

**TEODORO JULIANO, PETITIONER, VS. COURT OF APPEALS AND
DATU MANDO SINSUAT, RESPONDENTS.***G.R. No. L-27477. July 28, 1967*

Ponente: ZALDIVAR, J.

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In connection with the general elections held on November 12, 1963, the City Board of Canvassers of Cotabato City, on November 22, 1963, certified that the votes obtained by the candidates for the office of City Mayor of Cotabato City were as follows:

1. Datu Mando Sinsuat 4,002 votes
2. Teodoro Juliano 3,972 votes
3. Japal M. Guiani 1,767 votes
4. Balabagan Balilia 362 votes
5. Cecil Mangelen 89 votes

The City Board of Canvassers forthwith proclaimed Datu Mando Sinsuat elected City Mayor of Cotabato City, with a plurality of 30 votes over the votes obtained by Teodoro Juliano.

On December 4, 1963, Teodoro Juliano - herein-after referred to as protestant - filed a protest against the election of Datu Mando Sinsuat - herein-after referred to as protestee - in the Court of First Instance of Cotabato. In due time the protestee filed an answer to the protest and a counter-protest. The protestant in his protest, and the protestee in his counter-protest, as the case may be, alleged commission of frauds, coercions and irregularities that were committed in specified precincts in Cotabato City and each had impugned the validity of specified ballots that were cast in favor of each other. After appropriate proceedings pursuant to law, the Court of First Instance of Cotabato, on February 5, 1966, rendered a decision declaring the protestant winner over protestee by a margin of 283 votes.

The protestee appealed from the decision of the Court of First Instance of Cotabato to the Court of Appeals. In a decision rendered on December 19, 1966, the Court of Appeals reversed the decision of the lower court and declared the protestee winner over the protestant by a margin of 17 votes. Upon a motion for reconsideration filed by the protestant, the Court of Appeals, on March 30, 1967, promulgated a resolution maintaining its decision which declared the protestee the winner, but reducing the winning margin from 17 to 13 votes.

In due time, the protestant filed before this Court a petition for certiorari by way of an appeal from the decision of the Court of Appeals. This Court gave due course to protestant's petition.

In his petition for certiorari the protestant has assigned six errors which, he alleges, had been committed by the Court of Appeals in deciding the case against him. We shall proceed to dwell on those alleged errors in the order

that the protestant has indicated them.

1. In the first error assigned by the protestant, he points to 48 groups of ballots, all cast for the protestee, and he contends that each group of these 48 groups of ballots had been prepared by only one person. The protestant maintains that the Court of Appeals erred in not holding that each of these 48 groups of ballots had been prepared, or written on, by only one person.

These 48 groups of ballots, totalling 274, are accordingly marked as exhibits for the protestant. The number of ballots in each group varies - depending on how many ballots are considered as prepared by one person only. For the purposes of this decision, however, We do not consider it necessary to mention the exhibit marks of the ballots as grouped.

The Court of First Instance of Cotabato declared these 274 ballots invalid, precisely upon the ground that each group, of the 48 groups into which those 274 ballots had been separated, had been prepared by only one person. In ruling on these 274 ballots the Judge of the Court of First Instance of Cotabato relied on his personal examination of the ballots and on the testimony of Mr. Panfilo Lastimosa who is the hand-writing expert that was presented as a witness by the protestant. Aside from the testimony of Mr. Panfilo Lastimosa that each of these 48 groups of ballots had been prepared by only one person, the record does not show that the protestant had presented evidence which would show how it could have happened that each of these 48 groups of ballots in question had been prepared by only one person. On the other hand, the protestee had presented numerous witnesses to prove that the elections in the precincts where those questioned ballots were cast had been orderly and regular.

We have carefully examined these groups of ballots in question, and also the record of this case, and We find that the Court of Appeals did not err when it held that each of these 48 groups of ballots had not been written on, or prepared, by one person. We agree with the following observations and conclusions of the Court of Appeals:

"CONSIDERING: That the sole, absolutely, the only proof, submitted by protestant to the effect that the different sets of ballots mentioned a few pages back, had been prepared by the same hands in said Precincts 39, 41, 43, 49, 50, 53, and 54, is the testimony of his questioned documents examiner, in private practice, Mr. Panfilo C. Lastimosa, the gist of whose testimony is that he had examined the ballots aforementioned and concluded from the fact that the writings in said sets allegedly evinced the same individual characteristics line quality, speed, and design, that they had been respectively written by the same hand; stated otherwise, on the sole basis of this opinion evidence the trial judge took the responsibility of outlawing two hundred seventy four (274) ballots;

x x x x

"CONSIDERING: That to all the foregoing is one detail that this Court has in this appeal further found out in the examination of the record, which is that not only that protestant had failed to present one single witness, either one of his watchers or any other spectator, who could have declared if not to actual, at least to suspicious manipulations in the precincts here-in involved, any one of them, Precincts 39, 43, 50, 53, and 54, that might indicate that indeed there had been such allegedly flagrant violation of the exercise of suffrage by the preparation, wholesale, of ballots by one person alone,- which must have been visible if truly committed, not only this, but on the contrary, it was protestee who was able to present the electoral officials themselves, representatives of the Commission on Elections mainly, presumed to be impartial for they were public school teachers on the whole, and inspectors of the other opposing party, the rest,- and trial Court throughout, all throughout its decision, failed to state why it should not have believed them and should have chosen to discard their versions as to the regularity of the elections in said precincts;

x x x x

"CONSIDERING: That with the conflict of evidence thus presented on the questioned ballots in these

Precincts 39, 43, 49, 50, 53, and 54, involved in Errors 10, 18, 21, 24, 26 and 29, it must be seen that against the foregoing testimonies of election officials, public school teachers as well as of inspectors not of the party of protestee, that there had not been committed any anomaly in the elections in said precincts, officials who had nothing to gain with the victory of protestee, who have not been shown to have owed him a debt to repay by permitting themselves to become instruments of fraud and deceit; if it be said that they would have had the natural instinct of self-preservation to declare that their actuations had been clean, let it be remembered that they are not under any indictment at all, nor the slightest complaint been lodged against them for the record is absolutely silent as to that, indeed, and peculiarly enough, even trial judge has not given any reason at all in his decision why they should not be believed;- and against these public school teachers and election officials, there is pitted the sole and only opinion evidence consisting in the conclusions of protestant's documents examiner, seeking to establish that flagrant violations of the law had been there perpetrated, which conclusions could have been incorrect as explained so many pages back; in such a conflict of proofs, where the ballots themselves can not speak but on their face, regular and correct, attest to the will of the particular registered and qualified voters of the City of Cotabato, in the barrios of Kalanganan, Tamontaka, Pagalamotan, Tiogon and Tubiran, if there be any doubt as to who had declared to the truth, it better be remembered that if frauds, in the dimensions declared by the documents examiner, had been perpetrated, the public school teachers, Chairmen of the various Board of Inspectors, could not but have noticed, and noticing, could not have permitted them to have passed unprotested, if not the public school teachers, the PC who were also there, watching to see to it that the elections be clean, if not the PC, the watchers, of which protestant himself had his own; but not one of these noticed, or protested; the record is eloquently silent that protestant had ever denounced the commission of any anomaly during the election day in said precincts; x x x it was protestee who took the initiative of presenting abundant proof to attest to the regularity of the elections but protestant did not care to counteract in rebuttal, if there be any doubt in the approximation of the truth, such doubt should be resolved to validate the votes; because the rules of burden and preponderance of proof so dictate, and where Courts of Justice must have to choose between giving effect to a ballot regular on its face, or throwing it aside on less than plainly satisfactory evidence, the law, public policy, and simple justice should dictate its acceptance, otherwise, electoral protests, instead of attaining, the purity of elections might produce exactly the contrary result and subvert the will of the electorate; Errors 10, 18, 21, 24, 26, and 29 must have to be as they are hereby sustained, so that to the previous total of protestee of 3,667 votes should be added another two hundred seventy four (274) making a grand total of 3,941 votes in his favor, x x x."

