequence he has likewise the right to collect and receive the salaries and emoluments as compensation for the services he has rendered. (EULOGIO RODRIGUEZ, SR. *vs.* CARLOS TAN, G. R. No. L-3913, August 7, 1952.)

Public officers; Section 2195 of the Revised Adm. Code and Section 21 (a) of the Revised Election Law; temporary disability of mayor.

FACTS: When the mayor of Municipality S was suspended, the vice-mayor JB (respondent) assumed office as mayor by virtue of Sec. 2195 of the Rev. Adm. Code. However, the provincial governor, acting under sec. 21 (a) of the Rev. Election Code, with the consent of the provincial board appointed JL (petitioner), as mayor of S. Hence this *quo warranto* proceeding.

HELD: Sec. 21 (a) of the Rev. Election Code did not repeal Sec. 2195 of the Rev. Adm. Code. In the light of the principle of statutory construction that when a general and a particular provision are inconsistent the latter is paramount to the former, sec-

tion 2195 referring particularly to vacancy in the office of mayor, must prevail over the general terms of sec. 21 (a) as to vacancies of municipal (local) offices.

Consequently, when the mayor of a municipality is suspended, absent or temporarily unable, his duties should be discharged by the vice-mayor in accordance with Sec. 2195 of the Rev. Adm. Code. (JOSE L. LAXAMANA *vs.* JOSE T. BALTAZAR, G. R. No. L-5955, Sept. 19, 1952.)

Administrative Law: Election Law; suspension of Election Law during Japanese occupation.

FACTS: In the general elections of 1937, Primitivo Perez was proclaimed elected mayor of San Miguel, Pangasinan. Plaintiff filed a motion of protest which was finally lost in the Supreme Court. Upon return of the records to the court of origin, the latter, by order of November 27, 1941, approved the bill of costs filed by the protestee amounting to ₱1,967.00. On September 27, 1944, the bondsmen of the protestant filed a petition praying that the protestee or his lawyers be ordered to receive from the Clerk of Courts the sum of ₱1,000.00 that they had deposited in a[illegible]ayment of the costs adjudged against him. It may be added that pro[illegible] appellant had refused to accept the deposit of ₱1,000.00 made m[illegible]he bondsmen on the ground that the lower court had no jurisp[illegible]lai[illegible]on over the proceedings because the Election Law under which wit[illegible] lower court approved appellant's bill of costs on November 27, [illegible]1, was not in force during the Japanese regime, when said [illegible]eposit was made.

HELD: While political laws were suspended during the Japanese military occupation, the order of November 27, 1941, awarding to the appellant costs in the amount of ₱1,967.00, merely because the source of a civil obligation against the appellee and his bondsmen, and the lower court obviously had jurisdiction to entertain the petition of the bondsmen to direct the appellant to accept the amount of ₱1,000.00 deposited by the bondsmen on September 27, 1944, in satisfaction of the civil liability of said bondsmen. The appellant now contends that as the judgment for costs was for ₱1,967.00, the amount of ₱1,000.00 deposited by the bondsmen was not a full payment of the obligation, with the result that the appellant (creditors) could not be compelled to receive such partial payment, in accordance with Act 1169 of the Old Civil Code. This contention

s without merit, as it fails to take into account the fact that the iability of the bondsmen under their bond was limited to ₱1,000.00, he very amount deposited by them in court. Hence, as to the ɔondsmen, the amount of ₱1,000.00 represented the full payment ɔf their obligation, without prejudice of course to the right of the appellant to recover the unpaid balance from the appellee, the principal judgment debtor. The fact that the amount deposited was in Japanese military notes is of no account, since said notes were legal tender at the time. (NICOMEDES SULLER *vs.* PRIMITIVO S. PEREZ, G. R. No. L-4630, October 30, 1952.)

Administrative Law: Election Law; election contests; period allowed for intervention in election contests.

A third party defeated candidate can intervene in an election only within the same period allowed by law for the original protestant. Sec. 176 (g), Revised Election Law, applied. (FELIX T. CARO *vs.* SATURNINO GUMPAL Y OTROS, G. R. No. L-5422.)

