

MARIANO BELLO, PETITIONER, VS. HERMOGENES REYES, JUDGE OF FIRST INSTANCE OF ISABELA, AND BERNARDO DACUYCUI, RESPONDENTS.

G.R. No. 12301. January 16, 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.

The case has been submitted upon the merits. Both parties have united with the record a certified copy of the proceedings had in the court below. The facts are these:

At the general election held on June 6, 1916, Mariano Bello and Bernardo Dacuycui were opposing candidates for the office of president of the municipality of Cagayan, Province of Isabela. Dacuycui was declared elected by the municipal board of canvassers. Bello instituted proceedings in due time contesting the election. The motion of contest was prepared and filed by Miguel Binag, a duly licensed and practicing attorney, at the request and upon authority of the contestant. He was not, however, authorized to represent the contestant in court after the filing of the motion.

It has been definitely settled in this jurisdiction that a motion of contest, signed by an attorney, is a compliance with the statute and confers jurisdiction upon the court of the subject-matter, provided the same is filed within the time required by law and sets forth the necessary jurisdictional facts. (*De Castro vs. Salas and Santiago*, 34 Phil. Rep., 818.)

The mere fact that Miguel Binag was only employed and authorized to prepare, sign, and file the motion of contest makes no difference in so far as the question under consideration is concerned. Mandamus is the proper remedy when the court dismisses a contest upon an erroneous interpretation of the law.

It is therefore ordered that a writ of mandamus be issued directing the respondent judge to reinstate the election contest and to; proceed with trial of the same. Judgment will be entered accordingly, with costs against the respondent, Bernardo Dacuycui. So ordered.

Torres, Carson, and Araullo, JJ., concur.

MORELAND, J., concurring and dissenting:

I agree to the result in this case under the authority of the *De Castro* case. I cannot, however, agree that the following from the opinion of the court is a correct statement of the law of mandamus:

"Mandamus is the proper remedy when the court dismisses a contest upon an erroneous interpretation of the law."

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