# DOCUMENTS: STATUTES, JUDICIAL DECISIONS, CONVENTIONS, TREATIES, DECLARATIONS, AND OTHER STATE PAPERS

## ARSENIO H. LACSON V. MARCIANO ROQUE, ET AL.
## G. R. No. L-6225, Prom. Jan. 10, 1953

### DECISION

TUAZON, J.:

The petitioner, Arsenio H. Lacson, Mayor of the City of Manila, has been suspended from office by the President and has brought this original action for prohibition contesting the legality of the suspension. Marciano Roque, Acting Executive Secretary, and Dionisio Ojeda, Chief of Police of Manila, who are said to have threatened to carry out the President's order, and Bartolome Gatmaitan, the Vice-Mayor who is performing the duties of the office of mayor, are made defendants.

The salient facts alleged in the application, not denied by the respondents, are as follows:

On October 20, 1952, following the acquittal of Celestino C. Juan, Deputy Chief of Police, in a criminal prosecution for malversation of public property instituted at the instance of Mayor Lacson, the petitioner made a radio broadcast in which he criticized the court's decision stating, it is alleged: "I have nothing but contempt for certain courts of justice. * * *. I tell you one thing (answering an interrogator), if I have the power to fire Judge Montesa (the trial Judge) I will fire him for being incompetent, for being an ignorant . . . an ignoramus."

Thereafter, Judge Montesa, at a public meeting of the Judges of the Courts of First Instance of Manila submitted to the consideration of his colleagues the question of whether Mayor Lacson's remarks were contempt of court. A committee of judges, which was appointed to study the question, reported that it was not free to state whether contempt proceedings if instituted would prosper. The committee believed that Judge Montesa was the one most competent to decide upon the action that should be taken.

In the meanwhile, on October 23, Judge Montesa wrote the Secretary of Justice requesting that a special prosecutor be designated to handle the case for criminal libel which he intended to file against the Mayor. He gave as reasons for his request that "whatever blunders the Mayor had committed, the same was due to an advice given him by his legal adviser, the city fiscal," and that it would be "difficult to expect that he would be willing to move against him or act in a manner that would put him in a bad light with the mayor."

On October 24, in Special Administrative Order No. 235, marked "RUSH", the Secretary of Justice designated Solicitor Martiniano P. Vivo of the Solicitor General's Office "to assist the City Fiscal of Manila in the investigation of the complaint of Judge Agustin P. Montesa against Mayor Arsenio H. Lacson, to file whatever criminal action the evidence may warrant and to prosecute the same in court."

On the following day, Judge Montesa filed his projected complaint for "libel and contempt" with the City Fiscal which was numbered 27909. This complaint in the ordinary routine of distribution of cases in the City Fiscal's Office should have corresponded to Assistant Fiscal Jose B. Jimenez. Con-

sequently upon Solicitor Vivo's designation, City Fiscal Angeles designated Assistant Fiscals Jimenez and also Hermogenes Concepcion, Jr. to represent him and to collaborate with the Solicitor from the Bureau of Justice.

Solicitor Vivo conducted a preliminary investigation in the Office of the Solicitor General without the presence of either of the Assistant Fiscals assigned to the case, and sent out subpoenas in his name and upon his signature. And having completed the preliminary examination, on October 30 he docketed in the Court of First Instance a complaint for libel against Mayor Lacson, signed and sworn to by Judge Montesa as complainant. At the foot of the complaint both Assistant Fiscal Hermogenes Concepcion, Jr. and Solicitor Vivo certified that "we have conducted the preliminary investigation in this case in accordance with law" although Fiscal Concepcion had taken no part in the proceedings.

On October 31, the day following the filing of the above complaint, the President wrote the Mayor a letter of the following tenor:

> "In view of the pendency before the court of first instance of Manila of criminal case No. 20707 against you, for libel, and pursuant to the present policy of the administration, requiring the suspension of any local elective official who is being charged before the courts with any offense involving moral turpitude, you are hereby suspended from office effective upon receipt hereof, your suspension to continue until the final disposition of the said criminal case."

And notified of the suspension, Vice-Mayor Bartolome Gatmaitan entered upon the duties of the office in place of the suspended city executive.

Allegations have been made vigorously attacking the form and legality of Solicitor Vivo's designation and of the procedure pursued in the conduct of the preliminary investigation. The objections are at best inconclusive of the fundamental issues and will be brushed aside in this decision. It will be assumed for the purpose of our decision that the assailed designation and investigation were regular and legal, and we will proceed at once to the consideration of the validity of the disputed suspension.

By Section 9 of the Revised Charter of the City of Manila (Republic Act No. 409), "the Mayor shall hold office for four years unless sooner removed." But the Charter does not contain any provision for this officer's removal or suspension. This silence is in striking contrast to the explicitness with which Republic Act No. 409 stipulates for the removal and suspension of board members and other city officials. Section 14 specifies the causes for which members of the Municipal Board may be suspended and removed, to wit: the same causes for removal of provincial elective officers, and Section 22 expressly authorizes the removal—for cause—of appointive city officials and employees by the President or the Mayor depending on who made the appointments.

Nevertheless, the rights, duties and privileges of municipal officers do not have to be embodied in the charter, but may be regulated by provisions of general application specially if these are incorporated in the same code of which the city organic law forms a part.

Such is the case here. If the Manila City Charter itself is silent regarding the suspension or removal of the mayor, Section 64(b) of the Revised Administrative Code does confer upon the President the power to remove any person from any position of trust or authority under the Government of the Philip-

pines for disloyalty to the Republic of the Philippines. There is no denying that the position of mayor is under the Government of the Philippines and one of trust and authority, and comes within the purview of the provision before cited.

The intent of the phrase "unless sooner removed" in Section 9 of the Manila Charter has been a topic of much speculation and debate in the course of the oral arguments and in the briefs. This phrase is not uncommon in statutes relating to public offices, and has received construction from the courts. It has been declared that "Power in the appointing authority to remove a public officer may be implied where to statutory specification of the term of office are added the words 'unless sooner removed.'" (43 Am. Jur. 30.)

It is obvious from the plain language of this statement that the respondents can hardly derived comfort from the phrase in question as repository of a hidden or veiled authority of the President. Implying power of the appointing agency to remove, the natural inference is that the words have exclusive application to cases affecting appointive officers; so that, where the officers involved are elective, like that of mayor of the city of Manila, they have no other meaning than that the officer is not immune to removal, and the whole clause is to be interpreted to read, "The Mayor shall hold his position for the prescribed term unless sooner ousted as provided by other laws," or something to that effect. The Congress is presumed to have been aware of Section 64(b) of the Revised Administrative Code and to have in mind this Section and other removal statutes that may be enacted in the future, in employing the phrase "unless sooner removed." Another conclusion, we are impelled to say, is that under existing legislation, the Manila City Mayor is removable only for disloyalty to the Republic. For, as will be shown, the express mention of one cause or several causes for removal or suspension excludes other causes.

Four Justices who join in this decision do not share the view that the only ground upon which the Mayor may be expelled is disloyalty. The Chief Justice, Mr. Justice Padilla and Mr. Justice Jugo, three of the Justices referred to, reason that, as the office of provincial executive is at least as important as the office of mayor of the City of Manila, the latter officer, by analogy, ought to be amenable to removal and suspension for the same causes as provincial executives, who, under Section 2078 of the Revised Administrative Code, may be discharged for dishonesty, oppression, or misconduct in office, besides disloyalty. Even so, these members of the Court opine that the alleged offense for which Mayor Lacson has been suspended is not one of the grounds just enumerated, and are in complete agreement with others of the majority that the suspension is unwarranted and illegal. Mr. Justice Pablo also believes that the suspension was illegal but wants to have it understood that he bases his concurrence mainly on the strength of the ruling in the case of Cornejo v. Naval, 54 Phil. 809, of which he will speak more later.

The contention that the President has inherent power to remove or suspend municipal officers is without doubt not well taken. Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. (2 McQuillen's Municipal Corporations [Revised], Section 574.) So it has been declared that the governor of a state, (who is to the state what the President is to the Republic of the Philippines), can only remove where the power is expressly given or arises by necessary implication under the Constitution or statutes. (43 Am. Jur. 34.)

There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials. By Article VII, Sec. 10, par. (1) of the Constitution the President "shall * * * exercise general supervision over all local governments," but supervision does not contemplate control. (People v. Brophy, 120 P. 2nd. 946, 49 Cal. App. 2nd. 15.) Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso "as may be provided by law," a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation. And the limitation does not stop here. It is significant to note that Section 64(b) of the Revised Administrative Code in conferring on the Chief Executive power to remove specifically enjoins that the said power should be exercised conformably ot law, which we assume to mean that removals must be accomplished only for any of the causes and in the fashion prescribed by law and the procedure.

Then again, strict construction of law relating to suspension and removal, is the universal rule. The rule is expressed in different forms which convey the same iden: Removal is to be confined within the limits prescribed for it; The causes, manner and conditions fixed must be pursued with strictness; Where the cause for removal is specified, the specification amounts to a prohibition to remove for a different cause; etc. etc. (Mechem on the Law of Offices and Officers, p. 286; 2 McQuillen's Municipal Corporations [Revised] Section 575; 43 Am. Jur. 89.) The last statement is a paraphrase of the well-known maxim *Expressio unius est exclusio alterius.*

The reason for the stringent rule is said to be that the remedy by removal is a drastic one (43 Am. Jur. 89) and, according to some courts, including ours (Cornejo v. Naval, supra), penal in nature. When dealing with elective posts, the necessity for restricted construction is greater. Manifesting jealous regard for the integrity of positions filled by popular election, some courts have refused to bring officers holding elective offices within constitutional provision which gives the state governor power to remove at pleasure. Not even in the face of such provision, it has been emphasized, may elective officers be dismissed except for cause. (62 C. J. S. 947.)

It may be true, as suggested, that the public interest and the proper administration of official functions would be best served by an enlargement of the causes for removal of the mayor, and *vice versa.* The answer to this observation is that the shortcoming is for the legislative branch alone to correct by appropriate enactment. It is trite to say that we are not to pass upon the folly or wisdom of the law. As has been said in Cornejo v. Naval, *supra*, anent identical criticisms, "if the law is too narrow in scope, it is for the Legislature rather than the courts to expand it." It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; Otherwise the interpretation becomes judicial legislation. (Kansas ex rel. John T. Little, Atty. Gen. v. William M. Mitchell, 70 L. R. A. 306; Dudly v. Reynolds, 1 Kan. 285.)

Yet, the abridgment of the power to remove or suspend an elective mayor is not without its own justification, and was, we think, deliberately intended by the lawmakers. The evils resulting from a restricted authority to suspend or remove must have been weighed against the injustices and harms to the public interests which would be likely to emerge from an unrestrained discretionary power to suspend and remove.

