

ANDRES GARCHITORENA, PETITIONER AND APPELLEE, VS. MANUEL CRESCINI AND ENGRACIO IMPERIAL, RESPONDENTS AND APPELLANTS.*G.R. No. 14514. December 18, 1918*

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-14514/>**JOHNSON, J.:**

This is an appeal from a decision of the Court of First Instance of the Province of Ambos Camarines in an election contest. It appears from the record that on the 6th day of June, 1916, an election was held in said province for governor, and other provincial and municipal officers. At said election, Andres Garchitorena, Manuel Crescini, Engracio Imperial, and Francisco Botor were candidates for the office of governor. The election was closed. The returns were made by the inspectors of the various municipalities to the provincial board of inspectors which, after an examination of said returns, reached the conclusion that Andres Garchitorena had received 2,468 votes; that Manuel Crescini had received 3,198 votes; that Engracio Imperial had received 1,954 votes and Francisco Botor had received 692 votes. Upon that result the provincial board of inspectors decided that Manuel Crescini had received a plurality of all votes cast, made a proclamation declaring that he had been elected Governor, and issued to him a certificate to that effect.

Immediately upon notice of said proclamation, Andres Garchitorena presented a protest against said election, alleging that many frauds and irregularities had been committed in various municipalities of said province, and that he had, in fact, received a majority of all legal votes cast. To said protest answer was duly made, issue was joined, and a trial was had, after which the Honorable Maximino Mina, judge, in a very carefully prepared opinion, declared that Andres Garchitorena had, in fact, received a majority of the legal votes cast, and ordered the provincial board of inspectors to correct its report theretofore made, accordingly. Later, for certain reasons, a new trial was ordered (37 Phil. Rep., 675),[1] which was had before the Honorable Isidro Paredes, judge, who, after considering all the proof adduced during the trial of the cause, reached exactly the conclusion which Judge Maximino Mina had theretofore reached, and issued the same order to the provincial board of inspectors, requiring them to correct their report or canvass in accordance with said decision. From that decision, Manuel Crescini and Engracio Imperial appealed to this Court, briefs were presented, and the cause was finally submitted for decision on the 16th day of December, 1918.

The following table discloses the votes of the various municipalities to which the protest related, as declared by the provincial board of inspectors, as well as the result found by both Judges Mina and Paredes:

Election protest—Ambos Camarines.

Municipalities.

Prov. B. of Insp.

Mina.

Paredes

Gar.

Cre.

Gar.

Cre.

P.

Gar.

Cre.

P.

Gar.

Cre.

G.

L.

G.

L.

Capalonga.....

1

6

65

11

6

2

11

6

10

00

00

000

Minalabac.....

10

00

108

Ann.

2

Ann.

00

10

00

00

Mambulao.....

73

00

109

82

2

3

82

2

9

00

2

00

Nabua.....

164

110

110

164

110

4

164

110

00

00

00

00

Sagnay.....

11

173

110

Ann.

10

Ann.

00

11

00

173

Baao.....

6

133

2

5

126

14

5

126

00

1

00

7

Bato.....

32

292

13

Ann.

22

Ann.

00

32

00

292

Buhi.....

39

280

32

52

186

26

50

149

13

00

00

94

Calabanga....

81

134

46

62

45

31

62

45

00

19

00

89

Iriga.....

8

926

66

Ann.

35

Ann.

00

8

00

926

Lagonoy.....

30

91

99

Ann.

5

Ann.

00

30

00

91

Total gains and losses.....

32

111

2

1,672

Net losses (total gains subtracted from total losses).....

79

1,670

Total vote as result of this decision:

(a) Garchitorena.....	2389 (8287)
(b) Crescini.....	1428 (1441)

Note.—Abbreviations used.

Prov. B. of Insp. = Provincial Board of Inspectors.

Gar. = Garchitorena.

Cre. = Crescini.

P. = page.

G. = grains.

L. = losses.

Ann. = annulled.

The carefully prepared opinions of Judges Mina and Paredes present such a complete analysis of the proof that we deem them of sufficient value and importance, in relation with the questions presented by the appellants, to attach to and make them a part of this decision as Exhibits A and B, respectively.[2]

An examination of the table above inserted shows that because of the frauds mentioned in the decision of Judges Mina and Paredes, the entire vote in the municipalities of Minalabac, Sagnay, Bato, Iriga, and Lagonoy, were annulled. Judges Mina and Paredes, after discussion of the various frauds committed in said municipalities, arrived at the same conclusion, to wit: that said frauds and irregularities were such as to absolutely defeat the honest expression of the desires of the voters of said municipalities. Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters of said precinct or municipality. A reading of the evidence adduced during the trial of the cause, in relation with the facts stated in connection therewith, in said municipalities, shows an unmistakable intention and design on the part not only of the election inspectors but of many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipalities. The presumption is that an election is honestly conducted, and the burden of proof to show it otherwise is on the party assailing the return. But when the return is clearly shown to be wilfully and corruptly false, the whole of it becomes worthless as proof. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. It is list of all the frauds which will invalidate an election. Each case must rest upon its own evidence. The rule, however, is so well established that authorities need no longer be cited in its support, that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected, and those who are guilty of such frauds and irregularities should be punished to the very limit of the law. (Patton vs. Watkins, 131 Ala., 387; Gardiner vs. Romulo, 26 Phil. Rep., 521; The State vs. Sullivan, 44 Kan., 43; Londoner vs. People, 15 Colo., 557; Washburn vs. Voorhis, 2 Bart., 54; People vs. Cook, 8 N. Y., 67; The State vs. Malo, 42 Kan., 54, 120, 164.)

The record of the frauds and irregularities committed in the said municipalities in which Judges Mina and Paredes annulled the entire vote, not only shows that legal voters were prevented from voting, but in some instances, legal ballots were tampered with and destroyed after they had been cast, to such an extent that no confidence can be placed in the return. The return in no sense discloses the expressed will of the voters. Search has been made in vain for cases in jurisprudence in which the frauds and irregularities committed were more glaring and more atrocious, and in which the real will of the voters were more effectively defeated, than is found in the records in said municipalities in the present case. The statements of fact made by Judges Mina and Paredes relating to said

frauds and irregularities are fully sustained by the evidence adduced during the trial of the cause.

When two able, impartial, independent and conscientious judges, such as Judges Mina and Paredes, each examine in detail the proof adduced in the trial of the cause and in an extended and carefully prepared opinion, each reach the same conclusion, there is little left to be added.

After a careful examination of the proof adduced during the trial, we are fully persuaded that the conclusions reached by the court a quo is fully supported thereby. While perhaps some errors were committed in rejecting some of the votes of analfabetos (illiterates persons), the same, even though they were counted, would not be sufficient to change the general result.

Therefore, and without a further detailed discussion at this time of the various assignments of error, of the facts, and of the law, the judgment and order of Judge Isidro Paredes is hereby confirmed, with costs against the appellant, Manuel Crescini, with the provision that whatever costs Engracio Imperial had incurred shall be paid by him. And it is hereby further ordered and decreed that the record be immediately returned to the lower court with direction that an order be entered immediately in accordance herewith. So ordered.

We are not disposed to close this decision without taking note of the recommendation with reference to the criminal prosecution of the election inspectors and other persons of various municipalities, who wilfully and maliciously participated in the various irregularities and frauds. The record demonstrates that not only the inspectors in said municipalities, but other persons, wilfully and maliciously violated the Election Law, and should therefore be punished criminally under the provisions of section 29 of Act No. 1582, as amended by section 2632 of Act No. 2657 (as amended by section 2639 of Act No. 2711). We most earnestly recommended that the Attorney-General immediately investigate the conduct of the various election inspectors and other persons, in the municipalities of Bato, Buhi, Calabanga, Iriga and Sagnay, as well as others, in which frauds were committed, who were instrumental in defeating the will of the voters in the full and legal exercise of their elective franchise, and to instigate criminal actions against all such persons, if the facts are found to be sufficient, to the end that in the future voters may be permitted to participate in the affairs of their government, through the ballot, untrammelled and unmolested.

In democracies the people, combined, represent the sovereign power of the State. Their sovereign authority is exercised through the ballot, of the qualified voters, in duly appointed elections held from time to time, by means of which they choose their officials for definite and fixed periods, and to whom they entrust, for the time being, as their representatives, the exercise of the powers of government.

It is just such conduct, on the part of those in authority, as is described in the records in the present case which breeds dissension, disorder, distrust, and unrest among the people; it creates enmity, animosity and hatred among otherwise friendly neighbors; it gives birth to a spirit of anarchism and despair in organized governments; through it socialists are born and communism runs riot; it engenders distrust and hatred of public officials, creates a spirit of nihilism and a disregard for individual and property rights; it is just such conduct, on the part of public officers, upon which Bolsheviks feed, thrive, and survive, and which results in the overthrow of governments, and the establishment of reigns of terror. The pages of history are filled with incidents showing the disastrous results to governments where the officials have winked at, or actually participated in acts which result in depriving the people of their right to have a voice in the affairs of their government, and to express it without let, hindrance, or molestation. And it is not necessary to search ancient history for examples of what we have said. A people, no matter how patient and peace-loving, will not endure the deprivation of their rights and liberties forever.

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

Street, J., reserves his vote.

[1] Garchitorena vs. Crescini,

[2] See pages 264 and 398, post.

"EXHIBIT A.

"[United States of America, Philippine Islands. In the Court of First Instance of Ambos Camarines, Fifteenth Judicial District. Civil Case No..... Re election contest for the office of Governor.]

"Andres Garchitorena, petitioner, vs. Manuel Crescini, respondent.

"Albert E. Somersille and Julian Ocampo, in behalf of petitioner.

"L. D. Lockwood and Rafael de la Sierra, in behalf of respondent.

"DECISION.

"In this case, Andres Garchitorena, one of the candidates voted for for the office of provincial governor of the province of Ambos Camarines, P. I., protests against the election of the successful candidate, Manuel Crescini, and challenges it on the grounds specifically stated in his motion.

"The motion is accompanied, as an integral part thereof, by a certified copy of the returns and proclamation by the provincial board, acting as a board of canvassers, according to which copy the respondent, Manuel Crescini, obtained 3,198 votes, the petitioner, Andres Garchitorena 2,468, Engracio B. Imperial 1,954, and Francisco Botor 692. All these candidates acknowledged service of notice of this protest within the legal period and raised no objections whatsoever in the matter.

"This protest affects eleven municipalities of the province, in which the total number of votes cast for both of the herein opposing candidates is 2,620. These municipalities are the following: Baao, Bato, Buhi, Calabanga, Capalonga, Iriga, Lagonoy, Mambulao, Minalabac, Nabua, and Sagnay.

"The protestant was represented by attorneys Albert E. Somersille and Julian Ocampo, and the protestee, by Attorneys L. D. Lockwood and Rafael de la Sierra.

"After the decision of several incidental issues raised by the parties, this case was finally heard. The protestant presented numerous proofs, both oral and documentary, whereby nearly all the time that the hearing on this protest lasted was taken up, while but little evidence was introduced by the protestee.

"In order to proceed with clearness and a certain order, the court will examine the manifold issues raised by the parties, in the light of the large amount of evidence that has been accumulated, that of one municipality separately from that of another, and in each instance will dwell on the facts and the points of law brought into discussion, the resolution of which be necessary for a proper decision of this litigation.

"Municipality of Baao.

"The following grounds are advanced in the protest with respect to this municipality:

" '(a) The polling place of this municipality was situated on the upper floor of the municipal building, and to enter the place stairs had to be climbed. The booths were formed with screens joined to the walls of the building, one

leaf of each screen serving as a door for the respective booth, in such manner that the voter inside the latter could not be seen, inasmuch as this door was not raised fifty centimeters from the floor, as prescribed by law. In the polling place there was no guard rail placed at least two meters from the ballot boxes and from the booths, and no entrance and exit were provided, the one separate from the other, as required by law.

" '(b) The election inspectors of this precinct, named Andres Baesa, Ignacio Britanico, and Facundo Badong, all partisans. of the respondent, observed, during the voting and the canvass of the ballots on the day of the election, the following conduct notoriously in conflict with the law and vexatious to the voters: (1) The inspector Facundo Badong called aloud the voters, one by one, who were waiting at a distance of thirty meters from the polling place, and not until the person called had finished voting did he call another; so that the votes were cast one by one, notwithstanding there were in Baao 419 registered voters, for whom, eight booths had been provided; (2) no voter, besides those called by Facundo Badong, was permitted to enter the polling place; (3) said inspectors prepared and marked the ballots of the illiterate voters who solicited their assistance, and did so without previously consulting them as to whom they intended to vote for; (4) said inspectors, violating the secrecy of the ballot, entered the booths in company with voters able to read and write, in order to see what the latter wrote on their ballots, and forced them to vote for the respondent; (5) the canvass of the votes cast was not effected within view of the watchers representing the candidates and (6), on account of such unworthy and improper conduct on the part of the inspectors, the petitioner believes, and so alleges, that many of the ballots counted in the canvass as votes for the respondent are really votes for the petitioner, or for other candidates for the office of provincial governor.

""(c) The respondent, in connivance with the present provincial governor, Jose Fuentebella, who was the principal supporter of the former's candidacy, conceived together with Fuentebella, the plan of removing, on the very day of the election, Paulino Bernas from his office of election inspector for said precinct of Baao, and for this purpose availed himself of the services of the municipal president of the same town, Julian Barrameda, who wae another of the respondent's followers and a principal supporter of his candidacy. So when the said Bernas went to the polling place on the day referred to, at the hour for the opening of the polls, he was met by the municipal president Julian Barrameda who handed him an executive order issued by himself suspending him from office under the pretext that he, Bernas, was delinquent in the payment of his land tax. Bernas protested against this unjust and sudden suspension, but said municipal president, with the cooperation of the other election inspectors and certain policemen and members of the Constabulary, expelled Bernas by main force from the polling place, and immediately thereafter the two remaining election inspectors appointed the municipal policeman Facundo Badong to substitute the said Bernas. In view of this unexpected occurrence and violence, which was a threat to the voters, and in consideration of the oppressive procedure, contrary to law, adopted by the inspectors in relation to the casting of votes, as above related, about two-thirds of the voters registered in this precinct, partisans of the petitioner in their great majority, found themselves obliged to refrain from voting. Had they voted, the result of the election in this precinct would have been different.

" 'The names and listed numbers of these electors are those that appear in the attached Exhibit B, which forms an integral part of his protest.

" 'The very summary suspension of the inspector Bernas is ascribable as a cause solely to the fact that he was not an adherent of the respondent and did not agree to the latter's plans to harm the election by means of fraud. Bernas is a man of unquestionable morality and honor, and the electorate of Baao reposed and reposes in him their absolute confidence.'

"The protestee, in his answer, set up a special defense with respect to this municipality, alleging:

" '1. That it is not true that the respondent has taken part in any manner, direct or indirect, in the suspension of the election inspector Paulino Bernas, who is precisely a personal friend and political adherent of the respondent.

" '2. That the differences and questions had in the municipality of Baao were due to the excitement caused in the designation of the incumbent for the office of municipal president, that is, they were merely a matter of local politics, and that the matter of the election of a provincial governor in no wise concerned those differences and questions, for, in said municipality of Baao, nearly all the voters are partisans of this respondent, and the small remaining minority, partisans of the candidate Engracio B. Imperial; while the petitioner has no political influence whatever in his town.

" '3. That, although it is true that in this municipality some electors did fail to vote, it was due to their own voluntary desistance or waiver of their right in consequence of the differences or questions of local politics that arose in connection with the election for the office of municipal president; that the inspectors called those electors and invited them to vote, affording them all the necessary opportunities so to do; and that the respondent himself went to the town of Baao on the day of the election and begged said electors to vote, as they were nearly all of them his partisans, but that they refused to do so, owing to the aforementioned political questions of a local character.

" '4. That, by the failure of said electors to vote, no detriment was caused the petitioner, while the respondent did suffer greatly thereby, because, as aforesaid, nearly all of the said electors were partisans of the respondent.'

"From the documentary and oral evidence taken at the trial it appears that the general elections held in the municipality of Baao, Ambos Camarines, on June 6, 1916, took place under the following circumstances:

"On March 7, 1916, the municipal council of Baao, presided over by the municipal president Julian Barrameda, adopted its resolution No. 21 (Exhibit D, Baao), which is as follows:

" 'Councilor Bernardino Arroyo presented the following motion: "For the purpose of exactly complying with the law, and it being well known that in this municipality there are two opposing political parties headed, one of them by J. H. Barrameda, and the other by Tomas Guevara, it is desirable that for the party led by the first name, which obtained a majority of votes in the last election, there should be appointed two inspectors, and that for the other party one inspector should be given, in order that the two candi dates in the approaching elections, Eleuterio Arroyo, belonging to the majority party, and Felix Imperial, belonging to the minority party, be duly represented by their respective inspectors. It is therefore recommended that the council take the action proposed in this motion."

" 'On motion by the chairman:

" ' "Be it resolved: To appoint, as there are hereby appointed at the discretion of this council, Andres Baesa, Paulino Bernas, and Ignacio Britanico, as election inspectors, and Crispulo Badilla, as poll clerk." The first two obtained seven votes, and the last two, six votes.

" ' "Be it further resolved: To spread on the record that the preceding appointments, made at the council's own discretion, as aforesaid, were prompted by the fact that neither of the opposing political parties of this town presented any proposal in this matter; and to direct the municipal president to issue to said appointees their proper appointments within the period specified by law."

" 'It was so resolved by a majority vote, with respect to the appointments, and unanimously with respect to the other matters considered.'

"The document above transcribed, taken in connection with some of the oral evidence adduced, shows: That there

were, as there are, in the municipality of Baao two opposing political parties, whose respective leaders are Barrameda and Guevara; that at the time of the adoption of resolution No. 21, that is, when the appointments were made of those who were to be election inspectors, Eleuterio Arroyo and Felix Imperial were the recognized candidates for the office of municipal president, the former belonged to the majority party and the latter to the minority and that, notwithstanding that said political parties took no part in the appointment or designation of the persons who were to be inspectors, the council did, nevertheless, take into account the existence of these parties by appointing Andres Baesa and Ignacio Britanico, belonging to Barrameda's party, and Paulino Bernas, belonging to Guevara's party.

"There is evidence, and the court so finds, that this voluntary recognition on the part of the municipal president Barrameda of the rights of the minority, by the appointment of Paulino Bernas as inspector, was not due so much, to his desire to respect and protect said minority, as principally to the fact that Paulino Bernas, notwithstanding that he belonged to the same party as did the minority party's candidate, Felix Imperial, was a personal enemy of the latter, there being on this account good reasons to believe that he would not support him to any great extent, but on the contrary might work against his candidacy.

"In view thereof, and as Felix Imperial knew his true situation with respect to his candidacy, he withdrew seeing that, as the day for the elections approached, there came forward out of his political party another candidate with greater probabilities of success, namely, Domingo Fajardo, one of whose good qualifications, as regards the election strife, was that of his not being a personal enemy of the sole inspector belonging to his, Fajardo's party, namely, Paulino Bernas.

"These facts having come to the knowledge of the members of the opposite party, their leader Barrameda tried not only to remove Paulino Bernas from the board of election inspectors but also to do so on the very day of the elections, in order thus to control the situation and to render absolutely futile all attempts of the opposite party opportunely to obtain any legal redress.

"The plans made with these ends in view were in fact carried into execution: the inspector Paulino Bernas was expelled from the polling place, on the very morning of June 6, 1916, and Facundo Badong, a municipal policeman whose resignation as such was pending acceptance or disapproval by the municipal council, was appointed in his stead. If this policeman was not a partisan of Barrameda's, neither was he a member of the party to which the expelled inspector belonged.

"This incident, which took place in the presence of nearly all or a majority of the electors of Baao gathered near or around the polling place to await the opening of the polls, caused such an impression on all the voters belonging to the same party as the expelled inspector, and perhaps also on others not of that party, that they chose to abstain totally from taking part in the elections, for they saw that they had not or could not opportunely obtain any legal remedy for the prevalence of what they believed to be their right.

"The number of the voters who withdrew on this account was 254, and of the 419 voters entered on the election register only 165 voted.

"While the court deems the facts above related to have been fully proven, not only by a preponderance of the evidence adduced by the protestant, but also by the admissions of the protestee, yet he is not of the same opinion as regards the influence which these underhand tricks of a local character may have had in respect to the contests for the elections of provincial officers, nor does he believe there was any such positive proof as regards the direct or indirect participation which the governor, Fuentebella, may have had therein, and the pretended community or unity of election interests on the part of said Governor Fuentebella, the protestee Manuel Crescini, and Julian Barrameda.

"The court considers very abrupt the conclusion which the protestant draws from the fact that the said Fuentebella, Crescini, and Barrameda belong to the same political party, with the additional circumstance that the first named was governor of the province, and the second a member of the provincial board; and likewise his conclusion from the fact that provincial tickets or ballots were found on which appeared the name of the candidate Crescini together with that of the candidate Barrameda. (See Exhibit B.)

"In reality, as disclosed by the evidence, there was no struggle of parties in the matter of the provincial offices, and two of the candidates for governor (Manuel Crescini and Engracio Imperial) both belonged to the same party as did Governor Fuentebella, and both were also members of the provincial board; and as to the provincial tickets or ballots, there was a variety of them and among these there were free combinations of names and offices. It appears that, as a rule, the candidate upon obtaining such tickets would write on some of them besides his own name another or other names of such candidate or candidates as he believed to be the most popular, so as to draw attention and interest, or the candidate would have several tickets with names and offices differently combined, and to some voters would give those containing the name, united with others, of the candidate whom he knew they favored, and would distribute other such combination tickets to the voters whose preferences were known to incline to some other different candidate.

"It is not denied, nor can it be denied, that there exists some relation, mayhap an intimate one, between the different offices to be voted for in the general elections, but it would be too abrupt a supposition to infer that there was a relation of coincidence between the underhand tricks above mentioned and the votes obtained by the protestee or the votes which the protestant was unable to obtain, as likewise it would be too venturesome to affirm or contend that the legality of the election in Baao hinged on the person of the inspector Bernas and on the concurrence of each one and all of the registered electors.

"Without discussing here—because the court deems it unnecessary to do so and this is not the proper place for it—whether or not the municipal president Barrameda or the other election inspectors proceeded legally in eliminating Paulino Bernas from the board of inspectors or in expelling him from the polling place; whether or not there was good and sufficient ground for said officials to have proceeded as they did; whether or not the policeman Facundo Badong, who resigned as such, was qualified to be appointed inspector instead of Bernas; and whether or not the 254 voters of Baao, of the political party contrary to that to which Barrameda belonged, did right or wrong in abstaining from casting their votes for the reasons stated in the petition subscribed by them, Exhibit E, it is obvious that, with the exception of this incident that happened on the morning of the elections, the latter followed their course in relatively good order in the polling place and booths, which no doubt, owing to their imperfection and deficient condition, could not serve as models, but which were provided with the necessary safeguards for the free and secret expression of the will of the voters.

"From the protestant's own evidence it is disclosed that the partisans of the candidate for municipal president Domingo Fajardo had not, properly speaking, centered upon any candidate for governor such as might be said to be the choice of the group; some of them were known to favor the candidacy of Imperial, others seemed to be inclined in favor of that of Garchitorena, still others would have liked to see Botor triumph, and the rest desired the election of Crescini.

"The allegations that 'the inspectors prepared and marked the ballots of the illiterate voters who solicited their assistance, without previously consulting the latter as to whom they intended to vote for, and that said inspectors, violating the secrecy of the ballot, entered the booths in company with voters who could read and write, to see what they wrote on their ballots, and forced them to vote for the respondent' are not sustained by the evidence, and the protestants suspicion, that in the canvass, said inspectors counted as votes for the protestee some which really had been cast for the protestant or for other candidates for the office of governor, rests on no serious and

reasonable ground.

"And protestant's counsel do not insists nor maintain in their brief that they proved those averments of their motion, and merely touch lightly upon those relative to certain supposed irregularities in the manner of conducting the elections and to the construction or arrangement of the polling place and the booths. It is easy to comprehend that though it were proven that such irregularities, or, more properly speaking, imperfections of the polling place and booths used, did exist, they cannot, in the absence of fraud, vitiate nor much less invalidate the elections held in the single precinct of Baao.

"In view of the foregoing facts deemed to have been proven and of the considerations set forth in relation thereto, the court is of the opinion that for such reasons no change whatever should be made in the returns of the general elections held in Baao on June 6, 1916. The persons responsible for the abnormal state or condition of affairs that prevailed in said municipality on that 6th day of June may be deserving of censure, perhaps penal or administrative, but that would not warrant the declaration that the votes of those electors which were cast in an orderly and honorable manner on the very day and in the manner prescribed by law are null and void and of no value.

"Now, coming to the matter of the examination and recount of the votes cast in the single precinct of Baao for provincial governor, and duly considering the accusations made by the parties, the court finds that, taking into account that several illiterate electors voted in said precinct—a fact not discussed by the parties—and also taking into account that the inspectors were not expected to choose the ballots they prepared for these illiterate voters, it is to be supposed that the groups of 63, 15, and 8 ballots found to have been written by the same hand (each group) are those which said inspectors filled out or marked for the voters incapacitated to do so themselves and who requested their assistance in conformity with the law.

"In fact, the document Exhibit X, Baao, which is the record of the proceedings of the board in the matter of assistance to illiterate voters, shows that 83 electors were assisted by the inspectors Andres Baesa, Ignacio Britanico, and Facundo Badong, in the proportion, respectively, of 61, 16, and 6, which numbers differ very little from those above mentioned of 63, 15, and 8.

"The list shows 61 ballots filled in by Andres Baesa, and the handwriting expert identified 67 ballots as written by the same hand; but this court, after a careful examination of these ballots, is of the opinion that those numbered 36, 45, 46, and 47 are not identical with nor similar to the other ballots of the same group.

"In the challenge of the ballots, protestant's counsel speaks of a group of 16 ballots written by the same hand, and, according to the list, Ignacio Britanico assisted 16 illiterate voters.

"Facundo Badong prepared 6 ballots for illiterate voters, as against 8 ballots found by the court to be written in the same hand; for, although the handwriting expert separated 9 ballots to form one group, it can be seen that the ballot bearing No. 33 was erroneously included.

"According to the foregoing statements the list should show 63 (64 less 1) electors assisted by Baesa, 14 (15 less 1) by Britanico, and 7 (8 less 1) by Badong, that is to say, one ballot should be deducted from each group as being cast by the inspector himself and which for this reason should not of course appear on the list. Now then, adding together these numbers 63, 14- and 7, we have the sum of 84, and comparing it with the number of electors given on the list, 83, it is seen that there is only a difference of one, an error that is easily explained, if but due account be taken of this kind of work and of all the circumstances of the case.

"Neither is it difficult to believe that the discrepancy between the proportions for each inspector (63, 14, and 7 in the ballots, and 61, 16, and 6 on the list), may be due to involuntary transpositions or mistakes by recording that

Britanico assisted two more electors, when in fact they must have been assisted by Baesa, or one of them by Baesa and the other by Badong.

"The court believes that the list of illiterate voters, notwithstanding the slight errors mentioned, is correct within the purview of the law, was made up honestly by the inspectors and the poll clerk, and is a faithful record of the proceedings of the board in the matters of the assistance given to incapacitated electors.

"The other ballots challenged are Nos. 2, 3, 48, 115, and 119, all for Manuel Crescini and written in the same hand. They are admitted because in the opinion of the court they were not written by the same hand.

"Nos. 121 and 138, the first for Manuel Crescini and the second for Engracio Imperial, are challenged on the same ground. They are admitted. They are not identical nor similar.

"Nos. 11 and 20, both for Crescini. The same challenge. The same ruling.

"No. 118, for Crescini, and No. 148, for Francisco Botor. It is alleged that they are in the same handwriting. They are not, and are admitted.

"Nos. 9 and 10, for Manuel Crescini. Both are rejected as having been written by the same hand, and not by any of the inspectors of election.

"No. 1, written with a drawing pencil, is admitted there being no proof of fraud.

"According to the election returns Manuel Crescini obtained 133 votes and Andres Garchitorena 6; but the commissioners who were appointed awarded only 128 to the first and 5 to the second, and did not award to anybody the ballots found with space for the office of governor left blank, nor were these ballots claimed.

"The ballots rejected by the inspectors during the canvass and claimed by the interested parties before the commission are again rejected.

"Therefore, the following votes, cast in the single election precinct of Baao, are finally awarded to each of the litigants in this contest, to wit, to the candidate Manuel Crescini 128 votes, less two rejected (ballots Nos. 9 and 10), that is, 126 votes, and to the candidate Andres Garchitorena 5 votes.

"Municipality of Bato.

"The elections in the municipality of Bato are challenged by the protestant who sets forth in his motion the following grounds:

" ' (a) The polling place of this municipality was situated on the upper floor of the school building and to gain entrance thereto it was necessary to climb the stairs. The booths were so small that they each comprised a space of less than one meter square. One of the sides of each booth was open, serving as an entrance, and, besides, the desks placed one in each booth were so arranged that the voter sat facing the side of the booth, and any one passing along the line of booths could see what the elector was writing. In this polling place no guard rail was constructed, situated at least two meters from the ballot boxes and from the booths, as the law requires.

" ' (b) The inspectors of election of said precinct, named Eligio Calleja, Potenciano Orasa, and Francisco Relos, staunch partisans of the respondent, deceived and defrauded on a large scale the illiterate electors of said precinct who solicited their assistance and in such manner that said inspectors did not inquire of nor consult said illiterate voters in regard to the person for whom they intended or wished to vote, but marked the ballots to their, the inspectors' liking, writing in the space allotted for the candidate for the office of provincial governor the respondent's name, though such illiterate voters expressed their desire to vote for the petitioner or for some other candidates for said office.

" '(c) During the elections said inspectors carried on propaganda work and did electioneering to induce the electors coming to the polling place to vote for the respondent, their zeal and interest in this electioneering reaching such a pitch that they even accompanied within the booths electors who could read and write, in order to see what the latter wrote on their respective ballots, and threatened them with future vengeance if they showed unwillingness to write out or cast their votes in favor of the respondent, and, not content with this, said inspectors opened the ballots of these electors able to read and write, so as to ascertain their contents before depositing them in the ballot box. In such manner many votes were obtained for the respondent which should have been for the petitioner.

" 'The names and the listed members of said electors so influenced imduly and improperly by means of threats are Esteban Pili, Braulio Azanza, Ricardo Calinao, Dalmacio Buena, Estanislao Sandigon, and Domingo Palides. There are, besides, other such electors whose names are at the present time unknown to the petitioner.

" '(d) Said election inspectors did not administer the oath prescribed by law to such electors as, on account of illiteracy or some physical defect, solicited their assistance for the preparation of their ballots.

" '(e) More than 140 persons unqualified as electors were allowed to vote in that precinct, and their illegal votes were deposited in the ballot box and counted in the canvass. The names of said persons were carried on the list of voters of Bato.

" '(f) Said inspectors of election allowed more than 100 persons to vote after 6 p. m. on the day of the election—the hour for the closing of the polls according to law—and their votes were unduly deposited in the ballot box and afterwards counted in the canvass.

" '(g) The aforementioned election inspectors, acting illegally and arbitrarily, would not permit the voters among the public nor the watchers of several candidates to witness the voting, and during the canvass of the votes these watchers were so situated that they might notf as in fact they could not, see nor read the contents of the ballots which were being canvassed; for which reason the herein petitioner believes, and so alleges, that said election inspectors read during the canvass the name of the respondent for the office of provincial governor, although the spaces provided on said ballots for the insertion of the name of the candidate for said office were filled in with the name of the petitioner or that of some other person.

" '(h) Several ballots, more than ten in number, were read with the omission of the name of the candidate voted for for provincial governor notwithstanding the fact that the other blank spaces on said ballots, provided for candidates for other offices, were filled in, which leads the petitioner to believe, and he so alleges, that those ballots, or the majority of them, contained his name for the office of provincial governor/

"As may be seen, in the motion, mention is made of several more or less serious irregularities, and various unlawful acts are complained of, which constitute violations of law, as much with regard to the persons who, without possessing the necessary qualifications qualified as electors and voted, as to the inspectors who knowingly registered them and permitted them to vote, and said inspectors are accused of various frauds committed during the course of the elections.

"The court does not need to examine one by one the numerous proofs presented in support of each one of the allegations of the motion. Be whatever they may the irregularities that mar an election, if there has been no fraud on anybody's part, such irregularities, unless extremely serious, do not void the election; while, on the contrary, the existence of fraudulent irregularities determines the nullity of the election, immaterially whether or not they be serious or numerous. That is the crucial test. Therefore the most advisable procedure, and the court prefers this course, is to begin by ascertaining whether or not frauds were committed in the elections held at Bato, and, if they

were, by whom.

"From an examination of the ballots and other documents introduced in evidence, the court finds:

"That 351 persons were registered on the list of voters, all of whom voted on the day of the election, the polls being open from 7 o'clock in the morning until 10 o'clock at night; that more than one-half (180) of the ballots were prepared or filled in by the inspectors, all, absolutely all, of such ballots being for nianuel Crescini, without a single vote for any other candidate for governor; that there are 22 ballots written by the inspectors, besides about 8 written by electors, which were not counted in the canvass, on account of being marked, which ballots are also for Manuel Crescini, except one, which is for Andres Garchitorena; that the number of illiterate voters who were assisted by the inspectors in the preparation of their ballots is 141 only, according to the corresponding statement or list; and that two ballots disappeared.

"The preceding data, considered jointly with and in relation to all the other evidence introduced, show nothing but the nature of the illegal acts denounced in the motion, or, if preferred, irregularities so grave as to confound themselves with illegalities, and the existence of the frauds alleged, or, if preferred, discrepancies, excesses, and faults which do not harmonize with good faith.

"Be it observed, in the first place, that more than one-half of the ballots (180) were written by the inspectors, while the number of illiterate voters assisted is 141 only.

