RECENT DECISIONS

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UNITED STATES OF AMERICA

COMMONWEALTH OF THE PHILIPPINES

Supreme Court of the Philippines

JOSE D. VILLENA,
Petitioner,

versus

THE SECRETARY OF THE INTERIOR, Respondent.

G. R. No. 46570.

Promulgated:
April 21, 1939.

LAUREL, J.:

This is an original action of prohibition with prayer for preliminary injunction against the Secretary of the Interior to restrain him and his agents from proceeding with the investigation of the herein petitioner, Jose D. Villena, mayor of Makati, Rizal, which was scheduled to take place on March 30, 1939, until this case is finally determined by this Court. The respondent was required to answer, but the petition for preliminary injunction was denied.

It appears that the Division of Investigation of the Department of Justice, upon the request of the Secretary of the Interior, conducted an inquiry into the conduct of the petitioner, as a result of which the latter was found to have committed bribery, extortion, malicious abuse of authority and unauthorized practice of the law profession. The respondent, therefore, on February 8, 1939, recommended to the President of the Philippines the suspension of the petitioner to prevent possible coercion of witnesses, which recommendation was granted, according to the answer of the Solicitor-General of March 20, 1939, verbally by the President on the same day. The Secretary of the Interior suspended the petitioner from office on February 9, 1939, and then and thereafter wired the Provincial Governor of Rizal with instruction that the petitioner be advised accordingly. On February 13, 1939, the respondent wrote the petitioner a letter, specifying the many charges against him and notifying him of the designation of Emiliano Anonas as special investigator to investigate the charges. The special investigator forthwith notified the petitioner that the formal investigation would be commenced on February 17, 1939, at 9:00 A. M., but due to several incidents and postponements, the same had to be set definitely for March 28, 1939. Hence, the petition for preliminary injunction referred to in the beginning of this opinion.

The petitioner contends in his petition:

(1) That the Secretary of the Interior has no jurisdiction or authority to suspend and much less to prefer by himself administrative charges against the respondent and decide also by himself the merits of the charges as the power to suspend municipal elective officials and to try and punish them for misconduct in office or dereliction of duty is lodged in some other agencies of the Government;

(2) That the acts of the respondent in suspending the petitioner from office and in referring by himself charges against him and in designating a special investigator to hear the charges specified in Exh. "A" are null and void for the following reasons:

(a) Because the Secretary of the Interior, by suspending the petitioner, has exercised control over local governments when that power has been taken away from the President of the Philippines by the Constitution for the power to control has been interpreted to include the power to abrogate and the power to abrogate means the power to usurp and the power to usurp necessarily includes the power to destroy;

(b) Because even if the respondent Secretary of the Interior has power of supervision over local governments, that power, according to the constitution, must be exercised in accordance with the provisions of law and the provisions of law governing trials of charges against

elective municipal officials are those contained in section 2188 of the Administrative Code as amended. In other words, the Secretary of the Interior must exercise his supervision over local governments, if he has that power under existing law, in accordance with section 2188 of the Administrative Code, as amended, as the latter provisions govern the procedure to be followed in suspending and punishing elective local officials while section 79 (C) of the Administrative Code is the general law which must yield to the special law;

(c) Because the respondent Secretary of the Interior is exercising an arbitrary power by converting himself into a complainant and at the same time judge of the charges he has preferred against the petitioner;

(d) Because the action of the respondent Secretary of the Interior is not based on any sworn statement of any private person or citizen of this government when section 2188 of the Administrative Code requires the complaint against elective municipal officials to be under oath in order to merit consideration by the authorities.

Petitioner prays this Honorable Court:

(a) To issue a writ of preliminary injunction against the respondent restraining him, his agents, attorneys and all persons acting by virtue of his authority from further proceeding against the petitioner until this case is finally determined by this Court;

(b) To declare, after the hearing of this petition, that the respondent is without authority or jurisdiction to suspend the petitioner from the office of mayor of Makati and to order his immediate reinstatement in office;

(c) To declare that the respondent has no authority to prefer charges against the petitioner and to investigate those charges for to grant him that power the respondent would be acting as prosecutor and judge of the case of his own creation.

Upon the other hand, the Solicitor-General contends in his answer:

1. That section 79 (C) in relation with section 86 of the Revised Administrative Code expressly empowers the respondent as Secretary of the Interior to "order the investigation of any act or conduct of any person in the service of any bureau or office under his department" and in connection therewith to "designate an official or person who shall conduct such investigation."; (Par. 4)

2. That although section 2188 of the Revised Administrative Code, invoked by the petitioner, empowers the provincial governor to "receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office," said section does not preclude the respondent as Secretary of the Intrior from exercising the power vested in him by section 79 (C) in relation with section 86 of the Revised Administrative Code; and that, moreover, said section 2188 must be read in relation with section 37 of Act 4007, known as the Reorganization Law of 1932; (Par. 4, b)

3. That at the commencement of the investigation the petitioner did not question the power or jurisdiction of the Department of the Interior to investigate the administrative charges against him but merely contended that the filing of said charges was not in accordance with law for the reason that they did not bear the oaths of the complainants; (Par. 5)

4. That the authority of a Department Head to order the investigation of any act or conduct of any person under his department necessarily carries with it by implication the authority to take such measures as he may deem necessary to accomplish the purpose of the investigation, such as by suspending the officer under investigation to prevent coercion of witnesses; and that, furthermore, the suspension from office of the herein petitioner by the respondent was authorized by the Chief Executive, who is empowered by section 64 (B) of the Administrative Code to remove officials from office; (Par. 7)

5. That the petition does not allege facts and circumstances that would warrant the granting of the writ of preliminary injunction under section 164 of the Code of Civil Procedure; (Par. 8)

6. That it is a well-settled rule "that courts of equity have no power to restrain public officers by injunction from performing any official act which they are by law required to perform, or acts which are not in excess of the authority and discretion reposed in them." (Par. 9)

The issues presented in this case may be reduced to an inquiry into the legal authority of the Secretary of the Interior (a) to order an investigation, by a special investigator appointed by him, of the charges of corruption and irregularity brought to his attention against the mayor of the municipality of Makati, province of Rizal, who is the petitioner herein, and (b) to decree the suspension of the said mayor pending the investigation of the charges.

