CATALINO GALANG, PETITIONER, VS. VICENTE MIRANDA, JUDGE OF THE COURT OF FIRST INSTANCE, AND GONZALO DE LEON, RESPONDENTS.

G.R. No. 12118. February 23, 1917

Ponente: TRENT, J.

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TRENT, J.:

This is an original action in the Supreme Court, the object of which is to compel the respondent judge, by mandamus, to reinstate a certain election contest and to proceed with the trial thereof.

At the general election held on June 6, 1916, Catalino Galang received, according to the returns, 157 votes and Gonzalo de Leon received 162 votes for the office of municipal president for the municipality of Cabiao, Province of Nueva Ecija. On the 13th of June, 1916, Galang filed his motion in the Court of First Instance, contesting the election of De Leon. . On the 15th of that month the contestee appeared and answered the motion by general denial. When the case was called for hearing on the 19th of July, 1916, the contestant offered to prove by the municipal secretary that the contestee was duly proclaimed elected by the municipal board of canvassers. Counsel for the contestee objected to the introduction of this testimony upon the ground that there was no allegation in the motion to that effect. The objection was sustained and the motion of contest dismissed, with the costs against the contestant. Subsequent thereto, a petition was filed in this court, asking for the remedy indicated. The respondents demurred to the petition on the ground that the same did not state facts sufficient to constitute a cause of action. After hearing, the demurrer was overruled and the respondents were given five days to answer. (Galang vs. Miranda and De Leon, 35 Phil. Rep., 269.) In their answer the respondents admitted the facts above stated and as a special defense allege that it is not true that the petitioner (the contestant in the court below) made a clerical error in alleging that the respondent De Leon was proclaimed elected municipal president by the election inspectors instead of alleging that De Leon was proclaimed elected by the municipal board of canvassers. A certified transcript of the proceedings in the court below is attached to and made a part of the record in the instant case. The following are the pertinent facts:

The contestant alleged in his motion that the contestee was duly declared elected by the board of election inspectors on the 7th of June, 1916. The municipal board of canvassers promulgated their proclamation on June 8, 1916. There is only one precinct in the municipality of Cabiao.

Counsel for the contestant asked his first witness, who was the municipal secretary, this question: "Have you received also the subpoena duces tecum to bring here the act of the municipal council of Cabiao, used on the day of the election for the provincial and municipal officers?" Sumulong, counsel for the contestee:

"I object to this question because an attempt is made to prove a fact which is not alleged in the protest, precisely the protest is defective because it is not alleged that the contestee was proclaimed (elected) by the municipal council acting as municipal board of canvassers and this defect is fatal, according to the decisions of the Supreme Court in the cases of Manalo vs. Sevilla, and Navarro vs. Veloso."

Ledesma, for the contestant:

"It is true that it is alleged that the contestee was declared elected by the board of election inspectors. I do not know whether there was an error in the preparation of the protest or not, but, however this may be, there being but one precinct in the municipality of Cabiao and the functions of the municipal council being purely ministerial and not judicial, the municipal council must base its recount and proclamation upon the inspectors' return. The allegation that the contestee was proclaimed elected by the board of inspectors is virtually a proclamation by the inspectors that the contestee was elected."

Judge:

"The objection is sustained. The question cannot be admitted, and with reference to the petition to amend the protest, alleging this fact which is attempted to be proved,the court overrules the petition because it understands that it has not acquired jurisdiction to hear the case, because that essential fact which confers jurisdiction upon the court to hear this election protest is not alleged."

After counsel for the contestant noted his exception to this ruling, Sumulong moved that the protest be dismissed, with costs. The Court:

"In conformity with the motion, for the reasons there instated and for the reasons stated upon which the former resolution of the court is based, the protest is dismissed, with costs against the contestant."

The question submitted for determination is whether or not the court lacked jurisdiction to hear and determine the contest, because the contestant alleged that the contestee had been proclaimed elected by the board of inspectors instead of alleging that the contestee had been declared elected by the municipal council, acting as municipal board of canvassers. It is conceded that if the contestant had alleged the latter fact, the court would have had jurisdiction.

