REVIEW:

Opinions of the Secretary of Justice

SERIES OF 1949

CIVIL LAW—ACKNOWLEDGMENT OF A CHILD BY ONE OF THE PARENTS WHEN THE OTHER IS NOT CAPACITATED TO MARRY.

Is it proper to consider a child acknowledged by the mother alone upon proof of birth and identity or continuous possession by the child of the status of a natural child in cases where the child's father had no capacity to marry at the time of the conception while the mother had the capacity? On the other hand, is a separate acknowledgment by a father who had the capacity but in a case where the mother had no capacity to marry, be deemed enough to entitle the father to file a claim for the child's pension?

Opinion: In the case of Borres vs. Municipality of Panay (42 Phil. 643), the Supreme Court said:

"Under the Civil Code, there are two kinds of natural children: (a) Natural children proper, who are those born out of lawful wedlock of parents who were at the time of conception competent to marry with or without dispensation (art. 119, par. 2, C.C.); and (b) natural children by presumption, who are those acknowledged by the father or the mother separately (Art. 130)." (p. 650).

"Where the acknowledgment of a natural child *made by the mother* is contested on the ground that such child was begotten by a man who, it is alleged, was not legally competent to contract marriage at the time of the child's conception, *any evidence tending to reveal the name, or show the identity of the father is inadmissible,* as that would be an investigation of the paternity which is prohibited by the Civil Code. It is prohibited to investigate the paternity of illegitimate children, whether natural or not, except in cases mentioned in articles 135 and 141 of the Civil Code." (Syllabus).

In conformity with the foregoing rule, the first question should be answered in the affirmative. The deceased soldier in this case is an acknowledged natural child by presumption, having been acknowledged by the mother who, at the time of his conception, had the capacity to marry. His status is not even contested by anyone, and even if it were, the presumption will hold, because any evidence tending to reveal the name and identity of the father and hence his incapacity would be inadmissible. Such evidence is allowed only in the cases mentioned in Articles 135 and 141, i.e., in actions to compel acknowledgment by the father, which is not the case under consideration.

With respect to the second question, however, a different rule obtains. In the same case of Borres vs. Municipality of Panay, the Supreme Court said that where the acknowledgment of a natural child is *made by the father, any evidence is admissible to establish the identity of the mother and the fact that she was not, at the time of conception, legally competent to contract marriage,* and that, therefore, such child did not have the status of a natural child. (Id. citing decisions of the Supreme Court of Spain of June 9, 1893 and April 23, 1904);

Assuming, therefore, that the identity of the mother and her incapacity

are proved because the acknowledgment is contested by persons prejudiced thereby—the answer to the second query is in the negative. Where, however, no one appears to contest the acknowledgment made by the father, the presumption still prevails and the father is entitled to inherit as an acknowledging parent.

OPINION NO. 62

POLITICAL LAW — ILLEGALITY OF EXECUTION ON PENSIONS HELD BY GOVERNMENT.

The defendant in a criminal case was convicted of murder and the court issued a writ of execution to pay the indemnity on one-half of the monthly pension receivable by the accused from the Philippine Veterans Board.

The first question raised, is the propriety of subjecting the defendant's pension to execution.

Opinion:

It will be noted that the money sought to be reached by the writ of execution is in the hands of the Philippine Veterans Board. It is, therefore, still money of the Philippine Government and hence beyond the attack of creditors either by execution, garnishment, attachment or otherwise. The rule is well established that funds held by public official capacity cannot be reached by garnishment process or creditor's bill. Dow vs. Irwin, 21 N.M. 576, 157 P. 490; Allen vs. Gerard, 21 R. I. 467, 44 A. 592; Dale vs. Brumbly, 98 Md. 468, 56 A. 607.

In the leading case of Buchanan vs. Alexander, 11 L. ed. 857, the Supreme Court of the United States held that a purser who disregarded, on order of the Secretary of the Navy, writs of attachment issued by a justice of the peace against certain seamen on money due them for wages in the hands of the purser, was not liable on the attachments. "The funds of the government," said the court, "are specifically appropriated to certain national objects, and if such appropriation may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen."

In Farmer's Bank vs. Ball, 2 Penn. (Del.) 374, 46 Atl. 751, it was held that a salary or pension due to an associate justice who was not reappointed was not, while in the hands of the state treasurer, liable to garnishment, for to hold otherwise will be to violate three cardinal rules governing the subject; (1) It would subject the state or its treasurer to garnishment, when not expressly named or included in the statute; (2) it would subject the state to suits without its consent, or its officers to garnishment when the debt could not be sued for by the defendant; (3) it would embarrass and delay public officers in the orderly administration of public duties.

