

PIO VALENZUELA, PETITIONER AND APPELLANT, VS. JUAN B. CARLOS AND SILVINO LOPEZ DE JESUS, RESPONDENTS. JUAN B. CARLOS, APPELLEE.*G. R. No. 17565. December 07, 1921*

Ponente: STREET, J.

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At the general election held in the Province of Bulacan on June 3, 1919, three persons presented themselves as candidates for the office of provincial governor, to wit, Juan B. Carlos, Pio Valenzuela, and Silvino Lopez. In this election the Nationalist party was split into two factions, represented respectively by Silvino Lopez, the candidate of the Nationalist party proper, and Juan B., Carlos, the candidate of the faction known as the Nationalist Popular League, while the third candidate mentioned, Pio Valenzuela, was the representative of the Democratic party. As might be expected from these conditions the election was hotly contested, and such political excitement was engendered. When the election was over and the returns canvassed, it was found that, upon the face of the official returns, Juan B. Carlos had been elected provincial governor, having received 10,046 votes, as certified by the provincial board of canvassers; while Pio Valenzuela was second, with 9,861 votes; and Silvino Lopez third, with 7,187. Carlos was accordingly certified as elected and later was inducted into office.

Dissatisfied with the result, Pio Valenzuela, the defeated democratic candidate, in due time began the present proceedings by motion to contest the election. Both his opponents having been duly cited, Juan B. Carlos appeared and not only made an active defense against the contestant's motion but instituted a counter-contest; while Silvino Lopez, after having formally answered, allowed the proceedings to take their course without further participation on his part.

Upon submission of the case for decision, his Honor, Judge Bartolome Revilla, presiding in the Court of First Instance of Bulacan, after considering the contentions of both parties, decided that Carlos had been elected by a plurality of about 1,800 votes over Valenzuela and he accordingly dismissed the contest. From this decision the contestant appealed.

In beginning the discussion it should be noted that the unofficial figures showing the results of the election, as published at Malolos, the provincial capital of Bulacan, in the two or three days immediately succeeding the election, differed materially from those afterwards promulgated by the provincial board of canvassers; and these differences were sufficient to change the apparent result of the election for provincial governor. The most conspicuous of these changes is found in the figures relative to the first precinct of San Rafael, where by the official returns Carlos received 329, instead of 111 votes with which he had been credited in the unofficial returns; while in the same precinct Valenzuela, who had been credited in the unofficial returns with 154 votes, received in the official returns only 29 votes. In the second precinct of San Rafael, the official canvass showed a reduction of 10 votes in the number received by Carlos, he being here officially credited with 160 votes instead of 170. In the third precinct, where the votes in favor of Carlos and Valenzuela respectively had been reported as 17

to 50, the official returns showed 32 to 35, indicating a loss of 15 to Valenzuela and a corresponding gain of 15 for Carlos.

These discrepancies between the unofficial figures and the results of the official canvass were not restricted to the municipality of San Rafael, being scattered over a number of other municipalities or precincts which are unnecessary to be mentioned. Some of these discrepancies can of course be assumed to be the result of mere errors in the unofficial reports, due to the fatalities of chance as the information passed from one person to another on its way from the places where the votes were counted to the provincial capital; for nobody ever heard of an election of any magnitude in which the unofficial reports coincided in every detail with the true returns. In this instance, however, the changes effected in the returns by the official figures are decidedly more favorable to Carlos than to his opponent; and it is a fair assumption that some intelligent agency may have been at work either to garble the first unofficial figures or to falsify the final official returns.

The explanation supplied by the contestee is to the effect that the discrepancies referred to—so far as they may have resulted from designing human intervention—were the result of a prank perpetrated by one Aniceto Cruz, who had charge of the telephone over which the unofficial returns of the election were received at the provincial building in Malolos, from whence they were given general publicity, upon the billboard and by mimeographed copies, for the information of everybody. We incline to the view that the personality mentioned may have contributed somewhat to the confusion which resulted in the returns but the incident can exert no decisive influence over the case and we pass it without further comment.

In prosecuting our examination into the details of the vote cast in the various contested precincts, we shall for obvious reasons first direct attention to those precincts which have been put in issue by the contestant, the appellant in this court, as part of his case in chief; and in this connection we note that the contestant insists upon the total suppression of the returns from the three precincts of the municipality of Bustos, the seventh precinct of Malolos, and the three precincts of Paombong. In regard to the first and third precincts of San Rafael the contestant insists that the returns sent in by the inspectors were falsified as regards the office of governor. As a consequence he contends that secondary evidence should be admitted to show what the results in these precincts really were. In respect to the second precinct of San Rafael, it was at first insisted by the contestant that the official returns had here also been falsified by the election officials to the detriment of the contestant; but when the boxes were opened and their contents examined, the result of the recount was found to be more favorable to Carlos, by a few votes, than the result shown by the official returns. When this fact was revealed, the contestant took the position that the contents of these boxes had probably been tampered with and that the ballots found in said boxes should not be accepted as conclusive as to the votes cast. Instead, he suggests that the court should here either adhere to the official returns or accept the unofficial figures as correct.

We shall now proceed to consider the contests relating to the various precincts in the order above suggested, indicating what we consider the proper figures for each precinct in turn, and reserving to the conclusion of this opinion such observations as we may wish to make with respect to particular ballots which have been brought into discussion.

Bustos; precinct 1.—The appellant has assigned error to the action of the court in refusing to suppress the returns from the first precinct of Bustos. In this connection it appears that the ballot boxes pertaining to this precinct were violated on or about the night of June 22, 1919; and when said boxes were examined in this contest, there were found in the box of used ballots only 6 ballots bearing the name of Carlos and 6 bearing the name of Valenzuela, whereas by the official returns Carlos received 177 votes in this precinct and Valenzuela 13.

Upon the question as to which of the present litigants, if either, is responsible for the spoliation of these boxes, the

evidence is undecisive. It is morally certain that said act cannot be attributed to Carlos, since his interests would have been better promoted by the conservation of the ballots than by their destruction; and he has produced a full tale of 177 individuals, who swear that they voted for him in this precinct. It is suggested in the appellant's brief that the despoiling of these boxes was really in the interest of Carlos since, if the ballots had been produced, they would have proved the truth of the appellant's charge that many votes had been dishonestly read for Carlos when they were in fact cast for Valenzuela. But this rests upon the assumption that this species of fraud was perpetrated, which is refuted by the testimony of the witnesses, 177 in number, who declared that they had voted for Carlos. It is absolutely incredible that, if such a fraud as that supposed by the contestant had been perpetrated, the contestee could have produced, or would have attempted to produce, the requisite number of witnesses to swear that they had voted for him.

From evidence submitted on the part of the contestant one is inclined to credit the charge that the ballots were extracted from the boxes in question on the night of June 22, 1919, by a policeman named Marcelo, Bunag, aided by one Agustin Lopez, both affiliated with the Nationalist party, and that said ballots were carried by these two to the home of one Hermenegildo Hilario.

On the other hand, it may be inferred from proof submitted by the contestee that a certain defeated candidate for representative had entertained criminal designs on these boxes, with a view to the possible furtherance of his own contest for a seat in the House of Representatives. In this connection the witness Valeriano Castro testified that said personage had offered him the sum of P200 to steal the boxes of the first precinct of Bustos, saying that the disappearance of those boxes would enable him to be successful in his contest for the office of representative. Singularly enough, the individual alluded to, although at one time participating in the present lawsuit as one of the attorneys for the contestant, did not take the stand to refute this imputation; and the unfavorable inference which the trial judge drew from his reticence was apparently not entirely without basis.

But assuming that either the one or the other of the parties thus placed under suspicion were the possible authors or instigators of the act, we do not think that sufficient connection has been shown on the part of the contestant or contestee to justify fixing the responsibility upon either. In considering a question of this kind, it must be borne in mind that, after a general election has been held, many disappointed persons have their minds fixed with curiosity and suspicion upon the ballot boxes. Charges of irregularities and fraud readily spring up; and when it is shown that a box has been violated the commission of the offense should not be laid at the door of any particular candidate without strong presumptions or actual proof of complicity. In the present case it is a reasonable and tenable supposition that this act of spoliation was committed by some third person, and possibly without the design to promote the interest of either of those litigants. In this view the spoliation of these boxes was the act of a stranger, and in our opinion neither litigant should be penalized therefor. The practical result is that the official returns for this precinct must be adhered to and Carlos is therefore entitled to be credited with 177 votes and Valenzuela with 13.

As already stated the trial judge permitted the contestee, over the objection of the contestant, to introduce witnesses who waived their privilege of secrecy and testified that they had voted for the contestee. This testimony was in our opinion admissible for the purpose of rehabilitating the returns from this precinct. In this connection it is to be borne in mind that the contestant had impugned the returns from this precinct and had introduced evidence tending to show that the boxes of this precinct had been violated by persons affiliated with the party to which the contestee belonged. In this state of the case it was proper to admit the testimony of voters in order to show that the contestee actually received the votes with which he had been credited. This procedure is criticised by the appellant as permitting an election to be held a second time by the court. But it must be remembered that this proof is received not for the purpose of accrediting the votes of the witnesses so testifying to either litigant but to show

that the returns which have been brought under suspicion are correct; and it is in this sense that such proof is considered admissible. The action of the trial judge in admitting this proof was therefore correct and besides it was in conformity with the decision of this court in *Dayrit vs. San Agustin and Valdez* (40 Phil., 782).

When it was understood that the testimony of these numerous voters from the first precinct of Bustos would be presented in court, the trial judge, at the request of the contestee and over the objection of the contestant, appointed a date for the taking of their testimony in the municipality of Bustos, of which both parties had due notice; and upon that date his Honor went to that municipality and a great number of said witnesses were there examined. It is now assigned as error that the action of the judge in repairing to the municipality of Bustos was unauthorized and that the judicial acts there done are devoid of legal effect. For this reason the appellant would have us declare that the testimony thus taken cannot be used in this case. This position is in our opinion not well taken. It is true that there is no provision of law directly authorizing a court to repair to a place other than that where the court sits for the purpose of taking the testimony of witnesses, though there is a provision under which the Secretary of Justice may direct a special session of court to be held in any municipality. (Sec. 163, Adm. Code.) It is to be borne in mind, however, that the session of court which was thus held in the municipality of Bustos was held for the exclusive purpose of taking the testimony of witnesses and it was held during the probatory term, before the cause was submitted for argument or judicial determination. Under these circumstances the trial judge must be considered to have been acting somewhat in the character of a commissioner to take a deposition; and as it does not appear that he abused his discretion in going to the municipality of Bustos for this purpose the irregularity in so doing was not vital.