While the statute provides that election contests of this character must be instituted by motion, it is silent as to what allegations such motion must contain. From the very nature of the proceedings, whereby election contests are determined, it is apparent that there must be alleged in the motion the necessary jurisdictional facts. As to the form which the motion should take thereafter and the fulness and the particularity of its averments, [that] depends largely upon the statute and the established practice. It should state, of course, in a legal and logical form the facts constituting the grounds of complaint. The fact that the contestee or someone had been proclaimed duly elected, is jurisdictional and must be alleged (Navarro vs. Veloso, 23 Phil. Rep., 625) and the better practice requires that it be alleged that this act was done by the entity authorized to do so. The board of inspectors is not authorized to proclaim anyone elected. Section 24 of Act No. 1582, known as the Election Law and which was in force at the time the election in question was held, provides that upon the completion of the count, the inspectors shall make and sign a written statement in quadruplicate, showing the date of the election, the name of the municipality, and the number of the precinct in which it was held, the whole number of ballots cast for each person for each office, and that forthwith thereafter one copy thereof shall be filed with the
municipal secretary, and the statements, ballot box, and unissued ballots shall be returned to the municipal secretary immediately. And section 26 provides that immediately after the election the municipal board shall meet in special session and shall proceed to act as a municipal board of canvassers, but such board shall not have the power to recount the votes or to inspect any of them. The section further provides that the municipal board shall proceed upon the statements rendered, as corrected, if corrections are necessary.

It will thus be seen that the duties of the municipal council, acting as municipal board of canvassers, is purely mechanical. It can only compile the returns from the various precincts, in so far as municipal officers are

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concerned. It cannot open the ballot boxes or recount the votes. It must depend exclusively upon the statements or returns made by the various precinct election inspectors. It is authorized, however, to correct clerical errors in addition and other errors of a like character. It, therefore, necessarily follows that in the absence of clerical errors, and there were none in the instant case, the result of the municipal board of canvassers' operations must be exactly the same as the proclamation publicly pronounced by the chairman of the board of election inspectors of Cabiao, both proclamations containing the same information. That of the chairman of the board of inspectors was more extensive because it was announced publicly immediately after the termination of the counting of the ballots.

If the contestant had alleged that the contestee had been duly proclaimed elected without stating by whom, the motion would have been sufficient in order to give the court jurisdiction of the subject-matter. The service of notice upon the contestee in due form and within the time prescribed by law gives the court jurisdiction of the person of the contestee. That Gonzalo de Leon was duly served, there can be no question. He appeared and answered on the 15th of June, which was within a few days after the election. To hold that the court did not acquire jurisdiction because the contestant alleged that the contestee was duly declared elected by the board of election inspectors instead of by the municipal board of canvassers is entirely without foundation and is technical in the highest degree. In speaking of technicalities, which do not go to, the jurisdiction of the court and which do not in any way prejudice the rights of litigants, this court, in Alonso vs. Villamor (16 Phil. Rep., 315), said:

"The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. No litigant should be permitted to challenge a record of a court of these Islands for defect of form when his substantial rights have not been prejudiced thereby."

The observations here made by Justice Moreland are perfectly applicable to the case under consideration. The contestee De Leon knew that his election was being contested and it could make no difference to him whether the contestant alleged that he was duly declared elected by the board of election inspectors or by the municipal board of canvassers. There being only one precinct, the result, as we have indicated, was the same. The action of the court in dismissing the contest upon this immaterial technicality deprived the contestant of his day in court.

In De Castro vs. Salas and Santiago (34 Phil. Rep., 818) we said:

"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., 259; State ex: rel Chism & Boyd vs. Judge of 26th District Court, 34 La. An., 1177; State ex rel Citizens' Bank vs. Judge of 7th District Court, 38 La. An., 499.) Dr. High, in commenting upon the rule laid down by the court, says:

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" '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.' "

We will now examine the two cases relied upon by the contestee. The first, Navarro vs. Veloso (23 Phil. Rep., 625), was a contest for the office of provincial governor. The contestant alleged that the contestee had been declared elected by the various municipal boards of inspectors. The trial court dismissed the contest upon two grounds: (1) Because it was not alleged that the contestee had been duly proclaimed governor of the Province of Leyte, and (2) because it was not alleged that all the candidates voted for had been notified. In disposing of the first ground, this court said:

"Of course, one of the fundamental facts necessary to appear before a contest can be maintained is the election of the person against whom the protest is made. If there is no election there can be no protest. The best evidence, in fact, the primary evidence of such election is, under the law, the proclamation of the provincial board of canvassers. It is nowhere alleged in the protest that such board proclaimed the election of the protestee. On the contrary, it affirmatively appears that such board did not do so, the protestant alleging that the protestee was declared elected by the various municipal boards of inspectors."