The second question raised is the legality of the discontinuance of the pension because of the conviction of the pensioner of a crime involving moral turpitude and the effect of the penalty of perpetual absolute disqualification which carries with it the loss of pension for any office formerly held.

Pension statutes usually contain some provision authorizing the discontinuance or suspension of pensions granted thereunder for causes specified therein. 40 Am. Jur. 980. In the case of Republic Act No. 65, section 9 provides that the disabled veteran shall receive specified pension *for life unless he is actually receiving a similar pension from other government funds*, while section 10 of the same Act provides that the widow of

the veteran shall received pension *until she remarries* or *dies* and the minor children, until *they marry* or *reach the age of majority.* It will be noted that sections 9 and 10 mention the causes for the termination of the pensions therein granted. Nowhere in these sections nor in any other part of the Act is conviction of the pensioner for a crime involving moral turpitude declared to be a ground for the cancellation or termination of the pension. *Inclusio unius est exclusio alterius.* It is therefore evident that the pension of a veteran may not be cancelled by reason of his conviction for murder or for any other crime involving moral turpitude.

This conclusion is not affected by the last paragraph of Article 30 of the Revised Penal Code, which provides that the penalties of perpetual or temporary absolute disqualification for public office shall produce the loss of all right to retirement pay or other pension for any office formerly held. Although the penalty imposed upon the pensioner, was "reclusion perpetua" and carried with it perpetual absolute disqualification, he did not thereby lose his right to his pension, for the pensions contemplated in the provision of Article 30 referred to are those given for an office formerly held by the convict. The pension provided in Republic Act No. 65 is given not for an office previously held by the pensioner by for patriotic services rendered by him. It is consequently not terminated by the imposition of the penalty of absolute disqualification upon him.

OPINION NO. 74

MUNICIPAL CORPORATION—MUNICIPAL REGISTRATION FEE INVALID AS UNEQUAL AND OPPRESSIVE; MUNICIPALITY WITHOUT RIGHT TO IMPOSE "SPECIFIC TAXES."

A municipal ordinance imposed a registration fee of ₱1.00 on all transients who have not resided in the town since December 1947. A penalty is imposed for failure to register within five days after arrival. It ordained that the funds derived therefrom should be used for equiping the police force. Another ordinance taxed all buyers of copra in an amount of one half centavo per kilo of copra purchased by them in the town. Refusal to pay the tax would make the buyer liable to pay a surcharge and imprisonment of not more than 60 days. The validity of both ordinances are placed in issue.

Opinion:

It is a familiar rule that municipal corporations may exercise only such powers as are expressly conferred upon them and such as are fairly implied from, or incidental to the express powers. No law has been found which expressly authorizes a municipality to impose registration fees upon transients, nor may such authority be deduced or be fairly implied from the express powers conferred upon municipal corporations inasmuch as it is not essential to the accomplishment of the declared objects and purposes of the corporations. (37 Am. Jur. 722.) Neither can it be justified under the police power because there is no reasonable and substantial relation between the object sought to be accomplished by the ordinance and the promotion of the health, safety, and general welfare of the community. (White's Appeal, 287 Pa. 259, 134 A 409 53 A.L.R. 1215.)

The validity of the ordinance may furthermore be assailed on the ground that it is unreasonable, oppressive, unequal, and discriminatory in its operation. Under its terms, all transients are liable to the payment of registration fees irrespective of age, sex, or occupation. The money derived from them will accrue exclusively to the police force of the municipality of Butuan, and yet the residents thereof who receive police protection

equally with, if not more than, transients are not taxed.

In Village of Braceville vs. Doherty, 30 Ill., App. Ct. Reps. 645, a municipal ordinance imposing a license fee upon non-resident peddlers only was declared unconstitutional, the court saying "that the ordinance in question is not merely a regulation, but it is in restraint of trade; that it is unreasonable, unnecessary and inequitable, unequal and unjust in spirit and effect, in direct contravention of the spirit and policy of the Constitution and laws of this State, in that it tends to create monopolies, makes unjust and unwarrantable discrimination between resident and non-resident citizens of the appellant municipality exercising the same calling and business, which, before, the enactment of the such by-law, was, by the laws of the State, free to all-unequal and oppressive, and, therefore, against public policy and void."