"There cannot be the slightest doubt that 180 ballots were written by the inspectors. The inspectors themselves identified those that were prepared by them: Eligio Calleja picked out 17 such ballots, Francisco Relos 60, and Potenciano Orasa 87, making a total of 164, to which must be added 5 by Calleja, 6 by Relos, and 5 by Orasa, that is, 16 ballots more, making a grand total of 180. (The hand-writing expert identified 6 more ballots as being written by Orasa; but the court is of the opinion that one of these should be excluded, namely, Ballot No. 149.)

"Now then, if the foregoing facts are true and indisputable, as they are, for the ballots show them to be so, it is clearly seen that the list or statement of illiterate voters is false, and that the inspectors were gravely remiss in the fulfilment of their duty by failing to enter thereon a considerable number of electors assisted by them. No explanation whatever can be offered, for it is not a question of involuntary negligence or oversight, or of a more or less excusable mistake: it was simply an abandonment of duty, verging on an actual disdain of the law. Nor is a plea of ignorance admissible, for, in such a case, no list at all would have been made.

"If on the other hand this statement concerning illiterate voters is correct, then it is the best proof that the inspectors defrauded the voters on a large scale by writing out ballot after ballot for illiterate voters not in existence; and if those ballots were for electors who could read and write and the candidates voted for on them are really the same for whom these electors wished to cast their votes, then such ballots are illegal, for their secrecy was violated.

"The protestee has not invited the attention of the court to a satisfactory explanation of this serious disagreement between the list of illiterate voters and the ballots, and the great difference (39 votes) between 141 incapacitated and 180 assisted voters; and the court finds no light to attenuate, if not to dissipate completely, the dark shadows cast upon the elections at Bato by frauds, illegalities, and irregularities.

"Whether we accept any extreme of the alternatives above enunciated, or forge other propositions, we shall always find in front of us in brazen relief in the midst of confusion the execrable figure of illegality, or perhaps that of fraud, or if preferred that of various irregularities.

"What are, and what should be done with, the 39 votes (there are included here the 22 votes of which we shall

speak more extensively in another place) which make up the difference between the 141 incapacitated voters appearing on the corresponding list or statement, and the 180 ballots written by the inspectors for the illiterate or assisted voters, is what should be determined, premising, for the purposes of the discussion of this question, that the inspectors of Bato complied with the requirement of the law to administer the oath of incapacity or disability to each one and all of the electors assisted in the preparation of their respective ballots. Also, for the purposes of the argument, said list or statement of illiterate voters is presumed and admitted to be correct and true, inasmuch as if the contrary be insinuated or maintained, then not only would the 39 votes, constituting the difference aforementioned, be illegal, but also all the 180 votes written by the three inspectors, with the exception perhaps of three of them, their own votes.

"In reference to circumstances of the same nature as those concerned in the instant case, in the case of *Gardiner vs. Romulo* (26 Phil. Rep., 521), the Supreme Court said:

" 'The judgment of the lower court contains the following comment as to the discrepancies in the reports rendered by the inspectors of the five precincts of Camiling, in compliance with the above provisions of law.

" ' "First precinct.—According to the record of the illiterate voters of this precinct, the inspector Marcelino Fabros assisted only three such persons in the preparation of their ballots, and Eudoxio Masilongan, twelve. The first named, nevertheless, identified 13 ballots as his, written in his own handwriting; and the last named, 32. There is an excess of 30 ballots. It is understood how, for various reasons, a few names might have been omitted from the list of illiterates, but not those of thirty voters. Undoubtedly, these inspectors betrayed the confidence reposed in them, and the ballots written by them merit no consideration whatever.

" ' "Second precinct.—According to the record of illiterate voters, 59 of these were assisted by the inspectors; but the latter identified 77 ballots. There is, therefore, an excess of 18 ballots. Were it a question of only three or four names, we might say that the election inspectors forgot to record these three or four names in the list of illiterates, owing to the haste with which they proceeded in all their act? and to the large number of voters who requested their assistance; but we do not believe that those inspectors forgot to enter 18 names. If these men had actually voted, we believe that their names would have appeared in the list or record of illiterates. We are of opinion that all these ballots should be rejected; and as 42 of them were cast for Romulo and 35 for Gardiner, 42 votes should be deducted from those obtained by Gregorio Romulo and 35 from those obtained by Ernesto Gardiner.

" ' "Third precinct.—With respect to illiterate voters, Inspector Juan Guillermo assisted 80 of them. One hundred and nineteen ballots were identified as having been written by this inspector. Of these 119 ballots, 16 are for Ernesto Gardiner and the rest for Gregorio Romulo. There is proof that 136 illiterate voters voted in this precinct, all of them assisted by Juan Guillermo. It is to be presumed that in the ballot boxes there were 17 more ballots written by this inspector. It must be taken into account that Juan Guillermo did not identify the ballots written by himself, but these were identified by his two companions, inspectors Zacarias Reyes and Pio Salamanca. Of the 136 illiterates, 54 of them testified that they indicated to Juan Guillermo that they wished to vote for Gardiner for governor. Of the 119 ballots identified as written by Juan Guillermo, only 16 of them were cast for Gardiner. Juan Guillermo defrauded the will of 38 voters for Gardiner, and these votes should be awarded to this candidate and deducted from those obtained by Gregorio Romulo. The other 83 illiterates who testified all voted for Gregorio Romulo, which is proved by their own testimony.

" ' "Fourth precinct.—With regard to the illiterate voters, 49 of them were assisted by the election inspectors, but the latter identified only 41 ballots. There must be a few more ballots that were written by these inspectors and which could not be identified by them for some reason or other.

" ' "Fifth precinct.—With respect to the illiterates, it is sufficient to say that, according to the certificate of election,

only 73 of them were assisted by the inspectors, while the chairman of the board identified 98 ballots as having been written by the inspectors."

"We do not understand why the court failed to find the inspectors of the second, third, fourth, and fifth precincts guilty of fraud by the same line of reasoning which was applied to the inspectors of the first precinct. In the second precinct the court finds that the discrepancy between the records of the inspectors and their testimony could not be explained as an oversight in the keeping of records. As the discrepancy is only attributable to a willful disregard of the above quoted provisions of section 22, for no good purpose, their conduct is on a par with that of the inspectors of the first precinct. The court does find, in effect, that the inspectors of the third precinct grossly defrauded the illiterate voters. That, perhaps, is sufficient, without expressly stating that they were guilty of fraudulent acts. In the fourth precinct, however, the inspectors' records show that 49 illiterates voted while they could identify but 41 ballots, a discrepancy of 8. The explanation is that the inspectors were unable, in eight instances, to recognize their own handwriting. This explanation is not consistent with the well known accuracy with which a person can identify his own handwriting on a document containing as much of it as a ballot at a general election. The better explanation seems to be that the inspectors deliberately padded the list of illiterates. In the fifth precinct, where the court found the inspectors guilty of fraud in other particulars to such an extent that it was found necessary to annul the returns from that precinct, there can be no question that the shortage of 25 illiterates on the records of the inspectors was due to fraudulent practices.'

"This court does not overlook the fact that in the case above cited there was a very special circumstance which perhaps had a decisive influence over the minds of the Honorable Justices who subscribed the decision, to wit, the disappearance of official ballots; but the legal doctrine enunciated cannot for that reason alone be inapplicable to the instant case, at least as regards the difference of 39 ballots, the qualification of which is now the subject of our consideration.

"From all that has been said, it is concluded that at least the 39 votes under discussion are, and should be considered, fraudulent, which conclusion is at the same time a necessary premise of these others, to wit: that in the elections held at Bato frauds were committed, and that these frauds are considerable.

"Who committed them is a matter that requires no further explanation; it is clear enough. Those frauds were committed by the election inspectors.

"Examining the records or list of illiterates assisted in the preparation of their ballots, it is found to be a nominal list of these electors. Beside each one of the latter's names there were written the names of the two inspectors who assisted the respective voter; so that each line contains three names, to wit: that of the elector and those of each of the two inspectors.

"Now then, if the inspector whose name is the first that appears on said list is the one who wrote the ballot, and the inspector whose name follows the first is the witness, we have the result that Eligio Calleja filled in 58 ballots, Potenciano Orasa 26, and Francisco Relos 44, there being 13 names of electors without any indication whatever as to who assisted them. If, on the contrary, the second name is that of the inspector who wrote out the ballot, and the first name is that of the witness, the result follows that Eligio Calleja filled in 41 ballots, Orasa 73, and Francisco Relos 14, with the same 13 lines in blank where we should expect to see the names of the inspectors who assisted.

"Comparing the results of this examination with the number of ballots written by each inspector, many differences will be observed, for the better appreciation of which the following comparative table is inserted:

According to ballots.

According to list, first name.

According to list, second name.

Eligio Calleja

22

58

41

Francisco Relos.....

66

44

14

Potenciano Irasa

92

26

73

In blank.....

- - -

13

13

180

141

141

"By a mere glance at the preceding table, whether we take the first name on the list, Eligio Calleja, or the second, as that of the inspector who filled in the ballot, it will be noticed that the result is always the same, namely, that the list shows many more ballots as having been prepared by the inspector than those actually found in the ballot box as having been written by him.

"In view thereof, it is indisputable that, although it appears certain that the illiterate electors of Bato duly took the oath of incapacity before being assisted in writing out their ballots, as so evidenced by the corresponding record, the statement or list of said illiterates is nevertheless false, both in regard to the number of the latter and to the point in reference to which of the three inspectors, whether one or more, wrote out such electors' respective ballots.

"There is no possible middle ground to be taken, for it has been certainly ascertained just what ballots were written by these three inspectors and what proportion of them corresponds to each inspector, as shown by the ballots themselves. The list of illiterate voters is therefore necessarily false in all its essential features and deserves no credence whatever, or clearly shows that the inspectors deliberately filled it in, with or without fraudulent intent, but with grave violation of the provisions of law.

"There is another fact that also shows, though indirectly, the falsity of the list of illiterates and that either certain electors unnecessarily requested assistance, with violation of the secrecy of the ballot, or the inspectors in some manner compelled them to allow their ballots to be filled in.

"The register voters of Bato contains, in conformity with the law, entries of the qualifications of each elector. The election inspectors used the letter 'E' placed beside the name of the elector in the proper column to indicate that the latter had the qualification of education; the letter 'O,' to indicate that he had held offices such as the law mentions; and the letter 'P,' if he was a property owner. Now then, an examination of that register, on an assumption that it is correct and true in all respects, discloses that 164 electors were registered as qualified by education, 58 by education and office, 8 by education, office and property, and 2 by education and property (that is, 232 electors who could read and write), 115 by office, 2 by property, and 2 by office and property (that is, 119 illiterate electors). According to the ballots however 180 electors were assisted in writing them out. It would not be strange that some 10, 20, or 30 of the electors able to read and write should have requested assistance in marking their ballots, on account of their inability to do so themselves; but 61 (which is the difference between the 119 illiterate voters and the 180 ballots written for illiterate voters) is quite a large number which can, and does in fact, awaken certain suspicion against the legality of the proceedings conducted by the board of inspectors.

"The result is that not only should the 39 votes of illiterates which, for the reasons above set forth, are deemed to be fraudulent, but also all the 180 ballots of illiterates, for the same reasons and because of the unexplainable discrepancies and inaccuracies which point to grave irregularities, illegalities, committed by the inspectors.

"Let us consider now, in the second place, the fact that the voting was prolonged until 10 o'clock at night, there being no more than 351 voters, 180 of which, or more exactly, 177, were assisted by the inspectors, and the voting having commenced at the hour fixed by law, with a complete number of booths.

"The protestant's witnesses calculate that 100, or at least no less than 90, electors voted after 6 o'clock in the evening while the witnesses for the protestee estimate at 40 and no more than 50 the number of such tardy voters. As the voting lasted more than ten hours and the number of voters was 351, the resultant proportion is at the rate of not less than 23 electors per hour; so that, under similar circumstances, as it was so proven, not less than 92 electors, or more than 28 per cent of the total number of electors entered on the electoral registry, must have voted between 6 o'clock in the evening and 10 o'clock at night.

"Be the proportional number 40, as the protestee claims it was, or 100, according to the protestant's calculations, or 92, as the proportion was shown to be, it is undeniable that this constitutes at least an irregularity of relative importance and seriousness, and if this fact is brought into relation with the fact that several electors without legal qualification took part in the elections at Bato (the very evidence produced by the protestee disclosed three such at least, namely, Pablo Sabao, Faustino Casili, and Santiago Aquino), and with the further fact of the finding of 30 marked ballots which shall be discussed later on, the mind is drawn to the conclusion of the existence of other frauds or illegalities which vitiated the election.

"Considering separately this fact of the prolongation of the voting until 10 o'clock at night, and regarding it as a mere irregularity, in the light of the legal provisions and principles in the matter, we find that:

" 'At all the elections held under the provisions of this chapter the polls shall be open from seven o'clock in the morning until six in the afternoon, during which period not more than one member of the board of inspectors shall be absent at one time, and then for not to exceed twenty minutes at one time/ (Administrative Code, sec. 543 [1916].)

"McCrary says (par. 165, McCrary on Elections, 4th ed.):

" '620. From all the somewhat conflicting authorities, upon the subject, the following may be gathered as the governing rules:

" '1. If the statute fixing the hours during which the polls shall remain open expressly declares that a failure in this respect shall render the election void, it must be strictly enforced.

" '2. But in the absence of such a provision in the statute, it will be regarded as so far directory only, as that, unless the deviation from the regular hours has affected the result, it will be disregarded.

" '3. If the deviation from the legal hours is great, or even considerable, the presumption will be that it has affected the result, and the burden will be upon him who seeks to uphold the election to show affirmatively that it has not. But if the deviation from the legal hours is but slight, the presumption will be that it has not affected the result, and the burden will be upon him who attacks the validity of the election to show affirmatively the contrary.

" '4. If the number of votes illegally cast after the legal hours, and the persons for whom cast, can be shown, they be rejected from the count. (Cited by Villamor, Tratado de Elecciones, par. 620.)

" '628. The same doctrine is maintained in the Cyclopedia of Law and Procedure (vol. 15, p. 345; Villamor, par. 628) :

" ' "The provisions of a statute as to the time of opening and closing the polls is so far directory that an irregularity in this respect which does not deprive a legal voter of his vote or admit a disqualified person to vote will not vitiate the election. But if the departure from the provisions of the statute in regard to the time for opening or closing the polls was so great that it must be deemed to have affected the result, the election must be held invalid." ' "

"In view of the legal principles above cited, the court declares that, if he had to decide this case, with only this irregularity to consider, in connection with the 730 majority votes cast for the protestee in the entire province, or with the 260 majority votes over the number obtained by the protestant in the precinct of Bato, without any doubt the court would not hesitate in according no importance whatever to that irregularity, although it is obvious that it is not a question of but a slight inobservance of the legal hours, nor one where only a small number of votes were illegally cast.

"But such is not the case; the relation must be established between that irregularity and all the facts brought out at the trial, especially the illegalities and frauds alleged and proven in respect to the municipality of Bato. And it has already been said that in that municipality the election inspectors committed frauds whereby 180 votes were affected. It must also be taken into account that there is evidence which shows that some persons without the requisite qualifications were registered in the register of voters and though challenged voted in this election, some of them precisely during the night.

"Furthermore, there is even no need to seek relationship with other facts disclosed at the trial, in order to hold that these votes cast out of time are invalid; it is sufficient to pause a short while to consider: (a) that Andres Garchitorena obtained in Bato not a single vote cast by an illiterate, by any voter assisted by the inspectors, which means that the few who voted for him all knew how to read and write, and there are reasons to suppose and believe that they knew the law, at least in so far as it refers to the opening and closing of the polls, and must have voted during the legal hours; and (b), that the total number of votes for Garchitorena (32) does not even reach the minimum calculation (40) of the votes illegally cast, from which it is to be inferred that the election was not prolonged until 10 o'clock at night in order to admit the 32 votes for Garchitorena or the very few votes for the

other candidates for governor, but principally and especially in order to afford an opportunity to vote to all the registered electors, without a single exception, who were known to be all of them partisans of the protestee Manuel Crescini.

"The procedure of the inspectors of Bato is in very noticeable contrast with that of those of the neighboring town of Nabua who found but little difficulty in consulting the provincial fiscal in the matter and in following strictly his decision in the premises, namely, to close the polls at 6 o'clock in the evening, notwithstanding that there were still 80 voters who had not cast their ballots, because these electors were perhaps partisans of the protestant Garchitorena (in Nabua, Garchitorena had 164 votes as against 110 cast for Crescini), or at least were not electors who would surely vote for Crescini.

"Four hours of prolongation of the voting is more than a slight inobservance of the law, and 92 votes, or if preferred 40, are in reality a considerable number. The result is that these votes illegally cast should be thrown out, if they could be determined both as regards their numbers and their contents; but as this cannot be done, in view of the other irregularity committed by the inspectors in not enumerating successively each elector who voted, in conformity with the instructions clearly written on the election lists, it follows that we find ourselves confronted with a serious irregularity of such a nature as to make it impossible to separate the legal votea from the illegal ones.

"In the third place, it is to be noticed that, besides, 30 filled-in ballots were found in the ballot boxes, none of which ballots pertained to any elector; 22 of them were written in different proportions by the inspectors and 8 by electors; all of them were duly marked for the purpose of their rejection. There is the peculiarity that on one of these ballots, that numbered 353, there appears the imprint or trace left in writing the sign X as a mark in the middle of ballot No. 352, thus clearly showing that the ballot No. 353 was under the ballot No. 352 when this mark was written.

"No explanation whatever is given in regard to the existence of these ballots, either in the record of the proceedings by the board of inspectors, or in the evidence produced by the protestee, and the court finds no fact, detail, or circumstance which may justify the existence of such ballots so filled-in, marked, and rejected.

"Why it is that the inspector Francisco Relos had 18 ballots left over (Nos. 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 366, 367, 368, 370, 371, and 372), Eligio Calleja three (Nos. 343, 348 and 351), and Potenciano Orasa one (No. 346), all filled in or prepared, is what the court proposes to ascertain, for, if it does not constitute fraud, it is undoubtedly an irrefutable proof of fraud.

"The same inquiry will be made in reference to the eight other extra ballots filled in or prepared by different electors and which are numbered 344, 345, 346, 347, 349, 350, 365, and 369.

"No record was kept of the spoiled ballots in the proper column or in any other place of the registry list, opposite the name of the respective voter, as provided in section 551 of the Administrative Code, 1916.

"It should be kept in mind that these 30 ballots were rejected by the inspectors for the very reason that they were left over; and that they could not correspond to any registered elector because their numbers were completely crossed out.

"Apparently the inspectors of Bato, or some one of them at least, meant to say, in speaking of these 30 marked ballots, that they were duplicates, because in each case the elector amended his vote, and it was thought necessary to mark the changed ballot in order to invalidate it.

"Accepting this as true, the result would, be that 18 illiterate voters assisted by inspector Relos, 3 by inspector

Calleja, 1 by Orasa, and 8 electors who could read and write, amended their votes, immediately after their ballots had been filled in, each requesting for the purpose a second ballot. Now then, those amendments either were made at the elector's own will, or they were not; if it be the first, in the case of the illiterate voters, it was either because the elector made a mistake in dictating the names of his candidates or in specifying the respective offices, or because the inspector deliberately committed such mistakes and the elector would not accept the ballot as his own, immediately asking for another one.

"The court cannot believe in the supposed error on the part of the illiterate voter or of the voter who could read and write, committed in dictating or writing the names of his candidates. There is no evidence sustaining such supposition. If an amendment or change of his vote was agreed upon, it was the result of the effective electioneering which must have been carried on during the time the ballot was being written, or immediately after it had been written upon and its contents had become known, for such is the conclusion derived from some of the evidence taken.

"What most likely occurred with respect to the 22 ballots written by the inspectors is that the latter had them already prepared for the illiterate electors but calculated so poorly the number there might be of such Voters that several of the ballots were left over and they had to mark them as spoiled. These ballots so prepared beforehand were assembled together one on top of the other and were arranged in this way when were thrown out as spoiled; this fact explains that the imprint or trace of the mark placed on Ballot No. 352 became fixed on the next ballot below it, No. 353; it is also an explanation of why the inspector Orasa had only one ballot left over; of all the inspectors it was he who was able to dispose of the largest number (92) of previously prepared ballots.

"In one case or the other, it may be clearly seen that it is a matter of the same illegality under different forms; consequently the existence of the 30 perfectly good but deliberately marked ballots, if not in itself a fraud, is another manifest proof that fraud was committed or attempted to be committed.

"That all these ballots excepting one are for the protestee, does not alter the conclusion drawn, inasmuch as it is indifferent whether the vote was amended in regard to one office or to another. The fact is that the elector was unduly influenced or obliged by electioneering to make a change in one or more of his candidates. Ballot No. 364, the only one of those marked as spoiled, that is, for Andres Garchitorena, must have been substituted by another already written by an inspector, without the knowledge or the consent of the elector who filled in the substituted ballot.

"In the fourth place, let the following facts be observed, as disclosed by the returns made by the inspectors and by the recount effected by the commission.

"According to the returns, the results of the election for the office of governor is as follows:

Votes.

Manuel Crescini.....

292

Andres Garchitorena.....

32

Engracio Imperial

7

Severo Cea.....

___1

332

Scattering votes.....

___10

342

"According to the recount and the ballots themselves :

Votes.

Manuel Crescini had only.....

289

Andres Garchitorena

33

Various other candidates.....

20

"It may be admitted that it is very common and easy to err in making a canvass of votes, and that the counting of 292 instead of 289 ballots, 32 instead of 33, and 18 instead of 20, may have been done through mistake; but it is a very conspicuous and noticeable fact that, with respect to Manuel Crescini, the inspectors should have made the mistake of awarding him more votes than he should have had, while on the other hand, with regard to the other candidates, who certainly received but very few votes, the contrary should have occurred. If this is not fraud, it is nevertheless circumstantial evidence of it or sufficient proof that the inspectors of Bato were very prone to commit mistakes in favor of Crescini.

"Having reached the conclusions above set forth, to wit: that the election inspectors of Bato committed frauds of considerable importance in the preparation of the ballots, and that they obtained, by electioneering and by other still more censurable means, changes in the votes of several electors; that the legal hours were not observed, the voting being prolonged four hours beyond the time prescribed by law for the closing of the polls, during which period a considerable number of electors cast their votes; and that the inspectors did not enumerate successively each elector who voted, on account of which omission it is impossible to separate the ballots illegally cast from the good and unchallenged ones; the court does not deem it necessary to enter upon further considerations with regard to the other questions brought up in the motion and in the evidence, bearing upon irregularities with reference to the polling place, the voting booths, the procedure adopted by the inspectors with respect to the electors who were awaiting their return, the watchers, and the canvass of the votes.

"It is enough to say that there is some evidence which shows that the polling place and voting booths at Bato and the procedure adopted by the election inspectors are really very far from being perfect enough to serve as models or at least to be in accord with the letter and spirit of the law.

"It is not unknown to the court that the electors of the municipality of Bato are in their great majority, if not nearly all of them, partisans of the protestee Manuel Crescini, and that many of them, principally the illiterates, went to the polls to cast their votes in the most honorable manner, and that they had absolutely no hand whatever in the frauds, illegalities, and irregularities above referred to,

"The court would have the votes of the honest electors of Bato respected for the reason that they constitute the expression and fulfillment of their right of suffrage, and would not deprive anybody, though it be the most humble and illiterate citizen, of the enjoyment of said right; but it is found in such a situation that his desires to give effect to the suffrage of the electorate of Bato are shattered in the face of barriers, rocks, and boulders scattered during the elections, in the shape of irregularities, illegalities, and frauds, by the election inspectors.

"The result is that the elections held in the sole election precinct of the municipality of Bato should be repudiated.

"The measure is extreme and severe, as no one will doubt, but in view of all the proven facts, of the law and legal doctrines applicable, and of all the circumstances of the case, the court is fully convinced that it is the only just one that should be adopted.

"Adopting in this case of Bato the principle or rule according to which the fraudulent and illegal votes should be rejected, separating them from the good ones to give the latter force and effect, practically the same result would be reached, inasmuch as the 180 ballots written by the inspectors for illiterates, the 92 ballots illegally cast outside of the legal hours, and the 135 ballots of unqualified electors, the legality of which is at least doubtful (the court has not gone into any lengthy discussion concerning them, but there is proof that some of them are in fact illegal ballots) aggregate more than the total of all the votes cast in the precinct of Bato.

"In conclusion, the court holds that the election held in the sole and only precinct of Bato is null and void, rejects the returns, and takes no account of them in the general canvass of the votes cast in the entire province.

"Municipality of Buhi.

"With respect to this municipality the motion presented alleges the following grounds, to wit:

" '(a) That the election inspectors of this precinct, Gregorio Ricafranca, Jose Crescini, and Dalmacio Amador, on the day of the general elections held on the 6th of the present month, refused to admit to the polls the petitioner's watchers and the candidates who requested permission to witness the voting, and permitted them only to be present at the canvass of the votes, at a distance of more than three meters in front of the table occupied by the board where they were stationed by said inspectors, notwithstanding that such watchers and candidates had requested to be placed behind the table and at a reasonable distance therefrom to enable them to see and read the ballots to be counted; so that it was impossible for them to see or to read the ballots that were being read, or to observe their state and condition.

" '(b) That, at the commencement of and during the voting, said inspectors denied the public access to the polling station and to any place within a radius of 30 meters therefrom, with the exception of the electors who went there to vote; the latter were called, six at a time, from the 30 meter line where they had assembled and from there went pellmell, each trying to get ahead of the other.

" '(c) That the aforementioned inspectors did, within the polling place and the voting booths, unduly influence the electors, threaten, and force them in order that they might vote for the candidate the inspectors favored, the herein respondent Manuel Crescini.

" '(d) That when electors who could read and write entered the booths to vote, said inspectors followed them within to see them prepare and be present during the preparation of their ballots, to influence, threaten, and force them to vote for the respondent; and whenever they saw that the candidate voted for governor was the herein petitioner, they immediately spoiled the ballot, crossing it with a pencil, and forthwith substituted it by another ballot, warning the elector that he should vote for the respondent.

" '(e) That said inspectors prepared the ballots of the illiterate electors without inquiring of or consulting them as

to whom they desired to vote for governor, and whenever any of them presented a ticket or a list of their candidates, said inspectors improperly influenced, threatened, and forced them to vote for the respondent or, in the case of electors who could not read at all, entirely disregarded their wishes.

" 'That the electors who were influenced by threats, as stated in this and in the preceding paragraphs (c), (d), and (e), are Luciano Ibanita, Dimas Noy, Eleno Penaranda, Santiago Fabricante, Lorenzo Penaranda, Bruno Santo Tomas, and others at this moment unknown to the petitioner.

" '(f) That when some illiterate electors went to vote, they received from said inspectors ballots that had been previously prepared or filled in.

" '(g) That said inspectors themselves, after preparing the ballots of the illiterates, folded them without first showing their contents to said voters, and immediately thereupon ordered the latter to leave the polls; so that these voters could neither see the contents of their ballots nor know whether the same were or were not placed in the ballot box.

" '(h) That said inspectors prepared the ballots of the illiterate voters and of those physically unable to write, without first requiring of and administering to them the oath prescribed by law.

" '(i) That, because of the fact that the aforesaid inspectors would not permit the petitioner's watchers and those of other candidates to see, read, and observe the ballots which said inspectors were counting, the petitioner believes, and so alleges, that said inspectors fraudulently read the name of the respondent in the space provided for the entry of the name of the candidate 'for the office of provincial governor in some ballots, although in them and in said space there appeared written the petitioner's name or that of some other candidate.

" '(j) That said inspectors received from the municipal treasurer of the aforementioned municipality of Buhi 467 blank ballots, and as only 350 electors voted and up to this date said inspectors have not delivered to the municipal secretary of said municipality the extra or unused ballots, they have manifestly violated the law.

" '(k) That each one and all of said inspectors were and are ardent partisans of the respondent, and prior to the elections worked and electioneered for him, taking undue advantage of their positions as such election inspectors.

" '(l) In this precinct no guard rail as required by law was constructed and which should have been placed at least two meters from the ballot box and from the voting booths; the sides of these booths were closed with white cloth, and cloth hung on the side of the entrance served as doors, in such manner that it could easily be seen how the electors prepared their ballots.'

"The proofs presented by both parties with respect to this municipality are comparatively numerous, and divers questions of fact have been brought up therein, but those that the court considers to be the principal ones, upon the determination of which the judgment to be rendered in this case depends, are comprised in the following propositions, to wit:

"1. Whether or not the election inspectors of Buhi worked and electioneered in behalf of the protestee during and prior to the day of the elections, within and without the polling place.

"2. Whether or not said inspectors, availing themselves of their office and making use of censurable means, worked, to the end that the electors capable of reading and writing should vote, in filling out their ballots for the candidates supported by these inspectors.

"3. Whether or not said inspectors defrauded or attempted to defraud illiterate electors of their votes.

"4. Whether or not they failed to comply with the requirement to administer the oath of incapacity to the illiterate

voters before assisting them in the preparation of their ballots.

"5. Whether or not on the canvass they fraudulently read certain ballots in order to favor the protestee.

"Having examined these propositions one by one in the light of the evidence produced, principally the documentary, and of the ballots themselves, the court finds with displeasure that the preponderance of such evidence rather lies on the affirmative side of the propositions than on the negative, with the exception of Proposition No. 4.

"(1) There can be no doubt that the election inspectors of Buhi did in fact work and electioneer in behalf of the protestee, during and prior to the elections, both within and without the polling place. The evidence on this point is quite clear and conclusive, but justice requires the statement that not all the three inspectors worked and electioneered to that end with the same activity and to the same extent.

"(2) Properly speaking, there is no complete and conclusive evidence that the three election inspectors of Buhi, availing themselves of their office and making use of censurable means, did work to the end that the electors capable of reading and writing would vote, in filling out their ballot, for the protestee Manuel Crescini for the office of provincial governor; but there is positive and decisive evidence that the inspector Jose Crescini did proceed in that manner, although it was only in the case of a few electors.

"Such activity on the part of Jose Crescini is shown in the most evident manner by the ballot cast by Lorenzo Penacerrada (Exhibit A), those of Santiago Fabricante (Exhibits B and C), that of Balbino San Luis (Exhibit E), those of Felipe Estanislao (Exhibits F and G), and by the ballots Nos. 185, 195, 198, 199, and 249.

"The first of these ballots, Exhibit A, is one that was smashed by the elector Lorenzo Penacerrada. While he was filling it out in the booth, Jose Crescini entered therein and, on seeing him vote for another candidate, threatened to spoil his ballot unless he voted for the protestee; so Penacerrada in despair smashed his ballot, wherefore it was thrown out as spoiled.

"Santiago Fabricante had two ballots (Exhibits B and C) because the first one was spoiled by Jose Crescini by erasing or trying to erase the name of Engracio Imperial, candidate for governor, immediately whereafter he handed to Fabricante a second ballot which precisely was filled in by himself, as regards the office of governor, allowing this elector to complete it afterwards or write in it the names of the candidates he choose for the other offices.

"The ballot Exhibit E, cast by Balbino. San Luis, was torn in its upper edge because of Jose Crescini's attempt to snatch it away from the voter in order to see its contents, and there was resistance on the latter's part.

"Felix Estanislao is another elector who had two ballots (Exhibits F and G), for, after he had duly filled in the first one and when he was about to cast it into the ballot box, the inspector Crescini obliged Estanislao to show it to him and, having seen that Manuel Crescini was not voted for for governor, the inspector had the ballot changed for another and spoiled the first one by the superscription of other letters or names over those written in all the spaces allotted for the names of the candidates for the offices of municipal president and councilors. (See Exhibits f-1, f-2, f-3, and f-4, which are photographs taken of the ballot Exhibit F.)

"This evidence shows in an indubitable manner that one of the inspectors, Jose Crescini, did avail himself of his office and, making use of censurable means, did work to the end that some electors capable of reading and writing would, in filling out their ballots, vote for the protestee, Manuel Crescini.

"Furthermore, these facts are proven by the oral evidence contained in the record; but, as the court deems the documentary evidence sufficient and very convincing, he sees no need of a more or less longer discussion of said

oral evidence.

"(3) The court does not hold it to have been proven that the inspector Gregorio Ricafranca defrauded or attempted to defraud illiterate electors of their votes. He is in doubt with respect to the inspector Dalmacio Amador, but is fully convinced that the inspector Jose Crescini not only attempted to defraud illiterate electors of their votes, but actually did defraud some of them.

"As in the discussion of the preceding proposition, the court gives preference to the documentary evidence, and particularly to the ballots themselves; the latter therefore will be principally referred to in connection of course with all the other proofs adduced.

"The three inspectors, Gregorio Ricafranca, Dalmacio Amador, and Jose Crescini, identified 34, 28, and 44 ballots as having been prepared by them respectively for illiterate voters. The handwriting expert who testified in behalf of the protestant identified 8, 21, and 20 other ballots as also having been written respectively by the same inspectors, excepting some two or four of them which ballots the latter afterwards admitted that they did write.

"Of the 34 or 42 ballots written by the inspector Gregorio Ricafranca for illiterate electors, not a single one of them was for the protestant Andres Garchitorea; they were all for the protestee Manuel Crescini. This fact perhaps might arouse suspicion against the honesty of this inspector, but the court finds no positive evidence to warrant such a suspicion.

"There was one witness, Nazario Saballa, 54 years of age, who testified having been assisted by Gregorio Ricafranca and that he was not questioned as to whom he was going to vote for, but that his candidate for governor was Andres Garchitorea. However, the court does not give much importance to the testimony of this witness, inasmuch as on cross-examination, when he was asked why he had not protested against such procedure on the part of the inspector, he replied that he did not do it for the reason that it was the first time that he had voted, and when afterwards questioned as to how old he was, he made no reply. Evidently he saw that he was caught and recognized that the reason he gave was inadmissible, he being, as he was, 53 years of age, which age he wished to conceal by his silence. Besides, it was not proven that it was the first time he had voted, nor why he was not a voter in previous elections.

"With respect to Dalmacio Amador, although there is some evidence against him, the court however considers it insufficient to convict this inspector of fraud beyond all doubt.

