

DOMINGO FAJAEDO ET AL., PETITIONERS, VS. MANUEL V. DEL ROSARIO, JUDGE OF FIRST INSTANCE OF AMBOS CAMARINES, ET AL., RESPONDENTS.

G.R. No. 12179. January 25, 1917

Ponente: TRENT, J.

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TRENT, J.:

This is an original action in the Supreme Court whereby the petitioner seeks to compel, by mandamus, the respondent judge to sign a bill of exceptions.

The facts, according to the allegations in the complaint, are these: At the general election held on June 6, 1916, the petitioners and respondents, except the judge, were opposing candidates for the various municipal officers of Baao, Province of Ambos Camarines. The respondents were proclaimed elected. The petitioners contested the election. After hearing, the motion of contest was dismissed upon the merits. The petitioners prepared and submitted to the judge a bill of exceptions for approval. The judge declined to sign the bill for the reason, as he stated, that the judgment was final and conclusive.

The respondents demurred to the petition upon the ground that it does not state facts sufficient to justify the issuance of the writ, citing and relying upon the case of *Arzadon vs. Chanco and Baldueza* (14 Phil. Rep., 710) wherein the court held that:

"The jurisdiction of Courts of First Instance to hear and decide election contests is exclusive and final (sec. 27 of the Election Law); consequently, decisions rendered by them in the exercise of said jurisdiction can not be reviewed by means of an appeal. As they are not appealable and as against them no other plain, speedy and adequate remedy exists, it is evident that they constitute a proper subject for the extraordinary remedy of certiorari."

Counsel for the petitioners contends that the question whether judgments of Courts of First Instance in municipal election contests are appealable has never been directly raised and decided by this court and that, therefore, the question is still an open one, citing *McGirr vs. Hamilton and Abreu* (30 Phil. Rep., 563). We agree with counsel for the petitioners upon this point and will proceed to examine the case as of first impression.

Section 27 of Act No. 1582, as amended by section 2 of Act No. 2170, provides, among other things, that:

"The contest shall be filed with the court within two weeks after the election and shall be decided by the same as soon as possible after the hearing of the contest. Such court shall have exclusive and final jurisdiction, except as hereinafter provided. * * *: Provided, however, That an appeal may be taken to the Supreme Court, within ten days, from any final decision rendered by the Court of First Instance on contests of elections for provincial governors, for the review, amendment, repeal, or confirmation of such decision, and the procedure thereon shall be the same as in a criminal cause."

These provisions were reenacted without change and now form a part of sections 576 and 577 of Act No. 2657,

effective July 1, 1916.

It is contended on behalf of the petitioners that both Acts, in so far as they attempt to make the judgments of Courts of First Instance in such cases final and conclusive, are inconsistent with and repugnant to the provisions of section 9 of the Act of Congress of July 1, 1902, and section 26 of the Act of Congress of August 29, 1916.

The pertinent provisions of the two Acts of Congress, both being the same, read:

"That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law."

The jurisdiction of the Supreme Court, as thus conferred upon it by Congress, may be added to, but not diminished, by the Philippine Legislature. This proposition has long since been settled and if the acts complained of do, in fact, curtail the jurisdiction of this court, they are null and void. The inquiry now arises whether the Supreme Court of the Philippine Islands had jurisdiction to entertain appeals from judgments of Courts of First Instance in municipal election contests prior to the enactment of the first Philippine Bill.

Section 18 of the Organic Act, No. 136, effective June 16, 1901, reads as follows:

"The Supreme Court shall have appellate jurisdiction of all actions and special proceedings properly brought to it from Courts of First Instance, and from other tribunals from whose judgment the law shall specially provide an appeal to the Supreme Court."

Section 496 of the Code of Civil Procedure (Act No. 190), effective October 1, 1901, provides that the Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse or modify any final judgment, order or decree of a Court of First Instance regularly entered in the Supreme Court by a bill of exceptions or appeal.

