

**FERMIN TABANDA, PETITIONER VS. THE COURT OF APPEALS AND  
TIBURCIO ROSAL, RESPONDENTS.***G. R. No. L-2695. May 28, 1951*

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2ff2f348e1d9/>**PARAS, C.J.:**

In an election case between the herein petitioner, Fermin Tabanda, and the herein respondent, Tiburcio Rosal, the Court of First Instance of Iloeos Sur rendered a decision sustaining the election of respondent Rosal as mayor of San Vicente, Iloeos Sur, with a majority of three votes, and dismissing petitioner's protest. Said court, considering that the protest was not wholly unfounded because the majority of twelve votes given to respondent Rosal by the municipal board of canvassers was reduced to three in the judicial revision, and in view of the equitable provision of section 1 of Rule of Court No. 131, ordered the petitioner to pay one half of the costs. Upon appeal to the Court of Appeals, the latter court rendered a decision declaring petitioner elected as mayor of San Vicente, Iloeos Sur, with a majority of seven votes, and decreeing that every party shall bear his own expenses. The motion for reconsideration filed by petitioner, praying that the decision of the Court of Appeals be reconsidered so as to sentence respondent Rosal to pay the costs in both instances, or at least in the first instance, was denied by the Court of Appeals. The petitioner filed a motion for clarification, whereupon the Court of Appeals, in its resolution of December 14, 1948, declared that every party shall bear his own expenses actually paid or incurred in the prosecution of their respective protest and counter-protest in the trial court and of their respective appeal in the Court of Appeals. The petitioner, with leave of the Court of Appeals, filed a second motion for reconsideration which was denied. The present petition for certiorari was instituted in the Supreme Court, alleging that the Court of Appeals ignored the law or gravely abused its discretion in not taxing the costs in both instances against respondent Rosal.

It is contended by the petitioner that the Revised Election Code, in section 180, provides that "in case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party," and that, consequently, it is mandatory on the court in an election case to assess the expenses and costs against the losing party. As a corollary, it is argued that, although under section 1 of Rule 131, the court has the power for special reasons to adjudge "that either party shall pay the costs of an action, or that the same be divided, as may be equitable," said provision is not applicable to election cases, because Rule of Court No. 132 states that "these rules shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient."

The petitioner's contentions are untenable. Under the old Election Law, in force on December 6, 1924, it was also provided that "if the party paying such expenses and costs shall be successful they shall be taxed by the court and entered and be collectible as a judgment against the defeated party." (Section 28, Act No. 3210, amending section 482 of Act No. 2711, as amended by Act No. 3030.) In the case of *Mandac vs. Samonte*, 49 Phil. 284, 322-323, decided on August 30, 1926, the Supreme Court held as follows: "Ordinarily, the defeated litigant is ordered to

pay the costs, but section 487 of the Code of Civil Procedure authorizes the courts, for special reasons, to order any of the parties to pay the costs of the suit, or to divide the costs between them as may be just. Taking into account the result of this contest, we are of the opinion that the parties, the protestant, the protestee, and the intervenor, must each pay the costs caused by his instance." The basis of the court for ordering in the *Mandac vs. Samonte* case that each party should pay his own costs was section 487 of the Code of Civil Procedure. Placing side by side the provisions of the old Election Law and the Code of Civil Procedure relating to costs, and the corresponding provisions of the Revised Election Code and the present Rules of Court, we readily take notice of the substantial, if not exact, similarity between them.

We find no cogent reason for not applying section 1 of Rule 131 to election cases. There is no inconsistency between said rule and section 180 of the Revised Election Code. The latter provision, in stating that the court "shall assess, levy and collect the same as costs from the losing party," merely authorizes the court to tax the expenses of an election protest against the losing party. Without said statutory provisions, the court would have no power to include such expenses in the costs provided in the Rules of Court. We do not think that section 180 of the Revised Election Code was intended to deprive the court of its discretion under section 1 of Rule 131. Said discretion, unless expressly taken away in specific cases, undoubtedly has salutary and equitable effects, in that the court may determine the propriety and justness of imposing the costs authorized in section 180 of the Revised Election Code against one or both parties, depending upon the circumstances of each election case. It cannot be assumed that a defeated protestee, for example, is palpably not entitled to be declared winner by the proper board of canvassers, or that a defeated protestant is patently without any ground for filing his protest, because there are countless instances in which, as in the case at bar, the election of a party is sustained by a very bare majority. Much less can it be assumed that a candidate whose election is proclaimed, has influenced the proper authorities in their official acts. Upon the other hand, we cannot outright condemn, by the imposition of costs against him, a candidate by merely filing an election protest, as this may prevent or discourage parties from contesting the election of their rivals in proper cases.

Wherefore, the petition for certiorari is hereby dismissed without costs. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.