Among the 177 persons who thus testified that they voted for Carlos were a number of illiterate persons; and upon cross-examination some of them said that they had not been required, as a preliminary to voting, to make oath concerning their incapacity to prepare their ballots, and some also stated that only one inspector was present when their votes were made out. For this reason the appellant insists that the votes of these persons should be deducted from the votes of Carlos in this precinct. In our opinion this position is not well taken, even supposing that the irregularities mentioned actually occurred.

It must now be regarded as settled doctrine of this court that innocent voters should not be deprived of their votes by the failure of the election officers to comply with requirements of law such as are here under consideration. While such provisions are mandatory before the election, they are to be considered after the election as directory only. (*Lino Luna vs. Rodriguez and De los Angeles*, 39 Phil., 208, 214.) By this it should be understood that if the vote of an illiterate person should be challenged before it is put in the ballot box on the ground that he has not taken the required oath or that he has been assisted in the preparation of his ballot only by a single inspector, such vote would not be admitted. But after the vote is cast, the irregularity is not vital. This court has never declared an election in any precinct invalid for any mere irregularity of this character, unaccompanied by other evidence of fraud.

In the case of *Lino Luna vs. Rodriguez and De los Angeles*, *supra*, it is suggested that the vote of an illiterate person who has voted without complying with the formal requirements above contemplated should be deducted from the votes cast if the ballot can be identified. However, it must be remembered that when the court speaks of rejecting a ballot on such ground, or grounds, the situation contemplated is that where the irregularity complained of is part of a fraudulent scheme to frustrate a free expression of the desires of the electorate. Where there is no evidence of fraud and it clearly appears that the vote as cast actually reflects the choice of the voter, the innocent voter should not be disfranchised by the deduction of his vote from the total number cast.

Bustos; precincts 2 and 3.—The boxes in these precincts were opened and a recount was had at the instance of the contestant. No specific assignment of error has been made to the action of the court in connection with the

revision of these votes but it is intimated that the returns from both these precincts should have been suppressed. We find no proof in the record that would have justified such course, and the supposed error was not committed. There is, however, one circumstance connected with the vote in these precincts to which attention will be directed. It is that when the box containing the used ballots of the second precinct was opened by the five commissioners appointed for this purpose, two of them made a note in the report to the effect that various ballots found in this box were written in one and the same hand. In the similar report concerning the ballots contained in the box from the third precinct the same two commissioners made a note to the effect that 160 ballots in favor of Carlos appeared to have been written by one hand and 25 by another. Nevertheless, all five of the commissioners allowed these ballots to pass without question and they were adjudicated to Carlos. Under these circumstances there is nothing for us to do except to adhere to the revision, as approved by the trial judge. Certainly, if there had been anything to be made out of this circumstance favorable to the contestant, the question should have been properly raised and the ballots brought before us. But this has not been done. The statement that such a large proportion of the ballots contained in the box of the third precinct was written by a single hand, if true, suggests the possibility that the box had been violated. But if so, the official returns would doubtless have prevailed in any event.

The result is that Carlos must be credited with 193 votes in the second precinct of Bustos and Valenzuela with 36, which are the figures adopted by the trial judge. The revised figures for the third precinct, as adopted by the trial judge, show a vote of 206 for Carlos and 32 for Valenzuela, but the vote of the latter must be here increased to 39f by reason of the addition of 7 disputed ballots which we concede to him as will hereafter appear.

Malolos; precinct 7.—In this precinct the polls were closed at the precise hour fixed by law, or 6 o'clock p. m., at which time there were still two hundred or more electors who had not voted and most of whom were then present near the voting booths, awaiting an opportunity to cast their ballots. The appellant insists that the democratic voters had been systematically excluded from the polls during the entire day and that the closing of the polls at the hour mentioned had the effect of disfranchising nearly two hundred of the voters of this party. In this connection evidence was submitted tending to show that the voters pertaining to the Nationalist party proper and to the League were lined up on opposite sides of the polling place and from these only voters were allowed to enter alternately when occasion came to admit them. The result was, so it is alleged, that the democratic voters were unable to gain admittance in any appreciable numbers during regular voting hours.

Upon this point a preponderance of the evidence in our opinion shows that no systematic effort of the kind here supposed to disfranchise democratic voters was made; and the circumstance that so many persons were unable to vote was due to the inadequate facilities for handling so many voters within the lawful voting -hours. Indeed, not a few of the witnesses examined by the contestant testified that they were unable to vote merely because of the crowd.

The proof shows that the polls were closed promptly at 6 for the reason that before election day instructions had been sent out from the Executive Bureau in Manila to the effect that the voting should be closed at 6 in accordance with the provisions of law and this order was communicated by Governor Buendia to the election officials in Malolos. It is possible that among those disfranchised by the early closing of the polls persons of democratic affiliation may have predominated; but it is shown that many voters of other parties were disfranchised in the same manner. It results that the trial judge did not err in adhering to the original returns in the seventh precinct of Malolos and in there allotting to Carlos 133 votes and to Valenzuela 88.

Paombong; precincts 1, 2, and 3.—The appellant seeks to suppress the returns from the three precincts of Paombong on the ground that, during the hours appointed for the election, voters known to be of democratic affiliation were kept from voting. The plan by which this is supposed to have been accomplished was similar to that alleged to have been used in the seventh precinct of Malolos, namely, that the voters belonging to the

Nationalist party proper were kept in line at a certain place near the polls, and the voters of the League were similarly lined up on another side. From these two lines only voters were admitted to the polling place, either alternately or by taking an equal number from each line to obtain the quota necessary to fill the booths at any time. The ward leaders charged with the duty of maintaining these lines are alleged to have excluded voters of democratic affiliation, with a natural desire to get their own voters through with as little delay as possible.

Upon examining the proof bearing upon this feature of the election, we are convinced that the democratic voters were here discriminated against in the matter of admission to the polls, and that this was done with the connivance of the election officials, with the result that when the hour fixed by law for closing the polls arrived comparatively few of the voters of this persuasion had been able to vote. Nevertheless, this irregularity cannot be held to have vitiated the election; for the reason that in each of these precincts, the election officials kept the polls open until every eligible voter present had voted. This was done at the urgent insistence of the democratic leaders themselves for the express purpose of securing an opportunity for their followers to vote. In one of these precincts the voting appears to have continued practically throughout the entire night, and in all three precincts the voting continued until all registered voters who presented themselves for this purpose had voted. A comparison of the registration lists with the number who actually voted in these three precincts shows that very few eligible voters, if any, could have failed to vote on account of being excluded from the polls during the regular voting hours of election day. In this connection we note that the average number of registered voters who failed to vote for any cause in these three precincts was below twenty; and where so many hundred were enrolled it is evident that the number thus actually deprived of the right to vote, if any, must have been inconsiderable.

The legality of the election in the first precinct of Paombong is also attacked by the appellant on the ground that some persons were here assisted as illiterates who are alleged to have been competent to make out their own ballots. It appears, however, that such persons gave assurances that they were unable to write and apparently took the oath prescribed for illiterates. Some of these persons who were thus assisted as illiterates exhibited bandaged hands as evidence of their temporary incapacity to write. The incident does not impress us as one that would justify the annulment of an election; and it is partly explainable by reference to the fact that not a few persons qualify as electors on the ground of being able to read and write who nevertheless are very deficient in their command of the pen. As might be expected when election day comes and these persons are confronted with the duty of preparing their ballots they are seized by lack of confidence, and naturally many seek assistance on the ground that they are unable to prepare their votes. If such assistance is sought in good faith, and there is nothing in the case before us to indicate the contrary, the irregularity, if such it be, is unimportant.

It must be held that his Honor, the trial judge, did not err in adhering to the official returns in the three precincts of Paombong, thereby awarding to Carlos 607 votes and to Valenzuela 79.

San Rafael; precinct 1.—The contest over the vote in this precinct presents the concrete question whether the official returns, as made out and certified by the election officers, were falsified in respect to the office of provincial governor by showing a vote of 329 to 29, instead of 111 to 154, as between Carlos and Valenzuela.

The counting of the votes in this precinct consumed the entire night of June 3, and was finished early in the morning of June 4, 1919. Upon the conclusion of the count, the few watchers and spectators who had had the patience and curiosity to stay to the end, dispersed; and the election officials say that they then proceeded to make out the returns in quadruplicate.

Two copies of this return are in evidence and the only difference observable is that, in the copy Exhibit G, the words stating the number of votes cast for two candidates for representative (Norberto Manikis and Cirilo B. Santos) are written over erasures, showing that the votes first placed opposite these names had been changed. This

incident is explained by the inspectors, who concur in saying that in setting down these figures an error had been made in placing the vote of Manikis opposite the name of Santos and the vote of Santos opposite the name of Manikis. The same error appears to have been made in each of the four copies, and was not noticed until the time came for the inspectors to sign. Upon discovery of the mistake, two entirely new copies of the returns were made out upon the only two remaining forms which were available; and for the other two it was necessary to erase the original figures and substitute the correct figures. Upon a careful examination of the proof bearing upon this alteration, we are satisfied that the alteration was made in the manner and for the reason stated, but, as we shall presently show, there is no certainty that the returns now before us and containing the changes above referred to are the precise returns that were made up before the inspectors dispersed.

The work of holding the election having been thus accomplished, the ballot boxes were placed upon a cart and dispatched in the direction of the municipal building. The president of the board of inspectors, one Nazario Valero, accompanied the carreta, and the municipal secretary, who had been in attendance at the polling place, also started along. Now, it so happened that Valero's residence is near the municipal building, and as all who had participated in the election work were exceedingly tired, it was agreed between Valero and the municipal secretary that the former should keep the boxes in his house and under his care until they could be delivered to the secretary later. Accordingly the boxes, upon reaching their destination, were transferred to the home of Valero, just opposite the municipal building, where they remained until late Friday afternoon of June 6, when they were brought over to the municipal building upon the occasion of a meeting of the council.