It is quite clear that the rule here announced is not applicable to the case under consideration, because in that case there were various municipal boards of inspectors. In the present case there was only one board of inspectors. In the former it was the duty of the provincial board to canvass the returns from all the precincts and then proclaim someone elected. The municipal boards of inspectors could not do this for the reason that they did not have the requisite information. One board, of inspectors did not know the result of the other precincts. And, furthermore, we did not hold in the case just cited that if the contestant had alleged that the contestee had been duly proclaimed elected, without alleging by whom the proclamation was made, that the contestant could not have proved this fact under such an allegation.

The second case, Manalo vs. Sevilla (24 Phil. Rep., 609), was also a contest involving the office of provincial governor. In this case the court said:

"We, therefore, see that the protestant must not only morally know that respondent was elected, but he must legally know it—that is to say, he must know it in such a way that he can communicate that knowledge effectively to the court. * * * We repeat, in this connection, that we must bear always in mind the imperative necessity of alleging and proving the election of the respondent, that is, the loss of the election by the protestant."

In the instant case the contestant knew that according to the returns from the one precinct that the contestee had been elected. He communicated this information to the court when he alleged that the board of election inspectors from this precinct had declared the contestee elected municipal president. The court knew that, in the absence of clerical errors, the result of the operations of the municipal canvassing board must necessarily be the same as that proclaimed by the chairman of the board of election inspectors.

For the foregoing reasons judgment will be entered in favor of the petitioner, granting the writ of mandamus directing the respondent judge to reinstate the election contest and to proceed with the trial thereof. With costs against the respondent, Gonzalo de Leon. So ordered.

Torres, Carson, and Araullo, JJ. concur.

MORELAND, J., dissenting:

The court puts the question which it considered before it for decision as follows:

"The question submitted for determination is whether or not the court lacked jurisdiction to hear and determine the contest, because the contestant alleged that the contestee had been proclaimed elected by the board of inspectors instead of alleging that the contestee had been declared elected by the municipal council, acting as municipal board of canvassers. It is conceded that if the contestant had alleged the latter fact, the court would have had jurisdiction."

In my opinion this is not the question to be determined.

It was not the question submitted nor has it, so far as

I can see, anything to do with the resolution of this controversy. It may be admitted, as it was admitted on the argument, that the court had jurisdiction of the parties and of the subject-matter; and the question presented in this case would still remain unsolved, precisely as it was before the admission. This will more clearly appear from a statement of the facts of record.

The plaintiff here sought to protest what he now contends to be the election of the defendant Gonzalo de Leon to the office of municipal president. He filed with the Court of First Instance of the district a protest to that end. In that pleading he nowhere alleged or set out the election of De Leon. The only allegation in the pleading which is held either by the plaintiff or by this court to refer to that fact in any manner is the following:

"Third. That on the 7th of June, 1916, the board of election inspectors of Cabiao, N. E., proclaimed Mr. Gonzalo de Leon elected to the office of president of said municipality."

The respondent answered denying the allegations of the plaintiff's pleading except those expressly admitted, among which was the allegation quoted; and, after alleging that he had been illegally deprived of certain votes by the inspectors of election in their canvass of the ballots cast, prayed that the contest be dismissed.

The contest went to trial and the contestant offered evidence under and to sustain the allegation quoted, in spite of the fact that that allegation stood admitted by the answer. The evidence thus offered was not the proclamation of the inspectors of election, which was the basis of the allegation quoted, but the proclamation of the municipal board of canvassers, an entirely different body having powers and duties quite apart from those of the board of election inspectors and the effect of whose acts was wholly different. Objection was made to the introduction of the evidence offered on the ground, in effect, that the contestant could not prove the acts of one body by offering those of an entirely different body; that, having alleged that one body proclaimed a certain thing, he could not sustain that allegation by proving that the same thing was proclaimed by some other body; and that the allegation sought to be proved had fully admitted by the answer. This objection was sustained. The contestant then, so claims the plaintiff here, offered to amend his pleading by striking out the allegation quoted and inserting in place thereof an allegation that the respondent was proclaimed elected by the municipal board of canvassers. The respondent, so plaintiff asserts, objected to the amendment at that late day. The contest was filed the 13th of June, the answer the 15th of June, and the amendment was asked on the 19th of July and after the case had gone to trial. The court sustained the objection and refused to allow the amendment. The contestant being unable, as a natural result, to prove the election of the respondent, the proceeding naturally collapsed ; and, on motion of the respondent, it was dismissed.