Administrative Law; Election Law; motion of protest; essential allegations thereof.

Where a motion of protest contesting the election of a municipal mayor contains no allegation whatsoever that the irregularities mentioned in the motion of protest would, if corrected, ever result in the election of the protestant, the dismissal by the lower court of the motion of protest is not improper.[1] (ELEUTERIO DE LEON *vs.* NICANOR F. CRUZ, G. R. No. L-5579, December 29, 1952.)

Administrative Law; Election Law; estoppel in election cntests; Sec. 173 *Revised Election Code.*

FACTS: J.Y. appealed from decision of Court of First Instance

[1] In this case, the protestant contended that, inasmuch as the jurisdictional facts required by sec. 174 of the Revised Election Code are alleged in the motion of protest, the same cannot be dismissed, even if there is no allegation that the irregularities complained of would affect the result of the election. The protestant cited the case of Gallares *vs.* Caseñas, 48, Phil. 362, in support of the proposition that the trial court, instead of dismissing the motion of protest, should have allowed the protestant to amend it by alleging that the result would be changed by the irregularities complained of. The Supreme Court retorted, quoting the protestee, that in the case cited the protest contained an allegation "that had not said irregularities . . . been committed, the result of the elections would have been different, and the contestant would have been victorious with a large majority of votes over the contestee;" and this Court merely allowed the contestant to specify the number of votes which would result in favor of the protestant after the judicial counting.

declaring him ineligible to be voted as municipal mayor for Victoria, Tarlac on November 13, 1951 and enjoining him from assumng office. Court of First Instance found that Yap was less than 23 years of age at the time of his proclamation.

J.Y. claims that trial court erred in rejecting the defense of estoppel on the part of M.C. who knew of such ineligibility but did not question it before or during the election.

HELD: (1) Estoppel was not set up as a defense in the answer to the complaint. Where estoppel must be specially pleaded, the facts constituting such must be alleged, otherwise there can be no finding of estoppel. (2) Even if J.Y. had pleaded estoppel, plea would not hold, for the right to an elective local office can be contested only *after* proclamation. There is no authorized proceeding by which an ineligible candidate could be estopped from running for office. (MARIA J. CASTAÑEDA *vs.* JOSE V. YAP, G. R. No. L-5379, August 22, 1952.)

Public corporation: Power to tax; when possessed.

A municipal corporation unlike a sovereign state has no inherent power of taxation. The charter or statute must show intent to confer such power, otherwise the municipality cannot assume it. The power when granted is to be construed *strictissime juris,* any doubt being resolved against the municipality. C. A. No. 472 applied. (DR. ESTEBAN MEDINA ET ALS. *vs.* CITY OF BAGUIO, G. R. No. L-4060, August 29, 1952.)

Public corporations: interpretation of city ordinances imposing a license on auto dealers.

FACTS: The Municipal Board of Manila passed two ordinances, No. 2972 imposing a license on dealers of second-hand motor vehicles; and ordinance No. 2980, as amended by ordinance No. 3045, imposing a tax on dealers of cars without specifying whether old or new. Defendant City Treasurer first collected from plaintiff a license on each sale, both of first and second-hand cars. Then defendant collected a fee on the second-hand cars. Plaintiff paid both under protest and then brought action to recover. The lower court acquitted the defendant. Petitioner appealed.

HELD: Where the Municipal Board of Manila passed an ordinance imposing a license fee for the sale of vehicles and accessories

it refers to sales of vehicles and accessories both new and old, and where another ordinance was subsequently passed imposing a license fee for the sale of "new" vehicles and accessories the latter refers to sale of new vehicles and accessories because the insertion of the word "new" shows that the intent of the Municipal Board is to include new accessories and vehicles only. Otherwise, the taxpayer could justly assert and complain that the ordinances in question were designed to split his business into two or more units merely to derive more fees and taxes regardless of whether or not they are reasonable or fair.

The non-recovery of interest for taxes paid by a taxpayer refers to the sovereign government or State, such as the government of the Philippines. But a municipal corporation or mere governmental agency like the City of Manila may be made to pay interest. (MACONDRAY AND CO. *vs.* M. SARMIENTO, G. R. No. L-3739, January 28, 1952.)

