

PIO VALENZUELA, PETITIONER, VS. JUDGE OP THE COURT OP FIRST INSTANCE OF BULACAN ET AL., RESPONDENTS.

G.R. No. 15801. September 18, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court for the writ of prohibition. The question presented by the petition is, Has the Court of First Instance jurisdiction to hear and determine a counter election protest for the office of provincial governor, when (a) said counterprotest was not filed within the period of twenty days prescribed by law for the filing of a motion of protest, and (b) when all of the candidates voted for had not received notice of said counter-protest?

The facts upon which the prayer for the writ of prohibition is based may be stated as follows:

(1) That on the 3d day of June, 1919, an election was held for the office of governor in the Province of Bulacan; that at said election Pio Valenzuela, Juan B. Carlos and Silvino Lopez de Jesus were candidates for the office of governor; that at the close of the election a canvass of the ballots cast was made by the provincial board acting as a board of canvassers, and Juan B. Carlos, on the 9th day of June, 1919, was proclaimed elected as governor of said province.

(2) That on the 21st day of June, 1919, Pio Valenzuela presented a motion of protest in the Court of First Instance of said province, alleging that various frauds and irregularities had been committed during said election in various municipalities of said province to wit: San Rafael, Baliwag, Malolos, Paombong, Bocaue, Bigaa, Bustos, Norzagaray, Santa Maria and Guiguinto.

(3) That notice of said protest by Pio Valenzuela was duly served upon each of the candidates voted for, on the 23d day of June, 1919. (Exhibit A).

(4) That on the 7th day of July, 1919, the said protestee, Juan B. Carlos, presented his answer to the motion of protest of Pio Valenzuela. Said answer contained (a) a general and special denial, (b) a special defense, and (c) a counter-protest. In his counter-protest the said protestee alleged that certain frauds and irregularities had been committed, in several municipalities of said province, to wit: Polo, Maycauayan, Marilao, Quingua, San Ildefonso and Angat. (Exhibit B.)

(5) That Juan B. Carlos, the said protestee, failed to deliver a copy of his answer containing said protest to his coprotestee, Silvino Lopez de Jesus, one of the candidates voted for at said election. (Exhibit C.)

(6) That von the 1st day of September, 1919, the protestant, Pio Valenzuela, presented a motta in the Court of First Instance, asking that the said counter-protest of Juan B. Carlos be dismissed for the following reasons;

"(a) That the Election Law does not permit counterprotest on the part of the protestee;

"(b) That the Courts of First Instance have no jurisdiction to consider counter-protest;

"(c) That while counter-claims are permitted in ordinary actions, counter-protest are not permitted in election protests under section 481 of Act No. 2711; and

"(d) Admitting that counter-protests may be presented in election protests, the presentation of the same must be governed by the rules of notice and time prescribed for the presentation of original motions of protest; that is to say, within the period of twenty days from the date of the proclamation of election."

(7) That upon the consideration of the motion to dismiss for the reasons above given, the lower court denied said motion and set the counter-protest down for hearing, whereupon the protestant presented the present petition in this court, praying that the Court of First Instance be prohibited from considering and deciding the questions presented by said counter-protest.

When a motion of an election protest is filed in the Court of First Instance within the time prescribed by the law and notice of the same is given to all the candidates voted for, said court has jurisdiction to hear and determine the questions presented. The motion serves the purpose of a complaint in an ordinary civil action. The notice to all of the candidates is in effect a citation or summons and confers jurisdiction upon the court over the persons, of the persons notified. (*Bermudez vs. Court of First Instance of Tayabas*, 36 Phil. Rep., 360.)

While the Election Law provides when and how an election protest shall be commenced and the method by which the court obtains jurisdiction of the same, said law is silent upon the question when the protestees must appear and answer as well as upon the question of what defenses they may present. Section 479 of Act No. 2711 provides that the contests shall be filed with court within two weeks after the election and "shall be decided by the same (the court) as soon as possible after the hearing of the contest." Section 481 provides that the contest "shall be heard and determined by the court in the judicial district in which the election was held regardless of whether said court be at the time holding a regular or stated term." Said section (481) further provides that said motion of protest shall not be heard upon "pleadings or by action."

