

LUIS MORALES, PROTESTANT AND APPELLANT, VS. MANUEL DE LEON, PROTESTEE AND APPELLEE.

G.R. No. 24931. December 22, 1925

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STATEMENT

As a result of the last election, the provincial board of canvassers of the Province of Tarlac declared Manuel de Leon elected to the office of governor of that province.

The protestant duly filed a notice of contest, in which it is alleged:

"1. That the said protestant, and the protestees Manuel de Leon, Jose Espinosa, Marcelino Agana and Ramon de la Merced, are of legal age, residing respectively in the municipalities of Moncada, Tarlac, Tarlac, Tarlac and Victoria, of the Province of Tarlac.

"2. That the said protestant and the aforesaid protestees are all duly qualified electors in their respective municipalities, and are the only persons who were candidates for the office of governor of the Province of Tarlac, and all presented opportunely their respective certificates of candidacy for the said office, all of them having received votes for the said office of provincial governor of Tarlac in the general elections held June 2, 1925.

"3. That according to the certificate of the returns by the provincial board of canvassers of Tarlac the protestee Manuel de Leon in the said general elections, June 2, 1925, received a total of 5,175 votes for the said office of provincial governor of Tarlac, the protestant Luis Morales, 5,120, the candidate Jose Espinosa, 2,254, the candidate Marcelino Agana, 1,872, and the candidate Ramon de la Merced, 1,280."

Then follows a list of precincts in which the protestant claimed that there was error, and in which he desired a recount, and with a prayer that upon the final hearing, he be declared elected provincial governor. The protestee filed an answer in the nature of a general denial, and as a counter-protest alleged:

"1. That he hereby reproduces paragraphs 1, 2, 3 and 4 of the protest.

"2. That the counterprotestant challenges the results of the elections in the precincts of the municipalities mentioned herein below," in which it is further alleged that, as a general ground of the counterprotest, error has been made in the count in a number of different precincts in which he desired a recount, and that upon the final hearing, his election should be affirmed.

Upon such issues, commissioners were appointed and evidence taken, covering a period of about two months, and on September 28, 1925, the commissioners made a report to the court upon which the case was ready for trial on its merits. The protestee then filed a motion for the dismissal of the proceedings on the ground that the court did not have jurisdiction, for the reason that the motion of protest did not contain an allegation that the protestant was a registered candidate voted for in the last preceding election.

October 7, 1925, the lower court sustained the motion to dismiss largely upon the ground that the words "presentaron oportunamente sus respectivos certificados de candidatura" are not sufficient to convey the meaning

of the word "registrado," as that word is used in section 479 of the Election Law, as amended by Act No. 3030, and as that section was construed in the case of *Viola vs. Court of First Instance of Camarines Sur and Adolfo* (47 Phil., 849). The court also rendered judgment against the protestant for costs, from which he appeals, contending that "the trial court erred in dismissing the motion of protest filed herein by the protestant Luis Morales against the protestee Manuel de Leon."

JOHNS, J.:

It is very apparent that in dismissing the protest, the trial court relied on the decision of this court in the *Viola* case. From an examination of the record, it appears that the decision there was rendered by a divided court of five to four, and that the writer of this opinion was one of the five. Among other things, that opinion says:

"For all of the foregoing we are of the opinion that the use of the word 'registered' in the Election Law, as amended by Act No. 3210, is proper, and that the words 'voted candidate, with his corresponding certificate of candidacy,' used in the motion of protest now before us are not equivalent to said word 'registered,' and consequently they do not meet one of the essential requisites prescribed by the law in order that the Court of First Instance of Camarines Sur might acquire jurisdiction to try and decide said protest."

The syllabus of the dissenting opinion says:

"4. ELECTIONS; ELECTION CONTEST; PLEADINGS; JURISDICTION.—Where in the motion of protest, it is alleged that the contestant is a qualified elector, and that, according to the election return, is one of the candidates voted in the elections concerned, with certificate of candidacy, said pleading is sufficient in order that the court may acquire jurisdiction over the protest, because the board of canvassers would not have awarded him any vote, if he had not registered his candidacy, in view of the provision of section 35 of the Election Law, Act No. 3030, that any votes given to a person who has not filed his certificate of candidacy shall be considered as scattering votes."

Such are the dividing lines between the two opinions.

It further appears from the record that in his first appearance there, the protestee promptly raised and presented his objection to the jurisdiction of the court. In the instant case, that was not done. The first pleading filed by the protestee was his answer, in which he denies all of the material allegations of the complaint, and in the nature of a cross-complaint, he further pleads and reproduces all of the allegations made in paragraphs 1, 2, 3 and 4 of the protest above quoted, and then challenges the result of the election in the precincts of certain specified municipalities, upon the ground that errors had been committed therein against him in counting the votes in those particular precincts, and then asks that his election be confirmed.

As stated, the case went to trial upon such issues, and commissioners were appointed for the purpose of recounting the ballots in the precincts in question. That duty was fully performed, and the report of the commissioners was made to the court on the 28th of September, 1925. The case was at issue upon such pleadings for about two months during which time the evidence was taken by the respective parties based upon the allegations made in their respective petitions. When the report of the commissioners was filed and the case was submitted to the court, and was ready to be tried upon its merits, it was then, and for the first time, that the protestee challenged the jurisdiction of the court.

In the final analysis, we have this situation. The protest was duly filed demanding a recount of the votes, and the protestee was summoned to and did appear and filed his answer in the nature of a general denial, and as a further and separate plea, and in the nature of a cross-complaint, asked that the votes in a large number of other precincts be counted, and that his election be affirmed. By the filing of his cross-complaint, the protestee invoked the jurisdiction of the court, and asked to have the case tried on its merits, and after it was ready for trial on the merits

on both the protest and the cross-complaint, the protestee then filed his motion to dismiss upon the sole ground that the petition did not allege that the protestant was a registered candidate.

