

JOSE LINO LUNA, PLAINTIFF, VS. EULOGIO RODRIGUEZ, DEFENDANT.

G.R. No. 12581. August 10, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition presented in the Supreme Court for the extraordinary legal remedy of quo warranto.

To the first petition presented by the plaintiff a demurrer was filed which, after a consideration, was sustained. The petitioner was then given five days within which to amend his complaint. The amended complaint was presented the 30th day of March, 1917.

The facts pertinent to the consideration of the question involved may be stated as follows:

- (1) That an election was held in the Province of Rizal on the 6th day of June, 1916, for the purpose of electing a governor for said province.
- (2) That at the close of said election the votes were counted, and the provincial board of canvassers declared that the respondent herein had received a majority of the votes cast, and duly proclaimed him elected as governor of said province, and thereafter issued to him a certificate to that effect.
- (3) That after securing the certificate of election the protestee (respondent herein) took the oath of office and duly entered into the possession of the same on the 16th day of October, 1916.
- (4) That a protest was presented in the Court of First Instance by the plaintiff herein, and after issue was joined, a trial was had which resulted in a decision which declared that the protestant (petitioner herein) had received a majority of the legal votes cast at said election and ordered the provincial board of canvassers to correct its count in accordance therewith.
- (5) That from said decision the protestee (respondent herein) duly appealed to the Supreme Court. Said appeal is still pending.
- (6) That after the said decision the protestant (petitioner herein) notified the protestee (respondent herein) that he was ready to qualify and assume possession of the office of provincial governor and demanded possession of said office. No steps were taken to compel the provincial board of canvassers to comply with the order of the court.
- (7) That on the said 16th day of October, 1916, the said protest was still pending and undecided.
- (8) That the said protest was decided by the Court of First Instance as above indicated on the 14th day of January, 1917.
- (9) That the provincial board of canvassers has not revised its first proclamation nor its original report of the result of the election.

The petitioner, in his first complaint, based his right to the office in question exclusively upon the decision of the

Court of First Instance in the election contest. This Court sustained the demurrer to that complaint upon the ground, following the decision in the case of *Topacio vs. Paredes* (23 Phil. Rep., 238) and *Hontiveros vs. Altavas* (24 Phil. Rep., 632), that a Court of First Instance in an election contest has no authority to declare any one elected to the office to which the contest relates. Its sole duty is to order the provincial board of canvassers to correct its return. Its judgment, therefore, is not proof of plaintiff's election. Moreover, it is subject to appeal. In fact, the judgment of the court in this case was appealed and that appeal is now pending in this court.

Notwithstanding the decision of this court upon the first demurrer "that a Court of First Instance in an election contest has no authority to declare any one elected to the office to which it relates" the petitioner, in his new complaint, contends (a) that the decision of the Court of First Instance does entitle him to the office in question even during the pendency of the appeal; (b) that notwithstanding the pendency of the appeal, he has a right to the remedy of quo warranto for the purpose of aiding him in getting possession of the office in question; and (c) that the appeal does not suspend the execution of the sentence of the Court of First Instance.

Following the decision in the case of *Manalo vs. Sevilla* (24 Phil. Rep., 609) we held in the decision sustaining the demurrer to the first complaint that "a person is not entitled to occupy the office of provincial governor until his election has been duly proclaimed by the provincial board of canvassers and a certificate of election has been issued to him in pursuance of that proclamation."

The petitioner admits that the provincial board of canvassers has not proclaimed him elected nor issued to him a certificate of election. That admission, in view of our former decisions (23 Phil. Rep., 238; [1] 24 Phil. Rep., 632 [2]) would seem to be conclusive of his right to the office claimed, except for his contention now presented that the said appeal does not suspend the execution of the sentence of the lower court. Granting, for the purpose of the argument, that the appeal did not suspend the sentence, we have the question: Is the remedy of quo warranto the proper remedy, or should he not seek the extraordinary legal remedy of mandamus to compel the provincial board of canvassers to correct its return? If a person is not entitled to occupy the office of provincial governor until his election has been duly proclaimed by the provincial board of canvassers and a certificate of election has been issued to him in pursuance of that proclamation, then it would follow, as a matter of course, that the present petitioner is not entitled to the office until he has been proclaimed elected by the provincial board of canvassers and a certificate of election has been issued to him in pursuance of that proclamation. And, moreover, if the Court of First Instance, in an election contest "has no authority to declare any one elected to the office of provincial governor," and if it is the sole duty of the Court of First Instance to order the provincial board of canvassers to correct its return, then it must follow that the petitioner should have, by a proper remedy, attempted to compel the provincial board of canvassers to correct its return in accordance with the conclusions of the court. It would seem to be clear, therefore, in view of the foregoing, that the petitioner is not entitled to the remedy herein prayed for, but must seek his remedy in another direction.

This argument would seem to answer all of the contentions made by the petitioner, except his contention that the appeal did not suspend the execution of the sentence of the Court of First Instance. In support of that contention the petitioner cites a number of decisions from different States of the United States. The petitioner, however, overlooks the fact that whatever dictum or statement found in said decisions in support of his contention is based upon peculiar statutory provisions of the respective State, which statutory provisions are different from those in force in the Philippine Islands; and, consequently, said decisions are of little value in aiding us in the decision of the question presented.

In this jurisdiction an appeal is expressly allowed to the Supreme Court (section 2 of Act 2170, as amended by section 577 of the Administrative Code). The procedure in the appeals shall be the same as in criminal causes (section 577, Administrative Code). If the procedure is the same as in criminal causes for the appeal, it would

seem that the effect of the appeal should be the same, in the absence of statutory provision to the contrary. Appeals in criminal causes, once perfected, suspend, ipso facto, the execution of the sentence. We see no reason, in the absence of statutory provision, for applying a different rule to appeals in election cases.

Therefore, the demurrer is hereby sustained and the remedy prayed for is hereby denied, with costs. Let a judgment be entered to that effect. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

[1] Topacio vs. Paredes.

[2] Hontiveros vs. Altavas.

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