

JOSE TOPACIO NUENO, MANUEL DE LA FUENTE, EUSTAQUIO C. BALAGTAS, AND DELIA C. DIÑO, PETITIONERS, VS. GERARDO ANGELES, AGATON EVANGELISTA, ANDRES STA. MARIA, VICENTE G. CRUZ, AMAD...

G.R. No. L-89. February 01, 1946

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FERIA, J.:

This is an action of quo warranto instituted by the four petitioners against the six respondents to oust the latter from their offices as members of the Municipal Board of the City of Manila on the ground that the petitioners are entitled to occupy and respondents are illegally holding them.

Jose Topacio Nueno, Manuel de la Fuente, Eustaquio Balagtas and Carmen Planas and six others were elected in the general election held on Dec. 10, 1940, and qualified on Jan. 1, 1941. Subsequently, Jose Topacio Nueno and Carmen Planas resigned to run for seats in the House of Representatives in the national election held on Nov. 14, 1941, but they were not elected. After the election, the President of the Philippine Commonwealth appointed petitioner Nueno to fill the vacancy created by his own resignation, and petitioner Delia O. Diño to fill the vacancy in the place of Carmen Planas, for the last two belonged to the same political party, "The Young Philippines".

On Jan. 3, 1942, when the city of Manila was occupied by the Japanese Forces, the Commander-in-Chief of the Imperial Japanese army proclaimed military administration under martial law over all districts occupied by the army, and in the proclamation it was provided that "so far as military administration permits, all the laws now in force in the Commonwealth, as well as executive and judicial institutions shall continue to be effective as in the past, and all public officials shall remain in their present posts and carry on faithfully their duties as before."

By Order No. 1 of Jan. 3, 1942, of the Commander-in-Chief of the Imperial Japanese army, a central administrative organization or government under the name of Philippine Executive Commission was organized, and Jorge Vargas appointed Chairman thereof, and the latter, in Executive Order No. 4, Sec. 9(b) of Feb. 5, 1942, approved by the said Commander-in-Chief, provided that "the provincial boards and the boards or councils of cities, municipalities and specially organized local governments shall merely serve in an advisory capacity to their respective governor and mayors." Under the so-called Republic of the Philippines inaugurated on October 14, 1943, no material change was introduced in so far as the City of Manila was concerned.

The regular election which, according to Sec. 4 of Act no. 257 (Election Code), should have been held on the second Tuesday in December 1943 to elect the members of the Municipal Board of the City of Manila who were to assume office on the first of January, 1944, could not be held for the city was still under the Japanese military occupation; and as the special election provided for in Sec. 16(c) of said Act could not also be held after the reoccupation of the Philippines and the restoration of the Commonwealth Government on Feb. 27, 1945, due to physical impossibility, the President of the Commonwealth appointed on July 18, 1945, the six respondents and four of those elected in December, 1940, as members of the Board.

The four petitioners, Jose Topacio Nueno, Manuel de la Fuente, Agustin Balagtas and Delia O. Diño, instituted

this action against the six respondents, Gerardo Angeles, Agaton Evangelista, Andres Santa Maria, Vicente G. Cruz, Amando V. Hernandez and Felicidad Manuel, on the ground that petitioners, having been elected as members of the Municipal Board of Manila in the general election held in December, 1940, for three years, their term of office has not yet expired because they have not served for three years completely due to the Japanese occupation, and besides because they are entitled to hold over or continue in office until their successors are elected and qualified, and therefore respondents' appointments are null and void.

Attorney Nicolas V. Villaruz appeared to intervene in behalf of the political party "Young Philippines", and incidentally for the petitioner Delia Diño, and claims that although the latter is not, under the ' law, entitled to hold over after the expired term of the office of Carmen Planas (who resigned as above stated and in whose place she was appointed by the President), the appointments of the respondents were in contravention of section 16(b) of Act Ho. 357, because no one of the respondents belongs to the Young Philippines, whereas in the former Board there was one belonging to that political party, petitioner Delia Diño; and besides, their appointments, not having been submitted to the Commission on Appointments, became ineffective from September 18, 1945, the day following the adjournment of the second special session of the Congress of the Philippines.

The respondents, represented by the Fiscal of the City of Manila, contend that petitioners have no right to hold the public offices claimed by them, because their term of office had already expired on December 31, 1943, and they are not entitled to hold over; that whether or not they have served completely for three years as members of the Municipal Board of Manila is immaterial, for the term of office must be distinguished from the tenure of the incumbent; that as petitioners have no right to institute the present action, this Court has no jurisdiction to proceed and inquire into the validity of respondents' appointments; and that the appointments of the respondents are legal and valid under the., emergency powers granted by Act No. 671 of the Congress of the Philippines upon the President of the Commonwealth.

The decision in this case depends upon whether or not, under the law, petitioners are entitled to hold- over as members of the Municipal Board of the City of Manila, notwithstanding the expiration of their term of office on the last day of December of the year 1943.

In view of the conclusion we have reached in this decision, we shall not discuss the sufficiency of the "pleading filed "by the four petitioners who claim to be entitled to hold the offices now held by the six respondents. According to Sec. 7 of Rule 68, an individual who files a complaint of quo warranto must set forth the name of the person who claims to be entitled to the office and that of the defendant who is unlawfully in possession thereof, and those who claim to be entitled to the same office may be made parties in order to determine their respective rights to the office in the same action. An individual cannot sue and oust two or more persons although the latter are holding illegally their respective offices, unless he is entitled to all of them. Although, this question has not been raised by the parties, we may rest our decision on that ground alone and dismiss the action; for if we were to decide this case in favor of the petitioners, we would be at a loss how to determine which of the six respondents should be ousted as holding illegally the four offices or places claimed by the four petitioners. There is nothing in the record showing which of the six respondents occupy the four seats or offices formerly occupied by the four petitioners. The record does not show the respective dates or seniority of the respondents' appointments. But we want to decide the case on its merits and not on technicalities, so as to avoid any other or further proceedings.

The contention that petitioners are entitled to continue in office because they have not completely served for three years due to the war, is untenable, even assuming that they had not discharged the duties of their office during the Japanese occupation of Manila. For the simple reason that the term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of

right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold over. The tenure may be shorter than the Term for reasons within, or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war.

We shall, therefore, discuss and decide only the question of the respondents' right to hold over and, consequently, the power of the President to appoint their successors after the "expiration of their term of office.

While there is authority to the contrary, the general trend of decisions of American courts is to adopt the common-law rule of hold over. The rule is, as enunciated in 46 Corpus Juris, 968, that "in the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold his office until his successor is appointed or chosen and has qualified." This enunciation of the rule is substantially the same as that in *McQuillin, Municipal Corporations*, Vol. II, second ed. Art. 307). The legislative intent not to permit holding over may therefore be express or implied, in legislative acts'.