Public corporations: Manila; power of City Mayor to investigate employees.

FACTS: From a judgment rendered by the Court of First Instance of Manila denying a petition for a writ of prohibition and mandamus, against the City Mayor, City Treasurer, and Assistant City Treasurer of Manila.

Petitioner is a Civil Service employee of the Market Division, City Treasurer's office of Manila and for irregularities allegedly committed in office was ordered by the City Treasurer to submit a written answer within 72 hours to a set of charges filed against him. He answered and nothing was heard about the case until six months later when respondent Mayor required him again to answer and explain the same charges ordering at the same time his suspension, pending the investigation of the charges. Nothing was done about the charges notwithstanding the lapse of six months. He then applied for reinstatement on the ground that the City Mayor has no power to investigate City Officers and employees following the ruling in the Francia-Subido case. Petition was denied by the Mayor on the ground that the ruling laid down in the Francia-Subido case did not apply. Meanwhile, the City Mayor ordered the petitioner to submit to an investigation from which petitioner appealed to the Secretary of Interior. But without awaiting the result thereof he filed this petition.

HELD: The ruling in the case of Francia v. Subido, 47 Off. Gaz. (No. 12, Supp.) 296, does not apply to petitioner, because unlike the City Auditor the petitioner is an employee appointed by the Mayor. In the Francia-Subido case, the respondent as chief of the Division of Investigation in the office of the City Mayor had no power to investigate an officer or employee not appointed by the Mayor and could not exercise the powers and duties vested in the City Fiscal. Here, the Mayor is clothed with the authority and power to investigate the petitioner who is an employee not appointed by the President of the Philippines.

The Charter of the City of Manila (R. A. No. 409) vests in the Mayor the power and duty "to see that executive officers and employees of the city properly discharge their respective duties" (Sec. 11 (e) and empowers him to suspend and remove, subject to appeal to the Secretary of Interior, any city officer or employee not appointed by the President of the Philippines and to recommend to the latter the suspension or removal of any city officer appointed by him (Sec. 22).

Section 38 of Rep. Act No. 409, which provides that the City Fiscal is empowered to investigate any neglect or misconduct in office brought to his knowledge and to report to the Mayor thereon, does not deprive the latter of the authority and power to conduct an investigation. The powers vested in the Mayor and the City Fiscal may co-exist. Judgment affirmed. (FELIPE B. PAGKANLUNGAN *vs. The Honorable* MANUEL DE LA FUENTE, *as Mayor, City of Manila; The Honorable* MARCELINO SARMIENTO, *as Treasurer, City of Manila; and The Honorable* AQUILINO CALIXTO, *as Chairman of the City Treasury Anti-Graft and Corruption Committee,* G. R. No. L-4364, October 7, 1952.)

Public corporations; suspension and removal of members of police force; applicability of R. A. No. 557 *to chartered cities.*

FACTS: Petition for mandamus to compel respondents to reinstate petitioner. Petitioner, a member of the Manila Police Department (MPD), was investigated by the summary court of the MPD upon complaint of two individuals. He was suspended and ultimately removed from the service by the respondent Mayor. The basis of the respondent Mayor in suspending and removing the petitioner is section 22 of R. A. No. 409, known as the Revised Charter of the City of Manila.

Petitioner contends that said section 22 was repealed by R. A. No. 557 in so far as the provision of section 22 is inconsistent with the provisions of R. A. No. 557.

HELD: We have no hesitancy in ruling in favor of petitioner's contention. The obvious innovations introduced by R. A. No. 557 lie in the fact that the Municipal Board has been granted the exclusive power to investigate, with the Mayor being conferred only the power to prefer charges against a member of the city police; that the duration of any suspension is limited to sixty days; that the Municipal Board, not the Mayor, decides the case; and that the decision may be appealed to the Commissioner of Civil Service, instead of to the Secretary of the Interior.

The procedure ordered by R. A. No. 557 not having been followed in the case of petitioner, his suspension and removal is of no force and effect. (ALFREDO S. MANUEL *vs.* HON. MANUEL DE LA FUENTE, ETC., G. R. No. L-5009, November 29, 1952.)