Section 79 (C) of the Administrative Code provides as follows:

The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the Chief of said bureaus or offices when advisable in the public interest.

The Department Head may order the investigation of any act or conduct of any person in the service of any bureau or office under his department and in connection therewith may appoint a committee or designate an official or person who shall conduct such investigations, and such committee, official, or person may summon witness by *subpoena and subpoena duces tecum*, administer oath and take testimony relevant to the investigation.

The above section speaks, it is true, of direct control, direction, and supervision over bureaus and offices under the jurisdiction of the Secretary of the Interior, but this section should be interpreted in relation to section 86 of the same Code which grants to the Department of the Interior "executive supervision over the administration of provinces, municipalities, chartered cities and other local political subdivisions." In the case of Carmen Planas vs. Jose Gil, G. R. No. 46440, promulgated January 18, 1939, we observed that "Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon a knowledge of actual facts and conditions disclosed after careful study and investigation." The principle there enunciated is applicable with equal force to the present case.

We hold, therefore, that the Secretary of the Interior is invested with authority to order the investigation of the charges against the petitioner and to appoint a special investigator for that purpose.

As regards the challenged power of the Secretary of the Interior to decree the suspension of the herein petitioner pending an administrative investigation of the charges against him, the question, it may be admitted, is not free from difficulties. There is no clear and express grant of power to the Secretary to suspend a mayor of a municipality who is under investigation. On the contrary, the power appears lodged in the provincial governor by section 2188 of the Administrative Code which provides that "The Provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency he may reprimand the offender; and if a more severe punishment seems to be desirable he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected, the written charges against the officer shall be filed with the board within five days." The fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar power. For instance, counsel for the petitioner admitted in the oral argument that the President of the Philippines may himself suspend the petitioner from office in virtue of his greater power of removal (Sec. 2191, as amended, Administrative Code) to be exercised conformably to law. Indeed, if the President could, in the manner prescribed by law, remove a municipal official, it would be a legal incongruity if he were to be devoid of the lesser power of suspension. And the incongruity would be more patent if, possessed of the power both to suspend and to remove a provincial official (Sec. 2078, Administrative Code), the President were to be without the power to suspend a municipal official. Here is, perenthetically, an instance where, as counsel for petitioner admitted, the power to suspend a municipal official is not exclusive. Upon the other hand, it may be argued with some degree of plausibility that, if the Secretary of the Interior is, as we have hereinabove concluded, empowered to investigate the charges against the petitioner and to appoint a special investigator for that purpose, preventive suspension may be a means by which to carry into effect a fair and impartial investigation. This is a point, however, which, for the reason hereinafter indicated, we do not have to decide.

The Solicitor-General argues that section 37 of Act No. 4007, known as the

Reorganization Law of 1932, by providing, "the provisions of the existing law to the contrary notwithstanding," that "whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service", should be interpreted to concede to the Secretary of the Interior the power to suspend a mayor of a municipality. The argument is so generally sweeping that, unless distinctions are made, the effect would be the complete abrogation at will of the powers of provincial and municipal officials even in corporate affairs of local governments. Under the theory suggested by the Solicitor-General, the Secretary of the Interior could, as observed by able counsel for the petitioner, enter into a contract and sign a deed of conveyance of real property in behalf of a municipality against the opposition of the mayor thereof who is the local official authorized by law to do so (Sec. 2196, Revised Administrative Code), or in behalf of a province in lieu of the provincial governor thereof (Sec. 2068, Ibid), and otherwise exercise powers of corporate character mentioned in sections 2067 and 2175 of the Revised Administrative Code and which are lodged in the corresponding provincial and municipal officials. And if the power of suspension of the Secretary of the Interior is to be justified on the plea that the pretended power is governmental and not corporate, the result would be more disastrous. Then and thereunder, the Secretary of the Interior, in lieu of the mayor of the municipality, could directly veto municipal ordinance and resolutions under section 2229 of the Revised Administrative Code; he could, without any formality, elbow aside the municipal mayor and himself make appointments to all non-elective positions in the municipal service, under section 2199 of the Revised Administrative Code; he could, instead of the provincial governor, fill a temporary vacancy in any municipal office under subsection (a), section 2188, as amended, of the said Code; he could even directly appoint lieutenants of barrios and wrest the authority given by section 2218 of the Revised Administrative Code to a municipal councilor. Instances may be multiplied but it is unnecessary to go any farther. Prudence, then, dictates that we should hesitate to accept the suggestion urged upon us by the Solicitor-General, especially where we find the path indicated by him neither illumined by the light of our own experience nor cemented by the virtuality of legal principles but is, on the contrary, dimmed by the recognition however limited in our own Constitution of the right of local self-government and by the actual operation and enforcement of the laws governing provinces, chartered cities, municipalities and other political subdivisions. It is not any question of wisdom of legislation but the existence of any such destructive authority in the law invoked by the Government that we are called upon to pass and determine here.