The evidence shows that the copy of the certified official returns from this precinct which should have been promptly forwarded to the provincial treasurer at Malolos was not forwarded for two days, and as a result the provincial treasurer came to San Rafael on the evening of the 5th, inquiring why those returns had not been sent in. In reply he was informed that the municipal secretary had then forwarded the document.

The unofficial returns from this precinct, however, reached Malolos on the morning of the 4th, showing, as we have stated in the beginning of this opinion, that Carlos had here received 111 votes and Valenzuela 154; and these returns had been then duly published on the bulletin board at the provincial building. Just how this information was sent to Malolos is a matter of dispute. The evidence submitted on this point by the contestant tends to show that when the conclusion of the count was reached, it appeared that the vote was 111 to 154 as between Carlos and Valenzuela, and that the results of the election for this office, as well as others, was communicated over the telephone between 9 and 10 a. m., on the 4th, by the municipal treasurer, one Servillano de Jesus, to the office of the provincial treasurer at Malolos. The witness Vicente Valimento says that at the time the communication just mentioned was transmitted over the telephone by the municipal treasurer he (the witness) was present and saw in the hands of the treasurer a copy of the returns showing the results of the election for the various offices, among which were the figures for governor indicated by him, namely, 111 to 154. The person in charge of the telephone in Malolos, Aniceto Cruz, says that he faithfully received and recorded the returns and that the figures placed on the board were those actually received by him.

On the other hand, the municipal treasurer denies having sent any such message, and the testimony of witnesses at the other end of the line (Malolos) tends to show in an unconvincing way that Aniceto Cruz may have deliberately introduced changes into the figures received by him.

A careful perusal of the testimony relating to this incident leaves one with the impression that something is wrong and that the version of the matter given by the municipal treasurer is lacking in candor. We believe that his testimony is animated by a desire to shield somebody and that for this purpose he has feigned not to have participated in sending in the first returns. Yet those returns went through his office, and he could scarcely have been ignorant of the fact of that communication, even if he did not send it.

We now return to the incident of the counting of the votes. The same Vicente Valimento mentioned above testified that he was present where the count was conducted during the whole night of the 3d, and sufficiently near to hear the votes called out; that he kept tally on a cardboard of every vote for certain offices, including that of governor, and he exhibited in court the board on which these votes had been recorded. He says that he truly recorded the vote and that the number actually received by the two respective candidates were as stated, to wit, 111 to 154. He was corroborated substantially, as to the result thus stated, by two witnesses, Generoso Inducil and Getulio Gonzales, who were watchers for the Nationalist party. "The first of these witnesses says that Valenzuela got more votes in the count than Carlos, without giving figures, while the latter says that Carlos got 111 votes to Valenzuela's 154.

We are unable to treat the testimony of this trio as lightly as did the trial judge, and we are of the opinion that, taken together, and in combination with other facts, it is sufficient to engender belief that the official returns are false. The inference thus deduced in our opinion becomes a certainty when a fact is considered to which attention will now be directed.

It is well-known that where the electorate is largely illiterate and voters are required to write into the ballot the names of the persons voted for, there is a tendency to vote most heavily for the offices at the head of the ballot, except where great public interest may have been aroused over some particular office lower down on the ballot. Thus, taking at random the official returns from precinct 4 of Pulilan, where 590 persons voted, we note that 540 voted at the top for senator, while only 497 voted for governor, the third office on the ballot, and 436 for municipal president. Now, by the official returns of the first precinct of San Rafael, it appears that in all 419 persons voted. Of these 381 voted for senator and 339 for representative, while for the office of governor, next below on the ballot, the total vote recorded is 406. This vote for the office of governor is within 3 per cent of the total number of persons voting and it is reasonably certain that this number could not have voted for that office.

We have examined the averages in a number of precincts taken at random, and we find that the number of votes cast for the office of governor runs on the average from 15 to 20 per cent below the total number voting. In other words, the fraud in the first precinct of San Rafael is proved by the excessive and unreasonable total of votes attributed to the three candidates, and especially to Carlos. On the other hand, the vote for governor as revealed in the unofficial returns is about 25 per cent below the total number voting, and though this disparity is large, the percentage is not markedly out of line with the vote cast for this office in some other places.

Our conclusion is that, by a preponderance of the evidence, the returns showing 329 votes for Carlos and only 29 votes for Valenzuela in the first precinct of San Rafael are evidently falsified; and in our opinion the true vote in this precinct, as between the candidates mentioned, is 111 for Carlos and 154 for Valenzuela.

Sera Rafael; precinct 2.—The contestant asked for a recount of the votes in the second precinct of San Rafael, and when the boxes were opened the result was found to be more favorable to Carlos by a few votes than the official returns had shown. The contestant's attorneys thereupon asked the court to adhere to the official returns. The reason assigned for this is that the box is now supposed to have been violated. This, we think, is refuted by the proof; and although this box had been taken to Manila upon the occasion of the contest over the election for representative, it does not appear to have been officially opened in that contest, and we are fairly well satisfied that it had not been tampered with. It result that the trial judge committed no error in assigning to Carlos 178 votes and to Valenzuela 7 in this precinct, "Which is the result of the recount, there being no assignment of error by the contestant upon details.

San Rafael; precinct 3.—In order to exhibit the facts relative to the contest in the third precinct of San Rafael, it is necessary to relate an incident connected with the election in precinct 1, which is this: When the counting of the

votes in that precinct had been concluded, Nazario Valero took with him from the voting place, as was proper, the official returns and the unused ballots, from one to two hundred in number, pertaining to this precinct. These he turned over on the morning of June 5 to the municipal secretary. What became of this package of unused ballots is not absolutely known. The municipal secretary says that they disappeared. But when the box of used ballots pertaining to the third precinct of San Rafael was opened in this contest there were found therein 114 ballots pertaining to the first precinct, showing that this box at least had been violated, and that the perpetrator of the crime had substituted ballots of the first precinct for the genuine ballots of the third precinct which he must have taken therefrom. Of said 114 ballots, 17 were so fixed as to purport to be votes for Carlos, 50 for Valenzuela, 15 for Silvino Lopez, and 32 without any name for governor. As between Carlos and Valenzuela this is precisely the vote shown by the unofficial returns; and if these votes were accepted as genuine the contents of this box would strongly corroborate the contention of the contestant to the effect that the original returns were as published immediately after the election.

But the fatal circumstance here is that the ballots substituted for the genuine ballots are not ballots of this precinct but of precinct 1f and the proof shows that ballots bearing the proper mark for this precinct were used in voting here. Why did the violator of this box substitute ballots from precinct 1 in a box pertaining to precinct 3? The answer is doubtless found in the fact that precinct 3 had been lately formed from precinct 1, and the ballots especially designed for use in precinct 3 were requisitioned and obtained after the votes for the other precincts had been obtained. "The man who performed the substitution, knowing that precinct 3 had just been detached from precinct 1, probably thought—if the matter occurred to him at all—that tickets from precinct 1 might pass without question, and he possibly did not notice that the tickets taken by him from this box bore the distinguishing number of this precinct. At any rate the fraud is manifest.

When it was thus revealed in court by the inspection of this box that the votes cast had been substituted by illegal ballots pertaining to another precinct, the contestee Carlos was permitted to introduce 33 witnesses, all of whom waived their privilege of secrecy and, with the exception of one, testified that they had voted for the contestee. The single witness referred to said that he voted for Valenzuela. The latter introduced no witnesses to ratify the remaining votes that had been credited to him in the official returns in his favor.

Upon this state of the proof the trial judge gave Carlos 32 votes and Valenzuela 1, thereby depriving Valenzuela of 34 out of the 35 votes with which he had been credited in the official returns from this precinct. Upon this it is alleged in error that the trial judge, upon discovering that the contents of the box had been changed, should have adhered to the official returns.

Whether his Honor should have done so, in our opinion depends upon whether Valenzuela can be, fairly said to have been responsible for the violation of this box; and upon this we are constrained to hold that such responsibility is not proved. It is true that, superficially considered, the changes effected in the contents of this box might seem to have been made in his interest, since, if these spurious substituted ballots had been accredited by the court, the result in this precinct would have corroborated, in a vital way, the contention of the contestant to the effect that the returns as posted on the bulletin board at Malolos were correct and that the official returns had been changed after the count was over. Nevertheless, we are confident that the contestant acted in good faith in asking that this box be opened and that personally he probably had no knowledge of the act of violation. We therefore concede to him the benefit of the doubt and hold that the official returns must be here accepted as to both candidates, which show 32 votes for Carlos and 35 for Valenzuela.

Having concluded our survey of the results in those precincts where the contestant seeks the entire suppression of the returns, we shall proceed to consider those precincts the returns from which have been brought into discussion under the counter-protest; and in this connection we observe that the trial court, at the instance of the

counter-protestant, Carlos, totally suppressed the returns in the first and third precincts of Polo, the five precincts of Meycauayan, the two precincts of San Ildefonso, and the third precinct of Angat. To these therefore in turn our attention will presently be directed.

But before so doing it is necessary to dispose of the assignment of error (No. 1) directed to the action of the court in permitting the contestee, Carlos, to amend his motion of counter-contest on the date of September 16, 1919. In this connection it appears that the original protest was filed by the contestant on June 23, 1919, and the original answer and counter-protest was filed by the contestee on July 7, 1919. After this the cause was finally called for hearing, after a single adjournment, on September 16, 1919, upon which date the amended counter-protest was submitted by the contestee. Upon this date no proof had as yet been submitted by the contestant; and we are of the opinion that it was clearly within the discretion of the court to admit at that juncture the amended counter-protest. Certainly it would be difficult to discover the possibility of any legal prejudice resulting from that act to the contestant, no proof having as yet been taken by either party. When in addition to this it is remembered that the taking of proof in this case was continued over a period of more than one year, and that a considerable period of time intervened between the filing of the counter-protest and the taking of any evidence whatever by the contestee in support of the allegations of his counter-protest, it is quite evident the trial judge cannot now be put in error in having allowed the contestee to amend.

Polo; precinct 1.—The appellant calls in question the action of the trial judge in having allowed the ballot boxes of this precinct to be opened, it being insisted that the proper conservation of the same had not been sufficiently proved. We are unable to agree with the appellant on this point; and we accept the testimony of Francisco Mendiola, who was acting secretary of the municipality at the time of the election, in relation with that of his successor, Eugenio Agustinis, as sufficient to show *prima facie* that the boxes were kept inviolate until they came under the care of the detachment of the Constabulary that was sent to guard them, after which the boxes went into the custody of the clerk of the court.