In many states of the Union, the constitutions and statute expressly provide for the holding over of public officers until their successors are elected or appointed and have qualified. (46 G. J., Par. III, p. 969)

Here in the Philippines, in enacting the provisions of the Revised Administrative Code relating to elective provincial officers, members of the Municipal Board of the City of Manila and municipal officers in general, the Philippine Legislature was dealing with the same or similar subject matter, and notwithstanding the trend of American decisions to adopt the common-law rule of hold over, recognized and applied by this court to appointive officers in the case of *Tayko v. Capistrano*, 52 Phil. 866, our lawmakers have followed the policy and practice of those States that provide expressly in their statutes for holding over of provincial, city and municipal officers, in the following provisions of the Revised Administrative Code, the pertinent part have underscored.

Section 2074 of the Revised Administrative Code (Provincial Law) provided;

"Term of office of elective official.-- The term of a provincial officer elected at any general election commencing with the year nineteen hundred and thirty-seven, shall begin on the sixteenth of July following such election and shall end on the fifteenth of the same month three years thereafter; but if a successor be not inducted at the time appointed by law, the incumbent shall hold over until a successor shall be duly qualified.

Section 2177 of the same Code (Municipal Law) read as follows:

"Term of elective officer. The term of a municipal officer elected at any general election commencing with the year nineteen hundred and thirty-seven, shall begin on the sixteenth of July following such election and shall end on the fifteenth of the same month three years thereafter; but if a successor be not inducted at the time appointed by law, the incumbent shall hold over until a successor shall be duly qualified.""

The original provision of Sec. 2429 (Charter of the City of Manila) which provided "that the Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for four years or until their successors are elected and qualified" was amended by Act No. 2774 so as to read: "The Municipal Board shall be the legislative body of the City, and shall consist of ten elected members who shall hold office for three years. But the suppression of the provision for holding over did not have any effect, since it was then a surplusage, because the second paragraph of section 2440 provided among others the following;

"Election for the members of the Board shall be held on the date of the general triennial election, and elected members shall take office on the sixteenth day of October next following their election, upon qualifying, and shall hold office until their successors are elected and qualified"

From the express provisions above quoted, it clearly appears that it was the intention of the Legislature, independent or irrespective of the ruling of this Court in the above-cited case of *Tayko v. Capistrano* relating to appointive officers, to provide expressly that the elective (members of the Municipal Board of the City of Manila as well as elective provincial and municipal officers in general, shall hold over after the expiration of their terms until their successors shall be duly qualified. Such provision was enacted to provide against all contingencies which might result from an office becoming for any period of time vacant or without an incumbent.

Subsequently, the above-quoted provisions of sections 2074, 2177, and 2440 (second paragraph), were expressly repealed by Sec. 184 of Commonwealth Act No. 357. Section 4 of said act provides, in lieu of said provisions, that "on the "second Tuesday in December, nineteen hundred and forty, and upon the same day every three years thereafter, a regular selection shall be held to elect the officers who are to occupy all elective provincial, municipal and city offices throughout the Philippines. The officers elected shall assume office on the first day of January next following. This repeal of all provisions for holding over the provincial, city and municipal elective officers by Commonwealth Act No. 257, and the enactment of section 16 thereof which provides for the filling of all vacancies, temporary or otherwise, which might occur during and after the expiration of a term of office, so as to avoid the necessity and even the occasion for holding over, clearly show the manifest intention of Congress to suppress the hold over. The very attorney who appeared for petitioner *Delia c. Diño* argued in his brief and oral argument that the latter has no right under the law to hold over, but is entitle to be reappointed in accordance with Sec. 16(b) of Act Ho. 357.

The policy announced by the President of the Commonwealth in his message to Congress on June 9, 1945, that "the provincial and municipal officers who were elected in 1940 should, as a general principle, be recalled to their respective positions, thus giving due consideration to the will of the people as expressed, at the polls, and only for strong reasons should they be deprived of their privilege to serve," quoted in-the dissenting opinion, cannot be invoked in support of the right to hold over. In the first place, because the message has not the force and effect of law and is therefore not a legislative interpretation of the law; and secondly, because if any weight may be given to that policy in the decision of this case, it would work against the alleged right to hold over. If provincial and municipal officers are entitled by law to hold over, they would have the right to continue in office irrespective of any policy which the President may adopt, for the latter cannot deprive them of said right. If the President has to recall and appoint them to their respective original positions pursuant to such policy, it is because they are not entitled to hold over.

Section 16 of Commonwealth Act No. 357 reads as follows:

"Sec. 16. Vacancy in elective provincial or municipal office. — (a) Whenever a temporary vacancy in any elective local office occurs,- the same shall be filled by appointment by the President if it is a provincial office and by the provincial governor, with the consent of the provincial board, if it is a municipal office.

"(b) Whenever in any elective local office a vacancy occurs-as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, save in the case of a mayor, which shall be filled by the vice-mayor.

"(c) Whenever the election for a local office fails to take place on the date fixed by law, or such election results in a failure to elect, the President shall issue as soon as practicable, a proclamation calling a special election to fill said office.

"(d) When a local officer-elect die before assumption of office, or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or such office-elect fails to qualify, for any reason, the President may in his discretion either call a special election or fill the office by appointment.

“(e) In case a special election has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment .

“(f) The person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office.”

The only vacancies which may possibly occur in elective provincial or municipal offices, as well as of the City of Manila, are those provided for in the above-quoted provisions, and in section 2440 (e), applicable only to members of the Municipal Board of the City of Manila, besides those enumerated in said section 16 which are not in conflict therewith, for according to section 2440(d) as amended by Act No. 233, "in so far as they are applicable, all the provisions of the Election Law are made effective as to the members of the Board and to their election to the same extent as if the City of Manila were a province * * *." And each and every one of said vacancies may be immediately filled in the manner therein provided, and therefore there cannot be any interregnum during which the office may be temporarily without an incumbent as we shall show later on.

In case of sickness or absence, or if for any reason it becomes necessary to maintain a quorum in that Board, as in case of suspension or temporary disability of any member of the Municipal Board of the City of Manila, section 16(a) cannot be applied, because no vacancy; temporary or otherwise is created thereby since the office is not without an incumbent, and because that contingency is covered by section 2439 or the Administrative Code which is specially applicable to members of the Municipal Board of the City of Manila, in accordance with said section, the Governor General (now the President) may make in such case a temporary appointment of a person "who shall possess all the rights and perform all the duties of a member of the Board" until the return to duty of the incumbent. An office is said to be vacant where there is no incumbent elected or appointed to hold it. (46 C. J. 971). "A temporary absence will not result in a vacancy," (Young vs. Morris, 47 Okl., 743). Temporary "physical and mental disability of the incumbent of an elective office does not create a vacancy," (46 c. J. 973).

