

**CANUTO F. PIMENTEL, PROTESTANT AND APPELLANT, VS. PEDRO FESTEJO, PROTESTEE AND APPELLEE.***G.R. No. L-2327. January 11, 1949*

Ponente: PERFECTO, J.

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Pedro Festejo was proclaimed elected as mayor of Santa Lucia, Ilocos Sur, in the elections of November 11, 1947, with 1,108 votes against 1,101 votes in favor of Canuto F. Pimentel.

The latter protested. The trial court found that Festejo received 1,107 votes and Pimentel 1,101 votes and, consequently, dismissed the protest.

Appellant appealed, contending that the lower court erred in not crediting to him the fifty nine ballots mentioned in his first three assignments of error as votes in his favor, with which he would appear to have received a total of 1,160 votes and, therefore, enough majority to win the election.

As stated in appellant's brief, his name in the thirty seven ballots mentioned in his first assignment of error "was written on the line corresponding to vice-mayor," in the eight ballots mentioned in his second assignment of error "was written on the line corresponding to the second space for member of the Provincial Board," and in the fourteen ballots mentioned in his third assignment of error "was written in the space for councilor." Either names of other persons, not candidates for mayor, are written in the space for mayor in said ballots, or said space appears to be in blank.

Appellant's contention is premised on the theory that his name was only misplaced in the ballots in question but the intention of the voters to elect him as mayor can be gathered from the fact that in the order or sequence of the candidates for the several positions mentioned in each ballot, his name would appear to be written in the space for mayor if the names of the candidates for governor, member of provincial board, mayor and councilor have not been also misplaced one or two lines above or below the correct space. Appellant's theory is untenable. It appears on record that the majority of the election inspectors in Santa Lucia belonged to the same political party of appellant and, therefore, had the control in the decisions of the board of inspectors. They did not count the ballots in question in favor of appellant. This shows that said majority inspectors had not found upon the face of the ballots themselves that the voters voted for appellant as mayor. Belonging to the same political party of appellant, they cannot be assumed or expected to have deprived appellant unjustly of any vote.

Said inspectors appear to have applied the law correctly.

The Constitution has reserved the right to exercise suffrage to citizens of legal age who "are able to read and write." (Section 1, Article V.) Section 135 of the Revised Election Code provides that the voter shall fill his ballot "by writing in the proper space for each office the name of the person for whom \* \* \* he desires to vote."

The last provision is couched in a language the mandatory character of which cannot be questioned. Therefore, for any ballot to be counted for a candidate for mayor, it is indispensable that his name be written by the voter in the

proper space for mayor, which word is clearly printed in the ballot and cannot be mistaken by a person who, as provided by the Constitution, is able to read.

A name can be counted for any office only when it is written within the space indicated upon the ballot for the vote for such office (*Lucero vs. de Guzman*, 45 Phil., 852). It is impossible to count a ballot as vote for a candidate for mayor, when his name is clearly written in the space reserved for another office (*Aviado vs. Talens*, 52 Phil., 665; *Villaviray vs. Alvarez*, 61 Phil., 42).

Official ballots are printed in the form specified by sections 124 and 126 of the Revised Election Code for the clear and unmistakable determination of the will of the voters, so as to avoid, as far as possible, disputes among the members of the board of election inspectors that would hamper the early determination of the result of an election. That early determination is demanded by public interest. delays in the counting of votes increase uncertainty in the public mind, provoke uneasiness, and are a temptation for those bent on thwarting the popular will. On this respect we can still look to the elections in the United States as example and model. Notwithstanding the fact that about 50,000,000 voters had cast their votes in a vast country expanding from ocean to ocean, it took only about eleven hours from the closing of the election, probably the most surprising and spectacular in American history, for the whole world to know that Harry S. Truman has been re-elected President on November 2, 1948.

Considering that in fifty nine ballots claimed by appellant in this appeal his name does not appear written in the space reserved for mayor, he cannot claim them as votes in his favor as candidate for mayor.

There is no need of considering the counter-assignments of error of appellee.

The appealed decision is affirmed, with costs against appellant.

Moran, C.J., Paras, Feria, Pablo, Bengzon, and Briones, JJ., concur.