The data upon which the trial judge mainly relied as his basis for the annulment of the election in this precinct consist of certain facts which were revealed when the ballot boxes were opened, namely, first, that the list of illiterate voters and incapacitated persons who required assistance was not found in the box where the inspectors said it had been placed; secondly, the number of used ballots (435) found in the appropriate box was 7 less than the number of persons (442) who appeared to have voted, while on the other hand the number of spoiled ballots (51) and unused ballots (114) was sufficient, when added to the number of ballots actually used, to complete the exact number of ballots (600) delivered for election purposes to the inspectors of this precinct. From this circumstance the trial judge inferred that 7 ballots had been used outside the polls during the election for the fraudulent purpose of having the ballots prepared outside and delivered to the intending voter, who in turn was required to bring back from the polling booth the clean ballot delivered to him by the election officers. In this practice, the ballots thus illegitimately used serve the function of a shuttle; and by means of even a single ballot, the votes of many may be controlled. In the view of the trial judge the 7 ballots thus illegally used in the first precinct of Polo must have been surreptitiously introduced after the election into the box of spoiled and unused ballots through a slot which may have been left uncovered.

In addition to the circumstance above noted it was found upon examining the ballots cast in this precinct that more than 70 had been written with lead pencil, and this, notwithstanding the fact that indelible pencils had been supplied to the election inspectors in sufficient number to supply all the booths. The inspectors testified that between 10 and 11 o'clock on the morning of the election it was discovered that there were no pencils in three of the booths. The necessary inference to be drawn from these facts is either that the indelible pencils had been surreptitiously taken from these booths after the voting began or that such pencils had not been placed in the

booths at all. At any rate the absence of the indelible pencils from the voting booths during a part, or the whole of the day, must be taken as probably explaining the appearance of the 92 ballots written with lead pencil.

All of the circumstances above referred to, taken together, and others of less moment mentioned by the trial judge, are not in our opinion sufficient to justify the annulment of the election in this precinct. It is not to be denied that there is ground for a suspicion that one or more ballots may have been used in exactly the manner suggested, and it is conceivable that ballots may have been thus illegally introduced into the boxes during the election. But taken together, all this is matter of pure conjecture, and the circumstances mentioned do not in our opinion furnish any secure basis for annulling the returns from the entire precinct.

As a consequence of the view we take of the facts relating to this precinct, all of the legal votes found in this box must be counted. This means that we here concede to Carlos 17 votes and to Valenzuela 371, admitting certain ballots challenged by the commissioners, as will appear hereafter.

Polo; precinct 3.—Upon examining the ballots cast in this precinct there was found to be a discrepancy of one between the number of persons who actually voted and the number of ballots found in the box of used ballots, while the total number of used and unused ballots, plus the spoiled ballots, fell short by two of the total number of ballots delivered to the election officers prior to the election for use in this precinct. In addition to this, the number of ballots which the inspectors said they were able to identify as having been made out by themselves fell somewhat short of the number which they should apparently have been able to identify as written in their script, having regard to the number of illiterates who were shown by the registration lists to have sought assistance. Moreover, a number of voters in this precinct who had personally prepared their own ballots stated, after looking through the ballots found in the box, that the ballots prepared by them were not there.

In regard to the discrepancy of one between the number apparently voting and the number of used ballots, as well as the shortage of two in the number of ballots necessary to complete the number of those originally here placed in the hands of the election officers, the same must be said as was said of a similar discrepancy in the first precinct of Polo, namely, that though these facts may excite suspicion they do not prove fraud in the sense necessary to nullify the election. Nor in our opinion is a sufficient case made for the annulment of the election on the additional ground that some 12 or 13 ballots which the inspectors apparently should have filled out for illiterate persons were not identified; or that some voters who voted for Carlos said they did not find their ballots among those actually cast. Such proof we consider of doubtful value, and the too ready acceptance of the inference drawn from it would in our opinion be exceedingly dangerous to the security of election results. In this connection it should be borne in mind that when an election is over, persons on the losing side whose position has not been publicly known may readily feign, as a matter of vanity or policy, to have voted for the successful candidate, and if confronted with the proposition of identifying their ballots, they naturally would hesitate to admit as theirs a ballot which possibly would contradict their pretensions in respect to some one or another of the persons voted for. Moreover, election inspectors themselves might not infrequently have good personal reasons for not at once recognizing the work of their hands. On the whole we are inclined to minimize the weight of proof of this character; and at any rate the circumstances referred to, even if true, are not in our opinion sufficient to justify the disfranchisement of the entire electorate in this precinct, as would result from the annulment of the election.

The official returns from the third precinct of Polo must be therefore adhered to; and in this connection it will be noted that no addition can be here allowed in favor of Carlos by reason of the statement of a number of voters who claim to have voted for him but who said that their ballots were not to be found among the used ballots. The admission of these votes would indeed amount to the holding of a second election by the court. Carlos can in consequence be credited only with the 13 votes attributed to him in the official returns, while Valenzuela receives 244.

Meycauayan.—The protestee submitted the testimony of numerous witnesses tending to show irregularities in the conduct of the election in the various precincts of Meycauayan. The external irregularities thus charged, with respect to the conduct of the election in the several precincts, as summed up in the appellee's brief, are substantially as follows:

In the first and second precincts the voters, so it is claimed, were permitted to crowd into the polling places without due regard to the accommodations, with the result that two electors were sometimes found to be installed in a single compartment at the same time; and in said precincts Hermogenes Lim, Moises Buning, and Alipio Pedro were permitted to engage in improper activities as watchers, mingling among the voters, urging them to vote for certain candidates, and unlawfully assisting some in the preparation of their ballots. By this means, it is contended, the secrecy of the election was fatally impaired.

In the third precinct the voters are said not to have been duly identified; and an inspector, one Jose Padilla, a partisan of Pio Valenzuela, is said to have paced to and fro during a great part of election day in front of the voting booths, observing the voters and placing model ballots (plantillas) in their hands. As preparatory to the recount of the ballots in this precinct, those cast for Arsenio Francia, one of the candidates for municipal president, were placed in a pile separate from the pile containing the votes of his two opponents Hermogenes Lim and Pablo Noriega; and it is said that the count was suspended while there yet remained in the box other ballots which were not examined.

It is also claimed that after the voting was finished in this precinct the registration list was augmented by adding the names of persons not previously registered in order to adjust the list to the number voting.

In precinct 4 the voting was interrupted at one time during the day for a few minutes—some of the witnesses say as long as half an hour—by the sudden appearance of a shrieking woman who, being pursued by a man armed with a bolo, sought refuge in the polling place. This incident caused many of the people who were collected around the place to enter its precincts; and as a result of the disorder the election inspectors jumped up, scattering over the floor the unused ballots and other papers connected with the election.

Upon examining the proof in support of the irregularities mentioned above, it is quite apparent that such of these irregularities as are actually proved do not have the significance that the attorneys for the appellee would have us attribute to them, and they certainly could not be taken to justify the annulment of the election returns from these precincts. Indeed, the attorneys for the appellee rely upon these irregularities not so much for the purpose of thereby nullifying the returns from these precincts as for the purpose of showing the existence of irregularities and fraud sufficient to justify the opening of the boxes and the examination of the ballots found therein.

The facts upon which the trial judge relied for the suppression of these returns were deduced by him chiefly from the internal evidence of fraud, supplied by the contents of the boxes themselves. Upon these features of the case we shall presently make some comment, but it must first be stated that in our opinion by a clear preponderance of evidence both internal and external, the ballot boxes in the several precincts of Meycauayan had been tampered with before their contents were the subject of inspection in this case. It results that the facts revealed upon opening said boxes cannot serve as a basis for setting the official returns aside. It is well settled as a legal proposition that where the evidence shows that the ballot boxes have been violated and their contents changed, the original count must prevail; and it has been held that the fact that some of the ballots in a box have been tampered with impeaches the integrity of all in that box on a recount. (20 C. C. J., 255.) Before the ballots found in a box can be used to set aside the returns, the court must be sure that it has before it the identical ballots deposited by the voters. (Rhode vs. Steinmetz, 25 Colo., 308; Cobb vs. Berry, 168 Pac, 46.) Upon the point of the due conservation of these boxes, it appears that, prior to the trial in this case, a contest over the municipal offices in this

municipality had been instituted; and the contents of these boxes were examined in that contest. It results that the seals have been broken, and the external appearance of the boxes at the time of the trial afforded no proof either one way or the other upon the question whether they have been violated. But wholly apart from this, the evidence of violation is conclusive.

A witness named Genoveva Pengson, school mistress, introduced by the contestant, testified that a short while after the election she and others filled out the forms of about 150 official ballots, of which she herself fixed 30. This was done, so she says, in the interest of the contest of one of the candidates for municipal president, the idea being that the ballots thus fixed were to be surreptitiously introduced into the ballot boxes for the purpose of giving plausibility to his claims. For other offices than that of municipal president the names of various candidates were inserted, as suited the whims or preferences of the person writing the ballot.

We have no doubt that ballots were thus fabricated by Genoveva Pengson, and the proof of the statement is found in the fact that she undoubtedly recognized and identified 18 of these ballots in the boxes of the third precinct. The only doubt which we have entertained with reference to the testimony of this witness is whether or not those spurious ballots might not have been fixed on or before the election and fraudulently intromitted on that day into the ballot box. If a conspiracy to effect this had been made effective, this would doubtless have justified the annulment of the election in this precinct; but taking the proof all together this court is unable to say that such fact is proved.

In connection with the testimony of Genoveva Pengson, and as corroborative of the inferences deducible therefrom, may be mentioned the testimony of one Benigno Roque, sanitary inspector, who says that on or about Sunday morning of June 22, 1919, he had occasion to go to the municipal building in Meycauayan upon an errand relative to the issuance of a burial certificate, and that upon this occasion he passed into the office of the municipal secretary and saw the municipal president, Liberato Exaltation, confronting some open ballot boxes and with numerous ballots on the table before him, among which was a handful of mutilated ballots.

