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And although appeal was technically available to petitioner, Certiorari lies when such appeal does not prove to be a speedy and adequate remedy.[11] Certiorari is a more speedy and efficacious remedy to have the judgment by default set aside as a nullity where a party has been illegally declared in default.[12]

Note should also be taken of the fact that the trial Court had already ordered the issuance of a Writ of Execution in its Order of September 17, 1981,[13] except that respondent Judge, in his Order of November 12, 1981, held in abeyance resolution of petitioner's Motion to Quash said Writ pending the resolution by this Court of this Petition.[14] Clearly, even if appeal were available to petitioner, it is no longer speedy and adequate.[15]

WHEREFORE, granting Certiorari, the default Order and default Judgment rendered by respondent Judge in Civil Case No. 120920 are hereby set aside and he is hereby directed to re-set the case for pre-trial and trial and to render judgment accordingly.

No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Plana, Vasquez, Relova and *Gutierrez, Jr., JJ.*, concur.

EN BANC

[Adm. Case No. 133-J. May 31, 1982]

BERNARDITA R. MACARIOLA, complainant, *vs.* HONORABLE ELIAS B. ASUNCION, Judge of the Court of First Instance of Leyte, respondent.

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11 Dimayacyac *vs.* Court of Appeals, 93 SCRA 265 (1979).

12 Omico Mining & Industrial Corp. *vs.* Vallejos, 63 SCRA 286 (1975)

13 p. 104, CFI Records.

14 p. 109-110, *ibid.*

15 Matute *vs.* Court of Appeals, 26 SCRA 772 (1969).

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SYNOPSIS

Respondent judge was charged for having violated (1) Article 1491 of the New Civil Code when he acquired by purchase portion of a lot which was involved in a civil case decided by him; (2) Article 14 of the Code of Commerce, the Anti-Graft and Corrupt Practices Act, the Civil Service Rules, and the Canons of Judicial Ethics, when he associated himself with the Traders Manufacturing and Fishing Industries, Inc., as a stockholder and a ranking officer while he was a judge of the Court of First Instance.

The Supreme Court held that there was no violation of Paragraph 5, Article 1491 of the New Civil Code because the sale took place after finality of the decision; that respondent may not be held liable under paragraphs 1 and 5, Article 14 of the Code of Commerce (which is of Spanish vintage), because the provision partakes of the nature of a political law as it regulates the relationship between the government and certain public officers and employees and as such is deemed to have been automatically abrogated with the change of sovereignty from Spain to the United States; that respondent cannot be held liable under Paragraph H, Section 3 of the Anti-Graft and Corrupt Practices Act because there is no showing (a) that he participated or intervened in his official capacity in the business or transaction of the Traders Manufacturing and Fishing Industries, Inc., or (b) that said corporation gained any undue advantage by reason of respondent's financial involvement in it, and because neither the 1935 nor the 1973 Constitution of the Philippines or any existing law expressly prohibits members of the Judiciary from engaging or having any interest in any lawful business.

Respondent is reminded to be more discreet in his private and business activities.

SYLLABUS

1. CIVIL LAW; CONTRACTS; SALES; PROHIBITION TO BUY IN ARTICLE 1491 REFERS TO PROPERTIES UNDER LITIGATION; NO VIOLATION IN CASE AT BAR.— The prohibition in Article 1491 of the Civil Code applies only to the sale or assignment of the property which is the subject of litigation to the persons disqualified therein. WE have already ruled that ". . . for the prohibition to operate, the sale or assignment of the property must take place *during the pendency* of the litigation involving the property" (The Director of Lands *vs.* Ababa, et al., 88 SCRA 513). Consequently, the sale of a portion of Lot 1184-E to respondent Judge having taken place over one year after the finality of the decision in Civil Case No. 3010 as well as the two orders approving the project of partition, and not

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during the pendency of the litigation, there was no violation of paragraph 5, Article 1491 of the New Civil Code.

2. JUDICIAL ETHICS; CANONS OF JUDICIAL ETHICS; JUDGE'S CONDUCT SHOULD BE FREE FROM APPEARANCE OF IMPROPRIETY; JUDGE'S TRANSACTIONS REGARDING PROPERTIES LITIGATED IN HIS COURT, NOT PROPER.— Finally, while it is true that respondent Judge did not violate paragraph 5, Article 1491 of the New Civil Code in acquiring by purchase a portion of Lot 1184-E which was in litigation in his court, it was, however, improper for him to have acquired the same. He should be reminded of Canon 3 of the Canons of Judicial Ethics which requires that: "A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." Even if respondent honestly believed that Lot 1184-E was no longer in litigation in his court and that he was purchasing it from a third person and not from the parties to the litigation, he should nonetheless have refrained from buying it for himself and transferring it to a corporation in which he and his wife were financially involved, to avoid possible suspicion that his acquisition was related in one way or another to his official actuations in civil case 3010. The conduct of respondent gave cause for the litigants in civil case 3010, the lawyers practising in his court, and the public in general to doubt the honesty and fairness of his actuations and the integrity of our courts of justice.

3. MERCANTILE LAW; CODE OF COMMERCE; ARTICLE 14 THEREOF PARTAKES OF THE NATURE OF A POLITICAL LAW.— Although Article 14 of the Code of Commerce is part of the commercial laws of the Philippines, it, however, partakes of the nature of a political law as it regulates the relationship between the government and certain public officers and employees, like justices and judges.

4. CONSTITUTIONAL LAW; POLITICAL LAW, DEFINED.— Political law has been defined as that branch of public law which deals with the organization and operation of the governmental organs of the State and defines the relations of the state with the inhabitants of its territory (People *vs.* Perfecto, 43 Phil. 887). It must be recalled that a political law embraces constitutional law, law of public corporations, administrative law including the law on public officers and election.

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5. MERCANTILE LAW; CODE OF COMMERCE, ARTICLE 14 THEREOF ABROGATED BY CHANGE OF SOVEREIGNTY.— Upon the transfer of sovereignty from Spain to the United States to the Republic of the Philippines, Article 14 of this Code of Commerce must be deemed to have abrogated because where there is change of sovereignty, the political laws of the former sovereign, whether compatible or not with those of the new sovereign, are automatically abrogated, unless they are expressly re-enacted by affirmative act of the new sovereign.

6. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT; PROHIBITED PECUNIARY INTEREST UNDER PARAGRAPH H OF SECTION 3 THEREOF REFERS TO ONE WHERE THE PUBLIC OFFICER INTERVENES OR TAKES PART IN HIS OFFICIAL CAPACITY.— Respondent Judge can not be held liable under paragraph 4 Section 3 of the Anti-Graft and Corrupt Practices Act because there is no showing that respondent participated or intervened in *his official capacity* in the business or transactions of the Traders Manufacturing And Fishing Industries, Inc. In the case at bar, the business of the corporation in which respondent participated has obviously no relation or connection with his official office. The business of said corporation is not that kind where respondent intervenes or takes part in his capacity as Judge of the Court of First Instance. As was held in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition on public officers against directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "It is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and hence, the official who intervenes in contracts or transactions which have no relation to his office can not commit this crime" (People *vs.* Meneses, C.A. 40 C.G. 11th Supp. 134; Revised Penal Code, p. 1174, Vol. 11 (1976).