Moreover, the findings and the ruling of the Court of Appeals, regarding these 48 groups of ballots, relate to questions of fact which this Court will not disturb. It is a settled rule in election cases appealed to this Court that the findings of facts of the Court of Appeals with regard to the evidence aliunde submitted by the parties are no longer open for review, the function of this Court being limited to determining if the appreciation of the ballots by the Court of Appeals apart from the evidence was made in accordance with law and the rulings of this Court.[1]

2. In the second error assigned by the protestant, in his appeal before this Court, he alleges that the Court of Appeals erred in refusing to consider and rule that 40 ballots, cast in favor of the protestant, are not marked ballots. The protestant maintains that the Court of Appeals should have declared these 40 ballots valid and should have counted them in his (protestant's) favor. These 40 ballots are marked as Exhibits 9-M, 9-DD, 9-LLL, 10-KKKKKK, 10-MMMMMM, 12-AAA, 13-BBBB, 14-R, 14-QQQ, 15-FFF, 16-JJ, 19-EE, 19-A, 19-HHHH, 21-DDD, 23-QQQ, 23-Y, 23-RRRR, 24-N, 24-YY, 24-MMMM, 25-V, 26-P, 26-SSS, 26-III, 27-XXXX, 29-Z, 29-VVV, 30-N, 31-BBB, 33-D, 33-TT, 37-G, 37-HH, 37-QQQQ, 37-TTTT, 39--Q, 10-KK, 22-GGGG, and 13-FFFF.

Upon a careful examination of the record We have noted that 8 of the 40 ballots mentioned in the preceding paragraph, namely, those that are marked as Exhibits 10-MMMMMM, 13-BBBB, 14-QQQ, 16-JJ, 19-P, 23-Y, 26-P, and 37-QQQQ, are included among the ballots which the protestee mentioned in some of the errors he

as-signed in his appeal to the Court of Appeals (Errors 44, 51, 52, 54, 62, 69, 72, and 97, listed on pages 9, 10, 11, 12, 13, and 17 of protestee-appellant's brief; and are discussed on pages 52, 54, 55, 58, 61, 62, and 71 in the same brief; See also pages 13, 14, 15, 23 and 27 of the decision of the Court of Appeals which are respectively marked as pages 44, 45, 46, 54 and 58 of the record, or rollo, of this case). We have noted that all these 8 ballots had been rejected by the Court First Instance of Cotabato (Pages 543, 629, 653, 693, 781, 940, 1041 and 1334 of the printed decision of the lower court). We are surprised that while the lower court had rejected these 8 ballots the protestee had included these same 8 ballots in the errors he assigned in his appeal to the Court of Appeals. These 8 bal-lots are included in the groups of ballots which, the protestee alleges, were erroneously ruled by the lower court as "valid votes for Juliano" (Errors Nos. 44, 51, 52, 54, 62, 69, 72, and 97, respectively). And, sur-prisingly, the Court of Appeals had not taken note of this error or inconsistency on the part of the pro-testee, except as regards the ballot marked as Exhibit 23-Y. The Court of Appeals declared this ballot (Exhi-bit 23-Y) invalid, thus affirming the ruling of the lower court (p. 23, CA decision; p. 54 rollo). How-ever, as regards the other 7 ballots, it can be ga-thered from the decision that the Court of Appeals had considered them valid ballots for the protestant (pages 13, 14, 15, and 27, CA decision; pp. 44, 45, 46 and 58, rollo). But we have noted also that while the lower court had rejected these 7 ballots and deducted them from the votes of the protestant, the Court of Appeals did not credit the protestant with 7 votes correspond-ing to these 7 ballots. The Court of Appeals should have counted these 7 ballots as 7 more votes for the protestant.

We have stated that there are 40 ballots which are the subject of the second error assigned by the protestant in his appeal before this Court. These 40 ballots were claimed by the protestant before the Court of Appeals as valid ballots for him -- 37 in the mo-tion for reconsideration of the decision, and 3 were added as "additional claims" while the motion for re-consideration was pending action by the Court of Ap-peals. The Court of Appeals, in resolving the motion for reconsideration, refused to rule on the claim of the protestant that these 40 ballots are valid bal-lots for him, for the reason "that not one of any of these ballots was claimed by appellee (protestant) when he filed his brief x x x nor in all of his posterior pleadings x x x instead he therein made evi-dent his determination to have the case submitted on the basis of the specific ballots he had previously claimed in his brief." [2] The stand of the Court of Ap-peals in refusing to consider the claim of the pro-testant on these 40 ballots is that if this method of introducing entirely new claims were to be permitted in motions for reconsideration after the decision had been rendered in an appeal the court will have to examine more ballots and the losing party in the case can always claim on and on afterwards more ballots and the inevitable result would be that the case would never end, and there would be confusion and disorder in the disposition of the appeal, and this would be contrary to public policy which looks to the prompt and orderly disposition of election protest.

We believe that the Court of Appeals erred when it refused to consider and rule on these 40 ballots in a motion for reconsideration that was timely filed by the protestant. As we have adverted to, 8 of these 40 ballots were included in some of the errors assigned by the protestee, and the protestant claimed them in his appeal brief in the Court of Appeals (pp. 15, 17, 18, 21, 23, 24, and 33, protestant-appellees brief). As regards the remaining 32 ballots, it is true that the protestant had not claimed them in his brief, but when the protestant claimed those 32 ballots in his motion for reconsideration the protestant had thereby brought those 32 ballots squarely before the Court of Appeals, and said court should have examined those bal-lots and rule on the claim of the protestant that those are valid ballots for him which were erroneously re-jected by the lower court. The circumstance that the claim on those 32 ballots was made in a motion for re-consideration should not deter the court from examining, and ruling on, those ballots.

Well settled is the doctrine that election con-tests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. And also settled is the rule that laws governing election contests

must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.[3] In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate.[4] An appeal in an election contest shall proceed as in a criminal case and the appellate court may take notice of every error in fact or in law committed by the lower court.[5]

In consonance with the doctrines and rulings recited in the preceding paragraph, this Court in the case of *Borja v. De Leon*, G. R. No. L-20245, September 3, 1963, ruled as follows:

"It is true that this Court has stated in some cases that in appeals in election protests it is necessary that the party appealing should make an assignment of error in which he should point out the error or errors imputed to the trial court in the re-vision of ballots in different precincts in view of the numerous number of ballots involved in a protest and that if such assignment is not made or the error is not pointed out, the appellate court may refuse to examine or consider the same in the appeal, but that ruling was laid down merely as a guide for a party or his counsel in an election case in view of the numerous ballots involved because otherwise the court may not know what particular ballot an appeal refers to. But that ruling cannot be so interpreted as to deprive an appellate court of the right given to it by law to examine any ballot even *motu proprio* if that is necessary to arrive at a correct decision (Section 175, Revised Election Code). It is for this reason that an appeal in an election case is likened to an appeal in a criminal case where the case is deemed tried *de novo* (Section 178, Revised Election Code). The philosophy behind this ruling is that the real purpose of an election case is to ascertain what is the true will of the people or who is the one duly elected and this can only be achieved by throwing wide open the appeal before the court." (Underscoring supplied) [6]

In the case of *Protacio v. De Leon*, G. R. No. L-21135, November 8, 1963, this Court ruled:

"The courts have ample authority to examine and recount the ballots before it regardless of whether a party raises any issue in his pleading about them (Section 175, Revised Election Code; *Ibasco vs. Ilao, et al.*, L-17512, Dec. 29, 1960)." (Underscoring supplied)

Again in the case of *Roldan v. Monsanto*, G. R. No. L-21578, November 8, 1963, this Court ruled:

"The first question raised, a legal one, is the consideration by the Court of Appeals of 22 ballots for appellee *Monsanto*, rejected by the court of first instance, notwithstanding the fact that *Monsanto* did not appeal from the decision of the court of first instance, or cite this as error in appellee's brief. The Court of Appeals set aside the ruling of the court of first instance on said ballots and admitted and counted them for the appellee. We hold that the action of the Court of Appeals in reversing the action of the lower court on the 22 ballots and in counting them in favor of protestee-appellee is in accord with the provisions of Section 178 of the Revised Election Code which considers an election protest similar to a criminal case, wherein on appeal the case is tried *de novo*, and the appellate court may review a ruling of the court of first instance on any ballot *motu proprio* whether the ballot had been the object of appeal or not. This is based on the provisions of Section 178 of the Revised Election Code and supported by Our decisions in the cases of *Ibasco v. Ilao, et al.*, G. R. No. L-17512, Dec. 29, 1960, and *Borja v. De Leon, et al.*, G. R. No. L-20245, Sept. 30, 1963." (Underscoring supplied)

It can be gathered from a reading of the foregoing rulings of this Court that the decisive circumstance that makes it mandatory for the court to consider, and rule on, a ballot is that the ballot is before the court and it is claimed or impugned by a party in the election contest -- be it in the trial court or in the appellate court. The court can not, and it must not, close its eyes to the realities as presented by the ballots before it. The contention that to allow a party to claim or impugn ballots for the first time in a motion for reconsideration of a decision in the appellate court is to sanction confusion and delay in the disposal of election cases is of no moment as long as the claim on the ballots is presented before the decision has become final and the ballots thus claimed would be decisive in determining the real winner in the elections. Considering that the purpose of election contests is to

determine the true will of the electorate, the court should examine every ballot presented before it and rule whether the ballot or ballots is/are valid or not. For the court to refuse to consider ballots brought before it simply because a party has not complied with certain procedural or technical requirements, would be to disregard the public interest that is involved in the election case. Of course, it is for the court to determine if the belated claim or objection on certain ballots before it is frivolous, done in bad faith, and only for the purpose of delay. In the case now before Us, the motion for reconsideration, where the 40 ballots in question were claimed by the protestant, was filed on January 7, 1967 and it was not until March 30, 1967 when the Court of Appeals resolved to deny the motion for reconsideration -- only to declare that the 40 ballots can not be considered because they were claimed for the first time by the protestant in the motion for reconsideration. The resolution of the Court of Appeals denying the motion for reconsideration does not make even a hint that the claim on these 40 ballots by the protestant was done for the purpose of delay, or that the claim is frivolous. The policy which looks to the prompt disposal of election contests should not be made to prevail over the public interest which demands that the true will of the electorate must be ascertained by the courts by all means within their command.

The 40 ballots in question are properly identified, they have been passed upon by the lower court, and they were squarely presented and claimed before the Court of Appeals. Inasmuch as at least 32 of these 40 ballots have not been previously considered and ruled upon by the Court of Appeals, and these ballots are now before this Court,[7] We consider it the duty of this Court to examine those ballots, and to consider those ballots in determining who really was elected City Mayor of Cotabato City in the elections of November 12, 1963.

We shall now rule on the 40 ballots that are the subject of this second error, assigned.

Exhibit 9-M. The Court of Appeals did not rule on this ballot. The lower court declared this ballot as marked because the voter wrote "Xavier" and "Baguis" on the first and second lines for senators, respectively, and they are also voted for councilor on the first and seventh lines for councilors. The record shows that Xavier and Baguis were candidates for councilor. This is not a marked ballot. The votes for Xavier and Baguis for senator are considered simply as stray votes (Rules 13 and 18, Section 149, Revised Election Code). This is a valid ballot for the protestant (*Trajano v. Inciso*, G. R. No. L-23895, February 16, 1967; *Katigbak v. Mendoza*, G. R. No. L-24477, February 28, 1967).

Exhibit 9-DD. The Court of Appeals did not rule on this ballot. The lower court declared this as marked because on the spaces for mayor and vice mayor the voter wrote in big capital letters the names "Juliano" and "Uy". We note on this ballot that names of the candidates for councilors are also written in capital letters, and the names of Juliano and Uy are only slightly bigger than the names of the candidates voted for councilor. In the absence of evidence, and the record does not show, that the writing of the names of Juliano and Uy in capital letters slightly bigger than the capital letters with which the names of the councilors were written was deliberately done to identify this ballot, this ballot cannot be considered marked. This is a valid ballot for the protestant. (*Tajanlañgit v. Cazeñas*, G. R. No. L-18894, June 30, 1962; *Trajano v. Inciso*, supra; *Silverio v. Castro*, G. R. No. L-23827, Feb. 28, 1967).

Exhibit 9-LLL. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because in the space for mayor there is written the name "Teodoro" and followed by the surname "Juliano" in capital letters. We consider that the writing of the word Juliano in capital letters in this ballot simply indicates the wish of the voter to emphasize his vote for Juliano. The use of two or more kinds of writing on the ballot, in the absence of evidence that the voter had deliberately done this to identify his ballot, and the record does not show such evidence, does not invalidate the ballot. This is a valid ballot for the protestant. (Rule 18, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra; *Silverio v. Castro*, supra).

Exhibit 10-KKKKKK. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the fourth line for senator there is written the name "Pimentel" followed by the sign "?". According to the lower court "Pimentel" is the surname of a prominent doctor in Cotabato City who was not a candidate for senator. In the absence of evidence that the writing of the word "Pimentel" on this ballot was deliberately done to identify this ballot, We consider that the vote for Pimentel in this ballot is simply a stray vote. We have examined closely the sign of "?" following the word "Pimentel" and we are persuaded that the sign was placed there by a person other than the voter who prepared this ballot, to indicate that the voting for Pimentel in the ballot was questionable. The light pressure that the "?" mark is written is very indicative that this was not written by the person who wrote the names of the candidates on this ballot. A mark placed on the ballot by a person other than the voter himself does not invalidate the ballot. This is a valid ballot for the protestant (*Tajanlañgit v. Cazeñas*, supra; *Protacio v. De Leon*, G. R. No.L-21135, November 8, 1963).

Exhibit 10-MMMMMM. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as we have adverted to, the protestee included this ballot in Error No. 44 in his appeal to the Court of Appeals (p. 52, protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 13, 16 and 17, CA decision; pp. 44, 47 and 48, rollo). We note, however, that while the lower court had deducted this ballot from the votes of the protestant, the Court of Appeals did not count this ballot as one more vote for the protestant.

The lower court declared this ballot marked because in the space for mayor the name "Juliano" was written twice, and because the last two names voted for councilor were written in ink. The ruling of the lower court on this ballot is erroneous. The writing of the name "Juliano" twice in the space for mayor on this ballot would indicate only the enthusiasm of the voter in voting for Juliano. There is no evidence that the writing of the name Juliano twice in the space for Mayor in this ballot was deliberately done in order to identify this ballot (*Sarmiento v. Quemado*, G. R. No.L-18027, June 29, 1962). The fact that the last two names voted for councilor on this ballot were written in ink does not invalidate this ballot (Rule 10, Sec. 149, Revised Election Code). This is a valid ballot for the protestant.

Exhibit 12-AAA. This ballot was declared invalid by the lower court for being a marked ballot. This ballot was included in the motion for reconsideration filed by the protestant in the Court of Appeals, but which was not ruled upon. However, we cannot find this particular ballot among the ballots that were forwarded to this Court in the present appeal. Inasmuch as this ballot cannot be found the ruling of the trial court shall be sustained (*Coscolluela v. Gaston*, 63 Phil. 41, 48).

Exhibit 13-BBBB. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as we have adverted to, the protestee included this ballot in error No. 51 in his appeal to the Court of Appeals (p. 54, protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 14, 16, and 17, CA decision; pp. 45, 47 and 48, rollo). We note, however, that while the lower court had deducted this ballot from the protestant, the Court of Appeals did not count this ballot as one more vote for the protestant.

The lower court declared this ballot as marked for the reason that in the space for mayor appear written the words "Dondoy Juliano", and the word "Dondoy" is written in a bigger size (not capital letters) than "Juliano". The word "Dondoy" is the nickname of candidate Teodoro Juliano. The writing of the word "Dondoy" in a size slightly bigger than the word "Juliano" cannot be considered a distinguishing mark on this ballot in the absence of evidence that this was done deliberately in order to identify the ballot (Rule 13, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra). This is a valid ballot for the protestant.