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## DISSENTING

### MONTEMAYOR, J.:

In the elections held on November 11, 1947, in the municipality of Santa Lucia, Ilocos Sur, the election for the post of Mayor for which the protestant Canuto F. Pimentel and the protestee Pedro Festejo were registered candidates, was quite close as shown by the fact that the protestee was proclaimed mayor-elect with a plurality of only seven votes, having obtained 1,108 votes as against 1,101 received by Pimentel. This plurality was reduced to six (6) by the trial court acting on the motion of protest filed by Pimentel. On appeal to this Court, the majority decision affirms the judgment of the lower court even without considering the counter-assignment of errors of the appellee. Said appellee claims that he should be credited with a plurality of thirteen (13) votes instead of the six (6) votes found by the trial court. The appellant under his three assignments of errors claims fifty-nine (59) additional votes. It is therefore evident that if a majority or even a fraction, say, one-half (1/2) or even one-third (1/3) of the 59 votes claimed by him but rejected by the trial court are found to be valid votes and so counted in his favor, the appeal must be decided in his favor and he should be declared elected Mayor of Santa Lucia, Ilocos Sur.

The main if not the only point in issue involved in this appeal is the fact, and its legal effect, that in the 59 ballots above referred to, the name of the appellant Canuto F. Pimentel does not appear on the line for the post of mayor. It is either above said line, that is to say, it is written on the line corresponding to the post of members of the provincial board, like in ballot Exhibit J-5 or on the majority of said ballots it is found below the line of the office

of mayor, that is to say, on the line for the post of vice-mayor, like in ballot Exhibit F-1. On this fact alone, and without considering the whole ballot, as well as the circumstances surrounding the elections, this Court through the majority decision rejected these 59 ballots on the ground that the voters who prepared them failed to comply with the law which requires and directs that "the voter shall fill his ballot by writing in the proper space for each office the name of the person for whom \* \* \* he desires to vote."

I believe that this is too narrow and strict a construction and application of the election law and would result in depriving a great number of qualified voters in participating in the choice of their elective officials. Such construction and interpretation runs counter to the spirit of the law itself as well as the intention of the Legislature that promulgated it, as repeatedly interpreted by the Courts. Let us consider some of these ballots involved which may be regarded as typical of the rest. But before we do so, it is important to know the persons who ran under the banner of the Liberal Party to which the protestant belonged, as well as the offices for which said persons were candidates, from provincial governor down to municipal councilor. It is also a fact, as pointed out by counsel for appellant that the latter, on and before the elections, was known as a candidate for the position of mayor, only, having campaigned as such and filed his certificate of candidacy for said office, and that considering the relatively small voting population in Santa Lucia, the electorate, particularly his followers in the Liberal Party knew that he was a candidate for mayor, only. In addition, in said elections of November 11, 1947, there was in Santa Lucia, no candidate for national, provincial or municipal office with the same name or surname of the protestant Canuto Pimentel, thereby precluding any possible mistake or confusion about the identity of the person referred to whenever mentioned in any ballot with the name Pimentel. The following were the candidates for the Liberal Party:

Provincial Governor Perfecto Faypon

Members of the Provincial Board Pablo C. Sanidad

Cecilio A. Balbin

Municipal Mayor Canuto F. Pimentel

Martin Angala

Vice-Mayor Eliseo Abaya

Municipal Councilors Valentin Hadloc

Leoncio Fabro

Cesario Libed

Antero Hermosura

Alfonso Grcia

Rufino Haber

Now, let us examine the first ballot ("Exhibit "F-1") under the first assignment of error, which for purposes of

reference we reproduce below:

OFFICIAL BALLOT

Balota Opisyal

SANTA LUCIA, ILOCOS SUR, NOVEMBER 11, 1947

Santa Lucia, Ilocos Sur, Nobyembre 11, 1947

Fill out this ballot secretly inside the booth. Do not put any distinctive mark in any part of this ballot.

Sulatan nang palihim ang balotang ito sa loob ng silid na botahan. Huwag lagyan ng anumang palatandaan ang alinmang panig ng balotang ito.

