RECENT DECISIONS

Digest of Current Cases

CIVIL PROCEDURE (Exemption from Fees in Minor Claims).—*Jesus Tomas Cabañgis, Petitioner vs. Judge Natividad Almeda Lopez, Respondent, G. R. No. 47685, September 20, 1940.* Petitioner seeks to compel respondent to entertain in her Court, without charging any court fees, a civil action instituted by the former. The amount involved is ₱17.50. Petitioner claims that Sec. 17, Rule 4 of the Rules of Court provides that in actions involving not more than ₱20, "no fees shall be charged or costs allowed." Petitioner argues that this provision applies regardless of plaintiff's ability to pay. *Held:* (1) The exemption from the payment of court fees as provided in Sec. 17 of Rule 4 applies only to paupers. (2) This provision does not violate the equal protection clause of the Constitution. It merely establishes a classification and applies equally to all persons in the same class and situation. (Per Imperial, J.; Avanceña, C. J., Diaz and Horrilleno, JJ., concurring) *Moran, J., concurring:* The general purpose underlying the minor claims procedure is that the poor should be afforded an opportunity to avail themselves of the services of the courts of justice even on matters that concern their smallest needs, and this is *one of the important* policies of our Constitution.—*Briefed by* JOAQUIN V. GONZALEZ.

CONSTITUTIONAL LAW (C. A. 103).—*Antamok Goldfields Mining Co., Petitioner vs. Court of Industrial Relations and National Labor Union, Defendants. G. R. No. 46892, June 28, 1940.*—On December, 1938, the National Labor Union representing the workers and employees of the petitioners, presented to the latter a petition asking for 21 concessions in favor of its members. The officers of the company called the disgruntled workers and employees to a meeting and there told them that some of their demands were granted while the others were set aside because they were unreasonable. On the night of the same day, they declared a strike in protest against the said decision. The petitioner gave notice and account of it to the Department of Labor and asked for its immediate intervention to quickly facilitate its solution. The Department appointed a special investigator and the public defender of the province to intervene and provide a means of solving the strike. A conference was held between the representatives of the petitioner and the defendant as a result of which an agreement was made, the company permitting the strikers to return to work under certain conditions. The company, however, performed acts subsequent to the agreement which incurred the disfavor of the workers and, in spite of the agreement, they again declared another strike. Upon the intervention of the special investigator, the workers returned to work, their 21 demands having been endorsed by the Department to the Court of Industrial Relations. While the case was pending, the National Labor Union presented a motion to the court alleging that the petitioner dismissed a foreman and a number of workers of the union without the consent of the court and without just cause at all, and

therefore, should be declared in contempt. The court appointed a special investigator to find out the actual conditions in the mines to supplant whatever findings of facts may be made during the trial. On the basis of these findings the court declared that the discharges and indefinite suspensions alleged in the motion were made by the respondent without just cause and without first securing the consent of the Court in violation of the order of January 23, 1939. The court ordered the petitioner to put back to work the employees and workers discharged and to pay them their corresponding salaries during the time that they were out of work. The petitioner presented a motion for reconsideration of the decision which was denied. Against this denial and the original decision made, an appeal by way of a petition for a writ of certiorari was made in which petitioner alleged that C. A. 103 as amended by C. A. 254 and 355 is unconstitutional (1) because it violates the principle of separation of powers, (2) because the judicial powers conferred on the Court of Industrial Relations considered separately, are arbitrary and unreasonable and permit the deprivation of liberty and property without due process of law, (3) and even granting that in its totality it is constitutional, that portion of the law which empowers the court to adopt its own rules of procedure is null and void as it violates Article VIII of the Constitution which obligates the court to observe the general rules of procedure applicable to ordinary courts of justice. *Held:* C. A. 103 confers on the Court of Industrial Relations full discretional powers to resolve and decide agrarian and industrial disputes in the manner it may deem just and equitable without taking into account legal technicalities and formalities. Such power conceded is judicial and not legislative and therefore, there could not be any violation of the principle of separation of powers, nor of the prohibition to the delegation of legislative powers, nor of the equal protection clause before the law. As had been said in the case of Cincinnati W. & R. R. Co. vs. Com'rs. of Clinton County, 1 Ohio St., 88, cited in the case of Rubi et al vs. Provincial Board of Mindoro, 38 Phil. 675, "the true distinction is between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter, no valid objection can be made". The principle laid down in the case of Schechter vs. U.S., 4961 declaring the N.R.A. unconstitutional is not applicable to the present issue inasmuch as there is a big difference between that case and the one we are considering. The N.R.A. instead of creating a Court of Justice, created a board with legislative powers, and authorized the President of the U.S. to promulgate codes that prescribe rules of procedure with the purpose of realizing the ends of the law. A simple reading of article 20 of the Act will show that the law does not empower the Court of Industrial Relations to investigate and resolve questions and conflicts between employers and employees, and landlords and tenants in a capricious and arbitrary manner without submitting it to a determined norm of conduct. It clearly provides that the rules of procedure to be adopted and to which the court should adjust itself, must be based on justice and equity, and prescribes that the criterion to be formed must be founded on the substantial merits of the cause without considering legal technicalities and formalities. C.A. 103 which created a special court empowered to promul-

