

JACINTO MONTILLA, PROTESTANT AND APPELLANT, VS. CLAUDIO MONTILLA, PROTESTEE AND APPELLEE.*G.R. No. L-5616. March 30, 1955*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Negros Occidental, dismissing the election protest filed by Jacinto Montilla against Claudio Montilla as Mayor of the municipality of Isabela, province of Negros Occidental. The records of the protest were received in this Court on March 28, 1952, and on June 3, 1952, the protestant-appellant filed a motion in this Court, praying that the appeal be remanded to the Court of Appeals for the reason that he is appealing "on mixed questions of fact, law and evidence." Protestee-appellee opposed the motion on the ground that the judgment of the Court of First Instance of Negros Occidental in his orders of March 13 and March 22, 1952 had instructed the transmittal of the records of the case to this Court, and that notwithstanding the fact that the protestant-appellant was officially advised thereof, protestant-appellant never attempted to correct or change the appellate court to which the records were to be forwarded. This Court, on June 10, 1952, granted the motion. Upon being advised of this result, protestee-appellee filed a motion for reconsideration. This Court, acting on said motion, reconsidered its previous order and resolved that the matter of the certification be acted upon after the filing of the briefs. The briefs have been filed and the case is now ready for decision. As the protest involves the election of a Mayor in November, 1951, the resolution of the question as to which court has jurisdiction to try the case needs urgency, as another election is coming in a matter of a few months.

The reason adduced by the protestee-appellee for opposing the certification of the case to the Court of Appeals is that provision of the election law on appeals from decisions in election contests (Section 178, amending Section 172, C. A. 357), which grants the appellant the choice of the appellate court to which he desires to appeal and does not make any distinction between appeals on purely questions of fact and appeals on purely questions of law. In his previous opposition to the motion for certification, the protestee-appellee had claimed that the protestant-appellant is estopped from claiming that there was a mistake in appealing to the Supreme Court, as he was well aware of the orders of the lower court for the transmittal of the records of the case to this Court.

Section 178 of Republic Act No. 180, which provides for appeals from election contests, provides in part,

"* * *, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be * * *."
*." (Italics supplied)

The term "as the case may be", evidently, means that the appeal may be made to the Supreme Court if only questions of law are to be raised on the appeal, and to the Court of Appeals, in all other cases. When the Legislature enacted that provision, it was aware of the provisions defining the relative jurisdictions of the Supreme Court and the Court of Appeals. The pertinent provisions are as follows:

"Sec. 138. * * *. The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or

affirm, on appeal, certiorari or writ of error, as the law or rules of court may provide. final judgments and decrees of inferior courts as herein provided in * * *.

"(6) All other cases in which only errors or questions of law, are involved." (C. A. 3)

"Sec. 145-F. Jurisdiction of the Court of Appeals.—The Court of Appeals shall have exclusive appellate jurisdiction of all cases, actions and proceedings, not enumerated in section one hundred and thirty-eight of this Code, properly brought to it from Courts of First Instance. * * *." (Idem)

Pursuant to the above-quoted provisions, an appeal from a Court of First Instance to the Supreme Court would be proper only in cases in which only errors or questions of law are involved; in all cases involving both questions of fact and law, the appeal must be made to the Court of Appeals. As in the case at bar, both questions of law and of fact are involved, the appeal does not fall within the appellate jurisdiction of the Supreme Court but within that of the Court of Appeals.

The only other question to resolve is the claim of the protestee-appellee that protestant-appellant is estopped from having the case certified to the Court of Appeals. The records do not support this claim. The Notice of Appeal filed by the protestant-appellant did not state that he was appealing the case to the Court of Appeals. On the contrary, the language of the notice shows otherwise:

"* * * that the protestant hereby announces his intention to elevate this case to the Court of Appeals and/or Supreme Court, and requests that all the necessary records, documents and exhibits be elevated to the said Court." (Notice of Appeal, p. 465 of the Records).

The protestant-appellant did not expressly state that he was appealing the case to this Court, and to it alone. He appealed to the Supreme Court or to the Court of Appeals, perhaps because he was not yet finally decided what questions, whether purely of law or mixed questions of fact and law, he will raise on the appeal. On the 6th day after the receipt of the records in this Court, however, he filed a motion to have the case certified to the Court of Appeals, for the reason that he was going to raise mixed questions of fact and law. These facts and circumstances, certainly, do not show that he had ever intended to appeal directly to the Supreme Court. The orders of the court a quo given to the Clerk of Court, to transmit the records to this Court are judge's orders, by which the protestant-appellant can not be bound.

Wherefore, it is hereby ordered that this case should be, as it is hereby certified, to the Court of Appeals, pursuant to section 31 of Republic Act No. 296.

Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

Case certified to Court of Appeals.

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