PROVINCIAL GOVERNOR

Punong Lalawigan

MEMBERS OF THE PROVINCIAL BOARD:

Mga Kagawad ng Lupong Lalawigan:

- P. Faypon

- P. Sanidad

MAYOR C. Balbin

Alkalde

VICE-MAYOR C. Pimentel

Pangalawang Alkalde

COUNCILORS

Mga Konsehal:

1. E. Abaya

2. V. Hadloc

3. A. Hermosora

4. L. Fabros

5. C. Libed

6. A. Gracia

R. HABIR

It is obvious that the voter who prepared this exhibit overlooked the first line corresponding to the post of Governor and began writing down the names of his candidates on the first line for the post of Member of the Provincial Board. It is equally evident that he voted a straight Liberal Party ticket, for a complete set of Liberal Party candidates, even and including the posts for six (6) councilors, so that the name of his last candidate—R. Habir, who was the official Liberal Party candidate,—Rufino Haber, had to be written on the blank space below the last and 6th line for the post of councilor. Of course, if we are to confine ourselves only and exclusively to the line for the post of Mayor, as did those of the majority, then as far as protestant is concerned, the ballot is to be rejected because his name is not on that line. But, if we are to ascertain the intention of the voter who prepared this Exhibit F-1, as shown by the entire ballot and the circumstances surrounding the case, there is not the least doubt to my mind that the voter intended to vote for Pimentel for the post of Mayor. Evidently, the voter copied, without a break, the names of his candidates appearing on an official list kept in each booth, or his own private list

or copy of a sample ballot previously filled out, which list a voter generally takes along with him for his guidance, especially when there are many posts to be voted for, including those for councilors; but in doing so he made a slight mistake by overlooking the first line, thus resulting in the transposition or misplacement of all the names of the candidates by one line; but the order and sequence of the names of his candidates is unbroken and complete. This mistake is natural and not difficult to make, and was committed by many other voters—those who prepared the great majority of the 59 ballots herein involved. It is due in part to the unfamiliarity and lack of understanding by the voters, of the ballot itself. To the ordinary Ilocano voter the phrase Provincial Governor may not have a clear meaning. He is more familiar with the word Gobernador as designating the chief provincial executive. And the Tagalog phrase Punong Lalawigan is unknown to him. So it was not strange and unnatural for him to orait and disregard that line for Governor, and atari writing on the line for members of the provincial board, specially since the numbering—1, 2 etc. begins on that line.

Examining a few of the 59 ballots, which, like Exhibit "F-1", may be regarded as typical of the majority of the rest, we find that Exhibit "F-2" is exactly the same as Exhibit "F-1" except that the name of E. Abaya instead of being written on the first line for the post of councilor as was done in Exhibit "F-1", is written opposite the printed word "councilors" and that the voter wrote out the names of only five (5) councilors (all of the party of Pimentel, in fact the same names of councilors appearing on Exhibit "F-1" instead of six (6), but the order and sequence of the names of his candidates is unbroken and complete, Exhibit "F-4" is the same as Exhibit "F-1" except that only five (5) councilors were voted for Exhibit "J-3" is exactly the same as Exhibit "F-2", except that the voter added one more councilor to the same names of five councilors contained in Exhibit "F-2", Exhibits "U-1" and "U-4" are exactly the same as Exhibit "F-1", Exhibits "K", "K-1", "K-2" and "K-4" are exactly the same as Exhibit "F-1". Exhibits "K-3" and "K-5" are exactly the same as Exhibit "F-2".

As above stated, the ballots above mentioned are typical of the rest. The question to be determined therefore is whether or not these fifty-nine ballots or a majority of them are to be accepted and counted as good ballots, clearly and unmistakably, in my opinion, expressing as they do the intention of the voters to vote for the appellant for the post of Mayor. The trial court and counsel for the appellee invoke the doctrines laid down in the cases of *Lucero vs. De Guzman*, 45 Phil., 852 and *Aviado vs. Talens*, 52 Phil., 665, to the effect that unless the name of a candidate is written on the space corresponding to the office for which he is a candidate, it cannot be counted for him. This strict and narrow construction of the Election Law has, fortunately, been relaxed and modified in the later cases of *Adeser vs. Tago*, 52 Phil., 856; *Mandac vs. Samonte*, 54 Phil., 706; and *Coscolluela vs. Gaston*, 63 Phil., 41, wherein this tribunal refusing to be bound by what appears on the space corresponding to a post in the ballot, considered the ballot as a whole, in its endeavor to ascertain the intention of the voter and to give him a chance to show and voice his choice of the men who are to govern his town, province and country. This, in my opinion is the right attitude and mission of the courts as regards elections.

