52 Phil. 962

**[ G.R. No. 21265. September 29, 1923 ]**

**THE NACIONALISTA PARTY AND THE COLECTIVISTA PARTY, PETITIONERS AND APPELLEES, VS. THE MUNICIPAL BOARD OF MANILA, RESPONDENT AND APPELLANT.**

**D E C I S I O N**

**MALCOLM, J.:**

The Municipal Board of the City of Manila, the losing party in mandamus proceedings in the Court of First Instance of Manila, has, by the usual method, the perfection of a bill of exceptions and assignments of error, brought the case to this court. The appellant has been met on the threshold of the argument by the proposition advanced by the appellees, the Nacionalista Party and the Colectivista Party, that the case is not appealable and the Supreme Court is without jurisdiction to consider it.

We are all of the opinion that the point just mentioned is without particular merit. The Supreme Court is given appellate jurisdiction over all actions and special proceedings properly brought to it from Courts of First Instance. This has been the uniform practice. Jurisdiction seems only to be denied the Supreme Court in municipal election contests. (Act No. 136, section 18; Code of Civil Procedure, section 496; Act No. 3030, section 44.)

The errors assigned by appellant and the argument of both parties, naturally, find their inspiration in the decision of the trial judge, the Honorable Vicente Nepomuceno. An examination of this decision discloses that it has been carefully and thoughtfully prepared and that no useful purpose would be served by an attempted restatement of the facts and the law. We propose, therefore, to set forth the said decision in its entirety:

> "On the occasion of the special election to be held on October 2, 1923, in the Fourth Senatorial District, a question has been raised as to the method which should be followed in the appointment of election inspectors for the several

precincts of the City of Manila, in substitution of inspectors who have either resigned, or are at present absent from the Philippines, or who have died, and whose appointments had been made for the general election of 1922, subsequent to the election of 1919. It is a well-known fact that on account of a split in the ranks of the Nacionalista Party, which was victorious in the general election of 1919, a question arose as to the appointment of the inspectors for the general election in 1922, that is, whether the two inspectors to which the Nacionalista Party was entitled, under section 11 of Act No. 3030, should be divided: One for the party denominated 'Colectivista' and another for the party called 'Unipersonalista.' Said question was decided to the effect that the two inspectors belonging to the Nacionalista Party be divided between the old party and the new, or Colectivista Party; and thus the Unipersonalista, the Colectivista and the Democrata parties had each one inspector. This solution, first suggested by the Executive Bureau, was afterwards followed, adopted and sanctioned by the Supreme Court of the Philippine Islands in the case of Bonifacio Ysip *vs*. Municipal Council of Cabiao, Nueva Ecija (43 Phil., 352). In that case the high Tribunal, among other things, said:

> "'The highest number of votes was cast for the *Partido Nacionalista,* and the second highest number for the *Partido Democrata*. Recently, however, as appears from the record, and as a matter of current political history of which the courts can take judicial notice, the *Partido Nacionalista* divided into two parties, the *Partido Nacionalista,* commonly known as *Unipersonalista,* and the *Partido Nacionalista Colectivista;* or, if this statement be objected to by partisans of the *Partido Nacionalista,* a new party known as *Partido Nacionalista-Colectivista* was organized. * * *.
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> "'A liberal construction of the law will, on the other hand, permit the Nacionalista-Colectivista Party to have representation on election boards in all municipalities in which the old Nacionalista party polled the largest number of votes at the last election. Such interpretation and application of the law will not do violence to it, in view of the notorious fact that the party which won the election in many municipalities, such as Cabiao, Nueva Ecija, the Nacionalista Party has now split its forces between the old party and a new party.'