When it is borne in mind that Genoveva Pengson is corroborated by two witnesses as to the fact that ballots were filled out by her,—though said witnesses fix the time as the day of the election; and when it is further borne in mind that Genoveva Pengson afterwards recognized her own handiwork in 18 of the ballots found in the boxes of the third precinct, and that 59 mutilated ballots were found in the ballot box of the fourth precinct, which undoubtedly came from some other box, the fact of the violation of the boxes must be considered conclusively established.

It is suggested in the opinion of the trial judge that the circumstance that 59 mutilated ballots were found in the box of precinct 4 might be interpreted as showing that there was collusion among the inspectors of the election; but it is impossible to see how this transfer of ballots from the box of one precinct to another could have been effected upon the day of election before the official returns were made up. Nor is any reason discernible why such feat should have been then undertaken.

In stating the conclusion that the violation of the boxes in these precincts is proved, we have not overlooked the proof submitted by the contestee tending to show that said boxes were properly conserved, under the care of the appropriate officials, from the time the election was held. This proof, we admit, was *prima facie* sufficient to justify the opening of the boxes in this contest; but it is not conclusive and cannot prevail against the combination of facts showing that violation occurred.

Bearing in mind, then, our assumption that some and perhaps all of the ballot boxes pertaining to the various precincts of Meycauayan had been violated, we now direct our attention to the facts revealed upon the actual examination of said boxes. In this connection it may be stated that upon opening the boxes in precinct 1, 4 used

ballots were found to be missing, and there was an excess of 7 among the spoiled ballots. Again, the inspectors recognized only 5 ballots as having been prepared by them for illiterate persons, while 17 appeared to have sought assistance. Furthermore, one Juan Bello, a voter in this precinct declared that he was unable to find his ballot among those contained in the box of used ballots. From the facts above-mentioned his Honor inferred that 7 ballots had been illegitimately used outside of the polling place for the purpose of shuttling prepared ballots into the election boxes, and that some of the votes of illiterates, as well as that of Juan Bello, had been fraudulently substituted by other ballots. His Honor furthermore suspected that 59 ballots found in the box of the fourth precinct with tops torn off, so that the precinct to which they originally pertained could not be known, had been taken from the box of precinct 1. Whether this conjecture be true or not cannot be known. But it is evident that, in conformity with our ruling upon the first and third precincts of Polo, the official returns must here prevail.

In the second precinct, the two ballot boxes which should have contained respectively the used ballots and the spoiled ballots were both found, upon being opened, to contain ballots which appeared to be in all respects legitimate ballots. Of such ballots the first box contained 393 ballots and the other 95, which, being added together, make a total of 488, or an excess of 88 over the whole number who voted. This indicates that something is wrong here, but what is the nature of the trouble and whom does it affect? Perhaps it could be said that the boxes had simply been violated and these excess ballots introduced after the election. But the trial judge entertained the view that many persons had voted more than once in this precinct, resulting in an excess of ballots. This may have been the case, as there is some evidence tending to show that on election day the voters were admitted to the polling place in this precinct without identification. If so, the inspectors, at the beginning of the count, would have been confronted with the fact that they had decidedly more ballots on hand than would be accounted for by the number who had voted. In view of this, it is a plausible conjecture that the inspectors may have discarded excess ballots sufficient to reduce the number of used ballots to about the number who ought to have voted. We may add that authority for such procedure to reduce an excess of ballots is found in the Election Law (Adm. Code, sec. 462).

Now it is evident that the official returns from this precinct were made up from the contents of the box containing 393 ballots, since by the official returns Carlos is here credited with 38 votes, and Valenzuela with 289, and in the box referred to there were found 38 votes for Carlos and 288 for Valenzuela. The 95 ballots found in the other box therefore probably represent discarded excess ballots; and upon inspection of these, it is found that only two bear the name of Carlos while fifty bear the name of Valenzuela, and the remainder have no name in the space for the office of governor. From this it is evident that if any of Valenzuela's followers voted a second or third time, this candidate could have gained nothing by the process, since practically all of the discarded votes for governor bear his name. On the other hand, Carlos benefited by the discarding of these votes since the proportion of votes thus discarded which bear his name was not by any means equal to the ratio of his vote to that of Valenzuela in the box whose contents were counted. In this view of the case, the irregularity supposed to have occurred was not prejudicial to Carlos; and therefore the election in this precinct cannot be annulled at his instance on the ground of this irregularity.

In the third precinct, both boxes, upon being opened, were found to contain ballots which, to all appearance, might have been legitimately voted; but as the number of electors actually voting was 175 it is evident that the official returns were based upon the count of the box which contained exactly 175 ballots. Of these 105 were votes for Valenzuela and 32 for Carlos. The other box contained 221 ballots in all and showed a decidedly higher percentage of votes for Carlos than the box first mentioned (Valenzuela 78; Carlos 53). Of course this shows that something is wrong here also. The question is, In what did the fraud or irregularity consist?

The trial judge in his decision notes the fact that the oath does not appear to have been here administered to the

illiterate voters, and that there was a failure to identify the voters prior to admitting them to vote. From this he apparently inferred that repetition of votes occurred, with a consequent necessity on the part of the inspectors to isolate and put into a separate box the large excess of ballots over the number of actual voters. Possibly this may to some extent have been the case as in the second precinct, but the enormous excess of the votes that should have been discarded (221) under this theory, suggests that some other factor was at work. We believe that these ballot boxes had simply been stuffed after the election; and it was here, as will be remembered, that Genoveva Pengson found the ballots that had been prepared by herself. When the two boxes of the fourth precinct were examined, there were found altogether ballots used, unused, and mutilated, to the number of 659, or 59 in excess of the total number which had been here delivered to the officers for election purposes; and in the first of these boxes there was a package of exactly 59 ballots with the tops torn off, apparently for the purpose of destroying evidence of the precinct to which these ballots had been destined. The circumstance that 53 of them bear the name of Carlos raises a suspicion—nothing more—that this number of votes may somehow have been stolen from him; but all that we can say with certainty is that the ballot boxes of these precincts had been violated: Their contents therefore cannot be used to subvert the official returns.

Upon opening the boxes of the fifth precinct of Meycauayan, 1 ballot of the 600 here delivered to the election officials for purposes of the election appeared to be wanting, while the number of ballots found in the box of used ballots was 4 less than the number of persons voting. In addition to this 3 ballots prepared by one of the inspectors, Buenaventura Desiderio, was found in the box of spoiled ballots,—whether for Carlos or Valenzuela is not stated. In conformity with our ruling upon the effect of similar irregularities in other precincts, it is necessary to hold that this election cannot be annulled on account of the facts here stated.

But another circumstance is relied upon by the contestee to annul the election in this precinct, namely, that the boxes were returned without any official count of the vote having been made at the place where the election was held. In this connection it appears that the fifth precinct of Meycauayan is in a rural district, probably several kilometers distant from the poblacion; and it is claimed by the contestant that immediately after the polls were closed, between 5 and 6 p. m., on election day, the inspectors opened the boxes and set out for the poblacion, carrying the boxes with them. Having arrived at about 8 p. m., at the municipal building, or office of chief of police immediately adjacent thereto, they are supposed to have there opened the boxes and made up the returns. This incident is denied by persons concerned; but it is conceivable that the inspectors may have done this thing, either from ignorance or some necessity arising from lack of facilities for making the count at the polling place during the nighttime. Into these conjectures we shall not enter, inasmuch as we are of the opinion that the election in this precinct should not be annulled by reason of said irregularity, there being nothing to show that the official returns as made out are fictitious.

The result of the discussion relative to the contest in Meycauayan leads to the conclusion that the official returns must be here adhered to, not only because the boxes have evidently been tampered with, thus destroying the probative value of the ballots found in the boxes, but because the irregularities proved to have occurred in the several precincts are not such as in our opinion would justify the annulment of the election. We therefore concede to Carlos in the five precincts of this municipality 137 votes, and to Valenzuela 958.

San Ildefonso; precincts 1 and 2.—His Honor wholly suppressed the returns from both precincts of the municipality of San Ildefonso on account of certain irregularities in the conduct of the election; and although these precincts have many voters, the vote was so nearly equally divided between Carlos and Valenzuela that the action taken affects the result to the extent of only 4 votes in the first precinct and 13 in the second. The proof indicates in our opinion that during the greater part of the day average conditions as regards order and decorum prevailed at the polling places in this municipality; but as the day wore on and it became apparent that the voting

facilities were inadequate to accommodate the persons desiring to vote within the lawful hours of voting, the persons waiting to vote became impatient, and with the connivance or consent of the election officers began to press into the polling places faster than they could vote. This condition was more pronounced in the first precinct than elsewhere; and there is evidence tending to show that some of the voters prepared their ballots outside of the voting booths, availing themselves for this purpose of school desks or resting the ballots on the splays of the window. Moreover, it was observed that not infrequently the incoming voter entered a booth before it had been vacated by his predecessor.

That some disorder of this kind occurred may be admitted, but we can feel no assurance as to its extent or duration; and we think we would be attributing undue importance to it, if we should permit the ejection to be set aside in these precincts on that account. We note in this connection that in the original counter-protest, the vote in San Ildefonso was attacked by the contestee on the sole ground that ballots containing the name of Carlos had been erroneously misread for Valenzuela, and it was only in the amended counter-protest of September 16, 1919, that charges appeared with respect to the violation of the secrecy of the voting. It may therefore be inferred that the disorder above alluded to was not of a character to have attracted general attention on election day, and hence it was probably not such as to have vitally affected the expression of the voters' will. Certain other irregularities are mentioned in connection with the election in these precincts, such as failure to identify the voters who presented themselves to vote, and the circumstance that the number of illiterates in fact assisted by the inspectors was less than the number indicated in the registration list as having asked for assistance. We consider the evidence in support of these irregularities insufficient to merit serious attention.

We have looked with greater suspicion upon the activities of the president of the board of inspectors of the first precinct, one Quintino Villacorte, who is said to have paced to and fro in the polling place, obtruding himself unduly upon the attention of the voters, and exerting pressure upon them to vote for certain candidates. It is further claimed that, upon receiving the ballots from voters, instead of inserting them at once into the ballot box, he did not hesitate to open them on the pretext that they were improperly folded. Notwithstanding all this, we are persuaded that if there had been any systematic fraud perpetrated here in the interest of Valenzuela, the result would probably have been more conspicuous in the returns. Instead therefore of annulling the election in this municipality, we here adhere to the election returns and concede to Carlos 311 votes and to Valenzuela 327.

