Excerpts of Important Cases *

1. CREDITOR'S LIEN—ANNOTATION THEREOF UNDER ACT NO. 496.

Petitioner as sole heir to a parcel of land registered under Act No. 496, applied for the cancellation of the creditors' lien annotated on the title under section 1 and 4, Rule 74, Rules of Court. Application was based on section 112, Act 496, with a bond being offered to answer for such contingent claims. Upon denial of said application by respondent judge, the case was brought on certiorari to the Supreme Court. *Held:* Certiorari denied. "Applying these provisions to the present case (section 112, Act 496), it is evident that since the registered or annotated contingent interests of the creditors or other heirs of the petitioner's predecessors in interest, established by section 4 of Rule 74, have not yet *terminated or ceased*, for the period of two years from July 9, 1947, has not yet elapsed, the respondent had no jurisdiction or power to order the cancellation of said lien or annotation as prayed by the petitioner, nor authorize the substitution of a bond for such a lien or registered interest." (Rebong v. Hon. Fidel Ibañez, G. R. No. L-1578, Sept. 30, 1947)

2. POLLING PLACES; THEIR TRANSFER.

In connection with the last November elections, the polling places corresponding to the barrios in certain municipalities in Pampanga were transferred to the *poblacion* by resolution of the respondent municipal councils. The Commission on Elections gave its approval to such transfer over the objection of petitioner. Hence, this petition for review. *Held:* The action of the commission authorizing the transfer finds no support in law. "The general rule, therefore, under sections 62 and 63 (Revised Election Code) is that a polling place shall be located in each precinct and as centrally located as possible with respect to the residence of the voters. There are, however, three exceptions in which, under section 63, the polling places may be located in the *poblacion*, namely: (1) where the majority of the voters so request; (2) by agreement of all the political parties; (3) by a resolution of the municipal council, *but this last-named exception shall take effect subsequent to that of November of this year.* The express inclusion of these exceptions is an implied exclusion of all others." (Cortez v. Commission on Elections et al, G. R. No. L-1679, October 16, 1947)

3. DUPLICITY — FAILURE TO MOVE TO QUASH.

The information in this case charges robbery with violence against and intimidation of persons commit-

* These cases are considered leading ones on their respective subjects. The pertinent parts of the decisions are reprinted verbatim.

ted against two parties. A motion to quash based on duplicity was sustained by respondent court notwithstanding the fact that it was presented only when the prosecution was presenting its evidence. The theory of the lower court is that under Rule 113, section 10, waiver of the objection for duplicity can only be predicated upon the failure to move to quash where the duplicity "clearly appears on the face of the information." (16 C. J. 860) Petition for certiorari and mandamus was filed with the Supreme Court. *Held:* Petition granted. ". . . If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense or the court is without jurisdiction of the same (Rule 113, section 10, Rules of Court). Mark that this provision uses 'shall,' characteristic of mandatory precepts and clearly showing that it denied the trial judge all discretion in the matter, and made it his peremptory duty to proceed with the already commenced trial accordingly." (Provincial Fiscal v. Court of First Instance of Nueva Ecija and F. Valderrama, G. R. No. L-1418, August 30, 1947)

4. PEACEFUL PICKETING—A PART OF THE FREEDOM OF SPEECH.

On February 21, 1947, the Court of Industrial Relations issued an order in case No. 44-V (1), "*Bisig ng* Canlubang v. Canlubang Sugar Estate," requiring all the laborers of the company to return to work pending the settlement of the case, and further stated that "picketing under any guise or form, is hereby entirely prohibited." Petitioners now seek to annul the order on the ground that while they were not parties to the case and, therefore, not subject to the jurisdiction of the court, they were required to return to work and to desist from exercising their right to picket. *Held:* Petition denied. After holding that the Court of Industrial Relations did not lose its jurisdiction over the petitioners notwithstanding their separation from the original party to the case, the *Bisig ng Canlubang*, the Supreme Court pointed out "that the prohibition against picketing under any guise or form contained in the order of February 21, 1947 . . . should be understood to cover only illegal picketing, that is, picketing through the use of illegal means. Peaceful picketing cannot be prohibited. It is part of the freedom of speech guaranteed by the Constitution." (Mortera and Canlubang Workers' Union v. Court of Industrial Relations et al, G. R. No. L-1350, October 13, 1947)

A. C. C.

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5. A JUSTICE OF THE PEACE APPOINTED IN 1916—HIS RIGHT TO CONTINUE IN OFFICE UNDER THE CONSTITUTION.

This is a quo warranto proceeding.

Plaintiff was appointed justice of the peace of San Fernando, La Union, and took possession of his office on

or about April 16, 1916. He has not resigned nor has he been removed therefrom. He ceased to act in December, 1941, but reassumed office on April 27, 1945. Later defendant Gavina was appointed by President Osmeña to the same office. Still later President Roxas appointed the other defendant, Arciaga, to said office. Arciaga's appointment was confirmed on July 27, 1946.

HELD: Plaintiff has the constitutional right to continue in office until he reaches the age of 70 years and the President has no power to remove him from office without just cause and previous investigation.

"It cannot be contended that the intention of the framers of the Constitution to provide that appointive officers of the Commonwealth should cease or not continue as officers of the Republic, may be inferred from the inclusion of the provision of section 2(b) of the Philippine Independence Act or Tydings-McDuffie Law in our Constitution (as section 1[2], Article XVII), to the effect that 'The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly under such government, and shall serve their full term of office as prescribed in the Constitution.' Because, the Congress of the United States having required the inclusion of the above-quoted provision in our Constitution, the framers thereof were not free or at liberty to insert or not said provision therein; and, therefore, the legal maxim *'expressio unius est exclusio alterius'* is not applicable. . . . The legal maxim is predicated upon one's own voluntary act and not upon that of others."

"A contrary construction, that is, that all appointive officers and employees of the Government of the Commonwealth, from the Chief Justice of the Supreme Court to an office messenger, had ceased *ipso facto* or automatically upon the proclamation of the independence of the Philippines, would lead to enormous public inconvenience, a complete paralyzation of all the functions of the government, since it would necessarily require a considerable period of time to appoint the new officers and employees in their places. And if they were to hold over or continue in office until their successors are appointed, as there is no limitation provided in the Constitution as to the time within which the appointing powers may or must appoint their successors, a sort of Damocles' sword would be left hanging and ready to fall over the heads of said officers and employees for an indefinite period of time, to the detriment of the proper discharge of their functions and the independence that is to be expected from judges in the performance of their duties, essential for a good and clean government." (Tavora v. Gavina & Arciaga, G. R. No. L-1257, October 30, 1947)

J. A. S.