In consonance with the principles before stated, we are constrained to conclude that the power of the President to remove or suspend the Mayor of the City of Manila is confined to disloyalty to the Republic or, at the most, following the opinion of three of the subscribing Justices, for the other causes stipulated in Section 2078 of the Revised Administrative Code, and that the suspension of the petitioner for libel is outside the bounds of express or unwritten law. It need no argument to show that the offense of libel or oral defamation for which Mayor Lacson is being prosecuted is not disloyalty, dishonesty, or oppression within the legal or popular meaning of these words. Misconduct in office is the nearest approach to the offense of libel, and misconduct Mayor Lacson's offense is, in the opinion of counsel and of some members of the Court. Admitting, as we understand the respondents' position, that the petitioner was not guilty of disloyalty, dishonesty or oppression, yet counsel do contend that the petitioner's "outburst" against Judge Montesa constituted misconduct in office.

Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer. (Mechem, *supra*, Section 457). "It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office * * *." (43 Am. Jur. 39, 40.) To this effect is the principle laid down in Cornejo v. Naval, *supra*.

In that case, Cornejo, Municipal President of Pasay, Rizal, had been found guilty of the crime of falsification of a private document and sentenced therefor to one year, eight months, and twenty-one days' imprisonment, etc. On the basis of his conviction, the Municipal President had been suspended and administrative charges preferred against him with the Provincial Board, by the Governor.

The suspended officer assailed the legality of the suspension before this Court, and this Court in a unanimous decision ruled that the suspension was illegal and without effect. The Court prefaced its opinion with the statement that the charge against the municipal officer to be valid cause for suspension or removal "must be one affecting the official integrity of the officer in question." Making this premise the basis of its investigation, the Court concluded that the crime of falsification of a private document is not misconduct in office, pointing out that this crime "does not imply that one takes advantage of his official position, inasmuch as corruption signifies corruption in office, and inasmuch as the charge must be one affecting the official integrity of the officer in question."

Judged by the foregoing standard definition of misconduct in office, the alleged libel imputed to the suspended Mayor was not such misconduct even if the term "misconduct in office" be taken in its broadest sense. The radio broadcast in which the objectionable utterances were made had nothing or very little to do with petitioner's official functions and duties as mayor. It was not done by virtue or under color of authority. It was not any wrongful official act, or omission to perform a duty of public concern, tacitly or expressly annexed to his position. Neither can it be said that Mayor Lacson committed an abuse or took advantage of his office. One does not have to be a mayor to make those remarks or to talk on the radio. The use of the radio is a priv-

llege open to anyone who would pay for the time consumed, or whom the owner would allow for reasons of his own. The mere circumstance that the broadcast was transmitted from the City Hall instead of the radio station did not alter the situation. It is the character of the remarks and their immediate relation to the office that are of paramount consideration. It is our considered opinion that the petitioner acted as a private individual and should be made to answer in his private capacity if he committed any breach of propriety or law.

The most liberal view that can be taken of the power of the President to remove the Mayor of the City of Manila is that it must be for cause. Even those who would uphold the legality of the Mayor's suspension do not go so far as to claim power in the Chief Executive to remove or suspend the Mayor at pleasure. Untramelled discretionery power to remove does not apply to appointed officers whose term of office is definite, much less elective officers. As has been pointedly stated, "Fixity of tenure destroys the power of removal at pleasure otherwise incident to the appointing power * * *. The reason of this rule is the evident repugnance between the fixed term and the power of arbitrary removal. * * *."

"An inferential authority to remove at pleasure can not be deduced, since the existence of a defined term, *ipso facto*, negatives such an inference, and implies a contrary presumption, i.e., that the incumbent shall hold office to the end of his term subject to removal for cause." (State ex rel. Gallaghar v. Brown, 57 Mo. Ap. 203, expressly adopted by the Supreme Court in State ex rel. v. Maroney, 191 Mo. 548, 90 SW 141; State v. Crandell 269 Mo. 44, 190 SW 889; State v. Salval, 450 2nd, 995; 62 C. J. S. 947.)

Granting now, for the sake of argument, that the President may remove the Mayor for cause, was the Mayor's alleged crime sufficient legal justification for his suspension?

In a limited sense the words "for cause" and "misconduct in office" are synonymous. "For cause", like "misconduct in office", has been universally accepted to mean for reasons which the law and sound public policy recognize as sufficient ground for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of the office and must be restricted to something of a substantial nature directly affecting the rights and interest of the public. (43 Am. Jur. 48). One court went to the extent of saying that "The eccentric manner of an officer, his having exaggerated notion of his own importance, indulgence in coarse language, or talking loudly on the streets, however offensive, would not warrant any interference with his incumbency. Rudeness of an officer not amounting to illegality of conduct or oppression is not such misconduct as will give cause for removing him from office."

Much discussion, which we consider of little or no importance, has been devoted to the question of whether the power to remove carries with it the power to suspend. The two powers, as has been indicated, are identical and governed by the same principles in their important aspects that have any bearing on the case at bar. Whether decreed as a punishment in itself, or as auxiliary in the proceedings for removal so as to tie the defendant's hand pending his investigation, suspension ought to be based on the same ground upon which removal may be affected or is sought. (43 Am. Jur. 65.) When exercised as a mere incident to the power to remove, the power to suspend cannot be

broader than the power to which it is anciliary. A stream cannot rise higher than its source, as the saying goes.

In their effects, the difference between the power to remove and the power to suspend is only one of degree. Suspension is a qualified expulsion, and whether termed suspension or expulsion, it constitutes either temporary or permanent disfranchisement. It is an *ad interim* stoppage or arrest of an official power and pay. (2 McQuillen's Municipal Corporations [Revised], Section 585.) In fact, when the "suspension is to continue until the final disposition" of a criminal prosecution, like the petitioner's suspension, it might become a virtual removal, considering that in the event of conviction by the trial court the case might drag as long as the remainder of the suspended officer's term of office, or longer.

We believe also that in the field of procedure no less than in that of substantive law the suspension under review is fatally defective. No administrative charges have been preferred against the petitioner and none seem to be contemplated. The sole grounds for the suspension, as recited in the President's order, are "the pendency of criminal case No. 20707 for libel," and "the present policy of the administration, requiring the suspension of any elective official who is being charged before the courts of any offense involving moral turpitude."

It seems self-evident that if, as must be conceded, temporary suspension is allowed merely so as to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses, the rule presupposes the existence of administrative charges and investigation being conducted or to be conducted. We are certain that no authority or good reason can be found in support of a proposition that the Chief Executive can suspend an officer facing criminal charges for the sole purpose of aiding the court in the administration of justice. Independent of the other branches of the Government, the courts can well take care of their own administration of the law. And administrative policy or practice not predicated on constitutional or statutory authority can have no binding force and effect in matters not purely political or governmental. Where individual rights, honor and reputation are in jeopardy, it is only law or the Constitution which can give legality to executive actions. It has been shown that nothing in the Constitution, law or decisions warrants the petitioner's suspension.

If policy is to be a guiding factor, and we think it should be, such policy must emanate from the legislative branch, which, under our form of government, is the legitimate policy-making department. The legislative policy, as such policy may be gathered from Section 2188 of the Revised Administrative Code, frowns upon prolonged or indefinite suspension of local elective officials. By this section "the provincial governor shall receive and investigate complaints against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office." It provides that in case suspension has been effected, the hearing shall occur as soon as practicable, in no case later than ten days from the date the accused is furnished a copy of the charges, unless the suspended official on sufficient grounds asks for an extension of time to prepare his defense. The section further warns that "the preventive suspension shall not be for more than thirty days," and ordains that at the end of that period the officer should be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the defendant's fault, neglect or

request, and unless in case of conviction the Secretary of the Interior shall otherwise direct.

Section 2188 is of relatively recent vintage, and is designed to protect elective municipal officials against abuses of the power of suspension, abuses of which past experience and observation had presented abundant examples. The point we wish to drive home is that, evincing grave concerns for ordinary municipal officials including municipal councilors, as a matter of public policy, it is unreasonable to suppose that the Legislature intended to withhold the same safeguards from the post of mayor of the metropolis and seat of the National Government. On the contrary, in converting the office from appointive to elective, one of the legislative purposes, we venture to say, was to afford the position greater stability as well as to clothe it with greater dignity and prestige. What could be the practical use of having the people choose the city executive to manage the city's affairs if by the simple expedient of a criminal accusation he could be laid off for the long duration of a criminal prosecution, prosecution which, at long last might, as is not infrequently the case, turn out to be false, malicious, unsubstantial, or founded on a mistaken notion of law or evidence? Let it not be overlooked that criminal accusations are easy to make and take months or years to try and finally decide, and that the filing of such accusations and the time within which they are to be finished are matters over which the accused has no effective control. It is not difficult to see that the tenure of office and the incumbent's rights could easily be overthrown and defeated if power rested in any authority to suspend the officer on the mere filing or pendency of a criminal accusation, the suspension to continue until the final termination of the trial. The idea seems repugnant to the principles of due process, speedy trial, and simple justice—"principles that are fundamental and eternal."

It will also be noted from Section 2188 that it does not only limit the period of preventive suspension, but requires the filing of charges and prompt investigation. Without such express provision, however, it is established by the great weight of authority that the power of removal or suspension for cause can not, except by clear statutory authority, be exercised without notice and hearing. Mere silence of the statute with respect to notice and hearing will not justify the removal of such an officer without knowledge of the charges and an opportunity to be heard. (Mechem, p. 287; 43 Am. Jur. 50-52; 93 C. J. 65; 66; 62 C. J. S. 924; 43 C. J. 666, footnote 83(e) and cases cited.) It is only in those cases in which the office is held at the pleasure of the appointing power, and where the power of removal is exercisable at its mere discretion, that the officer may be removed without such notice or hearing. (Id.) Not even final conviction of a crime involving moral turpitude, as distinguished from conviction pending appeal, dispenses with the requisite notice and hearing. Final conviction is mentioned in Section 2188 of the Revised Administrative Code as ground for proceeding administratively against the convicted officer but does not operate as automatic removal doing away with the formalities of an administrative hearing.

The policy manifested by Section 2188 of the Revised Administrative Code, which is a consecrated policy in other jurisdictions whose republican institutions this country has copied, requires speedy termination of a case in which suspension of the accused has been decreed, not only in the interest of the immediate party but of the public in general. The electorate is vitally interested, and the public good demands, that the man it has elevated to office be, within the shortest time possible, separated from the service if proven unfit and

unfaithful to its trust, and restored if found innocent. Special proceedings alone. unincumbered by nice technicalities of pleading, practice and procedure, and the right of appeal, are best calculated to guarantee quick result.

The petition must be, and the same is granted without costs.

(Sgd.) PEDRO TUASON

WE CONCUR:
(Sgd.) F. R. FERIA
" GUILLERMO F. PABLO
" FERNANDO JUGO

PARAS, C. J.; *concurring:*

The Executive power is vested in the President. (Section 1, Article VII, Constitution.) The President exercises general supervision over all local governments as may be provided by law. (Section 10[1], Article VII, Constitution.) Among the particular powers of the President is the power "to remove all officials from office conformably to law." (Section 64[b], Revised Administrative Code.) Upon the other hand, the Revised Charter of the City of Manila, Republic Act No. 409, section 9, provides that the city mayor "shall hold office for four years, unless sooner removed."