> Thereafter, and in consideration of the foregoing premises, the same Supreme Court laid down the following doctrine:
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> "'We hold that, in municipalities where it is shown that the *Partido Nacionalista* polled the largest number of votes at the last election and the *Partido Democrata* the next largest number of votes at said election, and where in such municipalities, in addition to the *Partido Nacionalista* there has been duly organized a new party known as the *Partido Nacionalista-Colectivista,* one election inspector and one substitute shall belong each to the *Partido Nacionalista,* the *Partido Nacionalista-Colectivista,* and the *Partido Democrata.'*

"The following case is now presented: Among the election inspectors in Manila belonging to the Colectivista and Nacionalista parties, some have resigned their positions, others are absent from the Philippine Islands and still others have died. The Municipal Board of the City of Manila, in appointing the inspectors in substitution for those who have resigned, or were absent, or have died, decided, in accordance with Exhibit C, to give to the Nacionalistas and Colectivistas, that is, to the association called *Coalicion-Nacionalista-Colectivista,* one inspector only for each of the precincts and allowing the Democrata Party the two remaining inspectors, on the ground that the Democrata Party was the one which polled the largest number of votes in the City of Manila in the last general election (referring to the election for the year 1922) and on the further ground that the *Coalicion-Nacionalista-Colectivista* is represented in the electoral precincts either by a Nacionalista or Colectivista.

"This action by the Municipal Board of Manila gave rise to the filing by the representatives of the Nacionalista and Colectivista parties of the petition for mandamus which is now before us.

"From the evidence adduced during the trial of this case the following facts have been established:

> "'1. That in the City of Manila there has existed a political party denominated the *Nacionalista* Party which was afterwards divided into two parties known as *Partido Nacionalista* (commonly known as

*Unipersonalista*) and the *Colectivista* Party.

"'2. That in the general election for the year 1919, in the City of Manila, the *Nacionalista* candidate, Hon. Pedro Guevara, obtained 11,585 votes as against his rival candidate, Don Juan Sumulong, *Democrata,* who obtained 9,824 votes.

"'3. That when the appointment of inspectors for the general election in 1922 was made, the *Nacionalista* Party was already divided and, for that reason, one inspector was given to the *Unipersonalista* Party, one to the *Colectivista,* and another to the *Democrata* Party.

"'4. That the *Colectivista* Party, which sprang from the *Nacionalista* Party, had a distinct and independent personality from that of the *Nacionalista* Party.

"'5. That on several occasions an attempt was made to unite or amalgamate the two fractions, *Unipersonalista* and *Colectivista,* but, up to the present time, only an understanding or, at most, a coalition has been entered into and, not a real fusion, resulting in the fact that the two wings of the Nacionalista Party, otherwise known as the *Unipersonalistas* and *Colectivistas,* are still retaining a distinctive personality of their own.

"'6. That the so-called *Coalicion-Nacionalista-Colectivista* is the outcome of an understanding between the two parties, Nacionalista and Colectivista.

"'7. That the position of election inspectors held by Felino Galura, Colectivista; Paulino L. Rivera, Colectivista; Marciano Gonzales, Colectivista; Vidal P. Deunida, Colectivista; Leopoldo Delfin, Unipersonalista; Bonifacio Abella, Unipersonalista; Sergio M. Aragon, Colectivista; Emigdio de la Cruz, Colectivista; Emilio Pestaño, Unipersonalista; Amando del Rosario, Colectivista; Hermogenes Meneses, Colectivista; Maximino Aquino, Colectivista; Heraclio Villamor, Colectivista; Matias Capinpin, Unipersonalista; Jose P. Gatpandan, Unipersonalista; Filemon Bautista, Colectivista; Juan P. Canseco, Unipersonalista; Eusebio E. Montaño, Colectivista, and

> Nicolas Canseco, Unipersonalista became vacant, some by resignation, others, on account of absence from Manila, and still others, on account of death.
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> "'8. That Mr. Jose Quirante, secretary for the group or party *Coalicion-Nacionalista-Colectivista,* submitted to the Municipal Board of Manila a list (Exhibit B) of the names proposed to fill the vacancies on account of resignation, absence, or death, but the names appearing on said list were neither accepted nor appointed by the Board which appointed, in their stead, those appearing on the list presented by the Democratas, on the ground that the Democrata Party obtained the majority of the votes in Manila in the last election of 1922.' (Exhibit C, par. *b,* page 311.)