In the deliberation of this case it has also been suggested that, admitting that the President of the Philippines is invested with the authority to suspend the petitioner, and it appearing that he had verbally approved or at least acquiesced in the action taken by the Secretary of the Interior, the suspension of the petitioner should be sustained on the principle of approval or ratification of the act of the Secretary of the Interior by the President of the Philippines. There is, to be sure, more weight in this argument than in the suggested generalization of section 37 of Act No. 4007. Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law (Par. 2, Sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (Par. 6, Sec. 11, idem). Upon the other hand, doubt is entertained by some Members of the Court whether the statement made by the Secretary to the President in the latter's behalf and by his authority that the President had no objection to the suspension of the petitioner could be accepted as an affirmative exercise of the power of suspension in this case, or that the verbal approval by the President of the suspension alleged in a pleading presented in this case by the Solicitor-General could be considered as a sufficient ratification in law.

After serious reflection, we have decided to sustain the contention of the Government in this case on the broad

proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, Section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (Bunkle v. United States (1887) 122 U. S. 543, 30 L. ed., 1167, 7 Sup. Ct. Rep. 1141; see also U. S. v. Elinson (1839) 16 Pet. 291, 10 L. ed. 968; Jones v. U. S. (1890), 137 U. S. 202, 34 L. ed. 691, 11 Sup. Ct. Rep. 80; Wolsey vs. Chapman (1880) 101 U. S. 755; 25 L. ed. 915; Wilcox v. Jackson (1836) 13 Pet. 498, 10 L. ed. 264.)

Fear is expressed by more than one Member of this Court that the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any Member of his Cabinet, however illegal, irregular or improper may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With reference to the Executive Department of the Government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The Executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Mr. Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's *alter ego* in the matters of that department where the President is required by law to exercise authority" (47 Sup. Ct. at 30; 272 U. S. at 133). Secretaries of departments, of course, exercise certain powers under the law but the law cannot impair or in any way affect the constitutional power of control and direction of the President. As a matter of executive policy, they may be granted departmental autonomy as to certain matters, but this is by mere concession of the Executive, in the absence of valid legislation in the particular field. If the President, then, is the authority in the Executive Department, he assumes the corresponding responsibility. The head of a department is a man of his confidence; he controls and directs his acts; he appoints him and can remove him at pleasure; he is the Executive, not any of his Secretaries. It is therefore logical that he, the President, should be answerable for the acts of administration of the entire Executive Department before his own conscience no less than before that undefined power of public opinion which, in the language of Daniel Webster, is the last repository of popular government. These are the necessary corollaries of the American presidential type of government, and if there is any defect, it is attributable to the system itself. We cannot modify the system unless we modify the Constitution, and we cannot modify the Constitution by any subtle process of judicial interpretation or construction.

The petition is hereby dismissed, with costs against the petitioner.

SO ORDERED.

(Sgd.) JOSE P. LAUREL

We CONCUR:

(Sgd.) RAMON AVANCEÑA,
" ANACLETO DIAZ
" PEDRO CONCEPCION

Digest of Current Cases

CIVIL PROCEDURE.—*Teodora Domingo and Mariano Santos, Petitioners vs. Margarita David, Respondents, G. R. Nos. 45705 and 45707, May 23, 1939.* This is a petition for a writ of *certiorari* to revoke a joint decision of the Court of Appeals in two civil cases which required the petitioners to pay the respondents a certain sum of money. In one of the said cases, the petitioners presented in the Court of First Instance a motion to vacate its judgment on the ground of fraud. The court denied the motion. The petitioners did not appeal. The same motion, however, was presented in the Court of Appeals. Again, it was denied on the ground that the failure to appeal from the order of the Court of First Instance had the effect of staying the order and defeating any further action to have the judgment annulled. This case together with another, also between the same parties, were assigned to the first division of the Court of Appeals which was composed of Justices Concepcion, Moran, Sison, Paras, and Albert. While these cases were pending for decision, the Court adopted a resolution changing the composition of its divisions. Pursuant to that resolution Justices Moran, Imperial, Bengson, Padilla, and Lopez Vito were designated to form the second division to which the said pending cases were reassigned for decision. The petitioners contended: (1) that the remedy granted by Section 113 of the Code of Civil Procedure is cumulative and may be invoked in the Appellate Court despite of the failure to appeal from the order of the Court of First Instance denying the motion to vacate, and (2) that the decision rendered by the second division was null and void because it was subscribed by justices who were not present at the hearing, except Justice Moran. *Held:* (1) The order denying the motion to vacate a judgment is subject to appeal. Fraud, although not mentioned in Section 113 of the Code of Civil Procedure, may vitiate a judgment, provided it is collateral to the cause of action upon which the judgment sought to be annulled was rendered. (2) The decision rendered by the second division is valid. Rule 31 of the Court of Appeals provides, "All questions submitted to the Court shall be deemed submitted for the consideration of each and every one of the Justices present at the time for such consideration although they have not taken part in the hearing. *Provided, however,* that only those Justices who have participated in the hearing of the case shall take part in its deliberation whenever the litigants or any of them shall so request in writing the Clerk of Court before the date of the hearing." According to this rule, it is *only* when the parties or any of them shall so request in writing the Clerk of Court before the hearing that Justices who did not participate in the hearing of a case shall not take part in its decision. The Rules of the Court of Appeals when not contrary to law have the force and effect of law and bind the litigants. (Per Imperial, J.; five Justices concurring; Moran, J., not taking part). *Briefed by* LUIS J. GONZAGA.