"Five illiterates testified that they were electors who supported the protestant Andres Garchitorea and that they were assisted by Dalmacio Amador in the preparation of their ballot. Of the ballots written by this inspector, only three are found in favor of the protestant; there is therefore a difference of two. Notwithstanding, the court cannot consider this as conclusive proof that Dalmacio Amador defrauded illiterate electors of at least two votes, inasmuch as the witnesses presented as such are in fact illiterate and extremely ignorant and their testimony is inconsistent in several of its details and does not convince the court beyond all reasonable doubt.

"It is a different matter as regards Jose Crescini, with respect to whom the evidence is conclusive. From an examination of the ballots prepared by this inspector for illiterate electors, the court finds that of the 64 ballots written by him, in so far as the office of municipal president is concerned, 50 are for Infante, 4 for Trinidad, 1 for Nobleza, and 9 are in blank; that two of the ballots for Infante (Nos. 192 and 208) show erasures to have been made on them, it being noticed however at a simple glance that the name of Angel Trinidad or that of Alejandro Nobleza was erased and that of Hilario Infante was written in place thereof; that in two of the four ballots for Trinidad (Nos. 209 and 225) the latter's name was written very faintly, only the slightest pressure being applied in writing it, just as was done with respect to the other candidates voted for in the other ballots, with the manifest

purpose of enabling the writing easily to be erased and substituting in place of it the name of Hilario Infante, as was done in ballots Nos. 192 and 208; and that, of the 9 ballots in blank five of them, Nos. 187, 190, 193, 214, and 219 bear the name of Angel Trinidad on the second of the lines intended for the names of members of the council, while in two other ballots, Nos. 179 and 227, said Angel Trinidad was voted for for municipal vice-president, notwithstanding that he was not a candidate for either office; all of which clearly shows that it was Crescini's intention to take away from or spoil votes for Angel Trinidad by leaving in blank the space left for the insertion of the name of the candidate for the office of municipal president, and in other cases by not writing the name of said Angei Trinidad anywhere on the ballot, and in still other ballots by placing it in the space allotted for the candidate chosen for vice-president, and in the rest, in that intended for the name of member [of the provincial board].

"It is true that these proofs refer principally if not exclusively, as may be seen, to offices other than that of provincial governor, the subject matter of this protest; but it is also true that they show at least the isolated fact that the inspector Jose Crescini defrauded or attempted to defraud illiterate electors of their votes; and it is likewise true that the parties in this case stipulated that the evidence adduced in the matter of the contested municipal elections of Buhi should have its due bearing on this contested provincial election, in so far as the legality or illegality of the manner of conducting said municipal , elections is concerned.

"Moreover, that Jose Crescini did the same with respect to the office of provincial governor is disclosed by the testimony of twelve witnesses who testified that they intended to vote for the protestant, Andres Garchitorena, and that they were assisted by Jose Crescini in the preparation of their ballots; however, of the 64 ballots written by this inspector, not a single one of them is for Andres Garchitorena.

"(4) Notwithstanding the testimony of some witnesses to the contrary, the court believes that the election inspectors of Buhi did not fail to comply with the requirement to administer the oath of incapacity to the illiterate electors before assisting them in the preparation of their ballots or, in other words, that they endeavored to comply, and did comply, with said legal requirements. "

"The documents Exhibit I, concerning the Buhi elections, presented by the protestant himself, so shows.

"But it is contended that this document is false, from the fact that the words 'and he took oath before the board, as I, the secretary, so certify/ recorded at the end of each entry, were written subsequently, that is to say that the contents of said document was altered by the addition of the above-quoted words at some time subsequent to the preparation of the document.

"It is true that such alteration or addition is manifest, principally on the first pages, but this, far from proving the falsity of the fact, that is, that the assisted elector did not take oath before the board, precisely evidences the contrary, namely, that he actually did what is stated he did in the added words 'and he took oath before the board.'

"It is a known fact, and one not discussed, that Exhibit I is one of the several documents which were found in the ballot box and afterwards removed therefrom. It is also an uncontroverted fact that the ballot boxes of Buhi were not violated, and therefore the documents which they contained were found, as they should have been, in the same condition in which they were when the ballot boxes were closed immediately after the elections.

"If this is so, we can clearly grasp the explanation of the reason for the subsequent addition of the words 'and he took oath before the board, which I, the secretary, so certify,' and it is that at first the secretary did not record this fact, although the oath was administered, but later, on the revision of this list or statement of assisted illiterate electors, it was deemed advisable and necessary to make record of the fact, as was done. This explanation is in some manner corroborated by the context of the last entries. In these it is seen that the names of the illiterate

voters were successively put down without, at the time, writing in what follows them, and this was done undoubtedly to enable the registry of the names of all the electors who requested assistance of the inspectors; and as soon as the secretary had some time at his disposal for the purpose, he continued the entries until he had finished them, and also corrected the first entries by adding the words 'and he took oath before the board, which I, the secretary, so certify.,

"And why did he add these words? Without any doubt whatever, it was because the explanations above given are the facts that actually occurred, as confirmed by the entries made on the last pages where the fact of the administration of the oath is not recorded as an addition, but as an integral part of the text of the respective entry.

"The supposition on the part of the protestant that said addition was made after the initiation of the proceedings in this election contest, is unfounded in view of the fact that the ballot boxes were not tampered with.

"Furthermore, for the very reason that the document Exhibit I is not false, it necessarily follows that the apparent inaccuracy of the same with respect to the number of illiterates assisted is not actually the fact, and this feature will be examined later on. The inaccuracy lies, on the part of the inspectors who wrote ballots for electors whom they supposed were illiterates, while they were not. In fact the inspectors admitted having written 156 ballots—152, if some four are excepted, the preparation of which was not thoroughly explained—and, as may be seen, this number exceeds by 59 or 55 the number of electors who were assisted, according to Exhibit I.

"It is advisable, however, to consider this difference separately, that is, to distribute it among each one of the three inspectors. According to the list of illiterates, Exhibit I, the inspector Gregorio Ricafranca assisted 40, Dalmacio Amador 18, and Jose Crescini 39, which numbers, compared with those of the ballots prepared by them, to wit, 42, 50, and 64 respectively give the following differences: 2, 32, and 25.

"With respect to Gregorio Ricafranca, the difference is rather apparent than real, for, taking into account what has already been said of this inspector in the discussion of the preceding propositions and considering also that no thorough explanation was made of the manner of preparation of some two ballots which the handwriting expert said were written by Ricafranca, aside from the fact that the latter cast one ballot of his own, it will be seen that there is no such difference, and that as above said the statement of the illiterates is correct.

"Another proof of the correctness of the list Exhibit I is the very inaccuracy of the ballots, in so far as they concern the inspectors Dalmacio Amador and Jose Crescini, inasmuch as the differences are 32 and 25 respectively or, more properly, 31 and 24 (the illiterates assisted by them and whose names do not appear on the list Exhibit I), and such differences are too large to allow of their being satisfactorily explained as the result of an error or neglect on their part and that of the poll clerk.

"Taking due account of the frauds that were proven to have been committed by the inspector Jose Crescini, the court does not hesitate to affirm that the 24 ballots supposed to have been cast by illiterates are just so many fraudulent votes.

"With regard to Dalmacio Amador, the court has stated that he doubted whether this inspector did or did not defraud illiterate electors of their votes; but in view of so great a difference (31) between the ballots written by him and those written by the electors whose names appear on the list Exhibit I and who, as shown by the latter, were assisted by him, the court is obliged to hold that these 31 votes are at least more fraudulent than legal and their admission is unwarranted.

"And said fraudulent ballots were without any doubt cast by these inspectors, in favor of the protestee Manuel Crescini inasmuch as the ballots found to have been cast for the protestant Andres Garchitorena, from among those prepared by Dalmacio Amador, are insufficient "even to cover the number of votes of the few illiterate

electors who stated that they voted for Garchitorena. There is no need to speak of the ballots written by Jose Crescini; they are all for Manuel Crescini; none of them are for Andres Garchitorena. Consequently, if a deduction of these ballots is to be made as should be done they should be deducted from the votes awarded to Manuel Crescini.

"As gathered from the decision by the Supreme Court of these Islands, rendered in the case of Gardiner vs. Romulo (26 Phil. Rep., 521) it appears that all the ballots prepared by the inspectors who betrayed the confidence reposed in them should be rejected. But it should be noticed that in that case there was a circumstance which made it impossible to determine what votes were fraudulent, because, as stated in that decision, the influence of the circumstance referred to was widespread, so that it was impossible to separate the good votes from the bad.

"The decision above mentioned cites the following doctrine laid down in the case of Martin vs. McGarr (27 Okla., 653) :

" 'While a contestant in an election may always object to the counting and consideration of fraudulent or illegal votes, yet the reception of the same will in no instance result in the avoidance of the election except where the entire poll is so tainted that the good votes cannot be separated from the bad, and it is impossible to ascertain for whom the majority of the valid ballots were cast. The general rule obtaining throughout all the States of the Union is that an election is not to be held invalid except as a last resort, the correct doctrine being announced by Judge Brewster, in the case of Batturs vs. McGary (1 Brewster, 162), as follows: "The courts have the power to reject an entire poll, but only in the extremest case—as where it is impossible to ascertain the true vote. Impossibility is the test."

"In the present case, as the court deems it possible to separate the good votes from the bad, he does not see the need to resort to the extreme measure of rejecting or throwing out all the ballots prepared by these inspectors, and therefore chooses to follow the rule enunciated in the case of Martin vs. McGarr.

" (5) That in the canvass of the ballots some of these were fraudulently read by the inspectors of Buhi for the purpose of favoring the protestee is disclosed merely by examining the returns and comparing them with the result obtained by the recount.

"The inspectors must have read 280 ballots in favor of the protestee, inasmuch as the returns show that the latter was awarded 280 votes; but according to the recount there were no more than 270 for this candidate, including the 67 challenged. Were it a difference of but two or three votes, the explanation might be accepted that such discrepancy came from an error or an involuntary oversight; but there are ten votes, and it is hard to believe that the inspectors were mistaken ten times and each and every time in favor of the protestee.

"However, it is immaterial whether the number be large or small; its mere existence is enough to prove that the inspectors, in making the canvass, fraudulently read certain ballots for the purpose of favoring the protestee.

"Moreover, it will be noticed what kind of an error it is, if account is taken of the fact that these inspectors also made mistakes with respect to the votes obtained by the protestant Andres Garchitorena, but they did just the opposite by awarding him 12 votes less than those he obtained, for according to the return made by said inspectors, he had only 39 votes, while this candidate was voted for in 51 ballots.

"As stated hereinabove, and as may be seen in the part of the motion transcribed at the beginning of the preceding considerations concerning the elections at Buhi, various other irregularities were charged regarding which evidence was given at the trial, among them those in reference to the conditions of the voting booths, to the conduct observed by the election inspectors towards the voters while the latter were awaiting their turn, and to the watchers, principally during the canvassing of the ballots.

"The court also finds that these allegations of the motion are in a certain way proven; and though the record disclosed no positive proof of frauds committed, these irregularities would contribute, as they do to a large extent, to fortify the idea of the existence of frauds suggested by the illegalities above enumerated.

"Coming now to the recount made of the ballots cast for the candidates for the office of provincial governor in the general elections held in the municipality of Buhi on June 6, 1916, for the purpose of separating the legal votes from the fraudulent and inadmissible ones after giving due regard to the objections formulated by the parties, the court holds that the following votes should be, as they hereby are, awarded to the herein protestant and protestee, excluding the other candidates voted for:

"According to the recount made by the commissioner appointed, 270 votes were obtained by Manuel Crescini and 51 by Andres Garchitorena.

"From the 270 votes for Manuel Crescini, the following should be deducted:

31 votes written by Dalmacio Amador for illiterates whose names are not on the list.

24 votes written by Jose Crescini for illiterates whose names are not on the list.

12 votes of electors assisted by this inspector, which do not appear among the ballots.

6 votes, ballots Nos. 185, 195, 198, 199, 249, and Exhibit C, in which the name of the candidate for the office of governor was written by Jose Crescini, and those of the candidates for the other offices by the elector.

1 vote, ballot No. 117, because it bears the name of Crescini in two spaces.

1 vote, ballot No. 241, in which Crescini is voted for, but not for governor.

1 vote, No. 246. The space allotted for the name of the candidate for governor was left in blank.

1 vote, No. 247, M. C. only.

2 votes, Nos. 255 and 322. Illegible.

3 votes, Nos. 248, 253, and 263. Not for Crescini for governor.

1 vote, No. 251. Illegible and does not show the name of any candidate for governor.

1 vote, No. 266. Marked. (All the other ballots objected to are admitted.) 84 votes.

"Consequently, Manuel Crescini is awarded 270 votes less 84, that is, 186 votes.

"To the 51 votes for Andres Garchitorena there is to be added one (ballot No. 321), which was cast for him and contains no flaw whatever. This candidate, therefore, is awarded 52 votes.

"Municipality of Calabanga.

"The following facts are recited in the motion, in connection with the elections held in this municipality of Calabanga :

" '(a) The polling place of this municipality was situated on the upper floor of the municipal building, and to reach it high stairs had to be climbed. The voting booths were not entirely closed on their four sides, as the law requires they shall be; so that any person inside the polling place could see everything that was done in said booths. No guard rail as provided by law was erected in the polling place.

" '(b) About the month of last April, the municipal council of this municipality of Calabanga duly appointed

Manuel Sabido, Justo Bordado, and Ramon Malanyaon as election[^] inspectors. As Justo Bordado was not a partisan in favor of the respondent's candidacy, his appointment was vigorously opposed by the latter and to the extreme that Governor Fuentebella, one of the principal and most rabid supporters of the respondent's candidacy, suspended from office the municipal president and a majority of the municipal council of Calabanga, solely because said municipal officials favored the appointment of i Justo Bordado as election inspector. Later on this appointment was judicially brought into question, and the justice of the peace court of this capital, delegated to try the case in lieu of the Court of First Instance, sustained and affirmed the legality of said appointment in its decision under date of April 27th last, which decision has not been appealed.

Therefore Justo Bordado took possession of his office as election inspector for Calabanga and acted as such in the five sessions of the board of inspectors, held for the registration of voters and for the inclusion and exclusion of voters, as required in each case, pursuant to law. But the respondent, in his eager desire to have all the election inspectors of Calabanga on his side so that he might better carry out his fraudulent plans on the day of the election, did not stop until he saw Justo Bordado separated from his office and substituted by one of the respondent's partisans. In fact, on the afternoon of the 5th instant, the day before the election, the respondent availing himself of his confederate and protector, Governor Fuentebella, threatened to prosecute civilly and criminally said Justo Bordado unless he resigned from office, and the latter, thus intimidated, signed his resignation which had previously been prepared by Governor Fuentebella who was himself the bearer. The reason Bordado gave for resigning was ill-health, but in fact he was not ill. As soon as this resignation was signed, Governor Fuentebella forthwith called a special session of the municipal council of Calabanga for the purposes of accepting the resignation and appointing, as in fact said council did appoint that same afternoon one Toribio Felipe, a partisan of the respondent, in substitution of the resigning inspector. By these base intrigues the respondent accomplished what he so ardently desired, to wit, that all the inspectors of Calabanga be from among the members of his own political party.

" '(c) That the election inspectors Toribio Felipe, Manuel Sabido, and Roman Malanyaon, and the poll clerk of the board of inspectors, called Valeriano Pron, had in their possession, on the day of the elections, official ballots that had been prepared and filled out beforehand with the respondent's name in the space reserved for that of the candidate for the office of provincial governor, which ballots were by deceitful means handed to a large number of illiterate electors, partisans of the petitioner and of the respondent's other rivals, in order that such ballots might be deposited in the ballot box, as they were in fact and were counted for the respondent in the canvass of the votes.

" '(d) That said election inspectors, acting fraudulently and deceitfully, marked the ballots of the electors who, being illiterate or physically incapacitated from writing them themselves, solicited their assistance and did mark such ballots without consulting the will of said electors as to what candidates they intended to vote for; whereby many votes were obtained for the respondent which should have been for the petitioner.

" '(e) That said election inspectors including the poll clerk were, during the whole day of the election, carrying on election propaganda in behalf of the respondent within the polling place, soliciting from the electors who went to the polls their votes for the respondent, and threatening many of such electors with imprisonment and other future vengeance if they voted for the petitioner, and, not content with such electioneering work, said inspectors entered the booths to see what the electors who could read and write wrote on their respective ballots, thus scandalously violating the secrecy of the ballot. The names of the electors so unduly influenced are Baldomero Rojas, Antonio Asog, Bonifacio de los Santos, Pablo Estoller, Higino Migico, Narciso de los Santos, Mariano Relose, Santiago Ferrer, Salvador Malolot, and there are other names unknown to the petitioner at the present time. The election inspectors also addressed the following threat to the electors who were present at the polls: "Let whoever wishes

to go to jail have tickets for Garchitorena."

" '(f) That many ballots were deposited in the ballot box without the presence of the electors who prepared them, for said inspectors obliged such electors to go out before said ballots were there deposited.

" '(g) That said inspectors refused to show the electors, who solicited their assistance because of illiteracy or some physical disability, the contents of the ballots prepared by the former at the request of the latter.

" '(h) That said Governor Fuentebella, between 7 and 12 o'clock in the morning of the day of the election, stationed himself at or near the door of the polling place of Calabanga with a revolver at his waist and during all that time asked of the electors going to the polls, and searched them for, the provisional ballots of election propaganda—each of which ordinarily contains the ticket of the candidate for whom the elector provided with one of such ballots intends to vote—and every time that said Governor Fuentebella found ballots of this kind containing the name of the petitioner, he would threaten the electors carrying them with imprisonment and other persecutions and future acts of vengeance if they persisted in carrying those provisional ballots to the polling place and voting for the petitioner. Thereupon said inspectors would exchange said provisional ballots for others containing the name of the respondent and would especially charge these electors to vote for the latter, else great personal misfortunes would befall them. Under such terrifying threats uttered by the first authority of the province, many electors who otherwise would have voted for the petitioner voted for the respondent.

" '(i) That Governor Fuentebella himself, on the day and night prior to the date of the election, was in secret conference with said inspectors and poll clerk in said town of Calabanga, and during the day of the elections was, by means of letters, in continual communication with said inspectors and poll clerk, and afterwards went up into the polling place and remained therein for some time engaged in conversation with the inspectors.

" '(j) That said election inspectors did not permit the petitioner's watchers and those of the other candidates to witness the voting, and during the canvass of the ballots said watchers were placed at such a distance from the table where the counting was done that they could not see nor read the contents of the ballots while these were being read by the inspectors; wherefore the petitioner believes and so alleges that many of those ballots read as votes for the respondent were really votes for the petitioner.

" '(k) That said election inspectors did not count the good ballots placed in the ballot box before proceeding with the canvass of the votes, as the law requires.

" '(l) That many ballots found in the ballot box were not read by the inspectors during the canvass of the votes, but were placed in the box of spoiled ballots.

" '(m) That 351 electors voted in this precinct on the day of the election, and notwithstanding, according to the returns, only 340 ballots were found in the ballot box.

" '(n) That the illiterate voters or those incapable of writing voted without previously having taken the oath of illiteracy or incapacity.'

"The court believes that he can greatly shorten the discussion and resolution of the many questions brought up in the allegations above transcribed, by going directly upon an examination of the main and most essential one of them, namely, relative to the votes cast in the sole precinct of Calabanga.

"We shall begin with the votes cast by the illiterates.

"The inspectors themselves, called upon to pick out from among the good ballots those they wrote, identified the following: the inspector Toribio Felipe 2 ballots, both for the protestee; Roman Malanyaon 50, 44 of which are for Manuel Crescini and 6 for Andres Garchitorena; and Manuel Sabido 49, 35 for Crescini and 14 for Garchitorena.

The handwriting expert discovered 6 more ballots, all for Crescini, as having been written by the inspector Sabido, and the court believes that they were in fact; so that the total number of ballots prepared by Sabido is 55. There are therefore 107 ballots that were written by the three inspectors, including the three ballots of their own, so that 104 of them must have been cast by illiterates. As to how many the latter were, if any, is what cannot be determined.

"It is a fact proven by the absence of due certification and by the testimony of the election inspectors themselves, that no list was made of the illiterate and incapacitated voters who requested assistance and were assisted in the preparation of their ballots. The board of inspectors and the poll clerk gave not the slightest importance to this detail, nor did they care to inform themselves as to whether or not there was need of such a list. It appears that they did not care even so much as to trouble themselves in procuring and keeping in the polling place a copy of the Election Law.

"In speaking here of the list of the illiterate electors, we refer to the registry of the oaths taken by the incapacitated who were assisted by the inspectors, which list according to law should be kept by the board and, after the election, filed with the municipal secretary together with the other election documents.

"An attempt has been made to convince the court that the absence of the list was due to ignorance on the part of inspectors; that they committed that fault or incurred such neglect in good faith; and that as to the rest they complied with the requirement to administer the oath of incapacity to each elector who solicited their assistance and did so before assisting them in the preparation of their ballots.

"The court can give no weight to such statements. The acts performed by public corporations and boards and by public officials should have as their principal if not as their best and only proof their own records and their own registers which according to law they must keep. In the instant case, the lack of the record or register of the proceedings of the electoral board of Calabanga, with regard to the illiterate electors, simply shows that actually no such oaths, nor any at all like them, were either given or taken.

"And this is corroborated by the testimony of several witnesses, without including the contradictory statements of the inspector Manuel Sabido and the poll clerk Valeriano Pron.

"In the case of *Manalo vs. Sevilla* (24 Phil. Rep., 609), the Supreme Court said:

" 'Question 5: Should an illiterate or other voter, who, through physical disability, is unable to cast his ballot without assistance, be permitted to vote without first taking oath to his illiteracy or disability?

" 'He should not. The provision of the Election Law relative to this matter is as follows (sec. 22) :

" ' "A voter otherwise qualified who declares that he cannot write, or that from blindness or other physical disability he is unable to prepare his ballot, may make an oath to the effect that he is so disabled and the nature of his disability and that he desires one or two of the inspectors named by him to assist him in the preparation of such ballots. The board shall keep a record of all such oaths taken which shall show the name or names of the inspector or inspectors assisting the voter and file the same with the municipal secretary with the other records of the board after the election. The inspector or inspectors so named as aforesaid shall retire with the voter and prepare his ballot according to his wishes. The information thus obtained shall be regarded as a privileged communication."

" 'Under these provisions the oath of illiteracy or disability is a condition precedent to the right to vote. To permit voters to receive assistance in casting their ballots without any evidence as to their disability would be to open the door somewhat to fraud, coercion, and intimidation and to remove to some extent the secrecy of the ballot. This

can not be permitted, and to that end the oath must be taken before the elector may be allowed to cast his ballot.'

"And in 15 Cyc, 367, it is said that—

" 'A statute which provides that a voter shall take an oath of disability before his ballot can be marked for him and deposited is mandatory, and a ballot so marked without his declaration on oath being made is illegal and cannot be counted.' (In re Cusick, 136 Pa. St., 459, 10 L. R. A., 228, etc.)

"Besides, supposing it were true that the illiterate and incapacitated voters assisted by the inspectors in the preparation of their ballots really did take oath as to their incapacity, the mere fact of the lack of the list of such incapable electors so assisted is fatal and is a sufficient reason for rejecting their votes in the canvass or recount.

"In Villamor on Elections the following paragraphs [1100-1102] are quoted from the judgment rendered by the Court of First Instance of Pampanga, in the case of Arnedo vs. Liongson:

" 'The evidence shows that an inspector of the election precinct of the municipality of Candaba, province of Pampanga, wrote ballots in excess of the number of electors assisted by him, and defrauded the latter in the expression of their will, by writing other names instead of those indicated by them. In view of this fraud, the court rejected the 92 ballots written by this inspector, inasmuch as only 82 electors requested him to assist them in filling out their ballots. Thirteen ballots from this precinct, written by three persons only, were also rejected. (Arnedo vs. Liongson, of the Court of First Instance of Pampanga.)

" 'It was also discovered that an inspector of the election precinct of the municipality of Magalang wrote 65 ballots, while only 61 illiterate voters solicited his assistance in filling out their ballots, and 32 ballots written by no more than eight persons were found in the ballot boxes. All these 32 ballots as well as the 65 written by said inspector were for the respondent. The court considered them as fraudulent and deducted them from the legal ballots. (Id.)

" 'Likewise, in the election precincts of the municipality of Arayat a larger number of ballots was found to have been cast than that of the illiterate voters who solicited the assistance of the inspectors; there were also 31 ballots that had been written by not more than eight persons. All of the ballots first referred to, aggregating 64, together with the 31 last mentioned, were rejected by the court and deducted from the legal votes. (Id.)'

"In the case of Gardiner vs. Romulo (26 Phil. Rep., 521) it has been seen that the Supreme Court made no comment on the doctrine laid down and adopted by the lower court, to wit, that when there is a discrepancy between the list of illiterates and the ballots identified as written by the inspectors for such illiterates, all the ballots cast by the latter should be rejected.

"If the mere discrepancy between the numbers given in the list and the ballots themselves may give rise, as it has, to the rejection of the votes cast though the difference be not very considerable, then with all the more reason should the ballots said to have been cast by illiterates be rejected when the disagreement is as great as 104 to 0 (for the lack of the required list is equivalent to zero).

"Furthermore, principally in so far as the list of illiterates is concerned, these inspectors of Calabanga cannot plead the excuse of ignorance of their duties, nor that, though careless, they acted in good faith. The appointment of election inspectors was the subject of lively contest between the interested parties, both before the municipal council of Calabanga and before the justice of the peace of the provincial capital, acting as judge of the Court of First Instance.

"If the rule, or doctrine, or practice spoken of by the author Villamor in his work on Elections, par. 1117 [d], is that 'in the exercise of the authority to determine all questions relative to the regularity and legality of the acts

performed by election officers, the courts recognize the presumption that all the officers and other persons charged with the conduct of elections, the counting of votes, and the certification of election returns acted in conformity with law, so long as the contrary be not specifically alleged' it necessarily follows that it must also be presumed that such officers and other persons charged with the conduct of elections know and are informed of the provisions of law bearing on the subject; otherwise there would be no reasonable and legal foundation for the presumption that they acted in conformity with the law.

"It is then presumed that these inspectors of Calabanga were informed of the provisions of the law, at least in so far as their duties as inspectors were concerned, and if they did not know those provisions they should have informed themselves of them, as they had sufficient opportunity to do so, especially when they were with Governor Fuentebella in the house of Guillermo Tordilla, a candidate for municipal president, on the morning of the elections, or they should have provided themselves with a copy of the Election Law and taken the trouble to inform themselves of its provisions.

"They did nothing of this, nor did they pay any attention to the preparations of the polling place, voting booths, and other things necessary for the elections. They simply conducted themselves in accordance with their own whims. These facts are disclosed by their own testimony.

"On the other hand, the record contains evidence which proves that all that transpired with respect to the illiterate voters and the registration of their oaths forms a part of a preconceived plan for improper election purposes.

"The 104 votes of alleged illiterate and otherwise incapacitated voters who were assisted are declared fraudulent and should be rejected from the canvass effected or from the recount to be made.

"The foregoing disposes of the allegations contained in paragraphs (c) (d), (g), and (n) of the motion, in so far as concerns the votes "cast by illiterates. An extensive discussion and separate ruling on each one of said allegations is unnecessary, it being indifferent whether or not they have been proven, inasmuch as in an affirmative case the result would be the same, namely, the rejection of the 104 ballots in question.

"It should be said, however, that the court does not consider the fact proven that, on the day of the elections, the election inspectors held official ballots previously filled in with the name of the protestee written in the space provided for the name of the candidate for the office of provincial governor, and that such ballots were, through deceitful means, delivered to a large number of illiterate electors— partisans of the protestant and of other candidates—to be deposited in the ballot box.

"The corroborative testimony of Eulalio Daliba and other witnesses in regard to the abovementioned feature is unworthy of credence, inasmuch as, aside from its unlikeness and inconsistency in many of its main details, it was duly and completely rebutted by the evidence adduced by the protestee.

"The inspectors could not have had these official ballots in their possession, for the purpose of filling them in during the night prior to the day of the election, inasmuch as the then municipal treasurer, charged with the custody of said ballots, delivered them to the inspectors only on the very morning of the elections, according to his testimony and as shown by the proper receipt, which bears the date of June 6, 1916. (See Calabanga documents; Ballot box.)

"Under the circumstances described by Eulalio Daliba himself, it is unlikely that he could have seen and recognized the figure of the eagle borne on the back of the official ballots. The court is convinced that Daliba is a professional witness, or that he lacks but little of being one.

"The evidence derived from the ballots brands as false the declarations of Eulalio Daliba and of the other

witnesses in corroboration, and shows the groundlessness of the suspicions entertained by the handwriting expert, who insinuated that the ballots filled in by the inspector Malanyaon appeared to have been written all in the same place and on one single occasion.

"It is sufficient to say that Eulalio Daliba stated that the ballots which he said he had seen in Tordilla's house and are supposed to have been filled in by Malanyaon, formed a pile or bundle more than one inch thick, from which he concluded that there were one hundred or more of them. He also said that Manuel Sabido counted the ballots that had already been written and announced that their number was nearly one hundred; but only about 50 ballots written by said inspector Malanyaon were found in the ballot box.

"If it is said in reply to this that the rest of the ballots, of the one hundred or so to which Daliba referred, must have been written by the other inspector, Manuel Sabido, who it is stated accompanied Malanyaon, then it is very strange and significant that the handwriting expert should not have noticed in the ballots written by Sabido the same peculiarities that awakened his suspicions with reference to the ballots written by Malanyaon.

"The court must also hold that the facts set forth in paragraphs {d), (g), and (n) of the motion, particularly in paragraph (n) wherein it is averred that the illiterate voters or those incapable of writing voted without previously having taken the oath of illiteracy or incapacity, were more or less fully proven.

"As regards the allegations concerning the electioneering and abuses committed against the electors who had or carried provisional ballots containing the protestant's name and the taking away of such ballots from the voters or compelling them by threats to get rid of the same, the court finds that, though these alleged facts be true, they differ a good deal from those relative to the electioneering and threats referred to in the case of Gardiner vs. Romulo, *supra*.

"In that case the then governor was one of the candidates for the same office, and he and partisans of his were electioneering and, through threats, changing provisional ballots within the 30-meter limit from the polling place. In the instant case, although the governor now in office is accused, as Governor Fuentebella was then, he did not do within the 30-meter limit, but outside of it, what he is charged with having done; he did not electioneer in behalf of the protestee, nor was it satisfactorily proven that he was Crescini's exclusive campaign manager; he simply belonged to the latter's party, as did also the other candidate for governor, Engracio Imperial, who was with Fuentebella on that occasion; neither did he change provisional ballots containing the name of the protestant Andres Garchitorena for those containing that of the protestee Manuel Crescini.

"Moreover, with respect to the illiterate electors who, it appears, were merely passive subjects of the acts attributed to Governor Fuentebella, their votes should be deducted as previously said, for the reasons explained elsewhere herein.

"It is also said that the inspectors and poll clerk electioneered and made threats to illiterate voters within the polling place itself; but, from the oral testimony produced in regard to this point, given by only a small number of witnesses and contradictory or inconsistent in several of its principal details, it cannot be legally concluded that these averments of the motion have been duly proven beyond all doubt.

"In view of all the circumstances of the case, the court is inclined to believe that the inspectors and poll clerk of this municipality were in fact remiss in the discharged of their duty to remain absolutely neutral in the contest waged by the several candidates; but in view of the fact also that the evidence bearing on this point, aside from being contradictory and inconsistent in several of its details, as we have just said, is that of witnesses naturally partial and passionate, the court hesitates to declare that such facts are absolutely true and that they had an influence over the result of the elections.

"With respect to the strife over the appointment of inspectors, which is also the subject of one of the grounds of the motion, the court finds that it was carried on by and between the two candidates for municipal president, Guillermo Tordilla and Felino Padilla, and that the protestant and the protestee were entirely unconcerned therein, or that at least there is no evidence that either of the latter took or had any part in the same.

"There are documents that speak for themselves, and the court prefers to quote, with brief comments, the parts thereof pertinent to the present case.

"On February 29, 1916, the municipal council of Calabanga adopted its resolution No. 26 (Exhibit E), the tenor of which is as follows:

" 'Resolution No. 26.—The chairman brought before the council the matter of the necessity of appointing three election inspectors and one poll clerk, in accordance with Act No. 2045, in view of the nearness of the time for holding the general elections for the present year, 1916. On motion by Councilor Tordiall, seconded by the chairman, the following resolution was adopted: Be it resolved: To proceed by secret ballot to the appointment of inspectors. After the voting and the counting of the ballots (the chairman also voted) it was found that Victorio Colera, Manuel Sabido, and Cirilo Sinogba had been chosen as election inspectors, and Roman Malanyaon, poll clerk. Passed unanimously.'

"Felino Padilla, candidate for municipal president, petitioned the court for the annulment of this resolution concerning the appointments, on the ground, among others, that such appointments were untimely by reason of their having been made long prior to the date fixed by law. His petition was granted and the court annulled the resolution and ordered the municipal council to proceed with the appointment of inspectors on the 15th day of April, or, in case that could not be done on said date, on Monday, the 17th of the same month. (Exhibit D.)

"The municipal council of Calabanga, instead of meeting on the 15th of April, met two days earlier on April 13th, and on this latter date passed its resolution No. 45 (Exhibit E), which is of the following tenor:

" 'Resolution No. 45.—On motion by the municipal vice-president, the following resolution was adopted: Whereas the appointment made by this municipal council, of election inspectors and poll clerk, has been annulled by the justice of the peace court of the provincial capital through a protest filed before said court; and

" 'Whereas, in pursuance with law, it is necessary to make new appointments.

" 'Therefore, be it resolved: To appoint as inspectors for the approaching elections Manuel Sabido, Cirilo Sinogba, and Roman Malanyaon, and as poll clerk, Valeriano Pron. Yeas: Esteban Malanyaon, Monico Galves, Juan Cariño, Luis Ygusquiza, Francisco Amador, and Gerardo Parato. Nays: Esteban Frutos, Esteban Reganit, and Julio Cardena.'