"In order not to be misled in considering and deciding the question before us, two facts must be borne in mind, to wit: First, that the election inspectors who are sought to be appointed are mere *substitutes* for those who have died, or are absent, or have resigned their positions, whose appointments were made on the occasion of the general election for the year 1922, and second, that the election to be held on October second, next, wherein the new inspectors will act as such, is a *special election*.

"In accordance with section 11 of Act No. 3030, the inspectors appointed for the general election in 1922 were appointed for three years or until their successors have been appointed in their stead, that is to say, until the year 1925, when the general election will be held. This same legal provision provides that 'in case of vacancy in the office of election inspector or poll clerk, the same shall be covered for the remainder of the term, by the Municipal Council as above provided,' thus, the tenure of office of the newly appointed inspectors will be only for the balance of the period of three years during which the inspectors who have resigned, or are absent, or have died should have discharged their duties, that is to say, until the new inspectors are appointed for the general election for the year 1925, and that these vacancies should be filled 'as above provided,' using the same language of the Act.

"What does the phrase 'as above provided' mean? By this language the

Legislature intended, in the opinion of this court, that the appointment of inspectors who are to substitute or take the place of those who have died, or are absent, or have resigned, should be made in the same manner and on the same basis as the appointments of inspectors for whom the substitution has been made. And, since, for the appointment of those inspectors who have died, or resigned, the result of the 1919 general election has been taken into consideration (wherein the Nacionalista Party was victorious), the Municipal Board cannot now ignore the result of the 1919 election and take as a basis for the new appointments the result of the general election of 1922, because this is not a question of the appointment of inspectors for the general election in 1925, but of substitute inspectors who will act as such in the special election for the Fourth Senatorial District; and, consequently, the Municipal Board in filling these vacancies is bound to give to the old Nacionalista Party, victorious in the 1919 election, or to its two wings or subdivisions, two inspectors to which it is entitled, that is, an inspector for each of its fractions (Unipersonalista and Colectivista) and, one for the Democrata for each electoral precinct in the City of Manila.

"That this was the intention of the Legislature, the court has no doubt whatever. And this assertion is confirmed by the provisions contained in section 12 of said Act No. 3030 which, in referring to the *manner how to fill the temporary vacancies,* states: 'If at the time of any meeting of the inspectors there shall be a *vacancy* in the *office* of any *inspector* or poll clerk, or if any *inspector* or poll clerk shall be *absent* from any such meeting * * *, the inspector or inspectors present shall call one or more *substitutes,* as the case may be, *belonging to the same political party,* branch, or fraction thereof or local political group as the absent *inspector* or poll clerk * * *; if the substitutes cannot be found, then the inspectors present shall appoint a qualified elector of the precinct, at the proposition of the watchers belonging to the *party of the absentee,* who, in case of an inspector, *shall be a member of the same political party or fraction thereof* or political group as the absentee, to fill such vacancy until such absent officer shall appear or the vacancy be filled.'

"Now then, to fill a temporary vacancy (for one hour, one day or for a time necessary until the termination of the election) the law requires that the substitutes must belong to the same political affiliation as the one substituted; by analogy and by that legal principle 'Where there is the same reason, the same law must be applied.' That rule must be followed also in filling a definite vacancy

on account of death, absence from the Philippine Islands, or resignation.

"To this resolution or conclusion, as you may call it, the respondent seems to reply that the two political parties denominated *Unipersonalista* and *Colectivista* are no longer in existence, because they have again united under the name *Coalicion-Nacionalista-Colectivista* and that, consequently, this new party is only entitled to one inspector for each electoral precinct, the two remaining inspectors belonging to the other party which is the Democrata Party, on the ground that this party was victorious in the last general election of 1922. This last proposition, referring to the contention of the Democrata Party to have two inspectors in the coming special election for the Fourth Senatorial District on the ground that the party was victorious in Manila in the general election of 1922, has already been demonstrated to be untenable.