gate its own rules and to resolve and decide agrarian and industrial conflicts in accordance with the dictates of justice and equity cannot be impugned on the ground that it authorizes the deprivation of liberty and property without due process of law, nor can it be said to violate Article VIII of the Constitution as the Court of Industrial Relations is not of the same category as Municipal and Justice of the Peace Courts and Courts of First Instance for which the new Rules of Court were properly promulgated. The allegation of the petitioner that the Court of Industrial Relations is without jurisdiction to compel the payment of wages of the laborers during their forced lay-off as it is tantamount to an award of damages of which the court is alleged, as without power to award, is also without merit. The Court of Industrial Relations is a special court and as such, it is given power to award such wages by Articles 1 and 4 of C.A. 103 conferring power and jurisdiction to the said court to acknowledge, resolve, and decide all questions, controversies and disputes between employers and employees, tenants and landlords. The wages of the laborers concerned in this case during the time that they were separated from service were among those included in the controversies and disputes submitted by the Department of Labor to the Court of Industrial Relations. Under C.A. 103, our government no longer performs the role of mere mediator or intervenor but that of supreme arbiter. (Per Imperial, J.; Avanceña, CJ., Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* FELICISIMO SAN LUIS.

CRIMINAL LAW (Murder). —*People of the Philippines, Plaintiff-appellee vs. Mariano R. Marcos, Ferdinand Marcos, Pio Marcos, and Quirino Lizardo, Defendants-appellants. G. R. No. 47388, October 22, 1940.*—The defendants were charged in the lower court for the crime of murder for the death of Julio Nalundasan, elected representative from the second district of Ilocos Norte on the night of Sept. 20, 1935. Mariano Marcos and the deceased Julio Nalundasan were rival candidates in the election of Sept. 17, 1935. On Sept. 19, 1935, the followers of Nalundasan held a victory parade and passed in front of the house of the Marcoses enraging the latter as claimed by the prosecution which led to the eventual killing of Nalundasan the following night. Ferdinand Marcos and Quirino Lizardo were found guilty in the lower court. Mariano and Pio Marcos were absolved of the crime. The four of them were all found guilty of contempt of court for filing an action against Aguinaldo, the prosecution witness, for false testimony in the Justice of the Peace Court of Batac while their case was pending in the Court of First Instance and were fined ₱200.00 each. *Held:* 1. As a general rule, this court will not interefere with the judgment of the trial court in passing upon the weight or credibility that should be attached to the testimony of witnesses; but this court may determine for itself the guilt or innocence of the accused and may modify or reverse the conclusions of fact laid down by the trial court if there is some fact or circumstance of weight or influence which has been overlooked or the significance of which has been misinterpreted. 2. The testimony of Aguinaldo can not be given any credence because of its inherent probability and because it is full of contradictions. For this reason, we find it neither necessary nor profitable to examine the corroborative evidence presented by the prosecution. Where the principal and the basic evidence upon which the prosecution rests its case fails, all evidence intended to support

or corroborate it fails. 3. The complaint for false testimony against Aguinaldo in the Justice of the Peace Court of Batac before the termination of their case, is an attempt to obstruct directly or indirectly the administration of justice (In re Gomez, 6 Phil. 647; U.S. vs. Jaca, 26 Phil. 100.) However, the inherent power of the courts to punish for contempt should be exercised on the preservative and not on the vindicative principle (Villavicencio vs. Lukban, 39 Phil. 778), and on the corrective and not on the retaliatory idea of punishment (In re Lozano and Quevedo, 54 Phil. 801.) It is our view that this purpose is sufficiently achieved and the principle amply vindicated with the imposition upon each of the four accused above mentioned of a fine of fifty pesos, with subsidiary imprisonment in case of insolvency. (Per Laurel, J.; Avanceña, C.J., Imperial. Diaz, Horilleno, J.J., concurring.)—*Briefed by* GRACIANO C. REGALA.

