

DAVID REYNOSO ET AL., PETITIONERS, VS. MANSUETO JAVIER ET AL., RESPONDENTS.*G.R. No. 24767. October 20, 1925*

Ponente: ROMUALDEZ, J.

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This is a certiorari remedy instituted for the revision and annulment of certain proceedings had in an election contest case No. 1849 in the Court of First Instance of Tayabas between Mansueto Javier et al., as contestants, and the herein petitioners as contestees, and to declare that said court had no jurisdiction to entertain said case, except for the purpose of dismissing it, and to have a preliminary injunction issued in the meantime against the herein respondents.

The preliminary injunction was denied in a resolution of this court of September 23, 1925, after ordering the respondents on the 17th of the same month to answer or demur to the complaint within 5 days from the receipt of notice of said order and copy of the petition.

The respondents demurred to the petition on the ground that the facts alleged therein did not constitute a cause of action.

The facts alleged in the petition are: That on June 17, 1925, said election contest was presented, and the court ordered the summoning of the contestees; that on June 18, 1925, the sheriff delivered to the latter a copy of the motion of protest, but did not summon them; that on July 1, 1925, the contestees entered a special appearance only for the purpose of asking for the dismissal of the case for want of jurisdiction of the court over them and the subject-matter, in view of the fact that they were not summoned; that on July 6, 1925, at the instance of the contestants, a summons was issued to the contestees and on the following day the sheriff served the summons delivering to them a copy thereof; that on July 18, 1925, the hearing of the motion for dismissal was held, and on August 25, 1925, the respondent Court of First Instance denied said motion, declaring itself with jurisdiction, which ruling was notified to the contestees on September 1, 1925. And according to the motion of the herein petitioners filed September 21, 1925, said court set said election contest No. 1849 for hearing upon the merits on October 5, 1925.

In their argument against the demurrer to the complaint the petitioners contend, first, that the summons of July 7, 1925, served by delivering Exhibit 4 is not valid, as it does not meet the legal requirements; second, that even supposing that it does meet the legal requirements; still it would not be valid either, as the same was served after an objection had been filed to the jurisdiction of the court, and in derogation of a right already invoked in said court; and third, that for lack of a valid summons, the court had no jurisdiction to entertain the contest in question.

The summons is impugned because it does not state in its text that the bond required by the law had been given. While it is true that the bond must be given before the court shall take cognizance of a contest, yet the law does not require that the giving of said bond should be stated on the summons. Section 481 of the Administrative Code as lastly amended by Act No. 3210 does not contain such requirement. It only requires that a copy of the

summons and the protest be delivered by the sheriff personally to each contestee. If the intention of the law were that the contestee should also be notified of the giving of the bond, it would not have contented itself with requiring that such a fact be stated on the summons, which, as above stated, is not required, but should have provided that a copy of the bond be also furnished to the contestee, in order that he may thus be better informed of the terms thereof, and thus the person summoned may intelligently attack the same, since the logical purpose of such a notification would be to give opportunity to impugn the bond. But the law, while it requires a bond on the part of the contestant before the court should entertain any contest, has not deemed it well to provide that the contestee be notified in the summons or on the occasion of the service thereof of the giving of the bond; it does not even require that said bond be given before the summons is issued or served.

And that is because the purpose of the summons, which is to inform the person summoned of the action brought before him and to bring him to the court within the time therein fixed, is attained by furnishing a copy of the complaint and the summons where, among other things, there is stated the time within which he must appear before the court. While by special provision of the law, the bond appears to be an indispensable requisite in a contest, yet it is not a matter of pleading of which the contestee must be informed in order that he may understand the nature and particulars of the action brought against him, but is an inevitable requisite which is foreign to the pleadings, and for this reason it may be impugned outside, before or after the answer to the protest.

The second objection to the summons is the fact of it having been issued and served after an objection had been filed to the jurisdiction of the court. In support of this proposition the case of *Ramsey vs. Huck and Covington* (267 Mo., 333-340) is cited, which, among other things, deals with an amendment to a notice of the contest, wherein a period was originally fixed for appearance, and which was insufficient under the law of that State; the amendment consisting in the fixing of a new period of time in accordance with the law, such amendment having been made after the protestee had challenged the jurisdiction of the court. That case was one involving compliance with the requirement of the law in that State to the effect that the notice of the Contest must be served 15 days before the term of the court in which the action was brought. In our jurisdiction we have no such a legal provision. Our law now does not even fix the time for summoning the contestee. The motion, therefore, of the contestees praying for the dismissal of the case for want of jurisdiction of the court, was in this case no bar to the service of the summons, as was done.

And as to the time within which the summons in an election contest case must be served, there is no doubt that the present law has not fixed any period for the service of the summons. The former law prescribed a period, as then it was the duty of the contestant to notify the contestee of the contest; but now this duty does no longer devolve upon the contestant, since the notification is now made, according to the present law, by means of a summons issued by the court and served by the sheriff. There was reason for fixing a period when the giving of notice depended on the contestant, and that is in order to compel him to give it within a fixed period to insure promptness in the dispatch of such cases; and there is also reason why no fixed period exists at present, inasmuch as the service of the summons does no longer depend upon the contestant, but is issued by the court and served by the sheriff, who, as such public officers, are presumed to be impartial, and disposed to comply with their duty without unjustifiable delays.

Our conclusion is that the service of the summons made on the herein petitioners by the sheriff on July 7, 1925, is valid, the contestees having, on June 18, 1925, received a copy of the contest from the sheriff.

The herein petitioners having, on June 18, 1925, received from the sheriff a copy of the contest, we find that they were duly, completely and validly summoned by the service made on them by the sheriff on July 7, 1925, and that said summons is sufficient and valid not only as to its form but also as to the time of the service.

The last point raised by the petitioners is a consequence of the preceding ones. And if, as above stated, the service of the summons was valid and sufficient, the lower court acquired jurisdiction not only over the subject-matter of the contest but also of the persons of the contestees.

The lower court having acquired jurisdiction, certiorari does not lie. And the facts pleaded and admitted by both parties being of such a nature that it is unnecessary to go any further in this proceeding, it results that we may decide this case upon the merits, as we do hereby finally decide it by denying the petition for certiorari and dismissing this proceeding without special finding as to costs. So ordered.

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

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