This action is for a mandamus to compel the Court of First Instance to proceed with the contest. The judgment of this court grants "the writ of mandamus directing the respondent judge to reinstate the election contest and to proceed with the trial thereof."

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I have said that this court has not correctly stated the question presented by the facts of the case for the consideration and judgment of this court. That my statement is accurate is, I believe, now clear. The question really presented is: Will mandamus be awarded to control an inferior tribunal in the legal exercise of its judgment and discretion? Applying the question directly to this case Will mandamus issue to compel the trial court to reverse his ruling on the admissibility of the evidence offered by the contestant and excluded by the court; to reverse his ruling on the motion of contestant to amend his pleading; to reverse his ruling on the motion to dismiss the contest for failure of proof; and to reinstate and go forward with the proceeding? There is here no question of the jurisdiction of the court. No one really questions its jurisdiction over the parties and the subject-matter. Nor did the trial court base its acts essentially affecting the result on its own lack of power to act otherwise. The dismissal of the proceeding was not put on the ground of lack of jurisdiction, but on the ground that the contestant's pleading did not state facts sufficient to constitute a cause of action; and that, it being too late to amend, the proceedings must be dismissed. The motion to dismiss was, in effect, a demurrer to the pleading; and the dismissal was like the sustaining of a demurrer without leave to amend. The motion was in the following form:

"It not having been alleged in the contest that the board of municipal canvassers of Cabiao proclaimed the result of the election in that municipality, and that being an allegation necessary to give the court jurisdiction over the action, and this omission justifying a motion to dismiss the contest on the ground that the protest does not state facts sufficient to constitute a cause of action, we ask the court to dismiss the contest with costs."

The order of the court made upon this motion is as follows:

"Upon the grounds stated in the motion and for the reasons which appear as the basis of former decisions of this court, the motion is granted and the protest dismissed with costs."

These proceedings clearly show that no question of jurisdiction was involved in any way.

Plaintiff contends, however, that the refusal of the court to allow the amendment was put upon the ground of lack of jurisdiction to do so. Even if this is so it does not affect the case. But let us look at the record. The defendant in this case strenuously contends that no motion to amend the protest was made by the contestant; and he cites the records to substantiate his position. The record, outside of the statement of the trial court quoted in the opinion of this court, fully bears out defendant's contention. It shows that the contestant offered in evidence the proclamation of the municipal board of canvassers to prove his election. Counsel for respondent objected. The objection is immediately followed in the record by the argument of counsel for respondent in reply to the objection. It is as follows:

"The board of inspectors of the precinct of Cabiao declared the respondent elected. I do not know whether or not an error was made in drafting the protest. But in any case, there being only one precinct in the municipality of Cabiao, and the functions of the municipal council being purely ministerial and not judicial to the extent that the municipal council must base its recount and proclamation upon the proclamation of the board of inspectors, the allegation in the protest that the contestant was declared elected by the board of inspectors of the only precinct of Cabiao is virtually an allegation that he was proclaimed elected by the municipal board of canvassers."

There immediately follows the statement of the trial court, already quoted in the opinion of this court, which speaks of a motion to amend. So far as the record goes, it shows no such motion. Indeed, the very argument of counsel for contestant shows that he did not wish to amend, his contention being that the protest was good as it stood,—that, as he says, the allegation that the contestant was proclaimed elected by the board of inspectors was just as good as one to the effect that he was declared elected by the municipal board of canvassers. From this point of view no amendment was necessary. He reiterates this on the motion to dismiss. He says:

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"I object to the motion to dismiss upon the ground that paragraph 3 of the protest contains virtually and substantially an allegation of the proclamation of the result of the election in the municipality of Cabiao—a proclamation of the election of the respondent; and that the allegation in paragraph 3 of the protest confers jurisdiction on the court."

All this goes to show that no motion to amend was made, as counsel for the contestant was perfectly satisfied with the allegation as it was.

If we hold that there was no motion to amend, then the question presented is narrowed to the determination of whether a mandamus will lie to reverse the ruling of the trial court on the admissibility of evidence, and to reverse a judgment of a trial court dismissing a complaint on the ground that the plaintiff had failed to prove a cause of action, or on the ground that the complaint did not state facts sufficient to constitute a cause of action. That this is the question presented is particularly evident when it is noted that the motion to dismiss the contest was based upon the ground "that the protest does not state facts sufficient to constitute a cause of action;" and that the court granted the motion and dismissed the protest "upon the grounds stated in the motion," among others.