But even assuming that it was also the intention of Congress to apply, though improperly, the word "temporary vacancy" used in Section 16(a) of Act No. 357, to oases of sickness, absence, suspension or any other temporary disability of any member of provincial or municipal boards, it would not exclude the application of said section 16(a) to the proper "temporary vacancy" which may result from the delay in the election or appointment of a successor of the incumbent of the previous term in the cases contemplated in the provisions of subsection(c) and (d) of said section 16. Under these provisions, whenever (1) the election "fails to take place on the date fixed by law as in the case at bar), or (2) results in a failure to elect, or (3) the officer-elect dies before assumption of office, or (4) his election is not confirmed for disloyalty, or (5) he fails to qualify for reason of non-eligibility or other reasons, the successor to fill the vacancy shall be elected in a special election, if the President does not exercise his discretion to fill the vacancy in the last three cases (3), (4) and (5) by appointment. Now, as according to Sec. 17 of the same Act No. 357, the said special election shall be called by the President by proclamation for a date which shall not be earlier than thirty days nor later than ninety days from the date of said proclamation, it is evident that from the first day of January, the beginning of the new term, to the election or appointment and qualification of the successor elected in that special election, or appointed if the special election result in a failure to elect, as provided in subsection (e), there would necessarily be an interregnum or temporary vacancy during which no one actually holds or could hold the office. To meet or provide for such a contingency, said subsection (a) of section 16 empowers the president to appoint a person to fill such temporary vacancy or interregnum, and the persons so appointed shall hold the office until the permanent successor has been elected or appointed to fill the office lor the unexpired term, according to subsection (f) of said section 16 of Commonwealth Act No. 357. Election or appointment of a person to fill a vacancy under subsections (b), (c), (d) and (e) for the unexpired term should not be confused, with the appointment under subsection (a) of a person to fill the temporary-vacancy until

the permanent incumbent for the unexpired term has been elected or appointed (subsection [f]).

In addition to all the foregoing, we may add that petitioners Jose Topacio Nueno and Belia C. Dino can not claim the right to hold over as elective officers of the Municipal Board of Manila, because, as above stated, they held the office before the war by appointment under subsection (b) to fill the vacancies caused by resignation of the elective incumbents, one of them the same petitioner Nueno, and to hold the office for the unexpired term in accordance with subsection (f), Sec. 16, of said Commonwealth Act No. 357. And that petitioner Dino's claim is based on the incorrect assumption that the respondents were appointed under subsection (b) of said Act.

From the foregoing it clearly appears that petitioners are not entitled to hold over, and after the expiration of their term of office on Dec. 31, 1943, the offices of members of the Municipal Board of Manila became-vacant from January 1, 1944, because of failure to hold the regular election on the second Tuesday of December 1943 and the special election, and consequently to elect the would-be incumbents. And during the interregnum or temporary vacancy from January 1, 1944, until the said special election is held and new members elected or, in case of failure to elect, appointed by the President (under Sec. 16 (c) and (d) of Commonwealth Act No. 357) the President had, under section 16 (a) of the same act, the power to appoint the respondents or any other, at his discretion, to fill the said temporary vacancy or vacancies. As the petitioners are not entitled to hold-over or continue, after the expiration of their term, in the offices claimed by them and held now by the respondents, they have no right to bring the present action and impugn the validity of the latter's appointments, according to the provisions of section 6, Rules 68, of the rules of court.

The record does not show whether the respondents were appointed by the president under Sec. 16(a) of Commonwealth Act No. 357, or under the emergency powers granted him by Commonwealth Act No. 671 of the Congress of the Philippines as contended by the City Fiscal, attorney for the respondents. But having arrived at the above conclusion, this court does not deem it necessary to decide whether or not the President had the authority to appoint the respondents by virtue of his emergency powers; and whether or not the respondents' appointments became ineffective from September 18, 1945, which was the day following the adjournment of the Congress of the Philippines convened after their appointments, because the latter had not been submitted to Congress or -the Commission on Appointments, as claimed by the attorney for respondent Dino.

The action of quo warranto filed by the petitioners is therefore, dismissed, with costs against them. So ordered.

Jaranilla, De Joya, Pablo, Bengzon, and Briones. JJ., concur.

PERFECTO, J., concurring,

Petitioners Nueno, De la Fuente, and with Carmen Planas and five others, were elected members of the Municipal Board of Manila in the election held on December 10, 1940.

Planas and Mueno resigned and ran for Congress in the national election of November 14, 1941. Both failed. After the election, President Quezon reinstated Hueno by appointment in his former position in the Municipal Board. The same President appointed petitioner Diño in place of Planas.

Petitioner continued in office after the Japanese occupied Manila on January 2, 1942, and remained rendering services to the Japanese military administration until February, 1942, when Commissioner of the Interior Benigno S. Aquino, under the puppet Vargas Executive Commission, ordered the dissolution of the Municipal Board and petitioners were given the positions of advisers to the Mayor of Manila.

The regular election which should have taken place in December, 1943, to elect the new members of the

Municipal iBoard for the three-year term from January 1, 1944 to December 31, 1946, was not held due to the Japanese occupation.

The Commonwealth Government was re-established in Philippine territory in Leyte in October, 1944, and in Manila and the whole Philippines only on February 27, 1945.

“Only July 18, 1945, President Osmeña appointed respondents as members of the Municipal Board with others, four of whom were elected in 1940 for the three-year term of 1941-1943. During the almost five months' period of from February 27, 1945, when the Commonwealth Government was restored in Manila, until July 18, 1945, when respondents were appointed, no one had been occupying any of the ten positions in the Municipal Board. They were vacant.

Petitioners complained that the Chief Executive appointed respondents "instead of recalling the petitioners", but it appears that the petitioners were then under investigation by the CIC, which fact precluded the President from appointing them, the only way by which they could be recalled.

Petitioners seek the ouster of respondent and the declaration that:

(a) The term of office of respondents has expired in accordance with the Constitution, because they were not acted upon by the Commission on Appointments; and

(b) The petitioners are "legally entitled to be recalled and reinstated to their former positions as members of the Municipal Board" effective retroactively on February 27, 1945.

To obtain the remedy in this case, petitioners must show, in the first place, that they are entitled to the positions they are claiming as members of the Municipal Board. (Section 6, Judicial Rule 68; *Lomuntad v. Cuenco*, 41 Off. Gaze., 894.)

According to law, the title to a position as member of the Municipal Board of Manila may be acquired only (a) by election, regular or special, and (b) by presidential appointment.

It is evident that petitioners cannot claim title by election, To entitle them by election to occupy of the positions to which respondents were appointed. It is necessary that they should have been elected in the regular election which should have taken place in 1943 or, in default thereof, in any special election called by the President for the purpose. Since 1943, until respondents were appointed, no election, whether regular or special, had taken place in Manila, and, 'therefore, no one can rightfully claim to have been elected to the positions in question.

The fact that three petitioners were elected in 1940 cannot be advanced as a reason for their claim. They were elected in 1940 only for the three-year term of 1941-1943, ending on December 31, 1943, which cannot be confused with the following other three-year term of 1944-1946, The first belongs to the past; the second, to the present. The past is dead. The present is alive. It is impossible to engraft the dead in the living. Life and death are metaphysical opposites. There is no possible meeting between the two horns of the dilemmas to be or not to be. They are conclusively uninterchangeable.

The appointments made by President Quezon to petitioners Nueno and Dino had only the effect of filling the positions which became vacant as a result of the resignations of Nueno and Planas in the three-year term of 1941-1943; The effect of said appointments cannot extend further, as President Quezon, is&en he issued the appointments, had not the power to fill any position in this three-year term of 1944-1946; for, according to law, they should be filled by election and, only by its failure, by appointment. When the appointments were issued, no one was in a position to say that no election could be held to fill the positions in the three-year term of 1944-1946.

None lone of petitioners can claim title by appointment to any of the respondents' position, which belong to the

three-year term of 1944-1946.