Exhibit 14-R. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because the names on the ballot are written in crayola, and that on the fourth line for senator the word "Mañara" is written and followed by a mark "X" written in lead pencil. We find that the word "Mañara" is the surname of one of the candidates for councilor, and so the vote for Mañara for senator should be considered simply a stray vote. The mark "X" after "Mañara" is written with a lead pencil. Upon a close examination of this ballot we are persuaded that the mark "X" on this ballot could not have been written by the voter who prepared this ballot. Evidently the mark "X" was placed by some other person to indicate that the writing of the name Mañara in the space for senator was not correct because Mañara was a candidate for councilor. All the names in this ballot are written in crayola and it is improbable that the voter who prepared this ballot would get a lead pencil just to put the mark "X" after the name of Mañara. A mark placed on the ballot by a person other than the voter who prepared the ballot does not invalidate the ballot. The use of crayola in writing on the ballot does not invalidate the ballot (Rule 10, Section 149, Revised Election Code; and *Tajanlañgit v. Cazeñas*, supra).

Exhibit 14-QQQ. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as we have adverted to, the protestee included this ballot in Error 52 in his appeal to the Court of Appeals (p. 54, protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 14, 16 and 17, CA decision; pp. 45, 47 and 48, rollo). We note, however, that while the lower court had deducted this ballot from the votes of the protestant the Court of Appeals did not count this ballot as one more vote for the protestant.

The lower court declared this ballot marked for the reason that on the eighth line for senator there is the word "Ganzo" which was crossed out and the word "Lim" is written, and between the word "Ganzo" that was crossed out and the word "Lim" there is an "X". Upon a close examination of this ballot, We find that the "X" is written heavily, in contrast to the light way that the names on this ballot are written. Our conclusion is that this "X" was not placed by the voter who prepared this ballot. Evidently, this "X" was placed by some other person, not the voter who prepared this ballot, to indicate that "Lim" was voted for the second time for senator, because the word "Lim" also appears on the fourth line for senator. This is another case where a mark placed on the ballot by a person other than the voter who prepared the ballot does not invalidate the ballot (*Tajanlañgit v. Cazeñas*, supra; *Katigbak v. Mendoza*, G. R. No. L-24477, February 28, 1967). This ballot should be counted as one more vote for the protestant.

Exhibit 15-FFF. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked, because from the third to the eighth line for senators the voter wrote two almost parallel lines downward, and in the space for councilors the voter also placed two almost parallel lines downward from the fourth to the eighth line for councilors. It will be noted that on the first and second lines for senators the names Diokno and Roxas are written, respectively.

It is very apparent that when the voter placed those two parallel lines from line 3 to line 8 for senators, he indicated that he was desisting from voting for the other candidates for senators. Like-wise, in the spaces for councilors, the voter wrote the names of candidates for councilor on the first, second and third lines, and then he wrote the two almost parallel lines from line four downward, indicating that he was not voting for other candidates for councilor. This is a valid ballot for the protestant (Rule 17, Sec. 149, Revised Election Code; *Bisnar v. Lapasa*, G. R. No. L-24468, February 28, 1967; *Katigbak v. Mendoza*, supra).

Exhibit 16-JJ. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as we have adverted to, the protestee has included this ballot in Error No. 54 in his appeal to the Court of Appeals (p. 55 protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 14, 16, 17, CA decision; pp. 45, 47 and 48, rollo). The lower court declared

this ballot as marked because the voter wrote the name "Mañara" three times in the spaces for councilor - the first, fourth and seventh lines; and likewise the voter wrote the name "Monte de Ramos" three times, on the second, sixth and eighth lines for councilors. We agree with the lower court that this ballot is a marked ballot (*Gutierrez v. Aquino*, G. R. No. L-14352, February 28, 1959; *Katigbak v. Mendoza*, supra). We are surprised that the Court of Appeals did not take note of the fact that this ballot had been rejected by the lower court and that it is really a marked ballot.

Exhibit 19-EE. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because the names of Diokno and Puyat are written on the second and third lines for councilor, mixed with the names of three other candidates for councilor written on the first, fourth and fifth lines for councilors. On this ballot no one is voted for senator. There is no name written in Arabic on this ballot, as stated by the lower court. The mere fact that the names "Diokno" and "Puyat" are written on the lines for councilor does not invalidate this ballot. This is a valid ballot for the protestant (Rule 13, Sec. 149, Revised Election Code; *Gadon v. Gadon*, G. R. No. L-20015, November 30, 1963; *Silverio v. Castro*, supra; *Katigbak v. Mendoza*, supra).

Exhibit 19-P. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as we have adverted to, the protestee included this ballot in Error No. 62 in his appeal to the Court of Appeals (p. 58, protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 14, 16 and 17, CA decision; pp. 45, 47 and 48, rollo). We note, however, that while the lower court had deducted this ballot from the votes of the protestant the Court of Appeals did not count this ballot as one more vote for the protestant.

The lower court declared this ballot marked because in the space for mayor the name "Dondoy" was written in a diagonal position before the name "Juliano" that is written in a horizontal position. We do not consider that the way the word "Dondoy" is written on this ballot constitutes a distinguishing mark. Evidently, what happened was that the voter first wrote the name "Juliano", but wishing to write also the nickname "Dondoy" before the surname "Juliano" and finding that the space is already limited he had to write the word "Dondoy" diagonally upward in order not to overlap with the word "Juliano" that was already written. No ballot shall be rejected unless clear and sufficient reason justify that action, and doubt must be resolved in favor of the legality of the ballot. This is a valid ballot for the protestant (*Lloren v. Court of Appeals*, G. R. No. L-25907, January 25, 1967).

Exhibit 19-HHHH. The Court of Appeals did not rule on this ballot. The lower court declared this ballot as marked allegedly because the voter wrote "Juliano Juliano Juliano" in the space for mayor. We notice, however, from the way the names on this ballot are written that the voter is a poor writer and almost illiterate. Apparently what happened is that the voter first attempted to write the word "Jalano!" at the upper part of the space for mayor, and feeling that he had not written the name of his candidate correctly he tried to write again and succeeded in writing the word which may be read "Jalana" in a very poor way. So he attempted to write again, and finally he wrote the word that may be read "Julaano". The intention of the voter to vote for protestant "Juliano" is very apparent in his efforts to write the name of the candidate three times, all misspelled and poorly written. We cannot believe that a poor and almost illiterate writer who prepared this ballot could have thought of devising a mark on his ballot by writing the name "Juliano" three times. This is a case where we resolve the doubt in favor of the validity of the ballot so as not to disenfranchise a voter who apparently is a very poor writer but who was able to manifest his intention regarding the candidate whom he wanted to vote (*Ferrer v. Alban*, G. R. No. L-12083, July 31, 1957; *Amurao v. Calangi*, G. R. No. L-12631, August 22, 1958; *Lloren v. Court of Appeals*, supra).

Exhibit 21-DDD. The Court of Appeals did not rule on this ballot. The lower court declared this ballot as marked because the names of the candidates for senators, for mayor and for vice mayor were written all in capital letters,

while the names of the candidates voted for councilors are written in ordinary script. The use of two kinds of writing on this ballot does not invalidate this ballot. The name "Teodoro Juliano" is clearly written on this ballot, and this is a good ballot for the protestant (Rule 18, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra; *Trajano v. Inciso*, G. R. No. L-23895, February 16, 1967).

Exhibit 23-QQQ. The Court of Appeals did not rule on this ballot. The lower court declared this ballot as marked because on the eighth line for councilors there is written the word "Ramor" followed by small letter "x" and the capital letters "M" and "L". Evidently, the capital letters "M" and "L" are initials of the person voted for councilor and the letter "x" which is written in small size is intended to separate these initials from the word that was written. We consider the placing of the small letter "x" between the word "Ramor" and the initials as simply an innocent writing on the part of the voter and not intended to mark this ballot. In the absence of evidence to show that the placing of this small letter "x" was deliberately done in order to identify this ballot, the doubt must be resolved in favor of the validity of this ballot. This is a valid ballot for the protestant (Rule 18, Section 149, Revised Election Code; *Lloren v. Court of Appeals*, supra).

