

**JUAN DE LA CRUZ, PETITIONER, VS. PERCY M. MOIR, JUDGE OF
FIRST INSTANCE OF PAMPANGA, MELENCIO M. TRINIDAD,
FULGENCIO JAYME AND LEOCADIO BLANCO, RESPONDENTS.**

G.R. No. 12256. February 06, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition for a writ of certiorari to be directed to the Court of First Instance of Pampanga requiring him to remit to this court all the records and papers relating to a certain election contest pending therein instituted by Juan de la Cruz against Melecio M. Trinidad, that the proceeding had in said contest may be revised by this court and certain of the steps taken therein be declared null and void on the ground that they were taken by the court without or in excess of its jurisdiction.

The petition shows that on the 20th of June, 1916, Juan de la Cruz filed a protest in the Court of First Instance of Pampanga against Melecio M. Trinidad and others challenging the validity of the election of said Trinidad to the office of municipal president of Macabebe, Pampanga. The contest was duly brought on for hearing. After hearing and the presentation of evidence the court dismissed the proceedings on the merits. The particular acts of the court of which complaint is made are set out in the petition in this case as follows:

"That in trying and dismissing the said election protest filed by the petitioner, the said respondent the Hon. Percy M. Moir, as judge of first instance of Pampanga, has exceeded his jurisdiction in that although the said respondent judge admits that there were 193 electors of Macabebe who voted as illiterates and most of whom took no oath regarding their illiteracy before voting and who were aided only by one inspector of election and not by two as required by the election law, yet the said respondent judge has entirely and voluntarily failed, omitted and refused to separate the votes of the said illiterates and to declare the same as null and void, an act which is not only in excess of his jurisdiction but is manifestly against the law, for the votes of illiterates who have not taken the the necessary oath regarding their illiteracy before voting and who were aided only by one inspector of election are null and void.

"That in trying to indentify these votes of the illiterates, the petitioner moved the court below to put the election inspectors of Macabebe on the witness stand requiring them to select and separate the ballots prepared by each of them, with a view to separate and annul the said voes of the supposed illiterates, but he respondent judge refused to grant said motion of the petitioner, thereby exceeding his jurisdiction and abusing his judicial discretion.

"That during the trial of the protest the petitioner has offered to prove that of the 193 voters who voted as illiterates a great majority could write and could personally prepare their own ballots without the necessity of the aid of the inspectors, and that this mode of voting was adopted by the inspectors of the election only to perpetrate fraud on the voters; but all the evidence offered to this point by the petitioner, to wit, (1) Exhibit D (in the court below) which is a collection of the certificates of oaths of all the electors of Macabebe wherein can be seen who can write and who cannot; (2) Exhibit E (court below) which is the list of the 193 voters who voted as illiterates and (3) witness Cornelio Bustos who knew the majority of these voters as he has been an

election inspector too in the said municipality of Macabebe in one of the last elections, was rejected by the respondent judge notwithstanding this evidence is material, competent and relevant to the allegations of the petitioner in the protest. This rejection of evidence constitutes on the part of the respondent judge a violation of his duty and an abuse of his judicial discretion the correction of which law and justice demand.

"That by separating and annulling the votes of the illiterates who voted in violation of the law the result of the election at the municipality of Macabebe, Pampanga, will be changed in that the petitioner herein will have the majority of the legal votes cast at that election and will therefore have to be declared elected instead of respondent Melecio M. Trinidad.

"That the said respondent judge, the Hon. Percy M. Moir, has also exceeded his jurisdiction and abused his discretion in that upon opening the ballot box he has refused, to the prejudice of the petitioner, to annul 62 ballots for the respondent Melecio M. Trinidad in spite of the fact that these 62 ballots were marked with certain initials, said initials having not been proven to have been put without the knowledge and consent of the voters. On the other hand, the petitioner has conclusively proven that the voters themselves made those marks while preparing their ballots, that the ballot boxes were carefully and duly cared for by the municipal secretary until said ballot boxes were delivered to the court.

"That the said respondent judge has also abused his discretion and thus exceeded his jurisdiction in finding and concluding after the ballot box was opened that the said ballot box has been tampered with while in the custody of the municipal secretary, when in fact there was no evidence produced by the respondents proving the tampering of the ballot box.

"That by annulling these 62 marked ballots for respondent Melecio M. Trinidad, the result of the election at the municipality of Macabebe will be changed in that the petitioner Juan de la Cruz will have the majority of the legal votes as municipal president instead of said respondent Melecio M. Trinidad.

"That the respondent the Hon. Percy M. Moir, as judge of the Court of First Instance of Pampanga, has also exceeded his jurisdiction and abused his discretion in not annulling the election had on June 6, 1916, at the municipality of Macabebe, Pampanga, in spite of the fact that the evidence establishes (1) that while the inspectors were preparing the ballots of the alleged illiterates, there were present around them in the voting booths several other voters watching how the ballots were being filled by the inspectors thereby violating the secrecy of the election; (2) that the inspectors of respondent Melecio M. Trinidad in preparing the ballots for the illiterate voters did not at all ascertain the wishes of said illiterates but filled their ballots as said inspectors wished; (3) that the inspectors of respondent Melecio M. Trinidad were guilty of electioneering in the voting booths; (4) that the voting booths were not constructed in the manner provided for by the election law and were without doors; (5) that those who were waiting to vote near them could well see the ballots filled by the voters in their respective booths and could read such ballots if they wanted it; (6) that the voting booths were constructed outside of the guard rail; (7) that the public were prohibited by the inspectors to approach and observe the election within the distance of 30 meters with the exception of 10 voters at a time who were called to vote; (8) that the entrance of the voters to the electoral college was regulated in groups of 10 by 10 from each party, a mode adopted to discover before hand the force of each party, but a mode contrary to law. These facts have been proven although the respondent judge has failed to make findings of them, and these facts are sufficient to annul an election."