CONSTITUTIONAL LAW.—*John C. Robb and Herbert H. Hilscher, Petitioners-Appellants, vs. The People of the Philippines, Respondent-Appellee, G. R. No. 45866, June 12, 1939.* Petitioner-appellants were convicted of the violation of the Blue Sky Law (Act No. 2581) as they negotiated for the sale of speculative securities in the form of shares of stock after the license to sell such shares had been cancelled by the Insular Treasurer. Before the Court of Appeals, the constitutionality of the Blue Sky Law was raised for the first time, but the Court affirmed the judgment of conviction and inhibited itself from passing upon the constitutionality of the law as the question falls within the jurisdiction of the Supreme Court, and was not raised in the lower court and so could not therefore be raised for the first time on appeal. On certiorari, the decision was reviewed and affirmed. *Held:* The question of constitutionality must be raised at the earliest stage of the proceedings, and thus if it is not raised in the pleading, ordinarily it may not be raised at the trial and neither on appeal. The constitutional issue should be raised at the earliest opportunity, for such issue becomes *lis mota* on elevation of the case to the Supreme Court. Unless the constitutional issue is thus timely raised, it is deemed to have been waived, except in extra-ordinary or in exceptional cases where the Supreme Court believes the question to be involved upon the face of the record. Though the rule obtaining in some jurisdictions that the constitutionality of a statute on which a criminal prosecution is based may be raised

for the first time on appeal be applied, still the decision would be adverse to the appellants because the Blue Sky Law neither violates section 3, Jones Law and section 12 (1), Article VI of the Constitution which limit the bill to only one subject expressed in the title of the bill, nor delegates the legislative power to the Insular Treasurer. (Per Laurel, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring). *Briefed by* BIENVENIDO C. AMBION.

CONSTITUTIONAL LAW.—*The People of the Philippines, Plaintiff-Appellee, vs. Cayat, Accused-Appellant, G. R. No. 45987, May 5, 1939.* Prosecuted for violation of Act No. 1639, Cayat was found guilty of the crime charged. Act No. 1639 makes it unlawful for any member of a non-Christian tribe to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors. Appellant challenges the constitutionality of the Act on the ground that it is discriminatory and a denial of the equal protection of the laws, violative of the due process clause, and an improper exercise of the police power. *Held:* That the Act is constitutional. The issues raised were decided in the light of the policy of the government towards the non-Christian tribes consistently followed from the Spanish times to the present. As early as 1551, the Spanish government had assumed an unvarying solicitious attitude towards these inhabitants, and in the different laws of the Indies, their concentration in communities had been persistently attempted with the end in view of according them the "spiritual and temporal benefits" of civilized life. This policy had not been deflected from during the American period. "Placed in the alternative of either letting them alone or guiding them in the path of civilization," the present Government "has chosen to adopt the latter measure as one more in accord with humanity and with the national conscience." To this end, their homes have been brought in contact with civilized communities thru a network of highways and communications; the benefits of public education have been extended to them; and more lately, even the right of suffrage. The guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification and the classification, to be reasonable, must rest on substantial distinctions, must be germane to the purposes of the law, must not be limited to existing conditions only, and must apply equally to all members of the same class. Act No. 1639 satisfies these requirements. The classification is not based upon "accident of birth or parentage," but upon the degree of civilization and culture. The exceptional cases of certain members thereof who have reached a position of cultural equality with their Christian brothers, cannot affect the reasonableness of the classification thus established. It is germane to the purposes of the law as the prohibition is unquestionably designed to insure peace and order in and among the non-Christian tribes. The law is intended to apply for all times as long as those conditions attendant at the time of its enactment exist. That it may be unfair in its operation against a certain number of non-Christians by reason of their degree of culture, is not an argument against the equality of its application. Appellant contents that that provision empowering any police officer or other duly authorized agent of the government to seize and forthwith destroy any prohibited liquor found unlawfully in the possession of a non-Christian is violative of the due process clause. But this provision is not involved in the case at bar. Neither is the Act an improper exercise of the police power. The Act is designed to promote peace and order in the non-Christian tribes so as to remove all obstacles to their moral and intellectual growth and, eventually to hasten their equalization and unification with the rest of their Christian brothers. But whether conditions have so changed so as to warrant a partial or complete abrogation of the law, is a matter which rests exclusively within the prerogative of the National Assembly to determine. And, if in the application of the law, the educated non-Christians shall incidentally suffer, the justification still exists in the all-comprehending principle of *salus populi suprema est lex.* (Per Moran, J.: Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.) *Briefed by* GUILLERMO P. VILLASOR.

CONTRACTS.—*Geronimo Santiago, Plaintiff-Appellee vs. Fabian Millar, as Manager of the Philippine Charity Sweepstakes, Defendant-Appellant, G. R. No. 45993, May 11, 1939.* The plaintiff owned two units of a ticket which won a prize. Before the prize was collected the ticket was lost. The plaintiff sued to collect the prize. The defendant contended that the surrender of the ticket was a condition precedent to the payment of its prize. *Held:* The ticket bears the

notation: "prizes of tickets sold locally will be paid to the holder of ticket upon surrender of same." This means that to collect the prize the ticket must be presented. The contract is aleatory in nature, and the contracting parties may establish any agreements, terms, and conditions they may deem advisable, provided they are not contrary to law, morals, or public order. A contract has the force of law between the parties and must be performed in accordance with its stipulations. (Per Laurel, J.; seven Justices concurring; Villa-Real, J., dissenting). *Briefed by* LUIS J. GONZAGA.

