

RAMON HONTIVEROS, PETITIONER AND APPELLANT, VS. JOSE ALTAVAS, RESPONDENT AND APPELLEE.*G.R. No. 11769. December 05, 1918*

Ponente: JOHNSON, J.

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The question involved in this particular appeal as considered by this court in its first decision was, whether or not the items of costs allowed by the lower court were proper items to be taxed as costs, under the facts of the record and the law. In our former decision we held that some of such items were proper items to be taxed as costs and some were not. We held that under the provisions of section 492 of Act No. 190, no costs could be allowed except those specified in that section. The lower court was evidently misled by the Spanish translation of said section. The English of said section reads: "In an action pending in a Court of First Instance, the prevailing party may recover the following costs, 'and no others;'" * * * The Spanish translation of said section omits the phrase "and no others." That section has been interpreted various times and it has been uniformly held that "no other items" of costs could be allowed by virtue of the clause "and no others," in that section. (*Mendiola vs. Villa*, 15 Phil. Rep., 131; *Vargas vs. Ross*, 15 Phil. Rep., 665; *Osorio vs. Trias*, 16 Phil. Rep., 511.)

An "election protest" is an action in the court of first instance and said article (492) is applicable in the taxation of costs in such cases. Costs not permitted by the statute cannot be taxed. (*Mendiola vs. Villa*, 15 Phil. Rep., 131.)

Costs are statutory allowances to a party to an action for his expenses incurred in the action and have reference only to the parties and the amounts paid by them. The costs are the sums prescribed by law; in the absence of a statute permitting the taxation of costs, they cannot be allowed. In the absence of a statutory provision, each party must pay his own costs. In order to compel one party litigant to pay the costs of the other, some statutory authority authorizing it must be found. (*Hart vs. Skinner*, 16 Vt., 138 [42 Am. Dec, 500]; *Noyes vs. State*, 46 Wis., 250 [32 Am. Rep., 710]; 7 Ruling Case Law, 780; *Northern vs. Hanners*, 121 Ala., 587.)

The courts have no inherent power to tax costs. Costs can only be allowed when the statute permits it. Each party, in the absence of a statute, must pay his own costs. (*Northern vs. Hanners*, 121 Ala., 587; *Williams vs. Atchinson*, etc., *Railway Co.*, 156 Cal., 140 [134 Am. State Rep., 117]; *Two Rivers Mfg. Co vs. Beyer*, 74 Wis., 210.)

All of the questions raised by the motion for a reconsideration were considered and decided in the former decision except the one, whether or not an appeal lies against the judgment for costs. In answer to that question, it may be said that this court has recognized the right to appeal from a judgment for costs, when the exception were duly and properly made, in a number of cases. (*Mendiola vs. Villa*, 15 Phil. Rep., 131; *Vargas vs. Ross*, 15 Phil. Rep., 665; *Osorio vs. Trias*, 16 Phil. Rep., 511.)

Notwithstanding said decisions, the appellee now insists that the right to appeal in such cases does not exist.

While the authorities are not in exact harmony upon that general question, we think that they all agree that the right to appeal, from a judgment for costs, lies, in cases where the law, as in this jurisdiction, fixes the only items

of costs as well as the amount of the same, which can be taxed. In this jurisdiction the court has no authority or right to tax costs against either party litigant not allowed by statute. If the court allows items of costs not permitted by the law, or disallows items of costs which the law permits, it violates the law, and the right to appeal from said judgment, if exceptions are properly noted, exists. This, of course, is true only in cases where the right to appeal is given in a case in which the costs are taxed. If the lower court is given final jurisdiction and the right to appeal does not exist, then, of course, a judgment must be final as to every branch of the case, including the costs. In the present case, an exception was duly made to the order allowing the costs, and a bill of exceptions was duly presented. (*Empire Co. vs. Bonanza Co.*, 67 Cal., 406; *Muir vs. Meredith*, 82 Cal., 19; *Yorba vs. Dobner*, 90 Cal., 337; *Crane vs. Forth*, 95 Cal., 88; *Williams vs. Atchinson, etc., Railway Co.*, 156 Cal., 140.)

Costs should be taxed as a part of the judgment appealed from. The objection to the costs as taxed should be presented with the appeal and not left for a subsequent or separate appeal, so as not to prolong unnecessarily the litigation and final conclusion of the action.

For the foregoing reasons, the motion for a reconsideration is hereby denied. So ordered.

Arellano, C. J., Torres, Araullo, Street, and Avanceña, JJ., concur.

CONCURRING OPINION

MALCOLM, J., concurring:

I agree with so much of the decision as relates to the right to an appeal from a judgment for costs in an election case, Since I did not intervene in the original decision of this court, concerning the "expenses and costs" which should be allowed the successful party in election contests, I reserve my opinion on this question.

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