7. JUDICIAL ETHICS; JUDGES NOT PROHIBITED FROM ENGAGING IN LAWFUL BUSINESS.— There is no provision in both the 1935 and 1973 Constitutions of the Philippines, nor is there an existing law expressly prohibiting members of the Judiciary from engaging or having interest in any lawful business. It may be pointed out that Republic Act No. 296, as amended, also known as the Judiciary Act of 1948, does not contain any prohibition to that effect. As a matter of fact, under Section 77 of said law, municipal judges

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may engage in teaching or other vocation not involving the practice of the law after office hours but with the permission of the district judge concerned. Likewise, Article 14 of the Code of Commerce which prohibits judges from engaging in commerce is, as heretofore stated, deemed abrogated automatically upon the transfer of sovereignty from Spain to America, because it is political in nature.

8. ID.; ID.; CIVIL SERVICE ACT AND RULES PROMULGATED THEREUNDER NOT APPLICABLE TO MEMBERS OF THE JUDICIARY.— On the contention of complainant that respondent Judge violated Section 12, Rule XVIII of the Civil Service Rules, We hold that the Civil Service Act of 1959 (R.A. No. 2260) and the Civil Service Rules promulgated thereunder, particularly Section 12 of Rule XVIII, do not apply to the members of the Judiciary. It must be emphasized at the outset that respondent, being a member of the Judiciary, is covered by Republic Act No. 296, as amended, otherwise known as the Judiciary Act of 1948 and by Section 7, Article X, 1973 Constitution. Judges cannot be considered as subordinate civil service officers or employees subject to the disciplinary authority of the Commissioner of Civil Service; for, certainly, the Commissioner is not the head of the Judicial Department to which they belong. The Revised Administrative Code (Section 89) and the Civil Service Law itself state that the Chief Justice is the department head of the Supreme Court (Sec. 20, R.A. No. 2260 [1959]); and under the 1973 Constitution, the Judiciary is the only other or second branch of the government (Sec. 1, Art. X, 1973 Constitution). Besides, a violation of Section 12, Rule XVIII cannot be considered as a ground for disciplinary action against judges because to recognize the same as applicable to them, would be adding another ground for the discipline of judges and, as aforestated, Section 67 of the Judiciary Act recognizes only two grounds for their removal, namely, serious misconduct and inefficiency.

9. ID.; ID.; JUDGES; ENGAGING IN PRIVATE BUSINESS, IMPROPER UNDER THE CANONS.— Although the actuation of respondent Judge in engaging in private business by joining the Traders Manufacturing and Fishing Industries, Inc. as a stockholder and a ranking officer, is not violative of the provisions of Article 14 of the Code of Commerce and Section 3 (h) of the Anti-Graft and Corrupt Practices Act as well as Section 12, Rule XVIII of the Civil Service Rules promulgated pursuant to the Civil Service Act of 1959, the impropriety of the same is clearly unquestionable because Canon

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25 of the Canons of Judicial Ethics expressly declares that: "A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in his court; and, after his accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. . . ." The disposal or sale by respondent and his wife of their shares in the corporation only 22 days after the incorporation of the corporation, indicates that respondent realized that early that their interest in the corporation contravenes the aforesaid Canon 25. Respondent Judge and his wife therefore deserve commendation for their immediate withdrawal from the firm after its incorporation and before it became involved in any court litigation.

DECISION

MAKASIAR, *J.*:

In a verified complaint dated August 6, 1968 Bernardita R. Macariola charged respondent Judge Elias B. Asuncion of the Court of First Instance of Leyte, now Associate Justice of the Court of Appeals, with "acts unbecoming a judge."

The factual setting of the case is stated in the report dated May 27, 1971 of then Associate Justice Cecilia Muñoz Palma of the Court of Appeals now retired Associate Justice of the Supreme Court, to whom this case was referred on October 28, 1968 for investigation, thus:

"Civil Case No. 3010 of the Court of First Instance of Leyte was a complaint for partition filed by Sinforosa R. Bales, Luz R. Bakunawa, Anacorita Reyes, Ruperto Reyes, Adela Reyes, and Priscilla Reyes, plaintiffs, against Bernardita R. Macariola, defendant, concerning the properties left by the deceased Francisco Reyes, the common father of the plaintiffs and defendant.

"In her defenses to the complaint for partition, Mrs. Macariola alleged among other things that: a) plaintiff Sinforosa R. Bales was not a daughter of the deceased Francisco Reyes; b) the only legal heirs of the deceased were defendant Macariola, she being the only offspring of the first marriage of Francisco Reyes with Felisa Espiras, and the remaining plaintiffs who were the children of the deceased by his second marriage with Irene Ondes; c) the properties left by the deceased were all the conjugal properties of the latter and his first wife, Felisa Espiras, and no properties were acquired by

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the deceased during his second marriage; d) if there was any partition to be made, those conjugal properties should first be partitioned into two parts, and one part is to be adjudicated solely to defendant it being the share of the latter's deceased mother, Felisa Espiras, and the other half which is the share of the deceased Francisco Reyes was to be divided equally among his children by his two marriages.

"On June 8, 1963, a decision was rendered by respondent Judge Asuncion in Civil Case 3010, the dispositive portion of which reads:

