

**ISIDORO ALVENDIA, PETITIONER, VS. PERCY M. MOIR, JUDGE OF FIRST INSTANCE OF PAMPANGA, AND JOSE DINIO, RESPONDENTS.***G.R. No. 12054. November 20, 1916*

Ponente: MORELAND, J.

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This is a petition to obtain a writ of certiorari directed to the Honorable Percy M. Moir, as judge of the Court of First Instance of the Province of Pampanga, ordering him to forward to this court the proceedings had in a certain contested election case to the end that certain steps taken therein may be revised by this court and declared void and of no effect on the ground that the said court, in taking those steps, exceeded its jurisdiction.

The petition alleges that the petitioner, on the 19th of June, 1916, filed a protest against the election of one of the respondents, Jose Dinio, to the office of municipal president of Florida Blanca, Province of Pampanga, as proclaimed by the municipal board of canvassers of that village on the 10th day of June 1916; that, on the hearing of said protest, the court admitted and duly counted for the respondent all of the ballots voted by illiterate persons and persons physically disabled who were unable to prepare their ballots and which were accordingly prepared for them by the inspectors of election, although said illiterates and persons physically disabled so assisted, did not, previously to receiving the assistance of the inspectors, make affidavits that they were unable to prepare their ballots without assistance as required by section 550 of the Election Law; that the said court, in receiving and counting for the respondent Dinio the ballots referred to and prepared as stated, exceeded its jurisdiction and transcended its powers; and that, therefore, his act in declaring the respondent elected to the office referred to, based upon such ballots, was null and void and should be revised and annulled by this court.

A demurrer was presented to the petition on the ground that it did not state facts sufficient to constitute a cause of action.

We are of the opinion that the demurrer should be sustained as the petition fails utterly to state facts sufficient to justify the remedy prayed for. As we have held in numerous cases, certiorari will lie only when the court to which it is to be directed acted outside or in excess of its jurisdiction (Section 217 Code of Civil Procedure; *In re Prautch*, 1 Phil. Rep., 132; *Springer vs. Odlin*, 3 Phil. Rep., 344; *Arzadon vs. Chanco and Baldueza*, 14 Phil. Rep., 710; *De Fiesta vs. Llorente and Manila Railroad Co.*, 25 Phil. Rep., 554; *Herrera vs. Barretto and Joaquin*, 25 Phil. Rep., 245; *Gala vs. Cui and Rodriguez*, 25 Phil. Rep., 522; *Province of Tarlac vs. Gale*, 26 Phil. Rep., 338; *Napa vs. Weissenhagen*, 29 Phil. Rep., 180; *Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, 34 Phil. Rep., 157).

The respondent court has jurisdiction of election contests, that jurisdiction being conferred by section 576 of the Administrative Code. As a necessary consequence it has power and authority to resolve every question which may arise during the progress of the proceeding. One of the questions most frequently raised is the validity of ballots counted in favor of the person declared elected. The resolution of the question whether a given ballot is valid or invalid under the law is a question sometimes of law and sometimes of law and fact. Its determination is made by

the court in the exercise of its jurisdiction over the subject matter and the parties. The exercise of that jurisdiction does not involve a loss of jurisdiction or an entire absence of jurisdiction simply because the question under consideration in the exercise of that jurisdiction is determined wrong. The fact that the question is decided erroneously is of no consequence, so far as the jurisdiction of the court is concerned. It still maintains its jurisdiction over the proceeding and still acts within that jurisdiction no matter how the particular question may be decided. (See cases above cited.)

The determination of whether or not the ballots voted by illiterates and persons physically disabled, who required assistance to prepare them, are legal and valid, is in no sense different from the determination of whether a ballot alleged to be marked for identification is valid or invalid. The two determinations are in law the same. If it should be held that the court loses jurisdiction every time it receives and counts a ballot which is, in fact, illegal, there would be no termination of an election contest, as every decision as to the validity of a ballot would lead to a petition for certiorari to this court. If it were held that courts of First Instance lose jurisdiction every time they make a mistake, the administration of justice would cease.

The demurrer is sustained and the petition is dismissed on the merits, unless the petitioner within five days files an amended petition stating facts sufficient to entitle him to the remedy prayed for. So ordered.

Araullo, J., concurs.

Carson and Trent, JJ., concur in the result.

Johnson, J., did not seat in the case.

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