It would therefore appear that no motion to amend was made; that the court was in error in passing on such a motion, or that there was error in making up the record. The facts of record are entirely against the claim that such a motion was made.

With the question to be decided stated as I have stated it there is only one possible answer—mandamus will not issue.

Let us see what this court has actually done in this case. The trial court held (1) that the allegation that the respondent was declared elected by the board of election inspectors was not the equivalent of the allegation that he was declared elected by the municipal board of canvassers; (2) that the allegation that the board of election inspectors proclaimed respondent elected was not an allegation of respondent's election; (3) that the proclamation of the municipal board of canvassers was not admissible to prove the allegation that the board of election inspectors proclaimed respondent's election and was, therefore, inadmissible under the contestant's pleading; (4) admitting plaintiff's contention that he asked leave to amend his protest, the trial court denied leave to amend the protest; (5) the court entered a non suit for failure to prove the allegation of the protest; or, by looking at it from another point of view, he dismissed the protest on the ground that it did not state facts sufficient to constitute a cause of action. We have, then, five different propositions of law on which the trial court passed its judgment. The Supreme Court, by this decision, has used the writ of mandamus to reverse every one of those judgment as the trial court passed it, and has ordered the trial court to proceed and hear the contest on the merits. The trial court was required by law to exercise its judgment and discretion on every one of those five propositions and to decide the question involved in each one according to its own judgment of the law. It did so. Will mandamus lie to compel him to change his judgment, exercise a different discretion, and pronounce a different judgment in each case? Assuredly not. The trial court having, as the law required, used its judgment and discretion in the resolution of the question before it, mandamus will not lie to change the result reached. It is settled law that an inferior court is supreme within its own jurisdiction so long as it is acting (Ex party Sawyer, 21 Wall., 235, 238) and that the writ of mandamus cannot be used to control the discretion and judgment of an inferior court in the exercise of its legitimate jurisdiction, although exercised oppressively. (Ex parte Secombe, 19 How., 9, 15; 15 1. ed., 565; Ex parte Denver and Rio Grande Railway Co., 101 U. S., 711, 720; 25 1. ed., 872; Ex parte Flippin, 94 U. S., 348; 24 1. ed., 194; Life & Fire Ins. Co. vs. Wilson, 8 Pet, 291, 304; 8 1. ed., 949; In re Parsons, 150 U. S., 150, 156; 87 1. ed., 1034; Ex parte Bradley, 7 Wall., 364, 377; 19 1. ed., 214; Ex parte Many, 14 How., 24, 25; 14 1. ed., 311; United States vs. Addison, 22 How., 174, 183; 16 1. ed., 304; Ex parte Loring, 94 U. S., 418, 419; 24 1. ed., 165; Ex parte Newman, 14 Wall., 152, 169; 20 1. ed., 877; Ex parte Brown, 116 U. S., 401, 402; 29 1. ed., 676; In re

