

JOSE M. HONTIVEROS, PETITIONER AND APPELLANT, VS. SIMEON MOBO, RESPONDENT AND APPELLANT.*G.R. No. 13959. December 05, 1918*

Ponente: JOHNSON, J.

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This is an appeal from the judgment of the Court of First Instance of the Province of Capiz in an election contest for the office of provincial governor of said province. From the record, it appears that on the 6th day of June, 1916, an election was held in said province for the office of governor and other provincial and municipal officers; that Jose M. Hontiveros and Simeon Mobo were each candidates for the office of governor; that the election was closed, a return of the votes cast was made by the inspectors of the various precincts and municipalities to the provincial board of inspectors; that said board duly canvassed said returns and as a result declared that Jose M. Hontiveros had received 4,019 votes, and that Simeon Mobo had received 4,234 votes. It appearing by said return that Simeon Mobo had received a majority of the votes cast at said election, the provincial board of inspectors declared that he (Simeon Mobo) had been elected as governor and issued to him a certificate of election to that effect. Whereupon, Jose M. Hontiveros duly presented a protest against said election, alleging that many frauds and irregularities had been committed in various precincts of said province, and prayed that the court make an investigation of the same, and declare the true result of said election. An answer to said protest was duly made by Simeon Mobo. Issue was joined, a trial was had, and on the 7th day of January, 1918, the Honorable Fermin Mariano, judge, in a very exhaustive and carefully prepared decision in which every fraud and irregularity charged in the protest was examined and discussed, always citing the proof pro and con in support of his conclusions, decided that the provincial board of inspectors should correct its count in the following municipalities in the following manner :

Municipality.

Original vote as declared by the provincial board of inspectors.

Vote as corrected by Judge Fermin Mariano.

Mobo.

Hontiveros

Mobo.

Hontiveros

1. Makato (Taft)

236

33

209

45

2. Dumarao

116

65

120

69

3. Romblon

171

12

129

11

4. Dumalag

101

73

104

77

5. Lezo

129

108

Annulled.

6. Calivo

282

114

269

114

7. Badajoz

38

100

41

125

8. Sopian

113

112

113

104

9. Mambusao

135

159

135

145

0. Ivisan

57

102

48

76

1 Pontevedra (Maayon)

202

31

Annulled.

Examining the result of the decision of Judge Mariano, as above indicated, it will be seen that the total vote of Simeon Mobo is reduced by 412, while that of Jose M. Hontiveros is reduced by 143, making the total of Simeon Mobo 3,822 instead of 4,234, and that of Jose M. Hontiveros 3,876 instead of 4,019, thus giving to Jose M. Hontiveros a clear majority of 54 votes. After arriving at the above result, the Honorable Judge, Fermin Mariano, ordered and decreed that the provincial board of inspectors revise its count of the votes and report accordingly, and make a proclamation in accordance with said result, in conformity with the law.

From that conclusion of the lower court both parties appealed to this court and the cause was finally submitted to the Supreme Court for decision on the 21st day of October, 1918. The record contains no explanation for the very long time which expired from the commencement of the present action until its presentation to this court for decision.

The first question presented by the protestee-appellant is that this court is without jurisdiction to hear and determine the appeal of the protestant-appellant for the reason that the latter had not perfected his appeal in the time prescribed by the law. Section 577 of Act No. 2657 (section 480 of Act No. 2711) provides that in election contests an appeal may be taken to the Supreme Court, within ten days, from any final decision rendered by the court of first instance in contests of election for provincial governors, for the review, amendment, repeal, or confirmation of such decision, and the procedure thereon shall be the same as in criminal causes.

Section 579 of Act No. 2657 (section 482 of Act No. 2711) provides that before the court shall admit an appeal the party filing the appeal shall give bond in an amount fixed by the court with two sureties satisfactory to the etc.

In the present case the record shows that the protestant-appellant presented a written notice of his intention to appeal within ten days from the date on which he received notice of the decision of the lower court. He did not, however, give the bond required within ten days. Query: Must the appellant give the notice of his intention to appeal and present the bond required within ten days from the notice of decision? It will be noted that the time for the presentation of the appeal is fixed definitely by the law, but the time within which he must give his bond is not so fixed. It will also be noted that the court must fix the amount of the bond to be given. Certainly, the appellant cannot be held responsible for a delay on the part of the court in fixing the amount of the bond. The record shows that the lower court approved the appeal of the protestant-appellant on the 7th day of February, 1918, before a bond had been given. As a matter of fact the record does not show that the lower court ever did, by an order, fix the amount of the bond. However, on the 11th day of February, 1918, the protestant-appellant presented a bond which was on the same day approved by the lower court, and the appeal was thus perfected. Considering that the law does not fix the time within which the bond required must be given, and considering that the appellant cannot give his bond until the amount is fixed, and considering that the appellant in the present case gave due and timely notice of his intention to appeal, we are not of the opinion that his appeal should be dismissed for a failure on the part of the court to fix the amount of the bond. In order, however, that no unnecessary delays should occur, it would seem to be a wise practice for the court immediately upon the presentation of the notice to appeal, to fix not only the amount of the bond, but the time within which the same should be presented. For the foregoing reasons, the motion of the protestee-appellant to dismiss the appeal of the protestant-appellant is hereby denied.

With reference to the other assignment of error made by the respective appellants, the carefully prepared decision of Judge Fermin Mariano has been examined with reference to each of said assignments of error, together with the evidence adduced by the respective parties during the trial of the cause. After said examination, we are fully persuaded that the judgment of the court a quo should be, and is hereby, affirmed without a further discussion at this time, with costs against the protestee-appellant. And it is hereby ordered and decreed that the record be immediately returned to the court whence it came, with direction that a judgment be entered accordingly.

Before closing this decision, however, we cannot overlook the fact that Judge Mariano ordered a criminal prosecution of the inspectors in the following precincts and municipalities, for the frauds and irregularities committed by them: Pontevedra (Maayon), Makato (Taft), Romblon, Lezo, Calivo, Mambusao, and Capiz.

In our opinion such frauds and irregularities as are disclosed by the record cannot be winked at nor tolerated by those in authority. If such frauds are permitted, honest men will not allow their names to be used as candidates for office. Local governments will fall into the hands of the rabble and unscrupulous persons, and disorder and confusion will prevail instead of order, quietude and peace. It is just such acts on the part of officials as are disclosed in the record in the present case, which lead good men, finally, to arise in their might and to demand a change in the form of government imposed upon them. The Filipino people are a very patient, law-abiding and peace-loving people, but their history shows that they will not endure such wrongs forever. The elective franchise was extended to the masses in order that they might have a direct participation in the democratic government which has been established here. That right must not be thwarted nor defeated without imposing upon those who attempt so to do the severe penalties of the law.

It is therefore hereby ordered and decreed that the Attorney-General investigate the frauds and irregularities described in the record and file criminal complaints against all persons believed to be guilty, to the end that they may be punished in accordance with the provisions of section 2632 of Act No. 2657 (section 2639 of Act No. 2711). So ordered.

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

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