

BERNARDO TORRES, PROTESTANT AND APPELLANT, VS. MAMERTO S. RIBO, PROTESTEE AND APPELLEE.*G. R. No. L-5394. April 29, 1953*

Ponente: PARAS, C.J.

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Bernardo Torres filed an election protest against Mamerto Ribo. On September 19, 1949, the Court of First Instance of Leyte rendered a decision declaring the protestee elected to the office of Provincial Governor. The court sentenced the protestant to pay the "costas y gastos incidentales." Upon appeal by the protestant, the decision was affirmed by the Court of Appeals. Judgment having become final, the protestee filed in the Court of First Instance of Leyte, a "bill of expenses and costs" for various items in the total amount of P8,220.50. After the protestant had filed an opposition, and the protestee had replied thereto, the court issued an order dated August 14, 1950, disallowing attorney's fees for P5,000 and expenses for the protestee's brief for P200, and approving the protestee's bill as to all other items in the total amount of P3,020.50. The motion for reconsideration filed by the protestant having been denied, the present appeal was interposed.

The protestant and appellant first contends that the lower court erred in allowing the items for commissioners' fees in the sum of P2,008, transcript of stenographic notes in the sum of P375, and expenses for protestee's brief in the counter-protest in the sum of P125, on the ground that these items are not recoverable as costs under sections 10 and 11, Rule 131, of the Rules of Court. In our opinion, the commissioner's fees are proper expenses incident to the necessity of recanvassing the ballots, and taxable under section 180 of the Revised Election Code. As a matter of fact, as costs in the Court of Appeals and the Supreme Court, the fees of a commissioner in an action may be assessed against the defeated party; and by analogy the fees of commissioners in an election contest must be deemed to be embraced within the terms "expenses and costs" used in section 180, and collectible against the losing party. However, the items for the stenographic transcript and the brief in the counter-protest are out of order. Section 11 of Rule 131 expressly provides that no allowance shall be made to the prevailing party for the brief; and the protestee was not called upon to get any copy of the transcript, this being a part of the record of the court available to the parties.

The appellant further argues that the lower court should have ordered the parties to pay their respective costs, in view of the fact that, although the appellee was declared elected, his majority was reduced—an indication that the protest was not entirely without merit. This argument is untenable, because, under section 180 of the Revised Election Code, in relation to section 1 of Rule 131, the costs are generally assessed against the losing party, although for special reasons they may be divided equitably. In the latter case the court is vested with discretion. While it is true that the appellee's majority was reduced, the fact is that the appellee still won by a majority of 423 votes.

Wherefore, the appealed order is modified in the sense that the items for the transcript in the sum of P375 and for the protestee's brief in the counterprotest in the sum of P125 are disallowed. So ordered without costs.

Feria, Pablo, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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