illegal registry lists of voters although said lists have become permanent [1] and a petition in the form of a letter filed in due time for the purpose of giving effect to the constitutional powers of the Commission is sufficient. The failure of the Commission to dispose of the proceeding for annulment within fifteen days, as required in section 5 of the Revised Election Code, does not result in the loss of its jurisdiction inasmuch as said provision must be considered merely as directory, in the same way that similar provisions for the disposition of election contests [2] were held directory.[3] More or less the same considerations control as regards the jurisdiction of the courts over election contests and the authority of the Commission on Elections over matters placed under it by the Constitution.

Petition for certiorari is dismissed. (*Nicolas Y. Feliciano, et al., Petitioners, vs. Arsenio Lugay, et al., Respondents, G. R. No. L-6756*, promulgated September 16, 1953.)

SECTION 21, REVISED ELECTION CODE

A VICE MAYOR HAS NO RIGHT TO HOLD THE OFFICE OF MAYOR WHICH HAS BEEN FILLED BY APPOINTMENT BY THE PRESIDENT WITH THE CONSENT OF THE GOVERNOR AND THE PROVINCIAL BOARD, NOTWITHSTANDING THE FACT THAT THE APPOINTEE IS THE FORMER MAYOR-ELECT WHO HAD BEEN DECLARED INELIGIBLE.

FACTS: In an election protest, the herein respondent was declared ineligible to hold office as mayor of Victoria, Tarlac. Subsequently, the acting executive secretary, by order of the President, appointed the respondent as acting mayor. In this petition for quo warranto, the petitioner, as duly elected and qualified vice mayor, demands that the respondent turn over to the former the office of mayor.

Petitioner relies upon section 2195 of the Revised Administrative Code and section 21, paragraph (b) of Republic Act 180. Respondent, on the other hand, invokes section 21, paragraphs (c), (d) and (e) of Republic Act 180.

[1] Remigio Prudente, et al., *vs.* Angel Genuino (L-5222, Res. of Nov. 6, 1951).
[2] Secs. 177 and 178 of the Revised Election Code.
[3] Querubin *vs.* Court of Appeals, et al. (46 O. G. 1554); Cachola *vs.* Cordero (G. R. No. L-5780, Feb. 28, 1953.)

HELD: The laws relied upon by the petitioner are not in point to the controversy. Section 2195 of the Revised Administrative Code refers to a temporary disability and section 21, paragraph (b) of Republic Act 180, refers to a vacancy resulting from death, resignation, removal or cessation of an incumbent, thereby implying that the latter is a *de jure* officer, the vacancy occurring only by virtue of a cause arising subsequent to his qualification.

Paragraphs (d) and (e) as relied upon by the respondent are not applicable. Paragraph (d) is not applicable because it does not cover a case where there is failure of election and paragraph (e) only deals with a situation where a special election has already been called and held.

The rules applicable are paragraphs (a) and (c). The failure of election has created a temporary vacancy within the meaning of paragraph (a), which shall be filled by appointment by the President, if it is a provincial or city office, and by the provincial governor with the consent of the provincial board, if it is a municipal office. The vacancy in this case is temporary for the simple reason that the President is called upon, under paragraph (c) to call a special election as soon as possible. Although the designation was made by the President, the appointment expressly stated that it was upon the recommendation of the Provincial Board of Tarlac, from which it can be properly deduced that said designation carried the sanction of the Provincial Governor and the Provincial Board.

Petition dismissed.[1] (*Manuel S. Gamalinda, Petitioner, vs. Jose V. Yap, Respondent, G. R. No. L-6121*, promulgated May 30, 1953.)

SECTION 98, REVISED ELECTION CODE

RESIDENCE IS NOT LOST BY CONTINUOUS STAY IN ANOTHER CITY OR MUNICIPALITY DUE TO STUDIES OR WAR AND/OR BY REGIS-

[1] Justice J. Pablo dissenting:
The law relied upon by petitioner should be applied in this case because section 21, paragraph (b) does not distinguish between the cessation of a de jure and a de facto incumbent. What the law does not distinguish the court should not distinguish.

