

GREGORIO REMATA, PETITIONER, VS. JUAN JAVIER, RESPONDENT.*G.R. No. 12354. March 17, 1917*

Ponente: TRENT, J.

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TRENT, J.:

This is an action of quo warranto instituted by Gregorio Remata against Juan Javier for the purpose of ousting the latter from the office of municipal president of Candelaria, Province of Tayabas, and placing the plaintiff in possession of the same.

The grounds upon which the action is based, according to the complaint, are that Juan Javier was duly elected president, qualified and assumed the office in 1912, and that his term expired by operation of law on October 15, 1916. As a result of the general election held on June 6, 1916, Juan Javier was declared reflected by the municipal board of canvassers. Subsequent thereto, Ricardo Nadres, one of the candidates, contested Javier's election. After due hearing, the Court of First Instance found and decreed that no one was legally elected president and so certified to the proper authorities. At the same general election of 1916, Gregorio Remata, the plaintiff, was elected vice-president and entered upon the duties of his office on October 16, 1916.

The defendant demurred to the complaint upon the ground that it does not state facts sufficient to constitute a cause of action because the failure to elect a municipal president of Candelaria, did not create a vacancy which the vice-president has a right to fill.

In the consideration of this question, it must be borne in mind that this is not a case of a contest between parties as to the result of an election for an office for which they were opposing candidates before the people. When an election takes place and the will of the voters is expressed through the ballot box, the candidate receiving the number of votes necessary to elect him, is entitled to the possession of the office, its rights and emoluments. These are his property; his right to them is a private right which the law protects and the courts will enforce. A person who is entitled to fill a vacancy has the same rights and remedies.

Section 2123 of Act No. 2657, effective July 1, 1916, provides that the term of a municipal officer shall begin on the sixteenth day of October following the election and shall end on the fifteenth of the same month four years thereafter. The section further provides that 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 2126 of the same Code reads, in part, as follows:

"Vacancies in municipal office.—Vacancies occurring in elective municipal offices shall be filled as follows:

"(a) In case of the president, by the vice-president, or if there be no vice-president, by the council or who at the last general election received the highest number of votes.

* * * * *

"(d) In any case for which special provision is not made, by a qualified elector of the municipality to be

thereunto designated by the provincial governor, with the approval of the provincial board, after recommendation by the municipal council.

"A person thus called to fill a vacancy shall hold for the unexpired term and until the qualification of a successor."

If our inquiry as to the meaning of the words "vacancy" and "vacancies" is to be limited to section 2126, we would have to hold that the defendant's contention to the effect that no vacancy occurred, is well founded and supported by the weight of authority in the United States. But, if the Legislature intended that the word "vacancy" should be given a double meaning so as to include the instant case, then the result will be different. That the Legislature so intended, clearly appears from other provisions of the Administrative Code.

Section 2000 of the Administrative Code provides in the first paragraph, that when a vacancy occurs in an elective provincial office by reason of the death, resignation or removal of the incumbent, the Governor-General shall appoint a suitable person thereto. In paragraph two, provisions are made for the calling of a special election in case the general election fails to take place or the election fails. Under paragraph three, the Governor-General is authorized to call a special election or fill the place by appointment where a provincial officer elect dies prior to taking office, or for any other reason fails to qualify. Paragraph 4 provides that in case a special election shall have been called and held and shall have resulted in a failure legally to elect the provincial officer, the Governor-General shall fill the place by appointment. And the last paragraph reads: "A person appointed or elected to fill a vacancy in an elective provincial office shall hold for the unexpired term and until the qualification of a successor."

Again, section 2412, which applies to the city of Manila, provides that—"if any person so elected is ineligible to hold office, or if for any reason there should be a failure to elect one or more members, no special election shall be called, but the vacancy shall be filled for the term by the Governor-General with the consent of the Upper House of the Philippine Legislature. Vacancies in the office of member occurring after taking office shall be filled for the unexpired term in like manner."

It will thus be seen that the Legislature in sections 2000 and 2412 provided for two kinds of vacancies. The first, where vacancies occur by the death, resignation, or removal of the incumbent, and the second is where vacancies occur by reason of the failure to elect. In both instances the office becomes vacant.

In enacting the provisions with reference to elective provincial offices, elective municipal offices for the city of Manila and elective municipal offices in general, the Legislature was dealing with the same subject-matter. And, in view of the fact that no provisions are made for the calling of special elections in cases where the election fails or no one is legally elected to a municipal office, we must conclude that it was intended that the words "vacancy" and "vacancies" occurring in section 2126 should be given the same meaning as those in sections 2000 and 2412, otherwise an incumbent of an elective municipal office might continue indefinitely.