CONTRACTS.—*Edward J. Nell, Plaintiff-Appellee vs. Esteban de la Rama, Defendant-Appellant, G. R. No. 45523, May 12, 1939.* Action to recover the principal and interest due on a promissory note involving a contract of sale by plaintiff of a sugar mill and its accessories to defendant, who alleges that the interest has been condoned, relying on a deed of mortgage before the signature of which the defendant asked for the condonation of said interest which was refused, as well as any modification as to the date of payment. Defendant files counterclaim for damages because of delay in delivery. *Held:* Refusal to grant modification of contract necessarily precludes the idea of condonation of interest. Defendant's counterclaim for damages because of delay is unfounded because the contract expressed that time was not of the essence of the agreement, and, further that the vendor shall not be liable for any delay or other failure arising from force majeure. Judgment affirmed. (Per Moran, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.) *Briefed by* FRINE C. ASPRER.

DAMAGES.—*The People of the Philippines, Plaintiff-Appellee vs. Casimiro Macaso, Accused, and Justa Castro, Defendant-Appellant, G. R. No. 45222, May 9, 1939.* Casimiro Macaso was convicted of homicide and was sentenced to indemnify the heirs of the deceased, one of whom is the defendant-appellant, and to pay the costs of the proceedings. A sale at public auction was ordered by the Court, and by virtue of said order the sheriff attached a parcel of land belonging to Casimiro Macaso, which land was sold to the government, being the highest bidder. Appellant's representative appeared at the sale, and bid the value of the indemnification which was adjudicated to the heirs of the deceased Andres Julian, but the sheriff did not accept the bid unless the claim of the government for the costs of the proceedings and of the sale be paid first. *Held:* Under Art. 38 of the Revised Penal Code, the indemnification for consequential damages is preferred over the costs of the proceedings. Therefore when the property of the offender is not sufficient for the payment of both Claims, the indemnification for consequential damages must be paid before the costs. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, Moran, JJ., concurring.) *Briefed by* ERNESTO P. VALENCIA.

DOUBLE JEOPARDY.—*People of the Philippines, Plaintiff-Appellant vs. Ti Yek Juat alias Kim Seng, Defendant-Appellee, G. R. No. 45855, May 10, 1939.* A criminal action for theft was instituted against the accused. His bail bond was confiscated on account of his non-appearance at the arraignment. After the execution of the bail bond the case was dismissed provisionally and the accused has not been arrested since then. On May 5, 1937, the present case for the same crime was filed against him. Notwithstanding this fact, the first prosecution was revived on May 7, 1937 upon motion of the City Fiscal, and on June 14, 1937 the accused pleaded not guilty to it. However, on the same date the City Fiscal moved for its dismissal because of the existence of the present prosecution to which Ti Yek Juat on June 16, 1937 pleaded not guilty. As his defense, the accused alleged double jeopardy. *Held:* A defendant in a criminal prosecution is in legal jeopardy when placed on trial under the following conditions: (1) In a court of competent jurisdiction, (2) Upon a valid complaint or information, (3) After he has been arraigned, and (4) After he has pleaded to the complaint or information. In the light of this doctrine, the accused was in jeopardy when he pleaded not guilty to the first prosecution and he was in jeopardy for the second time when he entered the same plea in the present case. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concurring.)—*Briefed by* ALEJANDRO D. YANGO.

DOUBLE JEOPARDY.—*The People of the Philippines, Plaintiff-Appellant, vs. Sotero Peji Bautista, Defendant-Appellee, G. R. No. 45739, April 25, 1939.* —Accused was charged of false testimony against a defendant. After the preliminary investigation, the justice of the peace elevated the case to the Court of First Instance because he had no jurisdiction. The fiscal filed a complaint for

false testimony and perjury in solemn affirmation. Accused objected to the difference in the crime imputed to him. On indorsement of the case to him, the justice of the peace of the capital of the province found no reasonable grounds to believe the commission of false testimony and perjury. The judge of the Court of First Instance disposed of the case reserving to the fiscal the right to present a new complaint. The fiscal petitioned the judge himself to perform the preliminary investigation when the new complaint was filed. This was done. During the trial the accused raised two questions: 1—That he was not given a preliminary investigation; 2—That he was placed twice in jeopardy. *Held:* The proceeding performed by the judge himself on the petition of the fiscal is a preliminary investigation. There is no double jeopardy, for the preliminary investigation by the justice of the peace of Kawit was for false testimony against a defendant, while that by the justice of the peace of the capital to whom the investigation was indorsed, is for false testimony and perjury in solemn affirmation. Unless the previous sentence is absolute and condemnatory, one cannot be considered in double jeopardy. A preliminary investigation, however, is not a judgment nor a part of the same. Case remanded to trial court. (Per Diaz, J.; Avanceña, C. J., Imperial, Villa-Real, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* FRINÉ C. ASPRER.

