

CLEMENTE DAYRIT, PETITIONER, VS. PRIMITIVO SAN AGUSTIN, AUXILIARY JUDGE, AND EMILIANO J. VALDEZ, RESPONDENTS.

G.R. No. 16119. February 14, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court to require the respondent judge to hear the testimony of certain witnesses.

The facts upon which the petition is based may be stated as follows:

- (a) That an election was held in the municipality of Angeles, of the Province of Pampanga, on the 3d day of June, 1919, for the purpose of electing municipal officers, including a president;
- (b) That at said election Clemente Dayrit and Emiliano J. Valdez were candidates for the office of president;
- (c) That at the close of said election the ballots were counted and the municipal board of canvassers declared that Clemente Dayrit had received a plurality of 224 votes;
- (d) That on the..... day of....., 1919, Emiliano J. Valdez presented a motion of protest in the Court of First Instance in which, among other things, he alleged that many unofficial ballots had been cast at said election, and prayed that the alleged frauds be examined into;
- (e) That the protestee filed a general denial to said motion of protest.

Upon the issue thus joined by the motion of protest and the answer the court appointed commissioners to examine the ballots cast at said election and to make a report. The ballot boxes were brought into court and opened. Upon an examination of said ballots it was discovered that in precinct No. 1 there were 272 unofficial ballots. At the time and prior to the said election Emiliano J. Valdez was acting as president. It is alleged and not denied that the ballot boxes in question were kept in his office from the time the election closed until they were brought into court.

The law provides that the municipal secretary shall retain the ballot boxes, unopened, in his possession, until the final decision of any election contest, and in any event, for six months, subject to the order of the court of competent jurisdiction or other officers specially authorized to open the same. (Sec. 468, Act No. 2711.) The retention of the ballot boxes, therefore, by Emiliano J. Valdez in his office was in direct violation of the law.

Upon the discovery of said unofficial ballots, the court indicated that they should be excluded and not counted. All of said unofficial ballots appears to have been cast for Clemente Dayrit. The said unofficial ballots were of a distinct color and a different print from the official ballots. When the protestee, Clemente Dayrit, discovered that the court was inclined to exclude said unofficial ballots from the count, which would have clearly changed the result of the election, he offered to prove, by a majority of the voters of said precinct, numbering 283 voters, (a) that they had each voted for him; (b) that they had received the ballots which they voted from the hands of the

precinct inspectors; (c) that each of them had prepared his own ballot; and (d) that they had each deposited his respective ballot in the ballot box, in the presence of the precinct inspectors.

To sustain that contention of the protestee, about 60 witnesses had been presented, when the protestant objected to the presentation of other witnesses upon the ground that the testimony which were giving was purely cumulative. The judge sustained that objection and prevented the protestee from presenting proof and other witnesses to sustain his contention, upon the ground that the proof offered was purely cumulative. Upon the denial of the request of the protestee, the present action was instituted in this Court.

Whether the declaration of said witnesses was cumulative evidence or not, depends entirely upon what the protestee desired to prove. If he desired to prove that the ballot box had been tampered with and that said unofficial ballots had been placed therein after the election, then such proof would be cumulative. Had the protestee desired to prove that said unofficial ballots had been placed in the ballots box after the election, considering the fact that they were of a different color and a different print, he would naturally have called the inspectors of said precinct to prove that fact. Certainly, the inspectors of the precinct, if they were honest men, would have noticed, in counting the ballots immediately after the close of the election, that the ballots in question were unofficial. Upon the other hand, if the protestee was trying to prove (a) that the 283 witnesses had voted for him; (b) that they had received official ballots from the hands of the precinct inspectors; (c) that each of them had prepared his own ballot, and (d) that they had each deposited his ballot in the ballot box, in the presence of the precinct inspectors, in accordance with the provisions of the law, then said proof cannot be considered cumulative and the court should have received it. All of said witnesses seemed to be willing to testify concerning the person for whom they voted and the manner in which they received, prepared and cast their ballots.

All of the authorities are agreed, in order to preserve a secret ballot and to give the voter the largest, unhampered participation in the affairs of his government, through the ballot, that the voter cannot be required, if he objects, to disclose the names of the persons for whom he voted. The manner of an elector's vote and the person or persons for whom he voted is a fact which no man has a right to learn until the elector himself may choose to make it public. (*People vs. Cicott*, 16 Mich., 283; 97 Am. Dec., 141.) That rule grows out of the secret ballot system which has been generally adopted for the protection of the voter and the preservation of purity and independence in the exercise of the most important franchise which the people of a state enjoy. The privilege, however, is a personal one and, if waived by the voter himself, he may then not only be permitted but compelled to testify as to whom he voted for. (*People vs. Turpin*, 49 Colo., 234; 33 L. R. A. [N. S.], 766; *People vs. Pease*, 27 N. Y., 45; 84 Am. Dec. 242.) The right to examine the voters, after they have declared a willingness to testify, when ballot boxes have been tampered with after the election, is an affirmance and vindication of the essential principle of the election system—that the will of the majority of the qualified electors shall determine the right to an elective office. The will of the majority of the qualified electors must be determined by a count of the legal ballots found in the ballot box at the close of the election. Subsequent changes in the ballots should not be permitted to affect the result of the election in order to destroy the will of the majority of the qualified electors. (*Hontiveros vs. Altavas*, 26 Phil. Rep., 213; *Paulino vs. Cailles*, 37 Phil., 825; *Calangi vs. Jocson*, R. G. No. 16108, decided February 7, 1920, not published.)

The inspectors, when they counted the ballots immediately after the close of the election, proclaimed that Clemente Dayrit had received a majority of 224 legal votes. So far as the record is concerned, there is nothing to show that they found in the ballot box any unofficial ballot. If there were no unofficial ballots in the ballot box at the time it was opened immediately after the close of the election, it is difficult to understand how any unofficial ballots were found in the ballot box at the time it was opened in the presence of the court. It is charged that Emiliano J. Valdez, the protestant, had said ballot box in his office from the time of the election up to and

including the time it was opened in the presence of the court. It would seem that he might offer some explanation concerning how said unofficial ballots appeared in the ballot box. He alleged in his motion of protest that the ballot box contained unofficial ballots. No explanation has been offered up to date showing the source of his knowledge upon that question.

Considering that the candidates are entitled to be accredited with all of the legal ballots found in the ballot box immediately after the close of the election, and considering that the inspectors failed to find any illegal ballots in the ballot box at that time in favor of the protestee, and considering that the protestee stands ready and willing, with his witnesses present in court, to prove that a majority of the voters of the precinct cast legal and official ballots for him, we are of the opinion and so decide that he should be given an opportunity to prove that fact.

Therefore, the prayer of the petition is hereby granted, with costs against the respondents. So ordered.

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

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