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Pollitz, 206 U. S., 323, 331; 51 1. ed., 1081; Kendall vs. United States, 12 Pet, 524, 622; 9 1. ed., 1181; Ex parte Russell, 13 Wall., 664y 670; 20 1. ed., 632; Ex parte Sawyer, 21 Wall., 235, 238; 22 1. ed., 617; United States vs. Lawrence, 3 Dall., 42, 53; 1 1. ed., 502; Ex parte Perry, 102 U. S., 183, 186; 26 1. ed., 43; In re Atlantic City Railroad Co., 164 U. S., 633, 635; 41 1. ed., 579; Ex parte Railway Co., 101 U. S., 711, 720; 25 I. ed., 872; In re Hawkins 147 U. S., 486, 490; 37 1. ed., 251; Ex parte Morgan, 114 U. S., 174, 175; 29 1. ed., 135; Ex parte Burtis 103 U. S., 238; 26 1. ed., 392; Ex parte Schwab, 98 U. S., 240; 25 1. ed., 105; The Life & Fire Ins. Co. of New York vs. Adams, 9 Pet., 573, 602; 9 1. ed., 234; Ex parte Roberts, 6 Pet, 216, 217; 8 1. ed., 375; In re Haberman Mfg. Co., 147 U. S., 525, 530; 37 1. ed., 266; Commonwealth of Virginia vs. Paul, 148 U. S., 107, 124; 37 1. ed., 386; Morrison vs. District Court of the United States, 147 U. S., 14, 26; 37 1. ed., 60; American Const. Co. vs. Jacksonville, etc., R. Co., 148 U. S., 372, 379, 386; 37 L ed., 486; Ex parte Humes, 149 U. S., 192; 371. ed., 698; Ex parte Cutting, 94 U. S., 14, 22; 24 1. ed., 49; Ex parte Taylor, 14 How., 3; 14 L ed., 302; Ex parte Hoyt, 13 Pet, 279; 10 1. ed., 161; Ex parte Whitney, 13 Pet., 404; 10 1. ed., 221; Hudson vs. Parker, 156 U. S., 277, 288; 39 1. ed., 424; Ex parte Crane, 5 Pet., 190; 8 1. ed., 92; Ex parte Chateaugay etc., Iron Co., 128 U, S., 544, 557; 32 1. ed., 508; Ex parte Parker, 120 U. S., 737, 742; 30 1. ed., 818; Ex parte Parker, 131 U. S., 221, 226; 33 1. ed., 123; Ex parte The Milwaukee etc., R. Co., 5 Wall., 188, 190; 18 1. ed., 676; Clough vs. Curtis, 134 U. S., 361, 371; 33 1. ed., 945; Ex parte Taylor, 14 How., 3, 13; 14 1. ed., 302.) Nor can it be compelled to decide in a particular way; but must be left free to exercise its judgment and discretion in its own way. (United States vs. Lawrence, 3 DalL, 42, 43, 45; 1 1. ed., 502; Ex parte Crane, 5 Pet., 190, 207; 8 1. ed., 92; Morrison vs. District Court of the United States, 147 U. S., 14, 26; 37 1. ed., 60; Ex parte Morgan, 114 U. S., 174; 29 1. ed., 135; Ex parte Brown, 116 U. S., 401; 29 1. ed., 676; Ex parte Flippin, 94 U. S., 348, 350; 24 1. ed., 194; Kendall vs. United States, 12 Pet., 524, 622; 9 1. ed., 1181; In re Pollitz, 206 U. S., 323, 331; 51 1. ed., 1081; Ex parte Newman, 14 Wall, 152, 165; 20 1. ed., 877; In re Parsons, 150 U. S., 150, 156; 37 1. ed., 1034; The Life & Fire Ins. Co. vs. Adams, 9 Pet., 573; 9 1. ed., 234.) In the case at bar the Supreme Court compels the Court of First Instance to reverse itself on five different questions on which it lawfully exercised its discretion and judgment; and orders it to render a judgment in each case exactly opposite to the one it has already rendered in the legal exercise of that judgment and discretion. This is, it appears to me, palpable abuse of the writ, and is an illegal invasion of the prerogatives of Courts of First Instance. This sort of decision puts the Supreme Court well on its way to a usurpation of the functions of trial courts. When a trial court cannot exercise its judgment and discretion upon questions of law and of fact submitted by the parties, without being mandamused by the Supreme Court and compelled to act not as the law, but as the Supreme Court requires; to use not its own judgment and discretion, but the judgment and discretion of the Supreme Court, then does chaos reign in the administration of justice in the Philippine Islands.

Let us take the specific rulings which the Court of First Instance made in the course of the proceedings below. First, as to the admissibility of the evidence offered to prove the allegation of the protest concerning the election of the respondent The court, on the objection of the respondent, excluded the proclamation of the municipal board of canvassers offered to prove the allegation based on the proclamation of the board of election inspectors. This ruling the Supreme Court reverses by mandamus. As I view it, this is contrary to the known and established principles of law. It is universal law that the writ of mandamus does not He to control the judgment of a trial court as to the evidence it will receive or reject during a trial. If that were not so trials would never end, as mandamuses would descend upon trial courts like locust on fields of grain. The same rule applies to the finding of the trial court that the allegation of the contestant that the board of election inspectors declared the respondent elected (1) was not the equivalent of an allegation that he was declared elected by the proclamation of the municipal board of canvassers; and (2) that such allegation was not an allegation that the respondent was duly elected. The municipal board of canvassers is the only body authorized by law to proclaim the election of municipal officers; and its proclamation is the only evidence of such election (Manalo vs. Sevilla, 24 Phil. Rep., 609). The board of election inspectors has no authority to declare any person elected to a municipal office. Now, will mandamus lie to compel

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the trial court to change its mind on that question? Certainly not. The decisions already cited demonstrate this conclusively.

Will mandamus be awarded to compel a trial court to reverse a judgment of non suit or one sustaining a demurrer and dismissing a complaint, or one dismissing a complaint on a motion based on the ground that the complaint does not state facts sufficient to constitute a cause of action? Of course not. It is settled law that mandamus will not be granted in such cases. (See cases already cited and also Ex parte Loring, 94 U. S., 418.)