Section 56 of Act No. 136 provides that:

"Courts of First Instance shall have original jurisdiction:

"1. In all civil actions in which the subject of litigations is not capable of pecuniary estimation;" * * *.

Section 1 of the Code of Civil Procedure, which is "An Act providing a Code of Procedure in civil actions and special proceedings in the Philippine Islands," defines an action to be "an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a wrong;" and then declares that "every other remedy furnished by law is a special proceeding." Under section 143 of Act No. 190, either party to an action has the right to perfect a bill of exceptions for review by the Supreme Court of all rules, orders, and judgments made in the action, to which the party excepted in due time. The word "action," as here used, includes the special remedies of injunction, quo warranto, certiorari, mandamus, prohibition, and contempt. Part 2 of Act No. 190 contains the procedural law governing "special proceedings." In, such matters the orders, judgments, etc., of Courts of First Instance are reviewed by the Supreme Court on appeal and not by bills of exceptions. "Special proceedings" include proceedings in habeas corpus, the appointment of guardians, trustees and matters relating thereto, and the settlement of estates of deceased persons, including appeals in such matters. Every "special proceeding" is specifically defined and dealt with under its corresponding title. Election contest cases are nowhere mentioned or provided for in the Code. In fact, the only references to election matters are found in the sections under the title "Usurpation of office or franchise." The remedies herein provided are actions of quo warranto, which are not "special proceedings" within the meaning of the Code.

The right of the Philippine Commission to create municipal offices, to provide for the filling of them, and to

determine the manner in which the incumbents should derive their titles to such offices, at least prior to the approval of the Act of Congress of July 1, 1902, has never been questioned. In the exercise of this power, the Commission, after providing for the election of municipal officials by the qualified voters of the respective municipalities, declared that all contests in such elections shall be heard and determined by the provincial board of the organized province wherein the elections were held (sec. 13 of Act No. 82, effective January 31, 1901), thus creating a special tribunal for the determination of those questions exclusive of the Courts, although possessing general and original jurisdiction under Act No. 136. While it is true that when an election took place under Act No. 82 and the will of the people was expressed through the ballot box, the candidate receiving the number of votes necessary to elect him was entitled to the possession of the office, its rights and emoluments, and that these were his property, yet they were not of that class or kind of property mentioned in section 56 of Act No. 136 over which Courts of First Instance were given original jurisdiction. Neither was the exercise of the right to hold the office and enjoy its emoluments such a right which could be enforced in an "action" or "special proceedings," as these terms are used in the Code of Civil Procedure (Act No. 190). There is a clear distinction between a proceeding to contest an election and one to recover an office unlawfully withheld from another. Courts of First Instance have jurisdiction in actions of quo warranto to determine the title to an office and to oust the usurper, but this action will not lie before the beginning of a term of office, as the court can only give a judgment of ouster, based upon the existing usurpation. Jurisdiction to hear and determine municipal election contests was conferred upon the Courts of First Instance by Act No. 1582, effective January 9, 1907, but this was long after the approval of the first Philippine Bill. The result is that neither Act No. 1582 with its amendments, nor the reenactment (sections 576 and 577 of Act No. 2657) whereby judgments of Courts of First Instance in such cases, when rendered upon the merits, are final and conclusive, does not diminish the appellate jurisdiction of this court in violation of the Acts of Congress, for the reason that this court did not have such jurisdiction prior to the first Act of Congress.

For the foregoing reasons, the demurrer to the petition is sustained and the petitioners are given five days after notice within which to amend their petition. If no amendment is filed within this time, judgment will be entered dismissing the case, with costs against the petitioners. So ordered.

Torres and Araullo, JJ., concur.

Carson, J., concurs in the result.

MORELAND, J., concurring:

I agree to the decision of the court on the ground that the subject of election was left by Congress to the local legislative body and its action in relation to appeals in contested election cases is binding on the courts.

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