Petitioners allege that their term of office has not expired because their successors have not been elected, and qualified, and that they have not served completely in their term of three years. The allegation is based on erroneous assumptions. The term of office of petitioners was fixed by law, and it was limited to the three-year term of 1941-1943. Said three-year term is fixed by law, regardless of whether or not election takes place to fill positions for the next succeeding three-year term of 1944-1946, or those elected fail to qualify.

Said term of office had nothing to do with the duration of the tenure of office of petitioners. The tenure of office may be coetaneous with the three-year term, or shorter. The officer might even fail to occupy, for any length of time, the position to which he is elected. That fact does not change the duration of the term of office. The causes of his failure to occupy the position, whether the result of enemy occupation, death, sickness, resignation, etc., do not affect said duration.

Petitioners allege that they have not been legally removed or suspended, nor resigned or abandoned their positions in the Municipal Board. Such facts are not necessary. The term of office having expired, there was no office from which they could be removed or suspended, or which may be the object of resignation or abandonment. By the expiration of the term of office, with respect to petitioners, it can be truthfully stated that their offices disappeared. At most, they left in the mind of men a piece of history to remember. Separation takes place whether the occupant of an office, spontaneously or involuntarily, is separated therefrom, or the office, by its expiration, is removed from the occupant.

Under the facts in this case, there is ground to declare that, before the expiration of their term of office, petitioners, in fact, by their acceptance of official positions under the Japanese military administration, resigned from or abandoned or vacated their Commonwealth positions in January, 1942, because their positions under the Japanese Imperial Government, which represents a foreign state — Japan — were incompatible with their positions under the Commonwealth of the Philippines.

The incompatibility can be conclusively shown by the fact that our fundamental law provides: "No law granting title of nobility shall be enacted, and no person holding any office of profit or trust shall, without the consent of the Congress of the Philippines, accept any present, emolument, office, or title of any kind whatever from any foreign state." (Art. III, section 1:9, Constitution of the Philippines.) Consent of Congress in petitioners' case was not shown nor alleged. It was impossible to obtain it anyhow, because Congress could not convene during Japanese occupation. Japan, besides being a foreign state, was an enemy, thus emphasizing further the Incompatibility.

To implement this constitutional prohibition and make it effective by penal sanction, while we were a member of the First national Assembly we drafted a bill which, later, was enacted into the present Commonwealth Act No. 153.

The theory of hold-over has been advanced to support petitioners' claim to respondents' positions in the three-year term of 1944-1946. The principle of democracy has been even invoked to maintain the proposition that petitioners, at least the three who were elected in 1940, are entitled to occupy the positions in question until they are filled by the who may be elected in the future.

The fact which seems to have been forgotten is that one of the essential characteristics of democracy is temporary tenure of office for those officers who are more immediately called upon to expose, sponsor, or voice the people's fresh aspirations and developing policies, whether national or local, springing from the ever changing social and cultural conditions and new political or economic outlooks or situations, resulting from scientific progress and the

unquenchable thirstiness for improvements in all orders of life and aiming at the ideal of human perfection.

On November 15, 1939, on the occasion of the laying of the cornerstone of the Jefferson Memorial at Washington, D. C, the great President Franklin Delano Roosevelt, among other things, said:

"But it was in the field of political philosophy that Jefferson's significance is transcendent.

He lived as we live in the midst of a struggle between rule by the self-chosen, individual or the self-appointed and rule by the franchise and approval of the many. He believed as we do that the average opinion of mankind is in their long run superior to the dictates of the self-chosen.

During all the years that have followed Thomas Jefferson, the United States has expanded his philosophy into a greater achievement or security of the Nation, security of the individual, and national unity than in any other than in any other part of the world.

It may be that the conflict between the forms of philosophy will continue for centuries to come, but we in the United States are more than ever satisfied with the republican form of government based on regularly recurring opportunities to our citizens to choose their leaders themselves."

Besides, the provision of the Revised Administrative Code on hold-over contained in Section 2439, was eliminated by amendment made by Section 6 of Act No. 2774, approved by the Philippine legislature which is an evident expression of the legislative will not to allow said hold-over, in conformity with the following doctrines:

"Under a statute creating an office, fixing the term, and making no provision for holding over until a successor is elected and qualified, the term is definite and a vacancy exists upon its expiration." (State vs. Windom, 131 Minn., 401; 155 N.W., 629)

"When the duration of the term of office is specified in the statute; and an officer is elected to serve out the term, the power and authority thereupon ipso facto cease, unless he is authorized by some specific provision of organic law to hold-over." Marcellus v. Wright, 61 Mont. 274, 202 Pac., p. 381.)

"In all cases other than a vacancy occurring before the expiration of the term of office, the vacancy; for the purpose of appointing successor incumbent, is deemed to exist from the date of the expiration of the term of office." (People vs. Sohmer, 209 N.Y., 151; 102 N.E., 593; 46 L.R.A. [N.S.], 1202.)

"While the word 'vacancy' as applied to an office is one which technical meaning, an office is vacant in the eye of the law whenever it is unoccupied by a legally qualified incumbent who has a lawful right to therein until the happening of some future event." (46 C.J., 971.)

When the Philippine legislature, through the enactment of Sec. 6 of Act No. 2774, amended Sec. 2459 of the Administrative Code, by eliminating thereof the holdover provision concerning members of the Municipal Board of Manila, it did not eliminate the holdover provision in Sec. 2074 of the Administrative Code respecting provincial elective officers. But in 1957, for the sake of uniformity and consistency, when we wrote the text of the Election Code which we proposed to be adopted by the National Assembly, we eliminated said holdover provision of Section 2074 of the Administrative Code. The Election Code was passed as we drafted it. (See section 4 of Commonwealth Act No. 357, known as the Election Code.)

The fact that petitioners maintain that they are entitled to be recalled, and reinstated, serves only to weaken the holdover theory. This means that they are not in actual possession of the offices in question. It means that they are not in actual enjoyment of all the rights, privileges, and emoluments thereof. If they did not cease in the rightful possession of the offices, why should they be recalled? If they are holding over their positions, what is the purpose of the reinstatement they claim?

The ideas of recall and reinstatement are incompatible with the hold-over theory. Hold-over involves the idea of continuity. Recall and reinstatement involve the idea of cessation, interruption, or severance from office.

Since the Commonwealth Government was restored in Manila on February 27, 1945, had the petitioners done anything consistent with the hold-over theory? Did they occupy the positions in question? Did they attempt to occupy them? What appears in the record is the contrary. From February 27, 1945, to July 18, 1945, they completely failed to occupy the offices in question. It so happens that the mental attitude and conviction manifested by this abstention were not exclusive in the petitioners. They were general among all other provincial and municipal officers elected in 1940 throughout the Philippines for the same three-year term of 1941-1943. The fact shows conclusively a unanimous popular opinion against the hold-over theory. This means that the hold-over provision was eliminated by the Philippine Legislature and the National Assembly so as to express a well-crystallized public opinion, which is the strongest force behind legislative enactments, and to obey a popular mandate.

It appears, furthermore, that petitioners advanced the hold-over theory only when they failed to be recalled, reinstated, or appointed on July 18, 1945, making it a last minute strategy in a desperate attempt to save a losing proposition.