" 'IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court, upon a preponderance of evidence, finds and so holds, and hereby renders judgment (1) Declaring the plaintiffs Luz R. Bakunawa, Anacorita Reyes, Ruperto Reyes, Adela Reyes and Priscilla Reyes as the only children legitimated by the subsequent marriage of Francisco Reyes Diaz to Irene Ondez; (2) Declaring the plaintiff Sinforosa R. Bales to have been an illegitimate child of Francisco Reyes Diaz; (3) Declaring Lots Nos. 4474, 4475, 4892, 5265, 4803, 4581, 4506 and ¼ of Lot 1154 as belonging to the conjugal partnership of the spouses Francisco Reyes Diaz and Felisa Espiras; (4) Declaring Lot No. 2304 and ¼ of Lot No. 3416 as belonging to the spouses Francisco Reyes Diaz and Irene Ondez in common partnership; (5) Declaring that ½ of Lot No. 1184 as belonging exclusively to the deceased Francisco Reyes Diaz; (6) Declaring the defendant Bernardita R. Macariola, being the only legal and forced heir of her mother Felisa Espiras, as the exclusive owner of one-half of each of Lots Nos. 4474, 4475, 4892, 5265, 4803, 4581, 4506; and the remaining one-half (½) of each of said Lots Nos. 4474, 4475, 4892, 5265, 4803, 4581, 4506 and one-half (½) of one-fourth (¼) of Lot No. 1154 as belonging to the estate of Francisco Reyes Diaz; (7) Declaring Irene Ondez to be the exclusive owner of one-half (½) of Lot No. 2304 and one-half (½) of one-fourth (¼) of Lot No. 3416; the remaining one-half (½) of Lot 2304 and the remaining one-half (½) of one-fourth (¼) of Lot No. 3416 as belonging to the estate of Francisco Reyes Diaz; (8) Directing the division or partition of the estate of Francisco Reyes Diaz in such a manner as to give or grant to Irene Ondez, as surviving widow of Francisco Reyes Diaz, a hereditary share of one-twelfth (1/12) of the whole estate of Francisco Reyes Diaz (Art. 996 in relation to Art. 892, par. 2, New Civil Code), and the remaining portion of the estate to be divided among the plaintiffs Sinforosa R. Bales, Luz R. Bakunawa, Anacorita Reyes, Ruperto Reyes, Adela Reyes, Priscilla Reyes and defendant Bernardita R. Macariola, in such a way that the

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extent of the total share of plaintiff Sinforosa R. Bales in the hereditary estate shall not exceed the equivalent of two-fifth (2/5) of the total share of any or each of the other plaintiffs and the defendant (Art. 983, New Civil Code), each of the latter to receive equal shares from the hereditary estate, (Ramirez *vs.* Bautista, 14 Phil. 528; Diancin *vs.* Bishop of Jaro, O.G. [3rd Ed.] p. 33); (9) Directing the parties, within thirty days after this judgment shall have become final to submit to this court, for approval, a project of partition of the hereditary estate in the proportion above indicated, and in such manner as the parties may, by agreement, deem convenient and equitable to them taking into consideration the location, kind, quality, nature and value of the properties involved; (10) Directing the plaintiff Sinforosa R. Bales and defendant Bernardita R. Macariola to pay the costs of this suit, in the proportion of one-third (1/3) by the first named and two-thirds (2/3) by the second named; and (11) Dismissing all other claims of the parties [pp. 27-29 of Exh. C].

"The decision in civil case 3010 became final for lack of an appeal, and on October 16, 1963, a project of partition was submitted to Judge Asuncion which is marked Exh. A. Notwithstanding the fact that the project of partition was not signed by the parties themselves but only by the respective counsel of plaintiffs and defendant, Judge Asuncion approved it in his Order dated October 23, 1963, which for convenience is quoted hereunder in full:

'The parties, through their respective counsels, presented to this Court for approval the following project of partition:

'COMES NOW, the plaintiffs and the defendant in the above-entitled case, to this Honorable Court respectfully submit the following Project of Partition:

'1. The whole of Lots Nos. 1154, 2304 and 4506 shall belong exclusively to Bernardita Reyes Macariola;

'2. A portion of Lot No. 3416 consisting of 2,373.49 square meters along the eastern part of the lot shall be awarded likewise to Bernardita R. Macariola;

'3. Lots Nos. 4803, 4892 and 5265 shall be awarded to Sinforosa Reyes Bales;

'4. A portion of Lot No. 3416 consisting of 1,834.55 square meters along the western part of the lot shall likewise be awarded to Sinforosa Reyes Bales;

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'5. Lots Nos. 4474 and 4475 shall be divided equally among Luz Reyes Bakunawa, Anacorita Reyes, Ruperto Reyes, Adela Reyes and Priscilla Reyes in equal shares;

'6. Lot No. 1184 and the remaining portion of Lot No. 3416 after taking the portions awarded under item (2) and (4) above shall be awarded to Luz Reyes Bakunawa, Anacorita Reyes, Ruperto Reyes, Adela Reyes and Priscilla Reyes in equal shares, provided, however that the remaining portion of Lot No. 3416 shall belong exclusively to Priscilla Reyes.

'WHEREFORE, it is respectfully prayed that the Project of Partition indicated above which is made in accordance with the decision of the Honorable Court be approved.

'Tacloban City, October 16, 1963.

'(SGD) BONIFACIO RAMO
Atty. for the Defendant
Tacloban City

'(SGD) ZOTICO A. TOLETE
Atty. for the Plaintiff
Tacloban City

'While the Court thought it more desirable for all the parties to have signed this Project of Partition, nevertheless, upon assurance of both counsels of the respective parties to this Court that the Project of Partition, as above-quoted, had been made after a conference and agreement of the plaintiffs and the defendant approving the above Project of Partition, and that both lawyers had represented to the Court that they are given full authority to sign by themselves the Project of Partition, the Court, therefore, finding the above-quoted Project of Partition to be in accordance with law, hereby approves the same. The parties, therefore, are directed to execute such papers, documents or instrument sufficient in form and substance for the vesting of the rights, interests and participations which were adjudicated to the respective parties, as outlined in the Project of Partition and the delivery of the respective properties adjudicated to each one in view of said Project of Partition, and to perform such other acts as are legal and necessary to effectuate the said Project of Partition.

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'SO ORDERED.

'Given in Tacloban City, this 23rd day of October, 1963.

'(SGD) ELIAS B. ASUNCION
Judge'

"EXH. B.

"The above Order of October 23, 1963, was amended on November 11, 1963, only for the purpose of giving authority to the Register of Deeds of the Province of Leyte to issue the corresponding transfer certificates of title to the respective adjudicatees in conformity with the project of partition (see Exh. U).

"One of the properties mentioned in the project of partition was Lot 1184 or rather one-half thereof with an area of 15,162.5 sq. meters. This lot, which according to the decision was the exclusive property of the deceased Francisco Reyes, was adjudicated in said project of partition to the plaintiffs Luz, Anacorita, Ruperto, Adela, and Priscilla all surnamed Reyes in equal shares, and when the project of partition was approved by the trial court the adjudicatees caused Lot 1184 to be subdivided into five lots denominated as Lot 1184-A to 1184-E inclusive (Exh. V).

"Lot 1184-D was conveyed to Enriqueta D. Anota, a stenographer in Judge Asuncion's court (Exhs. F, F-1 and V-1), while Lot 1184-E which had an area of 2,172.5556 sq. meters was sold on July 31, 1964 to Dr. Arcadio Galapon (Exh. 2) who was issued transfer certificate of title No. 2338 of the Register of Deeds of the city of Tacloban (Exh. 12).

"On March 6, 1965, Dr. Arcadio Galapon and his wife sold a portion of Lot 1184-E with an area of around 1,306 sq. meters to Judge Asuncion and his wife, Victoria S. Asuncion (Exh. 11), which particular portion was declared by the latter for taxation purposes (Exh. F).