Exhibit 23-Y. This is a ballot that was declared invalid by the lower court, and was necessarily deducted from the votes of the protestant. However, as we have adverted to, the protestee included this ballot in Error No. 69 in his appeal to the Court of Appeals (p. 61 protestee-appellant's brief in the CA). In its decision the Court of Appeals declared this ballot as marked, thereby affirming the ruling of the lower court (p. 23 CA decision; p. 54, rollo).

The lower court declared this ballot marked because in the third space for councilor are written the words "Siga" and "stray", and on the fourth line for councilor there are written the words "tecla" and "stray". The lower court, as well as the Court of Appeals, considered the word "stray" after the words "Siga" and "tecla" as identifying marks. Upon scrutiny of this ballot, however, We are persuaded that the word "stray" was written by a hand different from the hand that wrote "Siga" and "tecla" and all the other names written on this ballot. We have noted that the person who wrote the words "Siga" and "tecla", as well as the other names on this ballot, is a poor writer, whereas the word "stray" is written in a manner that indicates facility in writing. While the words "Siga" and "tecla", as well as the other names written on the ballot, are written with heavy pressure, characteristic way of writing by a poor writer, the two words "stray" are written lightly. From what appears on the face of this ballot, We believe that the words "stray" had been written by a person other than the voter who prepared this ballot, to indicate that the votes for "Siga" and for "tecla" in the spaces for councilor are stray votes. One of the candidates for senator in the elections on November 12, 1963 was Tecla Ziga. Both the lower court and the Court of Appeals erred in declaring this ballot as marked. A mark placed on the ballot by a person other than the voter who prepared the ballot does not invalidate the ballot (*Tajanlañgit v. Cazañas*, supra).

The protestant claimed this ballot in his brief before the Court of Appeals (p. 23, protestant-appellee's brief in the CA). This ballot should be counted as one additional vote for protestant.

Exhibit 23-RRRR. This ballot was declared marked by the lower court. This ballot was included in the motion for reconsideration filed by the protestant in the Court of Appeals, but which was not ruled upon. However, We cannot find this particular ballot among the ballots that were forwarded to this Court in the present appeal. Inasmuch as this ballot can not be found, the ruling of the trial court shall be sustained (*Coscolluela v. Gaston*, 63 Phil., 648).

Exhibit 24-N. This ballot was not ruled upon by the Court of Appeals. The lower court declared this ballot marked for the reason that in the spaces for mayor, vice mayor, and on the first and second lines for councilor the names of the candidates voted for are written in big capital letters, while the names of the candidates voted for senators

are written in ordinary script. The use of these two forms of writing in the ballot, in the absence of evidence that this was deliberately done in order to identify the ballot, will not invalidate the ballot (Rule 18, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra; *Trajano v. Inciso*, supra).

Exhibit 24-YY. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because the names of the candidates voted for therein are written in block capital letters, and that some of the names are written in blue crayola. From what appears on the face of this ballot it is easy to conclude that the voter used an ordinary pencil in writing the names of the candidates from the first line for senator down to the line for vice mayor. But in writing the name "CARAG", which is the name voted for vice mayor, the voter could use his pencil only up to the letter "A" when he wrote the surname "CARAG" and then the lead of his pencil must have broken, or must have been used up, and so he had to use a blue pencil in writing the letter "g" to complete the name "CARAG". He had to use that same blue pencil in writing the names of "Bueno" and "Rabago" who were the only two candidates for councilor whom he voted. The use of blue pencil in writing on the ballot does not invalidate the ballot, in the absence of evidence to show that this was done in order to identify the ballot. Neither does the use of block letter form of writing invalidate the ballot in the absence of evidence that that form of writing was deliberately resorted to in order to identify the ballot (Rules 10 and 18, Sec. 149, Revised Election Code). Inasmuch as the word "Julino" is clearly written in the space for mayor, which is idem sonans to the name Juliano, this ballot is a valid one for the protestant.

Exhibit 24-MMMM. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the space for mayor the voter wrote a very heavy pencil mark. Upon examination of this ballot We do not find the heavy pencil mark referred to by the lower court. What We find is that in the space for mayor a word which apparently was a name of a candidate was crossed out by the voter in such a way that that word first written cannot be deciphered at all. Then the voter wrote the word "Juliano" in the same space. Apparently what happened here is that the voter had changed his mind so he crossed out heavily the first name that he had written and wrote the name of the protestant. This is a good ballot for the protestant (Rule 4, Sec. 149, Revised Election Code; *Villa-vert v. Lim*, 62 Phil., 178, 196).

Exhibit 25-V. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the first line for senator the voter wrote the word "Climaco" in ink, then inclosed it in parenthesis, and again wrote "Cesar Climaco" on the same line in pencil. The rest of the names written on this ballot are in pencil. We do not consider that the writing of the name "Climaco" in ink on this ballot is a distinguishing mark. The law allows the use of a pen or a pencil in preparing a ballot (Rule 10, Sec. 149, Revised Election Code). Apparently the voter who prepared this ballot was a very rabid admirer of Cesar Climaco who was a candidate for senator and he wanted to emphasize his vote for this particular candidate. There is no evidence that the writing of the name Climaco on this ballot in ink was deliberately done in order to identify the ballot. We have held that the writing of the name of a candidate twice on the same line does not invalidate the ballot (*Sarmiento v. Quemado*, supra).

Exhibit 26-P. This is a ballot that was declared invalid by the lower court and was necessarily deducted from the votes of the protestant. However, as We have adverted to, the protestee included this ballot in Error No. 72 in his appeal to the Court of Appeals (p. 62 protestee-appellant's brief in the CA). In its decision the Court of Appeals did not rule this ballot as invalid (pp. 14, 16 and 17 CA decision; pp. 45, 47 and 48, rollo). We note, however, that while the lower court had deducted this ballot from the votes of the protestant, the Court of Appeals did not credit this ballot as one more vote for the protestant.

The lower court declared this ballot marked for the reason that on the eighth space for senator the voter wrote a so-called glaring mark before writing the name "Peralta". The lower court consider this "unnecessary blotting in the face of the ballot" as a distinguishing mark. Upon Our examination of this ballot We find that what really

happened was that the voter had written a name on the eighth line for senator and then he crossed it out in such a way that what he had written could not be discerned, and then wrote the name "Peralta". We consider this simply as a change of mind on the part of the voter, such that he crossed out the name that he had already written and then wrote another name. The situation in this ballot is similar to that of Exhibit 24-MMMM (see above) which we have declared valid. This is a valid ballot for the protestant (Rule 4, Sec. 149, Revised Election Code; Villavert v. Lim, supra).

Exhibit 26-SSS. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the fifth line for senator and in the space for vice mayor the voter wrote names which he crossed out heavily. We do not consider the crossing out of these names as a distinguishing mark. What happened here is that the voter could not write well the name of the candidate that he wanted to vote for, and so he simply crossed the letters that he had already written. Judging from the way the names are written on this ballot it is very apparent that the voter is a very poor writer. In fact he was able to write only four names on the lines for senator and only one name on the lines for councilor. This is a valid ballot for the protestant (Villavert v. Lim, supra).