Although there may be some merit in the dissenting opinion in the Viola case and it reads plausible, yet, from our point of view, if the protestee in the instant case had filed a demurrer to the petition upon the ground that it did not state facts sufficient to constitute a cause of action, the majority opinion would have to be followed and sustained. Even in the absence of a demurrer, if the protestee had not filed a cross-complaint, in which he invoked the jurisdiction of the court, it might be that the motion to dismiss should be sustained. Be that as it may, the protestee not only did not question the jurisdiction of the court until after the testimony was taken and the case was ready for trial on its merits, but he filed a cross-complaint in which he invoked the jurisdiction of the court, and submitted testimony to sustain the issues made in his cross-complaint, and it was not until all of the ballots in question were counted and the commissioners had made their report and the case was ready for trial, that the protestee saw fit to question the jurisdiction of the court. The fact that this question was not raised until after the report of the commissioners was filed is very significant.

Although it was a division case, this question was squarely decided in *Ocampo vs. Mina and Arejola* (41 Phil., 308), in which the syllabus says:

"5. * * * The filing of an answer to the protest, denying the allegations thereof, setting forth a special defense and asking for its dismissal, amounts to a submission to the jurisdiction of the court," the opinion citing and quoting with approval the language used by this court in *Flores vs. Zurbito* (37 Phil., 746, 747), of that opinion.

Courts of First Instance are courts of general jurisdiction and have original jurisdiction over election contests, and the court had jurisdiction over the person. That is to say, the lower court had jurisdiction over the person and of the subject-matter of the suit, which was an election contest.

Hence, the only question now presented is whether, assuming that the petition does not state facts sufficient to constitute a cause of action, the defendant was in a position to raise that question at the time he filed his motion to dismiss.

We fully recognize the general rule that jurisdiction is never waived and can be questioned even for the first time in this court. But such a plea should be confined and limited to the jurisdiction of the court over the person or the subject-matter of the suit. In the instant case, the court had jurisdiction over the parties, and it also had the legal right to hear and determine an election contest, and for that purpose, the protestee himself invoked the jurisdiction of the court. To say the least, upon such a state of facts, the pleadings should be given a very broad and liberal construction.

Upon the admitted facts, we are clearly of the opinion that, through his laches and conduct, the protestee was estopped to question the jurisdiction of the court at the time and in the manner in which it was done.

This opinion should not be construed to overrule or modify the majority opinion in the Viola case.

The judgment of the lower court, dismissing the protest for want of jurisdiction, is reversed, and the case remanded for further proceedings not inconsistent with this opinion, with the costs in favor of the appellant. So ordered.

Ostrand, J., concurs.

Malcolm, J., concurs in the result.

Villamor, J., with whom concur Avanceña, C. J., and Street, J., concurring: I concur in the result chiefly for the reasons set forth in my dissenting opinion in the Viola case cited in this decision.

DISSENTING

VILLA-REAL, J., with whom concur Johnson and Romualdez, JJ.:

With all due respects, I regret to dissent from the opinion of the majority. It is a well known rule of remedial law that "where the mode of acquiring jurisdiction is prescribed by statute compliance therewith is essential or the proceedings will be a nullity" (15 C. J., par. 92). In the case of *Viola vs. Court of First Instance of Camarines Sur and Adolfo* (47 Phil., 849), the majority of the court held that " * * * While the courts of first instance are higher courts of general jurisdiction, yet in taking cognizance of election contests they exercise special jurisdiction conferred by a special law (section 479, Administrative Code, as amended by section 44 of Act No. 3030, and section 25 of Act No. 3210), under certain and specific conditions, among which are the following, to wit: (1) That the protest be presented 'upon motion by any registered candidate voted for;' (2) 'that the contest shall be filed with the court within two weeks after the proclamation.' * * * ' Where the jurisdiction of a court depends upon the existence of facts, it has no right or power to proceed or act upon a pleading which does not substantially set forth such facts. * * * ' (*City of Charleston vs. Littlepage*, 51 L. R. A. [N. S.], 353." The requirements of the Election Law goes to the exercise of jurisdiction not only on the subject matter, i. e., the protest, but also on the person of the protestant. The presentation by a defeated candidate for either a municipal or provincial office of a motion containing the allegation that he is a "registered candidate voted for" sets in motion the power of the competent court to hear and determine the protest. Following the doctrine in the *Viola* case, the Court of First Instance of Tarlac did not acquire jurisdiction to hear and determine the protest, and all the proceedings had before it were a nullity ab initio. The filing of a counter protest by the protestee and his submission to trial did not give the court jurisdiction either over the subject matter or the parties. "It is not within the power of litigants to invest a court with any jurisdiction or power not conferred on it by law, and accordingly it is well established as a general rule that, where the court has not jurisdiction of the cause of action or subject-matter involved in a particular case, such jurisdiction cannot be conferred by consent, agreement, or waiver. So also if the court cannot try the question except under particular conditions or when approached in a particular way, the law withholds jurisdiction unless such conditions exist or unless the court is approached in the manner provided, and consent will not avail to change the provisions of the law in this regard." (15 C. J., par. 101, page 802.) In the present case the protestant did not in his motion of protest comply with the conditions required by law to confer jurisdiction upon the court or approach it in the manner provided, so that the submission of the defendant or protestee did not cure the jurisdictional defect or give the court jurisdiction over the subject matter and over his person.

For the foregoing reasons the order of the lower court dismissing the protest should be affirmed.

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