"It appears that the council doubted the legality of its resolution just above transcribed, by reason, of its having been passed on the 13th day of April, and at its regular session of the 15th of the same month passed Resolution No. 48 (Exhibit E), which is as follows:

" 'Resolution No. 48.—Reading was had of the copy, in its entirety, of the decision of the justice of the peace court of the provincial capital, dated April 12, 1916, in which decision, among other pronouncements, it is held that the appointment of election inspectors and poll clerk in favor of Victorio Colera, Manuel Sabido, Cirilo Sinogba, and Roman Malanyaon, effected at the session held on February 29, 1916, is illegal, ntdl, and void, by reason of its not having been made on the date fixed by law, and therefore said court orders the municipal council to proceed with the appointment of new election inspectors and a new poll clerk, at its session to be held this 15th day of April, 1916, or, if impracticable for any reason, on the 17th of the same month.

" 'The chairman asked the opinion of each one of the members of the council as to whether or not new inspectors should be appointed in accordance with the decision of the court referred to. Councilors Yguzquisa, Malanyaon, and Amador, and vice-president Parato favored a new appointment, as did also councilor Reganit. The latter stated that at the session of April 13, 1916, he had dissented as he could not agree to the appointment of some of the inspectors effected on that date. He therefore thought that for his satisfaction he might be allowed to name the persons whom he desired to be chosen as election inspectors. Councilors Frutos, Carino, and Galves were of the opinion that the new appointment should not be made, for the reason that at the session held on April 13, 1916, these positions had already been filled by appointment. Councilor Cardena reserved his opinion.

" 'As a result of the opinions above mentioned it was resolved by a majority vote to appoint new election inspectors and a new poll clerk, in conformity with the decision of the court aforementioned. Upon a vote being taken Manuel Sabido, Justo Bordado and Roman Malanyaon were chosen as inspectors, and Valeriano Pron, as poll clerk, it being understood that from the vote taken by the council on the matter Messrs. Cirilo Sinogba and Roman Malanyaon received a tie vote; so the chairman cast the deciding vote in favor of the latter.' By this resolution Justo Bordado was appointed for the first time to take the place of Cirilo Sinogba. His appointment was proposed by Felino Padilla, candidate for municipal president, who claimed that said Bordado belonged to his party.

"In the afternoon of that same day the council again met in special session and adopted its resolution No. 50 (Exhibit E);, which is as follows:

" 'Resolution No. 50.—The municipal vice-president in the regular session of this day submitted the following resolution:

" '(1) Whereas, on April 13, 1916, the municipal council in special session, proceeded to the appointment of election inspectors, in accordance with the decision of the justice of the peace of the provincial capital;

" 'Whereas it is not superfluous or unnecessary to ratify said appointments; and therefore,

" 'Be it resolved to ratify, as is hereby done, the resolution adopted by the municipal council of Calabanga on April 13th and which concerns the appointment of election inspectors and poll clerk.

" 'Be it resolved, further, to set aside, as is hereby done, the resolution adopted by this council on the morning of April 15, 1916, and which concerns the appointment of inspectors. Adopted unanimously.'

"On April 17th, the council again met, also in special session, to adopt its resolution No. 65 (Exhibit E) which reads:

" 'Resolution No. 65.—On motion by the Chair, Be it resolved to ratify, as is hereby done, the appointments made of election inspectors in the regular session of April 15, 1916, as said appointments are in conformity with the pronouncements of the judicial decision which holds to be illegal, null and void the appointments made of election inspectors in the special session of April 13, 1916, and in the regular session held in the afternoon of the 15th of the same month, at which latter session the appointments made at the session on the 13th of said month of April were ratified, all of such appointments being in conflict with said judicial decision. Unanimously adopted.'

"On April 19th, Governor Fuentebella suspended from office the municipal president of Calabanga, Dionisio Bordado, and likewise the four councilors Julio Cardena, Esteban Reganit, Monico Galves, and Francisco Amador.

"On the same date the council composed of the remaining councilors and the new appointees in substitution of the suspended councilors met in special session presided over by the acting municipal president, for the purpose of passing resolutions among which was that numbered 67 (Exhibit E) as follows:

" 'Resolution No. 67.—In the session held today councilor Luis Ygusquiza submitted the following resolution: Whereas, on the 13th, 15th, and 17th of April, 1916, the municipal council in special sessions appointed three election inspectors and a poll clerk, in accordance with a decision rendered by the court of this provincial capital;

" 'Whereas the resolutions adopted at said sessions treated of the same matter and in such a confused manner that the resolution of the 13th of April was annulled by that of the morning of the 15th, and that of the afternoon of the 15th, by that of the night of the 17th; and

" 'Whereas it is desired to avoid wrong interpretations and that said appointments of inspectors and poll clerk be duly ratified,

" 'Therefore, Be it resolved: (1) To annul the resolution of the 13th, that of the morning of the 15th, and that of the night of the 17th, concerning the appointments of three inspectors and a poll clerk; (2) to rectify the resolution of the municipal council of Calabanga, No. 50, of the afterⁿ noon of April 15th, except the part thereof relative to the appointment of Manuel Sabido; and (3) to appoint, as is hereby done, Juan Garza, Cirilo Sinogba, and Roman Malanyaon, as election inspectors, and Valeriano Pron, as poll clerk.' Adopted by a majority vote.

" 'Councilors Guisic and Himantog dissented; the former proposed Justo Bordado, Cirilo Sinogba, and Juan Garza, as inspectors, and Valeriano Pron, as poll clerk; and the latter Toribio Felipe, Faustino Perfecto, and Eustaquio Portugal as inspectors, and Valeriano Pron as poll clerk.'

"This last resolution, as well as the others from which the name of Justo Bordado was eliminated from the names of the inspectors appointed, was the subject of an appeal on the part of Felino Padilla, which appeal was decided favorably to him by the justice of the peace court of the provincial capital, acting as judge of the Court of First Instance, by annulling the resolutions Nos. 45, 50, and 67, and declaring the resolutions Nos. 48 and 65 to be valid. Consequently, the appointments of Manuel Sabido, Justo Bordado, and Roman Malanyaon, as election inspectors were sustained.

"Justo Bordado resigned his office alleging sickness and was substituted by Toribio Felipe who, with the two appointees above named, acted as inspector on the day of the election.

"Such is the history of the conflict waged over the appointment of election inspectors in the municipality of Calabanga.

"If Governor Fuentebella took part in it, there would be no reason for surprise, as he was governor.

"As may be seen, it was all a purely local question and one of procedure. The herein protestant and protestee were not parties to that wrangle, and, as in the case of Baao, the court believes that, although the matter in dispute is in a certain manner connected with the conduct of the elections, yet the relation is not one of causality, that is to say, such changes of inspectors had no bearing on the votes obtained by the protestee Manuel Crescini nor on those which the protestant Andres Garchitorena failed to obtain.

"With respect to the other irregularities, both those relative to the polling place and the voting booths, as well as those concerning the manner in which the inspectors conducted themselves towards the watchers, also a subject of complaint on the part of the protestant, the court is convinced that these irregularities actually existed.

"The polling place was in the second story of the municipal building, which was fitted and equipped to serve for this purpose, while the ground floor might have been used instead. The voting booths had no doors; it appears that they had been provided with them but that they were removed, to which removal the inspectors paid no attention whatever. There was no railing in front to serve as a guard rail.

"It appears however that although all this may be another reason for holding that the inspectors of Calabanga

committed, as such, breaches of duty, or were negligent in the due compliance with their duties, such commissions and omissions do not warrant a holding that the election was seriously vitiated, inasmuch as there is no evidence that the secrecy of the ballot was thereby violated; there was no person near in front of the booths while the electors were filling out their ballots, nor was anybody in the room, except the electors inside of each booth, and the inspectors were stationed in such a way that their backs were turned towards the booths. (See Exhibit C, Calabanga.)

"In the case of *Gardiner vs. Romulo* (supra), the Supreme Court made pronouncements in regard to this kind of irregularities, and said:

" 'Were we confronted with the bare proposition that the polling stations were located on the second floor and that the 30-meter space around them was not kept clear, it might be that we should not have taken the drastic step of avoiding the returns from this municipality. The law directs that these things be done, but it does not say that the fact that they were not done shall have the effect of vitiating the returns, and unless the non-observance of the law in this respect was made a means of fraud or coercion they should be considered as harmless irregularities.'

"In that case said irregularities were combined with several facts showing as many election frauds and that the 30-meter space was not kept clear. In the present case, not only was said space clear (this was one of the grounds of the protestant's complaint), but also there were no people in the room and polling place, except the electors inside the respective booths occupied by them, the election inspectors and polling clerk, and a policeman or two at the door of the polling place to keep order.

"In view of these facts and of all the circumstances of the case, the court chooses to apply most benignly the principle expressed in the citation above given of the pronouncement made by the Supreme Court, and consequently considers said irregularities as of no vital import. On account of these irregularities all the ballots cast in the single election precinct of Calabanga should not be rejected; but the votes which for other reasons were declared fraudulent or illegal should be deducted.

"Now coming to the matter of the recount of the ballots, the court finds as follows:

"There is a slight variance between the list of voters, the returns, the ballots, and the statements of the inspectors, to wit:

"The list shows the registration of 368 electors, 348 of whom voted according to the voting enumerations and 20 of them did not vote. (Said list discloses however that the elector Natera, J. V., was listed under two numbers, 35 and 147, and Tarala, Nicolas, likewise twp, 22 and 52, which seems to indicate that these men voted twice.) The returns attest that 340 electors voted, and that the number of ballots found in the ballot box is also 340. The commission found that 349 ballots were used, 15 of which were thrown out by the inspectors during the count, and that 19 ballots were spoiled during the voting, there remaining 80 official ballots in blank, all of which ballots aggregate the sum of 448 as against 449, the number stated in the receipt given by the inspector Toribio Felipe to the municipal treasurer for the ballots delivered to the former by the latter. The inspectors attest in the statement made by them that 350 electors voted.

"This conflicting fact and the disappearance of one ballot, in combination with the frauds and irregularities above mentioned, might seem to be a sufficient reason for the complete annulment of the election held at Calabanga; but the court does not deem that such a drastic measure should be adopted until every means shall have been exhausted of finding some satisfactory explanation and some way to determine how many and which are the illegal votes, in order to give proper weight to those that are legal and unsullied.

"It must be taken into account that, in addition to the provincial protest, there was also a municipal protest

regarding the Calabanga elections, and it appears that, on recounting the ballots then, which was effected a long time ago, 350 ballots were found to have been used (according to the inspectors' statements), from which it is concluded that the disappearance of one of the ballots used occurred perhaps accidentally subsequent to said recount. It is understood how 350 used ballots were found, though but 348 electors voted, because each of the electors J. V. Natera and Nicolas Tarala voted twice (on the supposition that the list is correct in this regard). The incorrectness or inaccuracy of the returns is another fault for which the inspectors who drew it up are responsible; but the court believes that such defect can and should be corrected.

"The result given by the ballots is: for Manuel Crescini 133 (by the returns, 134); for Andres Garchitorena 82 (by the returns, 81). The remaining votes were cast for the other candidates, and there were some scattering votes. In several ballots the space intended for the name of the candidate for the office of governor was left in blank. Other ballots were rejected by the inspectors for various reasons.

"Several of these votes were challenged by the protestant on the ground which he alleged before the commission, and the court decides these objections in the following manner:

"One hundred and seven ballots were written by the inspectors, 87 of them being for Crescini and 20 for Garchitorena. One hundred and four of this total number, that is, not including the three votes of the respective inspectors, which are for Crescini, are rejected, for the reasons stated elsewhere and because they were written fraudulently for persons who are unknown and did not take the oath of incapacity.

"Nine votes, 3 of them for Crescini and 6 for Garchitorena (ballots Nos. 7, 8, 50, 64, 66, 175, 209, 229 and 331), are challenged as being written by the same hand, probably by the poll clerk V. Pron, not authorized by law to do so. The court has examined these ballots and is not convinced that they were written by the same hand. They are admitted.

"Objection is made to:

"One vote, ballot No. 296, as being ambiguous, because the name of Crescini is written twice. Rejected.

"One vote, ballot No. 297, for Crescini, as being illegible. It is so, and is rejected.

"Five votes, ballots Nos. 230, 238, 244, 304, and 310, as bearing the name of M. Crescini outside the space provided for the name of the candidate for governor. Of these ballots Nos. 230, 238, and 244 are admitted, as the intention of the respective elector appears to be clearly expressed; the remaining two, Nos. 301, (not 310) and 304, are rejected, as the elector left no space in blank to serve as a guide in interpreting his intention.

"In recapitulation: Of the 133 votes for Manuel Crescini, 88 should be thrown out, to wit: 84 cast by illiterates, 1 illegible, 1 ambiguous, and 2 with improper spacing, there being a remainder of 45 valid votes; and of the 82 votes for Andres Garchitorena, 20 cast by illiterates should be deducted, giving a residue of 62 valid votes.

"Municipality of Capalonga.

"The protestant's complaint with respect to this municipality consists according to his motion in that 'in this precinct the petitioner obtained 11 votes for provincial governor and notwithstanding, the provincial board of this province, in making the general canvass, awarded him only one vote according to the tabulation said board made of the returns by precincts of the election held in this province.' (Record, p. 103.)

"At the hearing the protestee admitted that the provincial board of canvassers did make a mistake by recording 1 instead of 11.

"Therefore, of the votes cast in this municipality, 6 should be awarded to Manuel Crescini and 11 to Andres

Garchitorena.

"Municipality of Iriga.

"This municipality is the largest of all those of the province of Ambos Camarines. According to the census of the Philippine Islands of 1903, it had 19,297 inhabitants distributed in very few barrios which on this account are quite densely populated; they are: Poblacion 2,049; Salvacion 1,944; San Agustin 1,880; San Antonio 2,203; San Isidro 1,910; San Juan 1,833; San Miguel 1,024; San Nicolas 1,824; Santiago 1,210; Santo Domingo 1,393; and Santo Nino, 2,027.

"In the motion or written protest, the following grounds were alleged, to wit:

" '(a) In view of the number of registered voters (more than 1,050), three polling places were prepared in this municipality, but the respondent who is the municipal president of said municipality, instead of locating said stations in central points in each election precinct, located all of them at a short distance from his dwelling house in the barrio of San Nicolas of said municipality and at the entrance to the town.

" '(b) Two of said polling places were situated in one school building, and to gain access to them the voters had to climb stairs of a little more than one meter high. These polling places were not furnished with any guard rail, as the law provides, and the voting booth, arranged in line, were made on all sides of a framework of bamboo covered with paper, but the paper did not cover the entire framework, there being an open space 2 or 3 inches in width in the walls or sides of the booths, so that the elector who entered one of the latter could see and communicate with those who were in the adjoining booths. Besides, the front part of each one of these booths which served as an entrance was completely open, had no door and was not covered with either paper or cloth; so the election inspectors could, from the place where they were, see, read and observe what the elector wrote on his ballot.

" '(c) The other polling place was situated in a small camarin built of bamboo and nipa and without a floor. It also had no guard rail. The partition walls of the booths of the two aforementioned polling places [?] and, besides, there was the following particularity: two of these booths were situated besides the entrance and exit of the camarin, and the voters assembled near said doors could not only communicate with the elector in either of said two booths while he was preparing his ballot, but could even read the contents of his ballot.

" '(d) The election inspectors and the poll clerk of these three precincts as well as the municipal policemen and other persons, all partisan of the respondent, engaged very actively in electioneering within the polling places on the day of the elections, solicited votes for the respondent, and entered the voting booths in company with electors who could read and write, in order to see and witness what the latter wrote on their respective ballots, and by promises or threats to induce them to vote for the respondent, by which means they obtained many votes for the latter which otherwise would have been cast for the petitioner or for other candidates.

" 'The said electors so unduly influenced are: Juan Borromeo, Feliciano Panis, Sinforoso Villadares, Doroteo Saunar, Victor Salvadora, Calixto Vizcaya, Juan E. Taduran, Valenciano Canuto, Julian Naldo, Isaac Lagasina, Rufino Alanis, and others at present unknown to the petitioner.

" '(e) Said election inspectors in those three polling places had during the voting official ballots that had been filled out beforehand with the name of the respondent written in the space intended for the name of the candidate for provincial governor, and said ballots were deceitfully delivered to illiterate electors for the purpose of being cast in the ballot box, as they were in fact cast and counted as votes for the respondent.

" '(f) The election inspectors themselves had ballots that were imitations of, or very similar to, the official ballots,

and such counterfeit ballots were delivered to many illiterate electors who went to the polls to vote and who being deceived filled out said false ballots, believing them to be authentic, and these were afterwards changed by said inspectors one of which changes was to make it appear that the respondent was voted for for the office of provincial governor. ,

" '(g) Said election inspectors defrauded a large number of illiterate electors who solicited their assistance in the preparation of their respective ballots, for, instead of writing the name of the respondent [petitioner?] or those of other candidates for the office of provincial governor, they wrote the name of the respondent for said office without the knowledge and against the will of said electors.

" '(h) Many electors, knowing how to write and not being physically incapacitated from preparing themselves their ballots, solicited nevertheless the assistance of the election inspectors in the preparation of their respective ballots, and the latter rendered such assistance for the purpose of knowing, and in this manner assuring themselves, that said electors' votes would be for the respondent.

" '(i) A large number of electors who solicited the assistance of the inspectors in the preparation of their ballots did not previously take the oath of illiteracy or physical disability as required by law nor did said inspectors require such oath.

" '(j) A large number of ballots were cast in the ballot box without the presence of the electors who prepared them, for the inspectors compelled these electors to go out before said ballots were therein deposited.

" '(k) More than 300 persons registered in the election list who were wholly unqualified to be electors voted in said polling places and their ballots were admitted by said inspectors who deposited them in the ballot box and afterwards counted them during the canvass made of the votes.

" '(l) More than 200 electors voted in said polling places after 6 p. m. on the day of the election and their votes were deposited in the ballot box and afterwards counted during the canvass made of the votes.

" '(m) After the closing of the polls, said polling places were closed for about three hours, during which time the only persons within were the election officers, and after this long closure the canvass of votes was commenced, which was conducted so slowly that it lasted three days, notwithstanding that not more than 400 electors had been registered in each polling place.

" '(n) Said election inspectors did not permit any candidate's watcher who witnessed the voting to see during the canvass of the votes the contents of the ballots as they were counted; wherefore the petitioner believes, and so alleges, that said inspectors read in many ballots the name of the respondent, though that of the petitioner or those of other persons were written thereon as candidate or candidates for the office of provincial governor/

"If the proofs adduced with respect to the other municipalities are numerous, not less so are those that should have been, and in fact were, presented in support of the objections made against the election held in the three election precincts of this municipality of Iriga.

"In consideration of the importance of the municipality just mentioned, the nature of the charges made, and the circumstance that it was the protestee's place of residence at the time this contested election was held, he being the municipal president of Iriga, the court will undertake to discuss each one and all of the questions raised by the parties in their pleadings and evidence, such as may be pertinent and necessary for the proper decision of this case, though this will be done synthetically and with the greatest possible conciseness compatible with the requisite clearness.

"The allegations contained in the paragraphs (a), (b), and (c) of the motion (as regards Iriga) may be deemed to be

proven; the court declares that they are.

"With respect to said allegations of the protest, not only did the protestant introduce unblemished and convincing evidence, but also the protestee impliedly admitted them at the hearing on his trying to show by his own evidence and by his cross-examination of the protestant's witnesses, that all that was done in view of the fact that the municipality of Iriga had no other buildings available for the purpose.

"In regard to the conditions of the voting booths on the day of the elections, counsel for the protestee had several witnesses brought before the court to testify that said booths were in the condition the law required them to be and had the appearance shown in the photographs (Exhibits 1 and 2),, and that at the time the election was held the booths in the three polling places or election precincts were alike or the same in form.

"The court gives no credence to that testimony and those photographs and although he should like to do so he cannot morally or legally, in view of the fact that such photographs which are supposed to have been taken of one or two booths of those used during the elections held on June 6, 1916, were made long subsequent to the elections and after they had been covered for the purpose of being so photographed, and chiefly in view of the following stipulation of facts, contained in the record and made at the proposal of the protestee's own counsel:

"While Luis Martinez, one of the protestant's witnesses, was testifying at the morning session of September 20, 1916, Mr. Lockwood said:

" "To gain time, we can agree that the booth of the first polling place of Iriga had no door." (Evidence presented before the Honorable Judge Paredes, p. 213.)

"It should be borne in mind in the first place that it is the understanding of the parties in this case and of the court that when speaking of a door it is not precisely the opening or space through which the elector passes in entering or going out of the voting booth that is meant but the actual door itself, namely, a thing made of material of one sort or another which serves to close said opening or space and which may be removed or put in place, according as to whether the door be opened or closed; and the second place, that is an actual, true, and certain fact that all the voting booths used in three polling places on June 6, 1916, were similar one to another and had the same form, like so many copies made from the same model or type.

"The following facts which were proven are intimately related to the matter of the polling places:

" (a) In the elections prior to that held on June 6, 1916, there were in Iriga two polling places; (b) said stations were separated from each other by more than one kilometer, having been so located without doubt for the convenience of the voters of each election precinct, in accordance with law; and, (c) at the last general elections, a third polling place was established and this one and the others were located in buildings very near each other situated in San Nicolas, the barrio in which the protestee Manuel Crescini resided.

"It was also proven that the number of booths prepared was insufficient inasmuch as, for instance, in the first precinct or polling station where 423 electors were registered on [?] booths were furnished, and the tables or desks used were most inadequate.

"Said desks or writing desks were of the kind used by the children in the public schools. They consist of a seat and a back. Nailed horizontally to the upper part of the back there is a slightly inclined board of about 50 centimeters in width which serves as a table for the pupil sitting in another seat placed behind the first, that is this small table corresponds to another child who is not the one occupying the seat of which the table forms a part.

"It is true that these desks or writing desks were placed against the wall in the rear of their respective booths, the small table being toward the inside and the seat toward the outside; but the elector, while writing, besides finding

both the table and the seat necessarily disproportionate. for him, had also to assume a very uncomfortable position, with his feet towards the door of the booth, his body to one side, and his face towards the rear, that is, he had to twist himself, unless he wrote with his writing material at his back or at his side, and in such a cramped position could not shield his ballot from the view of an observer outside the booth and in front of him, that is, not in line with the elector's body.

"Another fact is that the six ballot boxes furnished the three polling places consisted of so many boxes or receptacles of cubic shape made of pine; the boards that formed their sides simply nailed together, and their lids or covers were attached by hinges but were provided with no lock and key.

"In view of these facts, can it be said that the law was complied with? Evidently, no. Sections 511 and 512 of the Administrative Code [1916] provide:

" 'Sec. 511. Designation and arrangement of polling places.—At least sixty days before each general election the municipal council in each municipality in which such election is to be held shall designate in each election precinct a place, as centrally located with respect to the residences of the voters as is practicable, where the elections and the meetings of the board of inspectors for registration shall be held during the year. Each place so designated shall, if practicable, be a room upon the lower floor, of reasonable size sufficient to admit and comfortably accommodate twenty electors at one time outside the guard rails. No liquors shall be sold or cockfights held in any building so designated from the time of designation until the day after the election. If for any cause a place so designated shall thereafter and before election be destroyed or for any cause cannot be used, the municipal council shall forthwith meet and designate some other suitable place for holding such registry and election. Not more than one polling place shall be in the same room, and not more than two polling places shall be in the same building. The municipal council shall provide for each polling place at each election the necessary ballot and other boxes, guard rail, booths, stationery and supplies necessary for the lawful conduct of each registration and election thereat; shall preserve the same when not in use and shall deliver all such ballot or other boxes for each polling place at the opening of the polls of each election. Whenever the municipal council shall be unable to procure suitable places, or whenever it shall be more economical so to do, such council may provide temporary or portable structures adequate to the purpose, and shall take such measures as are proper and necessary for the storing thereof and reerection of the same at the following election. Such structures may be erected in any public street or plaza, but not so as to block traffic thereon. No building owned or inhabited by any person who is a candidate for any office for which votes are to be cast in any precinct shall be used as a polling place for that precinct.

" 'Sec. 512. Voting booths.—There shall be in each polling place during each election a sufficient number of voting booths not less than one for every fifty voters in the election precinct. Each such booth shall be at least one meter square, shall have four sides inclosed, each at least two meters high, and the one in front shall open and shut as a door swinging outward and shall extend to within fifty centimeters of the floor. Each such booth shall contain a shelf which shall be thirty centimeters wide extending across one side of the booth at a convenient height for writing, and shall be kept furnished with indelible pencils to enable the voters conveniently to prepare their ballots for voting. Each booth shall be kept clearly lighted, by artificial lights if necessary, while the polls are open and until the voting has ended.

" 'A guard rail shall be placed at each polling place at least two meters from the ballot boxes and from the booths, and no ballot box or booth shall be placed within two meters of such rail, and each guard rail shall be provided with an entrance and exit, the one separate from the other. The arrangement of the polling place shall be such that the booths can only be reached by passing within the guard rail, and that the booths, ballot boxes, election officers, and every part of the polling place, except the inside of the booths, shall be in plain view of the election

officer and of persons just outside the guard rail. Each booth shall be so arranged that there shall be no access thereto except by the door in the front of said booth.'

"These legal provisions just above cited, which are the same as those contained in sections 9 and 21 of Act No. 1582, have been interpreted by our Supreme Court, in *Gardiner vs. Romulo* (supra) as follows:

" '5. The central idea of the election law is to secure a secret ballot to the electors, to the end that they may express their choice of candidates uninfluenced by threats, intimidation, or corrupt motives.

" '6. 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.' (Syllabus.)

"And in *Manalo vs. Sevilla* (supra) the following appears :

" 'There should be a booth for every 50 voters and one for a fractional part thereof/ For example, if there are 51 voters, there should be two booths.

"Sections 543 and 544 of the Administrative Code [1916] give an idea of some of the requirements of the law in regard to ballot boxes. They prescribe:

" 'If it should become necessary to make room for more ballots the chairman may open the box in the presence of all the board and press down the ballots with his hands without removing any therefrom; he shall then close, lock and seal the box, as hereinafter provided. In case of the destruction of the boxes or the failure to deliver them at the polling place, the board of inspectors shall immediately provide other boxes or receptacles as nearly as possible adequate for the purposes for which intended.

" 'SEC. 544. * * * At the opening of the polls the ballot box and box for spoiled ballots shall be opened by the chairman, emptied and exhibited to all the members and other voters present, and, being empty, shall be closed, locked, and a seal placed over the lock, and the boxes shall be kept closed and sealed until the polls are closed, when the ballot box shall be opened to count the votes.'

"In passing to a consideration of the other questions raised, the court deems it convenient to discuss them separately, with respect to each one of the three precincts of Iriga, inasmuch as the evidence adduced bearing on the irregularities alleged to have been committed in one polling place, or on the frauds charged against the inspectors of a certain precinct, ought not affect the voting done in the other two precincts, though they belong to the same municipality.

"Following the same plan adopted with respect to the other municipalities or election precincts, the court will proceed first and preferentially to an examination of the ballots and other documentary evidence that concern the contested elections.

"FIRST PRECINCT.

"With respect to this precinct, a question arises that is entitled to preferential consideration, in view of the fact that it is alleged and there is evidence that the ballot boxes were tampered with.

"In fact, the testimony of the chairman and the poll clerk of the election board of the first precinct appears to be conclusive with respect to this question, particularly- taking into account the appearances of the ballot boxes as

compared with the other four pertaining to the other two polling places.

"The commission appointed for the recount deemed it expedient to ascertain the true condition of the ballot boxes before it should proceed to open them, and therefore called before it the respective election inspectors and the municipal secretary in order to give testimony in regard to the identification and other circumstances relative to said ballot boxes. In the minutes of the commission referred to, there is recorded the following memorandum:

" ENRIQUE Iturrios, presiding officer of the first polling place. He examined the box of the good ballots of the first polling place and testified that said ballot box had been changed; that the sides of the ballot box that had been used on the day of the election were of one single piece, while the sides of the present ballot box are of two pieces; that the wood of the ballot box used was newer than that of the present box; that the box of good ballots brought to this commission is not the same one that was delivered to the municipal secretary after the election; that the papers containing the signature of the municipal secretary, which were stuck to the edges of the ballot box after the election, were no longer there; and that after the election the ballot boxes were not closed with a key but with nails. He identified the signature that appears on the strip of paper attached to the lid and extending across the front side of the box and testified that said paper is the same one which they (the inspectors) signed and stuck on the original box in the same manner/

"The minutes also contain a record of the description of the ballot boxes, as follows:

" "With respect to the conditions of the ballot boxes before they were opened by this commission, it is made a matter of record that the box of good ballots is square on all its sides, is made of packing-case boards that are quite thick and of a natural color, is similar to the other ballot boxes of the same municipality of Iriga, and is securely nailed. On the cover there is a paper of the size of legal cap which extends to the middle of the front side of the box, and on the edges of this paper there are several daubs of sealing wax which serve as seals. Said paper bears the following words: "I. colegio electoral (1st Polling Place) and the signatures of Enrique Iturrios and Francisco Hernandez, and below, "Junio 6, 1916." On the ballot box of good ballots there are also several small strips of paper stuck to the sides, corners, and edges, and bearing the following inscription: "Julio 13, 1916,—Pastor Guadalupe, Municipal Secretary." At the bottom of the ballot box of good ballots of the 1st precinct there is an opening near one corner, two and a half inches long by one inch wide. This opening does not appear to have been made by outside force nor by any instrument whatever, but is a natural break in the wood caused by a knot.

" "The ballot box of spoiled ballots is of the same shape and size as that of the good ballots, except that it is a trifle higher than the latter, due to the cover being of thicker lumber.

" "On the cover of this box there is likewise a long sheet of legal cap paper reaching to the middle of the front side, and on the edges of this paper there are also daubs of sealing wax and the following words: "I. colegio electoral. —Balotas inutilizadas, Junio 6, 1916" (1st Polling Place.— Spoiled Ballots, June 6, 1916). Said ballot box also has several papers stuck to the edges, bearing the words: "Julio 13, 1916—Pastor S. Guadalupe—Mun. Sec."

"On petition by the parties, the court investigated this incident relative to the alleged violation of the ballot boxes, and several witnesses were called to testify, among them being the election inspectors themselves and the poll clerk.

"Enrique Iturrios, presiding officer of the election board of the first precinct, testified that the ballot box used at the election and intended for good ballots was sealed with paper signed by the three inspectors (the witness, Francisco Hernandez, and Paulino Federis) and was delivered to the municipal secretary together with the box of spoiled ballots (the paper seal of which box appears not to have been signed by any inspector); that one Sunday

night subsequent to the election, after prior notice by the protestee Manuel Crescini, witness went with the latter to the municipal building from which they took the ballot boxes of the first precinct and carried them in a sack to the protestee's house, and as soon as they entered it Crescini sent for the other inspector Hernandez who arrived immediately and thereupon broke the cover of the ballot box of good ballots and opened without breaking the cover of the box of spoiled ballots; that after both receptacles had thus been opened, he (Iturrios) and Hernandez engaged themselves in restoring several spoiled ballots which bore the name of Manuel Crescini for governor, transferring them to the ballot box of good ballots, and from the latter removed ballots that had been cast for Andres Garchitorena and for other candidates and put them into the box of spoiled ballots; that they also erased the name of Andres Garchitorena from other ballots, writing afterwards in place thereof the name of Manuel Crescini; and that the ballot box for good ballots used at the election was destroyed by fire and was substituted by a similar box which Crescini had there in his house, in which latter box the good ballots and those corrected were placed, and after this had been done the lid was nailed down and was sealed with another sheet of paper like the one used on the destroyed box, but signed by only the two inspectors Iturrios and Hernandez, the sole persons who were present during these proceedings.

"Francisco Velasco, poll clerk of the same polling place, testified that the ballot box exhibited to him as the one used at the election held in the first precinct of Iriga was not the one there used, because the ballot box that they used did not have a large opening at the bottom; that the sides of the genuine box were each made of one single piece of lumber and not of several; and that the paper containing the seals was signed by the three inspectors and not by only two of them.

"The inspector Francisco Hernandez states that the ballot box in question was the same one that was used at the election for good ballots, and that he was able to identify it because, when the president election officer showed the ballot box to the public, he noticed that it had a small hole at the bottom of the size of a peseta. (When this inspector testified—which he did before the poll clerk Velasco gave his testimony—the hole at the bottom of the box was still covered, and when it was uncovered by removing the paper covering the hole was found to be two and a half inches long by one inch wide. This witness denies all the statements made by Iturrios about the violation of the ballot box and his participation therein.

"The other inspector Paulino Federis testified that he did not sign the paper affixed to the ballot box bearing the seals, because, though he had finished his work when the sealing was done and the other inspectors signed, and though he saw these operations, he had a headache and forgot to sign, and that neither his colleagues nor the poll clerk called his attention to the fact that he did not sign.

"The ballot box and the box in question agree with the description given of them in the minutes of the commission above transcribed. There is besides the additional circumstance that, on comparing the ballot box for good ballots with the box for spoiled ballots, the latter is found to be somewhat larger than the former and, in comparison with the other four ballot boxes of the three precincts, of coarser make and a little older. Furthermore, on the lid or cover of this ballot box there is an old oxidized lock that cannot be opened or closed, which shows that the box was used in previous years. As to the box for spoiled ballots, the same previous use is suggested by its having on the cover a piece of tin plate, indicating that previously it had a lock. These circumstances in some manner distinguish these ballot boxes from the others.

"But the court does not wish to decide this question of the violation of the ballot boxes by solely relying upon the appearances and the testimony of Iturrios and Velasco. Iturrios, according to his own statements, had reasons for not liking the protestee Manuel Crescini; he saw that others were advanced to positions which he had a better right to fill, that his hopes were not realized of being appointed warden of the provincial jail, while the other inspectors, his companions, and the inspectors of other municipalities had already been awarded good provincial

or municipal positions.