Another ground upon which the petition was based was added by an amendment to the petition which says:

"Not less than 40 marked and countersigned ballots were counted in favor of Melecio M. Trinidad and legal and valid ballots cast in favor of the petitioner were rejected by the court and not counted in his favor."

An answer was duly filed by which, while certain allegations of the petition are denied, the main facts are admitted. The denials referred chiefly not to facts alleged in the petition but to conclusions which the petitioner draws from facts.

We are of the opinion that the petition does not state facts sufficient to warrant the relief prayed for. We have held in a long line of decisions that certiorari will not lie under the law of the Philippine Islands except in cases where the court has acted without or in excess of its jurisdiction and the acts thus performed are void (*In re Prautch*, 1 Phil. Rep., 132; *Springer vs. Odlin*, 3 Phil. Rep., 344; *Arzadon vs. Chanco*, 14 Phil. Rep., 710; *De Fiesta vs. Llorente and Manila Railroad Co.*, 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 P. I. vs. Judge of First Instance of Iloilo and Bantillo*, 34 Phil. Rep., 157). Certiorari, as a necessary consequence, will not lie to correct errors. In the case of *Herrera vs. Barretto and Joaquin* (25 Phil. Rep., 245) we said:

"It has been repeatedly held by this court that a writ of certiorari will not be issued unless it clearly appears that the court to which it is to be directed acted without or in excess of jurisdiction. It will not be issued to cure errors in the proceedings or to correct erroneous conclusions of law or of fact. If the court has jurisdiction of the subject-matter and of the person, decisions upon all questions pertaining to the cause are decisions they may be, cannot be corrected by certiorari" (p. 249).

"Jurisdiction is the authority to hear and determine a cause—the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction of the person and subject-matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction." (p. 251).

"A full and thorough examination of all the decided cases in this court touching the question of certiorari and prohibition fully supports the proposition already stated that, where a Court of First Instance has jurisdiction of the subject-matter and of the person, its decision of any question pertaining to the cause, however erroneous, cannot be reviewed by certiorari, but must be corrected by appeal" (p. 271).

None of the acts set out in the petition affect the jurisdiction of the court. They are acts performed in the exercise or jurisdiction; and, even though the decision of the court upon each one of the questions presented by the allegations of the petition was wrong in fact and in law, his jurisdiction would remain unaffected. As we have said so many times, it is always necessary to bear in mind the difference between jurisdiction and the exercise of jurisdiction. When a court exercises its jurisdiction an error committed while engaged in that exercise does not deprive it of the jurisdiction which it is exercising when the error is committed. If it did, every error committed by a court would deprive it of jurisdiction and every erroneous judgment would be a void judgment. This, of course, is not possible. The administration of justice would not survive such a rule. The decision of the trial court in the case before us holding that certain ballots cast by illiterates which had been prepared for them by the inspectors of election were legal and valid although the illiterates did not, previous to the preparation of their ballots by the inspectors, take the oath required by law showing that they could not cast their ballots without assistance, is a decision entirely within the jurisdiction of the court, even if we concede for the sake of argument that the court was wrong in that decision. The same could be said if he had held the precise contrary and had excluded all of the ballots cast by illiterates; and, of course, it necessarily follows that his failure to separate those which the petitioner claims were illegal from those he claims were legal does not alter the situation. The court has power and authority to conduct the case as he believes law and justice require and whatever he does is within his jurisdiction so long as he does not violate the principle of due process of law or transcend the limits of the case before him.

We reach the same result in discussing the other alleged errors. The denial of the motion to separate the illegal from the legal ballots, the rejection of the offer to prove that the majority of the illiterate voters could read and write, the refusal to annul 62 ballots in favor of Melecio M. Trinidad in spite of the fact that they were marked with certain letters, the finding that a certain ballot box had been tampered with after the ballots have been

counted and the box sealed by the inspectors, the refusal to annul the election in the municipality of Macababa on account of certain irregularities and violations of law which took place in the conduct thereof, and the counting of more than 40 marked ballots in favor of Trinidad and the refusal to count legal ballots in favor of Juan de la Cruz, do not touch the jurisdiction of the court in any way. They are all decisions made in the exercise of its jurisdiction and however erroneous they may be, if they or any of them are erroneous at all, it had power and authority to make them and they cannot be attacked on the ground of lack of jurisdiction.

On the oral argument it was said by counsel for the petitioner that some of the findings of the trial court were without evidence to support them. There is no allegation to this effect in the petition and no question of that sort is presented by the pleadings. We might say, however, that, even if the question were presented and it were admitted that certain findings were without evidence to support them, that would not mean necessarily that the judgment on the whole case was rendered without jurisdiction and was void. If the judgment was utterly without a purely arbitrary act of the court, then a different question might be presented. The is not the case here and we have no reason to consider or decide such a question.

The petition is dismissed on the merits, with costs. So ordered.

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

Trent, J., concurs in the result.

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