"On August 31, 1966, spouses Asuncion and spouses Galapon conveyed their respective shares and interest in Lot 1184-E to 'The Traders Manufacturing and Fishing Industries Inc.' (Exh. 15 & 16). At the time of said sale the stockholders of the corporation were Dominador Arigpa Tan, Humilia Jalandoni Tan, Jaime Arigpa Tan, Judge Asuncion, and the latter's wife, Victoria S. Asuncion, with Judge Asuncion as the President and Mrs. Asuncion as the secretary (Exhs. E-4 to E-7). The Articles of Incorporation of 'The Traders Manufacturing and Fishing Industries, Inc.' which we shall henceforth refer to as 'TRADERS' were registered with the Securities and Exchange Commission only on January 9, 1967 (Exh. E)" [pp. 378-385, rec.].

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Complainant Bernardita R. Macariola filed on August 9, 1968 the instant complaint dated August 6, 1968 alleging four causes of action, to wit: [1] that respondent Judge Asuncion violated Article 1491, paragraph 5, of the New Civil Code in acquiring by purchase a portion of Lot No. 1184-E which was one of those properties involved in Civil Case No. 3010 decided by him; [2] that he likewise violated Article 14, paragraphs 1 and 5 of the Code of Commerce, Section 3, paragraph H, of R.A. 3019, otherwise known as the Anti-graft and Corrupt Practices Act, Section 12, Rule XVIII of the Civil Service Rules, and Canon 25 of the Canons of Judicial Ethics, by associating himself with the Traders Manufacturing and Fishing Industries, Inc., as a stockholder and a ranking officer while he was a judge of the Court of First Instance of Leyte; [3] that respondent was guilty of coddling an impostor and acted in disregard of judicial decorum by closely fraternizing with a certain Dominador Arigpa Tan who openly and publicly advertised himself as a practising attorney when in truth and in fact his name does not appear in the Roll of Attorneys and is not a member of the Philippine Bar; and [4] that there was culpable defiance of the law and utter disregard for ethics by respondent Judge (pp. 1-7, rec.).

Respondent Judge Asuncion filed on September 24, 1968 his answer to which a reply was filed on October 16, 1968 by herein complainant. In Our resolution of October 28, 1968, We referred this case to then Justice Cecilia Muñoz Palma of the Court of Appeals, for investigation, report and recommendation. After hearing, the said Investigating Justice submitted her report dated May 27, 1971 recommending that respondent Judge should be reprimanded or warned in connection with the first cause of action alleged in the complaint, and for the second cause of action, respondent should be warned in case of a finding that he is prohibited under the law to engage in business. On the third and fourth causes of action, Justice Palma recommended that respondent Judge be exonerated.

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The records also reveal that on or about November 9 or 11, 1968 (pp. 481, 477, rec.), complainant herein instituted an action before the Court of First Instance of Leyte, entitled "Bernardita R. Macariola, plaintiff, *vs.* Sinforosa R. Bales, et al., defendants," which was docketed as Civil Case No. 4234, seeking the annulment of the project of partition made pursuant to the decision in Civil Case No. 3010 and the two orders issued by respondent Judge approving the same, as well as the partition of the estate and the subsequent conveyances with damages. It appears, however, that some defendants were dropped from the civil case. For one, the case against Dr. Arcadio Galapon was dismissed because he was no longer a real party in interest when Civil Case No. 4234 was filed, having already conveyed on March 6, 1965 a portion of lot 1184-E to respondent Judge and on August 31, 1966 the remainder was sold to the Traders Manufacturing and Fishing Industries, Inc.. Similarly, the case against defendant Victoria Asuncion was dismissed on the ground that she was no longer a real party in interest at the time the aforesaid Civil Case No. 4234 was filed as the portion of Lot 1184 acquired by her and respondent Judge from Dr. Arcadio Galapon was already sold on August 31, 1966 to the Traders Manufacturing and Fishing Industries, Inc.. Likewise, the cases against defendants Serafin P. Ramento, Catalina Cabus, Ben Barraza Go, Jesus Perez, Traders Manufacturing and Fishing Industries, Inc., Alfredo R. Celestial and Pilar P. Celestial, Leopoldo Petilla and Remedios Petilla, Salvador Anota and Enriqueta Anota and Atty. Zotico A. Tolete were dismissed with the conformity of complainant herein, plaintiff therein, and her counsel.

On November 2, 1970, Judge Jose D. Nepomuceno of the Court of First Instance of Leyte, who was directed and authorized on June 2, 1969 by the then Secretary (now Minister) of Justice and now Minister of National Defense Juan Ponce Enrile to hear and decide Civil Case No. 4234, rendered a decision, the dispositive portion of which reads as follows:

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"A. IN THE CASE AGAINST JUDGE ELIAS B. ASUNCION—

"(1) declaring that only Branch IV of the Court of First Instance of Leyte has jurisdiction to take cognizance of the issue of the legality and validity of the Project of Partition [Exhibit 'B'] and the two Orders [Exhibits 'C' and 'C-3'] approving the partition;

"(2) dismissing the complaint against Judge Elias B. Asuncion;

"(3) adjudging the plaintiff, Mrs. Bernardita R. Macariola to pay defendant Judge Elias B. Asuncion,

"(a) the sum of FOUR HUNDRED THOUSAND PESOS [₱400,000.00] for moral damages;

"(b) the sum of TWO HUNDRED THOUSAND PESOS [₱200,000.00] for exemplary damages;

"(c) the sum of FIFTY THOUSAND PESOS [₱50,000.00] for nominal damages; and

"(d) the sum of TEN THOUSAND PESOS [₱10,000.00] for Attorney's Fees.

"B. IN THE CASE AGAINST THE DEFENDANT MARIQUITA VILLASIN, FOR HERSELF AND FOR THE HEIRS OF THE DECEASED GERARDO VILLASIN—

"(1) Dismissing the complaint against the defendants Mariquita Villasin and the heirs of the deceased Gerardo Villasin;

"(2) Directing the plaintiff to pay the defendants Mariquita Villasin and the heirs of Gerardo Villasin the cost of the suit.

"C. IN THE CASE AGAINST THE DEFENDANT SINFOROSA R. BALES, ET AL., WHO WERE PLAINTIFFS IN CIVIL CASE NO. 3010—

"(1) Dismissing the complaint against defendants Sinforosa R. Bales, Adela R. Herrer, Priscilla R. Solis, Luz R. Bakunawa, Anacoreta R. Eng and Ruperto O. Reyes.

"D. IN THE CASE AGAINST DEFENDANT BONIFACIO RAMO—

"(1) Dismissing the complaint against Bonifacio Ramo;

"(2) Directing the plaintiff to pay the defendant Bonifacio Ramo the cost of the suit.

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"SO ORDERED" [pp. 531-533, rec.].

It is further disclosed by the record that the aforesaid decision was elevated to the Court of Appeals upon perfection of the appeal on February 22, 1971.

