

BERNARDO TORRES, PROTESTANT AND APPELLEE, VS. MAMERTO S. RIBO, PROTESTEE AND APPELLANT.*G.R. No. L-2831. May 20, 1949*

Ponente: OZAETA, J.

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This is an appeal from an order of the Court of First Instance of Leyte declaring the protestee-appellant's counterprotest to have been filed out of time and ordering it stricken out of the record.

Bernardo Torres and Mamerto S. Ribo were candidates for the office of provincial governor of Leyte in the general elections held on November 11, 1947. Ribo was proclaimed elected, and Torres protested. Summons was served upon the protestee on December 12, 1947. On December 15 the protestee filed a motion to dismiss the protest. That motion was denied by the court, which gave him five days from the receipt of the order within which to file his answer. The protestee received copy of that order on January 6 and on the following day, January 7, he moved for a reconsideration of the order denying his motion to dismiss. The court granted that motion for reconsideration and dismissed the protest. The protestant appealed to this court, which on May 21, 1948 reversed the order of dismissal. On May 24 the protestee received copy of the decision of this court. On May 29 pending the entry of final judgment by this court, the protestee filed his answer and counterprotest.

The protestant filed a motion to dismiss and strike out the protestee's answer and counterprotest on the ground that it was filed out of time. That motion was granted by the trial court. Hence this appeal.

The theory of the protestant-appellee, which the trial court sustained, is that the answer and counterprotest should have been filed within five days from December 12, 1947, the date on which the protestee was served with summons.

Section 176 of the Revised Election Code provides among other things that the protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance, and in all cases before the commencement of the hearing of the protest; and that if the protestee should desire to impugn the votes received by the protestant in other precincts, he shall file a counterprotest within the same period fixed for the answer.

It will be noted that after denying the protestee's motion to dismiss the protest the trial court, in an order copy of which was received by the protestee on January 6, 1948, gave him five days within which to file an answer. The validity of that order cannot be seriously questioned, since the protestee could not be expected to answer the petition of protest pending resolution of his motion to dismiss it. The law does not prohibit the court in such a case from giving the protestee an opportunity to answer the protest. What the law inferentially prohibits is the filing of an answer after the commencement of the hearing of the protest.

Therefore, the period of five days within which to answer commenced on January 6, 1948. That period, however, was suspended on January 7, when the protestee filed a motion for reconsideration of the order denying the

dismissal of the protest, until that motion was finally decided. That motion for reconsideration having been granted by the trial court, the period to answer continued to be suspended until the appeal of the protestant from the order dismissing his protest was finally decided by this court. It is true that on May 21, 1948, this court rendered its decision reversing the trial court's order of dismissal of the protest, and the protestee received copy of said decision on May 24. But that decision was not final and executory until after the lapse of fifteen days, during which the losing party could file a motion for reconsideration. In this case, however, the protestee did not avail himself of the right to file a motion for reconsideration, for, without waiting for the entry of final judgment, he acquiesced in or accepted the decision of this court by filing his answer and counterprotest on May 29, 1948. On that date, therefore, the decision of this court became final by virtue of the losing party's compliance therewith.

We hold that a bona fide motion to dismiss an election protest suspends the period within which the protestee should file his answer until said motion is finally decided, for the reason that should said motion for dismissal prosper there would be no need for the protestee to answer. In the present case the decision of this court, to which the protestant had appealed from the trial court's order of dismissal, became final, as we have explained, on May 29, 1948. Since on said date the protestee filed his answer and counterprotest, and since only one day had passed from the time the protestee received copy of the order of the trial court giving him five days within which to answer until he filed his motion for reconsideration which resulted in the trial court's dismissal of the protest, it follows that said answer and counterprotest was filed well within the period of five days granted by the court.

The order appealed from is reversed and the case is ordered remanded to the court of origin for further proceedings, with costs against the appellee. So ordered.

Moran, C. J., Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

FERIA, J.:

I concur in the result.

DISSENTING

PEEFECTO, J.:

Section 176 (b) and (c) of the Revised Election Code read as follows:

"(b) The protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance and in all cases before the commencement of the hearing of the protest. The answer shall deal only with the election in the precincts which are covered by the allegations of the protests.

"(c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff."

It appears that the protestee in this case was served with summons on December 12, 1947. Accordingly, he should have filed his answer and counter-protest not later than December 17, 1947. Protestee filed, however, his answer and counter-protest much later, that is, on May 29, 1948. It is evident that they were filed out of time under the above quoted provisions of the Revised Election Code.

In our opinion, the filing of the motion to dismiss the protest had not and could have not the effect of suspending the five-day period provided by section 176 for filing an answer and counter-protest. The protestee should have

filed his answer and counter-protest within the period provided by law, notwithstanding the filing of his motion to dismiss.

There is no provisions of law that would authorize the suspension of the five-day period provided for by section 176 of the Revised Election Code. The purpose of the law is the early disposal of election protests. There is no incompatibility between the filing of an answer and counter-protest and of a motion to dismiss the protest.

The majority's position is contrary to the spirit and letter of the Revised Election Code. We vote to affirm the appealed order.

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