

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAMON NERI ABEJUELA, DEFENDANT AND APPELLANT.*G.R. No. 4636. November 14, 1908*

Ponente: WILLARD, J.

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The defendant, on the 19th day of October, 1907, presented to the provincial board of the Province of Misamis a certificate in accordance with the provisions of section 12 of Act No. 1582, as amended by section 3 of Act No. 1709 in which he stated that he was a candidate for the office of third member of the provincial board of that province, and that he was eligible to the office. He was convicted in the court below of a violation of section 30 of Act No. 1582, as amended by section 7 of Act No. 1709, because on the 19th day of October, 1907, he was not eligible to the office of third member of the provincial board. He was sentenced to three month's imprisonment. From this judgment he has appealed.

Section 30, as amended, is as follows:

"Any person who, being a candidate for election as Delegate to the Philippine Assembly, provincial governor, or third member of a provincial board, shall make the certificate as to candidacy prescribed in section twelve of this Act, as amended, and in said certificate shall declare himself to be a resident or a duly qualified elector of any Assembly district or of any province, as the case may be, when he is not a resident or duly qualified elector of such district or province, as the case may be, or any person who, in said certificate as to candidacy, shall declare himself to be eligible to hold the office for which he is a candidate when he is ineligible to hold the same, shall be punished by imprisonment for not less than three months nor more than three years, in the discretion of the court."

The facts upon which the court below based its decision that the defendant was ineligible are as follows:

On the 5th day of October, 1907, the defendant was a member of the municipal council of Cagayan in the Province of Misamis. At the request of the other members of the council, made on the 30th day of September, 1907, he decided to become a candidate for the office of third member of the provincial board, and they then told him that when he presented his resignation as a member of the municipal council it would at once be accepted. In accordance with this arrangement, on the 5th day of October he presented to the municipal council his resignation of the office he then held. That resignation was not accepted by the council until the 31st day of October, for the reason that up to that time there had not been present at any meeting of the council a quorum. On the 31st day of October the resignation was accepted with the provision that it should take effect from the day when it was presented, that is to say, on the 5th of October.

The question in the case is, whether by the mere presentation of the resignation on the 5th of October the defendant ceased from that day to be a member of the municipal council, and that may be divided into two other questions, namely: (1) did he cease to be a member at that time for all purposes regardless of the purpose for which he presented his resignation? and (2) if he did not, does the Electoral Law, nevertheless, provide a special

rule in relation to the matter with reference to resignations presented for the purpose of becoming a candidate for another office? We will first consider the question as to whether an officer ceases to be such for all purposes upon the mere presentation of his resignation.

We have not been able to find in the laws of the Commission any general provisions relating to resignations by public officers, nor any general provision indicating that they must be accepted before they can take effect. Article 372 of the Penal Code is, however, as follows:

"The public official who shall abandon his employment without his resignation having been accepted, to the injury of the public interests, shall be punished with the penalty of suspension in its medium and maximum degrees.

"If the abandonment of such employment were made in order not to hinder, prosecute, or punish any of the crimes included in titles 1 and 2 of Book II of this code, there shall be imposed upon the culprit the penalty of prison correccional, in its minimum to its medium degree; and that of arresto mayor, if his purpose were not to prevent, prosecute, or punish any other kind of crime."

In the case of *Edwards vs. The United States* (103 U. S., 471), the court said (p. 473) :

"The plaintiff in error insists that, having done all that he could do to discharge himself from the office, by filing a written resignation with the township clerk, his resignation was complete. The defendant in error insists that a resignation is not complete until it is accepted by the proper authority. The question then is narrowed down to this: Was the resignation complete without an acceptance of it, or something tantamount thereto, such as the appointment of a successor?

"As civil officers are appointed for the purpose of exercising the functions and carrying on the operations of government, and maintaining public order, a political organization would seem to be imperfect which should allow the depositaries of its power to throw off their responsibilities at their own pleasure. This certainly was not the doctrine of the common law. In England a person elected to a municipal office was obliged to accept it and perform its duties, and he subjected himself to a penalty by refusal. An office was regarded as a burden which the appointee was bound, in the interest of the community and of good government, to bear. And from this it followed, of course, that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power. This was required in order that the public interests might suffer no inconvenience for want of public servants to execute the laws. * * *

"In this country where offices of honor and emolument are commonly more eagerly sought after than shunned, a contrary doctrine with regard to such offices, and, in some States, with regard to offices in general, may have obtained; but we must assume that the common law rule prevails unless the contrary be shown. In Michigan we do not find that any contrary rule has been adopted; on the contrary, the common-law rule seems to be confirmed by the statutes of the State, so far as their intent can be gathered from their specific provisions."