Angat; precinct 3.—The election in the third precinct of Angat may be said to have reproduced on a minor scale some of the features of disorder that characterized the election in the first precinct of San Ildefonso during certain hours of the afternoon; and it is perhaps sufficient to say that the case made for the annulment of the election here is decidedly weaker than in the election in San Ildefonso. According to the testimony of Teodorico Santos, the voters came into the polling place in good order and in proper succession until in the afternoon, when they began to crowd the place, with the consequence that the election officials no longer checked off the voters as they entered; but after the election was over, so this witness says, names were checked off in the registration list to correspond approximately with the number who had voted. According to another witness, officious offers were made by inspectors here to write out the ballots of persons who knew how to write. Our conclusion upon examining the proof is that irregularities of the character mentioned have not been proved to the extent that would justify a court in annulling the returns. It results that in the third precinct of Angat Carlos must be credited with 76 votes and Valenzuela with 151.

We now take up the discussion of the disputed ballots which are supposed to represent votes for the appellant Valenzuela but which were rejected by the trial judge. In approaching this feature of the case, in order to abridge discussion and avoid the constant repetition of rudimentary propositions, a word will be said as to the attitude of this court in passing on the validity of ballots in general. The first and principal thing to be here stated is that

voters should be encouraged to write their own ballots so far as possible, and it is the bounden duty of every person ducting an election to assist in the attainment of the freest possible expression of the will of the electorate through the voters themselves. Consistently with this, the utmost liberality must be observed in reading the ballots, with a view to giving effect to the intention of the voters. Where many are illiterate, the minor blemishes found on the ballots may be expected to exhibit great variety, including errors of spelling, the casual making of blurs and erasures, to which may be added unnecessary touches and flourishes with the pencil. None of these blemishes can be considered as affecting the validity of the ballot, where an honest intention on the part of the voter to vote for certain persons is discernible in the ballot. With respect to errors of spelling, or lack of finish in the written name, it may be said that no honest mistake, due to ignorance or illiteracy, should be permitted to defeat the intention of the voter, if that intention is discoverable; and in this connection the utmost liberality of construction must prevail.

We have held in this decision that if a surname is written as the name of a person voted for and this name is clearly a different surname from that of the candidate, such vote cannot be counted for the candidate, even though the two surnames in some respects resemble each other. For this reason, we have after some hesitation sustained the trial judge in discarding several ballots, claimed by Valenzuela in which the surname Valencia is written. Subject to exceptions of this character, the general rule for the guidance of the election inspectors and of lower courts must be to give effect to the intention of the voter, whenever that intention is fairly discernible.

We may add that in order for a ballot to be considered marked, in the sense necessary to invalidate it, it must appear that the voter has designedly placed some superfluous sign or mark on the ballot which might serve to identify the ballot thereafter. Genuine illustrations of such ballots, actually so marked by the voter, are of rare occurrence; and considerations of public policy as well as of justice require that no ballots should be discarded as a marked ballot unless its character as such is unmistakable.

Another point which has been several times ruled in this case is that a vote in favor of a candidate for a certain office is not to be discarded merely because the name of the same person appears voted in connection with some other different office, unless, of course, as would scarcely ever be the case, the court can infer that the voter deliberately adopted this device as a means of identifying his ballot. To justify this inference there should be something more before the court than the bare fact that the name is written under more than one office. Of course this ruling will not be understood as permitting a single person to be voted for more than once for the same office, as for instance, if the voter should repeat the name of the same candidate in voting for an office like that of councillor, where several are to be voted for.

Polo; precinct 1.—The trial judge threw out the returns from this precinct, as already stated, and among the irregularities noted by him is the fact that many used ballots here found in the box appeared to have been written with a lead pencil instead of the indelible pencil supposed to have been delivered to the inspectors for use in the election booths. In view of the fact that we have reversed the trial judge in throwing out these returns, it becomes necessary to pass incidentally on the validity of such of these ballots as are fairly open to question; and we do not hesitate to hold, in conformity with the doctrine of *Manalo vs. Sevilla* (24 Phil., 609), that the mere circumstance that a ballot is written with a lead pencil, instead of with an indelible pencil, does not invalidate the vote. True it is, this circumstance might in some cases be relevant, in connection with other evidence, as tending to show that fraud was perpetrated, as for instance where ballots are prepared away from the polls and fraudulently introduced into the ballot box during the course of the election. But in the case before us, we do not consider the evidence sufficient to warrant the conclusion that any such fraud was practiced. So far then as concerns being written with a lead pencil, none of these votes can be discarded.

Some 20 other ballots brought up to this court as Exhibits AAAA-73 to AAAA-92 of the appellant were not

actually ruled out by the trial judge, because of the fact that, for other reasons, he threw out all the votes of this precinct. But they were challenged before the commissioners, and we have looked them over. In some there are manifest errors in spelling the name Valenzuela, but in all the intention to vote for him is sufficiently manifest to warrant the admission of the vote. In one, the word "gobernador" is added after the name Pio Valenzuela (AAAA75) ; in another, nine instead of eight councillors are voted for, and the name of the last is below the bottom line enclosing the space for names of the councillors (AAAA77); in another, a comma is inserted between Pio and Valenzuela (AAAA-81) ; in another, commas or period are inserted between the Christian name and surname of the persons voted for as councillors (AAAA-82); in another, the voter, evidently a very poor scribe, after vainly attempting to write the names of the persons for whom he intended to vote as councillors, gave up the effort and covered the remaining space with illegible scrawls (AAAA-89). These and other similar defects noted in these ballots we consider too trivial to require extended comment.

Polo; precinct 2.—Of the 23 ballots (Exhibit 25-A to 25-U, inclusive) here rejected by the trial court all, with the exception of one, in our opinion represent good and legal votes for Valenzuela and should be counted for him. Among defects observable among these ballots, which the trial judge considered vital, but which in our opinion do not affect the validity of the vote are these: Certain circular flourishes of the pencil over the space appropriate for votes for municipal councillors, evidently made by the voter to indicate that he did not wish to vote for any person for that office (25-A); the placing of the title "Dr." before the name of Pio Valenzuela and the making of an oblique mark over the space for municipal councillors, after the name of the single person voted for in that space, the purpose evidently being to show that the voter did not wish to vote for more (Exhibit B); the spelling "Poi" for "Pio," and the placing of a mark like the initial stroke of the letter A in the space for municipal president, where the voter evidently started to write a name but for some cause failed to finish (Exhibit C). In the same ballot there appear some superfluous scrawls in connection with the initial letters of the names of two persons voted for as municipal councillors. These merely show that the voter, who was evidently unversed in the art of penmanship, had difficulty in starting out to spell these names. In another ballot, a triangular fragment, about the size of the print of one's thumb, has been torn out of the side of the ballot (Exhibit D), a circumstance which to our mind could have no possible significance, regardless as to how and when this fragment was torn off.

Exhibit 25-E was held to be a marked ballot by the trial judge for the reason that the voter in voting for members of the provincial board first erroneously wrote the word Fortuto for Fortunato, the Christian name of one of the candidates for this office. Observing his mistake, he cancelled the word Fortuto and wrote out the full name of the candidate correctly in the next line below. It is evident that the ballot should not be considered a marked ballot by reason of the correction of the error here first made by the voter. In the ballot 25-G, the voter first erroneously wrote the name of Pio Valenzuela in the place for representative, but perceiving his mistake, he erased the name in that place, so far as he could, leaving a blur, and wrote the name again in the place for the name of provincial governor. The vote for governor cannot be rejected either because of the erasure or because the same name has been written twice in connection with two different offices. The ballot 25-H should not be rejected for the error in the spelling of the name of the candidate voted for, which is here written "Puo Balenzula;" nor is it vitiated by the further fact that nine persons are voted for as municipal councillors instead of eighty one of the names being written below the line which marks the space for this office. This irregularity can affect the ballot only as regards the office of councillors. The vote for Pio Valenzuela in ballot Exhibit 25-1 is not rendered invalid by the circumstance that the voter first wrote the name of Leandro Cabral in the space for municipal president but afterwards struck this out and wrote the name of Arcadio Constantino for the same office. The ballot 25-J is not rendered invalid by reason of the illegible scrawls with which the space for municipal councillors is covered, it being evident that the voter merely intended to indicate that he could not or did not wish to vote for councillors. Nor is the same ballot vitiated by the fact that the words "Por tonto" are written in the space where the voter might

have placed the name of candidates for members of the provincial board. It is probable that he may at first have intended to write the name of Fortunato Rivera in this space, but gave up the attempt. The ballot 25-K cannot be rejected as marked for the mere reason that the word "Pare" (compadre) is prefixed to the name of one of the persons voted for as municipal councillor. The ballot 25-L is not vitiated by the fact that the voter first wrote the name of Leandro Constantino for municipal president, but perhaps thinking better of the matter, struck the name out. The ballot 25-LL is not rendered invalid by the circumstance that the name of Valenzuela is incorrectly spelled "Baranzuela," nor by the further fact that the voter first wrote the name of a certain person for representative but later struck the name out with repeated strokes of the pencil. The ballot 25-T is not vitiated by the circumstance that the word "Senador" is prefixed to the name of Teodorico Sandiko, candidate for senator. The ballot 25-V should not be rejected because among the names of the persons voted for as councillors there appear two names which it may be supposed are entirely fictitious, namely, Agustin Bolsevik and Melecio Kaiser. The remaining ballots in this lot, for the most part, contain repetitions of the errors above indicated, and which in our opinion do not justify the annulment of the ballot.

In the case of the ballot 25-T only, do we think it clear that the ballot must be rejected as a vote for Pio Valenzuela, for all that is written in the space for the name of provincial governor are the words "Piu Gobernador," which is not the name of the candidate.

The 5 ballots 27-A to 27-E of course cannot be counted for Pio Valenzuela, as governor, since in this ballot he is voted for only as candidate for representative.

The result of our review of these ballots is that Pio Valenzuela is entitled to 22 more votes in the second precinct of Polo than the court allowed him, that is to say, we here concede to Carlos 19 votes and to Valenzuela 296.