TRATION AND VOTING IN SAID PLACE, PROVIDED THE FACT OF ANIMUS REVERTENDI STILL EXISTS.

FACTS: The respondent Moises G. Otadoy was born in the municipality of Poro, Province of Cebu on November 25, 1919. He finished his elementary education there. In September, 1937, he went to Manila to continue his studies and finished his law course at the Philippine Law School in March, 1951. In June, 1951, he returned to Poro. Thus, from 1937 to June, 1951, he continuously resided in the city of Manila, although three times during said period he went to Poro to visit his relatives, staying there for only a few days and then returning to live in Manila. During the elections of 1947 and 1949, his name appeared as a registered voter in the list of voters of Precinct No. 517 of the City of Manila. He never asked for the cancellation of his name as a registered voter of Manila before he applied to be registered as a voter in Precinct No. 4 of the municipality of Poro, Cebu, in September, 1951.

After trial, the court *a quo* found that Otadoy lacked the required legal requisites to be validly elected to the office of mayor and declared vacant the position of municipal mayor of Poro, Cebu. From this judgment the respondent appealed.

HELD: The criteria for the acquisition of a domicile of choice are (1) residence or bodily presence in the new locality; (2) intention to remain there and (3) an intention to abandon the old domicile.

Otadoy's stay in Manila was not really voluntary, but a necessity arising from the continuation of his studies. As a matter of fact, appellant made periodical visits to Poro, during his protracted stay in Manila, showing the fact of animus revertendi. A student does not lose his residence on account of having resided elsewhere as a student. There must be satisfactory evidence of complete abandonment of the former residence.

As for appellant's continuous stay in Manila during the occupation years, no one could be said to be free in his movements, and his stay in one place would not be evidence of his desire to live there permanently or adopt it as his residence.

The mere fact that respondent registered and voted in Manila during the national election of 1946 does not justify the conclusion that he thereby lost his residence. The mere act of registration as a voter or voting in another place does not by itself constitute evidence of abandonment of one's legal residence. The question of residence

for the purpose of the Election Law is largely one of intention. He registered and voted in Manila during the presidential elections of 1946 just for the sake of "making use of his right of suffrage" and he neither registered nor voted in the elections of 1947 and 1949.

From Otadoy's declarations or acts, it can be concluded that the sojourn and stay in Manila, however long, was without the intention of making it his permanent home and that he therefore did not lose and could not have lost his residence in Poro, Cebu, during all the time.

Decision appealed from is reversed. (*Tereso Garciano, Petitioner-Appellee, vs. Moises G. Otadoy, Respondent-Appellant,* (*C.A.*) *G. R. No.* 8969, promulgated March 13, 1953.)

RESIDENCE FOR THE PURPOSE OF THE ELECTION LAW IS LARGELY ONE OF INTENTION; AS LONG AS THERE ARE CIRCUMSTANCES TO INDICATE THAT THE CANDIDATE HAD THE INTENTION TO RETURN TO HIS OLD DOMICILE, HE HAS NOT ABANDONED HIS DOMICILE OF ORIGIN.

FACTS: This is an appeal from a decision of the CFI of Ilocos Sur dismissing the petition for *quo warranto* filed by the petitioner seeking to disqualify Eliseo Quirino from holding the office of Governor of Ilocos Sur mainly on the ground that he was not a bona fide resident of said province at least one year immediately preceding the elections held on November 13, 1951.

Both petitioner and respondent were duly registered candidates for the office of Governor in the general elections held on Nov. 13, 1951. Respondent was proclaimed elected by the provincial board of canvassers with a vote of 49,017 in his favor as against 19,466 votes for the petitioner.

It was stipulated by the parties in open court that the respondent-appellee was born in Caoayan, Ilocos Sur, where his late father, Don Mariano Quirino, was a bona fide resident. Caoayan is therefore the domicile of origin of the respondent-appellee. Respondent-appellee went to the U. S. in 1919 to study and returned to the Philippines in 1923. On his return he taught at the University of the Philippines for four years. He became the owner and editor