For the foregoing reasons, the demurrer is overruled and the defendant is given five days after notice, within which to answer the complaint. If no answer is filed within this time, judgment will be entered in favor of the plaintiff in accordance with the prayer of the complaint, with costs against the defendant. So ordered.

Torres, Carson, and Araullo, JJ., concur.

Moreland, J., dissenting:

The decision in this case gives a new, and to me, very unusual definition to the word "vacancy." To hold that a municipal vice-president is entitled to possession of the office of a municipal president who still occupies the

office and who does so under a statute not only authorizing but compelling him to do so (Lino Luna vs. Rodriguez, p. 401, ante), seems strange to me. To hold that the office of municipal president, while still held by a person entitled in law to hold it, is vacant in such sense as to permit it to be filled by a municipal vice-president is, it seems to me, to disregard the meaning of words.

I am convinced that the court has confused the case where the vacancy is caused by the termination of the right or power of the incumbent to hold the office, that is, an absolute vacancy, with that which might be termed a qualified vacancy, where such right or power to hold the office is not terminated, but is authorized and confirmed by law, and continues by virtue of express provision of law until the happening of a certain event, namely, the election or appointment and qualification of his successor. There exists in such case only the right to elect or appoint a successor, not the right of a designated person to fill the office; and the incumbent not only can but must continue in office until the election or appointment occurs. There exists no right of succession in favor of any given person such as comes into existence on the death, resignation and removal of an official. There simply comes into existence the power to elect or appoint, not the right to succeed. It is in the first case only that a vice-president can assume the office of the president; never in the second case.

The court seem also to have overlooked the fact that, in the first case, the former incumbent is not succeeded by the new incumbent, but the office is "filled" (sec. 2126, Administrative Code); and that, in such case, until it is "filled" there is no one who actually holds the office and no one who can hold it; whereas, in the second case, there is a person who not only actually holds the office, but holds it legally under a statute requiring him to hold it.

Section 2126 of Act No. 2657 (the Administrative Code), cited and quoted in the opinion of the court, does not assume to provide for the appointment of a successor but provides in what cases an office can be "filled" It would not seem logical or even sensible that an office can be "filled" when it is already full—when it is already occupied by a person who holds it strictly in pursuance of law. There is a wide difference between a vacancy in office resulting from the death of the incumbent, for example, and that condition which exists when a person, by mandate of statute, holds over and continues in possession of the office until his successor is elected or appointed and qualifies. Yet this is precisely the difference which the court has failed to observe, the opinion holding in effect, that no such difference exists. This is necessarily the holding as the court declares that a vice-president has the right to assume the office of president in both cases. The statute, however, provides that he can do so only in the first case.

I believe that the court has also failed to observe that, in proving the right of a vice-president to assume the office of a president in both the cases named, it proves too much. If the decision of the court is correct then the Legislature has overworked itself. There was no need to enact the statute (sec. 2123, Administrative Code) providing that municipal presidents shall, notwithstanding the fixed term prescribed by other provisions of the statute, hold over and continue in office until their successors are duly elected or appointed and qualify. Under the ruling of the court, this provision is useless as no such condition can possibly arise; for the instant the time is propitious for it to arise, the vice-president, pursuant to the decision of the court, leaps upon the scene, seizes and takes possession of the office, and—Lo and behold!—the spectacle of a municipal president holding over and continuing in office after the expiration of his term, is rendered impossible. Section 2126 of the Administrative Code, as construed by the court, thus prevents the last paragraph of section 2123 of the same Code from having any effect whatever, as the situation to which it applies can never come into existence.

Thus, the court, by establishing one strange proposition, namely, that an office can be "filled" which is already full, thereby necessarily establishes another proposition equally strange from the standpoint of section 2123, and that is that it is impossible for a municipal president to hold over and continue in possession of his office after the expiration of his term, although the statute expressly says that he may do so.

The court has also failed to note the significance of the last sentence of section 2126 which it quotes. This sentence reads: "A person thus called to fill a vacancy shall hold for the unexpired term * * *." Now, according to the construction given the statute by the court, there can never be an "unexpired" term under section 2123. The instant the president's term as fixed by law expires the vice-president assumes the office, and there can be no holding over on the part of the president and, therefore, there can be no "unexpired" term. The words "unexpired term" indicate, of course, either that an officer dies, etc., during his term or he holds over and serves a part of the term succeeding that for which he was elected; and that the person who is elected or appointed to succeed him will, therefore, be unable to hold for the full term but only for the unexpired term, that is, that part not already served by the hold-over. This is the clearest kind of evidence of the correctness of my contention and, therefore, of the error of the court. The court holds that there can be no holding over, as the vice-president succeeds and takes possession of the office the instant the president's term expires. As a consequence, the last sentence of section 2126 is given no meaning when applied to a situation intended to be covered by section 2123 as there can be no such thing as an "unexpired" term in such case; and the flood of light which comes from it to aid in defining the word "vacancy" as used in section 2126 has served no purpose in the decision of this case. From these observations it appears that while, under section 2126, the word "vacancy" is used exclusively in connection with an unexpired term, the court uses the word to cover cases where there can be no unexpired term.