Counsel for the petitioner admits that the weight of authority in the United States is to the effect that the power to remove includes the power to suspend. We are of the opinion that the President has the power to remove and consequently to suspend the petitioner conformably to law. It is noteworthy that the power of removal conferred on the President by section 64(b) of the Revised Administrative Code refers to "all officials"; and there being no statutory distinction, the term "officials" should include both appointive and elective officials.

It is hard and illogical to believe that, while there are express legal provisions for the suspension and removal of provincial governors and municipal mayors, it could have been intended that the mayor of Manila should enjoy an over-all immunity or sacrosanct position, considering that a provincial governor or municipal mayor may fairly be considered in parity with the city mayor insofar as they are all executive heads of political subdivisions. Counsel for petitioner calls attention to the fact that the peculiarly elevated standard of the City of Manila and its populace might have prompted the law-makers to exempt the city mayor from removal or suspension. Much can be said about the desirability of making the executive head of Manila as strong and independent as possible, but there should not be any doubt that awareness of the existence of some sort of disciplinary measures has a neutralizing and deterring influence against any tendency towards officials misfeasance, excesses or omission.

It is contended for the petitioner that the terms "unless sooner removed" in section 9 of Republic Act No. 409 is merely a part of the provision fixing the tenure of office, and refers to such removal as may arise from causes enumerated in section 29 of the Revised Election Code, Articles 13 to 32 of the Revised Penal Code, and Article VI, section 10, paragraph (3), and Article IX of the Constitution. This contention is untenable, because under petitioner's theory the clause "unless sooner removed" would be superflous.

It is also argued for the petitioner that under the Constitution, Article VII, section 10, paragraph (1), the President is granted the power to exercise

only general supervision over local governments, in contrast to the power granted to him to have control over the executive departments, bureaus or offices, thereby intimating that the words "general supervision" were so intended as to deprive the President of any authority over local governments, including that of removal. This contention is likewise without merit, since the constitutional provision confers such general supervision as may be provided by law, so that said supervision will include any power vested in the President by law. As already stated, section 64(b) of the Revised Administrative Code has conferred on the President the special power to remove all officials conformably to law. Moreover, the removal of provincial officers is expressly provided for in section 2078 of the Revised Administrative Code, and it is not pretended that said provision is inconsistent with the power of general supervision conferred on the President by section 10, Article VII, paragraph, (1) of the Constitution.

The question that arises calls for the specification of the causes or grounds warranting the suspension or removal of the city mayor by the President. As already seen, section 64(b) of the Revised Administrative Code provides that the President may remove all officials conformably to law. While there are statutory causes regarding a provincial officer (section 2078, Revised Administrative Code) or municipal officer (section 2188, Id.), there is no legal provision enumerating the causes for the removal or suspension of the city mayor. In such case, removal conformably to law, as provided for in section 64(b) of the Revised Administrative Code, nccessarily means removal for cause. This follows from the constitutional provision that no officer or employee in the civil service shall be removed or suspended except for cause as provided for by law, and from the circumstance (admitted by counsel for petitioner) that the mayor of Manila, as an elective official is included in the unclassified civil service (section 7671, paragraph [c], Revised Administrative Code). The phrase "for cause" means, "for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public." (43 Am. Jur., 47, 48.) *See* also de los Santos vs. Mallari, G. R. No. L-3881, August 31, 1950.

We believe that the grounds for the suspension and removal of a provincial governor, namely, disloyalty, dishonesty, oppression, or misconduct in office, may by analogy be applied to the city mayor. But even extending the similarity further, and applying the grounds as to a municipal mayor, namely, neglect of duty, oppression, corruption, or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude,—certainly the city mayor is entitled to at least the same, if not more, protection enjoyed by a municipal officer,—the question is whether the petitioner's suspension may be based on the mere filing against him of a complaint for libel. The offense of libel is clearly not disloyalty, dishonesty, oppression, misconduct in office, neglect of duty, oppression corruption or other form of maladministration of office. Indeed, petitioner's suspension is not premised on any of these grounds. The petitioner has neither been convicted by final judgment of the offense of libel, so that even assuming that said offense involves moral turpitude, his suspension was not yet in order.

Upon the other hand, the offense of libel cannot be loosely considered as a misconduct in office, because the misconduct in office "which shall warrant a removal of the officer must be such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases it is necessary 'to separate the character of the man from the character of the officer' ". (Mechem, Officers, p. 290; *see* also Cornejo vs. Naval, 54 Phil. 809.) In this connection the rule of strict construction should be observed. (Cornejo vs. Naval, 54 Phil. 809.)

The law, in requiring final conviction, undoubtedly is intended to forestall any fabricated criminal prosecution as a political maneuver or revenge, not to mention the constitutional presumption of innocence. It cannot be argued that, if final conviction is always necessary, the power to suspend is rendered nugatory. In the first place, suspension lies on other grounds. In the second place, even with respect to a criminal conviction, administrative investigation has to be conducted with a view to determining whether the crime involves moral turpitude, and of course during the period of said investigation the officer concerned may be suspended. At any rate, if the power to suspend or remove has to be stretched, it is for the law makers to make the necessary statutory changes.

The libel for which the petitioner is prosecuted cannot in turn be said as having been committed in connection with or during the performance by the petitioner of his official duties and functions as mayor of Manila. He participated in the radio broadcast which gave rise to the allegedly libelous imputation, not in the exercise of his office as city mayor but as any other private citizen, since there is no law imposing upon the petitioner the duty of speaking before the radio on the occasion in question.

Wherefore, I vote to grant the petition.

(Sgd.) RICARDO PARAS

PADILLA, *J., concurring:*

The office of mayor of the City of Manila theretofore appointive was made elective by the new charter of the City, Republic Act No. 409. Under the charter the choice of the person to hold the office of mayor in the City of Manila devolves exclusively upon the qualified electors of the City. The tenure of office is for a fixed term of four years "unless sooner removed" (section 9). This provision of the charter contemplates the possibility of removal. As a rule the power to remove encompasses the power to suspend. There is no doubt in my mind that the city mayor may be removed and, therefore, suspended. But such removal and suspension must be for cause. In the case of the members of the municipal board the charter provides that "they may be suspended or removed from office under the same circumstances, in the same manner, and with the same effect, as elective provincial officers" (section 14). In the case of the mayor there is no such provision except the bare feasibility of his removal. That power to remove must, of course, be lodged somewhere in the framework of the Government. It could be in a competent court if the mayor should be found guilty of a crime or misdemeanor for which the penalty provided and imposed upon him be temporary or perpetual disqualification or suspension from holding public office. If he should be found to have committed malfeasance or irregularities in the exercise of his powers and performance of his duties as such mayor not amounting to a crime or misdemeanor, the President could remove him. Pursuant to section

64(b) of the Revised Administrative Code the President is empowered "to remove officials from office conformably to law and to declare vacant the offices held by such removed officials." And "For disloyalty, * * * the President of the Philippines may at any time remove a person from any position of trust or authority under the Government of the Philippines." Does that provision specifying disloyalty as the cause for removal and, therefore, suspension exclude other causes which would render the City Mayor unfit and unworthy to act as such? I believe that the mention of disloyalty as a cause for removal from office was not intended by Congress as a limitation, for the clause where disloyalty is mentioned as a cause for removal from office is preceded by another granting to the President the power "to remove officials from office conformably to law," and because if construed as a limitation, it would defeat its very aim and purpose—an honest government dedicated to the promotion of the general well-being of all the inhabitants of the city. Section 2078 of the Revised Administrative Code provides that provincial officers may be suspended and removed not only for disloyalty but also for dishonesty, oppression or misconduct in office. I do not believe the City Mayor of Manila should be placed over and above the elective provincial governors in rank and importance; and for that reason the causes for removal of elective provincial governors may as well be applied to the city Mayor of Manila. I am, therefore, of the opinion that the City Mayor of Manila, if found guilty after investigation or trial, could be removed and also suspended pending an administrative or judicial investigation of charges preferred against him involving disloyalty, dishonesty, oppression or misconduct in office.

This brings me to the consideration of whether the information for libel filed against the petitioner in the court of first instance of Manila warrants his suspension from office by the President of the Philippines. When an information is filed in the city courts charging a person with the commission of a crime, it is done only after an investigation has been made by the prosecuting officer who finds sufficient or *prima facie* evidence of his guilt. To find out whether he should suspend and then after an investigation remove an officer charged with irregularities or malfeasance in office, the President in the exercise of his supervisory power could either order such administrative investigation to be conducted or rely upon the investigation made by a prosecuting officer, and if he believes that the facts found by the prosecuting officer warrant suspension the President, undoubtedly, could suspend him and thereafter if the officer charged with a crime should be found by a competent court guilty thereof, he could remove him from office. The President may choose between instituting an administrative inquiry or rely upon the trial and judgment made by a competent court of justice. Nevertheless, conviction of a crime by a competent court does not necessarily grant the President under his authority of supervision the power to remove unless for causes provided by law, to wit: disloyalty, dishonesty, oppression or misconduct in office. Disloyalty may be committed independently of the exercise of the powers and performance of the duties by the City Mayor. Once that is proved the President may and must remove him. Dishonesty may be committed not only in connection with the exercise of the powers and performance of the functions and duties by the mayor but also independently of the exercise of such powers and performance of such duties. For instance, independently of the exercise of his powers and the performance of his duties as mayor of the city of Manila he may be charged with and found guilty of smuggling contraband goods into a province or other city outside his city's jurisdictional limits or he may be

charged with and found guilty of robbery, burglary, forgery or seduction unconnected with the exercise of his powers and the performance of his duties. Such conviction involves dishonesty and certainly the mayor cannot continue in office but must be removed. A man of such a character should not be allowed to continue in office. He should forthwith be removed. Acts of oppression must be committed in connection with the exercise of the powers and the performance of the duties as mayor, unless they involve dishonesty. Not all acts of oppression involve dishonesty. They vary in degree and some may seem oppressive but do not involve dishonesty. For that reason in order that the mayor may be removed from office, if found guilty of oppression, it must be in connection with the exercise of his powers and performance of his duties as such mayor. It is clear that misconduct in office must be committed in connection with the exercise of his powers and performance of his duties as such mayor.

Again this brings me to another point. Whether an information for libel which is neither disloyalty, dishonesty, or oppression may be considered as misconduct in office. It should be borne in mind that the filing of the information for libel against the petitioner is the offshoot or aftermath of the steps taken by him to purge the Manila Police Department. As a result of such steps he filed a complaint against the Deputy Chief of Police, Lt. Colonel Celestino C. Juan. All the steps taken by him, such as investigating the police officers involved in the irregularities committed in the Manila Police Department, filing the complaint in the city fiscal's office and presenting or submitting evidence against the deputy chief of police, were all in connection with the performance of his duties as mayor. So that if for such acts he could be held liable in an administrative investigation they would fall under misconduct in office provided for by law. But there is no question that such steps cannot be deemed to constitute misconduct in office. On the contrary, they are praiseworthy acts. However, the performance of his duties in connection with the prosecution and eventual removal of the deputy chief of the police of Manila stopped or ceased to be a function of his office after the presentation of the complaint and of the evidence in support thereof to the city fiscal's office. Thereafter, anything done by him, anything uttered by him, if it should constitute a crime would not be in connection with the performance of the duties of his office and, therefore, it would not constitute a misconduct in office. If it is a crime, his is the responsibility and he must be made to answer for it before a court of competent jurisdiction.

