

[ADMINISTRATIVE ORDER NO. 161, December 27, 1955]

CONSIDERING MR. ALBERTO JIMENEZ RESIGNED FROM OFFICE AS PROVINCIAL FISCAL OF LEYTE.

This is an administrative case against Provincial Fiscal Alberto Jimenez of Leyte for alleged inexcusable ignorance of the law and illegal sale of firearms. The case was investigated by a special investigator of the Department of Justice before whom the respondent had full opportunity to be heard and to present evidence in his defense.

1. (a) The record shows that on February 4, 1954, Aparecio Albuera and thirty-six others filed Civil Case No. 1739 of the Court of First Instance of Leyte for injunction against Provincial Governor Bernardo Torres and Board Members Francisco Astilla and Manuel Nierras of Leyte to enjoin the defendants from removing the plaintiffs from their positions and to order the former to pay the latter moral damages of P5,000 each plus costs of the suit. On March 9, 1954, defendants Torres and Nierras, through the first assistant provincial fiscal of Leyte, filed an answer containing specific denials with allegations setting forth the substance of the matters relied upon by the defendants in support of their denials and statements of matters in avoidance of the causes of action, besides a counterclaim of P50,000 for moral damages plus costs of the suit.

On March 25, 1954, respondent filed an amended answer, "denying generally and specifically each and every allegation in the complaint," which was admitted by the court on May 25, 1954. Thereafter, or on May 27, 1954, the plaintiffs filed a motion for judgment on the pleadings on the ground that by the nature of their amended answer filed by the respondent defendants were deemed to have admitted the material allegations of the complaint as provided in the Rules of Court. On June 8, 1954, the motion was granted by the court and the defendants were ordered to refrain from removing the plaintiffs from their positions and to pay the costs of suit. Before receipt of the court's decision, the respondent in behalf of defendants filed on June 9, 1954, a motion for withdrawal of the amended answer which was denied by the court. The respondent has appealed the case to the Supreme Court.

(b) The record also shows that on April 14, 1954, the Bishop of Palo filed a complaint docketed as Civil Case No. 1776 of the Court of First Instance of Leyte against the Province of Leyte for recovery of the sum of P5,445, together with interest, for the rentals and depreciation of a building of the former used as hospital and for rentals of office desks and expenses for transportation, and the further sums of P2,000 and P1,000 as damages and attorney's fees, respectively, together with costs of the suit. On May 10, 1954, respondent, as counsel for defendant Province of Leyte, filed an answer denying generally and specifically each and every allegation in the complaint without alleging or setting forth the substance of the matters relied upon by the defendant in support of its denial. As in the other case above, plaintiff filed a motion for judgment on the pleadings which was likewise granted by the