What about the refusal of the trial court to allow an amendment (admitting for the moment that leave to amend was asked) ? Precisely the same. It is unquestioned law that the allowance or refusal of amendments to pleadings will not be controlled by mandamus. (Ex parte Bradstreet, 7 Pet., 634, 647; The Bank of Columbia vs. Sweeny, 1 Pet., 567; Ex parte Davenport, 6 Pet., 661, 663.) It is also, settled law that the decision of a court on a motion cannot be reversed by mandamus. (Ex parte Loring, 94 U. S., 418, 419.) An inferior court cannot be compelled to render a particular judgment on any question. It has the right to decide every question properly presented to it as it believes it ought to decide under the law. (In re Rice, 155 U. S., 396, 403; 39 1. ed., 198; Ex parte Newman, 14 Wall, 152, 165; 20 1. ed., 877; The Life & Fire Ins. Co. vs. Adams, 9 Pet., 573, 602; 9 1. ed., 234; In re Parsons, 150 U. S., 150; 37 1. ed., 1034; Life & Fire Ins. Co. vs. Wilson, 8 Pet, 291; 8 1. ed., 949; Ex parte Hoyt, 13 Pet, 279, 290; 10 1. ed., 161.)

This court is, it seems to me, wrong in reversing the trial court upon these questions in a mandamus action. It seems to have misunderstood the statement of Mr. High quoted in the Castro case to the effect that: "If a 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 proceed to hear it on the merits." There was no preliminary objection here. The case went to trial and the contestant could not prove his case.

As I have before stated, the question is not one of the jurisdiction of the trial court, but, rather: Will mandamus issue to control the judgment and discretion of a trial court when legally exercised? Not a single word is uttered throughout the opinion of the Supreme Court in this case on the question of whether mandamus is the proper remedy under the facts of this case. It quotes the Castro decision, but has not a word to say as to why it is applicable to the case before us. No attempt is made to discuss what I consider the only question presented by this record. The trial court did not base its ruling excluding the evidence offered by the contestant on the ground of lack of jurisdiction. It simply sustained the objection and gave no reason whatever. It did not base its order dismissing the case on lack of jurisdiction, but on defects in the complaint and evidence. No party to this action alleges a lack of jurisdiction of the trial court over the parties or the subject-matter. The plaintiff asserts the precise contrary and asks that the court continue with the contest. The defendant does not allege it. He contends that the trial court properly ruled out the evidence offered by the contestant as it was inadmissible under his allegation; that he could not allege that one body declared respondent elected and then prove, under that allegation, that some other body did it. He contends that the court properly dismissed the contest both on the ground that the complaint did not state facts sufficient to constitute a cause of action and also on the ground that the plaintiff did not prove a case against the defendant. Nowhere in all the record does anybody base any claim upon the lack of jurisdiction of the trial court. It is true that the trial court seems, on the face of the order denying leave to amend, to base it on the ground of lack of jurisdiction. But apart from the explanation of that fact already given, we have this further fact, that the allegation of the protest under which the evidence rejected was offered was admitted by the respondent in his answer. If the allegation was true, and material, and amounted to anything in law, there was no necessity of proving it; it was admitted by the answer. On the other hand, if it was of no legal value to the contestant, then that was his fault alone; and, whether or not an amendment should be allowed at that late date (July 19) and after the trial had begun was a matter exclusively within the discretion of the trial court,

and the exercise of that discretion was not subject to review even on appeal unless the complaining party clearly showed an abuse of the discretion. It seems to me to be an unusual conception of the office of mandamus to hold that it will issue in such case.