I

WE find that there is no merit in the contention of complainant Bernardita R. Macariola, under her first cause of action, that respondent Judge Elias B. Asuncion violated Article 1491, paragraph 5, of the New Civil Code in acquiring by purchase a portion of Lot No. 1184-E which was one of those properties involved in Civil Case No. 3010.

That Article provides:

"Article 1491. The following persons cannot acquire by purchase, even at a public or judicial action, either in person or through the mediation of another:

. . . . . .

"(5) Justices, *judges,* prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, *the property and rights in litigation* or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession" [italics supplied].

The prohibition in the aforesaid Article applies only to the sale or assignment of the property which is the subject of litigation to the persons disqualified therein. WE have already ruled that ". . for the prohibition to operate, the sale or assignment of the property must take place *during the pendency* of the litigation involving the property" (The Director of Lands *vs.* Ababa, et al., 88 SCRA 513, 519 [1979]; Rosario Vda. de Laig *vs.* Court of Appeals, 86 SCRA 641, 646 [1978]).

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In the case at bar, when the respondent Judge purchased on *March 6, 1965* a portion of Lot 1184-E, the decision in Civil Case No. 3010 which he rendered on *June 8, 1963* was already final because none of the parties therein filed an appeal within the reglementary period; hence, the lot in question was no longer subject of the litigation. Moreover, at the time of the sale on March 6, 1965, respondent's order dated *October 23, 1963* and the amended order dated *November 11, 1963* approving the October 16, 1963 project of partition made pursuant to the June 8, 1963 decision, had long become final for there was no appeal from said orders.

Furthermore, respondent Judge did not buy the lot in question on March 6, 1965 directly from the plaintiffs in Civil Case No. 3010 but from Dr. Arcadio Galapon who earlier purchased on *July 31, 1964* Lot 1184-E from three of the plaintiffs, namely, Priscilla Reyes, Adela Reyes, and Luz R. Bakunawa after the finality of the decision in Civil Case No. 3010. It may be recalled that Lot 1184 or more specifically one-half thereof was adjudicated in equal shares to Priscilla Reyes, Adela Reyes, Luz Bakunawa, Ruperto Reyes and Anacorita Reyes in the project of partition, and the same was subdivided into five lots denominated as Lot 1184-A to 1184-E. As aforestated, Lot 1184-E was sold on July 31, 1964 to Dr. Galapon for which he was issued TCT No. 2338 by the Register of Deeds of Tacloban City, and on March 6, 1965 he sold a portion of said lot to respondent Judge and his wife who declared the same for taxation purposes only. The subsequent sale on *August 31, 1966* by spouses Asuncion and spouses Galapon of their respective shares and interest in said Lot 1184-E to the Traders Manufacturing and Fishing Industries, Inc., in which respondent was the president and his wife was the secretary, took place long after the finality of the decision in Civil Case No. 3010 and of the subsequent two aforesaid orders therein approving the project of partition.

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While it appears that complainant herein filed on or about *November 9 or 11, 1968* an action before the Court of First Instance of Leyte docketed as Civil Case No. 4234, seeking to annul the project of partition and the two orders approving the same, as well as the partition of the estate and the subsequent conveyances, the same, however, is of no moment.

The fact remains that respondent Judge purchased on March 6, 1965 a portion of Lot 1184-E from Dr. Arcadio Galapon; hence, after the finality of the decision which he rendered on *June 8, 1963* in Civil Case No. 3010 and his two questioned orders dated October 23, 1963 and November 11, 1963. Therefore, the property was no longer subject of litigation.

The subsequent filing on November 9, or 11, 1968 of Civil Case No. 4234 can no longer alter, change or affect the aforesaid facts—that the questioned sale to respondent Judge, now Court of Appeals Justice, was effected and consummated long after the finality of the aforesaid decision or orders.

Consequently, the sale of a portion of Lot 1184-E to respondent Judge having taken place over one year after the finality of the decision in Civil Case No. 3010 as well as the two orders approving the project of partition, and not during the pendency of the litigation, there was no violation of paragraph 5, Article 1491 of the New Civil Code.

It is also argued by complainant herein that the sale on July 31, 1964 of Lot 1184-E to Dr. Arcadio Galapon by Priscilla Reyes, Adela Reyes and Luz R. Bakunawa was only a mere scheme to conceal the illegal and unethical transfer of said lot to respondent Judge as a consideration for the approval of the project of partition. In this connection, We agree with the findings of the Investigating Justice thus:

"And so we are now confronted with this all-important question whether or not the acquisition by respondent of a portion of Lot 1184-E and the subsequent transfer of the whole lot to 'TRADERS' of which respondent

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was the President and his wife the Secretary, was intimately related to the Order of respondent approving the project of partition, Exh.A..

"Respondent vehemently denies any interest or participation in the transactions between the Reyeses and the Galapons concerning Lot 1184-E, and he insists that there is no evidence whatsoever to show that Dr. Galapon had acted, in the purchase of Lot 1184-E, in mediation for him and his wife. (See p. 14 of Respondent's Memorandum).

. . . . . .

"On this point, I agree with respondent that there is no evidence in the record showing that Dr. Arcadio Galapon acted as a mere 'dummy' of respondent in acquiring Lot 1184-E from the Reyeses. Dr. Galapon appeared to this investigator as a respectable citizen, credible and sincere, and I believe him when he testified that he bought Lot 1184-E in good faith and for valuable consideration from the Reyeses without any intervention of, or previous understanding with, Judge Asuncion" (pp. 391-394, rec.).

On the contention of complainant herein that respondent Judge acted illegally in approving the project of partition although it was not signed by the parties, We quote with approval the findings of the Investigating Justice, as follows:

"1. I agree with complainant that respondent should have required the signature of the parties more particularly that of Mrs. Macariola on the project of partition submitted to him for approval; however, whatever error was committed by respondent in that respect was done in good faith as according to Judge Asuncion he was assured by Atty. Bonifacio Ramo, the counsel of record of Mrs. Macariola, that he was authorized by his client to submit said project of partition. (See Exh. B and tsn, p. 24, January 20, 1969). While it is true that such written authority if there was any, was not presented by respondent in evidence, nor did Atty. Ramo appear to corroborate the statement of respondent, his affidavit being the only one that was presented as respondent's Exh. 10, certain actuations of Mrs. Macariola lead this investigator to believe that she knew the contents of the project of partition, Exh. A, and that she gave her conformity thereto. I refer to the following documents:

"1) Exh. 9—Certified true copy of OCT No. 19520 covering Lot 1154 of the Tacloban Cadastral Survey in which the deceased Francisco Reyes hold a '1/4 share' (Exh. 9-a). On this certificate of title the

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Order dated November 11, 1963, (Exh. U) approving the project of partition was duly entered and registered on November 26, 1963 (Exh. 9-D);

"2. Exh. 7—Certified copy of a deed of absolute sale executed by Bernardita Reyes Macariola on *October 22, 1963,* conveying to Dr. Hector Decena the one-fourth share of the late Francisco Reyes-Diaz in Lot 1154. In this deed of sale the vendee stated that she was the absolute owner of said one-fourth share, the same having been adjudicated to her as her share in the estate of her father Francisco Reyes Diaz as per decision of the Court of First Instance of Leyte under Civil Case No. 3010 (Exh. 7-a). The deed of sale was duly registered and annotated at the back of OCT 19520 on December 3, 1963 (see Exh. 9-e).