In fact, the idea of hold-over does not appear clearly enunciated in the petition, which contains only a timid and wavering insinuation. Petitioners themselves, when they drafted the petition, failed to strike at the precise word "hold-over," which in this case was used for the first time in respondents' answer, filed one week after the petition. It was only in the long and able memorandum they submitted where petitioners, taking advantage of the use of the word by respondents, seized the opportunity to boldly advance their hold-over theory in an elaborate fashion and, although the memorandum is written in Spanish, the English word "hold-over" used by respondents was retained, although hyphenized and underlined. The underline serves to emphasize the foreign character in the Spanish memorandum of the untranslated original English word.

In the absence of express statutory authority, hold-over is tolerated only in cases of extreme, paramount, insurmountable necessity. When public interest imperatively demands the performance of public functions, and there is no official duly elected or appointed to perform them, it is expected that the officer who, during his term of office, had been performing them, upon expiration of said term, should continue in their performance in a de facto capacity.

Such happened with the Second National Assembly. The terms of office of the members thereof would have ended on November 15, 1941; but, in pursuance of an understanding had at the time the constitutional amendments were adopted, they continued in office until December 29, 1941, because the life of Congress, created by constitutional amendment, would have only begun on December 30, 1941. With the extraordinary measures enacted by the Second National Assembly in its special War Session of December, 1941, while Manila was being subjected to enemy aerial bombardment, the Commonwealth Government was enabled to cope with the immediate problems caused by the unexpected outbreak of the Pacific War. It would have been too late to wait for the meeting of the new Congress which, anyway, was not and could not be convened and organized until after Liberation. By force of unprecedented circumstances, the Second National Assembly had to fill the legislative gap from November 15 to December 29, 1941, and the trend of world events made it our War Legislature. Many of our national postwar problems of today are being solved by governmental powers granted in its eventful December special War Session.

It can be seen from this instance that extreme necessity may justify, in the public interest, the hold-over by officers whose term of office had elapsed. National existence was in the balance. Our country was attacked and

invaded by the ruthless Nippon hordes. The National Government needed immediate legislative authority to adopt the measures demanded by the emergency. The members of the Second National Assembly could not have hesitated to continue performing their legislative functions and duties, although their term of office had expired, because no others were in a position to answer the call of the country for said special purpose.

But the case of the Second National Assembly must not and cannot be taken as a precedent in support of the hold-over theory. The example cannot be elevated to the category of a rule. The individual case, characterized by its own exclusive peculiarities, cannot be generalized. The Second National Assembly was the same legislative body which enacted the amendments in the Constitution by which Congress was created to replace the National Assembly as the legislative power of our government. When December 30, 1941, was fixed in the amendments as the day from which Congress should begin to exist, we knew, as all the rest of our fellow members in the Second National Assembly knew, that there would be a legislative gap to be filled from November 15, 1941, when our term of office was to end, to the day when Congress should begin to have existence. We knew then that the gap could not and should not remain unfilled, not only because the continuous existence of an organ entrusted with the legislative power is of paramount importance and is indispensable, but for the special reason that we were fully aware of the fact that the clouds of war were already hanging over our sky and at any moment the exercise of the legislative power might be urgently needed to face any emergency which might endanger our national existence. So we decided, as a logical step, to have a clear understanding to the effect that the Second National Assembly should be the one to fill the gap by hold-over. We deemed it unnecessary to insert in the amendments any specific provision to said effect, considering that it was of temporary character, but the idea was clearly and unmistakably stated in our deliberations, and when the amendments were submitted to the people for ratification, the public was fully apprised of the matter which was publicly discussed, and made subject of talks in popular meetings.

Hold-over is a fiction. For the purposes of this discussion, one may call it legal, if it suits one's literary taste. It will not change its nature. It shall remain nonetheless as a fiction, a mere product of imagination, without any objective reality. It can not even have the contingent statute of hypothesis, which is usually resorted to by scientists to build up and develop a theory, to clarify an enigma of nature. Such hypothesis will often be the expression of an unknown reality, only waiting for the scientific discovery or the miracle of invention, to be in full bloom in the field of human knowledge.

Hold-over, being a fiction, can not be raised to the category of a principle, can not be ranked with the simplest and most elemental truth. Upon it, no legal theory can validly be evolved. To attempt it is to try to erect a palace on thin air. The futility of the attempt is self-evident.

Let us be very careful not to give any intimation that we can elevate the hold-over theory to the category of a judicial doctrine, lest we may have to face the danger of placing Philippine Democracy on a dormant volcano which might erupt at any moment.

The safety of our democracy requires, among other things, that no ground or pretext be given by which elective officials might entertain the hold-over idea. Once they are allowed to entertain in their minds that it is a valid theory that courts might uphold, it will arouse the almost irresistible temptation for those who are coveting to remain in office by any means at their command. Unfortunately, their number is not small. The ambition for power, as President Quezon more than once said, is one of the greatest urges in the human heart. No one knew human nature better than the late Filipino national leader.

Municipal and provincial elective officers may do many things, even under color of legality, to cause the failure of the elections in which their successors might be elected. Their power to obstruct the holding of elections or to cause their failure is undeniable, because the law itself entrusted them with many important decisive official

functions concerning the holding of elections.

The hold-over theory might induce an unscrupulous majority in Congress to defeat the holding of elections, not necessarily by making amendments in the Election Code, which they could do easily, but simply by refusing to appropriate the necessary funds for the holding of national elections. Everybody knows that elections are so expensive. To save the money of the people under stringent economic conditions, such as are prevailing nowadays, is a pretext which can be resorted to, under the cover of a political gesture which will not be entirely lacking of popular appeal in some sectors of the electorate, where there are many big taxpayers who are bent on opposing all Government expenditures for their effect in the corresponding increase in taxes.

It is not necessary to mention the almost unlimited powers of the President to impede the holding of national elections. It is enough to mention that he can veto the necessary appropriation or just suspend the election for reasons of public order. That is the reason why the authors of our Constitution were careful enough to specify in unmistakable language the date of expiration of the President's term of office, to preclude any doubt in everybody's mind that he will necessarily cease to hold office on the day and hour fixed in the fundamental law.

The petitioners, not having shown that they are entitled to occupy the offices in question, lack the legal personality to institute these quo warranto proceedings, following the doctrine laid down by this Court in the case of *Lumontad vs. Cuenco* (41 Off. Gaz., 894), one of the first cases decided after the liberation. The remaining points of controversy in this case are of political nature, which must be submitted to the tribunal of the electorate, as we have stated in *Custodio vs. President of the Senate* (42 Off. Gaz., 1243), or are moot questions which it is not necessary for this Court to pass upon.

We vote for the denial of the petition without costs.

HILADO, J., dissenting:

We dissent. As stated in the majority opinion, petitioners Jose Topacio Nueno, Manuel de la Fuente, and Eustaquio Balagtas, together with Carmen Planas and six others, were elected members of the Municipal Board of the City of Manila in the general elections of December 10, 1940, all of them qualifying on January 1, 1941. Thereafter, Jose Topacio Nueno and Carmen Planas resigned to run for seats in the House of Representatives in the national elections held on November 14, 1941, but were defeated. After those elections, the President of the Philippines appointed petitioner Nueno to fill the vacancy created by his own resignation, and petitioner Delia C. Dino fill the vacancy left after the resignation of Carmen Planas, these last two belonging to the same political party, "The Young Philippines."