Citizenship; who are citizens of the Philippines at the time of the adoption of the Constitution.

FACTS: Respondent Uy was elected municipal mayor of M. Petitioner LT, a defeated candidate for the same office, brought the instant action of *quo warranto* on the ground that Uy is a Chinese national and, therefore, ineligible.

Uy was born out of wedlock in Lanao in 1912 of a Filipina mother and a Chinese father who were married on March, 1914. His father died in February, 1917 while Uy was still a minor. His mother died in 1949.

Uy never went to China, has voted in the previous elections held in this country, and has, on several occasions, been allowed to hold public offices.

HELD: Under the facts and circumstances of the case, Uy was declared a Filipino citizen and eligible to the office of municipal mayor.[1] (LAURETO A. TALAROC *vs.* ALEJANDRO D. UY, G. R. No. L-5397, September 26, 1952.)

[1] Six justices were of the opinion that a Filipino woman married to a Chinese *ipso facto* reacquired her Filipino citizenship upon her husband's demise and that, thereafter, her minor children's nationality automatically followed that of the mother's. Four of them went further to say that "this rule was not changed by the adoption of the *jus sanguinis* doctrine (by the Constitution) and was in force until C. A. No. 63 went into effect in 1936, by which the Legislature, for the first time, provided a method for regaining Philippine citizenship by Filipino women in such cases.

Citizenship: citizenship of child born out of wedlock of alien father and Filipino mother.

A child born out of wedlock of an alien father and a Filipino mother follows the citizenship of the mother; but if both marry later, the legitimated child follows the citizenship of the father. (KOK HUA *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5047, May 8, 1952.)

Naturalization: Procedure; court may accept evidence of already existing citizenship in the same naturalization proceedings.

Where the applicant's evidence proves that he already has the status of Filipino citizen so as to make it unnecessary to press further the petition for naturalization, the court may accept such evidence in the same proceedings for naturalization. (KOK HUA *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5047, May 8, 1952.)

Naturalization: Effect of inability to state principles underlying Constitution.

Inability to state, if asked, the principles underlying the Philippine Constitution, or the customs, tradition and ideals of the Filipino people, will not bar the applicant from acquiring Philippine citizenship. (KOK HUA *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5047, May 8, 1952.)

Naturalization: Section 2, par. 5, Revised Naturalization Law; Ability to speak and write English or Spanish; evidence thereof.

FACTS: Petition for naturalization. During the trial, the petitioner showed to the court that he knows how to speak and *read* Spanish intelligibly. But, because he was not asked to write in that language, the Government contends that petitioner, who has the burden of proof, failed to establish that he is "able to speak and *write* English or Spanish . . ."

HELD: It was proven that petitioner is able to speak and write the Bicol dialect. It is true that he was not able to actually demonstrate that he also knows how to *write* Spanish but it stands to

Four justices also held that "on the strength of the Roa doctrine, Uy undoubtedly was considered a full-pledged Philippine citizen on the date of the adoption of the Constitution, when *jus soli* had been the prevailing doctrine; that "it would neither be fair nor good policy to hold the respondent an alien after he had exercised the privileges of citizenship on the faith of legal principles that had the force of law."

reason that one who knows how to speak and read a language also knows how to write it, more so if he knows how to read and write. His failure to show that he is able to write Spanish is merely an oversight.[1] (ONG GUAN KIH *vs.* REP. OF THE PHIL., G. R. No. L-4180, September 30, 1952.)

Naturalization: Ability to speak and write English and Visayan; Communistic leaning; evidence thereof.

FACTS: After the hearing of the petition for naturalization of petitioner appellee, the provincial fiscal of Bohol opposed the petition and moved to present the testimony of engineer J.C. to the effect that the petitioner-appellee had a communistic tendency because of some words he had said. Motion denied. The appeal postulates two errors: (1) the finding that the applicant possesses all qualifications of law, and (2) denial to reopen the case for introduction of evidence to show that the applicant has Communistic leaning.