CRIMINAL PROCEDURE.—*People of the Philippines, Plaintiff-Appellee vs. Antonio Velisario, et al., Accused, and Anastacio M. Naval, Defendant-Appellant, G.R. No. 47440, November 8, 1940.*—This is a criminal action for libel brought against the defendants for having published an alleged libelous article in a local weekly of general circulation. The offended parties were among the speakers on the occasion of the celebration of Rizal Day at Biñan, Laguna, on Dec. 30, 1936, and said offended were the objects of ridicule by the article of defendant-appellant which appeared in "The Filipino Freedom", a local weekly. The alleged libelous article was attached to the complaint according to which the former is incorporated and made an integral part of the latter. The lower court convicted the defendant-appellant, hence, this appeal. Appellant contends: (1) That the complaint was defective as it does not state facts sufficient to constitute a cause action and that the mere incorporation by reference of the attached article did not make the same a part of the complaint; (2) that the copy of the publication containing the alleged libelous article was not sufficiently identified inasmuch as the prosecution failed to prove that said publication was duly registered in the Bureau of Posts as required by law; (3) that the prosecution should have proven what the offended parties said in their speeches which were later made objects of the alleged libelous article; (4) that the witnesses made an important error when they testified that the Rizal Day celebration took place on Dec. 30, 1937, instead of 1936; (5) that the article is not libelous *per se*. *Held:* (1) The form of the complaint as presented here does not violate article 6 of General Orders No. 58 in force at the time of this action. By reading the body of the complaint the accused are necessarily informed of the attached article which form part of said complaint and which described the defamatory acts of the accused. (2) The second contention is without merit because after the witnesses of the prosecution have sufficiently identified a copy of the publication containing the article in question, it is not necessary to show further that such publication was duly registered in the Bureau of Posts. (3) That the prosecution ought to have proven what the offended parties said in their speeches does not find support in law. All that was required to be proven are the contents of the alleged libelous article and the author of the same which in this case was amply demonstrated. (4) The fact that the witnesses for the prosecution erred as to the exact date of the celebration of Rizal Day is not

such a material error as to warrant the dismissal of the complaint. (5) Appellant's last contention is untenable. A reading of the article in question wherein appellant described the offended parties as enemies of independence, sons of crooks, men without senses and devoid of love for their country and who seek none but their personal welfare, is enough to convince one that the article is libelous *per se* as defined by art. 353 and sanctioned by art. 357 of the Revised Penal Code. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, Horrilleno, JJ., concurring) —*Briefed by* ISIDRO T. ALMEDA.

ELECTION LAW (Sec. 21 of C.A. No. 357 Construed)—*Feliciano Imperial, Plaintiff-appellee vs. The Secretary of the Interior, Defendant-appellant, G. R. No. 47700, September 27, 1940.*—Plaintiff asks for a declaratory judgment in accordance with Act 3736 (now Rule 66 of the New Rules of Court) as to the meaning and scope of Section 21 of Commonwealth Act No. 357 which provides: "A third consecutive reelection for the office of provincial governor and municipal mayor shall be prohibited and shall be null and void." Plaintiff was elected municipal mayor in the general elections held on June, 1931; he was reelected for the same office in 1934. His second term should have expired on July 15, 1937, but by virtue of Commonwealth Acts 199 and 233 which postponed the elections for provincial, municipal and city officials scheduled for June, 1937 to December, 1937, and which provided for the continuation in their respective offices of those who occupied them until their successors have been elected and duly qualified unless the President of the P. I. appointed their successors, plaintiff was again elected for the same office for another term of three years, which term started to run on January 1, 1938. *Questions:* 1. Did the postponement of the June, 1937 elections by virtue of C.A. Acts 199 and 233, to December 1937, have the effect of breaking and destroying the continuity of the two reelections in 1934 and 1937? 2. Does the prohibition contained in Section 21 of C.A. 357 refer to reelections which took place prior to the passage of said law, or only to those which shall occur after the elections of 1940? *Held:* 1. Before Commonwealth Act No. 357, the prohibition contained in Section 21, existed in substantially the same manner in Section 403 of Act 2711; and before said act, Act 82 of the U.S. Commission, Act 2045 and the Administrative Codes of 1916 and 1917 contained a prohibition against consecutive reelections in the same manner as Act 2711 and C.A. 357. The permanence or continuation in office, which is prohibited by said laws, is that which is not interrupted by another election or by the cessation of the exercise of the functions of said office for a period of time equal to the succeeding term of the same. The insertion or use in Section 21 of C.A. No. 357 of the word "consecutive", which was not done in the prior laws relating to the same or identical matter, is to place emphasis upon the central idea that between one election and another, that is, between the first election and the second one, properly called reelection; between the latter and the second reelection; and between the second reelection and the third reelection, no other election intervenes or has intervened; and that in each and every one of this two reelections, the provincial governor or mayor elected has discharged the functions of his office unceasingly, without interruption. In other words, in order for the prohibition to exist, it is necessary that the person concerned has discharged, through elections, the