Even in those States where, as is said by the Supreme Court in the above cited case, the common-law rule does not prevail and the resignation vacates the office without any acceptance, it is, nevertheless, held that where the statute law expressly provides that an acceptance is necessary, the office does not become vacant without such acceptance. For example, in the case of *Reiter vs. The State of Ohio* (51 Ohio St. Reps., 74, 78, s. c., 23 Law Reps. An., 083), it was held that a resignation without acceptance creates a vacancy to the extent at least of giving jurisdiction to appoint or elect a successor, unless otherwise provided by statute. The law of Ohio provided "that the resignation of a senator or representative which is tendered during any session of the General Assembly shall not take effect until the branch of which the person tendering it is a member has accepted the same by a vote of the majority of the members elected to such branch, exclusive of the person tendering his resignation;" and the court said "by the statutes referred to, a clear intention is evinced that an acceptance shall not be necessary to the

validity of a resignation except as to members of the General Assembly."

We have said that there were no acts of the Commission relating to resignations in general. There is, however, an Act relating to resignations of elected municipal officers. That Act is No. 528, enacted November 19, 1902, section 1 of which is as follows:

"Section twenty-five of Act Numbered Eighty-two, entitled 'The Municipal Code is hereby amended by adding at the close thereof the following words: 'Any elective municipal officer who has qualified may be allowed to resign in the interest of the public service with the approval of the provincial board.' "

We do not intend in this case to decide the general question as to whether a resignation must be accepted in order to create a vacancy in an office. We limit our decision to this specific case of a municipal elected officer. We decide nothing as to the resignation of an appointed municipal officer, nor do we decide anything as to the resignation of any other officer, either appointed or elected who is not an elected municipal officer.

An examination of Act No. 528 makes it clear that an elected municipal officer has no right to resign. The use of the word "allowed" in the law plainly indicates that. Moreover, he can not resign unless his resignation will be in the interest of the public service. Whether it will be in the interest of the public service or not, he himself can not decide. The decision upon that point must be made by some other authority. Whether the municipal council must itself accept the resignation, we need not consider, but by the express terms of the law the provincial board must pass upon the question. If, in its opinion, the resignation will not be in the interest of the public service, it must refuse its consent and until it decides that it will be in the interest of the public service to accept the resignation, the person still remains an officer and there is no vacancy in his office.

We therefore hold upon the first question that the presentation of a resignation by an elected municipal officer does not cause a vacancy therein, and that he still continues to be such officer until his resignation is approved by the provincial board.

The next question is whether this general rule has been modified when the resignation is presented in order that the person presenting it may be a candidate for some other office?

The only provision of law to which our attention has been called upon this subject is section 29 of Act No. 1582, as amended by section 6 of Act No. 1709. That section is in part as follows :

"No person holding any appointive or elective public office or employment within ninety days of any general election or within sixty days of any special election shall, except for reelection to the position which he may be holding, offer himself as a candidate for election, or be eligible to hold any elective public office or employment to be filled at such general or special election."

It is seen that this article does not speak of resignations, and we can not see that it provides a different rule for the case of a resignation presented for the purpose of becoming a candidate for another office. Under this section the only question is, whether within ninety days of any general election, or as to this election in November, 1907, within thirty days prior thereto, the defendant was holding an elective public office. We have seen that he was, and that when he presented his candidacy on the 19th day of October he was still a member of the municipal council of Cagayan.

We are not unmindful of the results which may follow from this holding and to which attention is called by the Attorney-General in his brief. It is true that a provincial board by refusing to act upon a resignation might prevent a person from becoming a candidate, and, if the construction of Act No. 528 were doubtful, such considerations would be entitled to great weight, but in view of its plain and manifests terms, it must be said that these considerations must be addressed to the legislature for the purpose of securing amendment of the law and not to

the court for the purpose of obtaining a construction of the law which would do violence, in our opinion, to its terms.

The Attorney-General, in expressing his opinion that the judgment should be reversed and the defendant acquitted, calls attention to a decision of the Governor-General upon the protest against the election of Governor Zandueta of the Province of La Union, reported in 6 Off. Gaz., 443 of the English edition, and page 469 of the Spanish edition, but an examination of that decision will show that the office there in question was not an elective municipal office but was, on the contrary, an appointive office.

The same thing may be said of the decision of the Assembly in deciding the protest against the election of Don Vicente Locsin, as Delegate for the Second District of Oriental Negros, to which attention is also called by the Attorney-General. The protest in that case was made by Don Antonio Oria. A suggestion was made that he had no right to protest the election because he himself was not eligible to the office there in question because at the time of the election he was a notary public and his resignation of that office had not been accepted. It is seen that this case also relates to an appointive office and not to a municipal elective office.

It is finally said by the Attorney-General that the defendant was led to believe that his resignation would be at once accepted and that he acted in good faith. He himself, however, testified that he believed at the time that the municipal council would have to take some action upon his resignation before it could produce effect. He also testified that, on the 19th of October, when he presented his candidacy for the office of third member of the provincial board, he had received no notice from the council that his resignation had been accepted.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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