

HILARION DE GUZMAN, PLAINTIFF AND APPELLEE, VS. MARCELO F. CUENCA, DEFENDANT AND APPELLANT.

G.R. No. 13329. September 25, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

The important question presented by this appeal is, whether or not the defeated party in a municipal election protest case has a right to appeal to this court against a judgment for costs.

It appears from the record that an election was held in the municipality of Bacoor, Province of Cavite, for the purpose of electing a municipal president; that at the close of the election, an examination of the ballots was made by the municipal board of canvassers, and Marcelo F. Cuenca was proclaimed elected as president of said municipality of Bacoor; that Hilarion de Guzman presented a protest against said election; that said protest was duly heard; that at the close of the trial of said protest the lower court declared that Hilarion de Guzman had been duly elected as president of said municipality, "con las costas y gastos incidentales al protestado Marcelo F. Cuenca" (with costs and incidental expenses against the protestee, Marcelo F. Cuenca.) Later, Hilarion de Guzman presented a bill of costs which was approved by the lower court. Against that approval and judgment the defendant, Marcelo F. Cuenca, appealed.

Under the law, the judgment of the Court of First Instance is final and not appealable, in all municipal election contests. (Sec. 479, Act No. 2711; *Tajanlangit vs. Perlaranda*, 37 Phil. Rep., 155.) If the judgment of the Court of First Instance is final and not appealable, it must be final and not appealable as to every part thereof. The judgment for costs is a part of the judgment. It would seem to follow, therefore, that, the judgment being final and not appealable, the defeated party cannot appeal from any part of it.

In the case of *Hontiveros vs. Altavas* (39 Phil. Rep., 226), we held that an appeal would lie from a judgment for costs in an election protest, in a case where the right of an appeal existed from the decision of the lower court. In that case, however, the court said that rule existed only "in cases where the right to appeal is given in the case in which the costs are taxed." That pronouncement is decisive of the question in the present case.

For the foregoing reason, therefore, the appeal is hereby dismissed, with costs against the appellant, for the reason that this court has no jurisdiction to consider the same. So ordered.

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

Appeal dismissed.

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