Much as it is wished and desired to see and have a mayor as becoming an officer of such high rank possessed of composure in his behavior, prudence in his acts and self-restraint in his utterances, yet I cannot bring myself to believe that a libel allegedly committed by him which is unrelated to the performance of the duties of his office would warrant his suspension from office. It is unnecessary to pass judgment on whether he may be removed after conviction. His utterances may be biting, cutting, sharp, caustic and sarcastic; and, granting for the sake of argument, that the utterance upon which the information for libel is grounded be contemptuous—a point I do not pass upon pending determination and judgment on the merits of the case for libel filed against the petitioner in the court of first instance of Manila—still I do not believe that the alleged libelous utterance which gave rise to the filing of the information, unrelated to the performance of his duties as mayor, would be sufficient cause for his suspension from office. The offended party must resort to court for redress of his grievance and to have it right the wrong.

And if it be contemptuous the court against which it was committed has ample power to make him answer for his misdeed.

The foregoing reasons lead me to hold the opinion and conclude that the suspension of the petitioner is illegal, invalid and of no legal effect. The petition for a writ of *quo warranto* should be granted, as the respondent acting mayor is unlawfully holding an office from which the petitioner who is entitled thereto is excluded.

(Sgd.) SABINO PADILLA

BAUTISTA ANGELO, *J.*, dissenting:

The power of the President to remove the officials in the government service may be found in section 64(b) of the Revised Administrative Code. This section provides, among others, that the President can "remove officials from office conformably to law". In addition, he may also remove for disloyalty any person from any position of trust or authority under the government.

The term "officials" includes all officials of the government, whether elective or appointive, because when the law does not distinguish there is no justification to make any distinction. *Ubi Lex Non Distinguit, Nec Nos Distinguere Debemus.* Said term, therefore, includes the Mayor of the City of Manila.

But is there any law which expressly authorizes the President to remove the Mayor of the City of Manila? The answer to this question would bring us to a scrutiny of the Charter of the City of Manila (Republic Act No. 409). A careful perusal of this Charter would disclose no express provision concerning the removal of the Mayor other than the following phrase: "He shall hold office for four years, unless sooner removed," unlike the members of the Municipal Board wherein it is clearly postulated that they can be removed in the same manner and on the same grounds as any provincial official. And because of this scanty provision, counsel for petitioner now contends that there is a void in the law which can only be remedied by legislation. The phrase *unless sooner removed,* counsel claims, does not necessarily allude to the President as the removing power, but rather it is expressive of acts which may render the Mayor disqualified to continue in office as found at random in different penal provisions of the land. But an insight into the origin and historical background of the phrase under consideration would at once reveal that such a claim has no merit.

Note that the phrase *unless sooner removed* is an old provision contained in the Revised Administrative Code (Section 2434) and which was merely transplanted to the Charter of the City of Manila (Republic Act No. 409, section 9). Said phrase was at the same time taken from statutes of American origin. This phrase has a well-defined meaning in American statutes. In the case of State ex rel. Nagle vs. Sullivan, 99 A.L.R. 321, 329, the phrase was defined as implying "power in the appointing authority to remove," which ruling found support in two other cases. Townsend v. Kurtz, 83 Md. 350, 34 A. 1123, 1126; State ex rel. v. Mitchell, 50 Kan. 295, 33 P. 104, 105, 20 L.R.A. 306. Or, as quoted in the majority opinion, "Power in the appointing authority to remove a public officer may be implied where to statutory specification of the term of office are added the words 'unless sooner removed.'" (43 A,. Jur. 30.) These authorities suffice to dispel any doubt that when said phrase was carried into the Charter of the City of Manila it was so carried with the implication that the President would continue wielding his power of removal as

heretofore followed under the old set-up. There is nothing in said Charter that would indicate any intention to the contrary. To hold otherwise would be to devoid the word *removed* of its substance and meaning. This word presupposes the existence of power somewhere, and this power can only be the Chief Executive. This is essentially an executive function. He cannot be deprived of this power unless the law lodges it elsewhere.

> "This case presents the question whether under the Constitution the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate."
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> "It is very clear from this history that the exact question which the House voted upon was whether it should recognize and declare the power of the President under the Constitution to remove the Secretary of Foreign Affairs without the advice and consent of the Senate. That was what the vote was taken for. Some effort has been made to question whether the decision carries the result claimed for it, but there is not the slightest doubt, after an examination of the record, that the vote was, and was intended to be, *a legislative declaration that the power to remove officers appointed by the President and the Senate vested in the President alone*, and until the Johnson impeachment trial in 1868, its meaning was not doubted even by those who questioned its soundness."
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> "After the bill as amended had passed the House, it was sent to the Senate, where it was discussed in secret session, without report. The critical vote there was upon the striking out of the clause recognizing and affirming the unrestricted power of the President to remove. The Senate divided by ten to ten, requiring the deciding vote of the Vice President, John Adams, who voted against striking out, and in favor of the passage of the bill as it had left the House. *Ten of the Senators had been in the Constitutional Convention, and of them six voted that the power of removal was in the President alone.* The bill having passed as it came from the House was signed by President Washington and became a law. Act of July 27, 1789, 1 Stat. at L. 28, Chap. 4."
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> "Assuming then the power of Congress to regulate removals as incidental to the exercise of its constitutional power to vest appointments of inferior officers in the heads of departments, *certainly so long as Congress does not exercise that power, the power of removal must remain where the Constitution places it, with the President, as part of the executive power*, in accordance with the legislative decision of 1789 which we have been considering." (Myers v. United States, 71 L. ed. pp. 160, 162, 165, 184.) (Underline supplied).

Now, the law says that the Mayor shall hold office for four years unless sooner removed. It does not say that he shall hold office at the pleasure of the President unlike similar provisions appearing in other city charters. The idea is to give the Mayor a definite tenure of office not dependent upon the pleasure of the President. If this were the case he could be separated from the service regardless of the cause or motive. But when he was given a definite tenure the implication is that he can only be removed for "*cause.*"

> "An inferential authority to remove at pleasure can not be deduced, since the existence of a defined term, *ipso facto*, negatives such an infer-

ence, and implies a contrary presumption, i. e., that the incumbent shall hold office to the end of his term subject to removal for cause." (State ex rel. Gallaghar v. Brown, 57 Mo. Ap. 203, expressly adopted by the Supreme Court in States ex rel v. Maroney, 191 Mo. 548, 90 SW 141; State v. Crandell 269 Mo. 44, 190 SW 889; State v. Salval, 450 2nd, 995; 62 C.J.S. 947.)

There is a divergence of opinion among the members of the Court as to the cause that may serve as basis for the removal of the Mayor of the City of Manila in view of the silence of the law. Some are of the opinion that the cause must be one which specifically relates to, and affects the administration of, the office of the official to be removed. And in that advocacy they are guided by the ruling laid down in the case of Cornejo v. Naval, 54 Phil. 809. But I am of the opinion that that cause should not be given a restrictive meaning in dealing with the office of the Mayor of the City of Manila considering its importance and stature. The city of Manila is a class by itself. It is the show window of the Orient so to speak. Peoples of different nationalities and from all walks of life have their abode in that city and because of their peculiar situation are entitled to be accorded such treatment, courtesy and consideration which are not expected in other cities. In dealing with these different groups of people the Mayor is confronted not only with domestic problems but international as well. His approach to these problems should be characterized with utmost tact, ability and circumspection. His office is on a par with other high officials of our national government and at times he is called upon to meet issues and situations just as important and far-reaching as those confronted by the President himself. Such a situation could not have passed unnoticed to Congress when it deemed it wise to place within the sound discretion of the President his continuance in office. And so it is my considered opinion that when the Charter of the city of Manila has impliedly provided that the Mayor can only be removed for cause it must have meant one which the law and sound public policy recognize as sufficient warrant for removal regardless of whether it relates to his office or otherwise. There are many authorities which follow this line of reasoning.

"Discharge of a civil service employee for 'good of the service' or 'for cause' implies some personal misconduct, or fact, rendering incumbent's further tenure harmful to the public interest" (State ex rel. Eckles v. Kansas City, Mo., 257 S.W. 197, 200).

"The phrase 'for cause,' when used in reference to removal of officers, means not the arbitrary will of the appointing power, but some cause affecting or concerning the ability or fitness of the officer to perform his duties" (Farish v. Young, 158 P. 845, 847, 18 Ariz. 298).

" 'Cause' as effects removal of a public employee means some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and sound public opinion recognize as a good cause for his no longer occupying the place" (Murphy v. Houston, 259 Ill. App. 385).

" 'Cause for removal of officer stated in resolution of address of Legislature must be legal and relate to matters of substantial nature directly affecting public interest, and the qualifications of officer or per-

formance of his duties, showing he is not fit person to hold office" (Moulton v. Scully, 89 App. 944, 947, 111 Me. 428).

"A 'cause' within statute providing that no person in the classified civil service can be removed except for cause on written charges, means some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion will recognize as a good cause for his no longer occupying the place" (City of Chicago v. Gillen, 124 Ill. App. 210).

Rejecting our theory that the phrase "shall hold office for four years unless sooner removed" comprises the Mayor of the city of Manila even if he is an elective official, the majority opinion holds the view that as the law now stands the Mayor is removable only for disloyalty to the Republic. The opinion also expresses the view that the "strict construction of law relating to suspension and removal is the universal rule. Removal is to be confined within the limits prescribed for it; the causes, manner and conditions fixed must be pursued with strictness; where the cause for removal is specified, the specification amounts to a prohibition to remove for a different cause." But in the same breath the opinion acquiesces in the view of three members of the Court to the effect that "as the office of provincial executive is at least as important as the office of the Mayor of the city of Manila, the latter officer, by analogy, ought to be amenable to removal and suspension for the same causes as provincial executives, who, under section 2078 of the Revised Administrative Code, may be discharged from office for dishonesty, oppression or misconduct in office, besides disloyalty." I cannot see how the above expressed views can be reconciled. If the law, as contended, only provides for the removal of the Mayor of the city of Manila on the ground of disloyalty, and this provision should be construed *strictissimi Juris*, simple logic dictates that he is not amenable to other causes of removal. This line of reasoning can only give rise to the implication that the Mayor of the city of Manila can be removed not only for disloyalty but also for other causes which the Revised Administrative Code specifically provides for provincial and municipal officers if the Chief Executive in his sound discretion believes them to be sufficient (Sections 2078, 2188). All of these grounds fit in to the realm of wide discretion that is conferred by law upon the Chief Executive under his power to remove for "cause."