In the case of *Siagan vs. Benesa*, 40 Off. Gaz. No. 25, page 4767, the Court of Appeals held and said:

"The name of the candidate for mayor was written on the line corresponding to vice-mayor, but the order of the names of the candidates beginning with that of Governor down thru the two positions for member of the Provincial Board has been preserved. Held: It is evident that the voter intended to vote for said candidate as mayor but he, apparently overlooked the first line for Governor and proceeded to write the names of his candidates beginning with the first line corresponding to that of member of the Provincial Board. The ballot is valid."

True, said decision rendered by a court inferior to the Supreme Court, is not binding on this Tribunal, but it is a unanimous decision signed by four Justices, and merits consideration.

In the case of *Mandac vs. Samonte*, supra, the Supreme Court said the following:

"In ballot 46-a, the surname "Samonti" is some distance from the name 'Domingo'; but it is evident that this is simply due to the fact that the voter did not notice the line where he wrote the surname. We hold this ballot to be valid.

"The same holds good for Exhibit 50, where the contestee's name is written above the line for governor, and nearer that for representative. But a careful examination of said ballot reveals the fact that the person who filled it out could not follow the respective lines. Even the name "Santiago" for senator is written across different lines. That the voter's intention to vote for the contestee as governor is shown by the fact that all the names for the several offices are written in; for senator Santiago Fonacier, for representative Eriño Ranjo, for governor Domingo Samot (in sound like Samonte) and for the provincial board Mauro Quevedo and Antonio Galo."

In the case of Coscolluela vs. Gaston, *supra*, the Supreme Court made the following findings and conclusion:

"\* \* \* We find after a detailed examination that in ballots Exhibits 83 and 407, the voters who prepared them, instead of writing the names of their candidates in the spaces corresponding to the offices for which they wanted to vote for them, wrote them on the column for the votes for the councilors, but placing before said names the offices for which they voted. For instance, in the case of the protestant, they put before his name the word "gobernador" or "provincial governor". In these two ballots, while the name and surname of the protestant are not written in the proper place, it is evident from the placing of the office before said names that the intention of those who prepared said ballots was to vote for the protestant. Consequently, the two ballots should be admitted as valid in his favor.

"\* \* \* An examination of the ballot shows that the full name Emilio Gaston was written, but the surname Gaston was placed a little lower than the line corresponding to the vote for the candidate for governor. The name of the candidate voted for representative having been written in the same way, we believe that the voter, who must be an illiterate, intended to write the full name on the line reserved for the purpose, but the surname was written a little lower than the said line.

"The other three ballots were likewise correctly admitted by the lower court, because while the names of the candidates in said ballots were written rather outside of the corresponding line, this was due to the lack of expertness of the voters who prepared them.

"4. Ballot Gaston Exhibit 638. This ballot shows upon its face that the names of the candidates voted for representative and governor were written upon the line immediately above that on which they should be written respectively. Considering, however, all the other details appearing thereon, it is patent that the intention of the voter who prepared it was to vote for the protestee for the office of governor.

"5. Ballot Gaston Exhibit 3483. While the protestee's name does not appear written exactly on the line reserved for the vote in favor of the candidate for governor, considering all the other circumstances and details appearing therein, no one can doubt in the least the voter's intention to vote for the protestee as governor."

On the question of liberally interpreting the election law for the purpose of ascertaining and giving due course to the intention of the voter, the following citations may be referred to with profit. In the case of *Perez vs. Suller*, 40 Off. Gaz., Third Supp., 226,[1] this Court reiterated its holding in the case of *Moya vs. Del Fierro* (69 Phil., 199) in the following language:

"Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality."