functions of the office of mayor or governor three times, consecutively or without break of continuity, and is for the fourth time elected (third reelection) to the same office. This is so, not only for the reason given, but also for the other reason that according to the former laws from which may be known the legislative intent, the interruption in the exercise of the functions of the office which would not hinder a second or third reelection, must be for a period equal to the ordinary term of such office as provided for by law. This is the way how Section 21 of Commonwealth Act No. 357 should be understood, because the purpose for which it was enacted is undoubtedly to avoid or impede a mayor or provincial governor from making use of the advantages derived from the office which gives him certain powers and opportunities which others who are not in the same circumstances do not possess, to perpetuate himself in office, monopolizing it for himself. To sustain the contrary view is to defeat the very purpose of the law, because plaintiff having been in power continuously from 1931, could, through successive reelections from December until the third reelection, continue in the same office for twelve years more. 2. Commonwealth Act No. 233 does not change this policy of not permitting any monopoly of an office, but on the contrary, it is an affirmance of said policy. The amendment introduced in said law, is only provisional or temporary (Sec. 403 of Commonwealth Act No. 233). Said amendment only suspended the prohibition which already existed before its adoption; it is simply an exception to the general rule. It also proves that the elections of 1931 and 1934 should be taken into account. If it should not be understood in this way it would be without sense or use for then there would not be any necessity of speaking about a prohibition as to a third reelection. Another reason for holding that the elections of 1931 and 1934, and 1937 should be taken into account in construing Sec. 21 is . "It would be of the most mischievous consequence to hold that the revision of a law had the effect of making the revised law entirely original, to be construed as though none of its provisions had effect but from the date of the revised law. When a former provision is included in a revised law, it is only thereby intended to continue its existence, not to make it operate as an original act to take effect from the date of the revised law. The revision has not the effect of breaking the continuity of those provisions which were in force before it was made" (St. Louis vs. Alexander, 23 Mo. 483, 509). (Per Díaz, J.; Avanceña, C. J., Laurel, Horrilleno, J. J., concurring; Moran, J., concurs in the result; Imperial, J., did not take part.)—*Briefed by* CARLOS LEDESMA.

HABEAS CORPUS.—*Cecilio Canua, etc., Petitioners vs. Carmen Vda. de Zalameda, Respondent, G. R. 47761, Oct. 1, 1940.*—Petitioner spouses pray for the writ of habeas corpus claiming deprivation of the custody of and patria potestas over their two minor children. Respondent answers that the children were entrusted to her by virtue of a contract with the petitioners whereby the children work for her as maid-servants at ₱2.50 per month, that she had no objection in delivering the girls provided the petitioners pay the balance of the debt of the minors, the value of a golden chain and a twenty-peso bill which one of the minor lost while in the service of the respondent. That the debt allegedly due from the minors is not a bar to

the issuance of the writ prayed for. As the legitimate father of the minors, he has the right to the custody of the same and may not be deprived of his patria potestas. If the claim of the respondent is legitimate, she can recover the same in a later action. (Per Imperial, J.; Avanceña, C.J., Diaz, Moran, Horrilleno, JJ., concurring.)—*Briefed by* RAUL O. DEL CASTILLO.