HELD: The government contends that the ability to speak does not carry with it the ability to write. But the applicant's ability to write can be inferred from the fact that he is a high school graduate from the San Carlos College of Cebu. It is a natural and logical deduction. As to the second error, granting that the applicant uttered the words attributed to him, the same would not warrant the conclusion that he has communistic leanings. (*In the matter of the petition for naturalization of* LAO CHIN KIENG *alias* QUIRINO LAO *vs.* THE REPUBLIC OF THE PHILIPPINES, G. R. No. L-3921, June 30, 1952.)

Naturalization; requirement as to enrollment of minor children of school age in prescribed schools; how established.

FACTS: Government appeals from lower court decision granting petition for naturalization of LM. Government contends that LM failed to enroll his minor son, Teofilo, in a school recognized by the Government where Philippine history, government and civics are taught or prescribed as part of the school curriculum. Government's claim is based on failure of petitioner to present certificate showing that said Teofilo has studied in a private school as alleged by petitioner.

HELD: The petition filed by LM states that Teofilo was enrolled

[1] Four justices dissented from this opinion.

in Sta. Theresa's College in Cebu City. On the witness stand LM testified to the same effect. The government did not dispute this testimony nor even cross-examine LM on this matter. Since his testimony was neither disputed nor overcome by other evidence, petitioner did not have to submit a certification from the school evidencing the enrollment of his son to corroborate his testimony. (LEON MIRANDA TIO LIOK *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-4545, October 29, 1952.)

Naturalization: Requirement as to enrollment of minor children of school age in prescribed schools; effect of absence of children from the Philippines.

FACTS: Appeal by the government from lower court decision granting petition for naturalization filed by C.P. The Government contends that petitioner has not enrolled all his minor children of school age in schools required by law. C.P. contends that sons in China could not return to the Philippines because of war and lack of transportation facilities. In motion for new trial, C.P. seeks to introduce evidence that children in China died while naturalization proceedings were pending.

HELD: In absence of explanation why minors were sent to China, it must be assumed they were sent there to study, since they were of school age. Besides, after the war in 1945, two or three years passed before Communists took over. Hence, C.P. could have brought his children back to P. I. Furthermore, he enrolled two other children in the Chinese Republican school in Manila, an exclusive Chinese school.

Petition for new trial must also be denied because the death of his children in China, even if proven, cannot excuse his non-compliance, while said children were still alive, with the law requiring that all the children of a petitioner for naturalization be sent to prescribed schools. (CHUA PIENG *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-4032, October 25, 1952.)

Naturalization: Effect of absence of applicant's children from Philippines.

FACTS: The Government appealed from a decree granting citizenship by naturalization to appellee, a Chinaman who arrived in the Philippines in 1909. Appellee has eight children, two of whom are in the Philippines enrolled in private schools approved and

recognized by the Government and not limited to any race or nationality but his other children are in China and have never been to the Philippines.

ISSUE: Whether or not applicant is exempt from making a declaration of intention to become a Filipino citizen, as required by section 6 of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535 and Republic Act No. 530.

HELD: An applicant for citizenship by naturalization who does not bring his children to the Philippines where they can study in Philippine schools is not exempt from filing a declaration of intention. The purpose behind this legal requirement is to forestall and prevent aliens and their minor children from becoming citizens of this country without knowing its institutions and the duties of citizenship that it entails. (SY KIAP, *Petitioner-Appellee, versus* REPUBLIC OF THE PHILIPPINES, *Oppositor-Appellant*, G. R. No. L-4404, August 21, 1952.)

Naturalization: Filing of Declaration of Intention is mandatory if applicant does not come under exceptions.

FACTS: This is a petition for naturalization wherein petitioner alleged that he has all the qualifications and none of the disqualifications required by the Revised Naturalization Law, which allegations he was able to prove to the satisfaction of the lower court. His landing certificate shows that petitioner landed in the Philippines on June 21, 1917 while petition was filed in 1946. Hence, the period of his residence in the Philippines prior to the filing of petition was only 29 years. Lower court granted the petition and with regard to the residence requirement stated that same has been substantially complied with because of the fact that the hearing of the case was held three years after the filing of the petition.

