

CELESTINO GALLARES, PETITIONER AND APPELLANT, VS. FILOMENO CASEÑAS, RESPONDENT AND APPELLEE.

G.R. No. 24600. November 28, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

From the record it appears that on July 2, 1925, the appellant filed with the Court of First Instance of Bohol an election contest against the appellee, alleging: (a) That he (contestant) was one of the registered candidates for the office of provincial governor who received votes in the general elections held in said province on June 2, 1925; (b) that in said elections the following registered candidates, with certificates of candidacy, obtained votes for the office of provincial governor:

Votes

Filomeno Caseñas

5,335

Celestino Gallares

5,128

Jesus Vaño

4,657

Eduardo Ramirez

1,594

Manuel Abueva

1,282

(c) that on July 25, 1925, the provincial board of canvassers of Bohol proclaimed the contestee elected for the office of provincial governor; (d) that he (protestant) contests the election of the contestee on the ground that in said elections the following frauds, irregularities and violations of the law were committed:

"1. That in all and each of the precincts or districts of the municipalities of Inabanga, Clarin, Tubigon, Calape, Valencia, Garcia-Hernandez, Jagna, Guindulman, Candijay, Anda, Mabini, Ubay, Talibon, Sierra-Bullones, Loboc, Balilihan, Dausi, Baclayon, Loon, Antequera and Tagbilaran: several ballots containing the name of the contestant for the office of provincial governor were rejected as being marked, void and invalid, and which, if properly and correctly interpreted, should have been counted as legal votes in favor of the contestant.

"2. That, on the other hand, several ballots marked, invalid and void in all and each of the precincts or election districts of the municipalities of Inabanga, Clarin, Tubigon, Calape, Valencia, Garcia-Hernandez, Jagna, Candijay, Anda, Mabini, Ubay, Talibon and Sierra-Bullones wherein the name of the respondent appears were not rejected, but were illegally adjudicated to the respondent as votes.

"3. That several ballots in all and each of the precincts of the municipalities mentioned in paragraph 2, wherein the name of the respondent does not appear as voted for the office of governor, were illegally adjudicated in his favor;" (e) that had not said irregularities or violations of the law alleged in the preceding paragraphs been committed, the result of the elections would have been different, and the contestant would have been victorious with a large majority of votes over the contestee.

After the filing of the protest and the giving of the proper bond fixed by the court, the contestee filed a demurrer on the ground: (1) That the court had no jurisdiction over the case; and (2) that the facts alleged in the protest did not constitute a cause of action.

Jesus Vaño, one of the candidates voted for the office of provincial governor of Bohol, on July 18, 1925, filed an intervention, praying the court that judgment be rendered in his favor proclaiming him elected for the office of provincial governor of Bohol.

On July 22, 1925, the lower court entered an order overruling the demurrer upon the first ground and sustaining it upon the second.

On the same date contestant filed a motion praying that he be permitted to amend his protest and that the contestee be required to answer said amended protest within a reasonable time. An amended intervention was also filed. On July 23, 1925, the court denied the motion of the appellant. On the same day, the contestant filed a notice of his intention to appeal from the orders of the court dated the 22d and 23d days of July.

Now the appellant claims that the trial court erred: (1) In deciding the protest on the merits upon the demurrer; (2) in sustaining the demurrer to the protest on the ground that the facts therein alleged did not constitute sufficient cause of action; and (3) in overruling the motion of the contestant to amend his protest which had been adjudged defective by the trial court.

The contention of the appellant in connection with the first assignment of error is that under section 27 of Act No. 3210, no demurrer can be filed in election contest cases on the ground of insufficiency of the allegations of the protest. This contention of the appellant is untenable. Section 27 of Act No. 3210 cited by the appellant, providing that "the candidate whose election is contested and all other registered candidates voted for may reply thereto within fifteen days after the summons, * * *" does not exclude the right of the contestee to allege, before answering, that the facts set forth in the motion of protest are insufficient for requiring him to answer, provided that he does so within the period fixed by the law for filing an answer. The appellant argues that if the intention of the legislator were to permit the filing of a demurrer, he should have employed these terms: "The contestee may file an answer or demurrer, etc." As to this, the appellee remarks, "If the intention of the legislature were to

prohibit in election contest cases the filing of a demurrer, it would have said so expressly." There is, indeed, in the law no express prohibition as to the filing of other pleadings besides the answer, and under these circumstances we are inclined to believe that it would be unjust to deprive the contestee of a right so generally recognized in judicial controversies. As to the second assignment of error, we are of the opinion that the trial court erred in finally dismissing the protest upon the second ground of the demurrer of the contestee.

From a reading of the allegations of the protest, it may be seen that frauds, irregularities and violations of the law are alleged therein, which, if true, would undoubtedly change the result of the elections.

The fact that in the protest the number of votes which would result in favor of the protestant after the judicial counting is not specified, does not affect the right of the protestant, for it being known that said omission is a defect of the protest, the same may be cured by a specification of the votes mentioned in paragraphs 1, 2 and 3 of the protest, without thereby adding new grounds to those already alleged by the protestant.

The court sustained the demurrer filed by the contestee "on the ground that, while in subparagraphs 1, 2 and 3 of paragraph 4 of the complaint it is alleged that several ballots in favor of the contestant were unduly excluded, and several others were unduly counted in favor of the contestee, yet the number of votes that should be adjudicated in favor of the contestant and not counted for the respondent was not specified, in order that it might be determined whether the irregularities and frauds committed will alter the result of the election." Having sustained the demurrer, the court should have permitted the contestant to file the necessary specification to make clear the facts alleged in the aforesaid three paragraphs of the protest.

In *Orencia vs. Araneta Diaz* (47 Phil., 830), this court held that " * * * the established jurisprudence of this court in connection with amendment of protest is that amendment of protest may be allowed when said amendment does not change essentially the grounds of the protest, and this may be done within a reasonable period before the beginning of the trial, unless there exist special reasons for making amendment after said period. But when the amendment is of such a nature that it virtually introduces new grounds not alleged in the original protest, said amendment must be presented within the period fixed by the law for the filing of protests. *' * *" (*Valenzuela vs. Revilla and Carlos*, 41 Phil., 4; *Cailles vs. Gomez and Barbaza*, 42 Phil., 496; *Tengco vs. Jocson*, 43 Phil., 715.)

For all of the foregoing, the orders appealed from are reversed, the record is remanded to the court of origin with instructions to admit the specifications of the votes indicated in the original protest, and to give the contestee an opportunity to file his answer, and to proceed afterwards with the trial of the case upon the merits and decide it in accordance with law. So ordered.

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

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