POSSESSION.—*Julian Gala, et als., Plaintiffs vs. Rufino Rodriguez, et als., Defendants, G. R. No. 46824, August 5, 1940.*—Plaintiffs, pursuant to agreement, delivered certain parcels of land to the defendants for the latter to cultivate and plant with coconut trees with the understanding that the fruits or value thereof be divided between them. Before the expiration of the term of agreement, plaintiffs conveyed the lands in usufruct to a third person. The sole point of controversy relates to the rights of the parties to the fruits of, and improvements on the land, the plaintiffs claiming their moiety by virtue of the contract. *Held:* Contracts with reciprocal obligations, like the one at bar, are *ipso facto* rescinded by failure of either contracting party to comply with what is incumbent upon him (Arts. 1124 and 1290, Civil Code; Manresa, Commentaries to the Civil Code, Vol. 8, p. 139, ed. 1901). The contract having been rescinded after the defendants had taken possession of the lands, made improvements thereon, and gathered the fruits thereof, in good faith, by virtue of a contract which subsisted for a time, rights relative to the fruits and improvements should be resolved in their favor in accordance with Articles 451 and 360 of the Civil Code. (Per Imperial, J: Avanceña, C. J., Diaz, Laurel, Moran, JJ., concurring.)—*Briefed by* HERACLEO HERRERA TAN.

CRIMINAL PROCEDURE (Validity of Judgment).—*P. P. I. Complainant-Appellant vs. Vito Cabiguin alias Jacinto Cabiguan, Defendant-Appellee.—G. R. No. 47124, Nov. 7, 1940.*—Defendants Jacinto Cabiguan and Julian Avillandres were tried for less serious physical injuries thru reckless imprudence in the Municipal Court of Manila, presided over by Judge Amador. Trial was held Sept. 3, 1939. Judge Amador reserved his decision for the next day. On Sept. 6, 1939, the clerk of court read the decision, which was in the form of a memorandum written at the bottom of the complaint. The decision acquitted Jacinto Cabiguan, but convicted Julian Avillandres, subjecting the latter to imprisonment and fine. The counsel for Julian Avillandres, upon hearing that Cabiguan was acquitted, protested and a dispute ensued between him and the counsel for Cabiguan. Upon being informed of the cause of the disturbance, Judge Amador examined his notes and acknowledged having made a mistake as to the identity of the parties and there he dictated another decision convicting Jacinto Cabiguan and acquitting Julian Avillandres. Jacinto Cabiguan appealed to the C. F. I. and instead of pleading to the information, he interposed the defense of "autrefais acquit." The judge of the C. F. I. sustained the defense and acquitted him on the ground of jeopardy. Prosecution appealed to the Supreme Court. The only question is, whether the decision as read by the clerk of court is valid. *Held:* For there to be valid decision in a criminal case, such decision must be the result of the voluntary act of the

judge, rendered after considering the evidence and circumstances of the case. The decision read by the clerk of court does not unite these requisites, for the said decision was a result of confusion in the mind of the judge with regards to the proper identity of the parties, such confusion resulting in a clerical error which can be cured by the judge himself. A sentence dictated under these circumstances is invalid and cannot be invoked to maintain the defense of "autrefois acquit." Order revoked. (Per Imperial, J.; Avanceña, C. J., Diaz, Horilleño, and Moran, J. J., concurring.)—*Briefed by* DOMINGO B. LAUREA.

Opinions And Decisions Of The Commission On Elections

AUTHORITY OF MUNICIPAL COUNCILOR TO ADMINISTER OATH IN PETITION FOR TRANSFER OF REGISTRATION UNDER SECTION 102 OF THE ELECTION CODE, AND FOR EXCLUSION OF VOTERS FROM THE LIST UNDER SECTION 116 OF THE SAME CODE. *Oct. 8, 1940. Opinion:*—A municipal councilor has no authority to administer the oaths accompanying the petition for transfer of registration under Section 102 of the Election Code, and the petition for cancellation of names of voters from the list under Section 116 of the same code. The officer who may administer oath in such cases not having been expressly mentioned in the Election Code, the general law (Rev. Add. Code sec. 21 as amended by C. A. 270) must be adverted to. A municipal councilor is not expressly mentioned as one of those officers having general authority to administer oaths, and following the rule expression *unius est exclusio alterius*, the legislature is deemed to have withheld from him such authority. (Per Abreu, Com.; Luna, Com., concurring.)