"The court prefers to turn to the ballots themselves in order to contemplate in them the resplendent light of the truth, if they are found to be intact, or in a contrary case to discover through them the frauds denounced and chiefly the very fact of their violation now under discussion.

"In one of the ballot boxes there were found 420 good ballots and 3 improperly filled in and bearing on their reverse side the word 'rejected;' and in the other box, 47 spoiled ballots with the word 'spoiled' written on the back, on some of them with an indelible pencil and on others with a pen. Of the 420 good ballots, 400 are for Manuel Crescini, 14 for Engracio Imperial, 4 for Andres Garchitorena, 1 is illegible, and 1 undecipherable. The 47 spoiled ballots can be classified as follows: 13 for Crescini, 16 for Imperial, 8 for Garchitorena, 3 for Botor, and 7 for various other candidates.

"Twenty-two of said 420 good ballots originally bore on their reverse side the word 'spoiled/ which was erased in order to restore them; besides, something is noticed in these ballots that distinguishes them from the other good ones, but which, at the same time, makes them similar to the spoiled ballots, and it is that the good ballots (except 2 of them which perhaps through confusion were included) all have, in about the central and middle part of their upper half, a small hole produced by a pin, needle, or thread, which indicates that they were strung together. The same kind of hole is also noticed in 24 of the 47 spoiled ballots, while these 22 ballots just above mentioned, as well as the other 23 (of the 47) spoiled ballots, have no such hole. These details show indubitably that the 24 perforated ballots now found among the spoiled ones were once among the good ballots and were strung with them by means of the same needle or the same thread, and that the 22 ballots with the word 'spoiled' erased, or, better said, restored ballots, must have come from the lot of spoiled ballots with which they must previously have been joined without stringing of any kind.

"In accordance with the details above mentioned, the result given by the 420 good ballots is in perfect harmony with the result shown by the returns, to wit, 400 votes for Crescimir, 4 for Garchitorena, and 15 for Imperial. (Of the remaining ballots, without doubt either the illegible or the undecipherable one was counted.)

"In view of the circumstances of the case, what explanation may be given to this fact, in connection with the violation of the ballot boxes now under discussion, taking into account besides that 16 of the restored ballots (Nos. 348, 349, 351, 352, 353, 354, 357, 358, 359, 360, 365, 366, 367, 368, 369, and 370) turn out to have been written by the inspector Iturrios, one (No. 341) by the inspector Hernandez, and another (No. 356) by the inspector Federis, and 4 (Nos. 344, 345, 346, and 355), by electors who could read and write?

"The ballot boxes were either actually violated or not; there is no possible middle ground. If it be the first alternative, then there is no question and there can be no doubt about the truth of the testimony given by Enrique Iturrios in so far as it refers to such violation, though perhaps not with the details related and without the direct or indirect intervention of the protestee Manuel Crescini. In such a case the ballots deserve no credence; they lose all their probatory value and carry with them the total discredit of the election returns.

"If there was no violation of the ballot boxes, and the ballots are intact and in the same condition that they were when the ballot boxes were closed and delivered together with the rest of the documents to the municipal secretary, then we find other frauds and illegalities as serious as such a violation itself.

"In fact, who wrote on the back of the ballots and afterwards erased the word 'spoiled'? It could only have been some one of the election inspectors (apparently Iturrios himself), because 18 of the ballots were written by the inspectors, supposedly for illiterate voters, and 4 of them were prepared by electors who could read and write, for it is presumed that they did not write anything on the back of their own ballots, nor much less wished to spoil

them, and there is no proof that they did. When a ballot was spoiled (during the voting, it is supposed) it must have been put inside the box for spoiled ballots, and the elector must then have received another blank ballot, which after being filled in must have been deposited in the proper ballot box. On this hypothesis, 423 good ballots would have been found in the ballot box, which is the number of electors who voted according to the registry list with the exclusion of course of the 22 spoiled ballots which, as we have said, must have been placed in the box intended for them. Then we find that likewise an illegal act was committed by the spoiling of good ballots to substitute them by other ballots taken from the box of spoiled ballots and restoring the substitutes by the erasure of the word 'spoiled' written on their reverse side; and this act could have no other than a fraudulent purpose.

"Another hypothesis is that the inspector who spoiled the ballot did so through mistake or carelessness and therefore immediately restored it and afterwards deposited it in the box for good ballots. Can such a theory be accepted? Assuredly it cannot, particularly if account is taken of the fact that most of these ballots were prepared by the inspectors themselves for supposed illiterate voters. At all events, in every case the alleged mistake or carelessness is illegal, because, with respect to the ballots written by electors who could read and write, it supposes the fact of the inspectors having opened these ballots, and likewise illegal was the restoration of the latter through erasures, for the elector should have been given another clean ballot.

"In the foregoing hypothesis no account at all has been taken of the detail regarding the perforations or small holes made in the ballots for the purpose of stringing them.

"Besides the absurdity of the suppositions mentioned, the protestee presented no evidence whatever in rebuttal of the statements of Enrique Iturrios with respect to the restoration of spoiled ballots, nor any proof at all to show that such ballots were restored during the voting or the subsequent canvass of the votes.

"Really, the court finds no complete explanation of this matter other than that given by the presiding officer of the election board, himself being one of those who violated the ballot boxes and restored ballots. That these acts were committed by Iturrios in the house mentioned and with the connivance of certain persons who were not inspectors, is a point which the court deems unnecessary to decide in these proceedings; it is sufficient to say that the violation of the ballot boxes of the first precinct of Iriga is a proven fact, and that it was likewise proven by the ballots themselves that some restored ballots in which protestee appears to have been voted for for governor were substituted or exchange for good ballots cast for other candidates. The inspectors Enrique Iturrios and Francisco Hernandez participated directly in the commission of these acts.

"This leads the court to inquire the purpose of the violation of the ballot boxes, the origin of the 22 restored ballots, and the reason why they were previously spoiled.

"The protestant advances the following theory with respect to these questions:

"As he alleges in his written petition, during the voting the election inspectors had official ballots which had been filled out beforehand by writing the name of the protestee in the space allotted for the office of provincial governor, and it was these ballots that were deceitfully delivered to illiterate electors to be deposited in the ballots box, as in fact they were there deposited and were counted as votes for the protestee. The ballots so prepared since the evening before the elections were not all given out, but some of them were left over, notwithstanding that the elections were prolonged in order to enable all registered electors to vote. These extra unused ballots were spoiled and placed in the proper box. In making the canvass of the votes they read on several ballots the protestee's name instead of the names of the rival candidates which were actually written on said ballots, thus falsifying the returns ; and knowing that these were not of course in agreement with the ballots, they made the necessary adjustment by violating the ballot boxes and restoring ballots that had been spoiled.

"In support of this theory the protestant presented among other evidence the exhibits B-1, B-3, and B-5, the testimony of the municipal treasurer of Iriga and of the inspector Enrique Iturrios, the electoral returns of the first precinct (Exhibit F), and the ballots themselves above mentioned. The Exhibits B-1, B-3, and B-5 together with the testimony of the municipal treasurer show that the election inspectors requested and received official ballots and indelible pencils on the afternoon of June 5, 1916. Enrique Iturrios gave the testimony reproduced and abridged in another part of this decision. The election returns set forth among other facts that the polls closed at seven o'clock in the evening. It has already been said that the ballots referred to prove the fact of the violation of the ballot boxes and show why they were violated.

"Against such theory and in rebuttal of said evidence, the protestee made no objection other than a mere denial, nor did he endeavor by testimony or by argument to prove the inadmissibility of the theory in question. He simply adduced evidence tending to prove his great popularity, particularly in Iriga, the town of his residence. He attempted to show that he had no need to resort to such illegalities in order to triumph and sustain the returns nor to attack the credibility of Iturrios and the other witnesses presented by the protestant.

"The court does not deny the protestee's popularity, and is morally convinced that the people of the town of Iriga like him, and that a large majority of the electors of this town voted for him. The court agrees with him in that not only was there no need to resort to unlawful means but also that in every case such means should be repudiated, and does not hold that the testimony given by Iturrios and other witnesses for the protestant is without defect or blemish. But the main question hinges on the explanation of the condition and circumstances of the ballots considered in combination, on the one hand, with the prolongation of the voting until 7 o'clock in the evening and on the other, with the requisition for and receipt of the official ballots on the afternoon of the day immediately preceding that of the elections.

"Be it as it may, the court considers these questions as secondary and will not delay further in a more extensive discussion of them. It is enough to say that whatever might have been the purpose sought by the violation of the ballot boxes, whatever the origin of the 22 restored ballots, and whatever be the reason why they were previously spoiled, none of the acts committed in respect to these facts can be justified, nor did they seek the attainment of any lawful purpose.

"So then, leaving these questions to one side and scrutinizing more closely the contents of the ballot boxes aforementioned, for the purposes of a full discussion of the elections held in this precinct, the court finds:

"That of the 420 ballots found in the ballot box 187 were written by the inspectors, Enrique Iturrios having identified 65 as prepared by him, Francisco Hernandez 86 and Paulino Federis 36; that, according to the list of illiterates, the number of incapacitated electors who were assisted is only 146; that 520 ballots were delivered by the municipal treasurer to the inspectors of the first precinct of Iriga; and that the total number of ballots returned by said inspectors is as follows:

Ballots filled in and valid.....	
420	
Ballots filled in and rejected.....	
3	
Ballots spoiled.....	
47	
Ballots in blank.....	

49

Total.....

519

"Consequently, one ballot is missing.

"Entering now upon a discussion of the 184 votes cast by illiterate electors (187 less the three votes of the inspectors), in connection with the list presented (Exhibit 3, Iriga), omitting for the present all consideration of the matter concerning the oaths of incapacity (the poll clerk said in his testimony that those who were assisted in the preparation of their ballots did not take this oath), and also of the question as to whether said list of illiterates is or is not admissible as evidence (it not having been transmitted to the court in due time, together with the rest of the documents pertaining to the election), the court will say that either said Exhibit 3 relative to Iriga is absolutely false, or the election held in the first precinct was full of illegalities and frauds, or that perhaps both these propositions are true.

"If the 184 ballots were written by the inspectors, which is a true and undeniable fact for it is shown to be such by the ballots themselves identified by the very electors for whom these inspectors wrote them, it necessarily follows that said list of illiterates is false, inasmuch as it shows that only 146 illiterate electors were assisted. Ordinarily this statement would suffice, but the court believes that it is not superfluous to scrutinize said list closely in order to establish grounds upon which to base such a grave pronouncement as that of declaring this list to be false.

"Said document is drawn up on a blank form, Election Form No. 8, and its heading is as follows i

" 'Minutes of the proceedings of the board of election inspectors.—In the polling place of the municipality of Iriga, June 6, 1916.—On this date record is hereby made of the names of the incapacitated electors who received assistance, the names of the inspectors who assisted them, together with a statement of the oaths taken before the board by said electors, and the nature of the disability alleged by the latter consisting, as to some of them, in their not knowing how to write, and, as to the others, in defective sight or defective hands.'

"Following this heading appear the Christian names and the surnames of the persons said to have been assisted, but no mention is made of the names of the inspectors who gave the assistance. It is supposed, and we are prone to believe, that said names were written in the same order in which the voting was done, that is to say, that the names first recorded are those of electors who voted before the electors whose names are last.

"Now then, it appears that Lorenzo Panday whose name is the first on the list, bears No. 189 in the order of the voting, as seen on the register of voters, which means that he voted long after Anselmo Molina whose name appears in the middle of the list and bears No. 5 in the order of the voting and after that of Feliciano Ibarreta, voter No. 196, though the latter's name is the last one of the 146 of the list.

"But the irregularities just mentioned are not the most serious ones. Said list shows that Pedro Dacara and Sergio Balang were assisted; however, upon an examination of the register of voters it is found that such persons, if they exist, were not registered. The case of Manuel Dacara and Victoriano Taturan is also very conspicuous. It is given to be understood that these two electors whose names appear in this list of illiterates voted in the first precinct, assisted by the inspectors; however, they were not registered in this precinct but in the second. Manuel Dacara did not vote, and it is not known whether Victorino Taturan voted or not, for, though he bears No. 117 in the order of the voting, this number nevertheless was crossed out.

"If it is contended that this list of illiterate electors is correct, then it constitutes the best proof that at the elections held in the first precinct of Iriga illegalities and frauds were committed such as those of the voting of persons not

registered in the list of voters and of electors from another precinct.

"The discrepancy between the number of ballots written by the inspectors and the number of illiterate electors to whom such ballots should correspond is undoubtedly a serious defect and one of considerable importance, as is likewise that of the absence of the proper register of disabled voters required by law, both of which defects the court holds to have been proven. It was also proven that the inspectors of the first precinct were unfaithful in the performance of their duties in regard to the illiterate voters. But of much more serious a nature, and of farreaching import, is the unexplained disappearance of one official ballot.

"When this loss occurred and whether it was a ballot already filled in or one in blank nobody knows. The fact is that the inspectors did not render an account of one ballot, did not explain its absence. In view of all the circumstances of the case it is more than likely that this ballot was removed during the night before the election by some elector or by an electioneerer of some candidate, with or without the knowledge and consent of the inspector who had the custody of the ballots.

"Now, by a slight examination of the register of voters it will be seen that several persons, after once having been excluded, were permitted to vote. This register shows in fact the registration of 42 electors, opposite whose names and in the column provided for remarks the following note appears: 'Excluded through challenge by the municipal treasurer.' However, 31 of these electors so shown to have been excluded did vote and only 11 of them did not.

"There are many and various other questions also, as for instance that of whether or not the secrecy of some ballots was violated while the respective electors were voting; that of whether or not an electioneering was done within the booths; and that of whether or not any electors voting for the protestant were defrauded of their votes; but the court does not believe it necessary to go into further detail in this matter. Suffice it to say that, owing to the conditions of the voting booths, it was easy to violate the secrecy of the ballots; that several witnesses presented by the protestant testified that the inspectors had unduly and improperly influenced them in favor of the protestee, and the testimony of some of them was not rebutted on cross-examination ; and that some thirteen electors capable of reading and writing testified, and their testimony was riot successfully rebutted, that they voted for Andres Garchitorena, while the returns show but four votes for this candidate.

"In conclusion: in view of the conditions of the voting place, booths, and ballot boxes of the first election precinct of Iriga, as described in the commencement of these considerations; taking into account the violation of the ballot boxes and the changes or substitutions of ballots, which fatally and absolutely discredit the electoral returns; noting the frauds that imply infidelity on the part of the inspectors in the performance of their duties with respect to the illiterate voters, and the falsity of the returns made by these inspectors; considering the disappearance of one ballot, and the fact that several persons voted who had previously been excluded from the registration list; and, finally, in view of the commission of various other irregularities by the inspectors during the elections, the court does not see how it can lawfully render a decision contrary to the general and constant doctrine followed by the courts of these Islands according to which, in such cases, the election must be annulled.

"The election returns are rejected and the election held in the first precinct of Iriga are annulled. (See McCrary, par. 348; Gaston vs. Hernaez et al., court of Negros Occidental; Genarao vs. Disipio, court of Pangasinan; Auresus vs. Pederero, court of Ambos Camarines; also Villamor on Elections, pars. 1053, 1062, and 1063; and Gardiner vs. Romulo, 26 Phil. Rep., 521.)

"SECOND PRECINCT.

"From an examination of the ballots cast in this second polling place of the municipality of Iriga, made in connection with the pleadings and evidence submitted, the court finds:

"That 284 good ballots and 25 spoiled ones were found in the ballots boxes; that 184 of these ballots were written by the three inspectors Juan Castro, Bembenuto Bersamina, and Juan Salvadora in the proportion respectively of 70, 28, and 86; that of the 70 prepared by Juan Castro, 55 were identified by him and the rest by the handwriting expert, with whose opinion the court agrees (said expert included 5 more ballots, Nos. 81, 83, 93, 95, and 106, also 115, but the court believes they should be excluded); that the 28 ballots written by Bembenuto Bersamina were all identified by him, except one, No. 80, which was found by the handwriting expert and is deemed by the court to have been written by Bersamina; that, likewise, Juan Salvadora recognized 31 ballots as having been written by him, and the court is convinced that the other 55 ballots found by the handwriting expert were also written by this inspector; that all these 184 ballots are for the protestee Manuel Crescini, there being not a single vote by any illiterate elector for any other rival candidate; and that 20 of the ballots filled out by Juan Salvadora were found completely untampered with, showing that they never had been folded.

"In the election returns Exhibit G-Iriga the statements, among others, are made that the polls were opened at 7 o'clock in the morning and remained open continuously until 8 o'clock in the evening; that according to the registry lists the number of persons who voted was 288; and that the number of ballots found in the ballot box was 285.

"The same returns, however, also state that the canvass of the ballots showed that for the office of governor:

Manuel Crescini received.....	
276	
Engracio Imperial	
6	
Andres Garchitorena	
1	
Fulgencio Contreras	
1	
Severo Cea	
1	
Felipe Momponbanua	
1	
Francisco Botor.....	
1	
Total	
287	

"The list of illiterate voters presented by the protestant as Exhibit 5-A Iriga contains the names of 167 persons who it is alleged, 'requested to be assisted by the inspectors, on account of these electors being incapacitated, and subscribed their oath of incapacity/ Said list shows that the inspector Juan Castro assisted 65, Bembenuto Bersamina 35, and Juan Salvadora 66. Another name is given, without specifying who rendered the assistance.

"Such are the facts shown to have been proven by the documentary evidence above mentioned, with respect to which there is not the least dispute. The question or questions which require solution are those that arise from the many discrepancies discovered in comparing one proof with another, and even the different parts of the same document with each other. These questions may be comprised within the following simple proposition: Whether or not irregularities, illegalities, and frauds were committed in the elections held in this election precinct.

"Commencing with the election returns, the first fact noted is that the voting was prolonged until 8 o'clock in the evening, notwithstanding that no more than 285 electors voted, and this is undoubtedly an irregularity. Secondly, it is made to appear that 285 electors voted, but following this statement, just below it, is another which shows that 287 votes in the aggregate were cast for governor, exceeding by 2 the number of voters. This may be an innocent mistake, but it is none the less another irregularity. Thirdly, the returns state that the number of ballots found in the ballot box was 285, while the commissioners and the court found there only 284—a difference of one ballot. This might be allowed to pass as an involuntary error, but it is also another irregularity.

"Coming now to the matter of the ballots themselves, our attention is greatly attracted by the large proportion of those written by the inspectors, 65 per cent of all the votes cast; but this is nothing as against the discrepancies found on comparing this number with that of the illiterate voters as shown by the list of the latter.

"One hundred and eighty-four ballots were written by the inspectors, which show that 181 illiterate electors were assisted by them. Of this number 69 should pertain to the inspector Castro, 27 to Bersamina, and 85 to Salvador. But the list of illiterates attests that only 167 of them were assisted: 65 by Castro, 35 by Bersamina, and 66 by Salvador. From this it follows that the first inspector wrote 4 and the last one 19 ballots more than do not correspond to any assisted elector, while the second inspector wrote 8 ballots less than the number attested to have been written by him, that is, 8 votes by disabled electors disappeared.

"If we turned our attention only to the number of the ballots identified by the inspectors themselves as having been written by them, consequently excluding those discovered by the handwriting expert and by the court, we would find a still more unexplainable difference, inasmuch as the sum of the ballots identified by the inspectors is only 113, while according to the list the number of supposed illiterate assisted is 167.

"In view of this discrepancy, there is no doubt that the list of illiterate voters presented as Exhibit 5-A-Iriga is inadmissible. It was not found among the documents which the municipal secretary transmitted to the court when he was directed so to do.

"Juan Castro stated that said list was made on the very day of the elections and that the succession of the names therein contained corresponds more or less to the order in which the owners of these names voted. Several of the names however, particularly the last ones, are not in such relationship with the order of the voting, as may be readily seen from the following table:

Order of going to the polling place to vote.

Order of voting, according to the registry list.

153. Policarpo Salvador
174

154. Pantaleon Iraola.....
186

155. Estanislao Iraola.....

54	
156.	Silverio Orbon
233	
157.	Apolonio Orbon
171	
158.	Pedro Orbon.....
154	
159.	Emiliano Asiao.....
191	
160.	Laureano Adaon.....
105	
160.	Laureano Adapon
105	
161.	Victor Solia
169	
162.	Norbeto Orgon
129	
163.	Gabino Tagalog.....
234	
164.	Numedico Samonte
196	
165.	Buenaventura Isabelo
119	
166.	Casiano Tagum
188	
167.	Juan Navarro.....
109	

"Moreover, the name of Tomas Casiao figures in said list as being¹ that of one of the electors who were assisted, while according to the registration list this elector did not vote. The list of illiterate voters also contains various other names of electors who, according to the oral evidence, were able to read and write and were not incapacitated from filling out their ballots.

"It cannot therefore be sustained that said list of illiterate voters is correct and legal, and the conclusion is that the

inspectors of the second precinct failed to perform the duty imposed upon them by law with respect to the registration of the oaths taken by disabled voters, and consequently, for the same reasons stated in regard to the same matter in connection with other precincts, the 181 ballots written by said election inspectors cannot be admitted as legal.

"The most serious fact and of fatal consequence noted in connection with this precinct is that the ballot box contained 20 ballots filled in by Juan Salvadora which are completely smooth and with no signs of having been forged; some of them bear traces or impressions of letters written by hand and with a pencil, showing that the ballots must have been under others while these were being filled out on top of them.

"Said unfolded ballots are those numbered 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 49, and 203, and those that show the traces or impressions mentioned are Nos. 7, 11, 12, 13, 15, 17, 18, 21, 23, and 49.

"What explanation can be given to this fact such as may be compatible with the legality of the elections and the innocence of the inspectors?

"None at all. Anyone, upon reflection, will find that it evidences or implies the commission of illegalities and frauds.

"The most innocent explanation that can be imagined is that this inspector Juan Salvadora, on the twenty occasions when he had to assist an illiterate elector, did not accompany him to the voting booth, but instead went to the inspectors' table and there filled out the ballot without separating it from the pile while he wrote, and was careless in not folding it and putting it in the proper ballot box.

"But, as is seen, even this, the most innocent explanation, shows the acts explained to be replete with illegalities, and it is useless to examine one by one the various suppositions that might be made.

"The most complete and satisfactory explanation which the court finds is that, during the voting, the election inspectors actually had ballots that had previously been filled in with the name of the protestee written in the space intended for the name of the candidate for the office of governor (this is shown, though indirectly, by the following indisputable facts: (a) the requisition for and receipt of the ballots and indelible pencils from the afternoon of the day immediately the elections; (b) the existence of 20 unfolded ballots; (c) the similarity bordering on an almost exact likeness of said 20 ballots, as regards the names of the candidates voted for; (d) the existence of traces or impressions of letters, on some of said ballots); that all of the ballots so prepared could not be disposed of, the 20 ballots in question, consequently, remaining undistributed; that probably several of the controvertible ballots, or some of those for other candidates, instead of being rejected or counted, were spoiled and afterwards substituted by these extra ballots (in the list there are no remarks about spoiled ballots and the four such which were found in favor of Andres Garchitorena are in reality perfectly good ballots); and that, in making such substitutions during the canvass of the votes the inspectors did not notice that the ballots in question had not been folded, for most likely all the ballots were open and spread out before them while being examined. All these facts show nothing but a series of illegalities and frauds of the most serious nature.

"Neither is the registration list exempt from irregularities and the fact of permitting registered persons to vote after they had been excluded is another proof of another illegality. In said list 54 registered names appear, opposite which the following note was placed by the inspectors: 'Excluded through challenge by the municipal treasurer/ One of the challenged electors voted, and 31 did not.

"Furthermore, the oral evidence shows that there were cases of violation of the secrecy of the ballot, of electioneering by the inspectors and policemen on guard within the polling place itself, and that Garchitorena was defrauded of several votes (eleven [11] witnesses testified that they voted for this candidate, and nevertheless only

one ballot was found to have been cast for him, or five [5], including the four [4] found among the spoiled ones; for these four are good ballots and should be counted).

"There were therefore several illegalities and frauds that sully the purity of the votes cast in this second precinct. In view of all the preceding statements, can the good votes be distinguished in order to separate them from bad ones deposited in the ballot box? It would be very difficult or perhaps impossible to do so, just as it would be to follow step by step the whole course of the election, and watch one by one the acts of the inspectors. Let us try however to proceed to make such a distinction under guidance of the most liberal rule possible, and we shall see what result is attained.

"For the reasons elsewhere explained, 181 votes cast by illiterate electors should not be accepted. The other irregularities or illegalities in reference to votes of illiterate electors may add to their unlawfulness, but cannot increase their number; the same may be said in connection with other frauds committed against these votes. Such irregularities and frauds may perhaps make the votes affected by them more repudiable than they are, but their effects are circumscribed to the group to which such votes pertain; they cannot contaminate the other votes honorably cast. That the 20 filled in and unfolded ballots are indexes of a great fraud, cannot be doubted but their fatal influence does not pass beyond the bounds of the group to which they belong, nor beyond those of that of the 181 ballots written by the inspectors.

"The prolongation of the voting until 8 o'clock in the evening can produce the nullification of the votes cast between 6 and 8 o'clock in the evening,-but nothing more. In the present case it is relatively easy to ascertain the number of such votes, and it is already known or should be presumed that they are all for the protestee, inasmuch as nearly all the votes cast in the precinct are for him. As 285 electors voted, according to the returns, and the polls were open for 13 hours, under similar circumstances 43 electors at the most must have voted between the hours of 6 and 8 in the evening which gives another determinate number of illegal votes.

"As certain persons excluded from the registration list voted notwithstanding, the measure of this illegality is also determinable and is determined by merely scanning said list, which attests that the number of such excluded electors is 21.

"The votes vitiated through other causes can perhaps be determined by an examination of the evidence adduced by the protestant, and, on the supposition that such evidence has been given its due and full weight, they would be distributed as follows: for violation of the secrecy of the ballot 3, for undue and improper influences 5, and as votes fraudulently wrested from Garchitorena 6 (11 less 5).

"There would thus be a total of about 259 excluded votes, that is, nearly all those-cast in the precinct; and if it is taken into account that there still remain several challenged ballots, some as being marked, others because they are illegible, a few for the reason that they bear certain defects, such as blots, the writing of the name outside of the proper space, etc., it will be seen that the result is practically the annulment of the election held in the whole precinct.

"In reality some of the illegalities that mark the purity of the election in this precinct are of such a nature that it is impossible to identify with any degree of certainty the vitiated votes in order to distinguish them from the good ones, particularly if account is taken of the fact that the same irregularities occurred in this precinct as in the first, as regards the conditions of the polling place, the voting booths, and the ballot boxes.

"It is unnecessary to repeat here the considerations already set forth above and by reason of which the returns and the elections held in the first precinct were rejected and set aside. For the same reasons the court finds that the elections held in the second election precinct of Iriga should be, as are hereby, set aside.

"THIRD PRECINCT.

"In order that this decision may not be too lengthy, the court will say at once briefly that in this precinct the same irregularities and similar frauds and illegalities were committed as in the first and second precincts.

"Two hundred and fifty-nine ballots were found in the ballot box, and 116 of these were identified by the inspectors as having been written by them (without counting some nine others which the handwriting expert identified), distributed as follows: the inspector Ciriaco Alfilor, 56; Pablo Aguilar, 30; and Manuel Seguera, 30. According to the list presented by the protestee himself, 95 illiterate were assisted.

"A slight examination of the table below inserted wil suffice to show at once the discrepancies between the ballots identified by the inspectors and the list of illiterate voters. It must be borne in mind that this list is one of names, beside each one of which are those of two assistant inspectors, and taking any of said names, the first as that of the clerk and second as that of the witness, or viceversa, nothing is discovered except an unexplainable disagreement. Here is a table:

Assisted by

As per ballots.

As per list, first name.

As per list, second name.

Ciriaco Alfilor

56

35

28

Pablo Aguilar.....

30

4

36

Manuel Seguera

30

56

26

In blank.....

--

5

5

"Said list (Exhibit 4-Iriga) bears the following heading:

'List of the qualified electors who voted in the 3d precinct,' and shows in their proper numeration the following

names among others, to wit: Juan Barroga 35, Marcos de los Reyes 146, Tomas Oliva 198, Agaton Oliva 199, Marcos de los Reyes 209, Tomas Oliva 198, Agaton Oliva 199, Marcelo Tabayag 209, and Tomas Gonzalez 226. However, the registration lists disclose that Juan Barroga did not vote, and that Marcos de los Reyes, Tomas Oliva, Agaton Oliva, and Tomas Gonzalez were registered in the second precinct, not in the third, and they too did not vote. Marcelo Tabayag's name is not found on any of the registration lists of Iriga, that is to say, he was not an elector.

"As may be seen, this list Exhibit 4-Iriga, is not a faithful record of the manner in which the election was conducted in this precinct, or, if it is, then it is a positive proof of the illegalities shown by it to have been committed. In either case, it cannot be admitted as evidence that the inspectors proceeded legally in conformity with law with respect to the illiterate electors.

"So then, the votes cast by the latter, and which number is 113 (116 less 3), must meet the same lot as the rest cast under similar conditions in the first and second precincts; they cannot be admitted as legal and irrefutable proofs of fraud stand against the inspectors.

"The court can not explain the fact of there having been found 269 good ballots and two groups of spoiled ballots (one group of 13 ballots which bear on their reverse side the word 'spoiled,' and another one of 15 without this word). He has examined, very scrupulously and with the greatest care, the registration lists of the third precinct, and has found that 282 electors were registered, of whom only 254 voted and 28 did not. According to these lists, only 13 ballots were spoiled during the voting.

"So then, there are 5 more good ballots than there should be, and 15 other surplus ballots (also good, though placed among the spoiled ones) the genuineness of which is much under suspicion, and as no explanation whatever was made of this matter, and furthermore as the court finds that these 15 unblemished ballots which are among the spoiled ones really must have been rejected during the canvass (which implies their substitution), he believes that there were also in this precinct some 20 surplus ballots, which were placed in the manner above related, and the word 'surplus' necessarily awakens the idea that, as in the other precincts, ballots were used which had been prepared beforehand by filling in the protestee's name for the office of governor.

"If the registration list is correct, as it ought and is presumed to be, for the litigant parties raised no question whatever in respect to its exactness, no more than 254 good ballots and 13 spoiled ones could have been found in the ballot boxes.

"Also in this precinct the voting was prolonged until 7 o'clock notwithstanding that no more than 282 electors were registered and that only 254 of them voted.

"In the polling place of this precinct, just as in those of the first and the second, several electors were allowed to vote whose names appear in the registration list under the following note written by the inspectors themselves: 'Excluded through challenge by the municipal treasurer.' Thirty-two of the 51 electors so excluded voted.

"Two ballots (Nos. 110 and 231) bear two different handwritings and show that the inspector Seguera wrote the name of Manuel Crescini for governor, and the elector the names for the other offices.

"Several ballots for the protestee which ought to have been rejected on account of marks, blots, or other defects were admitted and counted, while the few that were found with the name of Andres Garchitorena for governor (9 ballots) were either rejected or spoiled, it is not known exactly which, but the court has decided that at least 7 of the latter contain no defects such as might bring them into dispute.

"It was proven that in this third precinct, as in the first and the second, the secrecy of the ballot was violated and

electioneering was done in the polling place. Twenty- four electors testified that they voted for the protestant Andres Garchitorena; their votes however disappeared, only one of them being accounted for in the returns and found among the good ballots, and 9 were found among the spoiled ballots.

"The court is desirous of adopting the most liberal rule possible to guide him in passing upon the matter in hand, as he already stated with respect to the second precinct, and accordingly shall endeavor to determine the vitiated votes in order to separate them from the good ones; but it has already been seen that, due to so many irregularities and illegalities, the application of such a rule brings the result that the number of votes to be deducted is nearly equal to the total of the votes cast in the precinct, which is practically tantamount to an annulment of the elections held therein.

"On account of such frauds and illegalities held to have been proven, as well as of the nonfulfilment of the law as regards the installation of the polling place and the conditions of the voting booths and ballot boxes, and also because of the legal doctrines and the authorities above cited, the court is of the opinion that, in view of all the circumstances of the case, it is impossible to arrive at a positive determination of how many votes are affected by such fraudulent irregularities, and how many are not.

"The court therefore holds that, with respect to the third precinct of Iriga, the extreme measure must be adopted of rejecting the returns of its inspectors and setting aside the elections held therein.

"Municipality of Lagonoy.

"The grounds of the protest with respect to this municipality are :

" '(a) The polling place of this precinct was situated in the upper story of a house, and, notwithstanding that 225 electors were registered in this precinct, only four booths were constructed for voting purposes.

" '(b) On the 27th of May of the present year, the Court of First Instance of this Province of Ambos Camarines issued an order annulling the appointment of election inspectors and poll clerk made by the municipal council of this municipality in favor of Esteban Mendoza, Balbino Frondoso, and Doroteo Totañes, as inspectors, and Quintin Bona, as poll clerk, and ordered said council to proceed to appoint new election officers within 48 hours after it had been notified of said order. Consequently, on June 5, 1916, the council appointed new election officers in the persons of Gaudencio Presentacion, Gil Forteza, and Manuel Ledesma, as inspectors, and Ananias Obias, as poll clerk.

" '(c) On the day of the election, June 6, 1916, said election inspectors and poll clerk recently appointed took the oath required by law, but when they attempted to assume possession of their respective offices they were rudely, improperly, and unlawfully opposed by the former election inspectors and poll clerk whose appointment, as aforesaid, had been annulled by the Court of First Instance of this province. Said former election officers not only made such rude, improper, and unlawful opposition in obedience to instructions previously given by governor Jose Fuentebella, a most devoted partisan of the protestee, who proposed the appointment of these officers, but also refused to deliver to the new officers all the election documents, papers, and equipment, and to leave the polling place, as in fact they did not leave it, and in such manner prevented the new officers from acting and from holding the elections, which latter officials, notwithstanding, remained in the polling place on the said 6th day of June from 7 o'clock in the morning to 7 o'clock in the evening, when they retired without holding the election.