"The other contention, that is, that at the present time there is but one party, which is the so-called *Coalicion-Nacionalista-Colectivista,* and that, consequently, the former parties denominated *Unipersonalista* and *Colectivista,* cannot now, individually, that is, each party, claim an inspector which formerly they had, in compliance with the circular of the Executive Bureau and in accordance with the judgment of the Supreme Court, is likewise untenable. In the first place, the Colectivista Party, then recently organized, was given one of the inspectors belonging to the Nacionalista Party, *not* for the reason that it is a political party, but because that right was recognized for the simple reason that it is a fraction of the Nacionalista Party who obtained the majority vote in the general election of 1919 as against the Democrata Party. In the second place, and admitting for the sake of argument that the wings or fractions of the Nacionalista Party have again united into one party denominated *Coalicion-Nacionalista-Colectivista,* we can see no reason why the same number of inspectors should not be allowed to this new group, coalition or political party, resulting from the union of the two parties, Unipersonalista and Colectivista. As a matter of common knowledge, the so-called *Coalicion-Nacionalista-Colectivista* is, in substance, the same political party known as the Nacionalista Party. In other words, whether the two wings of the Nacionalista Party have united or not, there is no law nor reason which will justify the refusal to allow them (the Unipersonalista and Colectivista parties) or the political group denominated *Coalicion-Nacionalista-Colectivista* the two inspectors to which the Nacionalista Party is entitled.

> "Let us now examine the other phase of the question. The respondent contends that the Unipersonalista and Colectivista parties have no right to the remedy prayed for, because they have not submitted to the Municipal Board a list of the eligibles for the position of election inspector. But this contention is untenable, for the reason that the political group or party denominated *Coalicion-Nacionalista-Colectivista,* composed of members of the Unipersonalista and Colectivista parties, has submitted to the Board a list of eligibles who are affiliated with the Unipersonalista and Colectivista parties.
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> "For the foregoing reasons the court holds that the writ of mandamus should issue and to that effect it is hereby ordered that the Municipal Board immediately proceed to fill the vacancies of the position of election inspector, appointing persons having the same political affiliation as those who have died, or are absent, or have resigned their positions, in such a manner that in each electoral precinct the three parties, the Nacionalista, Colectivista and Democrata, will each have its corresponding inspector, selecting the names of such persons from the list submitted by the representative of the said political parties. And, in case an appointment has been made not in accordance with this decision, same must be immediately revoked and a new appointment made accordingly. And, finally, the costs of these proceedings must be paid by the members of the Municipal Board who were present at the session of August 28, 1923, and who took part in the resolution which gave rise to the filing of this petition for writ of mandamus.
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> "It is so ordered."

To what has been so well and clearly said by Judge Nepomuceno, little need be added. In accordance with the Election Law—and the law must be our guide—ninety days immediately prior to the general election in 1922, the Municipal Board of the City of Manila appointed three inspectors of election and one poll clerk, with their respective substitutes, for each electoral precinct. In accordance with the Election Law, these inspectors of election and poll clerks were selected on the basis of the number of votes polled in the City of Manila "at such preceding election," which, necessarily, was the election in 1919; and by virtue of the arrangement then agreed upon, one inspector of election in each electoral precinct was assigned to each of three parties, the *Partido Nacionalista,* the *Partido Colectivista* and the *Partido Democrata*. In accordance with the Election Law, the inspectors of election and poll clerks thus selected were to "hold office for three years," that is, until ninety days prior to