While the law is not clear as to the time when the protestees, if they desire to answer, must answer, it is certainly contemplated by the law that the answer to the protest should be presented as soon as possible—at least within a reasonable time—to the end that said protests should be settled and concluded.

While the law does not specify what defenses the protestees may make, it is certainly contemplated by the law that any defense which they have which denies or tends to deny, or has the effect of defeating the purpose of the contest, is open to them. In other words, it is our opinion that all of the defenses which are open to the defendant in ordinary actions may be taken advantage of by the protestees in an election case. They may demur or answer. If they answer by a special defense, it may be by any fact or facts which defeat or tend to defeat the purpose of the contest. A counter-protest is tantamount to a counterclaim in a civil action. The protestee may, by a counter-protest, show that by reason of frauds and irregularities the protestant cannot be declared elected, and that notwithstanding the frauds and irregularities alleged by the protestant the protestee, by reason of other frauds and irregularities, is still entitled to be proclaimed elected to the particular office. Our conclusion upon the question of the right to present a counter-protest, then, is that the protestee in an election contest has the right to present a counter-protest.

With reference to the contention of the petitioner herein that if the protestees are permitted to file a counter-protest they must do so within the time prescribed by the law for the presentation of the motion of protest, it may be said (a) that there is nothing in the law requiring that the counter-protest should be presented within the time the motion of protest itself must be presented, and (b) that a rule requiring the counter-protest to be presented within the time the motion of protest must be presented might result detrimentally to the protestee. In the first place, the protestee has no occasion for the presentation of a counterprotest until after the motion of protest is presented. To

support the contention of the petitioner herein that the counter-protest must be presented within the time prescribed for the presentation of the motion of protest, might also defeat the right to present a counter-protest for the reason that the protestant might purposely delay the presentation of the motion of protest until the last moment of the day on which his motion of protest must be presented, thereby defeating the right of the protestee to present a valid and subsisting defense to the protest. Upon that contention of the petitioner we are of the opinion and so decide that the counter-protest may be presented as a part of the answer and within the time the protestee is required to answer, if, indeed, he is required to answer at all, under the law (sections 479 and 481, Act No. 2711).

The petitioner herein further contends that the Court of First Instance was without jurisdiction to hear and consider the counter-protest for the Reason that the protestee who presented it failed to give notice of the same to his coprotestee. It is admitted that a copy of the counterprotest was delivered to the protestant. There is nothing in the law which requires the protestees, when they answer separately, to deliver a copy of their answer to their coprotestees nor, as a matter of fact, to the protestant. However, in order that all of the parties may be informed concerning the issues presented to, and to be tried by, the court, it is only a reasonable requirement that the protestee should serve a copy of his answer on the protestant. If the coprotestee desires to be informed of the contents of the answer, the court is open to him to ask that a copy of the same be delivered to him.

The coprotestee in the present case has not, so far as the record shows, demanded a copy of the answer, nor has he complained of the failure on the part of the protestee to deliver a copy of the same to him.

Our conclusions are: (1) that the presentation of a motion of protest, with notice to all the candidates voted for, within the time prescribed by law, gives the court jurisdiction to hear and determine the questions presented by the same; (2) that the protestee or protestees, in answering said motion of protest, may interpose any valid and legal defense, even to the presentation of a counter-protest, which would destroy or tend to destroy or defeat the purposes of the motion of protest, and thereby be relieved from the effect of the protest; (3) that said counter-protest may be presented as a part of the answer or as a special defense, and need not be presented within the time prescribed by the law for the presentation of the motion of protest; and (4) that the failure to give notice of said counter-protest by a protestee to his coprotestees does not deprive the court of the jurisdiction which it had acquired by the presentation of the original motion of protest.

Therefore, for all of the foregoing reasons, the petition herein is denied, with costs against the petitioner. So ordered.

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

Writ denied.

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