" '(d) After said new election officers left the polling place, said Esteban Mendoza, Balbino Frondoso, Doroteo Totafies, and Quintin Bona, intrusively assuming authority as election inspectors, the first three, and as poll clerk, the fourth, did, in obedience to orders given by Governor Fuentebella, hold the election from 10 o'clock at night until 3.35 p. m. of the 6th of June aforementioned, at which latter hour they rested until 6 o'clock in the morning

of the following day, June 7th, when they recommenced their labor and continued it until noon, in order to accomplish, as they did from this latter hour, the canvass of the ballots.

" '(e) About eighty voters registered in said precinct did not vote, some of them because, in view of the fact that the election was not held on the 6th of June, between 7 a. m. and 6 p. m., they believed there would be no election, and others because they believed and believe that the election held by said intrusive officers was and is illegal, null, and void, and, besides, they had no confidence in the honesty and morality of the latter.

" '(f) Said intrusive election officers carried on the voting by capriciously calling the electors by their names, four at a time, from the place where these voters had gathered at a distance of 30 meters from the polling place, for, like the public in general, they were not allowed to be in or nearer the polling place, which was surrounded and guarded by policemen and Constabulary soldiers carrying guns with fixed bayonets, who also patrolled the house of an elector named Ibo Alvarez not permitting anyone to go out of it, and abused several electors awaiting their turn to vote.

" '(g) Said intrusive officers, within the polling place and inside the booths themselves, unduly and improperly influenced, and used threats and force upon the voters already daunted by the exhibition of the armed force around the polling place, to the end that such electors might vote for the respondent Manuel Crescini. The electors wiiio were so unduly and improperly influenced by threats and the exhibition of force are Bonifacio Rosero, Juan Florence, Valentin Primavera, Ciriaco Rivero, Dalmacio Kellora, and Gerardo Romulo, and others whose names are at the present time unknown to the petitioner.

" '(h) Said intrusive officers prepared the ballots of the illiterate electors without inquiring of them as to whom they wished to vote for, and without paying heed to the indications made to them by said electors in reference to the latter's choice of candidates for the various offices.

" '(i) Said intrusive officers made fraudulent record that 134 electors voted, while in reality no more than 115 electors voted in that election.

" '(j) In view of the secrecy that attended the acts of said intrusive officers, and of the fraud alleged in the preceding paragraph, the petitioner believes, and so alleges, that these officers read on some ballots the name of the respondent for the office of provincial governor, although the name of the petitioner or that of some other candidates for governor was written thereon.

" '(k) Governor Jose Fuentebella, in connivance with the respondent, suspended the municipal president of said municipality, at 7 o'clock in the evening of said 6th day of June, and ordered him to respect the authority of the chairman of the election board, Esteban Mendoza, and did all this because said municipal president, since the morning of said day, tried to expel from the polling place said intrusive officers in order that those recently appointed might act instead.

" '(l) A few moments before the voting commenced, and during its progress, said false election inspectors distributed to the voters official ballots that had previously been filled in with the name of the respondent as the choice for the office of governor, without said voters having expressed their desire to vote for the respondent, and these ballots were placed in the ballots box and counted during the canvass as votes for the respondent. Moreover, said election officers did not, before receiving the votes of the illiterate electors or of those physically unable to write, require them to take the oath of illiteracy or of physical disability.

" '(m) Said false election inspectors did not deliver the ballot boxes, together with the election documents, to the municipal secretary immediately after the termination of the canvass of the votes, but said boxes and documents were retained by these inspectors until the day when this court required the same to be transmitted to it.'

"From the documentary and oral evidence produced during the trial, it is shown that the general elections held in the municipality of Lagonoy, Ambos Camarines, in the month of June, 1916, had the following antecedents and took place under the following circumstances:

"The municipal council of Lagonoy met several times in order to proceed to the appointment of election inspectors and a poll clerk, and, prior to May 31, 1916, did appoint Esteban Mendoza, Balbino Frondoso, and Doroteo Totafies as inspectors, and Quintin Bona as poll clerk.

"On said date of May 31, 1916, this court, deciding the petition for a writ of mandamus wherein Eulogio Froa is petitioner and the municipal council of Lagonoy and others are respondents (Civil Case No. 2020), held that the appointment of said election inspectors and poll clerk, Esteban Mendoza, Balbino Frondoso, and Doroteo Totanes, and Quintin Bona, was null and void and of no value, and issued a peremptory mandamus directed to the municipal council of Lagonoy of the province of Ambos Camarines, directing that, within forty-eight hours after service of notice of said order, it meet and proceed to appoint election inspectors, two of whom should be such persons as the petitioner Eulogio Froa might propose. (Exhibit F.)

"In said Civil Case No. 2020, said Esteban Mendoza, Balbino Frondoso, Doroteo Totañes, and Quintin Bona, as appointed election inspectors the first three, and as appointed poll clerk, the fourth, were respondents, together with the municipal council of Lagonoy.

"The dispositive part of the judgment referred to was telegraphed by the clerk of the court to the municipal council of Lagonoy, through the municipal president of San Jose, inasmuch as it was of an urgent nature and there was no time to lose.

"Upon notification and due call by the municipal president, the council met in special session on June 5, 1916, and proceeded to comply with the order of the court by appointing Gil Forteza, Gaudencio Presentacion, and Manuel Ledesma as election inspectors, and Ananias Obias as poll clerk, to substitute Esteban Mendoza, Balbino Frondoso, Doroteo Totañes, and Quintin Bona.

"What happened afterwards, that is, on the day of the elections, is set forth in the statement drawn up by the election inspectors and poll clerk last appointed, protestant's Exhibit J, the contents of which are as follows:

" 'In this single polling place of the municipality of Lagonoy, province of Ambos Camarines, P. I., today, the sixth of June, 1916, at five o'clock in the afternoon, we, the undersigned election inspectors, hereby solemnly set forth that at 6.30 a. m. of this date we went to the polling place for the purpose of fulfilling the duties and obligations imposed upon us by law as election inspectors legally appointed by the municipal council at its session held at 9 p. m. of the 5th instant, but that we were unable to enter the polling place for the reason that we were stopped and expelled beyond a distance of thirty meters therefrom by Constabulary guards and the whole municipal police corps. who would not admit us to the polling place and alleged that in prohibiting our entrance thereto they were obeying orders given them by the municipal president and presiding officer of the so styled election board which, according to said guards, was lawfully assembled. Therefore, we, the undersigned inspectors, for the purpose of avoiding our being held in any way liable under the law, had to seek the protection of the municipal president, and, after he had conferred with the Constabulary lieutenant, the fictitious inspectors permitted us, the undersigned, to enter said polling place, whereupon we took the required oath and requested of said municipal president that said intrusive inspectors be expelled and that he oblige them to deliver to us all the documents, minutes, ballots, and other official papers concerning the election, but said intrusive inspectors refused to deliver the same and likewise their possession of the polling place, and notwithstanding that the municipal president ordered the policemen to eject them from the polling place, these officers refused to comply with the municipal president's orders, which refusal was countenanced and approved by the chief of police who also refused to obey

these orders.

" 'In view of these facts, we, the undersigned legally appointed inspectors, had to remain in the polling place and officially confer with the municipal president to the end that the intrusive inspectors Esteban Mendoza, Doroteo Totafies, Balbino Frondoso, and the poll clerk Quintin Bona, might permit compliance and themselves comply with the orders given by said municipal president, so as not to waste time in detriment to the holding of the election. But said intruders were obstinate and refused to permit the election to be held and by such obstructive acts prevented the fulfilment of the provisions of the Election Law until the hour of 5 p. m. arrived, at which hour the law directs that the polls shall be closed, and as a result of said obstruction the electors who had been waiting since the morning were unable to vote until 5 p. m.

" 'Wherefore, we hereby make record of the foregoing facts in order to avoid the very serious liability which the law might exact of us.

" 'In witness whereof we, all the members of the election board, sign these presents, which I, the poll clerk, certify.

" 'Signed: Gaudencio Presentation.—Gil Forteza.—Manuel Ledesma.—Ananias Obias.—Elections Inspectors and Poll Clerk.—Ibo Alvarez.—Elector.—Pedro Demesa.—Elector.—Sofronio Bautista.—Elector.—Macario Ledesma.—Elector.'

"The previous election board formed by Esteban Mendoza, Balbino Frondoso, Doroteo Totañes, and Quintin Bona, whose appointment, as aforesaid, was judicially declared to be invalid, null, and void, willfully disregarding the court's decision, to which it did not except in due time and form, and being in possession of the ballots, documents and other things necessary for the election, proceeded to hold said election by opening the polls some time between 9 and 10 o'clock at night of the 6th day of June and closing them at about 5 o'clock in the afternoon of the next day, the 7th, with some interruption, for the purpose of getting a little rest, lasting until about the dawn of the day last mentioned.

"At these elections more than 8 duly qualified and registered electors were unable to vote and did not vote, either because of the considerable delay or, more properly speaking, by reason of the change of time in the opening of the polls, or because they knew that the persons who were acting as election inspectors and poll clerk had been dismissed from office by an order of this court, or because of both reasons.

"These facts are fully sustained by the evidence. Nevertheless, the protestee argues that the reason why the election was delayed is because the protestant, together with the municipal president Pedro Demesa, the justice of the peace Ibo Alvarez, the municipal secretary Sofronio Bautista, and more than fifty other persons, assaulted the polling place, molested the election inspectors, and tried by force to take away from them the ballot boxes, ballots, and other papers pertaining to the board of inspectors, and because such assaulters were within the polling place from the time the polls were opened until 7 o'clock in the evening of the 6th, at which hour the inspectors above mentioned were free to hold and continue the election. The protestee also asserts that Esteban Mendoza and the latter's companions were de facto election officers, since they had not been duly notified of the decision of this court in which it was held that their appointment was null and void and of no value.

"The most impartial testimony relative to these facts is without doubt that given by Porfirio Zablan, Constabulary lieutenant, who had been assigned to do service on the day of the elections in the towns of Sagnay, Tigaon, Goa, San Jose, and Lagonoy, and who had a hand in the matter. The relevant part of his testimony is as follows:

" 'A. While the justice of the peace was talking, the municipal president arrived, informed me that Esteban Mendoza and his (the latter's) companions were not the genuine election inspectors, and requested me to remove these inspectors and gather up the papers so as to deliver them to him. I replied to him that I had nothing to do in

the matter, and that I was there solely for the purpose of keeping order. He then told me that there was an order of the court, signed by the clerk of the court Mr. Cortes, which he, the municipal president, wished to be complied with. He also told me that he wished that order to be obeyed, but that he was powerless to force obedience to it. I then suggested to him that, as official head of the town, he had the police under his orders, and he replied that the police would not obey him. When I inquired of the chief of police about this, he told me that he was willing to obey the municipal president. Then the municipal president told me that he was going to suggest our proposal to the new inspectors, to which I said that I had no objection. He went to the polling place with four men, three of whom were the inspectors and the fourth the poll clerk. Fearing that there might be a disturbance, I went up the stairs leading to the polling place and remained at the landing of the stairway. When I arrived, there was a discussion between the persons who had recently come and those already there.

" 'Q. Who were those who were already there? A. Mendoza and his companions. This discussion or conversation continued, and after a little while I heard a noise as if something fell to the floor, then I heard men from both sides call out, "Police, police." I entered and told them that that was enough, and that they might proceed with order. I also informed them that I would arrest and put in jail anyone who disturb order there. Both parties asked protection of me. Mendoza and his companions requested me to protect them, and the last appointed inspectors asked me to expel the first appointed inspectors, and vice versa. I told them that I had nothing to do with the proceedings of the inspectors, and that I was not there to put anyone in as inspector or to remove anyone and put in somebody else in his place. Then Mendoza asked me to put out the new inspectors so that he and those who had been appointed with him might continue with the elections, as they were the true inspectors. I told them again that I had nothing to do with the elections. The new inspectors told me there was an order by the court to the effect that they were the true inspectors. Mendoza replied: "I have not been notified of anything. I know nothing of it. The fact is that I have been appointed inspector and have signed for the papers and documents, for which I am responsible." While Mendoza was saying that he knew nothing of that order, the municipal president showed it, saying: Here it is.

"The above quoted testimony is corroborated not only by that of other witnesses presented by the protestant but also and chiefly by the very testimony given by Esteban Mendoza, Balbino Frondoso, and Doroteo Totañes.

"There is no justification, nor can there be any, for the conduct observed by these men, Esteban Mendoza and his companions, after they had been duly requested by the municipal president and by the new election inspectors and the new poll clerk to leave the polling place and deliver to said inspectors and poll clerk the papers, documents, and other paraphernalia pertaining to the elections, and that conduct shows nothing but a disregard of the law, contempt to the order issued by this court and to the authority of the municipal president, and actual resistance on their part in order that they might not give up their position as election inspectors and poll clerk.

"But, aside from all this, the elections held in the single precinct of Lagonoy under the direction of those men, Mendoza and his companions, were actually conducted from between 9 and 10 o'clock of the night of June 6th until 5 o'clock in the afternoon of the following day, June 7th, 1916.

"Pursuant to section 543 of the Administrative Code, at all the elections held under the provisions of this chapter the polls shall be open from seven o'clock in the morning until six in the afternoon; and, according to section 494 of the same Code, the day set for the holding of the general election is the first Tuesday in June of every leap year.

"The elections at Lagonoy, presided over by Esteban Mendoza and his companions, are to be considered as having been held on Wednesday, the 7th of June, inasmuch as the principal part of the voting was done on that day, instead of on Tuesday, June 6th, or, as the protestee avers, the polls were opened at 7 o'clock of the morning of the 7th. In either case, it necessarily follows that the elections are null and void.

"This conclusion is clearly drawn from the language of the provision contained in section 495 of the Administrative Code, pursuant to which an election may be post-poned by the Governor-General with the consent of the Upper House of the Philippine Legislature, for such time as is deemed necessary, only when there is rebellion, sedition, brigandage, epidemic, public calamity or analogous cause which makes the holding of the election impossible or impracticable.

"This means that, outside of the cases provided for and without an express order by the Governor-General, with the consent of the Senate, in no other case and by no other authority can the holding of an election be postponed.

"What occurred in Lagonoy on June 6, 1916, is far from being one of the reasons specified as a lawful cause for postponement, and Esteban Mendoza and his companions had absolutely no authority to provide that the election should be held at a different hour and on a different day from those fixed by law.

"If there should still be any doubt on this point, it would be dissipated merely by a citation of the following authorities, among others, and of the following legal doctrine:

" 'The time for the holding of an election is of the substance of it; and an election held at a time not fixed by law itself or by a person authorized to do so, must be declared to be null and void.' (15 Cyc, 341.)

" 'Those provisions of law which fix the time or place of holding elections are to be construed as mandatory, * * * . As to the time of the election, of course the day cannot be changed even by the consent of all the voters, and the general rule is, that if the polls are not kept open for as many hours as the law directs, and if legal voters in numbers sufficient to change the result, or to render it doubtful,' are thereby deprived of the privilege of voting, the election must be set aside. A few minutes' delay in opening the polls will make no difference, but several hours' delay may render the election void, and certainly will have that effect if the party complaining of it can show that he has been injured thereby.' (McCrary, p. 125; Villamor, par. 617.)

"In the instant case it is not a question of a few hours' delay, but of there having been legal voters in sufficient number (more than 80) to have changed the result or rendered it doubtful, who could not vote or failed to do so.

"According to the motion, the protestee had in this municipality 91 votes, Andres Garchitorea, the protestant, 30 and certainly the 80 or more voters who could not or did not vote would have, had they voted for Andres Garchitorea, produced a majority for him, and not for the protestee, or at least their number was such as to render the protestee's triumph doubtful in the municipality of Lagonoy, a fact which of course has a great bearing on the total recount.

"Having arrived at this conclusion, the court believes that it is unnecessary to discuss the various other questions concerned in this matter, such as those that pertain to the irregularities of the election.

"Therefore, as the elections held in Lagonoy were null and void, which elections were held, presided over by Esteban Mendoza and his companions, for the purpose of filling among other offices, that of provincial governor of the province of Ambos Camarines, for and during the term beginning on October 16, 1916, the court decides that the election returns of the single precinct of Lagonoy should be, as they hereby are, rejected.

"Municipality of Minalabac.

"The protestant alleges in his motion:

" '(a) That in this precinct 34 electors duly inscribed in the registration list of the same failed to vote on the day of the election, not through any fault of theirs nor waiver of their rights, but through the want of official ballots, for, at about 2 o'clock in the afternoon of said day, while said 34 electors were in front of the polling place ready to vote, the board of inspectors of this precinct informed them that the supply of official ballots transmitted to it was

exhausted, wherefore it was obliged to suspend the voting with a view to resuming the same upon the arrival of more official ballots which had been requisitioned from the proper authorities. Said 34 electors awaited in vain the arrival of those requisitioned ballots, and until the next day, when, due to their failure to arrive, the canvass was proceeded with. Thus were said electors deprived of the exercise of the right of suffrage.'

"At the hearing, the protestee stated that he would offer no objection to an annulment of the election in the municipality, as the facts alleged in the motion were true. The record bears no evidence of the number of electors registered in Minalabac, but, having in sight the certificate of the canvass made by the provincial board (which accompanies the motion as Exhibit A, and according to which the votes obtained by each candidate for the office of governor are: Manuel Crescini none; Andres Garchitorena 10; Engracio B. Imperial 8; and Francisco Botor 63), it is seen that 34 duly registered electors is a considerable number for the precinct of Minalabac, and the fact of their being unable to vote, despite their desire to do so, has undoubtedly affected the result of the elections in this municipality.

"It is therefore held that the elections conducted in the single election precinct of Minalabac are null and void, and the votes cast at said elections for the protestant and the protestee should not be counted in the general canvass of all the votes cast in the province.

"Municipality of Mambulao.

"In this municipality the question at issue merely concerns the revision of the 19 ballots rejected by the inspectors during the canvass and which are now claimed by the protestant. The protestee, in turn, claims two ballots of those rejected by the inspectors and challenges six of those counted as for the protestant. After an examination of these ballots the court decides:

"That the following ballots should be and are hereby admitted: No. 2, 'Andres Gachitorena;' No. 3, same as No. 2; No. 4, 'Andres Gathetorina;' No. 6, 'Andes Garcitorina;' No. 7, 'Andres Garchotorrena;' No. 2 [12 ?], 'Andres Gatsiturina;' No. 13, 'Andres Garchetorina;' No. 14, 'Andres Gatchitorina;' No. 15, 'Andres Garchtorena;' No. 16, 'Andres Garchitorina;' and No. 17, 'Andres Garchiturina.' In all, eleven votes.

"That the rest of the ballots claimed, wherein appears the name 'Aandreso,' or 'Andreson,' or 'Andrisson,' or even that of 'Andres Garchitorena' in the space allotted for the name of the candidate for representative, should be and are hereby rejected.

"That, of the six (6) ballots challenged by the protestee, four (4) are admitted and counted as for Andres Garchitorena. The remaining two (2) are rejected.

"That the two ballots rejected by the inspectors during the canvass and claimed by the protestee as legal votes cast for him are admitted.

"Municipality of Nabua.

"The protest made with respect to this municipality alleges that:

"The liberality of the procedure had in the election precincts of Bato and Iriga, whereby the votes of more than 300 electors were admitted after the hours for the closing of the polls (6 p. m. on the day of the elections), was not observed by the election board of the precinct of Nabua, for two of the inspectors of the latter precinct, whose names are Juan Vega and Juan Goleta, partisans of the protestee, decided, in face of the opposition and dissidence of the other inspector Luis Ocampo, a partisan of the protestant, not to have the polls remain open after 6 p. m., for which reason more than 80 electors registered in this precinct failed to vote therein, notwithstanding that they were all present and in front of the polling place at that hour ready to vote. These tactics on the part of the

majority of the board of inspectors of Nabua, very different from those followed by the boards of inspectors of Bato and Iriga, were adopted in view of the fact that not all the election inspectors of Nabua were partisans of the protestant, and besides because the protestee knew that a great majority of the electors of Nabua were partisans of the protestant.'

"The protest was practically abandoned, inasmuch as the parties did not produce any proof in support of their respective allegations, the protestant, in his motion, and the protestee, in his answer. On the other hand, considering as true the facts alleged, it is clearly seen that the procedure had was not contrary to law, and that there is no evidence that the elections held in the single precinct of Nabua were in any manner vitiated.

"Municipality of Sagnay.

"The protest as regards this municipality is founded on the following facts alleged in the motion:

" '(a) The polling station of this precinct was in the upper story of a house. Its two booths were separated one from the other only by a screen; they had no walls on two of their sides, and no doors, so that their inside could be seen from the outside. Thus, the voters while preparing their ballots in these booths were in everybody's view. This polling place was not provided with the guard rail required by law for the due separation of the public from the ballot boxes and the booths.

" '(b) Notwithstanding the fact that 195 electors were registered in this precinct, only two booths, as aforesaid, were constructed and provided, and 188 electors prepared their ballots and voted in these only two booths.

" '(c) The election inspectors of this precinct, Constancio Cater, Roque Caneo, and Jose Tria, denied the public and the electors access to the polls and to any place within a radius of 30 meters therefrom during the voting. The electors who in a crowd were awaiting their turn to vote, stationed at a distance of 30 meters away, were called to the polls one by one by name, not in the alphabetical order of their names but capriciously as best suited the inspectors themselves.

" '(d) All and every one of said inspectors were and are steadfast partisans of the protestee, and during the voting worked so much to favor him that they did not restrict their efforts to mere electioneering, as they did electioneer, within the polling place and the voting booths, but also availed themselves of threats and force to compel the electors, while these were preparing their ballots, to vote for the protestee.

" '(e) When the electors iwho could read and write went to the booths to vote, said inspectors followed them in, in order to see and witness the preparation of these electors' ballots, and there in the booths did electioneering, and used threats and force upon the electors to induce them to vote for the protestee. The names of such electors so unduly and unlawfully influenced, as alleged in this paragraph and in the next preceding one, are: Filomeno Austria, Graciano Jallores, and Potenciano Cortes, and there are still others whose names are at this moment unknown to the protestant.

" '(f) Said inspectors prepared the ballots of the illiterate voters without inquiring of them or consulting them as to whom they desired to vote for, and after the ballots had been prepared the inspectors themselves, folded them and, without showing their contents to the respective electors for whom they had been written, deposited them in the ballot box, ordering the latter immediately to leave the polling place.

" '(g) The inspectors themselves prepared the ballots of the illiterate voters and of those who were physically unable to write, without previously requiring of them and having them take the oath prescribed by law.

" '(h) During the canvass of the ballots, the watchers there present noticed that a large majority of the ballots read had been prepared by only three or four different persons, as shown by their handwriting; that many electors who

could read and write were unable to identify their own ballots, though they were attentive to said canvass; and that, on the recount of the ballots, 190 of them duly prepared were found, notwithstanding that only 188 electors voted. Such facts cause the protestant to believe, and he so alleges, that many ballots were substituted for others prepared beforehand.

" '(i) Before the opening of the polls, and on the same 6th day of June, the municipal president Hoque Gacer, and the municipal treasurer Zo. Fortuno, of said municipality of Sagnay, bought a new trunk to serve as a ballot box and delivered it to the inspectors. Upon delivery it was intact in all respects, as was also its lock, and it was in fact used as a ballot box. After the canvass of the votes, the lock of this trunk was in a broken condition, could not be opened or closed, and said inspectors deposited the used ballots in another ballot box, an old one.'

"At the time of the presentation of the motion, the court, in conformity with law, ordered that the election registration lists and the ballots used in the election be immediately produced before him and examined, and appointed the commissioners necessary for this purpose.

"The ballot boxes of Sagnay containing the ballots and all of the other documents used in the contested elections were brought to the court and placed at the disposal of the appointed commissioners for examination. The result of this examination, as recorded in the minutes or report of the commission, is given herein below in detail:

" 'PRECINCT OF SAGNAY.

" 'It is hereby certified that the ballot boxes of said precinct were completely covered with thick paper on all their sides except one, which paper apparently was so placed for the purpose of transmitting the boxes to the court, for no seal or signature of any inspector appears thereon. When the inspectors were called before the commission to identify the ballot boxes, they stated that they could not do so until said paper covering was removed, and that they did not put on this covering.

" 'The paper covering the sides of the ballot boxes was removed.

" 'When the inspectors were again called, they said that the blank paper that closed the ballot boxes was not in the same condition as that in which same had been left by them, it appearing that the boxes were opened and that afterwards a strip of white paper was put on over the union of the cover and the box proper.

" 'The commissioners decided to exhibit the ballot boxes to the court and this was immediately done * * *.

" ' * * * It was discovered that one of these ballot boxes was entirely empty. In the other ballot box the following documents were found: Two packages of the ballots tied together with dry grass and several loose ballots. An examination of the latter in the presence of the parties showed this result:

Loose ballots containing two names only, for the offices of municipal president and governor.....

56

Loose ballots marked on their reverse side as extra ballots.....

2

Loose ballot marked on their reverse side as ballots spoiled by the inspectors.....

1

Total.....

59

" ' "Then the package tied with dry grass, the covering of which is marked with the letter A, was opened and was found to contain 51 ballots.

" ' "Afterwards the other package, also tied with dry grass and the covering of which is marked with the letter B, was opened and was found to contain 87 ballots.

" ' "In recapitulation. In this precinct there were found:

Loose ballots.....	
59	
Ballots in the package A.....	
51	
Ballots in the package B.....	
87	
Total.....	
197	

" ' "According to the information given by the provincial treasurer, 290 official blank ballots were transmitted to the municipal treasurer of Sagnay. There is therefore a shortage of 93 ballots.

" ' "The commission then proceeded to inspect the election returns furnished by the provincial fiscal. Said returns show the 188 electors voted; that the number of ballots found in the ballot box was 190; that there were two ballots marked 'Extra ballot;' that one ballot was rejected as having been marked; and that there were 42 ballots listed as marked but not as rejected.

" ' "According to said returns, the result of the voting for the office of governor is as follows:

Manuel Crescini.....	
173	
Andres Garchitorena	
11	
Severo Cea.....	
1	
Sulpicio Cea.....	
1	
Honesto Obias.....	
1	
Total.....	
187	

" ' "The parties then proceeded to separate their respective ballots with the following result:

Ballots for Manuel Crescini, not challenged.....

125

Ballots for Manuel Crescini, challenged.....

5

Ballots for Andres Garchitorena, not challenged.....

6

Ballots for Andres Garchitorena, challenged.....

2

Total.....

138

" " "Two books used by the inspectors and containing the list of registered voters were also found inside the ballot box. * * *"

"So that, as has been seen, the ballot boxes of Sangay were violated. Forty-nine of the used ballots disappeared, and no account was rendered of 93 blank ballots. The fact of the violation was not discussed by the parties, only they do not agree as to the place where the violation was committed, nor as to what person or persons perpetrated it.

"On the other hand, the election returns of Sagnay are not only assailed as false, but they are also by themselves proof of their falsity and to the extent that the election inspectors of said municipality are at present under prosecution for the falsification of these returns (Criminal Case No. 2721 of this court). Said returns clearly show the alterations made in them by erasing the sums of the votes originally written as the result of the canvass, and recording in their place a lesser number, as regards one candidate, that is to say, by reducing his votes, and a larger number, as regards the rival candidate, thus making it appear that the latter received more votes.

"It is true that this manifest falsification now under consideration has reference to another office different from that of governor, but at all event it shows the unquestionable fact of the very falsification of the election returns, which taint deprives them of their probatory value, renders them unworthy of credence, and destroys all the confidence that should be inspired by the official acts of the election inspectors of Sagnay.

"In connection with this matter, due account should be taken of the following legal doctrines and authorities:

" * * * Where it has been established that a fair and honest election was held, none but the gravest irregularities will avoid the election: such as might be said to raise a presumption of fraud. But where the election board has committed irregularities fraudulently, they need not be serious or numerous. The position and duties of an election board is one where much must be left to the honesty and integrity of its members. Many of its acts must be accepted as true even though false, for the reason that no adequate proof can be secured of their falsity. The law has, however, outlined its duties with some care; and fraudulent practices kept within bounds can not, as a rule, assume large proportions. Nor can fraud be practiced in many directions without asserting itself at some point or other. So that from the very difficulty of following all the movements of the board, a grave suspicion immediately arises as to its honesty of purpose when once a fraud chargeable to it has been discovered. The thought immediately suggests itself, if fraud was committed here, it is probable that it was also committed there, where it can not be proved except by the confession of the inspectors themselves. The general rule is that a witness found

to be a willful perjurer on a material point is thereby thoroughly discredited. The same rule should apply to the record made by an election board. Said record is prima facie evidence of the results of the election, guaranteed by the familiar presumption that public officials have done their duty. But once fraud is proved upon an important point, the party claiming under it must present his proofs. Such is the rule, more strongly stated, however, by McCrary on Elections section 541 et seq.:

" 'The safe rule, probably, is that where an election board is found to have willfully and deliberately committed a fraud, even though it affect a number of votes too small to change the result, it is sufficient to destroy all confidence in its official acts, and to put the party claiming anything under the election conducted by it to the proof of his votes by evidence other than the return.' (See *Londoner vs. People*, 15 Colo., 557; and *Gardiner vs. Romulo*, 26 Phil. Rep., 521.)

" 'An election return is prima facie evidence of everything the law requires it to contain, until it is shown to be fraudulent and false and then it falls to the ground; for although there is great danger of disfranchising innocent legal voters a return which is shown to be utterly untrustworthy must be rejected as evidence of the result. Although there may have been some fraudulent voting at an election, yet where the officers who conducted it did not participate in the fraud, but endeavored to hold the election according to law, their returns are prima facie evidence of all they contain, subject, however, to be corrected by proof; but where their returns are successfully impeached for fraud in them they are unworthy of credit and are evidence of nothing except that a poll was opened. But while the exercise of the power to discard the entire return of an election precinct is a public necessity and is sustained by abundant authority, it should be exercised with great caution and only as the last resort.' (15 Cyc, 418.)

" 'Although the general rule is that the ballots themselves are the best evidence of the number of votes cast, and for whom cast, yet this rule can have no application to a case where the ballots have been tampered with after they were deposited in the ballot box. In such a case the value of the ballots as evidence is almost totally destroyed, * *

*.' (McCrary, par. 474; and Villamor, par. 1054.)

" 'It was proved that the ballot boxes of the municipality of Alava were violated, and the effect of that violation is to annul all the ballots used and cast in the municipal election of said town, for, by reason of the facts here described these ballots have lost all their probatory value.' (*Generao vs. Dispo*, of the Court of First Instance of Pangasinan; and Villamor, par. 1062.)

"In this precinct of Sagnay the returns were falsified, the ballot boxes were violated, the ballots were visibly altered and 49 used ballots which should have been counted disappeared, and in place thereof appear 56 others which bear evidence of having been maliciously written by partisans of the protestee for the purpose of putting the protestant in a bad light, and, according to the report made by the commission, no account was rendered of the large number of missing ballots, amounting to ninety-three (93).

"If to all that we add some of the other irregularities alleged in the motion have also been proven, such as the inadequate condition of the polling place, the voting booths and the insufficient number of the latter, the electioneering and threats made within these places, and the unlawful taking away of some votes cast for Andres Garchitorena—for several witnesses, whose number is greater than that shown in the returns as that of those who voted for Garchitorena testified that they did vote for this candidate—it will be seen that the case of Sagnay is one of those which justify recourse to the last resort mentioned in the doctrine above quoted.

"Therefore, the elections held in the single precinct of Sagnay, on the 6th day of June, 1916, are declared null and void, and the returns thereof shall not be taken into account for the purposes of the general canvass of all the votes cast in the province.

"In recapitulation and as a result of the findings hereinabove: The returns rendered by five of the eleven (11) municipalities affected by the protest are rejected, that is, the elections had in these five municipalities are annulled. These municipalities and their respective annulled or rejected votes are the following:

(As per the provincial returns) —

Votes.

Bato.....

331

Iriga, 3d precinct.....

962

Lagonoy.....

127

Minalabac

81

Sagnay.....

184

Total.....

1,685

"According to the provincial returns which accompany the motion, the total number of votes cast in the whole province for the office of provincial governor is 8,312, distributed among the following candidates voted for: Manuel Crescini 3,198; Andres Garchitorena 2,468; Engracio B. Imperial 1,954; and Francisco Botor 692. According to this, the protestee Manuel Crescini has over the protestant Andres Garchitorena a majority of 730 votes.

"Now, coming to the general canvass of the votes cast in the entire province, or the recount of the votes in accordance with the pronouncements made in this decision, the result attained is that given in the following table, excluding the last candidate Francisco Botor:

Crescini.

Garchitorena.

Imperial.

Annulled.

1. Baao

126

5

7

2. Basud

38

42

5

3. Bato.....

0

0

0

331

4. Buhi.....

186

52

17

84

5. Bula.....

13

44

30

6. Cabusao

15

54

37

7. Calabanga

45

62

78

108

8. Camaligan

0

74

79

9. Canaman

0

34

60

10. Capalonga

6

11

48

11. Caramoan

21

181

71

12. Daet.....

182

198

40

13. Gainza.....

6

42

11

14. Goa

65

145

6

15. Indan.....

86

6

37

16. Iriga

0

0

0

962

17. Labo.....

94

12

134

18. Lagonoy

0

0

0

127

19. Libmanan

144

71

92

20. Lupi.....

2

64

5

21. Magarao

10

147

57

22. Mambulao

2

82

23

23. Milaor

61

26

3

24. Minalabac

110

110

0

81

25. Nabua

110

164

53

26. Naga

38

185

348

27. Pamplona

5

40

13

28. Paracale

5

52

60

29. Pasacao

26

24

14

30. Pili.....

3

2

176

31. Ragay.....

11

38

87

32. Sagnay

0

0

0

184

33. San Fernando.....

0

40

56

34. San Jose.....

1

187

12

35. San Vicente.....

36

2

23

36. Sipocot

2

29

105

37. Siruma

0

7

44

38. Talisay

11

44

43

39. Tigaon

79

148

15

40. Tinambac.....

__49

__75

__20

Total

1,478

2,409

1,909

1,877

"From the preceding canvass or recount of the votes, it appears that the protestant Andres Garchitorena obtained a majority of the legal votes cast in the forty municipalities of the province of Ambos Camarines for the office of provincial governor, and a plurality over the protestee of nine hundred and thirty-one votes.

