

## JOSE LIM, PETITIONER, VS. JOSE YULO, JOSE DE LA RAMA, AND ANTONIO LAO, RESPONDENTS.

*G.R. No. 44277. September 26, 1935*

Ponente: MALCOLM, J.

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### **MALCOLM, J.:**

The purpose of these quo warranto proceedings is to secure an order by means of which the petitioner can be reinstated in his office of justice of the peace of Carmen, Cebu.

Jose Lim, the petitioner, the former justice of the peace of Carmen, Cebu, completed the age of sixty-five years on December 2, 1933. This fact was brought to the attention of the Secretary of Justice by the petitioner, and later the petitioner in another communication addressed to the Judge of First Instance of Cebu, informed the latter that he was ready to surrender his office to whomsoever might be designated by the court. On August 24, 1935, that is, after the respondent Antonio Lao had qualified as and entered upon the discharge of the office of justice of the peace of Carmen, Cebu, and after the lapse of more than one year and seven months from the date the petitioner voluntarily vacated the office, he began this action.

The foregoing facts disclose two fundamental reasons why, notwithstanding our previous decisions interpretative of section 203 of the Administrative Code, as amended by Act No. 3899, the instant action cannot prosper. In the first place, an action of quo warranto can only be brought against an officer to be ousted from his office within one year after the cause of such ouster, or the right to hold the office, arose (Code of Civil Procedure, sec. 216; *Bautista vs. Fajar do* [1918], 38 Phil., 624). In the second place, acquiescence or voluntary surrender of an office precludes the maintenance of a quo warranto proceeding. (*Tanada vs. Yulo* [1935], 61 Phil., 515; *Ortiz Airoso vs. De Guzman* [1926], 49 Phil., 371.)

Wherefore, the petition filed in the present case will be dismissed, with the costs taxed against the petitioner.

Villa-Real, Hull, Imperial, and Goddard, JJ., concur.

Petition dismissed.

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