Bustos; precinct 3.—Of the 7 ballots claimed by Valenzuela and discarded by the trial judge in the third precinct of Bustos, all are in our opinion good ballots and must be counted for him. The only defect from which 2 of these are supposed to suffer is that of being written in lead pencil—a circumstance which, as we have repeatedly held, does not affect their validity. In both of these the voters began writing the first name with an indelible pencil but as the paper did not take the coloring matter freely, they discarded the indelible pencil and had recourse to a lead pencil. The ballot 13-C should not have been considered a marked ballot even assuming, as the trial judge supposed, that the name written for vice-president was Juanito Lopez. As a matter of fact the name there written is Jacinto Lopez. The ballot 13-H is good though voter made more than one superfluous touch with the pencil in starting to write the names of persons voted for, and he also voted for nine councillors, instead of eight, the name of one being outside of the proper space. In ballot Exhibit I the voter made a horizontal stroke, 1 inch in length, immediately over the name of one of the persons voted for, and he gave further variety to the ballot by placing periods between the Christian name and surname of many of the persons voted for. Neither of these details in anywise affect the validity of the ballot. The ballot 13-K is supposed to be marked by reason of the fact that a woman (Maria Desiderio) is voted for as member of the council, but this cannot affect the validity of the vote for governor. We believe at least two more of the ballots of this series discarded by the trial judge were good, but as no question has been made as to them by the appellant, they are here ignored.

Baliuag; precinct 1.—Of the 18 ballots of the series of Exhibits U which the trial judge discarded in this precinct, all are in our opinion good except 2. No. 8 of this series cannot be counted for the contestant because the surname of the person voted for is written Valencia, which is a well-known and different surname from Valenzuela. No. 15 of the same series was rejected by the trial judge as a marked ballot. We acquiesce in this action as the figures, or letter, written near the bottom of the ballot may have been designedly placed there by the voter with a view to the possible future identification of the ballot, and there are no indicia connected with the mark which would enable us to reverse the finding of the trial judge. No. 17 of this series is not rendered invalid by the circumstance that the

voter prefixed a series of numerals (1-8) before the names of the persons voted for as municipal councillors. These numerals were evidently placed merely to enable the voter to keep account of the exact number of names which he proposed to write. Other defects noted in ballots of the same series are in our opinion trivial, such as accidental blurs, erasures, casual check marks, superfluous touches or flourishes with the pencil, and the placing of dashes in spaces which are designedly left vacant. None of these defects in the ballots before us are sufficient in our opinion to invalidate them.

As a consequence of this revision Carlos is to be credited in this precinct with 151 votes and Valenzuela with 50.

Baliuag; precinct 2.—Of the 9 disputed ballots of the series of Exhibits V, rejected by the trial judge in this precinct, all but 3 are in our opinion good ballots. No. 6 of this series may be considered marked by reason of having a printed slip pasted in this place for representative and bearing the name Ricardo Gonzalez. No. 9 was rejected as a marked ballot by the trial judge by reason of the fact that the letter O has been placed in the upper right hand corner of the space for provincial governor. This mark was evidently written with the same sort of pencil as that used by the voter, and conceivably it may have been designedly there placed by him with a view to the future identification of the ballot. At any rate there are no indicia connected with the mark that would justify us in reversing the judge's action, for which reason we acquiesce in the rejection of this ballot. No. 10 cannot be counted for the appellant for governor since his name is written in the space for representative. Other defects noted in these ballots are a mere repetition of features repeatedly mentioned by us on passing over other ballots, and the ballots are not vitiated thereby.

As a result of this revision Valenzuela is entitled to 6 votes in addition to those conceded in this precinct by the trial judge, with the result that Carlos is here to be credited with 168 votes and Valenzuela with 204.

Baliuag; precinct 3.—Of the 2 disputed ballots coming from this precinct we concede to Valenzuela the first, which is merely written with a lead pencil and exhibits no other defect. The second cannot be counted for him since the surname written in the space for governor is not the name Valenzuela.

As a result of this revision Carlos receives 164 votes in this precinct and Valenzuela 126.

Baliuag; precinct 4.—Of the 30 disputed ballots of the series of Exhibits T coming from this precinct all without exception are in our opinion good votes for Valenzuela. No. 1 is not rendered invalid as a vote for Valenzuela for the office of governor by reason of the fact that his name also appears as one of the two individuals named for members of the provincial board. Nos. 9 and 11 were rejected as marked by the trial judge by reason of the fact that in the extreme upper left hand corner of these ballots appears a mark somewhat like the arithmetical radical sign used to indicate the extraction of a root. The same mark appears in a number of other ballots of the same series, and as these ballots are all apparently written in the same hand it may be supposed that they were the work of some inspector who assisted illiterate voters. Certainly the voter cannot be held responsible for this caprice, and the ballots must be considered good. Other defects supposed by the trial judge to vitiate certain ballots of this series constitute merely a repetition of blemishes which we hold to be immaterial, in conformity with our ruling upon other ballots. There is, however, one feature noticed in connection with some of these ballots to which attention should be directed. It is that on the back of some there appears certain pencil strokes which have evidently been placed thereon by some person other than the voters, doubtless with the intention of annulling these ballots. So palpable a fraud cannot be permitted to defeat the will of the voter.

As a consequence of this revision we concede to Carlos in the fourth precinct of Baliuag 167 votes and to Valenzuela 917.

Baliuag; precinct 6.—The action of the trial judge in discarding 3 ballots claimed by the contestant in this precinct

must be sustained. Of these one cannot be counted for Valenzuela because the name of the person voted for is written Pedro Valenzuela. The other two must be considered marked ballots by reason of the fact that a printed slip bearing the name of Ricardo Gonzalez is pasted in the space where the name should have been written of the person voted for.

As a consequence, the vote for the two candidates in this precinct must stand as declared by the trial judge, or 93 votes for Carlos and 165 for Valenzuela.

Pulilan; precinct 1.—The 2 ballots (PPP-1 and PPP-2) of which the contestant was deprived in this precinct are clearly good. In one the pencil used by the voter was repeatedly dampened with the result that the coloring matter shows a disposition to spread. These blurs cannot affect the validity of the vote. The other ballot has evidently come in contact with a drop of ink as a result of which there is an ink stain on the back of the ballot. For this the voter cannot be held responsible.

As a consequence of this revision Carlos receives 42 votes in this precinct and Valenzuela 98.

Pulilan; precinct 2.—Of the 12 ballots of the series of Exhibits ÑÑÑ, here discarded by the trial judge, the following 9 we declare to be valid: No. 1, a ballot marked with a cross (+) in the space intended for one of the two to be voted for as members of the provincial board, the evident intention of the voter being merely to indicate thereby that he did not intend to vote for more than one for this office; No. 4, a ballot evidently written by a very ignorant and illiterate voter in which the initial letter of Teodorico Sandico, for senator, was at first incorrectly written, whereupon the voter left this letter alone and made a second and more successful attempt. In the same ballot the name of Pio Valenzuela is written Pio Talenzuela, it being evident that the voter simply did not know how to make a V. No. 5, a ballot containing a light curved stroke with the pencil below the name of the sole person named for councillor, erroneously supposed by his Honor to have been designed as a mark, is good. Nos. 6 and 7, two ballots wherein the name of Pio Valenzuela is badly written, but the intent to write his name is manifest, are also good, as in Not 8, a ballot in which the voter, after writing by mistake the name of Fortunato Rivera in the place for governor, erased that name and wrote over it that of Pio Valenzuela, the person for whom he intended to vote. No. 9, in which the voter in writing the names of the candidates for councillor indulged the pleasantry of prefixing the title "Emperador" before the name of one and "Consejo de guerra" before that of another, is not invalidated as to the vote for governor by this fact. No. 16, in which the name first written for municipal vice-president was struck out and blurred over with pencil marks, we also hold to be a good ballot.

On the other hand, we approve of the action of the trial court in rejecting a ballot which contains an impertinent expression in Tagalog in the space where the names of persons voted for as councillors should have been placed (No. 2), and one in which the name of the person voted for is truly illegible (No. 3). No. 13 of the same series was also properly rejected as a vote for Pio Valenzuela, inasmuch as the name there appearing is merely "Pio Valen." The voter here may have decided that he did not wish to vote for Pio Valenzuela at all, and for this reason may have left the name unfinished.

As a consequence of this revision Carlos is to be credited in this precinct with 28 votes and Valenzuela with 171.

Pulilan; precinct 3.—Of the 4 votes discarded by the trial judge in this precinct, 2 are good votes for Pio Valenzuela, notwithstanding the fact that the scribes were so illiterate that the name as written is almost, though not completely, illegible. The other 2 cannot be counted for Pio Valenzuela, for governor, since the name is written in the space for representative.

As a consequence of this revision Carlos received 81 votes in this precinct and Valenzuela 294.

Pulilan; precinct 4.—Of the 21 disputed ballots from this precinct of the series LLL, we concede to Valenzuela the

following: No. 5, which is without a blemish; No. 6, in which the name first written by the voter for municipal president has had another name written over it in some other hand, an irregularity which cannot affect the vote for governor; No. 7, where one of the two names originally written for members of the provincial board was erased by the voter; No. 8, where the name of Valenzuela is poorly written, but legible; Nos. 10, 13, 14, 15, 16, 17, 18, and 24, for the same reason; No. 21, where the first part of the name of Teodorico Sandiko was repeated by the voter, but erased, in the space above where the name should have been written; Nos. 26 and 27 are good notwithstanding the blurs made by the illiterate voter in attempting to improve the results of his penmanship. On the other hand, Nos. 1, 2, 3, 4, and 29 are bad because the name of Valenzuela is here placed in the space for representative; while No. 20 is bad because illegible.

Eighteen other ballots of the series of Exhibits MMM cannot, in our opinion, be counted for Valenzuela though formally good, since these votes were found in the box of spoiled ballots, and all except 2 are indorsed "inutilizada." Our surmise is that these are "excess" ballots which may possibly have been separated by the inspectors from the other used ballots pursuant to the provisions of section 462 of the Administrative Code (1917). Even after discarding these votes, the number of used ballots which were counted are said by the attorney for the appellant to be six in excess of the number of persons reported to have voted. Whatever the irregularity here may have been, it cannot now be cured.

As a consequence of this revision Carlos is entitled to be here credited with 76 votes in the fourth precinct of Pulilan, and Valenzuela 264.