BENEFIT BALLS, ETC. (SCOPE OF SEC. 400 ELECTION CODE). *Oct. 7, 1940. Opinion:*—The Grand Benefit Ball for the Boy and Girl Scouts of the Philippines is beyond the scope of section 40 of the Election Code, which prohibits the holding of "balls, beauty contests, entertainments or cinematographs, theatrical, or other performances, during two months immediately preceding a regular or special election, for the purpose of raising funds, for benefit purposes or for an election campaign or for the support of any candidate". The term "benefit purposes" refers only to election and electioneering and not to benefit balls held by strictly non-political organizations. Furthermore, Proclamation No. 609 of the Chief Executive has fixed the date for carrying out the Boy and Girl Scouts campaign up to 6 days after the deadline established by Section 40. That Proclamation in effect is an executive construction of the extent and scope of Section 40 which the Commission on Election will accept "as in accordance with the true meaning of the law, unless there are very cogent and persuasive reason for departing from it" (Per Luna, Com.; Abreu, Com. concurring in separate opinion.)

ELECTION INSPECTORS: APPOINTMENT. *Oct. 10, 1940. Decision:*—The power of appointing election inspectors and poll clerks, who have been duly nominated by the authorized representatives of the national directorates of the parties, is vested in the presiding officer of the municipal council. The power must be exercised in accordance with Sections 70 and 73 of the Election Code. The appointing official is restricted in the exercise of his power in two ways: (1) as to the party affiliation of the inspectors to be appointed; (2) the choice must be made only from those proposed by the authorized representatives of the national directorates of the parties. A petition praying for the appointment of a third inspector and a substitute inspector will be denied when the record shows that the granting of the petition would deprive the presiding officer of the municipal council of the power of appointment with which he is vested by Section 69 of the Election Code and to encroach upon his prerogative, without giving him the opportunity to make in the first instance the appointment of inspectors.—(Per Abreu, Com.; Luna, Com., concurring.)

ELECTION INSPECTORS: NEW MUNICIPALITY. *Oct. 11, 1940. Decision:*—When a portion of the territory of a municipality is detached therefrom and organized into a new and independent municipality, the votes cast in the territory of the new municipality may not be considered separately for determining the appointment of election inspectors Section 70 of the Election Code speaks of the votes cast "in the municipality" at the next preceding election. Therefore, in computing the total number of votes polled by

all the political parties in the December (1937) election for the purposes of the appointment of election inspectors for the coming election, all the votes cast in said election of 1937 in the entire territory of these two municipalities are to be considered jointly. Pursuant to this procedure, the political parties entitled to election inspectors will have, in the two municipalities, the same representation in the board of election inspectors.—(Per Luna, Com.; Abreu, Com., concurring.)

ELECTION INSPECTORS; POLITICAL PARTIES—INDEPENDENT CANDIDATES. *Oct. 1, 1937. Opinion:*—In the election of 1937 ten candidates ran for office as councilors for the City of Davao. Five of the said ten were independent; they ran separately from one another without any party affiliation—they opposed one another at the same time opposing the Nationalista candidates. The five so-called independent candidates polled a total vote of 12,323; the Nationalistas (5) polled a total vote of 8, 575. *Question:* Are the Nationalistas entitled to two inspectors and poll clerk in this year's election notwithstanding the fact that they received fewer votes than the five independent candidates together? *Held:* Under the provisions of Section 70 of the Election Code (C. A. 357) the question must be answered in the affirmative. The party which polled the largest number of votes in the election of 1937 was the Nationalista Party. The five independent candidates ran without any party affiliation, and the aggregate number of votes they received, although exceeding the votes received by the Nationalista Party, cannot produce the result of allowing them two inspectors and one poll clerk. (Per Abreu, Com.; Luna, Com., concurring.)

ELECTION INSPECTORS; POLITICAL GROUPS COMPOSING ONE PARTY. *Sept. 28, 1940. Opinion:*—In the 1937 elections the Nationalista Party in Ilocos Norte has split into three factions. The "Obrero" faction received the majority vote in the municipality of Pasuquin. The "X" and "Union" factions, obtaining the second and third number of votes have combined in this year's election. *Question:* Is the "Obrero" faction entitled to two inspectors and one poll clerk in view of the fact that it polled the largest number of votes in the previous election? *Held:* Different political groups of the locality composing a party have no separate or distinct personality of their own other than the personality of the Nationalista Party. Consequently the mayor may only appoint from among those proposed by the authorised representative or representatives of the National Directorate of the party. All petitions of the different factions must, therefore, be addressed to the National directorate, which has the right to nominate the inspectors and poll clerks. (Per Luna, Com.; Abreu, Com., concurring.)