The following citation is also in point:

"A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective." (Mandac vs. Samonte, 49 Phil., 284, 301.)

In the case of *Prenevost vs. Delorme*, 129 Minn., 359; 152 N. W., 758, cited in *Cooley's Constitutional Limitations*, 8th Edition, Vol. 2, p. 1380, it was held that:

"In deciding for whom the voter intended to cast his ballot, the court is justified in examining the ballot itself, not only that part of it relating to the contestant or contestee, but the entire ballot, and, if from an examination of the entire ballot, the intention of the voter may be clearly ascertained, "then the ballot should be counted for the person for whom the voter clearly intended to vote." (The underlining in all these citations is ours.)

In considering the ballots involved in this appeal and in strictly interpreting the election law the trial court and, I am afraid, this Court looked only and exclusively at the space and line corresponding to the post of Mayor, and not finding the name of the protestant thereon, refused to count them in his favor. It did not, apparently, extend its field of inspection and scrutiny to the rest of the ballot and consider the circumstances surrounding this case in an endeavor to ascertain and give due course to the intention of the voter who, after all, is the person for whose benefit the election law was prepared and promulgated and around whom the whole system of suffrage revolves. It must be borne in mind that the ballot is not and was never intended to be a literacy or intelligence test. Neither is it an end in itself. It is only a means by which the voter expresses his choice and desire, as his participation in popular Government. If his intention can be ascertained and known in any reasonable way whatsoever by an examination of his ballot, and the voter is found to have achieved a substantial compliance with the law, and not seriously violated it, bearing in mind his lack of education, experience and training, said intention should be respected and carried out. True, the law requires that the voter know how to read and write but oftentimes his literacy extends only to writing his own name and, to copy others, and in a clumsy and laborious manner at that, and to reading with great difficulty. As a rule, the voter out in the barrios has no intimate acquaintance or association with pencil, pen and paper except on the day of the elections which comes seldom, by the years and not by the months. So his accomplishments or shortcomings in filling out his ballot should be judged and considered with understanding and liberality. Unlike the preparation of a will where the law requires strict compliance therewith because the testator counts with the aid and advice and assistance of relatives, friends, and lawyers in preparing his will, and hours, days or even weeks may be used, the elector or voter usually unfamiliar with the ballot, especially with its preparation, is sent to the voting booth, alone, *incomunicado*, and thrown entirely upon his own resources, and once in there, he is on his own; and he cannot take all day to prepare his ballot, either (he is allowed only five minutes by the law, see section 135, Revised Election Code) because there is a long line of electors waiting for him to finish filling out his ballot and vacate the booth. Should we therefore wonder or blame him if in his hurry and excitement or ignorance, he omits, or overlooks a line and slightly misplaces his complete set of candidates on the ballot? Even men more educated, more intelligent and with more experience not infrequently make mistakes in writing out names, even their own names on the proper spaces or lines. How many times have parties to a contract deed or document committed such a mistake despite the help or indication of the notary public or person preparing the document, and signed their names in the wrong space or line as for instance, writing the name and signature of the vendor in that provided for the vendee or witnesses.

As an additional argument in support of its stand in rejecting the fifty-nine ballots, involved in the appeal, the

majority opinion refers to and cites the fact that the very inspectors of the appellant did not count said votes for him. While this fact might speak well of the impartiality and honesty of said inspectors, I hardly think it has any relation or relevancy to the merit of said ballots. It should be borne in mind that poll inspectors, are expected and required only to read the ballots, particularly the names on the lines corresponding to each post, and count them. They are not supposed to interpret the election law and pass upon its fine points. That delicate task is reserved to the courts, especially to this Tribunal. So what the inspectors did in rejecting these ballots, is in my opinion, of no import in the consideration of the merits of this appeal.

In conclusion, I believe that a great majority of the fifty-nine ballots claimed by the appellant, at least one-half (1/2) of then which would be more than enough to outnumber and overcome the plurality of thirteen ballots claimed by the appellee, should be counted for and credited to the farmer, and that he (the protestant) should be declared elected to the post of Mayor of Santa Lucia, Ilocos Sur.

Tuason, J., agree with this dissent.

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[1] 69 Phil., 196.

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