Bocaue; precinct 1.—The ballot here discarded as a marked ballot, bearing the letters "Por su na" in the space for members of the provincial board, is a good ballot. The voter probably intended to write Fortunato Rivera here, but did not command the requisite skill in writing (QQQ). The 8 ballots of the series of Exhibits RRR, which were discarded by the trial judge, affirming the action of the inspectors of election, are all good votes for Valenzuela. The defects from which they are supposed to suffer, such as slight blurs and insignificant erasures, in no wise affect their validity.

As a result of this revision Carlos receives 83 votes in this precinct and Valenzuela 141.

Bocaue; precinct 2.—The three ballots here erroneously rejected by the trial judge on the ground that they are written with a lead pencil must be credited to the contestant. With this correction the vote of Carlos in this precinct is 144 to 163 for Valenzuela.

Bocaue; precinct 3.—The three ballots of the series of Exhibits VVV, of which the appellant was here deprived on the ground that nine persons were voted for as councillors, one name being written outside of the space for such office, must be restored to him, as this irregularity in the ballot with respect to councillor could not affect the legality of the vote for governor. Of the seventeen ballots of the series of Exhibits UUU, which were rejected by the inspectors and by the trial judge as defective ballots, the following are good votes for Valenzuela, namely, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13, since the defects from which they are supposed to suffer are not sufficient to render them invalid. These ballots merely reproduce in one way or another various trivial defects which we have repeatedly held to be of no moment. On the other hand, Nos. 10, 14, 15, 16, and 17 of the same series are rejected because the name of Pio Valenzuela is written in the space reserved for the office of representative.

By reason of this revision the vote in this precinct stands 123 for Carlos and 167 for Valenzuela.

Malolos; precinct 2.—Of the nine disputed ballots coming from this precinct of the series of Exhibits 14-A to 14-1 only the second ballot can be pronounced invalid as a vote for Valenzuela as governor. His name is here written in

the place where the representative should be voted for. The name of Valenzuela, for governor, is badly spelled in some of these ballots; and in at least one the name is almost, but not entirely, illegible.

As a result of the revision in this precinct Valenzuela is entitled to receive eight more votes than are conceded to him by the trial judge, with the result that in this precinct Carlos should be credited with 220 and Valenzuela with 164 votes.

Malolos; precincts 1, 5, 7.—In the revision effected by the trial judge the votes of the rival candidates in these three precincts have been combined; and error has been assigned by the appellant with respect to only two ballots from the fifth precinct, which were discarded by the trial judge. The first of these is not rendered void by reason of the fact that the voter evidently by error voted for a certain person as member of the provincial board but perceiving his error crossed that name out and placed the same name in the space for municipal president. As regards the other the trial judge states that the ballot is written in two different hands. In our opinion the whole ballot was written out by a single person and must be counted.

As a result of this revision Valenzuela is entitled to two additional votes in the fifth precinct, with the result that the total vote for the two candidates in the first, fifth, and seventh precincts of Malolos should stand as 423 for Carlos and 285 for Valenzuela.

Malolos; precinct 6.—The four disputed votes coming from this precinct of the series 17-C to 17-F which were discarded by the trial judge for one reason or another, in some cases more fanciful than real, should in our opinion be counted for Valenzuela. The name of Pio Valenzuela as written in the ballot 17-F is in some respect incomplete, but the scribe was evidently very illiterate and his efforts at expressing the name of the person voted for must be interpreted in the sense most favorable to giving effect to the vote.

As a result of this revision Carlos is entitled to be credited in this precinct with 81 votes and Valenzuela with 176.

Bigaa; precinct 1.—The 3 ballots AA, AA-1 to AA-2 of which the contestant was deprived in this precinct on the ground that two are written in pencil and one in ink, instead of being written with an indelible pencil, must be restored to him in conformity with our repeated ruling upon this point.

As a consequence of the revision in this precinct Carlos received 244 votes and Valenzuela 103.

Guiguinto; precinct 1.—Of the ten disputed ballots of the series of Exhibits GG, discarded by the trial judge, all except one represent good votes for Valenzuela and must be counted for him. No. 1 of this series cannot be counted for him because the surname written by the voter is Valencia, which is a well-known and different surname from that of the contestant. The defects from which the other ballots are supposed to suffer are such as we have repeatedly declared to be immaterial and repetition of details is unnecessary.

As a consequence of this revision the appellant is entitled to be credited with nine more votes than were conceded to him by the trial judge, with the result that Carlos here received 107 votes and Valenzuela 113.

Guiguinto; precinct 2.—Of the ten disputed ballots of the series of Exhibits HH, which were discarded by the trial judge in this precinct, all without exception represent good votes for Pio Valenzuela and must be counted for him. Two of these ballots are written with lead pencil, and the defects imputed to others consist of trivial blemishes requiring no comment.

As a result of this revision the appellant is entitled to six more votes than were conceded to him by the trial judge in this precinct, with the result that Carlos here receives 86 votes and Valenzuela 95.

Santa Maria; precinct 2.—Of the sixteen disputed ballots of the series FF from this precinct, which were discarded by the trial judge, all in our opinion contain valid votes for Valenzuela and must be counted for him. No. 1 of this

series is not rendered invalid as a vote for Valenzuela by reason of the fact that the voter after writing the name of one person for municipal councillor, with evident intention of abbreviating his labors, added "todos los concejales."

As a consequence of this revision Valenzuela is here entitled to receive sixteen more votes than were conceded to him by the trial judge, with the result that Carlos should be here credited with 193 votes and Valenzuela with 83.

Marilao; precinct 1.—The ballot ZZZ-1 here discarded by the trial judge on the ground that it is a blurred or marked ballot is practically without blemish, though written by a person who was not a skillful writer. The blurs on the ballot ZZZ-2 in no wise affect its validity. Both must be counted for the contestant.

Of ten of the disputed ballots of the series YYY, discarded by the trial judge, all except two are in our opinion free from any defect that would invalidate the ballot. No. 3 of this series should be counted for governor although he is also voted for another office. Nos. 1 and 2 cannot be counted for Valenzuela because the name written for the office of governor is Valencia, a well-known surname which though in some respects similar to Valenzuela is materially different therefrom.

As a result of this revision Valenzuela is entitled to ten more votes in this precinct than were conceded to him by the trial judge, with the result that Carlos is here entitled to be credited with 64 votes and Valenzuela with 182.

Having completed our revision of the questions presented upon this appeal, whether relating to the annulment of the returns from certain municipalities and precincts en toto or to the rejection of particular ballots, it remains to consolidate the results. This is effected in the subjoined table, which contains a complete statement of all returns, as revised, which have been the subject of attack either in the contest or in the counter-contest. It will be remembered, however, that both parties abstained from submitting proof in regard to some of the precincts originally questioned by them, and as to these the trial judge simply followed the official returns. These returns are of course also adopted by us. As to the votes in other precincts both parties have acquiesced in the conclusions of the trial judge, with the consequence that his estimate of the votes in such precincts remains unchanged. For the rest, the figures appearing in this table are such as are adopted by this court as showing the true results of the election in the several municipalities concerned, in conformity with the preceding opinion.

Table showing revised returns from contested municipalities and precincts

Municipality.

Precinct.

Carlos.

Valenzuela.

Angat.....

2

53

123

Do.....

3

76

151

Baliuag.....

1

151

50

Do.....

2

168

204

Do.....

3

164

126

Do.....

4

167

147

Do.....

5

188

46

Do.....

6

93

165

Bigaa.....

1

244

103

Do.....

2

108

170

Do.....

3

151

148

Bocaue.....

1

83

141

Do.....

2

144

163

Do.....

3

123

167

Bulacan.....

1

67

133

Do.....

2

182

176

Do.....

3

70

158

Do.....

4

94

134

Bustos.....

1

177

13

Do.....

2

193

36

Do.....

3

206

39

Guiguinto.....

1

107

113

Do.....

2

86

95

Malolos.....

1,5,7

423

285

Do.....

2

222

164

Do.....

3

81

233

Do.....

4

98

303

Do.....

6

81

176

Marilao.....

1

64

182

Do.....

2

46

53

Meycauayan.....

1-5

137

958

Norzagaray.....

1,2

297

146

Do.....

3

58

69

Obando.....

1

88

227

Do.....

2

110

104

Do.....

3

28

21

Paombong.....

1

235

2

Do.....

2

213

12

Do.....

3

159

65

Polo.....

1

17

371

Do.....

2

19

296

Do.....

3

13

244

Table showing revised returns from contested municipalities and
precincts—Continued

Municipality.

Precinct.

Carlos.

Valenzuela.

Pulilan.....

1

42

98

Do.....

2

28

171

Do.....

3

81

294

Do.....

4

76

264

San Ildefonso.....

1

78

224

Do.....

2

85

143

San Rafael.....

3

28

157

Do.....

1

188

192

Do.....

3

32

35

Santa Maria

1

242

57

Do.....

2

148

83

Do.....

3

112

124

Do.....

4

149

68

Total.....

.....

7,185

8,918

To the foregoing totals there remain to be added the votes that have never been questioned at any time. These embrace the returns from the municipalities of Calumpit, Hagonoy, San Jose, San Miguel, and the first precinct of Angat. The official returns here show a total of 2,667 for Carlos and 1,364 for Valenzuela; and in this connection we note that in the summary of these returns contained in the opinion of the trial judge, the vote for Valenzuela in the second district of San Miguel is made to appear as 53 when in fact it was only 33. Clerical errors of this kind are of course corrected by this court without regard to whom they may affect.

Combining this corrected total with the revised returns shown in the table, we have for the final and definitive result, the following:

For Valenzuela.....

10,282

For Carlos.....

9,852

Plurality of Valenzuela.....

430

In the light of the foregoing revision of the returns, it becomes our duty to reverse the judgment of the trial court and to declare, as we hereby do declare, that in the general election of June 3, 1919, Pio Valenzuela was duly elected to the office of governor of the Province of Bulacan, having received 10,282 votes, as against 9,852 for Juan B. Carlos, and 7,187 for Silvino Lopez. Judgment will accordingly be entered to this effect, and, a certified copy of the result as determined by this court will be forwarded to the provincial board of the Province of Bulacan in its capacity as provincial board of canvassers, with directions to amend its count and certify the result accordingly. Costs of both instances will be paid by the appellee. So ordered.

Araullo, C. J. Malcolm, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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