ELECTION INSPECTORS: POWER OF COMMISSION. *Oct. 7, 1940. Decision:*—A petition praying for the appointment of a third inspector for a party, should first be addressed to the proper official, namely, the presiding officer of the municipal council who is vested with the duty and the corresponding right to appoint the Board of Election Inspectors in his respective municipality. If the presiding officer of the municipal council does not grant the petition, then the matter may be brought to the attention of the Commission on Elections, in order that it may exercise the authority to decide whether (1) the matter so brought is of an administrative character, and (2) whether in the affirmative the claim presented can be entertained. Under the provisions of Section 2 of Commonwealth Act No. 607, the Commission on Elections has the power to decide all administrative questions affecting elections, including... the appointment of election inspectors and all other election officials. The Commission is vested with the power to advise the proper officials as to who should be appointed minority inspector in view of the facts submitted to it but not with the power to force said officials to appoint the third inspector without first exercising their proper discretion.—(Per Abreu, Com.; Luna, Com., concurring.)

ELECTION INSPECTORS: TENURE; NOMINATION. *Oct. 7, 1940. Opinion:*—(1). Section 69 of the Election Code which now governs the appointment of election inspectors during the forthcoming elections to be held on December 10,

1940, makes it a mandatory duty of the presiding officer of the municipal council to appoint fifty days before the election, election inspectors and poll clerks. This being the case there shall be a new set of election inspectors and poll clerks to be appointed for the election to be held on December 10, 1940, and the election inspectors and poll clerks appointed in connection with the election for provincial and municipal officials held in December, 1937, shall cease to hold office fifty days before the date of the forthcoming election. (2) The law requires that the presiding officer of the municipal council shall appoint election inspectors and poll clerks only upon proposal of the authorized representative or representatives of the national directorate of the party entitled to inspectors. In the event, however, that no such proposal is made, it may be possible that the national directorate of the party concerned has refrained from appointing its authorized representative or representatives in the particular locality, and may itself directly submit the nominees for appointment to the presiding officer of the council instead of doing so thru authorized representatives. If within a reasonable time taking into consideration the dates at which the boards of election inspectors shall meet in accordance with the law, the national directorate of a party entitled to inspector or inspectors, or its authorized representative, has not submitted any proposal to the presiding officer of the council concerned, any question arising out of the situation should be submitted to the Commission for decision. (3) When the national directorate of the party entitled to inspectors has appointed two different representatives for the same locality and possessed of the same authority to nominate inspectors, the question as to who should be recognized as the genuine representative by the presiding officer of the council is not for the Commission to decide. The matter is one coming within the province of the national directorate of the party concerned which possesses the exclusive power to appoint its representatives to nominate election inspectors and poll clerks.—(Per Luna, Com.; Abreu, Com., concurring.)

ELECTION INSPECTORS: WHERE THE ONLY CANDIDATES ARE THOSE OF THE TWO FACTIONS OF A NATIONAL PARTY AND NONE FROM THE OPPOSITION PARTY. *Oct. 2, 1940. Opinion:* — In the apportionment of election inspectors, the votes received by the two wings or factions of the Nacionalista Party—namely, the anti and the pro—in the 1937 elections for provincial and municipal officials should be added together, the two groups being merely branches of a national party called the Nacionalista Party; and if as a consequence of this computation the votes received by the antis and the pros is the largest number of votes in a municipality, the Nacionalista Party shall have two election inspectors and one poll clerk in each precinct of that municipality. The distribution of these election inspectors and poll clerks belonging to the Nacionalista Party between the anti and pro factions is a matter for the national directorate of the Nacionalista Party to decide. The third or minority inspector shall be adjudicated to the National party which polled the second largest number of votes in the municipality. If no other National party aside from the Nacionalista Party presented candidates in the municipality during the December (1937) elections, the Commission on Elections reserves the right to determine later to whom to grant the third (minority) inspector when proper claim with reasons and proofs in support thereof is presented to the Commission. In accordance with our system of bi-partisan representation in the board of inspectors, the Commission will always endeavor to grant the third (minority) inspector to any party which has an interest to protect in the elections opposed to the party having majority representation in the board, and thus provide for the necessary check and balance in the actuations of the board.—(Per Luna, Com.; Abreu, Com., concurring.)

