

ANGEL PALMA, PETITIONER, VS. THE JUDGE OP FIRST INSTANCE OF TAYABAS AND MAXIMO PALOMARES, RESPONDENTS.

G.R. No. 12454. March 26, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action of mandamus against the Court of First Instance of the Province of Tayabas and Maximo Palomares to compel it to go forward with and hear an election contest.

It appears that, at the elections held in June, 1916, in the Province of Tayabas several persons, including Angel Palma, the plaintiff, and. Maximo Palomares, the defendant, were candidates for the office of municipal president of Santa Cruz. The municipal board of canvassers duly declared Maximo Palomares elected to that office. Angel Palma then filed a contest against the election of Palomares. After the proceeding had been duly instituted a motion was made by the respondent Palomares to dismiss the proceedings on the ground that not all of the persons who received votes for the office contested had been notified of the contest as required by law. The court, on the hearing of the motion, held that the evidence before it did not show that Juan Pelaez and Felipe Murillo were thus notified and accordingly dismissed the contest.

The court held that where a party respondent did not appear in the contest it was the duty of the contestant, before proceeding with the contest, to prove service of notice upon him. Failing to do this the court held that the proceeding should be dismissed. No proof was offered by the contestant to show that Juan Pelaez had been notified as required by law, he simply stating that he had left the proof of service at his house. With respect to Felipe Murillo it was shown that he refused to sign a paper acknowledging receipt of a copy of the notice of protest; but no proof was offered to show that he had been notified as required by law. Upon this showing, or, rather, lack of showing, the court dismissed the proceedings.

We have already sustained a demurrer to the original complaint upon the ground that it did not state facts sufficient to constitute a cause of action. It was amended and a demurrer filed to the complaint as amended.

We do not believe that anything new is presented by the amended complaint. The same facts remain after the complaint was amended as appeared before. The additional allegations consist very largely of arguments and we find nothing which should change our former decision. We hold with the trial court that, where a party respondent in an election contest does not appear at or before the hearing of the contest, the contestant should, before the contest proceeds, submit to the court legal proof of the service of the notice of contest as required by law. Failing to do that it is the duty of the court to dismiss the proceeding.

The complaint is dismissed, with costs. So ordered.

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

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