the general election in 1925, "or until their successors shall have taken charge of the same." Finally, in accordance with the Election Law, "in case of a vacancy in the office of election inspector,"—and this is the fact before us—"the same shall be covered for the remainder of the term by the Municipal Council, *as above provided,"*—which can mean nothing else than that vacancies in the office of election inspector were to be filled for the remainder of the terms in exact conformity with the method and regulations provided for the choice of election inspectors originally, or on the basis of the election in 1919. When the time arrives for the naming of election inspectors and poll clerks for the election in 1925 which, however, is not our case, they will be chosen on the basis of the election in 1922. (See Act No. 3030, section 11; Provincial Circular, Executive Secretary, March 10, 1922; Opinions, Attorney-General, August 19, 1909, August 31, 1909, and May 11, 1912; Rodriguez and Juta *vs*. Municipal Council of Tagig [1919], 39 Phil., 812; Ysip *vs*. Municipal Council of Cabiao [1922], 43 Phil., 352.)

Judgment is affirmed without costs. So ordered.

*Araullo, C. J., Johns,* and *Romualdez, JJ.,* concur.

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*CONCURRING*

**STREET, J.:**

When reference is had to the questions of law involved in this appeal, I am of the opinion, for reasons which it is unnecessary to state, that the decision appealed from was erroneous and *should be reversed;* but if I should maintain that position, the court would be equally divided, with the result that it would be impossible to dispose of the case within the time necessary for the decision to become effective before the approaching local election. For this reason I have resolved to pursue a course adopted in similar situations by the Supreme Courts of certain American States where the provisions of law relative to the decision of cases are the same as that in force in this jurisdiction, that is to say, I shall give a *pro forma* concurrence in the affirmance of the appealed decision. This not only disposes of the case but in effect leads to the same result that which would follow from the inaction on our part, namely, that the appealed judgment will remain in force. In support of the course here followed I refer to the opinion in States *vs*. McClung (47 Fla., 224), and the cases cited in note 39, 4 C. J., 1122.

**JOHNSON, J.,** dissenting, and concurring with **STREET, AVANCEÑA,** and **VILLAMOR, JJ.:**

I agree with my associates Messrs. Justices Street, Avanceña, and Villamor, that the judgment of the court *a quo* should be reversed; and considering the importance of the question presented from the standpoint of "party control" in a democratic form of government, I desire to state the reasons for my dissent.

While the question of the right to appeal from the decision of the lower court was not raised in the assignment of error by the appellant, it was argued at the hearing. Upon the question of the right to appeal, in cases like the present, the court was unanimous in its decision that the right existed.

The opinion of the other four members of the court (Chief Justice Araullo, and Justices Malcolm, Johns, and Romualdez) is expressed in the terms of the decision of the lower court, without discussing or referring to the assignments of error made by the appellant. It is stated by them: "By virtue of the arrangement then (1919) agreed upon, one inspector of election in each electoral precinct was assigned to each of the three parties, the 'Partido Nacionalista,' the 'Partido Colectivista,' and the 'Partido Democrata.'" The record has been examined carefully and there is no statement found therein, nor even an intimation of that fact. The record does show, by Exhibit F, that the inspectors appointed for the various precincts in the City of Manila for the election of 1919 were members of the "Partido Colectivista," the "Partido Democrata," and the "Unipersonalista" (pp. 58-77 and 100 of the record). The record further shows, in the report of the result, that at the election of the year 1919 (Exhibit E) there were but two parties voted for, the "Nacionalista" and the "Democrata." The Nacionalista Party at that election polled the largest number of votes and the Democrata Party polled the next largest number of votes. It is to be presumed, therefore, even though the record contains no proof, that for the election of 1922 the Municipal Board in appointing inspectors for that election (1922), followed the law and appointed two inspectors from the "Partido Nacionalista" and one from the "Partido Democrata."