NAMES; CANCELLATIONS AND EXCLUSIONS. *Oct. 10, 1940. Opinion:*—(1.) The two plebiscites on the constitutional amendments are embraced in the term "elections", used in section 99 of the Election Code. Section 1 of the Election Code classifies elections into elections of public officers by the people and

all voting in connection with plebiscites. Furthermore, the Legislature in authorizing the holding of the plebiscites by C. A. 492 and 517 has christened the said plebiscites as general elections. (2.) The board of election inspectors may cancel a name of a voter from the list on the ground that he has not voted in two successive elections only upon previous motion of any member of the board or of any elector or watcher and upon sufficient proof convincing to the board that the voter concerned has really not voted in two successive elections. (Sec. 99 of the Election Code). (Per Luna, Com.; Abreu, Com., concurring.)

POLLING PLACES; LOCATION OF. *Oct. 7, 1940. Decision:*—Section 56 of the Election Code and Sec. 2 of Commonwealth Act No. 607 show that the municipal council is vested with the duty to designate the polling places. In the performance of this duty the municipal council is subject to direct supervision of this Commission, which has exclusive charge of the enforcement and administration of the laws relative thereto. More specifically, the Commission is expressly vested with the power to decide all administrative questions affecting the determination of the location of polling places. The jurisdiction of this Commission is thus one of supervision with the power to review and decide when its attention is properly called that the municipal council concerned has not followed the provisions of the Election Code in the performance of the duties imposed upon it by law. The Commission therefore has no power to designate in the first instance the location of polling places. (Per Luna, Com.; Abreu, Com., concurring.)

PARTY FACTIONS: RIGHT REPRESENTED IN THE BOARD OF ELECTION INSPECTORS. *November 4, 1940. Decision:*—I. The question of whether Hon. Juan Sumulong or Hon. Pedro Abad Santos is the real and true head of the Popular Front Party is properly for the courts to decide. The Commission therefore declines to decide it. II. (1) Popular Front Party which was recognized by the Supreme Court in the several decisions (Campomanes vs. Municipal Council of Sariaya, Tayabas 36 O.G. 1429; Tria Tirona vs. Municipal Council of Dagupan, Pangasinan 36 O.G. 110; Municipal Board of Manila and Mendoza vs. Agustin 36 O.G. 1335) was a confederation of several minority parties. Each of said minority parties composing the confederation continued to enjoy its personality separate and distinct from the said Popular Front which was recognized by the Supreme Court. (2) The personality of each minority party not having been lost, the presiding officer of the council before making an appointment of election inspector to represent the Popular Front Party in the Board of Election Inspectors should make an investigation and decide whether the minority local party organized in the municipality is affiliated to the faction of the Popular Front Party headed by Juan Sumulong or to the faction headed by Pedro Abad Santos and to recognize the nomination made by Sumulong or Abad Santos as to whether the minority local party in his municipality pertained to the Sumulong faction or to the Abad Santos faction. (3) In the event that the local minority party has been divided into two groups, one of which belongs to the Sumulong faction and the other to the Abad Santos faction, then the group with more following shall be recognized and the corresponding representative of the faction shall have the right to propose the minority election inspector. III. The authority to determine by a thorough investigation the merits of the respective claims of the factions of the Popular Front Party is necessarily incident to the power of appointment vested by law in the presiding officer of the municipal council. The provincial fiscal can not therefore be empowered to conduct such investigation. (Per Luna, Com.; Concepcion, Ch. Com., Abreu, Com., concurring.)

POLITICAL CONVENTION (PUBLIC MEETING WITHIN THE MEANING OF SECTION 45 OF THE ELECTION CODE). *Oct. 24, 1940. Resolution:*—(1) A convention for the purpose of selecting can-

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**Overruled by Supreme Court, as we go to press, holding that the Commission on Elections has the jurisdiction to decide this question.*

didates is a public meeting, irrespective of the place where it is held. The nature and character of the business to be treated or discussed in a meeting is the determinative factor. The fact that admission into the meeting is by card and only delegates to the convention will be admitted is inmaterial because the term "public" does not mean all the public, nor most of the people, nor very many of the people, but so many of them as contradistinguished from a few. (2) Aspirants for nomination are "candidates" within the meaning of Section 45 of the Election Code. "A man is a candidate for office when he is seeking such office. It is begging the question to say that he is only a candidate for nomination, for many persons have been elected to office who were never nominated at all". (Leonard v. Commonwealth, 4 Atl. 220) (Per Luna, Com.; Concepcion, Ch. Com., Abreu, Com., concurring.)

(Briefed by Alexander SyCip, Norberto Quisumbing, and Luciano Salazar.)

"TO Judge Cardozo the law was meant to serve and not to rule the institutions which it sheltered."—U. S. ATTY. GEN. CUMMINGS.