"In connection with the above-mentioned documents it is to be noted that in the project of partition dated *October 16, 1963,* which was approved by respondent on *October 23, 1963,* followed by an amending Order on November 11, 1963, Lot 1154 or rather 1/4 thereof was adjudicated to Mrs. Macariola. It is this 1/4 share in Lot 1154 which complainant sold to Dr. Decena on *October 22, 1963,* several days after the preparation of the project of partition.

"Counsel for complainant stresses the view, however, that the latter sold her one-fourth share in Lot 1154 by virtue of the decision in civil case 3010 and not because of the project of partition, Exh. A. Such contention is absurd because from the decision, Exh. C, it is clear that *one-half* of one-fourth of Lot 1154 belonged to the estate of Francisco Reyes Diaz while the other half of said one-fourth was the share of complainant's mother, Felisa Espiras; in other words, the decision did not adjudicate the whole of the one-fourth of Lot 1154 to the herein complainant (See Exhs. C-3 & C-4). Complainant became the owner of the entire one-fourth of Lot 1154 only by means of the project of partition, Exh. A. Therefore, if Mrs. Macariola sold Lot 1154 on October 22, 1963, it was for no other reason than that she was well aware of the distribution of the properties of her deceased father as per Exhs. A and B. It is also significant at this point to state that Mrs. Macariola admitted during the cross-examination that she went to Tacloban City in connection with the sale of Lot 1154 to Dr. Decena (tsn p. 92, November 28, 1968) from which we can deduce that she could not have been kept ignorant of the proceedings in Civil Case 3010 relative to the project of partition.

"Complainant also assails the project of partition because according to her the properties adjudicated to her were insignificant lots and the least

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valuable. Complainant, however, did not present any direct and positive evidence to prove the alleged gross inequalities in the choice and distribution of the real properties when she could have easily done so by presenting evidence on the area, location, kind, the assessed and market value of said properties. Without such evidence there is nothing in the record to show that there were inequalities in the distribution of the properties of complainant's father" (pp. 386-389, rec.).

Finally, while it is true that respondent Judge did not violate paragraph 5, Article 1491 of the New Civil Code in acquiring by purchase a portion of Lot 1184-E which was in litigation in his court, it was, however, improper for him to have acquired the same. He should be reminded of Canon 3 of the Canons of Judicial Ethics which requires that: "A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." And as aptly observed by the Investigating Justice: ". . it was unwise and indiscreet on the part of respondent to have purchased or acquired a portion of a piece of property that was or had been in litigation in his court and caused it to be transferred to a corporation of which he and his wife were ranking officers at the time of such transfer. One who occupies an exalted position in the judiciary has the duty and responsibility of maintaining the faith and trust of the citizenry in the courts of justice, so that not only must he be truly honest and just, but his actuations must be such as not give cause for doubt and mistrust in the uprightness of his administration of justice. In this particular case of respondent, he cannot deny that the transactions over Lot 1184-E are damaging and render his actuations open to suspicion and distrust. Even if respondent honestly believed that Lot 1184-E was no longer in litigation in his court and that he was purchasing it from a third person and not from the parties to the litigation, he should nonetheless have refrained from buying it for himself and transferring it to a corporation in which he and his wife were financially involved,

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to avoid possible suspicion that his acquisition was related in one way or another to his official actuations in civil case 3010. The conduct of respondent gave cause for the litigants in civil case 3010, the lawyers practising in his court, and the public in general to doubt the honesty and fairness of his actuations and the integrity of our courts of justice" (pp. 395-396, rec.).

II

With respect to the second cause of action, the complainant alleged that respondent Judge violated paragraphs 1 and 5, Article 14 of the Code of Commerce when he associated himself with the Traders Manufacturing and Fishing Industries, Inc. as a stockholder and a ranking officer, said corporation having been organized to engage in business. Said Article provides that:

"Article 14—The following cannot engage in commerce, either in person or by proxy, nor can they hold any office or have any direct, administrative, or financial intervention in commercial or industrial companies within the limits of the districts, provinces, or towns in which they discharge their duties:

'1. Justices of the Supreme Court, judges and officials of the department of public prosecution in active service. This provision shall not be applicable to mayors, municipal judges, and municipal prosecuting attorneys nor to those who by chance are temporarily discharging the functions of judge or prosecuting attorney.

. . . . . .

'5. Those who by virtue of laws or special provisions may not engage in commerce in a determinate territory.'

It is Our considered view that although the aforestated provision is incorporated in the Code of Commerce which is part of the commercial laws of the Philippines, it, however, partakes of the nature of a political law as it regulates the relationship between the government and certain public officers and employees, like justices and judges.

Political Law has been defined as that branch of public law which deals with the organization and operation of the governmental organs of the State and define the relations of the

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state with the inhabitants of its territory (People *vs.* Perfecto, 43 Phil. 887, 897 [1922]). It may be recalled that political law embraces constitutional law, law of public corporations, administrative law including the law on public officers and elections. Specifically, Article 14 of the Code of Commerce partakes more of the nature of an administrative law because it regulates the conduct of certain public officers and employees with respect to engaging in business; hence, political in essence.

It is significant to note that the present Code of Commerce is the Spanish Code of Commerce of 1885, with some modifications made by the "Comision de Codificacion de las Provincias de Ultramar," which was extended to the Philippines by the Royal Decree of August 6, 1888, and took effect as law in this jurisdiction on December 1, 1888.

Upon the transfer of sovereignty from Spain to the United States and later on from the United States to the Republic of the Philippines, Article 14 of this Code of Commerce must be deemed to have been abrogated because where there is change of sovereignty, the political laws of the former sovereign, whether compatible or not with those of the new sovereign, are automatically abrogated, unless they are expressly re-enacted by affirmative act of the new sovereign.