But I will follow the line of reasoning of the majority in its discussion of the causes of removal by the Chief Executive of the city Mayor of Manila, and I will admit that one of them is misconduct in office. At this juncture, I wish to ask: can not the behavior observed by petitioner in disparaging against a Judge of First Instance, a high and respectable official in our Government set-up, in a radio broadcast held exclusively for the expression of his views as Mayor of the city of Manila be considered misconduct in office? The majority opinion holds that such a behavior should be characterized as one entirely divorced from the official position of petitioner and should be appreciated merely in the light of a personal actuation which has no bearing on his office. I cannot subscribe to this view. The circumstances under which the petitioner made the utterances imputed to him as libelous point to a different conclusion. It should be borne in mind that those utterances were made on the occasion of a radio broadcast exclusively held to give petitioner an opportunity to express his view on public questions in his capacity as Mayor of the city of Manila. It was a broadcast given by him not as Lacson, the individual, but as Lacson

the Mayor. The public listened to him not because he was Arsenio Lacson but because he was the Mayor of the city. Such is the general impression when the broadcast was made, and that is the reason why the broadcast was made right in the city Hall in order to give to the whole show a color of official authority. And in that broadcast he made the following utterances: "I have nothing but contempt for certain courts of justice. I tell you one thing (answering an interrogator), if I have the power to fire Judge Montesa (the trial Judge) I will fire him for being incompetent, for being an ignorant. . .an *ignoramus*." The majority believes that such a behavior does not constitute a misconduct in office, but the Chief Executive holds a different opinion. On matters which involve differences of opinion between this Court and the Chief Executive, a becoming regard for a co-equal power demands that the opinion of the latter should be respected in the absence of abuse of discretion.

Much stress is laid by the majority opinion on the *ratio decidendi* in the case of Cornejo v. Naval, 54 Phil. 809, in its effort to show that the cause of removal must have direct relation to, and be connected, with the performance of official duties of petitioner. But this case cannot be invoked as a precedent here because it involves the interpretation of a law which governs the removal of municipal officials (Section 2188, Rev. Adm. Code). In that case, the phrase "other form of maladministration in office" was interpreted in connection with the word "corruption." On one hand, the petitioner contended that that phrase only limits the disciplinary action to misconduct relating to the office and does not extend to personal misbehavior. The respondents, on the other hand, claimed that the word corruption should be interpreted independently of the office of petitioner. It was then that the court made the following pronouncement: "It is a well recognized rule of statutory construction and of the law of public officers that a statute prescribing the grounds for which an officer may be suspended is penal in nature, and should be strictly construed. Making this principle the basis of our investigation, it is not possible to reach any other conclusion than that the prepositional phrase 'in office' qualifies the various grounds for legal suspension. The law says 'or other form of maladministration in office.' By the maxim *Ejusdem generis*, the scope of the word 'other' is limited to that which is of the same kind as its antecedent. Corruption, therefore, refers to corruption in office." The citation, therefore, of the Naval case as a precedent in the present case has no legal basis.

Having established that the President has the power to remove the Mayor of the city of Manila under the Charter provided that sufficient legal cause exists for doing so, the next inquiry is, can he also suspend him? The answer is in the affirmative under the well-known rule that the power to remove embraces the authority to suspend. One authority says, "the suspension of an officer pending his trial for misconduct, so as to tie his hands for the time being, seems to be universally accepted as fair and often necessary. This power to suspend is generally considered as included in the power of removal for cause, since a suspension is merely a less severe disciplinary measure" (43 Am. Jur. 65, section 242). It has also been held that "where the power of removal is limited to cause, the power to suspend, made use of as a disciplinary power pending charges, has been regarded as included within the power of removal, and it has been announced that the power to suspend is an incident to the power to remove for cause, and according to some authorities, the power to remove necessarily includes the minor power to suspend" (67 C. J. S. 233-234). A similar ruling was laid down in this jurisdiction in a case involving a municipal official. Said this Court:

"x x x 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, parenthetically, 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.*" (Villena vs. Sec. of the Interior, 67 Phil. 451, 460-461.) (Underline supplied).

It is true that the suspension of petitioner by the Chief Executive has been predicated merely upon the pendency of a criminal case No. 20707 for libel and not as a result of an administrative charge preferred against him in connection with the performance of his official duties. And because the suspension has been brought about without any previous administrative charge, the majority opinion opines that such suspension is unwarranted, as it finds no support in law or jurisprudence. I again disagree with this opinion. As well stated by the majority, "temporary suspension is allowed merely so as to prevent the accused from hampering the normal course of the investigation with his influence and authority of possible witnesses." To this I agree. This is the philosophy of a temporary suspension. But where we disagree is in its application, for I entertain the view that it also applies to a case where the officer is indicted in court for a criminal charge. I believe that the same evil or danger exists when an officer is charge administratively, as well as when he is indicted in court. Unless removed from and authority he is apt to make use of his influence to his advantage by suppressing or tempering with the witnesses. And he is apt to do this with more reason when he is indicted in court for then not only his position is at stake but his liberty as well.

"x x No right to suspend is given in express terms. If such power exists, it must be implied; x x x. This court in the Peterson case quoted therefrom with respect to language of such importance to the question here involved that we take the liberty of reproducing it on account of its practical suggestive force on this inquiry. Promising that in the Missouri case the right to suspend the official depended upon a power conferred solely by a statute, that court said: *'The suspension of an officer, pending his trial, for misconduct, so as to tie his hands for the time being, seems to be universally accepted as a fair, salutary, and often necessary incident of the situation. His retention, at such time of all the advantage and opportunities afforded by official position may enable and encourage him not only to persist in the rebellious practice complained of, but also to seriously embarass his triers in their approaches to the ends of justice. In the absence of any express limitation to the contrary, —and none has been shown,—we are of the opinion that in cases where guiltiness of the offense charged will involve a dismissal from office there is, on general principles, to arbitrary or improper exercise of a supervisory authority in a suspension of the accused pending his trial in due and*

*proper form. The reasons stated in the above quotation for holding that the right of suspension during proceedings for removal seems to be so essential to a complete and thorough investigation of an official charged with misconduct as to furnish an unanswerable argument to the claim of respondent that the minor right to suspend is not included in the major authority to remove.* A better illustration of the necessity of holding that such incidental right exists cannot be made than in the case of an investigated sheriff, who as executive officer of the county enjoys great influence, which might extend to the control of papers absolutely necessary to determine the matters under investigation. *He might, if so disposed, prevent the use of evidence necessary to a full and fair hearing of the charges against him.* If the alleged acts of misconduct against such sheriff were, as they might supposedly be, made the grounds of inquest by the grand jury upon which further proceedings might depend, *it is easy to see how he would have a deep interest in withholding use of means that would result in prosecution; and, if he might hold the office until removed by the governor, a trial of an indictment against him might be made ineffectual in various ways by the exercise of his power and influence in the court as well as in the investigation by the commissioners.* It may be said that it is a great hardship to an accused officer to be deprived of his fees and emolutions before actual removal; but the answer to this suggestion is that he takes the office and retains it cum onere, and must accept its burdens with its benefits. *It ought not, therefore, to be held that the unquestionable power to remove should be so handicapped by an interpretation of the statute as to defeat the very object it seeks to attain. Presumably, the chief executive of the state will act upon an exalted sense of justice and high consideration of duty, and only in cases where strong reasons exist for exercising the power of suspension will impose unnecessary burdens upon the accused official after a sufficient review of the reasons upon which that power is to be exercised."* (State v. Megaarden, 88 NW, pp. 414-415; Underline supplied.)

The remaining question to be determined is whether the President is justified in suspending petitioner from office. The record shows that petitioner has been suspended from office as a result of the charge for libel filed against him by Judge Agustin P. Montesa. The libelous statements imputed to petitioner are not only contrary to justice, honesty or good morals or in derogation of the elementary duty of respect and consideration he owes to a judge and to the judiciary in general but call for the application of a penalty which involves suspension from public office (Article 355, in connection with article 43, Revised Penal Code). Considering the nature of the charges as reflected in the information, and without in any way disputing or giving any opinion on the merits of the case, they at once give the impression that they are of a serious nature which involve turpitude. This is the only consideration which guided the President to suspend him following the policy he has consistently pursued in dealing with public officers, whether appointive or elective, who are charged in court or otherwise with an offense which involves moral turpitude (Exhibit A-1). The soundness and validity of this policy cannot be seriously disputed. The authority of the President to enunciate and adopt such a policy flows necessarily from his constitutional power of supervision over local governments and his equally constitutional duty to faithfully execute the laws (Sec. 10, par. 1, Article VII, Constitution) and this policy should apply with greater force to

the city Mayor who is the right arm of the President in the execution and enforcement of the laws in the city.

The action of the President in suspending petitioner because of the charges preferred against him by Judge Montesa cannot be branded as unwarranted or arbitrary. It is to be presumed that, before taking such action, he has carefully weighed the nature and seriousness of the charges not only as affecting the offended party but the judiciary as well. It should be noted that petitioner, in his radio broadcast, and as quoted in the information, made disparaging remarks not only against the Judge but against some courts of justice. These remarks, affecting as they do the judiciary, must have impressed the President as tending to undermine the faith and confidence of the people in the administration of justice. While there are authorities who favor criticism of court decisions after they have become final, which Judges should not begrudge, the criticism should be made in the proper spirit and must be kept within proper bounds. It should not be contemptuous nor cast unsavory reflection against the judge. Undoubtedly, the remarks of petitioner, considering the circumstances under which they were made, were considered by the President not only derogatory to the judiciary but one which involves moral turpitude, and this opinion must be respected unless the courts opine otherwise. Jurisprudence sustain this action of the President.

> "This is a proceeding to disbar an attorney, instituted by the state upon the relation of the members of the grievance committee of the Oregon State Bar Association. The facts are that O. P. Mason, a licensed attorney, was indicted, tried, and *convicted of the crime of libel, upon proof of the publication of defamatory matter in a newspapor published* at Portland, Or., known as the Sunday Mercury, *while he was its editor.* Whereupon the relators filed an information against him in this court, alleging such conviction, and that the offense of which he was so convicted is a 'misdemeanor involving moral turpitude,' and prayed a judgment of removal against the accused. The defendant, upon being cited to appear, filed his answer to the information, in which he denies that the misdemeanor of which he was convicted involved moral turpitude, and alleges that he was found guilty thereof by construction of law only, of which renders the manager, editor, or owner of a newspaper criminally liable for the publication of a libel, whether he wrote the article or not, or had any knowledge of its publication; that he did not write the alleged libelous article, nor see it or know of its publicaton until after the news paper was in circulation." x x x.
>
> x x x But inability to properly define the term, however, does not preclude us from saying that it is, and of necessity must be, involved in the willful publication of a libel. The case of Andres v. Koppenheafer, *supra*, was an action for slander, founded upon the following language: 'What is a woman that makes a libel? She is a dirty creature, and that is you. You have made a libel, and I will prove it with my whole estate.' It was held that the crime of libel, imputed to the plaintiff, involved moral turpitude; Tilghman, C.J., saying: 'The man who wantonly, maliciously, and falsely traduces the character of his neighbor is no better than a felon. He endeavors to rob him of that, in comparison with which, gold and diamonds are but dress.' *We think there can be no doubt that the willful publication of a malicious libel by the manager of a newspaper, when made either to vent his spleeen upon the object of his wrath, or to*

*cater to the perverted taste of a small portion of the public, clearly involves moral turpitude, and manifests, on the part of the libeler, a depraved disposition and a malignant purpose.*" (State ex rel. Mays et al. v. Mason, 29 Or. 18, Feb. 3, 1896, 43 Pac. 651, 652; underline supplied).