Exhibit 26-III. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked for the reason that the voter wrote the names Balao, Climaco, Cuenco, De la Rosa, Padilla, Roxas and Ziga, on the lines for senator and then wrote diagonally across the lines for senator the words "Straight Liberal Party"; and that in the space for councilors the voter wrote the names Rabago, Pabiona, Camello, Tanghal, Bueno, Camunay and Javier, and then across the lines for councilors the words "Straight Citizens League for Good Government". We do not consider that the writing of the words "Straight Liberal Party" and "Straight Citizens League for Good Government" constitutes distinguishing marks as would invalidate this ballot. Apparently, when the voter wrote the word "Straight Liberal Party" he meant to emphasize that he was voting for all the candidates of the Liberal Party, as in fact he did, because the record shows that in the elections of November 12, 1963 the candidates of the Liberal Party for senator were Balao, Climaco, Cuenco, De la Rosa, Liwag, Padilla, Roxas and Ziga. Likewise, when the voter wrote the words "Straight Citizens League for Good Government" across the lines for councilor he meant to emphasize that he was voting for the candidates of the "Citizens League for Good Government." The record shows that the protestant Teodoro Juliano was the candidate for Mayor of the "Citizens League for Good Government" of Cotabato City, and he had a complete line-up of candidates for vice mayor and councilors. There is no evidence that the writing of these words on this ballot was deliberately done in order to identify this ballot. No ballot shall be rejected as marked unless clear and sufficient reasons justify that action (Amurao v. Calangi, supra; Lloren v. Court of Appeals, supra). This is a valid ballot for the protestant.

Exhibit 27-XXXX. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on lines five, six, seven and eight for senators, on the space for vice-mayor, and on lines five, six, seven and eight for councilors the voter placed heavy pencil shadings. The lower court considered these pencil shadings as identification marks on this ballot. Upon our examination of this ballot we find that the pencil shadings are found on the lines where no names of candidates were written on. The shadings are light. We consider these pencil shadings as an indication on the part of the voter that he was not voting for any other candidate aside from those whose names he had already written on the ballot. These pencil shadings are similar to the circles, crosses or lines put on the spaces on which the voter has not voted to indicate his desistance from voting (Rule 17, Sec. 149, Revised Election Code). This is a valid ballot for the protestant.

Exhibit 29-Z. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because the voter wrote the names "Puyat" and "De la Rosa" on the first and second lines for senators and then drew a crooked (snake-like) line from line 3 down to line 6 for senators, and on the seventh and eighth lines for councilors the voter also drew the same crooked line. We consider the writing of this crooked line from lines 3 to

8 for senators as an indication on the part of the voter to desist from voting for other candidates for senator. Likewise, when the voter wrote a similar line from lines 7 to 8 on the lines for councilors he indicated his desistance from voting for other candidates for councilor. For the same reason that We declared the preceding ballot (Exhibit 27-XXXX) valid, We also declare this ballot valid for the protestant.

Exhibit 29-VVV. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because in the space for mayor the voter wrote "T. D. Juliano Juliano". The lower court says that it cannot see any reason why the voter would write the name Juliano twice except to identify the ballot. We have closely examined this ballot and We have noted that the first word "Juliano" was not well written because there are overlapping of letters. Apparently, the voter was not satisfied with the way he wrote the first "Juliano" and so he wrote again the same word in a clearer way. Judging from the way the names are written on this ballot, it is very apparent that the voter is a poor writer. The writing of the name of a candidate twice on the same line on the ballot, in the absence of evidence that this was deliberately done to invalidate the ballot, does not invalidate the ballot (*Sarmiento v. Quemado*, supra).

Exhibit 30-N. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked for the reason that on the third, fourth, fifth, sixth and seventh lines for councilors the voter wrote many crosses which identify the ballot. Upon Our examination of this ballot we find that what the voter did on lines 3 and 4 for councilors was to cross out the names that he wrote and again wrote names of candidates that he voted for on the same lines; while on line six the voter crossed out the name "E. Tanghal", presumably because the same name is also written on the seventh line for councilor. There is no crossing out of any word on line five. The crossing out by the voter of the names he had written is a permissible act when he wants to correct himself (Rule 4, Sec. 149, Revised Election Code; *Villavert v. Lim*, supra). This is a valid ballot for the protestant.

Exhibit 31-BBB. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because from the fourth to the eighth lines for senator the voter drew horizontal lines, although not very straight ones (wavy lines). The lower court considered these lines as identifying marks of this ballot. Upon Our examination of this ballot it is very apparent to Us that these horizontal lines were placed by the voter simply to indicate his desistance from voting for other candidates for senator. In the same way that We have declared valid the ballots, Exhibits 27-XXXX and 29-Z (see ante), We declare this ballot as valid for the protestant (Rule 17, Section 149, Revised Election Code).

Exhibit 33-D. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because the names voted for senator are in big capital letters, while the names of the candidates voted for mayor, vice mayor and councilors are written in ordinary script. The use of these two forms of writing in this ballot does not invalidate this ballot. This is a valid ballot for the protestant (Rule 18, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra; *Silverio v. Castro*, supra).

Exhibit 33-TT. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because in the spaces for senators there are heavy pencil crossing out of names such that the crossing out of these names constitute a distinguishing mark. But the lower court itself says "the voter wrote the names for councilors and finding his mistake, the voter wrote very heavy crosses on the names of the councilors . . . on the same lines the voter tried to write the names of the senators" (p. 1240, printed decision of the lower court). It appears to Us that the lower court itself has given the reason why this ballot should not be considered invalid. Indeed, what the voter did on this ballot was simply to cross out the names of the persons who were candidates for councilor, which he had written on the lines for senator. Inasmuch as the protestant is properly voted for mayor in this ballot, this ballot should be counted valid for the protestant (Rule 4, Sec. 149, Revised Election Code; *Villavert v. Lim*, supra).

Exhibit 37-G. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because from the second to the eighth line for senators the voter placed two "x" marks apart from each other (x x), and from the fourth to the eighth line for councilors the voter placed three "x" marks apart from each other (x x x). We consider the placing of these "x" marks simply as an indication on the part of the voter that he was desisting from voting for other candidates. In the same way that We declared valid the ballots, Exhibits 27-XXXX, 29-Z, and 31-BBB (see ante), We declare this ballot valid for the pro-testant (Rule 17, Sec. 149, Revised Election Code).

Exhibit 37-HH. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked. We agree with the lower court that this ballot is marked because on all the eight lines for senators the word "Ziga" is written. In the same way that We had declared ballot Exhibit 16-JJ (see ante) as in-valid, this ballot should not be counted for the pro-testant (*Gutierrez v. Aquino*, G. R. No. L-14252, February 28, 1959; *Katigbak v. Mendoza*, *supra*).

Exhibit 37-QQQ. This is a ballot that was de-clared invalid by the lower court, and was necessarily deducted from the votes of the protestant. However, as We have adverted to, the protestee included this bal-lot in Error No. 97 in his appeal to the Court of Ap-peals (p. 71, protestee-appellant's brief in the CA). In declaring this ballot as marked the lower court said:

"Exhibit 37-QQQQ is a marked ballot. On the space for mayor, the voter wrote Dondoy Juliano and Udtog Matalam and on the space for vice mayor, the voter wrote Guerrero and Limbang Ganong. The voter struck out Udtog Matalam, Guerrero and Limbang Ga-nong. The writing of Udtog Matalam, Guerrero and Limbang Ganong and their erasures marked the ballot very distinctively. Therefore, the vote 'Dondoy Juliano' written on the space for mayor shall not be counted in fa-vor of the protestant, Teodoro Juliano" (p. 1334, printed decision of the lower court).

In his 97th assignment of error the protestee alleges: "The lower court erred in ruling that Exh. 37--QQQQ is a valid vote for Juliano." In discussing this error, the protestee argues:

"In this particular ballot the words 'Udtog Matalam', 'Guerrero' and 'Dondoy' ap-pear on the space for Mayor. Pursuant to Rule 11 of Section 149 of the Revised Elect-ion Code this ballot is invalid" (p. 71, pro-testee-appellant's brief in the CA).