Thus, We held in Roa *vs.* Collector of Customs (23 Phil. 315, 330, 311 [1912]) that:

> " 'By well-settled public law, upon the cession of territory by one nation to another, either following a conquest or otherwise, . . . those laws which are political in their nature and pertain to the prerogatives of the former government immediately cease upon the transfer of sovereignty.' (Opinion, Atty. Gen., July 10, 1899).
>
> "While municipal laws of the newly acquired territory not in conflict with the laws of the new sovereign continue in force without the express assent or affirmative act of the conqueror, the political laws do not. (Halleck's Int. Law, chap. 34, par. 14). However, such political laws of the prior sovereignty as are not in conflict with the constitution or institutions of the new sovereign, may be continued in force if the conqueror shall so declare

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by affirmative act of the commander-in-chief during the war, or by Congress in time of peace. (Ely's Administrator *vs.* United States, 171 U.S. 220, 43 L.Ed. 142). In the case of American and Ocean Ins. Cos. *vs.* 356 Bales of Cotton (1 Pet. [26 U.S.] 511, 542, 7 L.Ed. 242), Chief Justice Marshall said:

> 'On such transfer (by cession) of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it; and the law which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals, remains in force, until altered by the newly-created power of the State.' "

Likewise, in People *vs.* Perfecto (43 Phil. 887, 897 [1922]), this Court stated that: "It is a general principle of the public law that on acquisition of territory the previous political relations of the ceded region are totally abrogated."

There appears no enabling or affirmative act that continued the effectivity of the aforestated provision of the Code of Commerce after the change of sovereignty from Spain to the United States and then to the Republic of the Philippines. Consequently, Article 14 of the Code of Commerce has no legal and binding effect and cannot apply to the respondent, then Judge of the Court of First Instance, now Associate Justice of the Court of Appeals.

It is also argued by complainant herein that respondent Judge violated paragraph H, Section 3 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides that:

"Sec. 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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. . . . . .

"(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

Respondent Judge cannot be held liable under the aforestated paragraph because there is no showing that respondent participated or intervened *in his official capacity* in the business or transactions of the Traders Manufacturing and Fishing Industries, Inc. In the case at bar, the business of the corporation in which respondent participated has obviously no relation or connection with his judicial office. The business of said corporation is not that kind where respondent intervenes or takes part in his capacity as Judge of the Court of First Instance. As was held in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition on public officers against directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(I)t is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and, hence, the official who intervenes in contracts or transactions which have no relation to his office cannot commit this crime" (People *vs.* Meneses, C.A. 40 O.G. 11th Supp. 134, cited by Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. II [1976]).

It does not appear also from the records that the aforesaid corporation gained any undue advantage in its business operations by reason of respondent's financial involvement in it, or that the corporation benefited in one way or another in any case filed by or against it in court. It is undisputed that there was no case filed in the different branches of the Court of First Instance of Leyte in which the corporation was either party plaintiff or defendant except Civil Case No. 4234 entitled "Bernardita R. Macariola, plaintiff, *versus* Sinforosa O. Bales, et al.," wherein the

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complainant herein sought to recover Lot 1184-E from the aforesaid corporation. It must be noted, however, that Civil Case No. 4234 was filed only on November 9 or 11, 1968 and decided on November 2, 1970 by CFI Judge Jose D. Nepomuceno when respondent Judge was no longer connected with the corporation, having disposed of his interest therein on January 31, 1967.

Furthermore, respondent is not liable under the same paragraph because there is no provision in both the 1935 and 1973 Constitutions of the Philippines, nor is there an existing law expressly prohibiting members of the Judiciary from engaging or having interest in any lawful business.

It may be pointed out that Republic Act No. 296, as amended, also known as the Judiciary Act of 1948, does not contain any prohibition to that effect. As a matter of fact, under Section 77 of said law, municipal judges may engage in teaching or other vocation not involving the practice of law after office hours but with the permission of the district judge concerned.

Likewise, Article 14 of the Code of Commerce which prohibits judges from engaging in commerce is, as heretofore stated, deemed abrogated automatically upon the transfer of sovereignty from Spain to America, because it is political in nature.

Moreover, the prohibition in paragraph 5, Article 1491 of the New Civil Code against the purchase by judges of a property in litigation before the court within whose jurisdiction they perform their duties, cannot apply to respondent Judge because the sale of the lot in question to him took place after the finality of his decision in Civil Case No. 3010 as well as his two orders approving the project of partition; hence, the property was no longer subject of litigation.

In addition, although Section 12, Rule XVIII of the Civil Service Rules made pursuant to the Civil Service Act of 1959 prohibits an officer or employee in the civil service from engaging in any private business, vocation, or profession or be connected with

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any commercial, credit, agricultural or industrial undertaking without a written permission from the head of department, the same, however, may not fall within the purview of paragraph h, Section 3 of the Anti-Graft and Corrupt Practices Act because the last portion of said paragraph speaks of a prohibition by the *Constitution* or *law* on any public officer from having any interest in any business and not by a mere administrative rule or regulation. Thus, a violation of the aforesaid rule by any officer or employee in the civil service, that is, engaging in private business without a written permission from the Department Head may not constitute graft and corrupt practice as defined by law.

On the contention of complainant that respondent Judge violated Section 12, Rule XVIII of the Civil Service Rules, We hold that the Civil Service Act of 1959 (R.A. No. 2260) and the Civil Service Rules promulgated thereunder, particularly Section 12 of Rule XVIII, do not apply to the members of the Judiciary. Under said Section 12: "No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the Head of Department . . .."

It must be emphasized at the outset that respondent, being a member of the Judiciary, is covered by Republic Act No. 296, as amended, otherwise known as the Judiciary Act of 1948 and by Section 7, Article X, 1973 Constitution.

Under Section 67 of said law, the power to remove or dismiss judges was then vested in the President of the Philippines, not in the Commissioner of Civil Service, and only on two grounds, namely, serious misconduct and inefficiency, and upon the recommendation of the Supreme Court, which alone is authorized, upon its own motion, or upon information of the Secretary (now Minister) of Justice to conduct the corresponding investigation.

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Clearly, the aforesaid section defines the grounds and prescribes the special procedure for the discipline of judges.

And under Sections 5, 6 and 7, Article X of the 1973 Constitution, only the Supreme Court can discipline judges of inferior courts as well as other personnel of the Judiciary.

It is true that under Section 33 of the Civil Service Act of 1959: "The Commissioner may, for . . violation of the existing Civil Service Law and rules or of reasonable office regulations, or in the interest of the service, remove any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine him in an amount not exceeding six months' salary." Thus, a violation of Section 12 of Rule XVIII is a ground for disciplinary action against civil service officers and employees.

However, judges cannot be considered as subordinate civil service officers or employees subject to the disciplinary authority of the Commissioner of Civil Service; for, certainly, the Commissioner is not the head of the Judicial Department to which they belong. The Revised Administrative Code (Section 89) and the Civil Service Law itself state that the Chief Justice is the department head of the Supreme Court (Sec. 20, R.A. No. 2260 [1959]); and under the 1973 Constitution, the Judiciary is the only other or second branch of the government (Sec. 1, Art. X, 1973 Constitution). Besides, a violation of Section 12, Rule XVIII cannot be considered as a ground for disciplinary action against judges because to recognize the same as applicable to them, would be adding another ground for the discipline of judges and, as aforestated, Section 67 of the Judiciary Act recognizes only two grounds for their removal, namely, serious misconduct and inefficiency.