There may be differences of opinion with regard to the determination of the nature or seriousness of the offense charged or the question whether such charge warrants disciplinary action, but there are authorities which hold that the officer invested with the power of removal is the sole judge of the existence of the sufficiency of the cause (17 R.C.L., section 233; Atty. General v. Doherty, 13 Am. Rep. 132), and unless a flagrant abuse of the exercise of that power is shown, public policy and a becoming regard for the principle of separation of powers demand that his action should be left undisturbed. Here there is no such showing nor the slightest intimation that that power has been abused. And so it is my opinion that this Court should do well in leaving the matter to the sole responsibility of the President until the criminal case which is now pending in the courts has been finally terminated.

For these reasons, I dissent from the opinion of the majority.

(Sgd.) FELIX BAUTISTA ANGELO

WE CONCUR:

(Sgd.) CESAR BENGSON
" MARCELIANO MONTEMAYOR
" ALEJO LABRADOR

# THE PEOPLE OF THE PHILIPPINES v. ARSENIO H. LACSON
## Crim. Case No. 21707
### FOR LIBEL

### ORDER

In 1895, the Supreme Court of Spain had to decide a case for "injuria"; the compiainant was a Judge; the accused was a lawyer who had lost his case; in his argument on appeal, the latter said that in his decision, the Judge had shown:

> "capricho, ignorancia, favoritismo, y salidas por la tangente, como el burro de la fabula asomaba las orejas."

The High Court ruled that:

> ". . . cuando las condiciones en que se realiza excluyen racionalmente el proposito de dañar honor y famas ajenas, . . . no puede considerarse reo de injuria, sino de una falta de respeto (which is contempt under our law). (S. de 29 Marzo, 1895, Gaceta del 15 de Agosto).

The situation in the case at bar is more or less parallel. The charge here is for libel; after trials on 14 November and 2, 5, and 11, December, 1952, the prosecution having presented witnesses Cayetano Cunanan, Bob Stewart, Ruperto Lunaria, Atty. Ariel Bocobo, Atty. Domingo de Lara, Francisco Valisno and Pedro de Jesus, and Exhibits A, A-1, B, C, D, E, E-1 to E-11 and X, defense moved to acquit, and argues that there is no case, because there is no sufficient showing of malice, that the aspersions cast by accused (which he admits) are privileged under the doctrine of fair comment, and that they are the truth.

We go to the setting: On 17 October, 1952, in Criminal Case No. 20177, People v. Celestino C. Juan, for malversation the complainant Judge, the Hon. Agustin P. Montesa promulgated his decision; it was acquittal; he gave two reasons therefor; the first was that as the pistol alleged to have been malversed had been assigned to defendant there for his official use as member of the Manila Police Department, but remained the property of the U.S. Army which had reserved the right to reclaim it upon demand, the sale that Capt. Juan might have made thereof could not be punishable as malversation under the law since malversation requires that the thing be public property, and under such facts, the pistol was not; and secondly, because "even granting for the sake of argument that the pistol in question is a public property of the Philippine government, the other element of misappropriation must be clearly established before there can be a conviction"; and from the evidence, the Judge was convinced that there was no proof beyond reasonable doubt that Capt. Juan had sold the pistol to Ng Seng Giap (Exhibit C). On 18 October, the day after the acquittal, defendant here, in his radio address, during the program "In This Corner", held at the City Hall over Station DZBB, answering interrogators anent said decision, made the remarks as follows:

> "I have nothing but contempt for certain courts of justice;
>
> "I tell you one thing, if I have the power to fire Judge Montesa, I will fire him for being incompetent, for being an ignorant . . . ah . . . ignoramus;

"The decision of Judge Montesa is stupid. Any student of law, any lawyer, will tell you that;

"Not only unusual, bizarre is the word, b-i-z-a-r-r-e (spelling the word and referring to the decision).

"It is stupid." (Again referring to the decision).

And interviewed by reporter Ariel Bocobo immediately after his remarks and asked if he could be quoted "as is", defendant answered, "Go ahead."

We proceed to dispose of the grounds for acquittal in the inverse order. Truth of course is an absolute defense where the imputation is made against a Government employee with respect to facts related to the discharge of his official duties (Art. 361, par. 2 Revised Penal Code, taken from Art. 460 of the Penal Code of 1887); although there is authority that the word "employees" should here be construed to exclude "Autoridades" (Viada, 5: 517, 5.a edicion); but this should not matter, because we discard the plea of truth. Omitting pages 1 to 6 of complainant's decision, (Exhibit C), a reading of the rest, pages 6 to 12, will reveal not incompetence or ignorance but the contrary; they display the mind of the analyst, who had taken the trouble to examine a mass of evidence with care, and rendered his findings, clear and lucid, on the facts as he had found them. We shall later comment on pages 1 to 6 some lines below. But if it were to be said in advance that the statement of the law in these pages of Exhibit C may really appear to be wrong, to make a downright conclusion of "ignorance" and "incompetence" would be an error of generalization. It is the defense of fair comment and failure of proof of malice that has troubled the Court. These grounds are interwined; we shall consider them together.

Complainant's decision on pages 1 to 6, held that under the law on malversation, accused therein could not be guilty even if he had disposed of or sold the pistol in question, sustaining that stand on the following reasoning:

> "On Sept. 6, 1945, Ithaca automatic pistol bearing serial number 1823015, together with two clips of ammunition were assigned to the defendant for his official use. It was one of the many firearms deposited with the Manila Police Department which had been confiscated from unauthorized persons. Later, on Jan. 23, 1947, the same gun became the object of an application for a temporary license by a chinaman by the name of Ng Seng Giap. The temporary license for three months in his name was issued for it by the defendant on Jan. 23, 1947, in the capacity of the latter as Deputy Chief of Police of Manila. Before the expiration of the period, on April 17, 1947, an application for the renewal of the said permit was filed by Ng Seng Giap, for which another temporary license was issued him dated April 18, 1947 by the then Chief of Police Lamberto Javalera. Following routine procedure, however, the gun was sent to the Chief of the Criminal Investigation Laboratory of the Manila Police Department for ballistic examination. The result of this examination showed that this gun was the same gun that had been previously issued to the defendant on Sept. 6, 1945. An investigation was conducted of the applicant who pointed to Sergeant Castillo and this, in turn, pointed to the defendant as the one who sold the said gun to the said Chinese applicant. Hence this charge for malversation.

THE LAW

"The charge is predicated upon Article 217 of the Revised Penal Code, which reads:

'Malversation of public funds or property.—Presumption of malversation.—Any public officer, who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

'1. The penalty of prison correccional in its minimum and medium periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos . . .

"'Under this Article, the elements of the crime charged are as follows:

"1. The defendant is a public officer.
"2. The property involved is public in nature.
"3. That said property has been misappropriated by the defendant.
"4. That he is accountable for the same.

"ISSUE

"There is no question that the defendant is a public officer having been appointed Deputy Chief of Police of the City of Manila in 1946 after he had been detailed to the said office by the Philippine Army. There is, however, a dispute over the character of the property in question, that is, whether or not the said pistol is a public property.

"From the evidence, it appears that this particular pistol was assigned to the defendant by Major Batty of the U.S. Army, then chief of the Criminal Investigation Laboratory under the supervision and control of the U.S. Army, subject to the condition that the same would be 'reclaimed by the U.S. Army upon demand. When it was first confiscated from an unauthorized holder, it was registered in the book, marked Exhibit H. Upon its assignment to the defendant, it was tallied out in another book Exhibit 1 in the name of the defendant. However, it had never been included in the inventory of either the Manila Police Department of the City of Manila as property of the Philippine Government. The status of the said property seems clearly to be that it is the property of the U.S. Government which reserves the right to reclaim the same upon demand. It was to this government that the defendant became accountable and not to the City of Manila or the National Government of the Philippines. The fact that it had never been included in the inventory of public property of the Police Department and that of the City of Manila is a clear indication that the same was not intended to be public property of the Philippine government or any of its branches. Other than the statement of Major Cabe, there is no evidence that the same had been transferred to the Manila Police Department. According to Major Cabe, there was a turn over of U.S. equipment to the Manila Police Department, and that a list of the firearms which had been taken by the U.S. Army as well as those that had been turned over to the Manila Police Department had been prepared. This list, however, has not been presented in court to show

that the pistol in question was part of those firearms which were turned over to the Manila Police Department.

"On the other hand, the Chief of Police in a letter, dated June 22, 1946, to the Chairman of the Philippine Purchasing Commission, stated, 'it will be remembered that the Police Department at the time of the turn-over on March 1, 1946, was given the assurance that if and when the military authorities shall eventually decide that the above-mentioned laboratory (C.I.L.) may be relinquished by the Army, the same shall be acquired by the Manila Police Department thru the FLC channels . . .' This letter shows clearly that the turn-over did not include the pistol in question, because the same belonged to the C.I. Laboratory. Whether it was finally acquired by the Manila Police Department as suggested in this letter is not shown by the evidence. The conclusion, therefore, is inescapable that the U.S. Army still reserves the right of ownership over this pistol until the present time and that the defendant is accountable for it to the U.S. Army and not to the City of Manila.

"The sale or whatever disposition might have been made of it by the defendant does not constitute the crime charged against him, for under the provisions of Article 217 of the Revised Penal Code penalizing malversation, it is an important requisite that the property be public property of this government. Under the condition imposed by the U.S. Army that assigned this pistol to the defendant, the defendant and he alone was made responsible for the said pistol to the said government, since it was exclusively a matter between him and the U.S. Army to return the same or not. If then the defendant had disposed of the said property, the crime he has committed is not Malversation but may or may not be estafa depending upon the circumstances. It must be remembered that this pistol was given to the defendant subject to be reclaimed by the U.S. Army upon demand. Until that demand is made, it is premature to conclude that the defendant had misappropriated the property. It might have been delivered by him to another, nay, even sold to that party, but as long as no demand has been made by the U.S. Army, no one can say that he has committed the crime of estafa, because it is impossible to say that when that demand is made, the said property will not be produced." (Exhibit C, pages 1 to 6).

Defense in this case contends that such a restatement of the law of embezzlement was patently against statute and precedents:

"It should be noted that the expression 'even if such property belongs to a private individual' (Art. 222, Revised Penal Code), is a sweeping and all embracing statement; it denotes the express intention of the Penal Code to make accountable public officers guilty of malversation not only of insular, provincial or municipal funds, revenues or property but also of other funds or property, even if they belong to private individuals, as long as funds or property are placed in their custody.