EXECUTION OF BONDS.—*Heraclio Abistado, et al., Petitioner vs. The China Surety and Insurance Co., Inc., and Jose Rubio, Respondents, G. R. No. 45709, May 6, 1939.* In an action brought by petitioner against Jose Rubio for the recovery of ₱5,000, a preliminary attachment was levied on the property of the latter which attachment was later released by virtue of an obligation executed by Jose Rubio together with the China Insurance and Surety Co. As the amount of the bond was insufficient to meet his claim, petitioner herein filed a motion for another preliminary attachment, but before the property of Rubio could be levied upon, another bond was filed by the China Insurance and Surety Co. After an adverse judgment condemning him to pay the plaintiff the sum of ₱5,000, defendant wrote a letter to the sheriff stating his inability to pay, but offering at the same time the property which had been released from the preliminary attachment. The offer was refused, for on the same day that the offer was made, the judge had ordered the execution of the two bonds filed by the China Surety Co. The Surety Co., on its part, made the same offer in a formal motion presented to the judge but it was also rejected. On appeal, the Court of Appeals annulled the order of execution on the two bonds. Hence this petition for certiorari. *Held:* (1) The order of execution of the first bond is null. The purpose of the bond is to guaranty the execution of the judgment by the return to the sheriff of the property released from attachment. Since the defendant as well as the Surety Co. have offered the return of said released property to the sheriff, there exists no justification whatsoever for the order of the execution of the bond." An offer in writing to pay a particular sum of money or *to deliver* a written instrument or *specific personal property* is, if rejected, equivalent *to the equal production or tender* of the money, instrument, or property." (Sec. 347 C. C. P.) (2) As regards the second bond, the order of execution is also null on the ground that the bond itself is null. The bond was given before any property of the defendant was levied upon and there having been no attachment on the property of the defendant when the bond was filed, there existed no obligation whatsoever to be guaranteed by the bond. Judgment affirmed. (Per Concepcion, J., Avanceña, Villa-Real, Diaz, Imperial, Laurel, JJ., concurring; Moran, J. did not take part.)—*Briefed by* HERMINIA YATCO.

MONEYED CLAIMS.—*Walter Bull, Plaintiff-Appellant vs. Alfredo L. Yatco, in his capacity as Collector of Internal Revenue, Defendant-Appellee, G. R. No. 45322, May 4, 1939.* This is an action filed in the court of first instance by the plaintiff against the defendant Yatco, in his capacity as Collector of Internal Revenue, demanding from the latter the payment of a reward for the information he had furnished, leading to the discovery of false statements in the declaration of sales made by certain merchants to the Simplex Trading Co., Inc. The claim is based upon section 2735 of the Revised Administrative Code, to wit: "Any person, except a public official who voluntarily gives definite information leading to the discovery of any fraud in the payment of any tax for which the law provides penalties, shall receive a reward." The trial court held for the defendant. Hence, this appeal. *Held:* The Philippine Legislature and the Constitution of the Commonwealth have prescribed the procedure which shall be followed in

cases of moneyed claims before the government may be sued. Before a private person may sue the Government before a court of record concerning moneyed claims which involve liability arising from contracts, express or implied, it is essential to show (1) that he has presented his claim to the Auditor General and (2) that his claim has been acted upon unfavorably. Inasmuch as the plaintiff did not appeal to the Auditor General from the ruling of the Collector denying his claim for the payment of the reward as an informer, the Court of First Instance has therefore no jurisdiction over the case. Judgment affirmed. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Concepcion, Laurel, Moran, JJ.. concurring; Santos, J., did not take part.) —*Briefed by* GELASIO M. IBARRA

PARDON.—*People of the Philippines vs. Teodorico Martin, Accused-Appellant, G. R. No. 46432, May 17, 1939.* The appellant, Teodorico Martin, was convicted in the Court of First Instance of Cavite of the crime of rape with 14 years, 8 months and 1 day of reclusion temporal. After serving his sentence for 8 years, 1 month and 17 days, he was pardoned on condition that he be not convicted of another offense. Subsequently, he was convicted in the province of Rizal of another crime. He was therefore accused of violating the condition of his pardon, and condemned to 6 years, 6 months and 14 days imprisonment. The defendant made out the following defenses: (1) that the Court of First Instance of Rizal has no jurisdiction, and (2) that the right of action has prescribed. *Held:* Although the Court of First Instance of Cavite is the one which imposed the sentence from which the defendant was thereafter pardoned conditionally, the infraction of this condition took place in Rizal. This proceeding is not the continuation nor part of the former one held in Cavite. It is a new proceeding, complete and independent from the other. This refers to other posterior acts that the law punishes as a distinct crime and its punishment is not necessarily the penalty remitted by the pardon. Citing Article 159 of the Revised Penal Code and Article 1 paragraph (b) of Act No. 3585, the defendant claims that the right of action has prescribed because 4 years has elapsed. The contention is without merit. In the first place, Act No. 3585 refers to "special acts" and article 159 of the Revised Penal Code is not a special act. And granting that it is, the last sentence of the latter article removes all doubt. It provides "However, if the penalty remitted by the granting of such pardon be higher than 6 years, the convict shall suffer the unexpired portion of his original sentence." In the case at bar, the remitted penalty is more than 6 years, and, therefore, the aforementioned provision governs. Under paragraph (c) Article 1 of Act 3585, the right of action prescribes in 12 years. Under article 90, such prescribes in 10 years. Therefore, whether under Act 3585 or the Revised Penal Code, the right of action in the case at bar has not as yet prescribed. Judgment affirmed. (Per Avanceña, C. J.; Villa-Real, Imperial, Diaz, Laurel, Concepcion, Moran, JJ., concurring.)—*Briefed by* EUGENIO R. FILIO.

PLEADING.—*Surigao Mine Exploration Co., Inc., Plaintiff-Appellant, vs. C. Harris, Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., Otto Weber et al., Defendants-Appellees, G. R. No. 45543, May 17, 1939.* On October 24, 1935, the plaintiff corporation filed an action to annul the registration of the forty-three lode mining claims of the defendants, claiming priority of location by its predecessors in interest. Several amended complaints were made, the last of which was presented on June 11, 1936. As shown by its muniments of title, the plaintiff's purchases of the claims in question were made subsequent to the institution of the original complaint. Defendants moved for dismissal of the action since the plaintiff-corporation filed the complaint when its right of action has not yet accrued. Motion was granted and judgment was affirmed on appeal. *Held:* In this jurisdiction, except as otherwise provided by law, an action commenced before the cause of action has accrued is premature and should therefore be dismissed if an objection on such ground is properly interposed. The right to amend a pleading is not an absolute and unconditional right as it is allowed only under a sound judicial discretion. The cause of action which had not existed when the action was instituted but which accrued subsequently, could not, by an amended pleading, be made the basis of the original complaint. The cause of action must exist at the time the action is commenced. (Per Laurel, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* BIENVENIDO C. AMBION.