I have made no argument to show that the various opinions of and judgments passed by the trial court upon the questions before him were correct in law. It is of no consequence, so far as the right to a writ of mandamus is concerned whether the inferior court was right or wrong. In considering whether the writ will issue or not it is unnecessary, in a case of this kind, to determine whether the court was right or wrong. It is sufficient to know that he was exercising his judgment and discretion on questions properly presented. Whether the result reached was right or wrong is immaterial; for, so far as the right to the writ is concerned, the court is at perfect liberty to decide all of the questions wrong. The writ will no more issue where the decision is wrong than where it is right. Of course, where there is a dismissal of a case on a preliminary objection the situation is different. I speak only of those cases where all preliminary questions are passed and the court has entered upon the case in one aspect or another. This is the case before us. It was not dismissed on a preliminary objection. The case was at issue, was on trial; and the dismissal was based upon grounds which showed that it occurred as a result of the exercise of the judgment and discretion of the court within the case and during the progress thereof and not outside of it or before the consideration of the case began. This is precisely the meaning of the Code of Civil Procedure, where it provides, section 222, that mandamus will be awarded when it appears that a court "unlawfully neglects the performance of an act which the law specially enjoins as a duty * * * or unlawfully excludes the plaintiff from the use and enjoyment of a right." So far as mandamus is concerned the only right which a plaintiff has is that the court shall exercise its judgment and discretion upon any question which he properly presents. He has no right to demand that the court exercise its judgment and discretion in a particular way. The only duty laid by law upon Courts of First Instance of the Philippine Islands is to exercise their judgment and discretion. When they have done that, they have complied fully with the law and completely met their obligation; and mandamus cannot issue to compel them to do more. No litigant can do more than compel a court to decide his case. He cannot compel it to decide his way. The contestant in this case asked the court to decide every one of the five questions above set out; and the court did it Can he now compel the court to do anything more? No. The court has acted, and, thus acting, has fulfilled every duty laid upon it by law. Nothing remains for it to do.

The Supreme Court has made an elaborate argument to show that the trial court was in error in deciding that the allegation that the board of election inspectors of Cabiao declared the respondent elected was not equivalent to an allegation that the contestant was proclaimed elected by the municipal board of canvassers, and was not an allegation of the fact of the respondent's election. It presents the same argument that contestant's attorney made in reply to the objection of the respondent to the introduction of the evidence offered by contestant to prove the allegation referred to, namely, that, inasmuch as the municipal board of canvassers cannot alter the figures furnished it by the return made by the board of election inspectors, but must base its proclamation on those figures alone, its proclamation cannot be different from the return of the inspectors and, therefore, the return of the board of inspectors is equivalent in law to the proclamation of the municipal board of canvassers. This reasoning is, of course, utterly unsound. The board of election inspectors has no authority to declare anyone elected. It can "proclaim" nothing. It can simply make a "return" But the return elects nobody. A candidate is no more elected after the return than he was before the return. The proclamation of the municipal board of canvassers is the operative act under the law. That is the only body capable of determining who was elected. Its proclamation is the only evidence of election (Manalo vs. Sevilla, above). Whether there was only one precinct in Cabiao or twenty has not the slightest bearing on the case; and the attempt to distinguish the cases of Navarro vs. Veloso and Manalo vs. Sevilla on that ground must be wholly barren of legal result. If twenty boards of election inspectors could not legally and effectively declare a candidate elected, one could not. The reasoning upon which the alleged

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distinction is based is interesting not only as a matter of logic but as statement to the legislature that it made a mistake when it provided that the power to proclaim election to municipal offices should rest exclusively with the board of municipal canvassers; and that the Supreme Court will rectify that mistake by declaring that the board of election inspectors may also declare and proclaim election to municipal offices.

There is a strange confusion involved in this statement of the court. Referring to what was held in the Navarro case, the court says:

"And, furthermore, we did not hold in the case just cited that if the contestant had alleged that the contestee had been duly proclaimed elected, without alleging by whom the proclamation was made, that the contestant could not have proved this fact under such an allegation."

This is true. Nor did the trial court in this case hold that. The trouble was that the contestant did not allege that respondent was elected or that he had been duly proclaimed elected. He simply alleged that "the board of election inspectors * * * proclaimed" the respondent elected. This is not an allegation that respondent was elected. It is simply an allegation that a certain body did an illegal thing; that it made a proclamation impossible in law. There is a grand difference between an allegation that "respondent was duly elected" and the allegation that "the board of election inspectors proclaimed respondent elected." This difference the court has overlooked.

But let us admit that this contention of the court is sound. What of it? Are we any nearer to mandamus than before? Not at all. I have said already that the right to the issuance of a writ of mandamus does not at all depend on whether the court committed an error or not.

The last remark applies to the court's argument based on the claim that the position of the defendant in this case, is "technical in the highest degree." Does the issuance of the writ depend on whether the inferior court decided the question or the case on technical or on fundamental grounds? I never understood that such a distinction had been made in the law of mandamus. But can it be called technical when a contestant fails to allege the election of the respondent? (Manalo vs. Sevilla, above.)

The whole discussion of the court is necessarily fruitless. Having erred as to the question presented for resolution, naturally nothing but error could follow.

I do not believe the writ should be awarded.

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