Without discussing the particular assignments of error presented by the appellant in detail, we believe that the following statements of fact and the law in a general way answer them:

This is an appeal from an order of one of the branches of the Court of First Instance of the

City of Manila. Said order was issued in a mandamus proceeding to require the Municipal Board of the City of Manila to appoint certain election inspectors from among the members of the "El Partido Nacionalista" and "El Partido Colectivista." The prayer of the petition is, that the Municipal Board shall be required to maintain the representation of the petitioners by two election inspectors and two substitutes in each one of the board of election inspectors in each of the precincts of the City of Manila and to fill the vacancies in precincts Nos. 5, 9, 18, 22, 29, 31, 33, 35, 39, 40, 50, 51, 57, 61, 63, 65, 69, 71, 73, 81, 95, 97, and 100, so that the petitioners shall have two inspectors and two substitutes in each of said election precincts, and that the inspectors so appointed shall be appointed from a list of persons proposed by said political parties. The court *a quo* granted said petition and issued its mandate, requiring the Municipal Board of the City of Manila to appoint one inspector and one substitute to fill the respective vacancies from *each* of the said political parties, to wit: Nacionalista, Colectivista, and Democrata parties. In other words, the lower court required said Municipal Board to appoint one inspector, as above indicated, from each of *"three political* parties," upon the theory that said mentioned political parties were the parties in existence in 1919, and from the members of which the election inspectors were appointed for the general election in that year (1919). Exhibit F is positive proof to the contrary. Exhibit F shows that the only parties which took part in the election of 1919 were the Nacionalista and the Democrata.

From said order of the lower court the Municipal Board appealed. The contention of the appellant, in substance, may be stated as follows:

1. That the law requires it to appoint election inspectors, substitutes, and poll clerks and to fill vacancies in said positions, when one or more political parties, etc., exist, in the following manner: "two" inspectors and "two" substitutes, who shall belong to the party which polled the largest number of votes at the "preceding election" and one inspector and one substitute from the political party which polled the next largest number of votes at said election; that *vacancies* in the office of election inspector, etc., shall be filled in the same manner.

2. That the law requires it to fill *vacancies* occurring in the board of election inspectors without reference to any general or special election, to the end that there may always be a board of election inspectors existing in each voting precinct. Had the Municipal Board failed or refused to fill the present vacancies, this same action might have been instituted without reference to any special election.

3. That whenever it becomes necessary to fill a vacancy in the board of election inspectors it shall be filled in accordance with the *law existing at the time of such appointment*. That is to say, such vacancies shall be filled so that the political party having the largest number of votes at the "preceding election" shall have "two" inspectors and the political party having the next largest number of votes at said preceding election shall have "one" inspector.

4. That the "preceding election" at the time (September, 1923) the appellant was called upon in the present case to fill vacancies, was the election of 1922 and not the election of 1919.

5. That at the election of 1922, according to Exhibit 2, there were three political parties in the City of Manila, to wit: Democratas, Colectivistas, and Liberales; that of said political parties the Democratas polled the largest number of votes and the Colectivistas polled the next largest number of votes.

6. That at the election of 1919, the result showed that there existed in the City of Manila two political parties: the Nacionalistas and the Democratas; that at said election the Nacionalista Party polled the largest number of votes and the Democrata Party polled the next largest number of votes. (Exhibit E.)

The theory of the lower court, in requiring the appellant to appoint one inspector from "El Partido Nacionalista" and one from "El Partido Colectivista," is evidently that since the election of 1919 "El Partido Nacionalista" had passed through a process of "vivisection"—that there had been a new birth, and that while in 1919 there was but one party, there are now two and that the two were the descendants of the old, and therefore each was entitled to an inspector. That theory might be considered to have some weight if it were not for the provisions of the law which requires the Municipal Board to appoint three inspectors, *two* from the party polling the largest number of votes and *one* from the party polling the next largest number of votes, at the "preceding election" even granting that the inspectors should be appointed from the existing parties in the election of 1919.

The law makes no provision for the appointment of inspectors from *three* parties. The law expressly provides that the inspectors shall be appointed from *two* parties only, if two parties exist in the municipality.

