

AGNETE E. NOBLE, PETITIONER, VS. PEDRO TUASON, JUDGE OF FIRST INSTANCE OF CAMARINES SUR, AND GREGORIO PEÑOSO, RESPONDENTS.*G.R. No. 24915. December 02, 1925*

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-24915/>**OSTRAND, J.:**

This is a petition for a writ of certiorari, the petitioner alleging in substance that at the general elections held on June 2, 1925, in the municipality of Buhi, Camarines Sur, he obtained 360 votes for the office of president of the municipality and was declared elected to that office by the municipal board of canvassers; that the respondent Gregorio Peñoso obtained only 356 votes; that said respondent presented a protest against said election to the Court of First Instance of the Province of Camarines Sur, alleging among other things "that the protestor was and is a duly qualified voter and a registered candidate voted for in said election for the office of municipal president of the said municipality of Buhi;" that said protest, after being entered in the docket of said Court of First Instance, was acted upon by the respondent judge, the Honorable Pedro Tuason, who limited the proceedings to; (a) Appointment of commissioners to open the ballot boxes and count the ballots; (b) the opening of said ballot boxes by the commissioners appointed and examination of the ballots; (c) presentation by the commissioners of their report; and (d) judgment by the court; and that without any evidence as to the jurisdictional facts, the respondent judge assumed jurisdiction over the case and over the persons of the respondent Gregorio Peñoso and the petitioner Agnete E. Noble.

The petitioner further alleges that in making the recount of the ballots, the respondent judge made operations of addition and subtraction without stating his reasons why certain ballots were valid and other ballots invalid, and erroneously finding that the petitioner and the respondent Peñoso each received 344 legal votes, declared that the election was tied as between the two. Upon these facts the petitioner maintains that the proceedings were conducted in an irregular manner and that the respondent judge therefore exceeded his jurisdiction.

For a second cause of action, the petitioner alleges that after reaching the conclusion that the election was a tie, the respondent judge, under the date of September 14, 1925, without any authority to do so, ordered that the parties, Agnete E. Noble and Gregorio Peñoso, "draw lots in the presence of the court on the 19th of September, 1924, at 8 o'clock in the morning, to determine who should be declared elected to the aforesaid office," the parties being notified of such order; that on the day assigned for the drawing, the 19th of September, the petitioner herein objected in writing to the drawing of lots before the court and asked that the court notify the municipal council of Buhi of the result of the protest, in order that said council might provide for the drawing of lots by the parties; that the court overruled said objection and stated that whether Agnete E. Noble so desired or not, the drawing would take place before the court, as ordered; that the petitioner was not notified by the court of its ruling upon his objection in writing presented on September 19, nor of the subsequent proceedings had before the court in relation to the drawing announced for said date and only learned on or about the 29th of September, 1925, through a notification in writing sent him by the clerk of the court, that the drawing announced by the court for the 19th of

September was held on the 22d of that month with results favorable to the respondent Peñoso; that in the meantime the municipal council of Buhi, upon ascertaining that the court had found that there was a tie, constituted itself a municipal board of canvassers and after due notice to the parties, held a special meeting on the 23d of September and then and there conducted a drawing of lots between the two candidates and that the herein petitioner, having been successful in this drawing, was again proclaimed municipal president.

The petitioner further alleges that he was not present at the drawing held before the court, but that according to information obtained by him the proceedings in said drawing were as follows: The respondent judge brought two folded pieces of paper from his office to the court room and, without exhibiting the contents of the papers to any one, placed them in a box and ordered the clerk to draw one of them from the box. The clerk did so and said "Peñoso," and immediately thereupon the respondent judge gathered up the two pieces of paper without exhibiting the contents to the public, and concluded the proceedings by declaring the respondent Peñoso elected. The petition further alleges that the respondent judge had no jurisdiction to order that the parties Agnete E. Noble and Gregorio Peñoso draw lots in the presence of the court, but that that function pertains to the municipal council of Buhi under the provisions of section 477 of the Electoral Law, and that the proceedings followed by the respondent judge in conducting the drawing of lots as above stated were irregular and beyond the jurisdiction of the court.

