

MARCOS PAULINO, PETITIONER AND APPELLANT, VS. JUAN CAILLES, RESPONDENT AND APPELLANT.*G.R. No. 12753. March 15, 1918*

Ponente: JOHNSON, J.

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This action grew out of an election held in the Province of Laguna, on the 6th day of June, 1916, for the election of a governor for said province and for other provincial and municipal officers. After the close of the election, reports were made by the respective boards of election inspectors for the various municipalities of said province to the provincial board of canvassers. Said board, after an examination of said reports, found that Juan Cailles had received 4,873 votes and that Marcos Paulino had received 4,607 votes. Upon that result the board declared that Juan Cailles had been duly elected as governor of said province, and issued a proclamation to that effect. Immediately Marcos Paulino entered a protest, alleging that certain frauds and irregularities had been committed in various of the municipalities of said province; that by virtue of said frauds and irregularities many votes had been illegally cast and counted for his opponent, Juan Cailles; that, if said illegal votes were eliminated from the return, he would have received a majority of the legal votes cast, and should therefore have been declared elected as governor of said province.

Said protest was duly answered by the protestee. In his answer the protestee alleged also that certain frauds and irregularities had been committed.

Upon the issue thus presented the case was finally submitted to the court for decision, after both parties had had full opportunity to present their proof, pro and con, upon the questions presented.

After hearing the respective parties, the Honorable Pedro Concepcion, in a very carefully prepared opinion, in which said alleged frauds and irregularities were noted and discussed, reached the conclusion that 437 votes had been counted for the protestee which should not have been counted in his favor and that 304 votes had been counted for the protestant which should not have been counted for him, and issued an order directing the provincial board of canvassers to correct its former return and to issue a proclamation in accordance with that result, with costs against the protestant.

From that decision each of the parties appealed to this court and each made several assignments of error.

An examination of the respective assignments of error shows that three questions only are presented:

- (1) Shall the ballots of the "analfabetos" etc., who received assistance from the election inspectors, without first taking the oath prescribed by section 22 of Act No. 1582, as amended by section 12 of Act No. 2045 (section 550 of Act No. 2657; section 453 of Act No. 2711), be counted for the respective candidates for whom they were cast?
- (2) Shall the ballots which were found to be marked at the time of the trial of the present protest be counted for the respective candidates for whom they were cast? and

(3) Shall the election in certain municipalities be declared null and void for the reason that proper voting booths had not been prepared, by reason of which the voters were not able to prepare their ballots in secret?

With reference to the first question, the record shows that the lower court eliminated and refused to count for either candidate a certain number of votes, which had been prepared by the election inspectors for certain "analfabetos" without first having required the oath provided for by the law. In order to maintain a secret ballot and to protect the voter in his right thereto, the law has wisely prohibited any interference, by any person, in the preparation of the ballot, except in cases where the voter is, for some reason, unable to prepare his ballot without assistance. By reason of possible frauds which might be perpetrated upon the ignorant voter, by designing and wicked persons, the law has thrown around him certain protection: (a) he must make an oath that he is unable, by reason of some disability, to prepare his ballot without assistance; (b) the board shall keep a record of such oath; (c) two of the inspectors, each of whom shall belong to a different political party, shall assist such voter in the preparation of his ballot according to his wishes; (d) that both of said inspectors must be present during the time of the preparation of the ballot; and (e) the ballot thus prepared must be kept out of the view of any other person. (Act No. 2045, section 12.)

Are said requirements of the law mandatory? Some courts have answered that question in the affirmative, while others have answered it in the negative. (*Patton vs. Watkins*, 131 Ala., 387; *Attorney-General vs. Parsell*, 99 Mich., 387; *Hope vs. Flentge*, 140 Mo., 390; 9 *Ruling Case Law*, section 101.)

The oath is required merely for the purpose of establishing the fact that the voter is incapacitated. A record of the oath is required in order to furnish tangible proof of such incapacity. Suppose, for example, the board of inspectors know that a particular voter is incapacitated, and tender him the assistance permitted by the law without first having required the oath, shall the ballot of such a voter be rejected simply because the oath was not required? And, suppose, further, that, when the ballots are counted, even granting that such a ballot should be rejected, it is impossible to identify that particular ballot, what then should be the result, should such failure result in rejecting all of the ballots of that precinct? Of course, if the law is absolutely mandatory, then a failure to comply with its terms is fatal.

The law intended that those voters only who are incapacitated in some way should be assisted. To insure a compliance with the law, an oath of incapacity is required. To prove that only such persons have received assistance, the election board is required to keep a record of such oath. To guarantee that such voters should not be imposed upon, the law wisely provided that two inspectors, of different political faith, should assist them.