Section 3(h) of Commonwealth Act No. 472 expressly provides that it is beyond the power of municipal councils to impose "specific taxes" on things manufactured or produced in the Philippines, or imported from the United States or foreign countries. The term "specific tax" generally connotes "a tax of a fixed amount by the head or number, or by some standard of weight or measurement, and requires no assessment other than a listing or classification of the subject to be taxed." (51 Am. Jur. 53.)

Under the terms of the Ordinance, a tax of one-half centavo is collectible from each buyer of copra for every kilo of the commodity purchased by him in the municipality. In other words, the buyer of the commodity will have to pay a fixed amount for every kilo of copra so purchased. The tax is clearly a specific tax, for it is a tax of a fixed amount measured by the weight of the article on which it is levied. It cannot therefore be validly imposed by the municipal council.

Passing upon a similar question, Opinion No. 315, s. 1947 held that the ordinance of the city of Iloilo, imposing a municipal tax of ₱0.02 and ₱0.01 in every package of imported cigarettes containing 20 and 10 pieces, respectively, and ₱0.01 on a package of local cigarettes containing 30 pieces or less, sold or distributed by the distributors thereof in the city of Iloilo, is illegal on the ground that the tax collectible therein is a specific tax on cigarettes, which is beyond the power of the city council to levy in accordance with section 3(h) of Commonwealth Act No. 472.

OPINION NO. 77

CONSTITUTIONAL LAW—EXEMPTION FROM TAXATION OF LANDS AND BUILDINGS FOR EDUCATIONAL PURPOSES.

A certain person owned several buildings and lots which are leased for valuable considerations for school purposes. The properties were assessed by the City Assessor on the ground that they are not exempt from taxation because although they are devoted actually for school purposes by a third party they are leased for value by the owner. The owner claims exemption on the ground that they are actually and exclusively used for educational purposes by the lessee.

Opinion:

The pertinent provision of the Constitution is Article VI, section 22, paragraph 3, which provides that "cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation."

On the same question, an opinion rendered in January 1941 held that the owner of property, which is used exclusively for religious, charitable, or educational purposes by an institution which pays rentals for the use thereof, is not exempt from the pay-

ment of taxes thereon for the reason that when one lets his property for rent although the lessee may use it for religious, charitable or educational purposes, the fact remains that the use which the owner is making of it cannot be said to be one of those mentioned in the constitutional provision.

Exemption from taxation of properties of educational institutions used exclusively for school purposes is universally upheld on the ground that such institutions perform a work which would otherwise have to be carried on by the public at the expense of the taxpayers, and that the exemption of institutions from taxation lessens rather than increases the burden upon other tax payers. (51 Am. Jur. 510.) Expounding a similar constitutional provision, the Supreme Court of Indiana said that the plain intent of the constitutional provision was to encourage those who devote *themselves and their properties* to the educational and other purposes mentioned. Education, religion and charity are all promoters of the welfare of society and through those agencies the standard of good citizenship is elevated and consequently the expenses of government diminished. The very object for which taxes are in large part assessed are to carry on the educational and benevolent institutions of the state, and hence there is great proreity in avoiding, as the Constitution does, the imposition of any taxation upon those agencies which are themselves employed in the very work to which the state applies so large a part of its revenues. (Travelers' Ins. Co. vs. Kent, 50 N.E. 562.)

In harmony with these reasons which underlie the exemption, it has been held that if the use made of the property is the test, and the owner allows his land to be used for school purposes by another but charges no rent and derives no personal benefit from the land, it is exempt from taxation because it is then devoted exclusively to school purposes. In such a case the owner contributes the use of his land to the public or quasi-public use, or to such a use as the constitution contemplates and derives no gain or profit for himself and therefore the state does not exact a tax from his land with one hand while accepting a contribution of its use with the other hand. (City of Louisville vs. Werne, 80 S.W. 224.)

But, when the owner leases his land for a valuable consideration for school purposes, and applies the rents derived therefrom to his own personal advantage, he contributes nothing to the public or to charity or to education, he loses nothing by the use, he is not a benefactor to anyone, but he stands before the law in exactly the same light as anyone else who leases his land for any other purpose, and uses the rents for his own advantage, and therefore he is not entitled to any special consideration at the hands of the law and the state, and his property is not exempt. Hence, conceding the correctness of the reason and purpose of the exemption, the maxim, "*Cessante ratione, cessat lex*," applies. (State vs. Macgur, 86 S.W. 138; Travelers' Ins. Co. vs. Kent, supra; Op. Sec. of Jus. of Jan. 14, 1941.)