In paragraph 9 of the petition it is alleged that the two political parties, "El Partido

Nacionalista" and "El Partido Colectivista," do not constitute "one party only but are two *partidos* completely independent one from the other." There is not a word of proof in the record showing that "El Partido Colectivista," as such, took any part in the election in the year 1919 (Exhibit E). Even granting that the "preceding election" is that of 1919 and not that of 1922, upon what theory under the law may the Municipal Board be required to appoint any inspector from among the members of a party which did not exist in 1919?

If the contention of the petitioners is tenable, then between the time of general elections new parties might come into existence and by uniting with the *minority* party at the "preceding election" claim a majority of the voters of the precinct and by that fact claim a majority of the board of inspectors in the very face of the law, which requires the Municipal Board to use as its basis for appointment of inspectors the existing parties at the "preceding election." The very fundamental purpose of the law is to give the majority party at any election two inspectors until an actual election thereafter held should demonstrate that another party constituted a majority of the voters in the municipality. In democracies the majority party controls until an actual election shows that another party has polled a majority of the voters.

While the petitioners claim that there are "two parties completely independent one from the other" there is much proof in the record which casts some doubt upon that question. The record shows that there is but one president and one secretary for the petitioners (Exhibit H, pp. 79-81 and oral testimony). At least there is enough proof in the record to create in the mind, of one who carefully reads it, a belief or suspicion that the petitioners are acting in unison and as harmoniously as the members of one party usually act.

But admitting, for the purpose of argument, that the petitioners are the heirs of the majority party of 1919, and are each entitled to one inspector, we ask, What would the court *a quo* have required the municipal Board to do, had there been three heirs instead of two, when the law permits the appointment of inspectors from two parties only?

It is argued that the law should be given a liberal and not a strict construction. There is no rule of construction or interpretation of statutes better established than that "where a statute is plain and unambiguous, the court cannot consider the expediency or practical utility thereof in giving effect thereto. Where there is no ambiguity in a statute, the plain terms thereof must be applied. Where there is no ambiguity and the terms of the statute are plain, no interpretation or construction is necessary." Velasco *vs*. Lopez (1 Phil., 720).

The language of section 11 of Act No. 3030 is too plain and unambiguous to justify the court in entering upon inquiries for the purpose of ascertaining its real meaning. Its terms are too plain and simple to justify even a suggestion that any ambiguity exists.

When the law provides that "two inspectors and two substitutes shall be appointed from the party which polled the largest number of votes in the *preceding election,* and one inspector and one substitute from the party having the next largest number of votes," we cannot understand why the plain letter of the law should not be applied. Neither can we understand why a liberal as against a strict interpretation can justify the appointment of one inspector from three different political parties. When the law provides that the inspector shall be appointed in the ratio of two and one from *two* political parties, and the law is plain and unambiguous, we cannot understand how officers who are sworn to comply with the law and the facts, can justify the appointment of *three* inspectors from three different political parties.

It must not be overlooked that the right to hold elections in a state is purely statutory—a concession by the sovereign authority; that the appointment of election officers is done by statutory authority; that their duties and powers in the conduct of an election is also purely statutory. And inasmuch as the right to hold elections and the right to appoint election officers are purely statutory, the method and manner for holding the elections and the appointment of the officers to conduct the same must be done in the manner pointed out by the statute. (20 Corpus Juris, 90.)

Section 11 of Act No. 3030, with reference to the appointment of inspectors, is mandatory and neither the Municipal Board nor the courts even, are justified in varying the terms of the law under the guise of a liberal as against a strict interpretation.

An election was held in the City of Manila in the year 1919. Another election was held in 1922. In September 1923, in speaking of the "preceding election" we are unable to understand how, under any rule of interpretation of plain language, the phrase "preceding election" can by any possibility refer to the election of 1919 and not to the election of 1922.

The judgment appealed from should be reversed.

