

MARCOS VERCELES, PETITIONER, VS. HONORABLE EMILIO ARANETA DIAZ, JUDGE OF FIRST INSTANCE OF LA UNION, GREGORIO NUVAL, CLEMENTE FE, AND FIDEL DE PERALTA, RESPONDENTS.

G.R. No. 24602. September 17, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an original action instituted in this court for the issuance of a writ of mandamus directed to the respondent judge, commanding him to set aside his order dismissing the election contest presented by the herein petitioner against Gregorio Nuval and others, to reinstate said case and proceed therewith until final judgment.

The respondents demur to the petition on the ground that the facts alleged therein do not constitute sufficient cause of action, for they contend that said protest was rightly dismissed by the respondent judge, because he had not acquired jurisdiction over the case on account of the fact that in the protest it was not alleged that the protestees were registered candidates.

In support thereof they cite the doctrine laid down in the case of *Tengco vs. Jocson* (43 Phil., 715), where the following was held:

"The 'motion of protest' in election contest cases must allege that it is presented by a 'registered candidate voted for,' under the provisions of section 44 of Act No. 3030. Unless the motion of protest shows that it is presented by a 'registered candidate voted for,' the Court of First Instance acquires no jurisdiction to hear and determine said motion."

In the case before us, it appears that as shown by Exhibit A attached to the petition for mandamus and made a part thereof, the protestant alleged in his motion of protest that he was a qualified elector and one of the registered candidates voted for in the general elections in question. That is to say that in said motion there is the allegation of the jurisdictional fact declared indispensable in the doctrine laid down in the case of *Tengco vs. Jocson* aforecited.

So that, so far as concerns the allegation with regard to the status of the petitioner in said election contest, the court has acquired jurisdiction. But the respondents contend that said allegation of being a registered candidate is indispensable not only with regard to the contestant but also as to the contestee.

But the case cited by them (*Tengco vs. Jocson*) does not impose such requisite. And it cannot do so, inasmuch as said doctrine, according to its own text, is based on the provisions of section 44 of Act No. 3030 then in force, and this legal provision, just as its amendments contained in section 25 of Act No. 3210, does not require that in the motion of protest it be alleged that the protestee was a registered candidate.

The respondents cited section 27 of said Act No. 3210, the first four paragraphs of which are as follows:

"Sec. 27. Section four hundred and eighty-one of Act Numbered Twenty-seven hundred and eleven, as

amended by Act Numbered Three thousand and thirty, is hereby amended to read as follows:

" 'Sec. 481. Mode of procedure in court cases.—Proceedings for the judicial contest of an election shall be upon written contest with summons, which shall be served as hereinafter prescribed: Provided, That if the contest refers to the office of councilor, it shall be sufficient to summon the candidates proclaimed elected by the municipal board of canvassers.

" 'In such proceedings the registration list as finally corrected by the board of inspectors shall be conclusive as to who was entitled to vote at such election.

" 'The aforesaid summons shall be served by delivery by the sheriff of a copy of the summons and the contest to each of the registered candidates voted for personally, or in case of their not being found, by leaving such copies at their, usual place of residence, in the hands of some person resident therein and of sufficient discretion to receive the same; such notice shall be considered as having been served if the acknowledgment of the service made as hereinbefore prescribed shall appear on the back of the summons.' "

And the respondents argue that this provision, directing the sheriff to make personal delivery of the copy of the summons and the protest to each of the candidates registered and voted for, means that the motion of protest must allege that the protestees were registered candidates, that such a fact is jurisdictional and the failure to allege it is fatal to the jurisdiction of the court.

In the first place, the aforesaid provision, as indicated by the heading of the section containing it, has reference to the procedure, unlike section 479 which prescribes the jurisdictional elements that must be present in a motion of protest.

In the second place, the rule that, in serving the summons, the sheriff must make service only upon the registered candidates is not absolute. If it were so it cannot be conceived why in dealing with the contest concerning the election of a councilor the same section requires only that the summons be served upon the candidates proclaimed elected, without using the word "registered."

To hold that an election contest must contain as an indispensable and jurisdictional fact the allegation that the protestee is a registered candidate, is tantamount to making the Election Law now in force inconsistent and inadequate. As there is no doubt that the failure to present certificate of candidacy is one of the grounds for a judicial contest, under such an interpretation of the law, it would be impossible to formulate an election contest against a candidate proclaimed elected by mistake or through fraud, and not duly registered.

And to hold that the law means that the sheriff must summon only those candidates registered, would result in entirely closing the doors to every judicial remedy for a candidate who presents an election contest against a candidate proclaimed elected and not registered, for then, on account of the very illegality of his status as candidate, he cannot be summoned and his election would, therefore, be incontestable.

We cannot give the law such absurd effects. There is no valid reason for it. Every law carries with it the presumption that it is perfect, and without solid grounds in law, it is not proper to attribute to it defects, inconsistencies or contradictions.

"It is presumed that the legislature does not intend an absurdity, or that absurd consequences shall flow from its enactments. Such a result will therefore be avoided, if the terms of the act admit of it, by a reasonable construction of the statute." (Oates vs. First National Bank of Montgomery, 100 U. S., 239; State vs. Clark, 29 N. L. Law, 96; Henry vs. Tilson, 17 Vt., 479; Gilkey vs. Cook, 60 Wis., 133; 18 N. W., 639.)

"The mind of the legislature is presumed to be consistent; and in case of a doubtful or ambiguous expression of its will, such a construction should be adopted as will make all the provisions of the statute consistent with

each other and with the preexisting body of the law." (Black on Interpretation of Laws, p. 98.)

There is reason to require that he who institutes an election contest should allege in his protest that he meets all the requirements not only to be proclaimed elected, but also to be held legally eligible. He claims the office and must allege that he has a right to it, if he wants the competent court to pay him any attention. That is not, however, the case as regards the protestee. A protest is filed against him for the very reason that he does not meet all the requirements to be proclaimed elected, or to be legally eligible. And one of the fatal defects which a protestee may have is that of not having been registered. It follows from this that, while there is reason for requiring in the motion of protest the allegation that the protestant is a registered candidate, yet not only is there none for requiring such an allegation as regards the protestee, but that there is enough reason for not requiring it.

And in the particular case now before us, there is, besides, the circumstance that two of the protestees submitted to the jurisdiction of the court, by appearing and filing pleadings, Clemente Fe, an intervention (Exhibit B), and Gregorio Nuval, an answer and counter-protest (Exhibit C). So that with regard to them the court having already acquired jurisdiction over the protest, which alleged the legal status of the protestant, has acquired also over the protestees by voluntary submission of the latter, who cannot now lawfully withdraw from said jurisdiction.

"Where the court has jurisdiction of the subject matter of the suit, a general or voluntary appearance by defendant is so far equivalent to the service of process as to confer on the court jurisdiction of his person, and thereafter he is estopped to object for the want of such jurisdiction. * * * " (4 C. J., pp. 1350, 1351.)

Our conclusion, therefore, is that the lower court acquired full jurisdiction over the protest now before us and over the protestees, and that it is its duty to proceed with the case until its determination.

And as the grounds of the demurrer are such, and are thus decided in such a way, that any answer would be useless, so this case is finally adjudicated upon the merits, and the Judge of First Instance of La Union is commanded to set aside his order in the election contest presented by the petitioner (civil case No. 1301 of his own court) whereby said protest was dismissed, and to reinstate said case and take the proper proceedings until its termination and decision on the merits. No special pronouncement as to costs is made.

The writ is granted. So ordered.

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

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