In ruling on this Error 97, involving ballot Exhi-bit 37-QQQQ, the Court of Appeals said:

"CONSIDERING: As to Error 97:

'XCVII - THE LOWER COURT ERRED IN RULING THAT EXHIBIT 37-QQQQ IS A VALID VOTE FOR JULIANO.'

that in the space for 'Mayor' are written the words 'Dondoy Juliano' and 'Udtog Ma-talam' but the latter words were stricken out leaving only 'Dondoy Juliano', in the absence of persuasive indication that that was used as a distinguishing mark, the correct interpretation should be that the voter had intended to vote finally for the protestant; and had corrected himself before finishing his ballot; this is valid, Par. 17, Section 149; Error 97 should be overruled; the result still will so far be 3,667 votes for protestee and 3,924 votes for protestant." (p. 27, decision of CA; p. 58, rollo)

We agree with the ruling of the Court of Appeals that this ballot, Exhibit 37-QQQQ, is a valid ballot. We have noted, however, that the Court of Appeals did not credit the protestant with this ballot as one ad-ditional vote for him. As We have pointed out, the lower court had rejected this ballot, and so it did not count this ballot for the protestant. Why the pro-testee included this ballot in his assignment of er-ror in his appeal to the Court of Appeals, is something We do not understand. Nevertheless, the protestant claimed this ballot as a valid vote for

him (p. 33, protestant-appellee's brief in the CA).

This ballot should be counted as one additional vote for the protestant.

Exhibit 37-TTTTT. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the space for mayor the voter wrote "Juliano Juliano". The lower court considered the writing of the word Juliano twice as done for the purpose of placing a distinguishing mark on this ballot. In the same way that We had considered valid the ballot, Exhibit 29-VVV (see ante), this ballot must be considered valid for the protestant (*Sarmiento v. Quemado*, supra).

Exhibit 39-Q. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked for the reason that in the space for mayor there is a heavy crossing out of a name, and this heavy crossing out of a name serves as an identification mark of this ballot. We have examined this ballot and We find that what appears in the space for mayor is that the voter had written a name and crossed it out and over it he wrote the name "Juliano". Evidently the voter had realized his mistake and so he crossed out the name that he had previously written. This is a valid ballot for the protestant (*Villavert v. Lim*, supra; Rule 4, Sec. 149, Revised Election Code).

Exhibit 10-KK. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because on the seventh line for senator the word "Camello" is written and then a little towards the right there appears a "?" sign. This ballot cannot be considered a marked ballot. We have examined this ballot closely, and We are persuaded that the "?" sign is written by a hand and pencil different from the hand and pencil that wrote the word "Camello" and all the other names on this ballot. Evidently some other person, not the voter who prepared this ballot, had placed this "?" sign, to indicate that Camello is wrongly voted. The record shows that Camello was a candidate for councilor. The law requires that for the ballot to be considered marked the mark must be placed by the voter himself. We are convinced that the mark "?" on this ballot is not placed by the person who prepared this ballot. In the same way that We have considered valid the ballots, Exhibits 10-KKKKKK, 14-R, 14-QQQ, and 23-Y, We also declare this ballot as valid for the protestant (*Tajanlañgit v. Cazeñas*, supra).

Exhibit 22-GGGG. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked for the reason that on the first line for senator the name "Juliano" is written and in the space for mayor the name "Juliano" also is written. It is the stand of the lower court that the writing of the word "Juliano" in the space for senator constitutes an identification mark. We do not agree. In the absence of evidence, and there is none in the record, that the writing of "Juliano" on the first line for senator was intended to identify this ballot, this ballot should be considered valid. The vote for Juliano for senator should only be considered a stray vote (Rule 3, Sec. 149, Revised Election Code; *Katigbak v. Mendoza*, supra). This is a valid ballot for the protestant.

Exhibit 13-FFFF. The Court of Appeals did not rule on this ballot. The lower court declared this ballot marked because in the space for mayor the name "D. Juliano" is written in big script letters, and also in the space for vice-mayor the name "R. Carag" is written in big script letters. We have already ruled that the writing of a name of a candidate in big letters simply indicates that the voter tried to emphasize his vote for the candidate that he had thus voted. In the absence of evidence, and the record does not show any, that this manner of writing the name of a candidate was deliberately done in order to identify the ballot, this ballot should be considered valid, and should be counted for the protestant (Rule 18, Sec. 149, Revised Election Code; *Tajanlañgit v. Cazeñas*, supra; *Silverio v. Castro*, supra).

As a result of Our appreciation of the ballots that are the subject of the second error assigned by the protestant, We find that the protestant must be credited with thirty-six (36) more valid ballots, or with thirty-six (36) more votes.

3. In the third error assigned by the protestant, in his appeal before this Court, he alleges that the Court of Appeals erred in refusing to consider and rule that three ballots, cast in his favor, are valid ballots, because the word written in the space for mayor in each of those ballots is idem sonans with the protestant's surname "Juliano". The three ballots are marked as Exhibits 21-MM, 35-P, and 10-HHHHH.

These three ballots were claimed by the protest-ant in his motion for reconsideration in the Court of Appeals, but the Court of Appeals refused to consider, and rule on, these ballots. We have noted, however, that of these three ballots, two - Exhibits 21-MM and 10-HHHHH - were claimed for the first time by the pro-testant in his motion for reconsideration in the Court of Appeals, while the other ballot, Exhibit 35-P, had previously been passed upon by the Court of Appeals because that was included in the 92nd error assigned by the protestee in his appeal before the Court of Appeals. Because these three ballots are before Us now, for the same reason that We have ruled on the forty ballots mentioned in the second error assigned by the protestant, We shall proceed to rule on these ballots.

Exhibit 21-MM. The Court of Appeals did not rule on this ballot. The lower court declared that what is written in the space for mayor on this ballot is illegible and does not sufficiently identify the candidate voted for. We have examined this ballot very closely, and We find that what is written on this ballot is "Julalnon" which, when read, is idem sonans with the name Juliano. We note that the voter who prepared this ballot is a poor writer, judging from the way he wrote the other names on this ballot. But it appears to Us that the intention of the voter to vote for Ju-liano is very clear. This is a valid ballot for the protestant.

Exhibit 35-P. This is a ballot that was de-clared invalid by the lower court, and was necessarily deducted from the votes of the protestant. But, as We have adverted to, the protestee included this ballot in Error No. 92 in his appeal to the Court of Appeals (p. 69, protestee-appellant's brief in the CA). In its decision the Court of Appeals declared that this ballot was already rejected by the lower court and it affirmed the ruling of the lower court, that the word which was written in the space for mayor in this bal-lot was not sufficient to identify the person voted for (p. 26 CA decision; p. 57 rollo). We find that what appears written in the space for mayor in this ballot is the word "honano" which, when read, is idem sonans with the name Juliano. We observe that the voter who wrote this ballot is a very poor writer, but We believe that in writing the word "honano" he had shown his intention to vote for Juliano. This is a valid ballot for the protestant.

Exhibit 10-HHHHH. The Court of Appeals did not rule on this ballot. The lower court declared that what appears written on this ballot may be read "Hoyenon", which does not identify the name of the candi-date voted for. The word that appears in the space for mayor in this ballot is written in Arabic. We agree with the lower court that this ballot cannot be counted for the protestant.

As a result of Our appreciation of the ballots that are the subject of the third error assigned by the protestant, We find that the protestant must be credited with two more valid ballots, or with two (2) more votes.

4. In the fourth error assigned by the protestant, in his appeal before this Court, he alleges that the Court of Appeals erred in ruling that four ballots, marked as Exhibits 26-II, 33-ZZZ, 34-CC, and 36-CC, where the protestant is voted for mayor, are not valid ballots for the protestant.

These four ballots were all rejected by the lower court, but, surprisingly, the protestee included them all in his appeal before the Court of Appeals (Errors Nos. 73, 87, 89, and 95, respectively found on pages 62, 67, 68, and 70, of the protestee-appellant's brief in the CA). The protestant in turn claimed all these four ballots, in his brief before the Court of Appeals, as valid ballots for him (pp. 24, 29, 30 and 32, protestant-appellee's brief in the CA).

The Court of Appeals, in its decision, declared that all these four ballots have already been rejected by the lower

court, and it affirmed the ruling of the lower court that they are all marked ballots. The Court of Appeals likewise overruled the claim of the protestant on these ballots (Decision of the CA, pp. 23, 25, and 26; pp. 54, 56, 57, rollo).

The protestant included these four ballots in his motion for reconsideration, and the Court of Appeals, in its resolution denying the motion for reconsideration, maintained its ruling that these four ballots are not valid ballots.