HELD: Section 5 of the Revised Naturalization Law which requires an applicant for Philippine citizenship to file a declaration of intention to become a citizen of the Philippines is mandatory and the only ones exempt from this requirement are (1) those born in the Philippines and have received their primary and secondary education in any of the schools provided by law and (2) those who have resided continuously in the Philippines for a period of 30 years or more before filing their application. Petitioner, not falling under these exemptions and having failed to file his declaration of intention, is not entitled to the grant of Philippine citizenship.

Petition dismissed without prejudice. (*In the matter of the petition of* CARLOS CHUA *to be admitted a citizen of the Philippines,* CARLOS CHUA *alias* CHUA GUI SENG, *Petitioner-Appellee, versus* REPUBLIC OF THE PHILIPPINES, *Oppositor-Appellant,* G. R. No. L-4112, August 28, 1952.)

Naturalization; Applicant who fails to file Declaration Intention may renew his petition.

FACTS: In applying for naturalization, petitioner failed to file declaration of intention as required by law. Solicitor General opposed the naturalization.

HELD: The law must be complied with. Petitioner does not fall within those exempted from filing declaration of intention. Petitioner may, however, renew his petition, complying with all legal requirements, as he is clearly entitled to naturalization. (*In the matter of the petition of* JESUS UY YAP *to be admitted a citizen of the Philippines,* G. R. No. L-4270, May 8, 1952.)

Naturalization: Effect of failure to file Declaration of Intention.

FACTS: The government appealed from a judgment of C.F.I., Capiz, approving the application for naturalization of F.Y. One of the grounds of the appeal is the failure of F.Y. to file a declaration of intention.

HELD: F.Y. had not completed a full 30-year continuous residence in the Philippines as to exempt him from filing a declaration of intention. His failure to file a declaration of intention to become a Filipino citizen is a ground for reversal of the judgment; in naturalization cases full compliance with the statutory requirements is necessary. (*In the matter of the naturalization of* FRANCISCO L. YU, FRANCISCO L. YU *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-3808, July 20, 1952.)

Naturalization; declaration of intention; exemption from filing of same; "thirty years continuous residence" construed; Section 6, C. A. No. 473, as amended.

FACTS: Petition for naturalization. Petitioner, DD, did not file his declaration of intention.

Petitioner was born in the Philippines in the year 1923, he went to China with his mother to study, and while he used to go back and forth from China to the Philippines during school vacations

he did not come back to live permanently here until the year 1937. This petition was filed in 1949. Is the petitioner deemed to have resided in the Philippines continuously for 30 years or more for the purpose of exempting him from filing his declaration of intention?

HELD: The evident reason of Section 6 of the Revised Naturalization Law in exempting applicants who have resided in the country continuously for 30 years or more before the filing of their application for Philippine citizenship, is because they have stayed in the country for so long a time that they can be presumed to have acquired the principles and imbibed the spirit of our institutions, and the community and the naturalization service have had full opportunity to observe their conduct. The law, therefore, contemplates actual and substantial residence within the Philippines, not legal residence alone, because only by actual and substantial residence may the said qualification be acquired by an applicant. (DOMINGO DY, *alias* WILLIAM DY CHINGO *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-4548, Nov. 26, 1952.)

Naturalization; probationary period retroactive effect of R. A. No. 530.

FACTS: Appeal from the decision of the CFI, the dispositive part of which reads: ". . . thirty days after this decision becomes final let the necessary naturalization certificate be issued . . . ." The appellant is the Government. The only contention raised is that the appealed decision, in so far as its execution is concerned, should be subject to Rep. Act No. 530 which provides that any decision granting the application for Philippine citizenship shall become executory only after two years from its promulgation.

HELD: Republic Act No. 530 took effect on June 16, 1950, but Sec. 4 thereof expressly makes the Act applicable to "cases pending in court and to those where the applicant has not yet taken the oath of citizenship." It appears that the appellee has not yet taken the oath of citizenship, wherefore, the appealed decision is modified in the sense that its execution shall be subject to the provisions of Republic Act No. 530. (LIM LIAN TENG *vs.* REP. OF THE PHIL., G. R. No. L-5661, prom. November 13, 1952.)