"It also appears therefrom that the votes cast in the five municipalities whose elections have been declared null and void or have been rejected are equivalent to 20 per cent of the total number of those cast in the entire province.

"In view of this fact, the question arises as to whether it would be proper to order the provincial board to correct the canvass in such a way that it shall declare the protestant elected by awarding him a plurality of 931 votes, or whether on the contrary it should be certified that the election is voided as regards the office of provincial governor of the province of Ambos Camarines.

"In the case of *Gardiner vs. Romulo*, supra, the Supreme Court held:

"The returns from a municipality which comprised twenty-five per cent of the electors of the province were rejected in view of the serious irregularities committed in the manner of holding the election, and because of frauds and intimidation played upon the electors, which gave the protestant a small majority. Seventy-five per cent of the electors and eleven out of the twelve municipalities of the province participated in the obtainment of this majority. Held: That it is not sufficient to justify the holding of a new election in the whole province, in view of the fact that the winning candidate by the prima facie returns and his partisans were largely responsible for the conditions that prevailed in said municipality on the day of the election.'

"In the present case, although it is held that thirty-five of the forty municipalities of the province participated in the obtainment of the majority, that is, a proportion less than that resulting from the relation between eleven and twelve, it also appears that not only seventy-five but eighty per cent of the electors of the province contributed to

the obtainment of said majority. In this respect then it is held that the fact of the rejection of the returns from five municipalities, which comprise 20 per cent of the electors of the province, is not a sufficient reason to justify a new election.

"It is said however in the aforecited decision that in view of the fact that the winning candidates by the prima facie returns and his partisans were largely responsible for the conditions that prevailed in said municipality on the day of the election," (p. 85.) the intention being undoubtedly to give it to be understood that, were it not for that circumstance, it would have been held that a new election was justifiable.

"This brings us to a discussion as to whether or not the protestee or his declared partisans were responsible for the fatal irregularities and illegalities which served as a ground of reason for the court's rejection of the returns from entire precincts.

"Aside from the irregularities relative to the installation of the three polling places of Iriga, and to the construction of the voting booths and ballot boxes used therein, for which perhaps the protestee may be held responsible by reason of his official character as municipal president of said municipality of Iriga (although there is evidence that the vice-president acted at the time), there is nothing in the record to show conclusively that Manuel Crescini participated directly or indirectly in the illegalities and frauds committed by the respective election inspectors, nor is it evidence that such inspectors (excepting perhaps Jose Crescini, one of the inspectors of Buhi) were his, the protestee's declared partisans. This was alleged in the motion and some evidence bearing on this matter was produced but the court does not deem sufficient the more or less reasonable conjectures or deductions of the witnesses.

"At all events, and although it be said besides, as it should be said, that, after all, legal votes were cast for Manuel Crescini in Iriga and in the other municipalities, for undoubtedly there were many electors who honestly believed that he was the best candidate for the office of provincial governor, yet it is also unquestionable that in a certain way he is responsible for the conditions which prevailed in his municipality on the day of the elections and so much the more that the polling places were located near his residence and were consequently within his close watch.

"This being the case, and it being a well settled general rule that an election ought not to be annulled except as a last resort, and, further, it being easily possible to separate, as was done in the recount, the vitiated from the legal votes, among all the votes cast in the entire province, the court can do nothing but put into effect the will of the majority, freely, honestly and legally expressed.

"For all the foregoing reasons the court decides that he should order, as he hereby does, the provincial board of canvassers, as soon as it shall receive a certified copy of this decision, which immediately upon becoming final, should be transmitted to it by the clerk of this court, to proceed to correct, in conformity with the pronouncements made in this decision, the returns of the elections held in the forty municipalities of this province, and to declare the protestant Andres Garchitorena legally elected to the office of provincial governor of Ambos Camarines for the rest of the present term of office which began on October 16, 1916. The protestee is ordered to pay the costs of this action, excepting those that pertain to the municipalities of Buhi and Lagonoy, as they have already been adjusted in the respective municipal protests.

"The clerk of the court is ordered to send a certified copy of this decision to the Executive Secretary, for such purposes as the law requires, and further to refer said decision to the Attorney-General so that the latter may take such measures against the election inspectors for their violation or violations of law, as may be warranted by the pronouncements herein or by his investigation.

"So ordered.

"Given at Naga, Ambos Camarines, on March 27, 1917.

Maximino Mina,
Auxiliary Judge, 4th Group.

"EXHIBIT B.

"[United States of America, Philippine Islands. In the Court of First Instance of Ambos Camarines, fifteenth Judicial District. Election Protest.]

'Andres Garchitorena, petitioner, versus Manuel Crescini, respondent.

"DECISION.

"On June 21, 1916, the provincial board of Ambos Camarines acting as a provincial board of canvassers certified that the result of the elections held in said province on the 6th day of June, 1916, to fill the office of provincial governor, was the following: Manuel Crescini 3,198 votes: Andres Garchitorena 2,468; Engracio B. Imperial 1,954; and Francisco Botor 692. In consequence thereof, it proclaimed as governor-elect of Ambos Camarines the triumphant candidate Manuel Crescini. Against said result of the elections, one of the defeated candidates, Andres Garchitorena, presented in due time before this court a motion of protest which having passed through all the process required by law, is now submitted to the consideration of this court in order that, by virtue of the instructions of the Supreme Court, this lower court render judgment after an examination of the evidence so far adduced and which is made a part of the record in accordance with the law and the facts.

"Municipality of Capalonga.

"This is one of the municipalities affected by the protest in which it is averred that in this precinct the protestant obtained 11 votes for provincial governor and notwithstanding the provincial board of this province, in making the general canvass, awarded him only one vote according to the tabulation made by said board of the result of the election by precincts.

"There was no need of taking evidence in order to explain the facts alleged in the protest. At the hearing of the case the protestee admitted that in fact the provincial board of canvassers incurred an error in recording only one vote instead of eleven for the protestant.

Therefore the court decides that, with reference to the elections held in the municipality of Capalonga, he should award, as he hereby does, 11 votes to Andres Garchitorena and 6 votes to Manuel Crescini.

"Municipality of Minalabac.

"This is another of the municipalities affected by the protest in which it is set forth that 'in this precinct 34 electors duly inscribed in the election register of the municipality failed to vote on the day of the election, not through any fault of theirs, nor waiver of their rights, but because of the want of official ballots, for, at about 2 o'clock in the afternoon of said day, when said 34 electors were in front of the polling place ready to vote, the board of inspectors of this precinct informed them that the supply of official ballots transmitted to it was exhausted, wherefore it was obliged to suspend the voting with a view to resuming the same upon the arrival of more official ballots which had been requisitioned from the proper authorities. Said 34 electors awaited in vain the arrival of those requisitioned ballots until the next day when, due to their failure to arrive, the canvass was proceeded with.

Thus were said electors deprived of the exercise of the right of suffrage.'

"Neither was there need of taking any evidence with respect to these allegations of the protest because at the hearing of the case the protestee consented to an annulment of the elections held in this municipality of Minalabac, on the ground that the facts alleged in the motion were true.

"The record does not disclose the number of electors registered in Minalabac; but according to the canvass made by the provincial board, the votes obtained by each candidate for the office of governor are as follows: Manuel Crescini none; Andres Garchitorena 10; Engracio B. Imperial 8; and Francisco Botor 63. So that the total number of votes deposited in the ballot boxes was 81. Comparing this number of votes with the number of the electors, 34, who were unable to vote through no fault of their own and in spite of their vehement desire to do so, I find that more than 40% of the registered electors were unjustly deprived of their right to vote, and this of course affects the result of the election.

"Therefore, the court declares and decides that the election held in the municipality of Minalabac should be, as it is hereby, annulled.

"Municipality of Mambulao.

"This is another of the municipalities affected by the protest which, with respect to Mambulao, just as in regard to Capalonga, is solely directed against errors committed by the board of inspectors in the canvass of the votes. The question here raised solely concerns the revision of the 19 ballots rejected by the board of inspectors during the canvass and which are now claimed by the protestant. The protestee in turn claims two ballots of those rejected by the inspectors and challenges 6 ballots of those counted for the protestant.

"Upon an examination of said ballots, the court decides that he should admit, and does admit, the following ballots: No. 2, 'Andres Gachitorena;' No. 3, same as No. 2; No. 4, 'Andres Gathetorina;' No. 6, 'Andes Garcitorina;' No. 7, 'Andres Garchotorrena;' No. 12, 'Andres Gatsiturina;' No. 13, 'Andres Garchetorina;' No. 14, 'Andres Gatcitorina;' No. 15, 'Andres Garchtorena;' No. 16, 'Andres Garchitorina;' and No. 17, 'Andres Garchiturina.' That makes 11 votes.

"The court also decides that he should reject, as he hereby does, the rest of the ballots claimed whereon appear the names of 'Aandreso' or 'Andreson' or 'Andrisson' or even 'Andres Garchtoreno,' where the latter was written on the line intended for the name of a candidate for the office of representative.

"Of the 6 ballots challenged by the protestee, 4 are admitted and counted for Andres Garchitorena, and 2 are rejected.

"The 2 ballots rejected by the inspectors during the canvass and claimed by the protestee as legal votes cast for him are admitted.

"So that the canvass of the votes cast in Mambulao instead of bearing record of no votes for Manuel Crescini and 73 votes for Andres Garchitorena, should be as follows: Manuel Crescini, 2 votes; and Andres Garchitorena, 82.

"Municipality of Nabua.

"The following allegations are made in the protest against the election held in this municipality: 'The liberality of the procedure had in the election precincts of Bato and Iriga, whereby the votes of more than 300 electors were admitted after the hour for the closing of the polls (6 p. m. on the day of the elections), was not observed by the election board of the precinct of Nabua, for two of the inspectors of the latter precinct, whose names are Juan Vega and Juan Goleta, partisans of the protestee, decided, in face of the opposition and dissidence of the other inspector Luis Ocampo, a partisan of the protestant, not to have the polls remain open after 6 p. m., for which

reason more than 80 electors registered in this precinct failed to vote therein, notwithstanding that they were all present and in front of the polling place at that hour ready to vote. These tactics on the part of the majority of the board of inspectors of Nabua, very different from those followed by the board of inspectors of Bato and Iriga, were adopted in view of the fact that not all the election inspectors of Nabua were partisans of the protestant, and besides because the protestee knew that a great majority of the electors of Nabua were partisans of the protestant.'

"But it appears that this part of the protest was abandoned, as the parties produced no evidence whatever in support of their respective allegations. On the other hand, the court considers that if the facts alleged in the protest are true there is nothing in them that can in any manner void the election held in the single precinct of Nabua. The fact of some 80 registered electors having been unable to vote cannot annul the result of the election in which Crescini obtained 110 votes, and Garchitorena 164. The number of those who were unable to vote does not even reach 30 per cent of the total number of electors. The canvass made by the election board should be sustained.

"Municipality of Lagonoy.

"After a perusal of the pleadings of both parties and a careful examination of the evidence adduced by them, as well in behalf of as against the protest, I am of the opinion that the elections in this municipality for the office of governor should be annulled for the following reasons derived from the following facts, all proven at the trial, to wit:

"The municipal council of Lagonoy met several times in order to proceed to the appointment of election inspectors and a poll clerk, and did appoint, prior to May 31, 1916, Esteban Mendoza, Balbino Frondoso, and Doroteo Totafies, as inspectors, and Quintin Bona, as poll clerk.

"On said date, this court, deciding upon a petition for a writ of mandamus in which Eulogio Proa was petitioner and the municipal council of Lagonoy and others were respondents (Civil case No. 2020), declared to be null and void and of no value the appointment of the first election inspectors and poll clerk and ordered the issuance of a peremptory mandamus addressed to the municipal council of Lagonoy directing that, within 48 hours after it be notified of that mandamus, it annul said appointment and proceed to appoint other election inspectors, two of whom should be such persons as the petitioner Proa might propose. In that civil action of mandamus, the respondents were jointly the municipal council of Lagonoy, the said inspectors Mendoza, Frondoso, and Totafies, and the poll clerk Bona.

"As the case was of an urgent nature and there was no time to be lost, the dispositive part of the decision was telegraphed by the clerk of the court to the municipal council of Lagonoy through the municipal president of San Jose. The council was notified and after due summons met in special session on June 6, 1916, at which session it proceeded to comply with the order of the court, and Gil Forteza, Gaudencio Presentacion, and Manuel Ledesma were appointed as election inspectors, and Ananias Obias, as poll clerk, as substitutes for the others whose appointment had been annulled by the court. What happened afterwards, that is, on the day of the elections, is set out in the minutes made by the election inspectors and poll clerk last appointed, petitioner's Exhibit J, the tenor of which is literally, as follows:

" In the single polling place of the municipality of Lagonoy, province of Ambos Camarines, P. I., today, the sixth of June, 1916, at five o'clock in the afternoon, we, the undersigned election inspectors, hereby solemnly set forth that at 6.30 a. m. of this date we went to the polling place for the purpose of fulfilling the duties and obligations imposed upon us by law, as election inspectors legally appointed by the municipal council at its session held at 9 p. m. of the 5th instant, but that we were unable to enter the polling place for the reason that we were stopped and expelled beyond a distance of thirty meters therefrom by Constabulary guards and the whole municipal police corps, who would not admit us to the polling place and alleged that in prohibiting our entrance thereto they were

obeying orders given them by the municipal president and presiding officer of the so-styled election board which, according to said guards, was lawfully assembled. Therefore, we, the undersigned inspectors, for the purpose of avoiding our being held in any way liable under the law, had to seek the protection of the municipal president, and, after he had conferred with the constabulary lieutenant, the fictitious inspectors permitted us, the undersigned, to enter said polling place, whereupon we took the required oath and requested of said municipal president that said intrusive inspectors be expelled and that he obliged them to deliver to us all the documents, minutes, ballots, and other official papers concerning the election, but said intrusive inspectors refused to deliver the same and likewise their possession of the polling place, and notwithstanding that the municipal president ordered the policemen to eject them from the polling place, these officers refused to comply with the municipal president's orders, which refusal was countenanced and approved by the chief of police who also refused to obey these orders.

" 'In view of these facts, we, the undersigned legally appointed inspectors, had to remain in the polling place and officially confer with the municipal president to the end that the intrusive inspectors Esteban Mendoza, Doroteo Totanes, Balbino Frondoso, and the poll clerk Quintin Bona, might permit compliance and themselves comply with the orders given by said municipal president, so as not to waste time in detriment to the holding of the election. But said intruders were obstinate and refused to permit the election to be held and by such obstructive acts prevented the fulfillment of the provisions of the Election Law until the hour of 5 p. m. arrived, at which hour the law directs that the polls shall be closed, and as a result of said obstruction the electors who had been waiting since morning were unable to vote until 5 p. m.

" 'Wherefore, we hereby make record of the foregoing facts in order to avoid the very serious liability which the law might exact of us.

" 'In witness whereof we, all the members of the election board, sign these presents which I, the poll clerk, certify.

" 'Signed: Gaudencio Presentacion.—Gil Forteza.—Manuel Ledesma.—Ananias Obias.—Election inspectors and poll clerk.—Ibo Alvarez.—Elector.—Pedro Demesa.—Elector.—Sofronio Bautista.—Elector.—Macario Ledesma. Elector.'

"The previous election board composed of the persons whose appointment was annulled by the court in disobedience to the decision rendered by the latter and to which no timely and proper exception was taken, and being in possession of the ballots, documents and other things necessary for the election, proceeded to hold the same, opening the polls between 9 and 10 o'clock on the night of June 6th and closing them at about 5 o'clock on the 7th, with a short recess for rest during the early morning of the latter date.

"The elections were held in the upper floor of the municipal building. The voting booths were open and the public was excluded from the 30 meter limit around the polling place. The inspectors did not keep a list of the illiterate electors nor take their oaths before they voted, and they did not permit the electors to deposit their ballots in the ballot boxes, but the chairman kept them in his pocket or held them in his hands until the electors went out by his order. After the election the ballot boxes were not delivered to the municipal secretary, but instead to the chief of police, the latter being a son of the chairman of the election board. Several days afterwards, for more or less justifiable reasons, the municipal secretary was dismissed from office, the person who was poll clerk was appointed in his stead, and the latter took possession of the ballot boxes.

"At these elections more than 80 duly qualified and registered electors were unable to vote or failed to do so either on account of the considerable delay, or more properly said, of the change in the time for the opening of the polls, or because they knew that the persons who were acting as election officers had been shorn of their office by an order of the court, or perhaps it was because of both of these reasons. At all events, the courts is of the opinion that if those eighty electors had voted the result of the elections would necessarily have been changed in favor of

the petitioner and against the respondent.

"The respondent tried to prove as an explanation of the delay or change in the hour of opening the polls that the herein petitioner Andres Garchitorena, accompanied by the justice of the peace Ibo Alvarez and fifty other men, assaulted the polling place, interfered with the election inspectors, and endeavored to snatch away from them the ballot boxes, ballots, and other papers pertaining to the board of inspectors, and were inside the polling place from the time the polls were opened until 7 o'clock in the evening, the hour when the inspectors above mentioned were free to hold the election. But the court holds this allegation to be totally false and wholly disproved by the testimony of lieutenant Sablan, a witness in this case who is exceptionally impartial and truthful.

"The court holds that all the facts above stated were proven and that they jointly or separately constitute not only a grave illegality but also a manifest disdain of all the provisions of the Election Law and at the same time a flagrant contempt against the authority of the court. These reasons necessarily impose the annulment of the elections held in this precinct and the court decides that the elections are null and void.

"Municipality of Sagnay.

"As certified by the provincial board of canvassers, the result of the provincial election in this municipality is that Manuel Crescini received 173 votes and Andres Garchitorena 11 only. But as this was one of the municipalities affected by the protest, the court ordered the ballot boxes to be brought to it for a revision of the ballots and the latter were turned over to the commissioners. Besides, oral evidence was produced in support of the other allegations contained in the petitioner's protest.

"After closely examining the pleading and evidence of both parties, the court finds that there are no means available whereby to determine the number of votes received by each candidate. Therefore the elections should be annulled on the ground that neither the ballots found in the ballot boxes nor the election returns prepared by the board of inspectors can serve as proof.

"The ballots cannot serve as proof because the ballot boxes were tampered with after the election. This fact was expressly admitted by both parties and if they had not admitted it, it would have been evidenced by the following proofs afforded by the report and the proceedings of the commissioners. The latter in their report stated as follows:

"PRECINCT OF SAGNAY.

" 'It is hereby certified that the ballot boxes of said precinct were completely covered with thick paper on all their sides except one, which paper apparently was so placed for the purpose of transmitting the boxes to the court, for no seal or signature of any inspector appears thereon. When the inspectors were called before the commission to identify the ballot boxes, they stated that they could not do so until said paper covering was removed, and that they did not put on this covering.

" 'The paper covering the sides of the ballot boxes was removed.

" 'When the inspectors were again called, they said that the blank paper that closed the ballot boxes was not in the same condition as that in which same had been left by them, it appearing that the boxes were opened and that afterwards a strip of white paper was put on over the union of the cover and the box proper.

" 'The commissioners decided to exhibit the ballot boxes to the court, and this was immediately done * * *.

" '* * * It was discovered that one of these ballot boxes was entirely empty. In the other ballot box the following documents were found: Two packages of ballots tied together with dry grass and several loose ballots. An

examination of the latter in the presence of the parties showed this result:

Loose ballots containing two names only, for the offices of municipal president and governor.....

56

Loose ballots marked on their reverse side as extraballots.....

2

Loose ballots marked on their reverse side as ballotspoiled by the inspectors.....

_1

Total.....

59

" 'Then the package tied with dry grass, the covering of which is marked with the letter A, was opened and was found to contain 51 ballots.

" 'Afterwards the other package, also tied with dry grass and the covering of which is marked with the letter B, was opened and was found to contain 87 ballots.

" 'In recapitulation: In this precinct there were found:

Loose ballots.....

59

Ballots in the package A.....

51

Ballots in the package B.....

_87

Total.....

197

" 'According to the information given by the provincial treasurer, 290 official blank ballots were transmitted to the municipal treasurer of Sagnay. There is, therefore, a shortage of 93 ballots.

" 'The commission then proceeded to inspect the election returns furnished by the provincial fiscal. Said returns show that 188 electors voted; that the number of ballots found in the ballot box was 190; that there were two ballots marked "Extra Ballots;" that one ballot was rejected as having been marked; and that there were 42 ballots listed as marked but not as rejected.

" 'According to said returns, the result of the voting for the office of governor is as follows :

Manuel Crescini

173

Andres Garchitorena.....

11

Severo Cea.....	
1	
Sulpicio Cea.....	
1	
Honesto Obias.....	
__1	
Total.....	
187	

" The parties then proceeded to separate their respective ballots, with the following result:

Ballots for Manuel Crescini, not challenged.....	
125	
Ballots for Manuel Crescini, challenged.....	
5	
Ballots for Andres Garchitorena, not challenged.....	
6	
Ballots for Andres Garchitorena, challenged.....	
__2	
Total.....	
138	

"Hence it is apparent that the ballot boxes of Sagnay were tampered with. Forty nine (49) of the used ballots disappeared and no account was rendered of 93 blank ballots.

"Neither can the election returns serve as proof as they were falsified, and this falsification was disclosed by the following proven facts, to wit:

"1. Said returns, which were requested by the office of the provincial fiscal in order that they might serve as ground for a criminal action for falsification, bear erasures and alterations in the spaces after the names of each one of the candidates for the office of representative, Honesto Obias and Sulpicio Cea, the falsification consisting in that one of the figures of those that denote the number of votes obtained by Obias was erased and added to the number of votes received by the candidate Cea for the purpose of increasing the latter's votes.

"2. According to these election returns, Andres Garchitorena received 11 votes. However, 19 witnesses positively testified before this court that they voted for Garchitorena; and it is not amiss to say in this connection that the petitioner requested the summoning of 48 witnesses, although but very few of these were able to come to testify. So that two kinds of evidence prove the falsity of the returns: physical evidence, that is, the material and visible alteration of the returns and legal evidence, or that derived from the consideration that there should be 19 votes for Garchitorena, and not 11 as stated in the returns, because at least 19 electors swore and testified that they cast their votes for this candidate. With respect to the first kind of evidence it does not matter that the material

alteration or falsification has reference, not to the office of governor here under discussion but to that of representative. According to legal authorities, the general rule that where it is proven that a witness has voluntarily perjured himself in an important matter his whole testimony is discredited, is also applicable to the records made by the inspectors of an election board. Once such a record is shown to be false in one respect, it should be considered as false in all its other respects. If we look for a falsity in direct reference to the office of governor herein under dispute, we shall find one in the fact that according to the second kind of evidence above mentioned the number of votes for the candidate Garchitorena was falsified inasmuch as the returns award him only 11 votes, while it was proven that at least 19 electors voted for him.

"Therefore, the court holds that as regards the office of governor the elections held in the municipality of Sagnay are null and void.

"Municipality of Baao.

"At the elections held in this municipality that of the 419 registered electors, 254 failed to vote and only 165 voted, with the result that Manuel Crescini obtained 133 votes and Andres Garchitorena 6 votes.

"Against this result of the elections the petitioner protests and alleges substantially: 1. Defects of construction and form in the voting booths of the polling place; 2. That during the voting and the canvass of the ballots, the election inspectors partisans of the respondent, adopted procedure violative of law and vexatious to the voters; 3. That the respondent, in connivance with the provincial governor Fuentebella and the municipal president Julian Barrameda, conceived and executed the plan to remove, on the very day of the election, the inspector Paulino Bernas of the opposite party, in order that all the inspectors might be of the same party to which the respondent belonged so that by force of fraud the minority might triumph over the majority; and 4. That in consequence of the sudden removal and expulsion of the inspector Paulino Bernas, some 254 electors, a majority of whom were partisan of the petitioner, saw fit not to vote, and had they voted the result of the election might have been different.

"The respondent in his answer alleged the following :

" '1. That it is not true that the respondent has. taken part in any manner, direct or indirect, in the suspensions of the election inspector Paulino Bernas who is precisely both a personal friend and a political adherent of the respondent.

" '2. That the differences and questions had in the municipality of Baao were due to the excitement caused in the designation of the incumbent for the office of municipal president, that is, they were merely a matter of local politics, and that the matter of the election of a provincial governor in no wise concerned those differences and questions, for in said municipality of Baao nearly all the voters are partisans of the respondent, and the small remaining minority, partisans of the candidate Engracio. B. Imperial, while the petitioner has no political influence whatever in this town.

" '3. That although it is true that in this municipality some electors failed to vote, it was due to their own voluntary desistance or waiver of their right in consequence of the differences of questions of local politics that arose in connection with the election for the office of municipal president; that the inspectors called those electors and invited them to vote, affording them all necessary opportunities so to do; and that the respondent himself went to the town of Baao on the day of the election and begged said electors to vote as they were nearly all of them his partisans, but they refused to do so, owing to the aforementioned political questions of a local character.

" '4. That by the failure of said electors to vote no detriment was caused the petitioner, while the respondent did suffer greatly thereby, because as aforesaid nearly all of said electors were partisans of the respondent.'

"Upon an examination of the evidence adduced by both parties, in the order of their respective allegations in rebuttal, the court finds that the preponderance of said evidence establishes the following facts:

"In the municipality of Baao there were, and are, two opposite political parties, the respective leaders of which are Julian Barrameda and Tomas Guevara. About the 7th of March, 1916, that is, at the time when the municipal council had to proceed to appoint the persons who were to be election inspectors, Eleuterio Arroyo and Felix Imperial were known to be candidates for the office of municipal president. The first of them belonged to the party of the majority and the second to that of the minority. On said date of March 7th, the municipal council of Baao appointed as election inspectors Andres Baesa, Ignacio Britanico, and Paulino Bernas, the two first named belonging to Barrameda's party and the last named to Guevara's. The council made these appointments on its own initiative and without any interference whatever by the local political parties. However, the appointment of Paulino Bernas as inspector was not due precisely to the council's respect for or protection to the party of the minority, but principally to the fact that Paulino Bernas although a partisan of Felix Imperial, a candidate of the minority, was also a personal enemy of his, there being reason to believe that on that account Bernas would work against the candidacy of Felix Imperial, or that at least he would not accord it very decided support. As Felix Imperial learned of his true situation in respect to his candidacy, he withdrew the latter, another reason for his so doing being as the day for the election approached there came forward out of his political party another candidate named Domingo Fajardo with greater probabilities of success, because he was not a personal enemy of the inspector Bernas, addicted to his, Fajardo's party. But these tactics having come to the observation of Barrameda's party, its leader conceived the plan not only to remove Bernas from the board of inspectors, but also to do so on the very day of the elections, in order thus to control the situation and render absolutely futile all attempts of the opposite party opportunely to obtain any legal redress. Accordingly, on the morning of June 6th, 1916, Paulino Bernas was dismissed from office and forcibly expelled from the polling place; and Facundo Badong, a municipal policeman whose resignation as such was still pending action by the municipal council, was appointed in his stead. If Facundo Badong was not a partisan of Barrameda's, neither was he a member of the party to which the expelled inspector belonged. After this incident of the expulsion which took place in the presence of all the electors belonging to the same party as did inspector Bernas, and perhaps also in the view of others who were not of that party, it occurred that 254 electors abstained from voting and taking part in the elections.

"The evidence does not warrant the conclusion that said 254 electors were prevented from voting by force and intimidation. They waived their right out of their own free will. Neither does the evidence support the allegation that the removal of the inspector Bernas was the result of connivance between Governor Fuentebella, the petitioner (respondent?), and the municipal president Julian Barrameda. The political collusions resorted to in the municipality of Baao were of a purely local nature and in no wise influenced the contest over the office of provincial governor, and this contest had absolutely nothing whatever to do with that other one waged over the office of municipal president of Baao. Fuentebella, Crescini, and Engracio B. Imperial (another of the candidates for governor) belong to the same political party. Crescini was a member of the provincial board and so was also Engracio B. Imperial. According to the evidence, Guevara's party in the municipality of Baao had no candidate for the office of provincial governor; some of the members of this party were addicted to Crescini, others showed greater devotion to Engracio Imperial, while still others favored the candidacy of the petitioner Andres Garchitorena. So that it would be a bold and unwarranted assertion to say that Governor Fuentebella displayed greater active interest for Crescini than for Engracio Imperial, and no less so to declare that the local party led by Barrameda gave greater support to the candidacy of Crescini than to that of Engracio Imperial. And as to the Fajardo's party in the same locality, it has already been said that it did not have a candidate for the office of governor. Neither does the evidence support the petitioner's allegations relative to proceedings violatory of law and vexatious to the electors.

"With respect to certain irregularities in the mode of conducting the elections and in the construction or form of the polling place, and its voting booths, I believe that, even taking them to be true and to have been proven they cannot vitiate or void the elections held in the single precinct of Baao in default of proof of fraud. Said elections were held and conducted by the only electors who wished to exercise their rights in a regular and orderly manner within the period marked by law. Despite the incident above mentioned, that of the removal and expulsion of the inspector Bernas, I am of the opinion that the elections at Baao should be sustained in order to uphold the will of the 165 electors who went to deposit honorably their votes in the ballot box.

"We now come to the matter of the recount of the votes cast for the office of provincial governor. It appears that upon the opening of the ballot boxes, the commissioners found three groups of ballots: the first was composed of 63 ballots; the second of 15; and the third of 8. All the ballots in each group were written by the same hand. As several illiterate electors took part in the election, and as the inspectors were not called for the purpose of picking out the ballots prepared by them while assisting said illiterates, the court holds that the ballots of the group mentioned, i. e., of 63, 15 and 8 ballots found to have been written by one and the same hand are those which were filled out by the election inspectors for the incapacitated or disabled voters who asked their assistance in accordance with the law.

"In fact, from the document Exhibit X of Baao which is the record of the proceedings had by the board in connection with the assistance given to illiterates, it appears that 83 electors were assisted by the inspectors Andres Baesa, Ignacio Britanico, and Facundo Badong in the proportion of 61, 16, and 6 respectively, which numbers differ very little from those of the 63, 15 and 8 above referred to.

"The list of illiterate voters attests that 61 ballots were filled in by Andres Baesa, and the handwriting expert identified sixty seven (four ballots more) as having been written by the same hand. But after a careful examination of these four ballots, Nos. 36, 45, 46, and 47, the court is of the opinion that they are neither identical nor similar to the rest of the group.

"The petitioner challenged a group of 16 ballots, on the ground that they were written by the same hand. But it precisely appears in the list that Ignacio Britanico assisted 16 illiterate electors.

"Facundo Badong prepared 6 ballots for incapacitated voters, and 8 ballots were found written in the same handwriting. The handwriting expert added one more to the latter number, making this group consist of 9 such ballots. But it is seen that this additional ballot, bearing No. 33, was erroneously included.

"According to the statements just made, the list should show 63 (64 less 1) electors as assisted by Baesa, 14 (15 less 1), by Britanico, and 7 (8 less 1) by Badong, that is to say, deducting one ballot from each group, which is the inspector's own ballot and would not therefore appear in the list. Now then, adding the said numbers 63, 14, and 7, we have a total of 84, and comparing this sum with the number .83 in the list it may be seen that there is only one unit difference, a mistake that can be easily explained, taking into account this kind of work and all the circumstances of the case.

"It is easy to understand that the discrepancy between the proportions accredited to each inspector (63, 14, and 7, and in the list, 61, 16, and 6) is due to involuntary mistakes caused by recording that Britanico assisted two electors more, while these two were in fact assisted by Baesa and the other by Badong. In recapitulation, the court is of the opinion that the list of the illiterate electors, notwithstanding the slight errors mentioned, is correct within the purview of the law; that it was gotten up honestly by the inspectors and the poll clerk; and that it is a faithful reflection of the proceedings of the board had in connection with the matter of assistance given to incapacitated electors.

"The other ballots challenged are: Nos. 2, 3, 48, 115, and 119, all for Manuel Crescini and alleged to have been written by the same hand. They are admitted because in the opinion of the court they were not all written by the same hand.

"Nos. 121 and 138, the first for Manuel Crescini and the second for Engracio Imperial. Challenged on the same ground. Admitted. They are not identical nor alike.

"Nos. 11 and 20, both for Crescini. The same challenge; the same finding,

"No. 118, for Crescini, and No. 148, for Francisco Botor. It is alleged that they were written in the same hand. I think not. Admitted.

"Nos. 9 and 10, both for Manuel Crescini. Rejected, because written in the same handwriting and not by any of the election inspectors.

"No. 1, for Manuel Crescini, challenged as having been written with a drawing pencil. It is admitted, there being no evidence of fraud.

"According to the election returns, Manuel Crescini received 133 votes and Andres Garchitorena 6. But the commissioners awarded no more than 128 to the first and 5 to the second, and awarded to nobody the ballots, where the space allotted for the name of the candidate for the office of governor was left in blank, which ballots were not at all claimed. The ballots rejected by the inspectors during the canvass and claimed before the commission by the parties in interest are again rejected.

"Consequently, the following final award is made of the votes cast in the election precinct of Baao, to wit, to Manuel Crescini 128 votes, less two that have been rejected (ballots Nos. 9 and 10), a total of 126 votes; and to Andres Garchitorena five (5) votes.

"Municipality of Bato.

"Quite extensive are the allegations of the protest against the returns of the provincial election held in this municipality. They are recorded in the paragraphs from (a) to (h) of the amended petition of protest found on pages 82, 83, and 84 of the record, and consist of violations of law, irregularities of procedure and frauds of so serious a nature that if true would necessarily invalidate said election.