"In the instant case, there is not the least doubt that the Red Cross funds in question came to the possession of this appellant as trustee, agent, administrator or depository of the same by virtue of his official position. Such being the case, those funds had the nature, attributes or character of public or government funds at the time of their misappropriation (Section 658, Revised Administrative Code; *U.S. v. Togonon*, 12 Phil. 516;

*U.S. v. Guzman*, 25 Phil. 22; *U.S. v. Velasquez*, 32 Phil. 157; *U.S. v. Radaza*, 17 Phil. 286; *U.S. v. Torrida*, 23 Phil. 189; and *U.S. v. Regala*, 28 Phil. 57). Moreover, in *People v. Castro* (61 Phil. 681), Chief Justice Avanceña delivering an opinion of the Supreme Court, held that the amounts represented by money orders under the custody of the accused had the character of public funds, and the appropriation thereof constitutes the crime of malversation. We, therefore, hold that funds contributed for the Red Cross, while in the custody of a government official, partake of the nature of public or government funds, and the misappropriation thereof constituted the crime of malversation." *People v. de la Serna*, 40 O.G. (12 Supp.), 166-167.

"Cuando un funcionario publico recibe algun dinero, para su custodia, éste adquiere los caracteres de fondos publicos (R.G. No. 44363, diciembre 17, 1937; *Pueblo contra Castro*, R.G. No. 41747, agosto 30, 1935; *Pueblo contra Sibulo*, R.G. No. 40714, agosto 7, 1939). Con vista de estas decisiones, es evidente que el apelante, al recibir la cantidad de ₱1,701.26, que eran fondos de la 'Red Cross,' a 'Anti-Tuberculosa' y los 'Boy Scouts,' se hizo responsable de dicha suma. Al no poder, pues, dar explicacion satisfactoria de la falta del dinero, cuando se efectuaron el examen y arqueo de sus libros por los auditores se ha hecho reo del delito de malversacion de fondos publicos, alegado en la querella fiscal." *People v. Velasquez*, 40 O.G. (No. 15), 3121.

"El sheriff que recibe una suma de dinero como precio de retracto en una venta judicial verificada por él, la recibe, no como personal particular o amigo del retrayente, sino en su concepto de functionario publico, y el dinero recibido, aunque lo fué para ser entregado al comprador en la subasta publica, tiene el caracter de fondos publicos (*E.U. contra Feliciano*, 15 Jur. Fil., 150; *E.U. contra Corrales*, 28 Jur. Fil. 379; *E.U. contra Ondaro*, 39 Jur. Fil., 77; *Pueblo contra Castro*, R.G. No. 41747). Por tanto, el delito cometido no es el de estafa, sino el de malversacion de fondos publicos, previsto y castigado en el articulo 217 del Codigo Penal Revisado." *People v. Pe Benito*, 36 O.G. 27.

"La omisión de entregar el importe de la venta de bienes embargados, vendidos mediante consentimiento, por el depositario no constituye el delito de estafa, sino el de malversacion segun los articulos 395, 390 y 392 del Codigo Penal." *U.S. v. Rastrollo*, 1 Jur. Fil. 23.

While the Prosecutor, in written argument, makes the statement that the decision, Exhibit C, proves the falsity of defendant's aspersions, he does not show how. So far as the law is expounded in Exhibit C, we must admit that we are with the defense. The reasoning therein was that only because there had been no turn over (meaning transfer of ownership) to the City of Manila, it should follow that as the pistol remained the property of the U.S. Army subject to be reclaimed upon demand, therefore, it did not become public property and consequently, could not be malversed; and we see that the conclusion was not justified by the premise. For the jurisprudence is uniform that even private property, property essentially private, not even transferred "with right to reclaim upon demand," once received by an accountable public officer in his official capacity becomes impressed with public character for purposes of the law of embezzlement and illegal disposal thereof is the crime of malversation.

This being the case, would the remarks of "incompetent, ignorant, ignoramus, stupid decision," be justified under the defense of fair comment? The rule as cited by counsel is:

"There is no specific definition of 'fair comment' but from the authorities it is clear that, in order that a comment may be fair, the following conditions must be satisfied:

a) It must be based on facts truly stated.

b) It must not contain imputations of corrupt or dishonorable motives on the part of the person whose conduct or work is criticized save insofar as such imputations are warranted by the facts.

c) It must be the honest expression of the writer's real opinion (Page 24 Memorandum of Defense, quoting Gatley on Libel and Slander, page 376, 3rd edition, 1938)."

The doctrine of fair comment as exculpation in libel cases was adopted by dictum in *U.S. v. Bustos*, 37 Phil. 764, and as the *ratio decidendi* (with one dissenting) in *People v. Velasco*, 40 O. G. (No. 18), 3694, C. A., it being in this latter case held that *"Libelous remarks or comments connected with any speech or act performed by public officers in the exercise of their functions are not actionable, unless malice is proved"*; so that in that case, where a person, accused of frustrated murder and sentenced to slight physical injuries after the decision, issued a publication attacking the Fiscal and saying that he had instituted the case because he had wanted to court favor with an Assemblyman who was a relative of the offended party, the Court of Appeals held that it was not libel because the comment was based on a fact truly stated, and was a reasonable deduction from the circumstance that the charge had been manifestly exaggerated, and the element of malice in the author of the article had not been proved independently of the publication. It may truly be argued that the doctrine of fair comment as understood in the American and Anglo-Saxon law of libel and slander is not clearly recognized in the Revised Penal Code; its incorporation into our law was admittedly "albeit somewhat confusedly" in the words of Justice Albert who penned the decision in the Velasco case; it may even be said that the admission of the doctrine of fair comment, as thus understood, is practically judicial legislation, because our law on libel literally recognizes only two defenses, namely, truth (Art. 361) and privilege (Art. 354), and no more; but the Prosecutor has not challenged the application of that doctrine; and with the decision in the Velasco case by the Court of Appeals, we can not do that for him.

Now then, there is no question that the comments of herein accused were based on proven facts (pages 1 to 6, Exhibit 6, in connection with the cases of *De la Serna*, etc. etc., cited *ante*); *nor did he impute dishonorable motives upon complainant; the only aspersion he cast being the alleged incompetence and ignorance* (of established decisions of the Supreme Court) it only remains to determine if he had been actuated by malice; for if this were so, the privilege must fall; since there should be no question that to say that a judge is incompetent, or ignorant, and that his decision is stupid is to hold him in discredit.

Was the defendant actuated by "el proposito gratuito y la intencion deliberada de menospreciar y deshonesto" the complainant, which is the test of malice? (S. de 6 de Junio, 1878). It was for this reason, and following the rule of verbal completeness (Wigmore, Sec. 1786), and the principle that the utterances should be read and construed together (*Washington Post v. Chaloner*, 63 L. Ed. 987, quoted in prosecution's memorandum, p. 5, p. 295, record), and the doctrine established by the Supreme Court of Spain that in cases of insults, "hay que tener presente las circumstancias, ocasion, y motivo de unos y otros actos" (S. de 31 de Mayo, 1895, Gaceta, 14 de Septiembre), and "la tendencia

y sentido en que ha sido vertida" (S. de 29 de Abril 1892), that we ordered a replay of the tape recording; this consisted in Rounds 1 and 2, identified by witness, Bob Stewart to be a faithful reproduction of the broadcast, (Exh. A, A-1). This Court has had the chance to itself hear the broadcast.[1] and see and decide for itself whether the style and tone as contended by the Prosecutor (citing Noeb V. Hope, 111 Pa. 145, 154, 2 Cent. Rep. 71) would be enough evidence of malice.

The Court has noted that defendant placed unusual emphasis on his pronunciation of the middle initial "P" in the name of complainant; when queried by the interrogator, he excused himself saying that he is a Visayan and could not help it if "my tongue gets in the way." (page 17, transcript of replay), although we also note that the interrogator himself noted his sarcasm (id). This unusual pronunciation was made three times (pages 4, 8, and 16, transcript of replay.) So far as evidence of malice, they are relevant; but are they enough? After hearing carefully and well, to the replay of both Rounds 1 and 2, we have been impelled to the conclusion that on the entirety, it was not defendant's deliberate intention to dishonor complainant.

We note first, the laudable introductory:

> "I am your Mayor, your champion, your friend, and spokesman; you the people of Manila elected me to serve you, to give you the government that you want and the government that you deserve. I can not do this unless you help me,—you, and it is your duty to help, because the complex administration of the City is a cooperative enterprise, demanding not only the cooperation of the city government officials concerned, but also of the citizens as well. Do not be afraid to come to me with your problems and grievances. If there had been wrongs committed, any error perpetrated, I promise you I will try my best to remedy and rectify them, for I believe that nothing is settled until it is settled right, and no fear nor threat should be allowed to check the agitation to right a wrong or remedy an abuse. I also believe that law and order must be enforced and maintained with justice for law must be based on justice, or else, it can not stand; your individual selfish interest must yield to the greater interests of the community, since good government is based primarily on the greatest good for the greatest number." (pp. 8-9, transcript of replay).

He proceeded to deplore the delay in the issuance of certain building permits, saying that they would cause an automatic loss to the City of ₱80,000.00 (p. 10); then he advocated the cancellation of permits for hotels operating near schools, saying, "You know what these hotels are for" (p. 16), and that "we can lose any revenue from the city hotels. We can make it up from other legitimate sources" (id); next he justified increase in high school tuition fees (20); and said that "Where before the War we had a population of six hundred thousand, today we have a population of almost two million. Today we devote one-half of our income, the City's income, for school purposes. We can not carry the freight indefinitely and I maintain one thing: That the people themselves will not object to taxes, provided that those taxes go back to the people in the form of public service." (18); then he touched upon the need for

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[1] We remember that on October 20, 1952, in the morning, there was also a replay in the office of the Clerk of Court, where we were also present, but it was not clear, and we now notice that it was confined to the latter part.

a fire alarm system at the request of a boy living in Azcarraga Extension, Binondo (22); he then criticised the Public Service Commission, with being "very very free with the routes they give buses" (25); then he touched on the parking of automobiles on narrow lanes, leaving no room for pedestrians (28); on Mabolo St.; once more he went to the problem of provincial buses operating in Manila (29) and said that if they were placed under him, "they would be cleaned in about one month" (30); (Round 1).

This was immediately followed by Round 2; it is here where this trouble started. We notice that he was made to answer:

> "The first question which will be posed to you, Mr. Mayor, is this: What did you want to accomplish when you sent a letter yesterday to the different city department heads, requesting them to make an inventory of all city-owned property which was turned by the United States Government?"

To which he gave this answer:

> "The implication of Judge Montesa's decision is tremendous. That means that any U.S. Government property turned over to the city . . . ah . . . if somebody loots it, . . . if some . . . ah . . . accountable officer, for example, disposes of it, like Mayor Cabe here, who have about one hundred thousand dollars worth of equipment that are not even listed in the inventory in the CI lab, if Major Cabe disposes of it, Major Cabe can not be prosecuted, according to the Honorable Agustin P. (emphasized) Montesa." (p. 4, Round 2).

