part of which reads as follows:

> "Wherefore, the decision appealed from is hereby modified in the sense that each of the plaintiffs shall participate in the proportion subject of litigation in the proportion of one-half (1/2) of the share that corresponds to each of the defendants. The latter are further sentenced to pay jointly and severally to plaintiffs said sum of ₱220.00 that they spent for the redemption of the parcels of land under Tax Declarations Nos. 21719 (Exh. D) and 2153 (Exh. G). In the meantime this is not done, the properties mentioned in Exhibits D and G will answer for the payment of this sentence. Without pronouncements as to costs."

Not satisfied with the decision of the Court of Appeals, the defendants have filed the present petition for its review on certiorari.

The findings of fact of the Court of Appeals upon which its decision rests, quoted verbatim, are as follows:

> "(a) That the properties under litigation were not of Damiana Tupin but of her husband, the late Justo Magallanes;
>
> "(b) That plaintiffs Maximo, Gaspar, Baltazar and Bienvenido, surnamed Magallanes, had redeemed from their vendees *a retro* Filomeno Gallo and Soledad Canto (Exh. D) and Jose Capanang (Exh. G) the parcels of land under Tax 21719 and 2153 mentioned in said exhibits and paid for such redemptions the sums of ₱100.00 and ₱120.00, respectively;
>
> "(c) That Enrica Tagaduar, alleged mother of the plaintiffs, did not marry Justo Magallanes in the year 1918 after the death of his first wife Damiana Tupia occurred in 1915. We arrived at this conclusion not only because Justo's sister Aleja Magallanes positively declared 'that until the death of my brother (Justo) he was never married again,' but also because Magallanes himself declared in various documents that he executed in his lifetime and up to 1938, that he was a widower (Exhs. B, C and I), and although it is true that in 1939 his civil status appearing on Exhibit F is that of 'married' (without stating to whom he was married then), it does not follow, even if the statement of such status was not due to a clerical error, that he was precisely married to Enrica Tagaduar who did not pretend that she married him between 1936 and 1938, but in 1918. Plaintiffs-appellees state that according to our jurisprudence:
>
> > 'A man or woman who are living in marital relations, under the same roof, are *presumed* to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence.' (U.S. vs. Uri et al., 34 Phil. 653; U.S. vs. Villafuerte, 4 Phil. 559).
>
> but this doctrine only establishes a presumption that in the case at bar was rebutted by the testimony of Aleja Magallanes and by documents executed by Justo Magallanes himself. In this case it is not a matter of imagining what might have happened to the plaintiffs, as the trial court does without adequate support in the record. Furthermore, and even considering that the plaintiffs are the natural children of Justo Magallanes and that sometime between 1936 and 1939 Justo Magallanes married Enrica Tagaduar, such marriage could not have the effect of automatically legitimizing the children both prior to the marriage, because our Civil Code provides:
>
> > 'Art. 121 Children shall be considered as legitimized by a subsequent marriage *only* when they have been acknowledged by the parents before or after the celebration thereof.'
>
> and the record fails to adequately show that such acknowledgment ever took place.
>
> "(d) That the plaintiffs are the natural children of the late Justo Magallanes by Enrica Tagaduar. The defendants do not deny their status as such and it can be inferred from the records that they enjoyed such status during the lifetime of their deceased father."

Petitioners' main contention is that the Court of Appeals erred in holding that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes, as mere natural children of the deceased Justo Magallanes, without having been legally acknowledged, are entitled to inherit under article 840 of the old Civil Code, which reads as follows:

> "When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of legitimate children who have not received any betterment, provided that it may be included within the freely disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.
>
> "The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation."