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*DISSENTING*

**AVANCEÑA** and **VILLAMOR, JJ.:**

It is seen that the decision in this case is rendered by half of the present members of this court, with the *pro forma* concurrence of Mr. Justice Street, who, nevertheless, believes that the appealed judgment is erroneous and should be reversed. This being the decision of the majority, we have little to say in explanation of our vote for the reversal of the judgment appealed from.

To our mind, the decisive point in this appeal is the interpretation of the words "preceding general election" used in section 11 of Act No. 3030, amending section 417 of the Administrative Code.

This being a question of the appointment of inspectors made by the Municipal Board of Manila to fill vacancies, what rule or procedure must be followed in such appointments? They must be made in accordance with section 11 of Act No. 3030. That is, the Municipal Board must take into account the result of the *preceding election,* appointing two inspectors and two substitutes from the party that polled the largest number of votes at such *preceding election,* and one inspector and one substitute from the party that polled the next largest number of votes at said election. Assuming that special elections will be held in the Fourth Senatorial District on the second of next October, it is clear that the basis, the *preceding general election* is that of 1922, and not that of 1919. "Preceding" means that which precedes, that which comes before in time and place, not that which is further off. There is nothing in the Election Law to indicate that the Legislature here used the word *preceding* in a sense different from its grammatical meaning.

The reason for considering the *preceding election* is because the Election Law would give effect to the will of the majority as expressed in said *preceding election,* giving two inspectors and two substitutes to the majority, and one inspector and one substitute to the minority.

The appealed judgment invokes section 12 of Act No. 3030, which refers to the temporary appointment of inspectors made, in cases of emergency, by the election inspectors themselves. It is asserted that in these cases, those designated by the inspectors must be of the same political affiliation as those substituted, and that by analogy, the same rule must be followed in the appointments made by the Municipal Board to fill vacancies of inspectors.

There is no similarity between the case contemplated by section 11, paragraph 4, and that dealt with in section 12 of the Election Law; and there is therefore no reason for invoking

the rule of *ubi eadem est ratio, ibi eadem est juris dispositio*.

The first case refers to the appointment of inspectors made by municipal boards or municipal councils to fill vacancies; the second, to the appointment of inspectors made by the election inspectors, when, at any meeting, there should be a vacancy in the office of inspector, or if an inspector is absent. In the first case, there is a definitive appointment, although the appointee should perform the functions of his office only during the remainder of the legal triennium; in the second, there is an appointment, or more properly, a designation, which shall only be effective until the return of the absent inspector or the vacancy is filled.

In the appointments provided in section 12 of Act No. 3030, the inspector or inspectors present shall call the substitutes of the same political party to which the absentees belong, and in their absence, they shall appoint a qualified elector of the district, proposed by the watchers of the party to which the absentees belong. In such appointments, contrary to those of section 11, paragraph 4, the election inspectors need not bear in mind the result of the *preceding election*. It is sufficient if they appoint a substitute inspector or a qualified elector of the electoral district, belonging to the same party as the absent inspectors. And one of the reasons for this is the urgency of these appointments, because the absentee may appear at any time during the meeting of the election inspectors.

If the *preceding election* referred to by section 11 is the election that served as the basis for the original appointment of the inspector whose place is left vacant, it would always happen that the substitute appointed would belong to the same party, and in such a case, we are at a loss to understand why the law provided in section 12, that for the temporary appointments, the substitute be necessarily affiliated with the same party as the inspector whose place he is to fill. When the law has provided a form of appointment in one case, and another form in another which requires the fulfillment of a specific condition, this condition must be understood not to be necessarily included in the first case.

We may imagine that both appointments should be made according to one and the same rule, but the Legislature has deemed fit to assign different rules to them, and has provided one procedure for the case of section 11, paragraph 4, and a different one for that of section 12. It may be that the law should be amended in this respect, but while it remains as it is, there is no legal ground for evading the fulfillment of its provisions.

The opinions cited parenthetically in the majority opinion refer to other questions than that

herein discussed, and there is no need to comment upon them now.

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