

JOSE DEOGRACIAS, PETITIONER, VS. JOSE C. ABREU, JUDGE OF FIRST INSTANCE OF THE FOURTEENTH JUDICIAL DISTRICT, AND GUMERSINDO DE LA SANTA, RESPONDENTS.

G.R. No. 12508. March 17, 1917

Ponente: MORELAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12508/>

MORELAND, J.:

This is an original action in this court to obtain a writ of mandamus directed to the Court of First Instance of the 14th Judicial District to compel it to proceed with the hearing of an election contest which it had dismissed on motion.

At the elections held on the 6th of June, 1916, in the municipality of Boac, subprovince of Marinduque, Province of Tayabas, there were five candidates for the office of municipal president, Jose Deogracias, Gumersindo de la Santa, Benito Mondoñedo, Pedro Mascarenas and Narciso Alino. Gumersindo de la Santa having, according to the return of the inspectors, received the highest number of votes cast was proclaimed elected by the municipal board of canvassers on the 9th of June, 1916.

On the 19th of June the plaintiff filed a protest against the election of the said De la Santa. The contest was amended on the 2nd of August. Gumersindo de la Santa duly answered the amended protest on the 18th of August.

On the 5th of September Gumersindo de la Santa filed a motion in the Court of First Instance in which the contest was pending for the dismissal of the contest on the ground that not all of the persons receiving votes for the office contested had been notified of the contest in the manner and within the time prescribed by law. After a hearing the motion was granted and the contest was dismissed upon the grounds stated in the motion.

The court in its order dismissing the contest said:

"Notwithstanding the fact that it does not appear in the record in this case that the notices were served, the court has permitted the contestant to offer evidence on that subject. In accepting this opportunity the contestant offered in evidence a copy of the contest on which appear acknowledgments or admissions of service of the notice of protest by Benito Mondonedo, Narciso Aliño and Pedro Mascareñas; but the only evidence offered by the protestant to show service of notice on the respondent Gumersindo dela Santa was the receipt which one receiving registered mail signs on receipt of the same.

"This receipt is not sufficient to prove the service of the notice of the contest on Gumersindo de la Santa, In the absence of a special provision on the subject, since the Election Law does not provide the manner in which the notice of contest should be served on the candidates receiving votes, the notice must be served on the candidates in the manner required by the rules promulgated for the Courts of First Instance of the Islands.

"Article 14 of those rules provides: 'Notices and copies of motions and pleadings may be served by anyone. Proof of such service may be made by the written admission of the party served or the affidavit of the party serving. In each case the time, place, and manner of the service shall be stated. In all cases the proof shall be

filed with the clerk.'

"As will be seen neither the registered receipt nor the acknowledgment of Mondoñedo, Aliño and Mascareñas are sufficient to prove service under the provisions of the rules just referred to inasmuch as, with regard to the registered receipt, there is no sworn statement of the person- who served the notice nor an acknowledgment or admission of the service by the person to whom the notice was directed; and with regard to the admissions of service by the others it does not appear on what date or in what place or in what manner the notice was served. With respect to the service on all of them the proof of service has not been duly filed in the office of the clerk of court."

Upon the grounds thus stated the court dismissed the contest.

We are of the opinion that the court was in error in part and correct in part. A written admission of service by a party to an action or proceeding is as effective as an affidavit of service made by the persons who actually served the process or notice. As appears from the statement of the court admission of service was made by three of the four respondents. That admission of service was in writing and attached to a copy of the contest. This is sufficient to prove service as to them. As to the other respondent Gumersindo de la Santa it is sufficient to recall that he appeared in the case and filed an answer. It is the universal rule that a voluntary general appearance, and especially the filing of a pleading, is an act which gives the court complete jurisdiction over the person of the party so appearing and pleading and that no service of process or of notice on him is necessary thereafter.

It appears, however, that the appearance in the case and the filing of the answer did not occur until the 18th of August, 1916, whereas the contest was filed on the 19th of June. Therefore, under the recent decision of this court in the case of Bermudez vs. Court of First Instance of Tayabas, (p. 360, ante), notice of the contest must be served on the respondents within twenty days after the filing of the contest. It is clear that the appearance and answer of the respondent Gumersindo de la Santa was long after the expiration of the twenty days referred to; and the question therefore arises as to whether the rule of twenty days applies to a voluntary general appearance and to an appearance by answer as it does to service. In principle there should be no distinction. If it is essential to confer jurisdiction on the court that the notice of contest be served within twenty days after the contest is filed, then, certainly, there was no jurisdiction here as there was no service or appearance within that time. The jurisdiction of the court failed at the end of the twentieth day and a voluntary general appearance thereafter was without force or effect.

The other evidence of the service of the notice on the respondent Gumersindo de la Santa offered by the contestant was the receipt acknowledging delivery of register package to which the court refers in its opinion. We are satisfied that this receipt is not sufficient evidence of service to comply with the provisions of the Code of Civil Procedure with respect to the service of a summons in an action, which provisions we have held applicable to the service of notice of contest in cases of this character (Campos vs. Wislizenus and Aldanese, 35 Phil. Rep., 373.)

There being no proof of service of the contest on Gumersindo de la Santa within the twenty days after the filing of the contest, and his appearance and answer occurring after that period had expired, the court acquired no jurisdiction of the proceeding and the contest was properly dismissed.

The demurrer is sustained; and unless an amended complaint is filed within five days the action will be dismissed with costs. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.