

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELIAS CUETO, DEFENDANT AND APPELLANT.*G.R. No. 13626. October 29, 1918*

Ponente: MALCOLM, J.

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In the general election held on June 6, 1916, Elias Cueto, now the defendant and appellant, was an election inspector for an election precinct in the municipality of Tiaong, Province of Tayabas. For the position of municipal president of this municipality, two gentlemen named Mayo and Magbiray were candidates. Toribio Briones, a qualified elector, belonged to the Mayo party. He was given a slip containing the slate of candidates of the Mayo faction for the different offices, such as is circulated at election time, and, with this in his possession, entered the polling place. Being a disabled person, because of failing sight and rheumatism in his hand, although still able when necessary to read and write, Briones secured the assistance of Cueto to prepare his ballot. Instead, however, of copying the name of Mayo, the candidate for municipal president found on the slip of paper, for whom Briones desired to vote, Cueto inserted the name of Magbiray. When once outside the dark booth, Briones noticed that his ballot contained the name of Magbiray and, on his objecting, a new ballot with the name of Mayo was prepared for him by the election inspector.

On these facts, which we find supported by the proof, Cueto was charged with, and convicted of, a violation of the Election Law, and sentenced to two months imprisonment and to pay the costs. This statement, with the addition of what is hereafter said, disposes of the sole assignment of error by the appellant.

The Philippine Bill and subsequent Acts of Congress conceded to qualified persons the high prerogative of suffrage. To carry out this purpose, the Election Law was carefully drafted and enacted, and then revised by the Philippine Legislature. Its primal feature was to allow the citizen to vote secretly for whom he pleased, free from improper influences. As was well said in the instructive decision in *Gardiner vs. Romulo* ([1914], 26 Phil., 521, 550):

"The purity of elections is one of the most important and fundamental requisites of popular government. To banish the spectre of revenge from the minds of the timid or defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure a fair and honest count of the ballots cast, is the aim of the law. To accomplish these ends, Act No. 1582 was enacted. This law requires that only qualified electors shall be admitted to the polls; that they shall vote in absolute secrecy, and that the returns shall be justly compiled and announced. In its essential details, this law is a counterpart of the ballot laws almost universally adopted within comparatively recent times in the United States, and is generically called by text-writers the Australian ballot law.

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"* * * The central idea of the Australian ballot law, as so often expressed in the cases, is to shroud the marking of the ballots in absolute secrecy. All the efforts to secure a free and untrammelled expression of the elector's will lead up to and depart from that point."

The accused, as already remarked, was an election inspector. To hold this office it was necessary for him to have certain qualifications. He had to be a qualified elector of his precinct, of good character, not convicted of an offense involving moral turpitude, and able to read, write, and speak either English, Spanish, or the local dialect understandingly. The accused took an oath, honestly and justly to administer his duties according to the Election Law without prejudice or favor toward any person, candidate, party, society, or religious sect. One of his functions was, in conjunction with another inspector (the accused, however, violated this provision of the law by acting alone), to prepare ballots for disabled persons. The law made it his duty, and his duty only, with another inspector, to ascertain the wishes of the disabled voter and to prepare the ballot of the voter in proper form according to his wishes. (See sections 417-424, 453, Administrative Code of 1917.)

The election inspector in giving assistance to a disabled voter has but one function to perform, namely, the mechanical act of preparing the ballot. The exercise of any discretion as to the selection of candidates for the voter assisted is prohibited to the marker, and the substitution of his own for the voter's choice in such selection is a flagrant violation of an official trust. (Patton vs. Watkins [1901], 131 Ala., 387; 90 Am. St. Rep., 43; Board vs. Dill [1910], 26 Okla., 104; Ann. Cas. [1912] B, 101; Re Prangley, 21 Ont. L. Rep., 54.) An inspector who fails to write upon the ballot the name or names expressly indicated by the voter is guilty of a fraud practiced against the voter and thus of a violation of the penal provisions of the Election Law. (U. S. vs. De la Serna and Callet [1909], 12 Phil, 672.)

