

in office should be filled unless otherwise provided by law. The question is, was it otherwise provided by law?" The statute referred to is as follows: "A general election shall be held on the first Tuesday after the first Monday in November, in the year 1882, and biennially thereafter on the same day, at which election all existing vacancies in offices, and all offices the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law." This act regarded the offices substantially as vacant, for the purpose of being filled when a person held over. There was a law expressly providing for the election, where there were any existing vacancies, or where the term would expire before the next general election. The court says: "The relator having been elected his own successor in 1882, his second term of service must be deemed to have commenced at the regular period in 1882. He could not, by holding over, after the expiration of his first term, and failure to qualify, until one year of his second term had passed, extend the latter term, or make his second term commence at an irregular period." It seems that he was elected at the regular time, but he deferred qualifying for one year, and claimed in consequence of his not qualifying for one year that his term did not commence until that time. The court says he cannot extend his term in that way. He was in office, and it was his duty to qualify, but if he did not qualify, his term commenced just the same. The case is not analogous to the one in point.

Plaintiff also relies upon *Sawyer vs. Haydon*, in the 1st Nevada, page 64. The contest was as to the office of the prosecuting attorney. The one in office resigned and the respondent was appointed and entered upon the duties of office. An election was held and the plaintiff received the majority of the votes. The points necessary to refer to are: "It is urged on the part of the appellant, first, that the general policy of the Territorial laws was to make all offices elective as far as practicable, and when a case of necessity arose requiring the temporary appointment of an elective officer, that appointment should not extend, and was not by law intended to extend, beyond the next general election, when the people would have an opportunity of electing. Second: That the law, having vested the people with power to elect prosecuting attorneys for the full term, they would have the right without any special statute on the subject, when assembled at a general election, to fill any vacancy in that office that might then exist, and also to elect an officer to fill the unexpired term, when the vacancy had been temporarily filled by the county commissioners." In that case, before the term expired, it seems, a general election occurred and the plaintiff was elected at that general election, not at the end of the term. The court says: "The question then resolves itself into this: Can the people, by virtue of an inherent right in themselves, when assembled at a general election, elect an officer for a fractional term, when the statute law authorizes them to elect for the full term, but is silent in regard to the election of such officer for the fractional term."

"But we think no court or judge has gone so far as to hold that the people might hold an election or vote for any particular officer at a general election, unless special provision was made for electing such officer for the particular term to which he was seeking to be elected, either in the constitution or some statutory enactment. For an able and lucid argument on these points we would refer to the opinion of Mr. Justice Baldwin, in the case of *McCune vs. Weller*, 11 Cal., 49. The court in this case, however, uses this language. It would apply, however, to an officer appointed: 'In this case, had the law of 1862, after providing for the election of a prosecuting attorney for two years, gone on in the same law to provide that in the case of vacancy the county commissioners should fill that vacancy until the next general election, and no special provision had been made to fill it for any period reaching beyond the next election, perhaps it might be said here was a case where the legislature had, by direct language, conferred upon the electors of the county the right at the general election, biennially, to elect a prosecuting attorney, and had, by implication, conferred on them the power to elect for a fractional term.' The case in hand is one in which there was no vacancy, where the person holds over by virtue of the law. There is no vacancy and no appointment or right to appoint.

The *State vs. Dodson*, *Northwestern Reporter*, volume 31, page 788, is cited. The court says: "Charles W. Meeker was elected to said office, qualified, and entered upon the duties thereof; that on the 6th day of March, 1886, the said Meeker was, by the board of county commissioners of said county, legally removed from said office for cause, and that on the same day the respondent was duly appointed to said office by said Board to fill the vacancy caused by the removal of said Meeker; and that said respondent duly qualified and entered upon the duties of the office, and has continued to fill the same hitherto." It is seen that there was an actual vacancy, a vacancy in fact. The court says, "The points presented and urged by the respondent may be stated as follows: (1) That no election of clerk of the District court in and for said county could be legally held at the general election of 1886." Because it was not the regular time for electing the clerk, but was a general election. But the court refers to the law and says, "Section 101 of the same chapter provides that every civil office shall be vacant, upon the happening of either of the following events, at any time, before the expiration of the term of such office, as follows: (1) The resignation of the incumbent. (2) His death. (3) His removal from office, etc." "In this case there was a resignation; the law provided it should be vacant. Section 105 provides that appointments under the provisions of this chapter shall be in writing and shall continue until the next election, at which the vacancy can be filled, and until a successor is elected and qualified, etc. Section 107 provides that vacancies occurring in any State, judicial district, county precinct, township or any public

elective office, thirty days prior to any general election, shall be filled thereat. To apply this provision to the case at bar, had Meeker been removed less than thirty days before the general election of 1886, that election would have been one at which the vacancy caused by his removal could not have been filled, not because of any peculiarity in the term of office, but because of the language of the section last above quoted. But as the office became vacant, thirty days before said election, it was an election at which said office could be filled. I thus have reached the conclusion, and from it I see no escape, that a clerk of a district court in and for Saline county could be legally elected at the general election of 1886, whose term of office would expire in the month of January, 1888." Of course the law there expressly provides for the election. But the trouble with this case is that this section relied upon provides that a vacancy shall be filled by appointment until the next general election, and at that next general election it shall be filled by election until the end of the term, but there is no vacancy here. There was no vacancy that authorized an appointment, and hence this law does not apply, because it expressly says: "The County court of the county where such vacancy occurs shall have power to fill such vacancy by appointment, until the next general election," but there was no vacancy in this case. The law had filled the office, and the officer in it was holding by virtue of the law; he was there lawfully and had the right to hold until his successor was elected and qualified, and then no vacancy will occur because the successor will take office just as his successor would have taken it if the election had been held on the 1st day of August, 1888, at the proper time, and his successor had qualified in the following June, 1889. There was no election in 1888, and in June, 1889, there was no authority to hold an election, because there was no vacancy, and the same as to 1891. There had been no appointment made, and there was no vacancy, and the appointed in office as an officer held over until his successor was elected and qualified. By election of an officer it means a legal election, an officer elected by law. Here there was no election provided for in August, 1889, or in 1891, either expressly or by implication, because there was no vacancy. I see no escape from the conclusion that the present incumbent, Mr. Hardy, holds over under the statute, and that he will hold until his successor is elected at the general election in August in 1892, and he is qualified, unless the legislature changes the law or a vacancy occurs by death, resignation removal or other disability.

A MEXICAN CAVE.

I have just returned from working on the railroad in the Boca Grande, which is thirty-five miles north of Colonia Diaz, in the State of Chihuahua, Mexico. While I was there, Brother William Adams discovered a curiosity which I think will be interesting to many of your readers. It is located half a mile south of Mexican guard camp and it is similar in appear-