Petitioners were the lawful incumbents of their respective seats on the Municipal Board of the City of Manila when the Pacific War broke out, and when, subsequently, the City of Manila was occupied by the invading Japanese forces, which occupation took place on January 2, 1942.

On February 5, 1942, Jorge B. Vargas, who had been appointed by the Commander in Chief Of the Imperial Japanese Army Chairman of the Philippine Executive Commission, which had been organized by virtue of Order No. 1 of January 23, 1942, of the same Commander in Chief, decreed that "the provincial boards and the boards or councils of cities, municipalities and specially organized local governments shall merely serve in an advisory capacity to their respective governors and mayors." From then on until the liberation and reestablishment of the Commonwealth Government, particularly of the city government of Manila, the Municipal Board of said city could not and did not function as provided in the Constitution and laws of the Commonwealth. The war and the consequent occupation of the city by the Japanese invaders, and the setting up by them of an entirely different

governmental structure made it impossible for the Commonwealth Government in general, and the city government of Manila in particular, to continue functioning as such under and pursuant to the Commonwealth Constitution and laws. This fact was in the mind of President Osmeña when he spoke in his message to the Filipino people, upon the day of the Leyte landing, October 20, 1944 (41 Off. Gaz., 151), of the resumption of the "normal functions of civil government" in the liberated areas, "the restoration of the democratic functions of government in the administration of the nation, the provinces and the municipalities," and the re-establishment of the constitutional government "which existed here before Pearl Harbor." The same fact was also recognized in the Joint Resolution of the United States Congress of June 29, 1944 (41 Off. Gaz., 81) wherein it is said that "the Japanese are now in possession and control of the land, peoples, business, communication, and institutions of the Commonwealth of the Philippines, and because of these circumstances the Filipino people are denied the free use and employment of the processes and political institutions jointly established by the Government of the United States and the Commonwealth of the Philippines for the transaction of private and public business and for the maintenance of liberty, law and order, and justice in the Philippine Islands." (Italics supplied.) One of the consequences of that interruption of the normal functions and processes of the Commonwealth Government and its agencies, was the impossibility of holding the election of the new members of the Municipal Board of Manila on the second Tuesday in December, 1943, as provided in section 4 of the Election Code (Commonwealth Act No. 357).

A fact of official knowledge and judicial notice is, that although under section 3 (b) of the Election Code the term of office of the members of the Second National Assembly was to terminate three years after the second Tuesday in November, 1938, that is, November 15, 1941, said legislative body held over and continued to function, passing certain legislative measures of an emergency character, significantly Commonwealth Act No. 671, up to a date nearing Christmas of 1941.

The fundamental question which arises from the foregoing facts is: Under the laws of the Commonwealth in force before the war and before the City of Manila was occupied by the Japanese invaders, by virtue of which petitioners Jose Topacio Nueno, Manuel de la Fuente, Eustaquio Balagtas, and Delia C. Dino were then holding office as members of the Municipal Board of Manila, did said petitioners have the right to hold-over in case the next election for the same office should not take place on the date fixed by law, or such election should result in a failure to elect, and while the President of the Commonwealth has not issued a proclamation calling a special election to fill said office, and their successors are not duly elected and qualified? We are of opinion that, under said circumstances, they possessed such right to hold-over. The general rule, solidly supported by the weight of authority, and which we believe is the one more conducive to a maximum of governmental stability and efficiency, is that, in the absence of an express constitutional or statutory provision to the contrary, public officers have the right, as well as the duty, to continue in office under the principle of hold-over until their successors are duly elected or appointed and qualified, unless there is a manifest implied intention in the Constitution or the laws to prohibit such hold-over. Just as nature abhors a vacuum, the law abhors a vacancy in government. This is a legal maxim venerable by age, unassailable because intrinsically sound. In justice to the Legislature, it should be presumed that it did not, in any act passed by it, impliedly prohibit hold-over without concomitantly providing" for a procedure or remedy by which to avoid the vacancy which would otherwise result, for the simple reason that it would be against the public interest and general welfare to leave any office in the government without an incumbent. That office has been created either by constitutional or by statutory mandate because it was considered necessary for the efficient functioning of the government; and so long as such office is not abolished, it would be unjust to assume that the Legislature would ever leave it vacant and its functions paralyzed, when such vacancy and paralization can be avoided.

"In the absence of any constitutional or statutory regulation on the subject, the general rule is that an incumbent of

an office will hold-over after the conclusion of his term until the election and qualification of his successor." (Tayko vs. Capistrano, 53 Phil., 866.)

"The principle frequently adopted by the American courts is that, in the absence of express provisions and unless the legislative intent to the contrary is manifest, municipal officers hold-over until their successors are provided. The courts, however, generally indulge in a strong presumption against a legislative intent to create by a statute a condition which may result in an executive or administrative office becoming for any period of time wholly vacant and unoccupied by one lawfully authorized to exercise its functions." (McQuillin, Municipal Corporations, 2d ed., Vol. II, art. 507.)

We are entirely in agreement with the majority in that the deletion from section 2439 (a part of the Manila Charter) of the Revised Administrative Code of the phrase "or until their successors are elected and qualified" by the amendment of said section by Act No. 2774, could not imply a legislative intent to abolish the rule of hold-over, since that phrase would any way be a mere surplusage if left to stand in said section, for the reason that the section immediately following, namely, section 2440, provides for hold-over for the members of the Municipal Board of Manila in these express words: "and shall hold office until their successors are elected and qualified."

It results, therefore, that the deletion of the aforesaid phrase from section 2439 of the Revised Administrative Code, as amended by Act No. 2774, does not imply an intention —much less a manifest intention—on the part of the legislature to prohibit the right of hold-over to the members of the Municipal Board of Manila.

The fact that the Second National Assembly held-over beyond November 15 until the holidays in the last week of December, 1941, would also clearly show that the members of said body considered the principle of hold-over as in force without need of so expressly providing in the law. Their stand on the matter would seem to be in perfect harmony with the general rule which we are applying in this dissent, and be it not overlooked that the question of whether or not to adopt the principle of hold-over is one peculiarly within the province of the lawmaking power.

On August 22, 1938, the First National Assembly approved the Election Code (Commonwealth Act No. 357). Sections 4 and 16 thereof provide:

"SEC. 4. Regular elections for provincial and municipal offices. — On the second Tuesday in December, nineteen hundred and forty, and upon the same day every three years thereafter, a regular election shall be held to elect the officers who are to occupy all elective provincial, municipal and city offices throughout the Philippines. The officers elected shall assume office on the first day of January next following.

"SEC. 16. Vacancy in elective provincial or municipal office. —(a) Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office.

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, save in the case of a mayor, which shall be filled by the vice-mayor.

"(c) Whenever the election for a local office fails to take place on the date fixed by law, or such election results in a failure to elect, the President shall issue as soon as practicable, a proclamation calling a special election to fill said office.

