

RAMON HONTIVEROS, PLAINTIFF AND APPELLANT, VS. JOSE ALTAVAS, DEFENDANT AND APPELLEE.

G. R. No. 10243. August 26, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action, or motion rather, presented in the Court of First Instance of the Province of Capiz by the plaintiff for the purpose of securing a modification of a judgment for costs theretofore rendered. The motion was denied, and the plaintiff now appeals to this court.

It appears that at a certain election the plaintiff and the defendant herein were each candidates for governor of the Province of Capiz. Upon a canvass of the returns, it was found that the defendant, Jose Altavas, had been elected governor by a majority of the votes, whereupon the plaintiff, Ramon Hontiveros, presented a protest and asked that the election returns from the various municipalities be revised. At that time, in accordance with section 27 of Act No. 1582, he presented a bond guaranteeing the payment of all of the costs which might be incurred by reason of his protest. The said returns were recanvassed. The votes were recounted and it was declared by the canvassing board that Ramon Hontiveros had received a majority of the votes. An appeal was taken to the Supreme Court where all of the questions were considered and the decision of the lower court was revoked "without costs to either party in this court." The cause was returned to the lower court, and later the motion in the present case was presented.

It appears from the admission of the appellant, Hontiveros, that the lower court, in the first instance, had rendered a judgment against him for costs. That part of the judgment of the lower court was not modified in the slightest degree by the decision of this court. (Hontiveros vs.. Altavas, 26 Phil. Rep., 213.) Considering the provisions of section 27 of Act No. 1582, in relation with section 2 of Act No. 2170, we are of the opinion and so hold, that the plaintiff is under obligation to pay the costs incurred by reason of his protest.

The judgment of the lower court, refusing to modify the judgment theretofore rendered against the plaintiff for costs, is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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