

**MARTIN NISPEROS, PETITIONER, VS. THE HONORABLE EMILIO ARANETA DIAZ, JUDGE ON DUTY OF THE COURT OF FIRST INSTANCE OF LA UNION, AND PEDRO FLORES, RESPONDENTS.***G.R. No. 24552. September 10, 1925*

Ponente: VILLAMOR, J.

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This action instituted originally in this court is for the purpose of having a writ issued, ordering the respondent Judge of First Instance of La Union to reinstate the election protest presented by the petitioner against the election as municipal president of the other respondent Pedro Flores, which was dismissed by the respondent judge in an order dated July 23 of this year, and to decide the same upon its merits after the proper legal proceedings.

The petitioner alleges that on June 9, 1925, he filed a motion in the Court of First Instance of La Union protesting against the election of Pedro Flores who was proclaimed as municipal president of San Fernando, La Union, by the municipal board of canvassers on June 6 of the same year; that after giving a bond in the sum fixed by the court, and after it was approved by the same court the protest was set for hearing on July 6, the respondent judge having ordered that on the same date all the ballot boxes and the ballots used in said election be presented to him for their examination by the committee appointed to that effect for the revision and examination of said ballots; that on June 22 of the same year the protestee, now respondent, filed his answer denying generally and specifically all the allegations contained in the original motion of protest; that on June 26 of the same year an amended protest was filed by the protestant with leave of the court, adding to the original motion a more specific allegation relative to the names of the various voters mentioned in one of the paragraphs of the amended protest; that on June 12, 1925, an answer was filed to said amended protest by the attorney for the respondent; that on July 20, 1925, the attorney for the respondent filed a motion praying for the suspension of all proceedings and the dismissal of the said protest with the costs against the protestant, on the ground that the court has no jurisdiction over the subject-matter, because it was not alleged either in the original or in the amended motion of protest, that the protest was filed within the time prescribed by the law, although it clearly appears from the record that the original protest was presented within two weeks after the proclamation made by the board of inspectors as board of canvassers of San Fernando, La Union, on June 6, 1925, and it further appears from the stamp of the clerk of the Court of First Instance of La Union that the original motion of protest was really filed in said office on June 9, 1925; that in accordance with the allegations contained in the original protest, the protestant, now petitioner, presented as exhibits the following documents: Exhibit A, which is the certificate of the municipal board of canvassers of San Fernando, La Union; Exhibit B, the certificate of candidacy of the petitioner for the office of municipal president, and duly registered in the office of the municipal secretary; Exhibit C, the certificate of candidacy of Pedro Flores for the same office, duly registered in the office of the municipal secretary; Exhibit D, the summons to the protestee Pedro Flores, now respondent; and Exhibit E, the original protest; that, notwithstanding the foregoing allegations, the respondent judge, in an order dated July 22, 1925, at the instance of the protestee, dismissed the protest on the ground that there was no allegation either in the original or the amended

motion of protest that the same was presented within the period prescribed by the law.

The respondent filed a demurrer to the complaint, alleging that the facts alleged in the application for mandamus, with the exception of those in paragraph 8 which are the subject of an answer filed by the respondent under date of August 13, do not constitute a cause of action.

The respondent contends that the only question at issue in the application for mandamus presented by the petitioner is whether or not a motion of protest for the office of municipal president wherein it is not expressly alleged that the same was presented within the period of two weeks after the proclamation by the municipal board of canvassers gives jurisdiction to the Court of First Instance to take cognizance of said motion of protest.

The respondent invokes in support of his demurrer the doctrine laid down in the case of *Ferrer vs. Gutierrez David and Lucot* (43 Phil., 795). In that case we have held that one of the essential facts that give jurisdiction to the court to take cognizance of election contests is that the motion of protest was presented within two weeks after the proclamation. In the syllabus of said decision it is stated that, as regards the protestant, a protest is sufficient wherein it is alleged that the protestant has duly registered his candidacy and received votes in the election; that the protestee was proclaimed elected in said election; and that the motion of protest was presented within two weeks after the proclamation. The question now at issue in this case is whether or not the lack of allegation as to the time of the filing of the protest makes the same insufficient in such a way that the court cannot take cognizance thereof for lack of jurisdiction. It must be noted that the time of filing the protest is a matter of judicial record and if the protest was actually filed, within the legal period, as was admitted by the respondent at the hearing, it seems evident that the court, having under its control the judicial record, may determine by itself whether the protest was presented or not within the legal period, irrespective of any allegation that might be made in the protest with regard to the time of filing thereof. The writer of this opinion personally believes that it would have been more expedient for the protestant to allege that the protest was presented within the legal period, for the very reason that the clerk's office, for some reason or other, may stamp on the motion another different date; but the members of this court are of the opinion that the omission of said allegation, even under the doctrine laid down in the aforesaid case of *Ferrer vs. Gutierrez David and Lucot*, supra, is not necessarily fatal to the protestant, because the courts must not, by reason of a technicality, close their eyes to the real facts. What the law requires is that the protest should be filed with the court within the legal term. It having been, as it is, admitted in the instant case by the respondent that the protest was presented within the legal period, there can be no sufficient ground for raising this question. If it is indisputable that the protest in question was presented to the court within the legal period, then this essential fact exists, which gives the court jurisdiction to try and decide said protest.

The respondent filed, besides his demurrer, an answer limited to paragraph 8 of the application for mandamus, denying the facts therein alleged. The petitioner alleges in said paragraph having attached to the protest filed with the court the documents copies of which were attached to the herein complaint and are the same exhibits which we have already mentioned. The question whether or not these documents were admitted as evidence by the respondent judge is of no importance in the instant case.

For all of the foregoing, we hold that the demurrer to the application should be overruled; and inasmuch as the only question submitted by the parties is the same one announced in the demurrer, which, cannot be altered by means of a new answer, we likewise hold that the writ applied for should issue without special finding as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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