We believe that both the lower court and the Court of Appeals erred in declaring these four ballots invalid for being marked, upon the ground that in Exhibit 26-II the word "Straight Nacionalista" is written across the lines for senators; that in Exhibit 33-ZZZ the word "Straight NP" is written across the lines for senators; that in Exhibit 34-CC the word "Nacionalista Party" is written over the lines for senators; and in Exhibit 36-CC the word "Straight Nacionalista" is written on the second line for senator. These four ballots are valid ballots for the protestant. The words "Straight Nacionalista", "Straight NP", or "Nacionalista Party", as the case may be, written on these ballots, are not distinguishing marks that would invalidate these ballots. No evidence had been presented to show that the writing of these words on the ballots in question was deliberately done in order to identify these ballots. In the case of *Gutierrez v. Aquino*, G. R. No. L-14252, February 28, 1959, this Court made the following rulings on ballots more or less similarly assailed as the four ballots now in question:

"Ballot P65-G6. In the space for Mayor, protestee was voted; and in the spaces for Members of the Provincial Board, the words 'Straight Nacionalista Party', and in spaces 1 to 7 for Councilors the words 'Straight Nacionalista except Tayao' were written. We believe that these words should not be considered as impertinent or irrelevant sufficient to nullify these ballots. The writing of these words, which are traces of the repealed block-voting system, may be expected for some time. In the absence of evidence aliunde that these words were intended for identification of the ballot or voter, this ballot should be counted in favor of protestee. (Underscore supplied)

x x x x

"Ballot P21-A5. In the spaces for Councilors, the word 'Nacionalista Paterio Bloc' was written, and in the line for Vice-Mayor the name 'Norma Vales', a non-candidate, was also written. The alleged defect is similar to what appears in ballot P74-A1, above, with regard to the words 'Nacionalista Paterio Bloc'. The name 'Norma Vales' should only be considered as a stray vote under Rule 13, Section 149 of the Revised Election Code. This ballot should, therefore, be counted for protestant, who was voted for the office of mayor." (Underscore supplied)

It appearing that the protestant is properly voted in these four ballots in question, these ballots should be considered valid ballots for the protestant.

We find, however, that in the decision of the Court of Appeals (pp. 9, 10 and 11) said court declared invalid the ballot, Exhibit VVV-1, where the protestee is voted for mayor, upon the ground that it contained the words "All LP senators". This ballot is among those ballots that have been forwarded to this Court, and We have examined it. We find that the phrase "All LP senators" is written on the first line for senators, and no candidate for senator is voted. The protestee is properly voted in the space for mayor. In consonance with Our ruling that the four ballots, claimed by the protestant, in this fourth error he assigned, are valid, We declare that this ballot, Exhibit VVV-1, is also a valid ballot for the protestee.

It results that in this fourth error assigned by the protestant, the protestant should be credited with four (4) additional votes, while the protestee should be credited with one (1) additional vote.

5. In the fifth error assigned by the protestant, in his appeal before this Court, he alleges that the Court of Appeals

erred in validating twenty-three ballots, cast in favor of the protestee, that are written partly in Arabic script and partly in Romanized script, all of which were previously rejected by the trial court and not counted in favor of the protestee. In assailing the validity of these ballots the protestant invokes the provisions of Rule 8, Section 149 of the Revised Election Code, which provides as follows:

"8. Ballots wholly written in Arabic in localities where it is of general use are valid. To read them the board may employ any person who upon oath can do so impartially."

It is the contention of the protestant that under that rule if the ballot is not wholly written in Arabic the ballot is not valid.

We have examined these 23 ballots and We find that each one of them is really partly written in Arabic script and partly written in the Romanized script. These ballots are properly identified, but for the purposes of this decision We do not consider it necessary to mention them by their exhibit marks.

We cannot sustain the contention of the protestant in assailing the validity of these ballots. The Court takes judicial notice that in the province of Cotabato a large segment of the population are Muslims who speak and write the Arabic language, and that the 23 ballots in question were cast in precincts in Cotabato City inhabited by Muslims. With the spread of instruction in the English language through the schools, it is to be expected that Muslim inhabitants have learned to speak and write the English language. It is not surprising, therefore, that those Muslims who knew how to write in the Romanized script way would write their ideas either in the Arabic way or in the Romanized way, or mixed Arabic and Roman way. In the absence of evidence, and the record does not show any, that the mixed writing of names in each of the 23 ballots in question - some in Arabic and some in Roman script - was a device deliberately resorted to in order to identify these ballots or the voters who prepared them, We have to resolve whatever doubt there may be regarding these 23 ballots in favor of their validity. We agree with the following observations of the Court of Appeals, in its decision, regarding these ballots:

"xxx it is argued that in order for a ballot with Arabic writing to be valid, all the names voted for in that ballot should be in Arabic, but this logic appears to be out of place for the reason that it overlooks the fact that perhaps the more correct conclusion should be the reverse, that if only portions are in Arabic and the rest in the ordinary Romanized system of writing, with more reason should the ballot be validated; where the law accepts the validity of the whole, it must be interpreted to accept the validity of the part, because the whole includes any of the parts, stated otherwise, since the Election Code has gone so far as to permit ballots to be prepared wholly in Arabic, that cannot be meant to mean that ballots prepared partly in Arabic and partly in the ordinary Romanized form would be excluded; in the first place, there is nothing in the Election Code that justifies that conclusion; in case of doubt, the interpretation of the Courts would never be to disenfranchise the voter; x x x."

6. In the sixth error assigned by the protestant, in his appeal before this Court, he alleges that the Court of Appeals erred in refusing to rule that two ballots cast in favor of the protestee, marked as Exhibits XXX-9 and PP-29, are invalid ballots.

These two ballots were declared valid by the lower court. The protestant assailed the validity of these ballots for the first time in his motion for reconsideration in the Court of Appeals, but said court refused to rule on them. These two ballots; however, are not among the ballots forwarded to this Court from the Court of Appeals. Inasmuch as these two ballots can not be found, the ruling of the lower court on these ballots shall be sustained (*Coscolluela v. Gaston*, 63 Phil., 41, 48).

In resume, We declare that at this instance the protestant must be credited with forty-two (42) more votes, and the protestee with one (1) vote. From the decision of the Court of Appeals We find that the protestee was credited

with a total of 3,937 votes and the protestant with a total of 3,924 votes. Inasmuch as at this instance the protestant is credited with forty-two additional votes, and the protestee with one additional vote, it results that the protestant must be credited with a grand total of 3,966 votes and the protestee with a grand total of 3,938 votes. The protestant must, therefore, be declared winner over the protestee by a margin of twenty-eight (28) votes.

WHEREFORE, the appealed decision of the Court of Appeals should be, as it is hereby, reversed, and another one entered declaring protestant Teodoro Juliano the duly elected City Mayor of Cotabato City in the elections held on November 12, 1963, with costs against the protestee, Datu Mando Sinsuat.

When this decision shall have become final, let a copy thereof be furnished the Commission on Elections.

IT IS SO ORDERED.

Reyes, JBL, Makalintal, Bengzon, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., no part.

[1] Villavert v. Fornier, 84 Phil., 756, 770; Ilao v. Bernados, 96 Phil., 968, unreported; Tajanlañgit v. Cazeñas, L-18894, June 30, 1962.

[2] As quoted from the resolution denying the motion for reconsideration

[3] Gardiner v. Romulo, 26 Phil., 521; Galang v. Miranda, 35 Phil., 269; Jalandoni v. Sarcon, G. R. No. L-6496, January 27, 1962; Macasundig v. Macalañgan, G. R. No. L-22779, March 31, 1965; Cauton v. Commission on Elections, G. R. No. L-25467, April 27, 1967.

[4] Ibasco v. Ilao, G. R. No. L-17512, December 29, 1960.

[5] Mendoza v. Mendiola, 53 Phil., 267, 270; Caba-basada v. Valmoria, 83 Phil., 112, 114.

[6] See also Cababasada v. Valmoria, 83 Phil., 112.

[7] Except two, marked as Exhibits 12-AAA and 23- RRRR, which are not included among the ballots forwarded to this Court.

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