Of course, an election officer is not responsible for a mere mistake in judgment but only for a willful disregard of duty. All that the law requires of an election officer is the exercise of prudence, of intelligent deliberation leading him to judgment; and when he does that, although he does not live up to the law there is no crime, because there is no criminal intent. (See 15 Cyc, p. 344, citing numerous cases.) But when, as in the instant case, the election officer is given a specific duty to perform and, notwithstanding this duty, deliberately disregards the wishes of the voter, criminal intent exists. "The color of the act determines the complexion of the intent. In the investigation of human affairs, whether connected with contract or crime, we are constrained to infer the motive from the act. The intent to affect the result of the election is properly presumed when unlawful acts, which naturally or necessarily have that effect, are proved to have been intentionally committed, or knowingly permitted, by those having charge of such elections." (U. S. vs. Carpenter [1889], 41 Fed., 330.) The election officer, who scorns the law which he is sworn to enforce, undermines the entire edifice of democratic institutions and is deserving of the severest condemnation.

In a case which was decided by the first division of this court and which, because of the doctrine enunciated in the decision, should be known to all, Mr. Justice Johnson said:

"Rarely are the courts called upon to decide criminal cases which show a greater culpability on the part of an appellant than the facts in the present case. The appellant, by his own confession, has convicted himself of an attempt to defeat the will of the people in their participation in the affairs of their own self-government. The people of the Philippine Islands have been granted the right to select, by secret ballot, the men who shall make laws for them. They have' been given a right to participate directly in the form of government under which they live. Such a right is among the most important and sacred of the rights of the people in self-government, and one which must be most vigilantly guarded if a people desires to maintain for themselves and their posterity a republican form of government in which the individual may, in accordance with law, have a voice in the form of his government. If republics are to survive and if the people are to continue to exercise the right to govern themselves and to directly participate in the affairs of their government by selecting their representatives by secret ballot, then the maxims of such a government must be left to the watchful care and reverential guardianship of the people. Eternal vigilance is the price paid by a free people for a continuance of their right to directly participate in

the affairs of their government. Designing, ambitious, corrupt, and unscrupulous politicians, if the people are off their guard, will ingeniously and persistently encroach upon the rights of an unwary people, and will finally undermine the very foundations of self-government and the rights of the people. It behooves the people under a free government to prosecute to the limit, without stint or favor, every person who attempts, in the slightest degree, to interfere with, or who attempts to defeat, their direct participation, by secret ballot, under the forms prescribed by law, in the affairs of their government. If nefarious practices of officials of the government, such as is described in the complaint in the present case, are to be continued or permitted by those in authority, and punishment is not meted out speedily and severely upon those who rob the people of their political rights, the result is generally a revolution in which the people again repossess themselves of the jewels of personal and political liberty and the right to self-government, through blood and carnage.

"The defendant not only convicts himself out of his own mouth of an attempt to defeat the will of the people of his district in their effort to choose their representatives in the legislative branch of the government, but also violated his oath of office in which he asked God to help him honestly and justly to administer his duties as an inspector of elections without prejudice or favor toward any person, candidate, party, society, or religious sect, which oath must have been taken freely or without evasion or mental reservation whatsoever. (Section 516, Act No. 2657; section 419, Act No. 2711.) In addition to convicting himself of an attempt to violate the rights of the people, together with the violation of a solemn oath, he also convicts himself of the falsification of a public document, and might be punished for the latter offense in a manner very much more severe than for the crime for which he is being tried. (Articles 300 and 301 of the Penal Code, as amended by Act No. 2712.)

"In consideration of all of the foregoing, we are of the opinion that the maximum penalty of the law should be imposed. Therefore, the sentence of the lower court is hereby revoked, and it is hereby ordered and decreed that the defendant and appellant be sentenced to be imprisoned for a period of one year and to pay a fine of P500 and costs, and, in case of insolvency, to suffer subsidiary imprisonment for the payment of said fine." (U. S. vs. Iturrius [1918], 37 Phil., 762.)

The law provides as a punishment for an election officer who fails to perform his official duties, imprisonment for not less than one month nor more than one year, or by a fine of not less than P200 nor more than P500, or both. (Section 2639, Administrative Code of 1917.) In the decision above quoted, the maximum penalty was, for good reason, imposed. There the facts were aggravated because the election officer had manipulated and changed the election totals. Herein, while the inner purpose of the defendant was just as bad, the result was not as disastrous. However, believing that either the maximum, or a penalty approaching the maximum, should always be imposed on election officers who violate the law, we must proceed to increase the sentence imposed by the lower court so that the defendant and appellant shall be condemned to six months imprisonment, and to pay a fine of P250, with subsidiary imprisonment in case of insolvency, and with the costs of both instances against him. So ordered.

Torres, Johnson, Street, Avanceña, and Fisher, JJ., concur.

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