Next come the following questions and answers where the actionable statements were uttered:

> "Question.—In connection with that decision, Mr. Mayor, what happens to the case of Sgt. Mariano Litao whom you accused of selling a jeep to . . . ah . . . to a motor big car exchange, Mr. Mayor?
>
> "Answer.—If it can be proven that the jeep in question was turned over to the City of Manila under the same circumstances as the pistol given . . . ah . . . to Col. Juan, . . . ah . . . we have no case.
>
> "Question.—By the way, has the decision of . . . ah . . . Judge Montesa become final?
>
> "Answer.—Yes.
>
> "Question.—So you are free to comment on it now?
>
> "Answer.—Correct. But even during the pendency of the case, I feel free to comment, because I have nothing but contempt (emphasized) for certain courts of justice.
>
> "Question.—What do you think of decision . . . eh—issued by Judge Montesa?
>
> "Answer.—There are certain definite laws on libel that restrain me from commenting.
>
> "Question.—What possible effects does . . . ah . . . will it have on your current drive to rid the police department of its undesirable elements?
>
> "Answer.—A very bad effect.
>
> "Question.—You think . . . ah . . . those . . . ah . . . marked men may become so bold?

"Answer.—Oh, yes, definitely . . . ah . . . You know, I was amazed at that decision of Judge Montesa. You are a student of law, Mr. Logarta.

"Question.—Fourth year.

"Answer.—Fourth year.

"Question.—Shall we . . . ah . . .

"Answer.—But this is the point here . . . ah . . . We have this decision of Judge Montesa. Ah . . . even . . . ah . . . a first year law student should know one thing. Uh . . . there is a leading case decided by the Supreme Court, Serra, I think it is, . . . I believe, I can not remember exactly, but, . . . ah . . . it was held that, . . . eh . . . that National Red Cross funds, when placed under the custody of a government accountable officer immediately assumes the character of public funds. The Revised Penal Code itself specifies that private property when placed under the charge, under the custody of accountable officer, becomes immediately public property. Uh . . . I tell one thing: If I have the power to fire Judge Montesa, I will fire him for being an incompetent, for being an ignorant . . . ah . . . ignoramus.

"Question.—Mr. Mayor, that was quite a blast. What do you think of the pistol allegedly sold by Col. Juan, did . . . was it placed with an accountable officer?

"Answer.—Yes, Major Cabe.

"Question.—So, . . . so, it took the nature of a public property?

"Answer.—Naturally. (emphasized) Any government property, any U. S. Government property turned over to the City of Manila under the administration of the City of Manila, becomes public property. It does not matter that it should be held according to the Honorable Agustin P. (emphasized) Montesa, . . . eh . . . (pp. 5 to 8, Round 2).

He next talked of income tax evasion (p. 12 to 13); and then came Gil Darang of the Daily Record:

"Question.—Mr. Mayor, just one question, I—Let us go back to Montesa. You seem to make it appear . . .

"Answer.—Must we . . . Can't we discuss a more pleasant subject? Let us not . . .

And next inter-change of questions and answers:

"Question.—You seem to make it appear that the decision of Montesa, from the legal view point . . .

"Answer.—The decision of Montesa is stupid. (in a rapid manner). Any student of law, any lawyer will tell you that.

"Question.—Mr. Mayor, would you agree with me if I say that the decision of Judge Montesa is the most unusual?

"Answer.—Eh . . . very unusual. Not only unusual . . . ah . . . bizarre is the word (then spelling it) B-i-z-a-r-r-e.

"Question.—Ah . . . Mr. Mayor, what do you think made it unusual and . . . Can you see an unseen hand behind it?

"Answer.—Ha, ha, ha, (laughing) Let us not go into that. You know, because . . . ah . . . there are certain laws on libel, you know, which restrain the Mayor from expressing an opinion on that matter." (p. 14, trans. Round 2).

Then he commented on certain policemen who still molested couples in the Luneta; and he said "Make the average citizen, who is supposed to be militant, make him realize his duties and his obligations as a citizen. Let him come to the City Hall, complain and pin point, and we will punish the guilty parties." (p. 15 tsn Round 2).

And next, he was asked:

"Question.—I was going to ask you a question about the Juan case. Since you disagree with the decision of Montesa, what action do you contemplate to take, Mr. Mayor? Is there any remedy . . . ah . . . open to you?

"Answer.—Frankly speaking, I have not thought about it, but next week I am going to make a cold-blooded impartial analysis of the evidence adduced during the trial and the decision of the Honorable Agustin P. (emphasized) Montesa."

. . . . . .

"Question.—Mr. Mayor, I have been observing that whenever you pronounce the name of Judge Agustin P. Montesa, you . . . have emphasized the "P". Eh . . . Mr. Mayor, before you make any sarcastic remark, my name . . . my name happens also to be Mario "P".

"Answer.—Wha . . . what did I say, for example?

"Question.—You said, 'Agustin P. (emphasized) Montesa.'

"Answer.—Well, Pete . . . I am a Visayan, can I help it if my tongue gets on the way?

"Question.—Ah . . . Mr. Mayor, you . . . ah . . . you . . . you consider Judge Montesa's decision to be stupid?

"Answer.—Ah . . . it is stupid.

"Question.—Then . . . and . . . your opinion . . .

"Answer.—You ask Mr. Arcangel, the attorney suspect.

"Question.—Can you think of any way by which you can contest, eh . . . Judge Montesa's decision, for instance . . ." (p. 18 tsn. Round 2)

And he remarked on the need for a law permitting appeal by the Prosecution in cases of acquittal:

"Answer.—Wait a minute. You know, when I was in Congress, I always advocated the bill . . . I mean . . . I wanted to sustain the bill that . . . eh . . . the . . . eh . . . former Senator Vicente Francisco filed in Congress, and that is, appeal by the prosecution on criminal offenses for the simple reason that when there is a miscarriage of justice (emphasized) either through the corruptness of the judge, or the incompetence of the judge concerned, there is no appeal by the prosecution.

"Question.—I think we can leave this subject now, unless somebody else has any other question to make. Mr. Logarta.

You mean to imply, Mr. Mayor, that the Courts under the Department of Justice is not, . . . shall we say not properly . . . supervised?

"Answer.—Well, I tell you one thing, Mr. Logarta, without even going into that matter. When I was in Congress, I have always sustained the theory that the Judiciary must be placed under the direct control and su-

pervision, the exclusive control and supervision of the Supreme Court, in order to avoid any political pressure.

"Question.—During your incumbency in Congress, did you draft any bill . . . eh . . . to that effect?

"Answer.—I . . . followed Tañada's bill in the Senate.

"Question.—What is the status of that?

"Answer.—Eh . . . there are so many congressmen, you know, who want to exert political pressure on the Judiciary that bill was defeated." (p. 19 tsn. Round 2).

He then announced his intention to knock off certain gambling joints (20); he criticized the action of the Municipal Board in trying to declare a certain section of the Quiapo Church area as patrimonial property, saying that it was a dangerous precedent (21); in a lighter vein, he dug barbs on Councilor Gonzaga, "The bard from Bambang"; and finally at the last part of the program, he made this appeal:

"Ladies and gentlemen: When you are doing business at the City Hall, and this applies to all persons, irrespective of citizenship, especially the aliens, do so. I would like to remind you that you do not have to pay you way around when you are doing legitimate business, and if somebody holds you up in the City Hall, for the simple reason that you want to get a building permit, for the simple reason that you want to transact legal business, inform the Mayor so that the Mayor can take the proper steps. At the same time, I would like to call your attention to those who are delinquent in the payment of the real assessment taxes, that the deadline is October the 20th, and for them to contact the City Treasurer and to pay their taxes, otherwise, much to my regret, their properties will be sold at public auction for even one-tenth or one-twentieth, or one-thirtieth of the sum which they owe the City of Manila. Good evening, ladies and gentlemen. God bless you and thank you."

The program ended with this remark of the announcer:

"You have just heard the program "In This Corner," featuring His Honor, the Mayor, in cooperation with the City Hall Press Club, here at the City Hall, from 7:30 to 8:30 in the evening. Take it away, DZBB." (p. 25 and 26 tsn. Round 2).

*That being the totality of the utterances, can it now be said that beyond reasonable doubt, it has been shown that it was the deliberate intent to discredit complainant that had impelled accused to make the questioned remarks? But under the biting sarcasm, we notice the honesty* and *bravery* of the man; he was swamped with city problems; he was called upon to give his solutions on split second decisions; uppermost in his convictions, as we see his answers, was the intent to protect the city government and population; in the particular case of complainant, we see that it was not the "proposito gratuito y la intencion de liberada de menospreciar" *but the indignation at the "very bad effect" that complainant's statement of the law may have upon the drive to rid the city of undeserving* policemen that was the underlying current behind the disparaging remarks. It has been said that it is hopeless for the law to draw the line between liberty and license; for judges can not look into the heart of a speaker and tell whether his motives are patriotic or mean; it is the man that can look into his soul and make that decision before he speaks

out. We are nonetheless of the final opinion, after hearing the entire replay, that accused had not intended to make his remarks *a mere cloak to slander.*

It only remains to comment on a statement in oral argument made by the Prosecutor; namely, that there is much significance in this case. We must confess to that; and it has weighed heavy upon the conscience of the Court. We are not unaware that this decision might carry with it unfortunate results. It may be twisted by mischievous men to mean that insolent remarks may be made on dispenses of Justice with perfect immunity. We may, perhaps, be unwittingly giving courage to scoundrels, who, careless of Truth, may throw all caution to the winds to create panic and uproar. Others may say that this is weakness, pity, indulgence, and sentiment, which have no place in Courts of Justice, and which four are the failings of Government. But where discussion is forbidden, rumors exaggerate the slightest calamity; all the more confidence is felt in the information of him who whispers gossip and scandals. *We abhor a return to that regime when we had to communicate in bated breath. Stifling the liberties will not give strength to the Republic;* it will enervate. We believe in the sacred right of freedom of conscience. It is true that judges work silent and hard; they disdain display and the plaudits of the multitude; they feel superior to the hopes of reward; in these times of danger, when they know that cases come where they have to impose punishments upon dissidents and die-hard criminals and they become marked men themselves, they come to cultivate contempt for death, finding consolation like the soldier, only in the belief that they owe everything to their country, and that life after all is transitory, but the State must live eternal. But we are not holy men; we are not untouchables; we have our errors, our faults, our sins. Who in this world can say that he is blameless? What harm is there in exposing our ills on the steps of the Temple? Respect will be gained not by compulsion, but by tolerance. Three years ago, even the President became the target of a similar attack; it was said of him that he was "incompetent"; he shrugged the charge with grace; only when his personal honesty was allegedly assailed by a trader did he venture to come to the Courts for Justice. That example of Oriental restraint and contemplation may well deserve emulation.

IN VIEW WHEREOF, dismissed, with costs *de oficio* and cancellation of bail bond.

SO ORDERED.

Manila, Philippines, January 12, 1953.

MAGNO S. GATMAITAN
*Judge*