

EMILIO DE CASTRO, PETITIONER, VS. FERNANDO SALAS, JUDGE OF FIRST INSTANCE OF THE PROVINCE OF SORSOGON, AND SEGUNDO SANTIAGO, RESPONDENTS.

G.R. No. 12096. August 22, 1916

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12096/>

JOHNSON, J.:

This is an original action commenced in the Supreme Court. Its purpose was to obtain the extraordinary legal remedy of mandamus to require the Court of First Instance to reinstate and to decide upon, its merits a certain election contest heretofore dismissed by the respondent judge upon a motion to quash. The said motion to quash was based upon the ground that the "motion" (or contest) had not been signed by the contestant personally.

While the pleadings present some minor questions of general importance, in view of the urgency for a decision upon the main question, we will now limit ourselves to a discussion and to a decision of that question only, which is: In an election contest by a "candidate voted for," for the office of president of a municipality, may he present or file the "motion," provided for by section 27 of Act No. 1582, (Section 576, Administrative Code), signed by his attorney, or must such "motion" be signed by him personally?

The facts upon which this action are based are undisputed and are as follows:

First. On the 6th of June, 1916, an election was held in the municipality of Casiguran, of the Province of Sorsogon, for the election of a president.

Second. At said election several candidates were voted for. Among such candidates were the petitioner, Emilio de Castro, and the respondent, Segundo Santiago.

Third. At the close of said election the ballots were counted and it was found upon said count that the respondent, Segundo Santiago, had received 258 votes and that the petitioner, Emilio de Castro, had received 248 votes, and as a result of said count Segundo Santiago was declared elected president of said municipality, by the municipal council thereof, on the 12th of June, 1916.

Fourth. That later, and on the 17th of June, 1916, Emilio de Castro contested said election by presenting a "motion" in the Court of First Instance of the Province of Sorsogon. Said "motion" was not signed by the "candidate voted for" but was signed by his attorney.

Fifth. That on the 10th of July, 1916, the respondent, Segundo Santiago, answered said "motion," and among other defenses presented, prayed that the "motion" be quashed or dismissed for the reason that it had not been signed by the "candidate voted for" as is required by law. (Section 576, Administrative Code.)

Sixth. That on the 28th of July, 1916, the respondent judge, Fernando Salas, after hearing the respective parties, dismissed said "motion" for the reason that it had not been signed by the contestant himself, Emilio de Castro. The court held that by virtue of said section 576, the "motion" or contest could only be initiated by the contestant himself by signing said "motion" himself personally; that said contest could not be initiated by

presenting a "motion" signed by his attorney.

Seventh. That thereafter, on the 31st of July, 1916, the petitioner, Emilio de Castro, by his attorney, presented a motion for a reconsideration of the order dismissing his "motion" or contest.

Eighth. That on the same day (the 31st of July, 1916), the respondent judge, Fernando Salas, denied said motion for a reconsideration of his order dismissing said "motion" or contest.

Ninth. That on the 2d of August, 1916, the petition for the remedy prayed for in this court was presented, which was amended by the substitution of another complaint on the 9th of August, 1916.

Tenth. That on the 9th of August, 1916, the Attorney-General, representing the respondent, Fernando Salas, presented an answer to said petition.

Eleventh. That on the 15th of August, the respondent, Segundo Santiago, presented a demurrer to said petition.

Upon the foregoing facts and the issue presented by the petition, the answer, and the demurrer, and after hearing the respective parties, the questions involved were presented to this court.

Upon the main question presented for our consideration, authorities and precedents have not readily been found. The respondents contend that the law (section 576, Administrative Code) is mandatory and explicit, and cite Act No. 1773 and some decisions of this court, which they deem to be authority for their contention, while the petitioner contends that the law is not mandatory and does not limit the signing of the "motion" to the contestant himself personally, and cites the provisions of section 34 of Act No. 190, as amended by section 1 of Act No. 2453, in support of his contention.

It is true that the criminal actions mentioned in said Act No. 1773 can only be initiated by a complaint of the aggrieved person, or of the parents, grandparents, or guardian of such person. (U. S. vs. Narvas, 14 Phil. Rep., 410; U. S. vs. Castañares, 18 Phil. Rep., 210; U. S. vs. Arzadon, 19 Phil. Rep., 175; U. S. vs. Cruz and Reyes, 20 Phil. Rep., 363; Quilatan and Santiago vs. Caruncho, 21 Phil. Rep., 399; U. S. vs. Jayme, 24 Phil. Rep., 90; U. S. vs. Gariboso, 25 Phil. Rep., 171.)

It must be remembered that the actions provided for under Act No. 1773 are criminal actions, while the action contemplated by section 576 is not a criminal action. It is a civil action. It has none of the elements of a criminal action and should therefore be governed by the Code of Civil Procedure, so far as the procedure is not expressly defined by the Act providing for the "motion" or contest. An examination of said section 576 and the other sections of the law relating to election contests (sections 575-580, Administrative Code) fails to disclose any express provision which lends any assistance to the solution of the question presented.