REGISTRATION OF LAND.—*The Director of Lands, Applicant vs. Bartola Acosta, et al., Claimants: Jose J. Rivera, Claimant-Appellee; Martin Gonzales, Claimant-Appellant, G. R. No. 45501, May 3, 1939.* Martin Gonzales, claimant-appellant, appeals from an order of the cadastral court dismissing his petition to set aside the decision which adjudicated lot No. 1125 to Jose Rivera claimant-appellee on the ground of fraud. The controverted lot was originally claimed by both Rivera and Gonzales. These conflicting claims were ended through arbitration by which Rivera was to pay Gonzales ₱3,750.00 and the property was to be registered in Rivera's name. Accordingly the court adjudicated lot 1125 to Rivera. In the petition for revision filed by the claimant-appellant, it is represented that lot 1125 includes some 15,116 square meters which pertained to lot 632 belonging to Gonzales. It is also alleged by the appellant that the appellee in his application for registration stated that he had acquired lot 1125 by purchase, whereas he testified at the hearing that he had acquired it by donation inter-vivos from his parents, and this constitutes fraud within the purview of Section 38 of the Land Registration Act. *Held:* (1) As the adjudication of lot 1125 was a result of the arbitration, Gonzales cannot now be heard to complain against it. If he had failed to ascertain the true area of this lot and also defaulted at the hearing with reference thereto, it is his own fault. (2) Mere variance between a statement in the application and the testimony of the applicant as to the origin of the property sought to be registered is not necessarily fraud within the purview of Section 38 of the Land Registration Act. Judgment affirmed. (Per Laurel, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, Moran, JJ., concurring.)—*Briefed by* ALFREDO LUZ BAUTISTA.

TAXATION.—*Municipality of Victorias, Plaintiff-Appellant vs. Victorias Milling Co., Inc., Defendant-Appellee, G. R. No. 45524, May 4, 1939.* A municipal ordinance provides that all persons and entities establishing a private market within the jurisdiction of the municipality must first secure the authorization of the municipal president and pay to the municipality a certain tax. Without complying with such ordinance, the defendant corporation erected a private market within the vicinity of its central for the use of its own employees and laborers. In an action brought by the municipality based on the ordinance, the defendant corporation contended (1) that the ordinance is *ultra vires* and (2) that it cannot be compelled to pay the tax provided for in the ordinance. *Held:* (1) The plaintiff municipality, like all other municipalities in the Philippines, has the lawful power to authorize and regulate the establishment and operation of public and private markets. (2) Act No. 3422, as amended by Act No. 3790, provides that "a municipal council shall have authority to impose license taxes upon persons engaged in any occupation or business . . ." *Occupation or business* means any lucrative enterprise or activity. According to the stipulation of facts of the parties, the defendant corporation has never collected any compensation or rent for the use of its market from persons who sell or buy articles or merchandise therein. Therefore, the defendant cannot be said to have "engaged in any occupation or business." There is no reason why it should be compelled to pay the tax provided for in the ordinance. (Per Concepcion, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* JUAN E. JACINTO.

TESTATE PROCEEDINGS.—*Testate of the deceased Samuel Murray, Margaret Stewart Mitchell McMaster, Petitioner-Appellee vs. Henry Reissmann and Co., Oppositor-Appellant, G. R. No. 45842, May 23, 1939.* The court of first instance approved and legalized the will of the deceased Samuel Murray and declared Henry Reissmann and Co. as the only legatee. More than one year and six months after the approval and legalization of the said will, the petitioner filed an application for its reopening. The court acceded to the reopening of the proceedings. Because of abandonment on the part of the petitioner, the court ordered that the proceedings be definitely closed. An application for reopening was again filed after more than one year and three months from this order. The court again acceded and rendered the judgment appealed from. *Held:* It does not appear that the petitioner was notified of the order of the court approving and legalizing the will of the deceased Samuel Murray. But whether she was notified or not is unimportant because testate or intestate proceedings have the character of proceedings in rem. The publication of the application for approval and legalization of a will and of the date of its hearing in the newspapers, in the form prescribed by law, is a notice to the whole world of the existence of the proceedings and of the date and hour of

its hearing. The publication of the actuations in the testate proceedings of the deceased Samuel Murray gives to the petitioner a presumption that she was notified. According to the provision of section 281 of the Code of Civil Procedure as amended by section 2 of Act No. 3403, the petitioner can appeal within twenty-five days if she does not agree with the order of the court. After the lapse of twenty-five days, the petitioner may still revoke the order of the court, provided that the application is presented within six months after the order. The application for reopening was made outside of the six months period. The court was without jurisdiction to continue the proceedings so that the judgment appealed from is without basis. Judgment reversed. (Per Villa-Real, J.; Avanceña, C. J., Diaz, Laurel, Concepcion, Moran. JJ., concurring; Imperial, J., did not take part.)—*Briefed by* VICENTE Q. QUINTILLAN.