We can find nothing irregular in the proceedings described under the petitioner's first cause of action. The omission to introduce affirmative proof of the jurisdictional facts alleged in the election protest loses its importance when it is considered that the protest was duly verified and that the allegations in question were not denied under oath by the protestee. These verified allegations in the protest established a prima facie case sufficient to enable the court to take jurisdiction, and no evidence to the contrary having been introduced by the protestee, the court never lost that jurisdiction. It is further to be noted that at the beginning of the hearing in the Court of First Instance, the parties agreed "that the ballot boxes be opened, that the ballots be counted and that upon the result of the count, decision will be rendered."

For his second cause of action the petitioner relies on section 477 of the Administrative Code which provides that in case the canvass by the municipal council "results in a tie for any municipal office the tied candidates shall draw lots in the presence of the board of canvassers, and the successful candidate shall be declared elected." The petitioner's contention is that an election protest is in the nature of a proceeding in mandamus, and that in the present case the court should have issued a mandate ordering the municipal council of Buhi to constitute itself into a board of canvassers and conduct the drawing of lots by the tied candidates. This argument would have been perfectly sound under the law as it existed prior to the enactment of Act No. 3210, but can no longer be considered valid. The original section 479 of the Administrative Code reads:

"Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election. The contests shall be filed with the court within two weeks after the election and shall be decided by the same as soon as possible after the hearing of the contest. Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall be payable in the first instance out of the provincial treasury, and to issue its mandamus directed to the board of canvassers to correct its canvass in accordance with the facts as found."

But section 25 of Act No. 3210 amends this section so as to read as follows:

"Sec. 479. Contested election to office in general.—Contests in all elections for the determination of which

provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any registered candidate voted for at such election. The contests shall be filed with the court within two weeks after the proclamation.

"Such court shall have exclusive and final jurisdiction, except as hereinafter provided. Upon petition of an interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall not exceed five pesos per diem each and shall be payable in the first instance out of the provincial treasury.

"The court shall declare who has been elected or that no candidate has been legally elected, as the case may be, and the candidate who has been declared elected shall be entitled to assume office without any other canvass by the board of canvassers, as soon as the clerk of the court has notified the board of canvassers of the decision of the court and the person concerned has received a copy thereof, unless by virtue of the section next following an appeal shall lie and shall have been filed in accordance with the provisions of said section. The clerk of court shall immediately send certified copies of the decision to the board of canvassers and the candidates affected by the same."

The difference between the original section and the section as amended is so marked and the language is so clear as to admit of no special interpretation. Under the original section the court was only required to find the facts and issue a mandate to the board of canvassers to correct its canvass accordingly. In legal effect the duty of making the official declaration of the election therefore rested with the board; under the amended section the duty to do so rests with the court and the board has nothing to do therewith. It was clearly the intention of the Legislature to have the proceedings terminate with the judgment of the court so as to avoid further complications and renewed appeals to the courts in cases of dissatisfaction with the subsequent action of the board.

It being his duty to declare who was elected to the office in question, the respondent judge was fully justified in ordering that the tied candidates draw lots before the court and in his presence. Under the law he could not very well do otherwise.

We find no irregularity in the drawing conducted by the court. The parties appear to have been duly notified and if the petitioner failed to appear it was through his own fault and voluntary action. The fact that the writing on the lots was not exhibited to the public at the time of the drawing is in the circumstances of no consequence; it does not appear that anyone requested permission to examine them.

From what has been said it follows that the drawing had before the municipal board was null and void and of no effect; the jurisdiction of the board to conduct such drawings must be considered limited to ties resulting from its own canvass or count of the votes.

The petition for a writ of certiorari is denied and the preliminary injunction hereinbefore issued is dissolved, with the costs against the petitioner. So ordered.

Avanceña, C. J., Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.
Street, J., reserves his vote.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.