Said section 576 provides for an action for the contest of elections to offices in general. It provides:

"Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election, etc."

The respondents contend that the provision that the actions shall be initiated "upon motion by any candidate voted for," expressly prohibits the presentation of the "motion" by any other person than by the "candidate voted for," personally. The respondents rely upon the provisions of Act No. 1773. That Act provides that no prosecution for the crimes mentioned therein "shall be instituted, except upon the complaint of the aggrieved person," etc. It will be noted that Act No. 1773, by express provision, inhibits the presentation of the complaint, except by the "aggrieved person," etc. No such words of limitation are used in section 576. Had the Legislature said "except upon motion by any candidate voted for," then the two statutes would be exactly analogous in their inhibitions,

with reference to the persons who should initiate the respective actions.

Section 34 of Act No. 190, as amended by Act No. 2453, after making provision for the conduct of litigation in courts of justices of the peace, provides that:

"In any other court, the party may conduct his litigation personally or by the aid of a lawyer, and his appearance must be either personally or by the aid of a duly authorized member of the bar."

The phrase "may conduct his litigation," must mean that the party-litigant may either personally or by the aid of a lawyer, do anything in the progress of the action from the commencement to the termination of the litigation. Taking into consideration that there are no words used in said section 576 expressly inhibiting the contestant from presenting the "motion" by an attorney, in relation with the fact that it has been the custom ever since the adoption of section 27 of Act No. 1582 (section 576, Administrative Code), for the contestants to appear by attorneys, and in view of the above-quoted provision of Act No. 2453, we are not inclined to adopt as our view the contention of the respondents. It is also a fact of public knowledge that the majority of the members of the Legislature, who adopted section 576 of the Administrative Code, were attorneys at law, and it is not believed, in view of the large number of contests which follow each election, that it was their intention to inhibit attorneys at law from assisting contestants in the initiation of their contests. In our opinion there is nothing in the law (section 576)' which inhibits contestants in election contests, under section 576, from initiating their contests upon a "motion" presented by their attorneys. (*Bragunier vs. Penn*, 79 Md., 244; *McCauley vs. State*, 21 Md., 556.)

The respondents further argue that the Court of First Instance having jurisdiction in the premises to consider the questions presented by the petitioner in his "motion," it had jurisdiction to decide all of the questions presented. That contention is true if we limit his jurisdiction to hear and determine questions presented upon their merits. But when it is alleged that the court refused to consider the questions upon their merits and erroneously dismissed the action upon a construction of some question of law or of practice preliminary to a final hearing, we have an entirely different question presented. No rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court, when honestly exercised and when such power and authority is not abused. A distinction however must be made between a case where the writ of mandamus is sought to control the decision of a court upon the merits of the cause, and cases where the court has refused to go into the merits of the action, upon an erroneous view of the law or practice. If the court has erroneously dismissed an action upon a preliminary objection and upon an erroneous construction of the law, then mandamus is the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits. (*High on Extraordinary Legal Remedies* [3d ed.], section .151; *Castello vs. St. Louis Circuit Court*, 28 Mo., 269; *State ex rel. Chism & Boyd vs. Judge of 26th District Court*, 34 La. Ann., 1177; *State ex rel. Citizens' Bank vs. Judge of 7th District Court*, 38 La. Ann., 499). Dr. High, in commenting upon the rule laid down by the court, says:

"For example, when, in statutory proceedings instituted to test the election of an officer, the court below refuses to try the case upon its merits, and quashes the proceedings, upon the ground that the contestant has not given the notice required by statute, if such court has erred in its construction of the statute, as to the notice required, the writ (mandamus) will be granted to compel it to reinstate the case and proceed to a hearing. (*Castello vs. St. Louis Circuit Court*, 28 Mo., 259.)"

Dr. High, in his valuable work, further adds, however:

"If, however, the point raised by the preliminary question be purely a matter of fact, the decision of the inferior tribunal is binding and conclusive, and will not be controlled by mandamus. (*Queen vs. Justices of Kesteven*, 3d Ad., & E. [N. S.], 810.)"

In view of all of the foregoing, we are of the opinion—

First. That the law does not inhibit the contestant in the present case from initiating his contest by having the "motion" presented by his attorney.

Second. That the lower court refused to go into the merits of said contest, upon an erroneous construction of the law.

Therefore, it is ordered and decreed that an order be issued out of this court to the respondent judge, Fernando Salas, directing and requiring him to set aside and to annul his order heretofore rendered, in which he dismissed the action of the petitioner, and to reinstate said action and to proceed to try said cause upon its merits. And without any finding as to costs, it is so ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., dissents.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.