Thus, by construction, the court has not only created a situation in which the words "unexpired term" found in section 2126 can have no meaning or effect but also has prevented the possibility of an official holding over after the expiration of his term, something which section 2123 expressly says he may do.

The court, in my judgment, has overlooked another thing which is highly important. As nature abhors a vacuum, so the law abhors a vacancy in public office; and the first care of the legislator is to prevent the occurrence of such a vacancy. This duty the Legislature had in mind when it placed in the statute the provision that all elective officers, in spite of the fact that they are elected for a definite term, shall hold over and continue in possession of their offices until their successors are elected or appointed and qualify. The sole purpose of this provision is to prevent vacancies in public office. The purpose thus manifested is defeated by the decision of the court, not only for the reasons already stated, but also for the further reason that it results from the construction given to the statute that the court fills one vacancy by creating another. It fills the office of president by creating a vacancy in the office of vice-president. This is a strange way of satisfying a provision of statute the sole purpose of which is to prevent vacancies in office. Robbing Peter to pay Paul is a new principle of statutory construction.

The court has also failed to look upon the question in a broad way. The question is a very simple one. We have two sections of the Administrative Code dealing with the question of the occupation of a municipal office. One of them has to do exclusively with the occupation of the office after the term of the incumbent has expired, and no one has been elected or appointed to succeed him. The other deals exclusively with cases where the term of office has not expired but, during the term, it has been put beyond the power of the incumbent to occupy the office further; that is, the right and the power to occupy have ceased to exist although the term for which the incumbent was elected has not expired. Such an occasion arises on the death, resignation, or removal of the official. In such case the term for which he was elected has not expired but the elected has not expired. Such an occasion arises on the right or power to hold the office has ceased.

Now, section 2123 deals exclusively with a case where the term of office has expired and no one has been elected or appointed to succeed the incumbent; while section 2126 deals exclusively with a case where the term of office has not expired but the incumbent, by his own act or by an act of nature or of superior authority or by operation of law has lost the power or right to hold the office until the expiration of his term. This simple situation has been seized upon by the court and handled in such manner that the two sections of the law referred to are put in

conflict, the court holding that section 2126 covers the same ground as a part of section 2123. This has caused the error of the court. The decision has confused a statute which deals with the term of office with one dealing not with the term of office but with the occupant of the office—with a situation produced, not by the expiration of or anything affecting the term of office but, by something occurring to the incumbent of the office. This confusion naturally vitiates any conclusion to which the court may arrive.

It is clear, then, that the court has obliterated the distinction between an absolute and a qualified vacancy—between a case where there is no one who is holding or can by any possibility hold the office, and that where there is a person who not only holds and can hold the office but who is compelled by law to hold it.

It is also clear that the court has refused to permit provisions 6f statute to have their natural and intended effect—indeed, any effect at all. Not only this; it has interpreted and construed section 2126 of the Administrative Code so that it is in conflict with a part of section 2123 of the same Code, the result being that a portion of the last named section is applied where, by virtue of its express provisions, it cannot apply. Furthermore, and this is more interesting still, the court has so interpreted that section that the first part thereof is in conflict with the last part; and such is the nature of the conflict that the last part ceases to have meaning or application and, as a consequence, is virtually stricken from the section. This is done by obliterating the words "unexpired term," that is, by making the first part of the action applicable to cases where there can be no unexpired term.

Of course the Legislature itself labored under no such confusion of terms and ideas. To establish its thesis the court does not resort to the wording or the very section of the law it is construing. Nor does it even resort to the law which deals with the same subject-matter. Instead of considering the law of municipal officials, which is the only law under consideration as it is the only law applicable, it takes up and considers instead the law relating to provincial officials and officials of the city of Manila, which is not governed by the Municipal Law. It cites and quotes from section 2000 of the Administrative Code, which deals exclusively with provincial officials, and studies and considers it in detail, referring to the paragraphs in succession. It cites and quotes also from section 2412, which applies only to the city of Manila, and considers its provisions in the same manner. From a detailed study of these two sections, that is of the provincial and city law, the court draws a conclusion as to what the Municipal Law ought to be. The law of municipal officials is left almost untouched and unconsidered.

For these reasons I dissent.

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