Petitioners' contention is tenable. We are bound by the finding of the Court of Appeals in its decision that said respondents are the natural children of Justo Magallanes, that the petitioners do not deny their status as such, and that it can be inferred from the records that they enjoyed such status during the lifetime of their deceased father. Nonetheless, we are also bound by its finding that the record fails to adequately show that said respondents were ever acknowledged as such natural children. Under Article 840 of the old Civil Code, above quoted, the natural children entitled to inherit are those legally acknowledged. In the case of Briz vs. Briz, 45 Phil. 763, the following pronouncement was made: "x x x the actual attainment of the status of a legally recognized natural child is a condition precedent to the realization of any rights which may pertain to such child in the character of heir. In the case before us, assuming that the plaintiff has been in the uninterrupted possession of the status of natural child, she is undoubtedly entitled to enforce legal recognition; but this does not in itself make her a legally recognized natural child." It being a fact, conclusive in this instance, that there was no requisite acknowledgement, the respondents' right to inherit cannot be sustained.

The respondents cannot demand that this suit be considered a complex action for compulsory recognition and partition, under the authority of Briz vs. Briz, *supra*, and Lopez vs. Lapez, 68 Phil. 227, for the reason that the action was not instituted within the four years following the death of the alleged natural father (Art. 137, old Civil Code; Art. 285, New Civil Code). According to the decision of the Court of Appeals, the father, Justo Magallanes, died in 1943, and the present action was instituted seven years later in 1950.

Wherefore, the decision of the Court of Appeals is hereby motified by eliminating therefrom the ruling that the respondents Maximo, Gaspar, Baltazar and Bienvenido Magallanes are entitled to inherit from the deceased Justo Magallanes in the proportion of one half of the share that corresponds to each of the petitioners Federico, Fermin and Angel Magallanes. So ordered without costs.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion and *J. B. L. Reyes, JJ.*, concur.

V

Tomas Bagalay, Plaintiff-Appellant, vs. Genaro Ursal, Defendant-Appellee, No. L-6445, July 29, 1954, Padilla, J.

DAMAGES; CLAIM FOR DAMAGES UNDER ARTICLE 27 OF THE CIVIL CODE; PARTY ENTITLED TO DAMAGES ONLY WHEN PUBLIC SERVANT REFUSES OR NEGLECTS TO PERFORM HIS OFFICIAL DUTY WITHOUT CAUSE. — Article 27 of the Civil Code which authorizes the filing of an action for damages contemplates a refusal or neglect without

just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. In the case at bar, plaintiff is not entitled to moral damages because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it.

Numeriano G. Estenzo for plaintiff and appellant.

City Fiscal Jose L. Abad and First Assistant City Fiscal Honorato Garciano for defendant and appellee.

DECISION

PADILLA, *J.*:

An action was brought to recover moral damages in the sum of ₱10,000 and ₱2,500 for attorney's fees and costs. For cause of action the plaintiff alleges that the defendant, in his capacity as City Assesor of Cebu, wrote and mailed to him a letter by which he was informed that he was delinquent in the payment of realty tax from 1947 to 1951 on a parcel of land assessed at ₱1,800, amounting to ₱98.45 including penalties, and that unless the same be paid on 9 May 1952 the real property would be advertised for sale to satisfy the tax and penalty due and expenses of the auction sale; that the letter caused him mental anguish, fright, serious anxiety, moral shock and social humiliation; besmirched his reputation; wounded his feelings, all of which the plaintiff fairly estimates to be ₱10,000. A motion to dismiss the complaint on the ground that it does not state a cause of action was granted. A motion for reconsideration of the order of dimsissal was denied. Hence this appeal.

Laying aside the other unimportant point as to whether the letter was addressed to Tomas Bacalay and not to the plaintiff surnamed Bagalay and granting that it was addressed and mailed to the latter, still the facts pleaded in the complaint, admitting them to be true, do not entitle him to recover the amount of moral damages he claims to have suffered as a result of the writing and mailing of the letter by the defendant in his official capacity and receipt thereof by the plaintiff because the former has done nothing more than to write and mail the letter. There is no allegation in the complaint that the amount due for the realty tax and penalty referred to in the defendant's letter complained of had been paid by the plaintiff. Article 27 of the Civil Code which authorizes the filing of an action for damages, relied upon by the plaintiff, contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. The provisions of the article invoked by the plaintiff do not lend support to his claim and contention, because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it. All the moral damages the plaintiff claims he has suffered are but the product of oversensitiveness.