In Corporation Commission vs. Oxford Seminary Const. Co., 76 S.E. 640, where the interpretation of the words "*used exclusively for school purposes*" was involved, it was held that those words do not ordinarily apply to a case where the owner builds a schoolhouse, and rents it for consideration to another for purposes of a school. The same rule is followed in the cases of Armand vs. Dumas, 28 La. Ann. 403; Hennepin County vs. Bell, 45 N. W 815; People vs. Brooklyn, 32 Hun, 457, 97 N.Y. 648; and Commonwealth vs. First Christian Church of Louisville, 169 Ky. Rep. 411, where it is laid down that, under a provision which makes use the sole basis for exemption, when a property owner merely leases his property for consideration to another, it is taxable, not-

withstanding the fact that the lessee has used the same exclusively for school purposes, because then the use which the owner is making of it cannot be said to be a use for educational purposes.

It is obvious, therefore, that to entitle property to exemption under the above-quoted provision, it must not only be used exclusively for any of the purposes specified but must be so used by the party claiming the exemption. Where the owner of the property leases it to another, and receives rental from the lessee, who uses it exclusively for any of the purposes mentioned in the Constitution, that property is not used by its owner exclusively for one or more of those purposes but also for profit. Hence it is not entitled to exemption from taxation under the Constitutional provision above quoted.

OPINION NO. 80

CIVIL PROCEDURE—STATUTE OF LIMITATIONS RUNS AGAINST PERSONS UNDER LEGAL DISABILITY UNLESS EXPRESSLY EXEMPTED.

A former government employee was convicted of theft and accordingly sentenced. After commencing the service of his sentence he was released from confinement under a "Discharge on Parole." He then filed his application for backpay but the application was refused on the ground that the time limit fixed by the Backpay Law within which to file the application had already expired. The issue is whether the period for filing the application is suspended in favor of the applicant as he was in prison during that time.

Opinion:

The pertinent provisions of Republic Act No. 304 read as follows:

"Sec. 2 . . The Treasurer of the Philippines shall upon application, and within one year from the approval of this act, and under such rules and regulations as may be promulgated by the Secretary of Finance, acknowledge and file requests for the recognition of the right to salaries or wages, as provided in Section 1 hereof. . . .."

It is mandatory that the request or application for the recognition of the right to back pay be made and filed within one year from the date of the approval of Republic Act No. 304, otherwise, the right to the benefits provided therein will be forfeited. No mention is made whatsoever with respect to any particular person or class of persons, much less those suffering from imprisonment or other disabilities, that would tend to exclude them from the operation of the one-year period prescribed by the statute.

As a general rule, a statute of limitations containing no exception in favor of persons under legal disability runs against the right of action existing in favor of such person and, upon the expiration of the period of time limited in the statute, bars his right to sue to the same extent and with the same effect as he were a person *sui juris* (34 Am. Jur. pp. 155, 171; Musgrave vs. McManus, 173 Pac. 196, LRA. 1918F 348, 351). Also, it is a well established rule that where the legislature has not seen fit to except a particular person or class of persons from the operation of such statute, the courts will not assume the right to do so (Buss vs. Kemp Lumber Co., 23 NM 567, 170 p. 54, LRA 1918C 1015; Pricbe vs. Amas, 104 Minn. 419, 116 NW 829, 17 LRA [NS] 206; Baldes vs. Stakes, 1 Baxt. [Tenn.] 312; 34 Am. Jur. pp. 150-151).

"*The enactment of the lawmaking power within its legitimate field must not be obstructed* by the judicial administration. Such power is ample, if it sees fit, to extinguish any right enforceable by an action, if judicial

remedies for such enforcement are not invoked within such reasonable time as it sees fit to name. The possessor of the right may be under disability personally to enforce the same within the prescribed period by reason of infancy, insanity, *imprisonment*, or other cause, and yet the statute in general terms, not containing any exception to save the right, will extinguish it" (Federal Crude Oil Co. vs. Yount-Lee Oil Co. (Tex. Civ. App.) 73 SW [2d] 969 (writ of certiorari denied in 295 U.S. 741, 79 L. ed. 1687, 55 S. Ct. 655) citing RCL; Pietch vs. Milbrath 123 Wis. 647, 101 NW 388, 102 NW 342 68 LRA 945, 107 Am. St. Rep. 10. 17).

The principle that imprisonment, if not an exception in a statute, can not affect the running of limitations is applied to the instant case.

OPINION NO. 85

Briefed by CAMILO QUIAZON

The arms which an advocate wields he ought to use as a warrior and not as an assassin. He ought to uphold the interests of the clients *per fas* and not *per nefas*. He ought to know how to reconcile the interests of his client with the eternal interests of truth and justice.

— COSTIGAN —