"(d) When a local officer-elect dies before assumption of office, or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or such officer-elect fails to qualify, for any

reason, the President may in his discretion either call a special election or fill the office by appointment.

"(e) In case a special election has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment.

"(f) The person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office."

Pursuant to section 4 of the Election Code, if the Pacific War had not broken out and the Philippines not been invaded by the Japanese, a regular election would have been held, among others, for the purpose of electing the new members of the Municipal Board of Manila on the second Tuesday in December, 1943, but because of that Avar and of that invasion and the consequent occupation of Manila by the invaders, that election "failed to take place" in the words of paragraph (c) of section 16 of the same Code.

Section 4 of said Code, which provides that the officers elected in the regular elections on the second Tuesday in December of every triennial shall assume office on the first day of January next following, if interpreted, as we think it should be, in harmony with the principle that the law abhors a vacancy in government, would impose upon the actual incumbents the duty and confer upon them the right to continue in office until their successors actually assume it in accordance with law. It is not disputed in the case at bar that this latter event has not yet happened.

His Excellency, the President of the Commonwealth, in his first message to the First Congress of the Philippines, delivered on June 9, 1945, said:

"As I stated in Leyte, in praising the guerrillas we should not be forgetful of the loyal civilians who were left behind and, at the risk of their lives, supported the resistance movement. Included among these civilians were those who, at the beginning of the war, were civil service employees or holders of subordinate positions in the government, and who remained at their post to protect the people and extend to them all possible aid and comfort. They should, as a general principle, be recalled as soon as their services should be needed; only for strong reasons should they be deprived of their privilege to serve. This policy applies as well to elected provincial and municipal officials who were chosen in the election of 1940, thus giving due consideration to the will of the people as expressed at the polls". (Italics supplied.)

Petitioners herein were among the "municipal officials who were chosen in the elections of 1940." Under the facts of the instant case, no implication from the quoted declarations of said message can be more logical than that the President considered the principle of hold-over applicable to the public officials, particularly municipal officials, mentioned by him.

The foregoing quotation is made not because the message has the force and effect of law (see p. 25, majority decision) but as showing the interpretation of the Chief Executive of what the law provides as regards the vital question of hold-over. It is elementary that the construction placed upon the law by the executive department of the government is of great aid in its proper interpretation. The majority also say that the said message "would work against the alleged right to hold-over," and the following reasoning is given in support of this assertion: "If provincial and municipal officers are entitled by law to hold-over, they would have the right to continue in office irrespective of any policy which the President may adopt, for the latter cannot deprive them of said right. If the President has to recall and appoint them to their respective original positions pursuant to such policy, it is because they are not entitled to hold-over." As we maintain toward the end of this dissent, our opinion is that petitioners had and have the right to continue in office without need of Presidential appointment. We there say: "in our opinion they (petitioners) legally retained their seats and needed no Presidential appointment." Their "recall" of

which the President's quoted message speaks, as we construe this message, is not equivalent to appointment, but merely to a notice to them, and to other public officials similarly situated, that that the Commonwealth Government, in general, and the City Government of Manila, in particular, were ready to resume their functions, and that they should return to the respective posts occupied by them immediately before the war.

The solution of the question here presented hinges on the proper construction and application of the pertinent precept of section 16 of the Election Code. This section is obviously designed to guard against vacancies in elective provincial or municipal offices —preventing them, where possible, and in other cases, shortening their duration to a minimum; and this the law has proposed to do in the manner determined in the various subsections of said section 16, according to the different situations therein respectively provided for. Hence, we should interpret its provisions in that way which would carry out its evident purpose. Let us consider, one by one, its different subsections, and see if any —and which—is applicable to the case at bar.

"Vacancy. A place which is empty. The term is principally applied to cases where the office is not filled". (Vol. 3, Bouvier's Law-Dictionary, 3d Revision, p. 3385.)

Subsection (a) refers to a temporary vacancy in an elective local office. In such case the office retains its incumbent, but the incumbent is not actually exercising the functions of his office due to some temporary inability, incapacity or cause, e. g. sickness, absence, suspension, or the like. The vacancy being temporary, the appointment by the President or the Provincial Governor, as the case may be, necessarily has to be likewise temporary —coeval with the vacancy itself. When the temporary vacancy ceases by the return to office of the incumbent, the temporary substitute gives way to him (Rev. Adm. Code, sec. 2439). This subsection provides a specific remedy for the specific case it deals with. This is clearly not the case of a vacancy caused by the expiration of the incumbent's term where there is no hold-over.

Evidently, the phrase "temporary vacancy" used by our legislators in section 16 (a) of the Election Code refers to a case where the office has not lost its incumbent permanently so as to necessitate the election or appointment of a permanent substitute. Undoubtedly, the Philippine National Assembly which enacted the Election Code had the legitimate power to use this phrase and the word "vacancy" and to give them the meaning that they saw fit without being bound by technical definitions of the same terms in other jurisdictions. If we were to give the term "vacancy" in said subsection the meaning that the office is without an incumbent, then, in our opinion, the vacancy would no longer be temporary but permanent. As we understand the provision, the lawmaker had to devise a phrase to denote the situation of an office having an incumbent but who is unable to exercise or is not actually exercising its functions due to some temporary cause or reason.

Subsection (b) deals with the case of an elective local office which becomes vacant as a result of the death, resignation, removal or cessation of the incumbent. It also provides the method of filling the vacancy therein referred to. In the very nature of things, there can be no question of hold-over here, as the incumbent who dies, resigns, is removed or ceases, cannot possess such a right. This is unquestionably not the case before us.

Subsection (c) speaks of the case where the election for a local office "fails to take place on the date fixed by law, or such election results in a failure to elect." And it directs the procedure primarily to be followed "to fill said office", and it is this:

"* * * the President shall issue as soon as practicable, a proclamation calling a special election to fill said office."

Secondarily, that is, in case such special election "has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment." (Subsection [e].)

Thus for the specific contingency spoken of in subsection (c) —which is our case—the law provides a special

procedure for the selection of the incumbent's successor, viz., primarily, by a special election which shall be called "as soon as practicable" by Presidential proclamation; and, secondarily (under subsection [e]), in case such special election has been called and held and shall have resulted in a failure to elect, then by Presidential appointment.

The phrase "as soon as practicable" in said subsection (c), in our opinion, clearly indicates that the legislator foresaw the possibility of delay in the issuance of the required Presidential proclamation or the holding of the special election, the duration of which delay—long or short—he had no means of foretelling. But the legislator, of course, knew that in case of such delay, whether short or long, the office would be left vacant if he should prohibit the incumbent from holding over in the meantime. He has not expressly imposed this prohibition. As a general proposition, the country had nothing to gain and everything to lose by such prohibition. Shall we imply that the law-maker intended it? We are not prepared to indulge such implication. Neither are we prepared to believe that the legislature excluded the possibility of war being the cause of the delay—when the Election Code was enacted the possibility of another world war and its involving the Philippines was not at all out of the question. In the absence of a positive contrary showing, we must presume that the representatives of the people in the legislature acted not only with foresight but with farsightedness and wisdom, and accordingly intended against leaving the office vacant, pending the selection and qualification of the incumbent's successor according to the procedure which they were laying down.