The order appealed from is affirmed, with costs against the plaintiff.

Paras, Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion and *J. B. L. Reyes, J.J.*, concur.

VI

Pio S. Palamine, Sulpicio Udarbe, Alfonso Sagado, Hipolito Exclise, Ireneo Sulita, Melecio Damasing, and Ludhero Baloc, Petitioners, vs. Rodrigo Zagado, Metrano Palamine, Brigido Canales, Dominador Acodo, Gualberto Saforteza, Respondents, G. R. No. L-6901, March 5, 1954, Bengzon, J.

ADMINISTRATIVE LAW; REMOVAL OR DISMISSAL OF CHIEF AND MEMBERS OF POLICE FORCE OF A MUNICIPALITY. — The chief and members of the police force of a municipality cannot be dismissed simply in accordance "with the new policy of the present administration," without charging and proving any of the legal causes specifically provided in Republic Act 557.

Tañada, Pelaez & Teehankee for petitioners.

Provincial Fiscal Pedro D. Melendez for respondents.

DECISION

BENGZON, *J.*:

The petitioners were on June 12, 1953, the chief and members of the police force of Salay, Misamis Oriental. On that date they were removed from the service by the respondent Rodrigo Zagado as the acting mayor of the same municipality. The other respondents are the persons subsequently appointed to the positions thus vacated.

This litigation was instituted without unnecessary delay, to test the validity of such removals and appointments, the petitioners contending they were illegal, because contrary to the provisions of section 1, Republic Act No. 557, which reads in part as follows:

> "Members of the provincial guards, city police and municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, x x x"

There is no question that on June 12, 1953 each of the petitioners received from the respondent Rodrigo Zagado a letter of dismissal couched in these terms:

> "I have the honor to inform you that according to the new policy of the present administration, your services as Municipal Police, this municipality will terminate at the opening of the office hour in the morning of June 13, 1953, and in view hereof, you are hereby respectfully advised to tender your resignation effective immediately upon receipt of this letter."

There is also no question that on June 14, 1953 said respondent appointed the other respondents to the vacant positions, which the latter assumed in due course and presently occupy.

The respondents' answer, without denying the letters of dismissal, alleges that Acting Mayor Zagado had dismissed the petitioners "with legal cause and justification" and that "charges have been preferred against the said petitioners".

What that legal cause is, the pleading does not disclose. What the preferred charges were, we do not know. Whether they are charges of the kind that justify investigation and dismissal, respondents do not say. And when the controversy came up for hearing, none appeared for respondents to enlighten the court on such charges or the outcome thereof.

Hence, as the record now stands, the petitioners appear to have been dismissed simply in accordance "with the new policy of the present administration" as avowed in the letters of dismissal. Probably that is the "legal cause" alleged by respondents. But they forget and disregard Republic Act 557, inasmuch as no misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularity in the performance of duty or violation of law has been charged and proven against the petitioners. The Legislature in said statute has wisely expressed its desire that membership in the police force shall not be forfeited thru changes of administration, or fluctuations of "policy", or causes other than those it has specifically mentioned.

Reinstatement is clearly in order[1].

Wherefore, judgment is hereby rendered in favor of the petitioners, commanding the respondent Acting Mayor Rodrigo Zagado to reinstate them to their respective positions, and ordering the other respondents to vacate their places. Costs against respondents. So ordered.

Paras, C.J., Pablo, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *Diokno, J.J.*, concur.

Petitioners reinstated.

1 Mission et al vs. Del Rosario, G. R. No. L-6754, Feb. 26, 1954; Manuel vs. De la Fuente, 48 Of. Gaz., 4829.