

ARSENIO H. LACSON, PETITIONER, VS. HON. MARCIANO ROQUE, AS ACTING EXECUTIVE SECRETARY, HON. BARTOLOME GATMAITAN, AS VICE-MAYOR OF MANILA, AND COL. DIONISIO OJEDA, AS ACTING CHIEF...*G. R. No. L-6225. January 10, 1953*

Ponente: TUASON, J.

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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 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. Consequently 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 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 Philippines 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 argument 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 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 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 discharge 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 vs. Naval*, (54 Phil., 809), of which we 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, Section 10, paragraph (1) of the Constitution the President "shall * * * exercise general supervision over all local governments," but supervision does not contemplate control. (*People vs. 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 disqualified 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 to 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 idea: 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., 39.) 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., 39) and, according to some courts, including ours (*Cornejo vs. 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 folly or wisdom of the law. As has been said in *Cornejo vs. 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. Little Atty., Gen. vs. Mitchell*, 70 L. R. A., 306; *Dudly vs. 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 needs no argument to show that the offense of libel or oral defamation for which Mayor Lacson 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 misconduct such as affects his performance of his duties as an officer and not such only 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 vs. 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 illegality 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 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 of 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 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 privilege 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. Untrammelled discretionary 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. Gallagher vs. Brown, 57 Mo. Apo., 203, expressly adopted by the Supreme Court in State ex rel. vs. Maroney, 191, Mo., 548; 90 S. W., 141; State vs. Grandell, 269 Mo., 44; 190 S. W., 889; State vs. Salval, 450, 2d, 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 be 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 effected 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 ancillary. 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.

An 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 effective 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.

Feria, Pablo and Jugo, JJ., concur.

CONCURRING

PARAS, C.J.,

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 lawmakers 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 official's misfeasance, excesses or omission.

It is contented 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 superfluous.

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, necessarily 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 671, 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 interests of the public." (43 Am. Jur., 47, 48.) (See also *De los Santos vs. Mallari*,[*] 48 Off. Gaz., 1787.)

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 lawmakers 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 imputations, not in the exercise of his office as city mayor but as any other private citizen, since before the radio on the occasion in question.

Wherefore, I vote to grant the petition.

[*] 87 Phil., 289.

CONCURRING

PADILLA, J.,

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 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 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 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 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.

DISSENTING

BAUTISTA ANGELO, J.,

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 phrases: "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 vs. Kurtz*, 83 Md., 350; 34 A., 1123, 1126; *State ex rel. vs. 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 Am. 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.* * *.

"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.* * *.

"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.* * *.

"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 vs. United States, 71 Law. ed. pp. 160, 162, 165, 184.) (Italics 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 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. Gallagher vs. Brown, 57 Mo. Ap., 203, expressly adopted by the Supreme Court in States ex rel. vs. Maroney, 191 Mo. 548; 90 S. W., 141; State vs. Crandell, 269 Mo. 44; 190 S. W., 889; State vs. Salval, 450 2d, 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 vs. Naval, (54 Phil., 809). But I am of the opinion 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 vs. 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 vs. 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 vs. Houston, 259 111. pp. 385).

"'Cause' for removal of officer stated in resolution of address if Legislature must be legal and relate to matters of substantial nature directly affecting public interest, and the qualifications of officer or performance of his duties, showing he is not fit person to hold office" (Moulton vs. Scully, 89 A., 944, 947, 111 Me. 428).

"A 'cause' within statute providing that no person in the classified civil service can be removed 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 vs. Gillen, 124 111. 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 views 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 vs. 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 the 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 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. The 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:

"* * * 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 potent 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. Secretary of the Interior*, 67 Phil., 451, 460-461.) (*Italics 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 charged administratively, as well as when he is indicted in court. Unless removed from power and authority he is apt to make use of his influence to his advantage by suppressing or tampering 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.

"* * * No right to suspend is given in express terms. If such power exists, it must be implied, * * *. This court in the Peterson case quoted therefrom with respect 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 advantages 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 embarrass 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, no 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 country 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 each 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 official to be deprived of his fees and emoluments 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 vs. Megaarden*, 88 N. W., pp. 414-415.) (Italics 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 his judiciary in general but call for the application of a penalty which involves 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 moral 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-I). 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 sustains 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 newspaper 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, 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 publication until after the newspaper was in circulation * * *."

"* * * 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 vs. Koppenhefer*, 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 spleen 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. vs. Mason*, 29 Or., 18; Feb. 3, 1896; 43 Pac., 651, 652.) (Italics 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; *Attorney General vs. Doherty*, 13 Am. Rep., 132), and unless a flagrant abuse of the exercise of that power is shown, public policy separation 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 abused. And so it is my opinion that 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.

Bengzon, Montemayor and Labrador, JJ., concur.

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