As already pointed out, that selection could only be by Presidential appointment under subsection (e) in case the special election required by subsection (c) has been called and held and has resulted in a failure to elect.

The majority are of opinion that under subsection (a) the President is authorized "to appoint a person or persons to fill the temporary vacancy during the interregnum" (pp. 27, 28, majority decision), that is, during the "delay in the election or appointment of the successor in cases contemplated in the provisions of subsections (c) and (d)" (p. 27, majority decision). We cannot agree with this view. If there is no hold-over, as maintained by the majority, the vacancy created by the expiration of the term—such expiration is understood in the case of subsection (c)—is permanent and not temporary as in the case of subsection (a). Hence, no appointment can be made in such a case under the authority of subsection (a). An appointment to fill a permanent vacancy, in cases authorized by law, is necessarily permanent—"for the unexpired term of the office," in the words of subsection (f). We understand a vacancy to be permanent where the office permanently loses its incumbent by some physical or legal reason of a permanent nature—such as expiration of the term, death, resignation, removal, abandonment, permanent physical or mental disability, or the like. And, speaking concretely of a vacancy created by the expiration of the term, to say that it may be filled by appointment, is to render impossible the special election provided for in subsection (c), because under subsection (f) the appointee would in such case "hold the same (office) for the unexpired term" (*Italics supplied*), which in the same case could only refer to the next ensuing term.

Subsection (d) is concerned with the case of a local officer-elect who dies before assumption of office, or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or who fails to qualify, for any reason. Admittedly, this is not our case.

Subsection (e) has already been considered in connection with subsection (c).

Subsection (f) merely provides that the person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office. It clearly refers to a permanent vacancy. And referring, as it does, to an elective provincial or municipal office, in case the next election for said office should fail to take place on the date fixed by law, or should such election result in a failure to elect, then again subsection (c) would be brought into play, and if it fails to secure an election, then subsection (e) will provide the

remedy.

It is self-evident that if the person appointed or elected to fill a vacancy in an elective provincial or municipal office is to hold the office "for the unexpired term", in the words of subsection (f) of section 16 of the Election Code, such appointment or election is permanent, as contra distinguished from a temporary one. If so, said vacancy must of necessity be likewise permanent—it would be a contradiction in terms to say that a temporary vacancy is to be filled by a permanent appointment or election. Hence, the appointment or election mentioned in said subsection (f) cannot refer to the case of subsection (a), firstly, because the latter subsection speaks only of appointment and not election, and, secondly, because it is concerned with a temporary vacancy. Therefore, subsection (f) can only relate to the cases of subsections (b), (c), (d), and (e). And since, as above demonstrated, subsection (f) refers to a permanent vacancy, it is clear that the vacancy involved in subsections (b), (c), (d), and (e) is a permanent vacancy. Now, that vacancy is in the very nature of things permanent from its inception down to the end. So that, in the specific case of subsection (c), for example, we cannot say that in one part of its duration the vacancy is temporary, and in the remaining part it is permanent. If, then, there can be no temporary vacancy under subsection (c), there can be temporary appointment in its case under the authority of subsection (a).

"162. Rule in Absence of Specific Provision. —Apart from any constitutional or statutory regulation on the subject, there seems to be a general rule that an incumbent of an office will hold-over after the conclusion of his term until the election and qualification, of a successor, and this, notwithstanding a provision rendering one elected to an office ineligible to succeed himself." (43 Am. Jur., p. 20.)

"164. Operation, and Effect of Authorization to Hold-Over. —The purpose of provisions authorizing public officers to hold-over is to prevent a hiatus in the government pending the time when a successor may be chosen and inducted into office. While the authorities differ as to the effect of the provision, according to many authorities the effect of such provision is to add an additional contingent and defeasible term to the original fixed term, and to prevent the happening of vacancies in office except by death, resignation, removal, and the like. In other words, according to such authorities, there is no vacancy to be filled by the appointing power. The period between the expiration of an officer's term and the qualification of his successor is as much a part of the incumbent's term of office as the fixed constitutional or statutory period. This is true even where a person is elected his own successor. While there is authority to the contrary, it has been ruled that one who holds-over until his successor is qualified continues as the incumbent of the office although he has formally resigned and his resignation has been accepted." (43 Am. Jur., pp. 21-22.) (Italics supplied.)

"A Mayor of a municipal corporation who has been regularly elected to the office is entitled to serve until his successor is qualified; and while he continues to so serve on account of a failure to elect his successor, there is no vacancy in the office, nor is the council authorized to make an appointment thereto." (State ex. rel. Bachman vs. Wright, 56 Ohio St., 540; 47 N. E., 569.)

"Where the constitution provides that sheriffs shall be elected at a general election and shall hold their office for a term of three years beginning on the first Monday in January next after their election, and 'until their successor shall be duly qualified' and 'all vacancies' not otherwise provided for shall be filled as provided for by law, the vacancies referred to are not those occurring at the expiration of a regular term, since those are provided for by the phrase, until their successors 'shall be duly qualified.' " (Com. ex rel. King vs. King, 85 Pa., 103.)

"So, the provision of the Constitution that the duration of an office not fixed by the constitution should not exceed four years does not preclude an officer whose term of office had expired from holding over beyond such period where his successor has not been elected. (People ex rel. Madden vs. Straton, 28 Cal., 382. To the same effect, People ex rel. Stratton vs. Culton, 28 Cal., 44; People ex rel. Hinton vs. Hammond, 66 Cal., 654; 6 Pac, 741;

People ex rel. Parsons vs. Edwards, 93 Cal., 153; 28 Pac, 831; State ex rel. Carson vs. Harrison, 113 Ind., 434; 3 Am. St. Kep., 663; 16 N. E., 384.)"

As to the objection made in the majority opinion that there are only four petitioners but six respondents, we are of opinion that said objection is not insurmountable. The four petitioners being, in our opinion, still entitled to the corresponding four seats in the Municipal Board of Manila, those four seats were not vacant when the correlative appointments were made. Of the ten persons named in paragraph 7 of the petition, as having been appointed by the President, Piedad Montenegro, Valeriano Fugoso, Segundo Agustin and Pascual Santos, were among those elected to the Board in the general elections of December 10, 1940, and in our opinion they legally retained their seats and needed no Presidential appointment. This leaves six, namely, Gerardo Angeles, Agaton Evangelista, Andres Santamaria, Amado V. Hernandez, Felicidad Manuel , and Vicente G. Cruz. Who should be ousted? Four of the six seats actually occupied by these six appointees legally belong, in our opinion, to the four petitioners. Said four seats should be vacated. It would seem but just and logical that the last four of said six appointees, in the order of their appointments or commissions, are the ones who should be ousted.

We conclude that the ouster of said last four appointees should be decreed, and that petitioners should be declared legally entitled to occupy, and exercise all the powers and rights appertaining to, their office on the Municipal Board of Manila, and to receive and enjoy its emoluments, and bound to comply with the corresponding duties.

Moran, C. J., Ozaeta, and Paras, JJ. :

We concur in the foregoing dissenting opinion of Justice Hilado.

Action dismissed.

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