"The court will not state one by one which allegations are sustained by the evidence and which are not. For the purposes of this decision it is sufficient to hold that the following facts were proven:

"1. Three hundred and fifty voters were entered on the election register and they all voted on the day of the election. The voting lasted from 7 o'clock in the morning until 10 o'clock at night. When the ballot boxes were opened, 180 ballots were found to have been prepared and written by the inspectors while according to the list of illiterates the number of the latter was only 141. Hence it is concluded that the inspectors were seriously remiss in the fulfillment of their duty by not having entered in the list or record of illiterates a considerable number of electors assisted by them. These inspectors have lost the confidence reposed in them and cannot excuse themselves by alleging error or involuntary neglect, because there is too great a difference between 141 and 180; nor can they plead ignorance because if they were ignorant of the law they would not have prepared the list of illiterates as the law directs. Therefore, the court holds that the 39 ballots which make the difference between the 141 electors said to have been assisted by the inspectors and the 180 electors to be illiterate should be annulled.

"2. The voting was held not only during the time specified by law, from 7 o'clock in the morning until sunset, but was also unnecessarily prolonged four hours more, that is, until 10 o'clock at night. The number of votes cast during the four hours of unnecessary prolongation is estimated, according to the evidence, at not less than 92,

which is 26 per cent of the total number of electors (350). Fifteen hours of voting instead of eleven or twelve as provided by law represents a very considerable prolongation; and 92, that is 26 per cent of the electors also represents a no less considerable number. In other words, the result of the election was in the opinion of the court affected by the unnecessary prolongation of the voting.

"The authorities on the matter say that when the nonfulfilment or nonobservance of the provisions of the law with respect to the time for the opening and closing of the polls is very evident, it should be considered to have affected the result of the elections which consequently must be declared null and void.

"Notwithstanding the rule above enunciated, the court would not annul the entire election, but would accord value to the 92 ballots cast during the four hours of unnecessary prolongation of the voting, provided these ballots could be identified either by numbers or by their contents. But the case is that such identification is impossible, because the election inspectors, committing with fraudulent intention a new violation of the law, willfully failed to enumerate successively on the list each elector who voted. So then, we have the fraud about the unnecessary prolongation of the voting increased by a new fraud, which is that of the failure to enumerate, and on the other hand, we have the effect of both frauds, which had been to cause so much confusion and obscurity that no means are now available for the separation of the good votes from the bad ones. The court says that the intention of the inspectors in committing these frauds was fraudulent, because the facts show that such frauds always tend to increase the votes of one candidate and to reduce those of his opponent. The 92 votes cast outside of the legal hours should therefore be annulled, as the 39 votes above referred to were annulled. Thirty-nine and ninety-two makes 131; and deducting 131 from the 180 votes found for Manuel Crescini, he has left only 49. But, as it cannot be determined which are these 49 good votes, for, as before explained, they cannot be separated from the illegal ones, the result is that all those 180 votes for the candidate just mentioned should be annulled.

"3. After the ballot boxes had been opened, the commissioners found 30 ballots prepared and written by the inspectors, and all rejected as having been marked. It is noteworthy that all these ballots were for the candidate Crescini. No explanation has been made of this fact, that is, of the existence of these ballots, either in the record of the proceedings of the election board or in the evidence presented by the protestee. The court finds no fact, detail, or circumstance whatsoever that might prove the existence of such ballots so filled in, marked, and rejected.

"This mystery is explained only by the fact alleged, and which the court holds to have been proven, that the election inspectors, very zealous partisans of the respondent, did, during the voting, electioneer the electors who went to the polls to vote, in order to induce them to cast their votes for the respondent. These inspectors had in their possession ballots with the name of Crescini already written on them in the space allotted for the name of the candidate for the office of governor; and in the booths they electioneered the voters. If the latter allowed themselves to be influenced, these prepared ballots were delivered to them and they filled in the spaces in blank for the names of the candidates for the other officers; but if they did not allow themselves to be influenced, then the electors filled in the blank spaces that were left and afterwards marked the ballots so as to spoil them. Thus it is understood why all the ballots in question except one are in the name of Crescini.

"4. The election inspectors falsified the election returns; to be convinced of this, one has but to note the following details: According to the returns, the result of the election is that Manuel Crescini received 292 votes, Andres Garchitorena 32, Engracio Imperial 17, and Severo Cea 1, and there were 10 scattering votes; while, according to the same returns and the ballots themselves, Manuel Crescini obtained only 289 votes and Andres Garchitorena 33, not a single vote was found for either Engracio Imperial or Severo Cea, but there were 20 ballots for various other candidates.

"The evidence brings several other facts to light, but the court deems it unnecessary to mention them, in view of

the conclusions he has drawn, as seen above. Absolute disdain of the law on the part of the inspectors with respect to compliance with their duties, as shown by their failure to record in the returns the true number of electors assisted by them; unnecessary prolongation of the voting for the sole purpose of favoring the interests of the respondent; frauds upon frauds each committed for the purpose of concealing the next preceding one; appearance of 30 ballots, prepared, challenged, and marked by the inspectors themselves evidently with the intention to supersede votes for the petitioner; and falsification of the election returns in the most inconsiderate and unwarranted manner—each one of these reasons, and all of them jointly, necessarily determine the annulment of the election.

"Therefore the court annuls the elections held in the municipality of Bato for the selection of an incumbent for the office of governor.

"Municipality of Buhi.

"Of the irregularities, illegalities, and frauds alleged in the motion of protest against the returns of the election held in the municipality, the court finds the following ones to have been proven:

" (a) The election inspectors Gregorio Ricafranca, Jose Crescini, and Dalmacio Amador are all zealous partisans of the protestee, and the second named, Jose Crescini, is his uncle.

" (b) According to the provincial board of canvassers, Manuel Crescini received 280 votes, and Andres Ga'rchitorena 39.

" (c) All the inspectors above mentioned did electioneering and propaganda work, on a greater or less scale and with greater or lesser activity, in behalf of the protestee, not only inside but also outside of the polling place, and both before and during the election.

" (d) The inspector Jose Crescini, availing himself of his office, made use of censurable means in order that illiterate electors, while filling out their ballots, might vote for the herein respondent who is a nephew of said inspector. Exhibit A is a ballot that was crumpled by the elector Lorenzo Penacerrada, because, while he was filling it in inside the booth, the inspector Jose Crescini entered there and, seeing that this elector was voting for another candidate, made the threat to him that he, Crescini, would spoil the ballot unless the elector voted for the herein respondent, and then Peñacerrada, in despair, crumpled his ballot, thus spoiling it. Exhibits B and C are both ballots by Santiago Fabricante, for the first one was spoiled by Jose Crescini by erasing or trying to erase the name of Engracio Imperial, a candidate for the office of governor, whereupon Crescini handed Fabricante a second ballot which was filled out by Crescini as regards the office of governor, and was then handed over to the elector Fabricante so that he might complete it by writing in the names of the candidates he chose for the other offices. Exhibit E is a ballot by Balbino San Luis. It is torn on its upper margin because Jose Crescini tried to take the ballot away from the elector in order to see its contents which act was resisted by the latter. Exhibits F and G are the two ballots which the elector Felix Estanislao had, for, after duly filling in the first one and while he was putting it into the ballot box, the inspector Crescini obliged him to show it to him, and, seeing that Estanislao had not voted for Manuel Crescini for governor, had the ballot changed for another one, and spoiled the first ballot by the superposition of other letters or names in connection with all the offices from that of municipal president to that of the last councilor.

" (e) While Jose Crescini was performing the acts related in the preceding paragraph, the other inspectors did nothing to curb him or prevent him from so doing but, on the contrary, each of them did all he could to cooperate with Crescini. Nazario Saballa, an elector 54 years of age, testified that Gregorio Ricafranca assisted him in the preparation of his ballots, and that he was not asked as to whom he intended to vote for, though his candidate for

governor was Andres Garchitorena. Notwithstanding, Ricafranca filled out and prepared Saballa's ballot. The evidence shows moreover that of the 34 or more ballots written by this inspector Ricafranca none are for the petitioner Andres Garchitorena; all of them are for the respondent Manuel Crescini. As regards the other inspector Dalmacio Amador, we have the testimony of five witnesses who positively stated that they were assisted by him in the preparation of their ballots, and that they told him that they desired to vote for Andres Garchitorena for governor. However, of the ballots written by Amador only three were found to be for the petitioner.

" (f) Said inspectors, with the deliberate intention of increasing the number of votes for Crescini and decreasing those for Andres Garchitorena, falsified the returns by recording therein the following result: That Manuel Crescini received 280 votes, Andres Garchitorena 39, Engracio Imperial 17, and the other candidates 6, when in fact and in truth, as they themselves very well knew, Manuel Crescini obtained only 270 votes, Andres Garchitorena 51, and the other candidates 25.

" (g) Of the 350 electors who voted, about 97 were illiterates and therefore were assisted in the preparation of their ballots by the inspectors. However, the commissioners found in the ballot box 106 ballots written by the inspectors.

" (h) Said 97 illiterate electors did not take oath of their incapacity before voting, and the Exhibit 1 or list of illiterates is false. Twenty two of these illiterates electors testified before this court that they did not take oath before they voted. On the other hand, see in the stenographic notes the testimony given by the handwriting expert with respect to the list Exhibit 1.

"The foregoing acts which, as it is seen, constitute enormous frauds and irregularities of a most impudent nature, more than sufficiently warrant the annulment of the elections held in this municipality; but, mindful that the influence of such frauds has not been far reaching and that means are still available to distinguish the good votes from the corrupted ones, the court now proceeds to make the following canvass of the votes.

"Of the 280 votes for the respondent Manuel Crescini, there should be annulled and deducted 32 ballots prepared for illiterate voters by the Inspector Dalmacio Amador, 28 ballots prepared for illiterates by the inspector Ricafranca, and 44 ballots prepared for illiterates by the other inspector Jose Crescini, aggregating a total of 104 ballots or votes by illiterates; this annulment and rejection is made because these electors did not take the oath of incapacity before voting. Besides, the following ballots should be annulled and deducted; 6 ballots, Nos. 185, 195, 198, 199, and 249, and the Exhibit C, for the reason that the space intended for the name of the candidate for the office of governor was filled in by Jose Crescini, and the rest of the space for the names of the candidate for the other offices by the respective electors; one ballot, No. 117, because it bears Crescini's name in two spaces; one ballot, No. 241, because by it Manuel Crescini is not voted for for governor; one ballot, No. 246, because the space for the name of the candidate for governor is blank; one ballot, No. 247, because it bears only the letters M. C, the initials of Manuel Crescini's name; 2 ballots, Nos. 255 and 322, because by them Manuel Crescini is not voted for for governor; one ballot, No. 251, because it is illegible and contains no mention of any candidate for the office of governor; and one ballot, No. 266, because it is marked. All the other challenged ballots are admitted. Consequently, Manuel Crescini is finally awarded 149 of the votes cast in this precinct.

"To the 51 votes received by Andres Garchitorena one other, ballot No. 321, is to be added as this ballot contains no defect whatever; but there are to be deducted and annulled two votes by illiterates assisted by the inspector Amador, because these electors did not take oath of their incapacity.

The petitioner, Andres Garchitorena, is finally awarded 50 of the votes cast in this municipality.

"Municipality of Calabanga.

"The following facts at least are disclosed by the abundant evidence produced by the petitioner in support of the averments of his protest against the returns of the provincial election held in this municipality:

"(a) The election inspectors Toribio Felipe, Roman Malanyaon, and Manuel Sabido were all faithful partisans of the respondent Crescini and worked actively in behalf of his candidacy and against Garchitorena's, not only prior to the election but also during the same and during the voting inside the polling place itself.

"(b) From the election register it appears that 368 voters were registered, of which 348 voted and 20 did not, according to the enumeration of the ballots cast. However, in the returns by the inspectors above mentioned, the latter attest that 340 electors voted, and that the number of ballots found by them in the ballot box was also 340. The committee of revision found that there were 349 spoiled ballots, 15 of which had been rejected by the inspectors during the canvass, and that there were 19 ballots spoiled during the voting, and 80 blank official ballots left over, making a total, altogether, of 448 ballots. On the other hand, said inspectors stated in their respective testimony that 350 electors voted.

"(c) Said inspectors identified 107 ballots as written by them in their assistance to illiterate electors, 80 of these ballots being for the candidate Crescini, and 20 for the candidate Garchitorena; but they made no list of the illiterates, do not know the names of these, nor even their numbers, and did not have these supposed illiterates take the oath of incapacity before voting.

"It is alleged that the failure to make the list of illiterates was due to neglect committed in good faith. But the court is compelled to disattend such a plea. Public officials like these inspectors who, as we have just seen, performed the acts mentioned in the last two preceding paragraphs merit no credence and lose all of the confidence the law reposed in them by reason of their office. They also aver that although they did not make any list of illiterates containing an attestation that the latter took the oath, the truth is that such illiterates did take the oath of incapacity before voting. The court however considers this plea to be invalid like the preceding one, not only for the reasons already stated but also because 20 illiterate witnesses testified that they did not take the oath of incapacity before they voted, and chiefly because the poll clerk of the election board testified under oath, at the hearing on the municipal protest on the elections of Capalonga, that the board of inspectors did not take the oath of the illiterate electors. It is fitting to remind the parties that there is on file in the record an agreement according to which all evidence produced in regard to the municipal protest should be taken into account in connection with the provincial protest.

"The court is of the opinion that there is no need of any pronouncement as to whether the evidence does or does not support the allegations of the protest with reference to the direct or indirect intervention of Governor Fuentebella in the fight over the appointment of election inspectors for Capalonga; whether on the day of the elections said governor did or did not unduly influence the electors by means of force or threats before they entered within the area of the polling place; whether the voting booths of said polling place were or were not perfectly made; whether there was at first a guard rail but which, the day before the election, was ordered removed; whether, for many days prior to the election, the official ballots were in the possession of the board of inspectors, so that the latter, the night before the election, could have prepared said ballots by writing the name of Crescini in the space allotted for the office of governor; and whether, on the day of the election, they delivered the ballots so prepared to the electors who were going to vote. Some of these allegations are proven, while others lack conclusive proof. What seems to be the surest and most important way for the court to decide upon the protest made with respect to this municipality, is to rely solely and exclusively on the facts held in the beginning to have been proven and on the canvass of the ballots themselves, ever keeping in mind the rule staunchly recommended by legal authorities, that use should not be made of the power to annul all the votes cast in a precinct, except in extreme cases and where there are* no means of ascertaining the true will of the majority, freely and honestly

manifested in the ballots.

"The result given by the latter is as follows: For Manuel Crescini 133, and for Andres Garchitorena 82.

"Several of these ballots were challenged by the protestant on the grounds he alleged before the commission. The court will now proceed to make the canvass and decide upon these impeachments.

"104 of the 107 ballots written by the inspectors are rejected because they were written for persons who are unknown and who did not take oath of their incapacity. 87 of these ballots were cast for Crescini and 20 for Garchitorena. 3 of the 107 ballots are admitted as votes for the candidate Crescini, because they were cast by the three inspectors in their own behalf.

"Nine votes, 3 of them for Crescini and 6 for Garchitorena, which are ballots Nos. 7, 8, 50, 64, 66, 175, 209, 229, and 331, were challenged as having been written by the same hand. The court is of the opinion that they were not and admits them, that is, 3 of them for Crescini and 6 for Garchitorena.

"One vote, ballot No. 266, challenged as ambiguous because the name of Crescini is written on it twice, is rejected.

"One vote, ballot No. 297, for Crescini, challenged as being illegible, is rejected.

"Five votes, ballots Nos. 230, 238, 244, 304, and 310, are challenged because they bear the name of Crescini outside of the space allotted for the office of governor.

"Upon an examination of these five ballots, the court admits as votes for Crescini, the ballots Nos. 230, 238, and 244, but rejects the other two, Nos. 304 and 310. So that in conclusion, of the 133 votes for Crescini, 88 should be deducted, to wit: 84 votes by illiterates, one illegible vote, one ambiguous vote, and 2 votes with the name of the candidate written outside of the proper space, the remainder, 45 votes, being counted in his favor; and of the 82 votes for Andres Garchitorena, the 20 votes cast by illiterates should be deducted, and he is awarded the remainder, or 62 votes.

"Municipality of Iriga.

"Three polling places were provided for this municipality on account of its large population; and after an examination of the evidence submitted with respect to the elections had in the first precinct, the court has come to the conclusion that said elections should be completely annulled on the grounds, first, that the ballot boxes were tampered with, and, second, that the returns were falsified. The tampering with the ballot boxes is proved (a) by the testimony of the chairman and poll clerk of the election board, and (b) by the physical appearance of the ballot boxes themselves according to the commissioner's report, an excerpt from which is as follows:

" 'Enrique Iturrios, presiding officer of the first polling place, examined the box of the good ballots of the first polling place and testified that said ballot box had been changed; that the sides of the ballot box that had been used on the day of the election were of one single piece, while the sides of the present ballot box are of two pieces; that the wood of the ballot box used was newer than that of the present box; that the box of good ballots brought to this commission is not the same one that was delivered to the municipal secretary after the election; that the papers containing the signature of the municipal secretary, which were stuck to the edges of the ballot box after the election, were no longer there, and that after the election the ballot boxes were not closed with a key but with nails. He identified the signature that appears on the strip of paper attached to the lid and extending across the front side of the box, and testified that said paper is the same one which they (the inspectors) signed and stuck on the original box in the same manner.'

The minutes also contain a record of the description of the ballot boxes, as follows:

"With respect to the conditions of the ballot boxes before they were opened by this commission, it is made a matter of record, that the box of good ballots is square on all its sides, is made of packing-case boards that are quite thick and of a natural color, is similar to the other ballot boxes of the same municipality of Iriga, and is securely nailed. On the cover there is a paper of the size of legal cap which extends to the middle of the front side of the box, and on the edges of this paper there are several daubs of sealing wax which serve as seals. Said paper bears the following words: "1.er Colegio electoral" (1st Polling Place) and the signature of Enrique Iturrios and Francisco Hernandez, and below, "Junio 6, 1916." On the ballot box of the good ballots there are also several small strips of paper stuck to the sides, corners, and edges and bearing the following inscription: "Julio 13, 1916.—Pastor S. Guadalupe—Municipal Secretary." In the bottom of the ballot box of good ballots of the first precinct there is an opening near one corner, two and a half inches long by one inch wide. This opening does not appear to have been made by outside force nor by any instrument whatever, but is a natural break in the wood caused by a knot.

"The ballot box of spoiled ballots is of the same shape and size as that of the good ballots, except that it is a trifle higher than the latter, due to the cover being of thicker lumber.

"On the cover of this box there is likewise a long sheet of legal cap paper reaching to the middle of the front side, and on the edges of this paper there are also daubs of sealing-wax and the following word: "1.er Colegio Electoral.—Balotas inutilizadas, Junio 6, 1916." (First Polling place.—Spoiled ballots, June 6, 1916.) Said ballots box has also several papers stuck to the edges bearing the words: "Julio 13, 1916.—Pastor S. Guadalupe—Mun. Sec."

"During the hearing on this incidental question, Enrique Iturrios testified substantially as follows: That he is the chairman of the election board of the first precinct; that the ballot box used at the election intended for good ballots was sealed with paper signed by the three inspectors (the witness, Francisco Hernandez, and Paulino Federis) and was delivered to the municipal secretary together with the box of the spoiled ballots (the paper seal of which box appears not to have been signed by any inspector); that one Sunday night subsequent to the election, after prior notice by the protestee Manuel Crescini, witness went with the latter to the municipal building from which they took the ballot boxes of the first precinct and carried them in a sack to the protestee's house, and as soon as they entered it Crescini sent for the other inspector, Hernandez, who arrived immediately and thereupon broke the cover of the ballot box of good ballot and opened without breaking the cover of the box of spoiled ballots; that after both receptacles had thus been opened, he (Iturrios) and Hernandez engaged themselves in restoring several spoiled ballots which bore the name of Manuel Crescini for governor, transferring them to the ballot box of good ballots, and from the latter removed ballots that had been cast for Andres Garchitorena and for other candidates, and put them into the box of spoiled ballots; that they also erased the name of Andres Garchitorena from other ballots, writing afterwards in place thereof the name of Manuel Crescini; and that the ballot box for good ballots used at the election was destroyed by fire and was substituted by a similar box which Crescini had there in his house, in which latter box the good ballots and those corrected were placed, and after this had been done the lid was nailed down and was sealed with another sheet of paper like the one used on the destroyed box, but signed by only the two inspectors Iturrios and Hernandez, the sole persons who were present during those proceedings.

"Francisco Velasco, poll clerk of this same polling place, testified that the ballot box exhibited to him as the one used at the election held in the first precinct of Iriga, was not the one there used, because the ballot box that they used did not have a large opening at the bottom; that the sides of the genuine box were each made of one single piece of lumber and not of several; and that the paper containing the seals was signed by the three inspectors, and not by only two of them.

"In one of the ballot boxes there were found 420 good ballots and 3 which are claimed, and in the other box, 47 spoiled ballots with the word 'spoiled' also written on their reverse, on some of them with an indelible pencil and on the others with a pen. Of the 420 good ballots, 400 are for Manuel Crescini, 14 for Engracio Imperial, 4 for Andres Garchitorena, 1 is illegible, and 1 undecipherable. The 47 spoiled ballots can be classified as follows: 13 for Crescini, 16 for Imperial, 8 for Garchitorena, 3 for Botor, and 7 for various other candidates.

"Twenty two of said 420 good ballots originally bore on their reverse side the word 'spoiled' which was erased in order to restore them: besides, something is noticed in these ballots that distinguishes them from the other good ones, but which, at the same time, makes them similar to the spoiled ballots, and it is that the good ballots (except 2 of them which perhaps through confusion were included) all have, in about the central and middle part of their upper half, a small hole produced by a pin, needle, or thread, which indicates that they were strung together. The same kind of hole is also noticed in 24 of the 47 spoiled ballots, while these 22 ballots just above mentioned, as well as the other 23 (of the 47) spoiled ballots, have no such hole. These details show indubitably that the 24 perforated ballots now found among the spoiled ones were once among the good ballots and were strung with them by means of the same needle or the same thread, and that the 22 ballots which the word 'spoiled' erased, or, better said, restored ballots, must have come from the lot of spoiled ballots with which they must previously have been joined without stringing of any kind.

"The respondent's attorneys themselves in their brief admit that the ballot boxes were tampered with, and therefore it is unnecessary to dwell further on this matter.

"The election returns were falsified. The proof are: (1) the notable discrepancy between the canvass of the votes and the returns. According to the canvass there were 406 votes for Crescini, while the returns show that there were 400, but it is to be noted that this number '400' was written above the number '406' which was erased; (2) this discrepancy is still greater, as well with reference to the other offices as to the names of the candidates voted for, Cea, Ortiz, and Nery; and (3) the recitals of the returns are in agreement with the contents of the ballot boxes after these had been tampered with. Said discrepancy plainly shows that after tampering with the ballot boxes it was found necessary to amend and falsify the returns so as to make them agree with the ballots.

"With the violation of the ballot boxes and the falsification of the election returns, the annulment of the election would be perfectly warranted; but the evidence discloses further reasons, to wit, deficiency in the construction of the voting booths of the polling place, in such way that the secrecy of the ballot was not safeguarded, and bad conduct on the part of the inspectors, by their exerting, undue and improper influence on the electors in the polling place in the booths, and they did not only do this, but they also deprived and defrauded them of their votes. A mere deficiency of construction in a polling place is generally not such an irregularity as would invalidate an entire election; but when the deficiency or irregularity was purposely caused with the deliberate intent to commit frauds, as in fact were committed, I believe that they vitiate the whole election. The same may be said of the conduct of the inspectors who, we would remark incidentally, were all partisans of the respondent Manuel Crescini.

"Therefore, the elections held in the first precinct of Iriga for the selection of an incumbent for the office of governor, is annulled.

"SECOND PRECINCT (IRIGA)

"1. The evidence shows that the following irregularities, frauds, and illegalities were committed at the elections held in the second precinct: 284 good ballots and 25 spoiled ones were found in the ballot boxes: 184 of these ballots were prepared and written for illiterates by the three inspectors, Juan Castro, Bembenuto Bersamina, and Juan Salvador in the proportion respectively of 70, 28, and 82. It is to be taken into account that said number

includes not only the ballots identified by the inspectors and which they frankly and expressly admitted that they had written, but also the ballots which were discovered by the handwriting expert, with whose opinion in regard thereto the court agrees. All these 184 ballots are for the protestee Manuel Crescini. There is not a single vote by any illiterate for the protestant, nor for any candidate opposing him. 20 of the ballots filled in by the inspector Juan Salvador were found to be perfectly smooth, with no sign whatever of their ever having been folded. Before all and above all it appears that these three inspectors were partisans of Crescini, and that the latter himself recommended their appointment to the municipal council.

"2. In the election returns (Exhibit G-Iriga) the statements, among others, are made that the polls were opened at 7 o'clock in the morning and remained open continuously until 8 o'clock in the evening; that according to the registry list the number of persons who voted was 285; and that the number of ballots found in the ballot box was 285. In the same returns however said inspectors also state that the canvass of the ballots showed the following result with respect to the office of governor: Manuel Crescini, 276 votes; Engracio Imperial, 6; Andres Garchitorena, 1; Fulgencio Contreras, 1; Severo Cea, 1; Felipe Mamponbanua, 1; and Francisco Botor, 1. The votes so distributed make a total of 287; consequently in that election there were two votes more than the number of electors. The inspectors did not record the truth, and therefore were seriously remiss in the fulfilment of their official oath.

"3. The list of illiterate voters, presented in evidence by the respondent as Exhibit 5-A-Iriga, contains the names of 167 persons who, it is alleged, 'requested to be assisted by the inspectors, on account of their being incapacitated, and subscribed their oaths of incapacity.' Said list shows that the inspector Juan Castro assisted 65 electors, Bembenuto Bersamina 35, and Juan Salvador 66; a total of 166 incapacitated electors. So that one more person voted and it is not known who assisted him.

"4. Said inspectors permitted 21 electors to vote whose names had been stricken from the election register, and did so knowing that these electors were disqualified. These facts appear from said register which shows the registration of 52 electors, opposite whose names the following note was written by the inspectors: 'Excluded through challenge by the municipal treasurer, 21 of whom voted and 31 did not.'

"5. Eleven witnesses for the petitioner testified that they voted for this candidate; however, only one single ballot for him was found, or five ballots, if we add to the first the four found among the spoiled ballots, for, on the other hand, these four are good ballots and should be counted. Hence it is concluded that the inspectors not only falsified the register, the election returns, and the list of illiterate voters, but also deprived and defrauded the petitioner of votes, and awarded them to the respondent.

"6. Three witnesses for the petitioner testified that the secrecy of their ballots was violated by the inspectors within the booths; and 5 witnesses also testified that they were going to cast their votes for Garchitorena, but were unduly and improperly influenced by the inspectors and therefore voted for Manuel Crescini.

"7. The preponderance of the evidence shows that the illiterate voters did not take the oath of incapacity before voting.

"If the illegalities above mentioned were the result of only excusable neglect, error, or ignorance on the part of the inspectors, undoubtedly they would not vitiate the election; but the court holds that they were all fraudulent and served as means for the commission of frauds, such as in fact were committed, and consequently further holds that in the instant case they necessarily determine the nullity of the election.

"The petitioner insists on the correctness of the list of illiterates, Exhibit 5-A Iriga. The court however is obliged to reject this exhibit, not only for the reasons above mentioned but also because of the following: Immediately

after the filing of the motion containing the protest, the court ordered the municipal secretary to bring in all the ballots boxes and all the documents used in the election, but that official did not forward the exhibit in question. This exhibit was presented here in court by the respondent only during the hearing. Besides, according to the inspector Juan Castro, the exhibit in question or list of illiterates was made on the very day of the elections, and the names therein recorded were put down more or less in the same order as these electors voted. However, such relationship of order was not kept with respect to several names, particularly the last ones.

"Supposing for a moment the contrary to be true, namely, that there were no frauds but mere irregularities in the election here in question, then the canvass of the votes should be made in the following manner:

"According to the returns, Crescini received 276 votes, and Garchitorena only one. From the 276 votes for Crescini we would deduct the following, as being null and void: 181 votes by illiterates because they did not take the oath of incapacity and because no list of such illiterates was made; 21 votes by electors who voted in spite of their exclusion from the list; 43 votes which were deposited in the ballot box by electors outside of the regular hours for voting; 3 votes, because the secrecy of the ballots was violated; 5 votes obtained through electioneering by the inspectors; and 6 votes of which Garchitorena was deprived and defrauded by the latter, making a total of 259 votes that are null and void. According to this count, Crescini would have left 17 votes as. against one for Garchitorena; but, as the number of votes cast at the election amounts to 285, were we to give validity to these 17 votes for Crescini, he would be elected, not by the people as a whole nor by a majority of the voters, but by an insignificant fraction of the minority, which could not be allowed. Whatever be the angle of view, all consideration converges in the necessity of the annulment of the elections.

"Consequently the court holds that the elections had in the second precinct of Iriga for the selection of an incumbent for the office of governor are null and void.

"THIRD PRECINCT (IRIGA).

"The elections held in this precinct should be annulled, just as have been those held in the first and second precincts, because of their being tainted with the following frauds and illegalities proven at the trial:

"1. Two hundred and fifty-nine good ballots were found in the ballot boxes. Of these, the inspectors Ciriaco Alfelor, Pablo Aguilar, and Manuel Ceguera identified 116 in the following proportion: by Alfelor 56; by Aguilar 30; and by Ceguera 30, making a total of 116 ballots by assisted illiterates. However, according to the list formed by the inspectors and presented in evidence by the protestee, the number of illiterate reaches only 95. So then, as there are 21 extra ballots, the election inspectors either formed a false list of illiterates or they assisted 21 electors who could read and write. Here begins the series of frauds. This list of illiterates is not admissible as proof of anything but the illegality and fraud committed by the election inspectors.

"2. The list Exhibit 4 Iriga presented by the respondent bears the following heading: 'List of the qualified electors who voted in the third precinct, and shows in their proper numeration the following names among others, to wit: Juan Beroga 35, Marcos de los Reyes 156, Tomas Oliva 198, Agaton Oliva 199,. Marcos de los Reyes 209, Tomas Oliva 199, Agaton Oliva 199, Marcelo Tabayug 209, and Tomas Gonzalez 226. However, the registration lists disclose that Juan Beroga did not vote, and that Marcos de los Reyes, Tomas Oliva, Agaton Oliva, and Tomas Gonzalez were not registered in the third precinct, but in the second where they also did not vote. Marcelo Tabayug's name is not found on any of the registration lists of Iriga that is to say, he was not an elector. How stupendous the frauds just mentioned! How could four electors registered in the second precincts have voted in the third precinct? And how could one Marcelo Tabayug have voted in the third precinct, when his name does not appear on any of the registration lists of Iriga? Frauds upon frauds.

"3. Besides the 259 good ballots found in the ballot box, there were also found two groups of spoiled ballots, the first composed of 13 ballots bearing on their reverse side the word 'spoiled*' and the second of 15 ballots without this word. However, the registration list shows that 282 electors were registered in the third precinct, of whom 254 voted and 28 did not, and that only 13 ballots were spoiled during the voting. Hence it is concluded that there, were 5 good ballots left over, and that there were besides 15 good surplus ballots which were placed among the spoiled ones. What opprobrious name should be deservedly given to such frauds? The inspectors of the third precinct of Iriga, rather than inspectors, appear-to have been magicians or sleight-of-hand artists who perform marvelous tricks by using ballot boxes instead of juggler's goblets.

"4. The voting was unduly prolonged until 7 o'clock in the evening of the day of the election, notwithstanding that only 282 electors had registered and only 254 of them voted.

"5. The aforementioned inspectors allowed several electors to vote whose names appear on the register with the following memorandum written after them by these same inspectors: 'Excluded through challenge by the municipal treasurer/ Of the 51 electors so exclude 32 voted.

"The court holds that generally the same irregularities and illegalities were proven to have been committed in this precinct as in the second precinct, to wit, violation of the law in reference to the location of the polling places, the three stations being very near each other and all three of them in close vicinity to the respondent, to the conditions of the ballot boxes and voting booths; defraudation of votes; violation of the secrecy of the ballots; and electioneering within the polling place and the booths.

"In regard to the elections held in this precinct, no other pronouncement can be made than to declare, as the court does, hereby declare, that said elections are null and void and should be rejected.

"According to the returns of the provincial board of canvassers, which accompany the motion of protest, the total number of votes cast in the whole province for the office of provincial governor is 8,312, distributed among the following candidates voted for: Manuel Crescini 3,198; Andres Garchitorena 2,468; Engracio Imperial 1,954; and Francisco Botor 692; that is according to the canvass made by the provincial board, the respondent Manuel Crescini has over the petitioner Andres Garchitorena a majority of 730 votes. But this count must be amended to make it conformable to the pronouncements of this decision with respect to the eleven municipalities affected by the protest. In other words, the count should be made in the following manner:

Crescini.

Garchitorena

Bao.....

126

5

Bato

0

0

Buhi

149

50

Calabanga

45

62

Capalonga.....

6

11

Iriga, first precinct.....

0

0

Iriga, second precinct.....

0

0

Iriga, third precinct.....

0

0

Lagonoy.....

0

0

Mambulao

2

82

Minalabac.....

0

0

Nabua.....

110

164

Sagnay.....

0

0

making a total of 438 votes for the respondent Crescini and 374 for the petitioner Garchitorena. Adding the 438

votes obtained by Crescini in the eleven protested municipalities to the 1,003 votes obtained by him in the remaining municipalities of the province, and performing the same operation with respect to the votes cast for Garchitorena in the municipalities, whether or not the returns from these were the subject of the protest, we shall have the following final result: In the provincial elections Manuel Crescini obtained as a candidate for the office of governor of Ambos Camarines 1,441 votes, and Andres Garchitorena 2,387. Now comparing these total sums, there results a difference of 946, which represents the majority of votes obtained by Andres Garchitorena over Manuel Crescini.

"By reason of all the foregoing, the protest is sustained and it is held that the petitioner Andres Garchitorena was elected provincial governor of Ambos Camarines with a majority of 946 votes over the respondent. Therefore it is ordered that a writ of mandamus issue against the provincial board of canvassers directing it to amend its returns so as to make them conform to the findings of this decision.

"So ordered with costs against the respondent.

"Albay (for Naga, Ambos Camarines), August 22, 1918.

"Isidro Paredes,

"Judge, 15th Judicial District."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.