Moreover, under Section 16(i) of the Civil Service Act of 1959, it is the Commissioner of Civil Service who has original and

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exclusive jurisdiction "(T)o decide, within one hundred twenty days, after submission to it, all administrative cases against *permanent office and employees in the competitive service,* and, except as provided by law, to have final authority to pass upon their removal, separation, and suspension and upon all matters relating to the conduct, discipline, and efficiency of such officers and employees; and prescribe standards, guidelines and regulations governing the administration of discipline" (italics supplied). There is no question that a judge belong to the non-competitive or unclassified service of the government as a Presidential appointee and is therefore not covered by the aforesaid provision. WE have already ruled that ". . in interpreting Section 16(i) of Republic Act No. 2260, we emphasized that only permanent officers and employees who belong to the classified service come under the exclusive jurisdiction of the Commissioner of Civil Service" (Villaluz *vs.* Zaldivar, 15 SCRA 710, 713 [1965], Ang-Angco *vs.* Castillo, 9 SCRA 619 [1963]).

Although the actuation of respondent Judge in engaging in private business by joining the Traders Manufacturing and Fishing Industries, Inc. as a stockholder and a ranking officer, is not violative of the provisions of Article 14 of the Code of Commerce and Section 3(h) of the Anti-Graft and Corrupt Practices Act as well as Section 12, Rule XVIII of the Civil Service Rules promulgated pursuant to the Civil Service Act of 1959, the impropriety of the same is clearly unquestionable because Canon 25 of the Canons of Judicial Ethics expressly declares that:

"A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in his court; and, after his accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties. . . ."

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WE are not, however, unmindful of the fact that respondent Judge and his wife had withdrawn on January 31, 1967 from the aforesaid corporation and sold their respective shares to third parties, and it appears also that the aforesaid corporation did not in anyway benefit in any case filed by or against it in court as there was no case filed in the different branches of the Court of First Instance of Leyte from the time of the drafting of the Articles of Incorporation of the corporation on March 12, 1966, up to its incorporation on January 9, 1967, and the eventual withdrawal of respondent on January 31, 1967 from said corporation. Such disposal or sale by respondent and his wife of their shares in the corporation only 22 days after the incorporation of the corporation, indicates that respondent realized that early that their interest in the corporation contravenes the aforesaid Canon 25. Respondent Judge and his wife therefore deserve commendation for their immediate withdrawal from the firm after its incorporation and before it became involved in any court litigation.

III

With respect to the third and fourth causes of action, complainant alleged that respondent was guilty of coddling an impostor and acted in disregard of judicial decorum, and that there was culpable defiance of the law and utter disregard for ethics. WE agree, however, with the recommendation of the Investigating Justice that respondent Judge be exonerated because the aforesaid causes of action are groundless, and WE quote the pertinent portion of her report which reads as follows:

"The basis for complainant's third cause of action is the claim that respondent associated and closely fraternized with Dominador Arigpa Tan who openly and publicly advertised himself as a practising attorney (see Exhs. I, I-1 and J) when in truth and in fact said Dominador Arigpa Tan does not appear in the Roll of Attorneys and is not a member of the Philippine Bar as certified to in Exh. K.

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"The respondent denies knowing that Dominador Arigpa Tan was an 'impostor' and claims that all the time he believed that the latter was a *bona fide* member of the bar. I see no reason for disbelieving this assertion of respondent. It has been shown by complainant that Dominador Arigpa Tan represented himself publicly as an attorney-at-law to the extent of putting up a signboard with his name and the words 'Attorney-at-Law' (Exh. I and I-1) to indicate his office, and it was but natural for respondent and any person for that matter to have accepted that statement on its face value.

"Now with respect to the allegation of complainant that respondent is guilty of fraternizing with Dominador Arigpa Tan to the extent of permitting his wife to be a godmother of Mr. Tan's child at baptism (Exhs. M & M-1), that fact even if true did not render respondent guilty of violating any canon of judicial ethics as long as his friendly relations with Dominador A. Tan and family did not influence his official actuations as a judge where said persons were concerned. There is no tangible convincing proof that herein respondent gave any undue privileges in his court to Dominador Arigpa Tan or that the latter benefitted in his pratice of law from his personal relations with respondent, or that he used his influence, if he had any, on the Judges of the other branches of the Court to favor said Dominador Tan.

"Of course it is highly desirable for a member of the judiciary to refrain as much as possible from maintaining close friendly relations with practising attorneys and litigants in his court so as to avoid suspicion 'that his social or business relations or friendship constitute an element in determining his judicial course' (par. 30, Canons of Judicial Ethics), but if a judge does have such social relations, that in itself would not constitute a ground for disciplinary action unless it be clearly shown that his social relations beclouded his official actuations with bias and partiality in favor of his friends" (pp. 403-405, rec.).

In conclusion, while respondent Judge Asuncion, now Associate Justice of the Court of Appeals, did not violate any law in acquiring by purchase a parcel of land which was in litigation in his court and in engaging in business by joining a private corporation during his incumbency as judge of the Court of First Instance of Leyte, he should be reminded to be more discreet in his private and business activities, because his conduct as a member of the Judiciary must not only be characterized with propriety but must always be above suspicion.

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WHEREFORE, THE RESPONDENT ASSOCIATE JUSTICE OF THE COURT OF APPEALS IS HEREBY REMINDED TO BE MORE DISCREET IN HIS PRIVATE AND BUSINESS ACTIVITIES.

SO ORDERED.

Teehankee, Guerrero, de Castro, Melencio-Herrera, Plana, Vasquez, Relova and *Gutierrez, JJ.*, concur.

Fernando, C.J., Abad Santos and *Escolin, JJ.*, took no part.

Barredo, J., voted with Justice Aquino.

Aquino, J., voted for respondent's unqualified exoneration.

Concepcion Jr., J. is on leave.

SECOND DIVISION

[Adm. Case No. 797. May 31, 1982]

LYDIA CABATU, complainant, *vs.* EDGARDO C. DOMINGO, respondent.

SYNOPSIS

A complaint for disbarment was filed against the respondent for having contracted a second marriage notwithstanding the fact of his valid and subsisting marriage with the complainant. The case was referred to the Solicitor General for investigation and report. Subsequently, a recommendation for the dismissal of the complaint was submitted for the reason that from the time the complaint was filed in 1967 up to the present time, there has been no move on the part of the complainant to pursue her complaint, despite her receipt of the order setting the case for hearing, clearly showing her loss of interest to pursue the complaint against the respondent who had already moved to the U.S.A.

The Supreme Court adopted the recommendation of the Solicitor General and dismissed the complaint.