The law itself (section 12 of Act No. 2045) contains no penalty for its violation, neither against the voter nor the board of inspectors. Have the courts, in the absence of such a provision, authority to read into the law a penalty for a violation of its terms? Certainly the courts have a right to protect the purity of the ballot. One of the very purposes in allowing appeals to courts is to insure the purity of the ballot and to see that the will of the honest voter is not defeated by the fraud and intrigue of individuals nor by the board of election inspectors.

Experience and observation have taught the legislatures and the courts that, at the time of a hotly contested election, the partisan spirit of ingenious and unscrupulous politicians will lead them beyond the limits of honesty and decency and by the use of bribery, fraud and intimidation despoil the purity of the ballot and defeat the will of the people at the polls. Such experience has led the legislatures to adopt very stringent rules for the purpose of protecting the voter in the manner of preparing and casting his ballot and to guard the purity of elections. Such knowledge has also led the courts to give a strict interpretation to such rules. But, are the courts justified in defeating the will of the honest voter by the frauds, negligence and misconduct of election officials, for whose acts the voter is in no way responsible and specially when such illegality cannot be identified or separated from

the perfectly legal acts? We believe the legislature intended, by the provisions of the Election Law, that no ballot should be counted which had not been prepared and cast in accordance with its provisions. But, upon the other hand, we are not of the opinion that the legislature intended that the innocent voter should be deprived of his legal rights by the neglect or misconduct of others.

The ballots of incapacitated persons who voted without taking the oath should not be counted if such ballots can be identified; but all of the ballots of the precinct are not invalidated by the mere fact that the inspectors did not comply with their duty. Innocent voters should not be deprived of their participation in the election for a violation of the law for which they were in no way responsible and which they could not prevent. The voter, however, is responsible for voting without complying with the law. For that illegal act on his part his ballot should not be counted if it can be identified. (*Manalo vs. Sevilla*, 24 Phil. Rep., 609, 631; *Gardiner vs. De Leon and Torres*, R. G. No. 12382.[1]) He violated the law. He should suffer the consequences of his acts. Upon the other hand, if the inspectors failed or declined to perform any duty or obligation imposed upon them by the Election Law, they may be punished. (Sec. 2632, Act No. 2657; sec. 2639, Act No. 2711.) No punishment is provided for the incapacitated voter who violates the law by voting without first taking the oath required. The only remedy is to punish the inspectors of election who failed to fulfill the plain provisions of the law, and to reject such ballots when they can be sufficiently identified. The lower court was able to identify a number of the ballots of the incapacitated voters and rejected them. In that respect he committed no error, and his judgment should not be reversed or modified on that account.

Upon the second question, whether marked ballots should be counted or not, it may be said that the answer depends upon when the marking took place. If the ballot was marked before it was cast, then it should be rejected. If it was marked afterwards by some person or persons other than the voter himself, then it should be counted. (*Hontiveros vs. Altavas*, 26 Phil. Rep., 213.)

In the present case, there is some proof in the record which indicates that some of the marked ballots which were rejected as marked ballots were marked after they had been cast. The lower court rejected 108 marked ballots. We deem it unnecessary to follow the discussion further, for the reason that if all of such ballots were counted for one or the other of the candidates it would not change the result.

Upon the question of the effect of the failure to provide voting booths so that the voter may have an opportunity to prepare his ballot in secret, it may be said that the law requires that such protection shall be afforded the voter. (Sec. 512, Act No. 2657; sec. 415, Act No. 2711.)

It was held in the case of *Gardiner vs. Romulo* (26 Phil. Rep., 521) that "the requirements of the Election Law, providing for the location of polling stations and the construction of booths and guard rails for the latter, may be departed from in some particulars and yet preserve in substantial form the secrecy which the law requires. But the failure to provide doors and guard rails for the booths and the placing of the writing shelf so that it faces the side instead of the rear of the booth are, combined, a fatal disregard of the law, inasmuch as such an arrangement does not offer, even in substantial form, the secrecy and seclusion which, according to the purpose and spirit of the Election Law, is its most mandatory requirement."

In the present case, however, booths were prepared, so far as the record shows, in accordance with the provisions of the law. During the progress of the voting, however, some of the partitions between the different booths, which seem to have been made of paper, were, by a strong wind, destroyed or broken down to some extent. No one seems to have been responsible except that the inspectors failed to take the proper precaution in the construction of the booths. Neither does it appear that there were not sufficient booths left intact to permit all those voters, who, in fact, desired to prepare their ballots in secret, to do so. While there was almost an inexcusable negligence

on the part of those in authority in the construction of the booths, we see no reason in the present case for modifying the conclusion of the lower court.

Finding as we do that none of the alleged errors, even though they be sustained, would change or alter the result of the election, we are of the opinion and so decide that the decision of the lower court should be and is hereby affirmed, with costs against the protestant. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

[1] Decided March 15, 1917, not reported.

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