TORRENS TITLE.—*The Roman Catholic Archbishop of Manila, Applicant and Amicus Curiae; The Municipal Council of Parañaque, Rizal, Petitioner-Appellant vs. "El Monte de Piedad y Caja de Ahorros de Manila," Padres Redentoristas," The Asiatic Petroleum Co. (P. I.), Ltd., Respondents-Appellee, G. R. No. 45496, May 5, 1939.* On September 30, 1911, the Roman Catholic Archbishop of Manila filed with the then Court of Land Registration an application for the registration of parcels of land, alleging that the property had been acquired thru donation for religious purposes. The court rendered judgment granting the application, and the corresponding certificate of title was issued. Thereafter, the property was transferred to the "El Monte de Piedad y Caja de Ahorros de Manila" and to the Asiatic Petroleum Co. (P. I.) Ltd. Twenty-four years after the issuance of the original certificate of title in favor of the applicant, the petitioner-appellant Municipality of Parañaque, Rizal, filed a petition seeking a declaration of escheat in its favor on the property in question. From an order of the Court denying the petition, the Municipality appealed, alleging: (1) That the property had not been really donated by Doña Ana Maria de Araujo to the Roman Catholic Archbishop of Manila, but that she merely constituted on November 13, 1677 a chaplaincy under Bachiller Felipe de los Reyes, and as he died without heirs the property should therefore escheat in favor of the Municipality, and (2) That the transfers to the various entities are null and void. *Held:* The right to escheat claimed by the municipality existed long prior to the registration proceedings instituted by the Roman Catholic Archbishop of Manila, but as the same has not been asserted in the said proceedings, it is deemed to have been completely waived. Under the Torrens system of registration, claims and liens of whatever character, except those mentioned by law, existing against the land prior to the issuance of the certificate of title are cut off by such certificate if not noted thereon and the certificate so issued binds the whole world including the Government. (3) The nullity of such transfers cannot be determined in the registration proceedings, but in a separate action. Petition denied. (Per Moran, J.; Avanceña, C.. Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* AMORSOLO V. MENDOZA.

TREATIES.—*Tomas Ocejo y Samperio, Petitioner-Appellant vs. Consul General of Spain, Movant-Appellee, G. R. No. 45449, April 22, 1939.* The appellant, claiming to be one of the principal creditors of the deceased Jose Aguilar y Aules, petitioned the court of first instance that he be appointed administrator of the estate of the deceased. The petition was granted. Thereafter, the Consul General of Spain moved to vacate the order appointing the appellant as administrator, alleging that the deceased was a Spanish subject at the time of his death, and prayed that he instead be appointed special administrator pursuant to the Treaty of Friendship and General Relations between Spain and the United States in 1902. He also prayed that the estate of the deceased, not exceeding ₱6,000, be summarily distributed in accordance with law. The court granted the motion of the Consul General. From this order the petitioner appealed. Three important questions were raised. (1)—Was the deceased a Spanish subject at the time of his death? (2)—Is the Treaty of Friendship and General Relations applicable to the Philippines? (3)—Has the Consul General a better right than the appellant to be appointed as special administrator? *Held:* Even admitting that the deceased had been residing in the Philippines up to the time of his death, his having inscribed himself in the Spanish Consulate General as a Spanish subject was a sufficient declaration of his intention to preserve his allegiance to the Crown of Spain. Article XXVI of the aforementioned treaty states in part, "in case of the death of a subject or citizen of one of the parties in the territories or

dominions of the other ." The phrase "territories or dominions" includes the Philippines for, pending withdrawal of the sovereignty of the United States, the Philippines even in its self-governing status continues to be subject to the sovereignty of the United States. Article XXVII of the treaty confers upon the Consul General the right to represent the absent and unknown relatives of the deceased, hence he must be construed to be included within the first place in the order of preference provided for in Section 642, Code of Civil Procedure. At all events, the court was not bound to follow said order of preference. Since the estate of the deceased does not exceed ₱6,000, the order for its summary settlement was proper. Judgment affirmed. (Per Moran, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* CICERON SEVERINO.

TRIAL PRACTICE.—*Feliciano Sanchez, Petitioner-Appellant vs. Francisco Zulueta, Judge of the Court of First Instance of Cavite, Josefa Diego, and Mario Sanchez, assisted by his mother, Josefa Diego, as guardian ad litem, Respondents-Appellees, G. R. No. 45616, May 16, 1939.* Josefa Diego and Mario Sanchez were the plaintiffs and Feliciano Sanchez was the defendant in an action for support. The defendant interposed as a defense adultery on the part of Josefa Diego, his wife, with one Macario Sanchez. One month after the filing of the action, the plaintiffs filed a petition for support *pendente lite*, to which the defendant objected on the ground that Mario Sanchez is not his legitimate son but the adulterous son of Josefa Diego and Macario Sanchez. Denying the defendant an opportunity to introduce evidence in support of his objection to the petition, the court granted the petition for support *pendente lite*. In view of these facts, the defendant filed a petition for a writ of prohibition in the Court of Appeals against the Judge of the Court of First Instance and the plaintiffs. The Court of Appeals denied the remedy. Hence, this petition for a writ of certiorari in the Supreme Court. *Held:* The trial court erred in not permitting the petitioner to present his evidence the object of which was to support his opposition to the petition for support *pendente lite*. Adultery on the part of the wife is a valid defense in an action for alimony. Consequently, as against the son, it is also a defense that he is the fruit of an adulterous relation, and in such case he is not entitled to claim for any subsistence. But it is not sufficient to allege this defense. It is necessary to prove it. Hence, nothing will be attained if such defense is not permitted to be proven. If the defendant alleges a valid defense which should be proven and asks for an opportunity to present evidence to support it, it is error to deny him such an opportunity. (Per Avanceña, C. J.; Villa-Real, Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* JUAN E. JACINTO.
