

SIMEON MANDAC, PETITIONER AND APPELLEE, VS. DOMINGO J. SAMONTE, RESPONDENT AND APPELLANT; JUSTO DACUYCUI, INTERVENER AND APPELLANT.

G. R. No. 25185. August 30, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

As a result of the general elections held in the Province of Ilocos Norte on June 2, 1925, 13,909 votes were cast for the office of provincial governor in favor of the following candidates:

Votes

Domingo J. Samonte

4,249

Simeon Mandac

4,241

Justo Dacuycui

3,330

Ignacio Arzaga

1,734

Eleuterio Ruiz

355

Consequently, the provincial board of canvassers of Ilocos Norte proclaimed Domingo J. Samonte elected governor of said province with a plurality of 8 votes over Simeon Mandac, who received second place.

On June 22, 1925, Simeon Mandac filed an election protest in the Court of First Instance of the Province of Ilocos Norte, praying for the annulment of the election of the protestee Domingo J. Samonte, proclaimed governor-elect by the provincial board of Ilocos Norte, and, in his place, to declare the protestant elected to said office.

As the grounds for said protest, the following is alleged:

"(a) That the provincial board of canvassers and the election inspectors of the two election precincts of the municipality of Currimaog, Ilocos Norte, adjudicated to the protestee Domingo J. Samonte, 120 imaginary votes, or 256 instead of only 136 votes, thus falsifying the will of the electorate and, in addition, adjudicated to him an illegal and void vote on a stained ballot.

"(b) That the provincial board of canvassers and the election inspectors of the nine election precincts of the municipality of Laoag, Ilocos Norte, failed to adjudicate to the protestant more than 100 legal votes and, on the contrary, adjudicated several illegal votes to the protestee which must be declared void under section 452 of the Election Law as amended by Act No. 3210.

"(c) That the provincial board of canvassers and the election inspectors of all the election precincts of the municipality of Batac, Ilocos Norte, adjudicated to the protestee Domingo J. Samonte, 161 illegal and void votes because the ballots showed the name of a person on a line intended for councilman when said person was not a registered candidate.

"(d) That the provincial board of canvassers and the election inspectors of all of the election precincts of Batac, Ilocos Norte, adjudicated to the protestant only 607 votes instead of 614 as evidenced by the election returns made by said inspectors now in the hands of the municipal secretary of Batac, Ilocos Norte,

"(e) That the provincial board of canvassers and the election inspectors of precinct No. 4 of Badoc, Ilocos Norte, adjudicated to the protestee Domingo J. Samonte, 14 illegal votes on 14 mutilated ballots.

"(f) That the said provincial board of canvassers and the election inspectors of all the election precincts of the municipalities of Bangui, Badoc, Piddig, Dingras, and Pinili, Ilocos Norte, adjudicated to the protestee Domingo J. Samonte, 279 imaginary and falsified votes, or 100 votes in Bangui, 83 in Badoc, 10 in Piddig, 12 in Dingras and 74 in Pinili, besides other illegal votes that must be declared void, and failed to adjudicate to the protestant several legal votes in his favor.

"(g) That the said provincial board of canvassers and all of the election inspectors of the other municipalities of Bacarra, Pasuquin, Burgos, Vintar, Sarrat, Dingras, Piddig, Solzona, Banna, Nueva Era, San Nicolas, and Paoay, Ilocos Norte, failed to adjudicate several legal votes to the protestant which were cast in his favor and, on the contrary, adjudicated several illegal and void votes to the protestee."

The protestee Domingo J. Samonte filed a demurrer to the motion of protest alleging: (a) That the protestant has no legal capacity to protest; (b) that the motion of protest does not contain sufficient facts to constitute a cause of action; and (c) that the motion of protest is ambiguous and uncertain.

This demurrer was overruled by the court in an order dated August 7, 1925, and on the following day, August 8th, the protestee filed his answer, alleging:

"(1) That the protestant has no legal capacity to file a protest, being a disqualified voter.

"(2) That the provincial board of canvassers and the election inspectors of all the election precincts in the Province of Ilocos Norte illegally rejected and failed to adjudicate to the protestee Domingo J. Samonte more than three hundred (300) legal and valid votes.

"(3) That the provincial board of canvassers and the election inspectors of all the election precincts in the

Province of Ilocos Norte, illegally admitted and adjudicated to the protestant Simeon Mandac more than two hundred (200) void and invalid votes."

On July 9, 1925, the other candidate for governor, Justo Dacuycuy, filed an answer with a counter-protest praying that the elections of Ilocos Norte be declared a failure and, in case this petition was denied, that the provincial board of canvassers be ordered to correct its election returns in such a manner as to declare the counter-protestant Justo Dacuycuy elected governor of the Province of Ilocos Norte.

The grounds of the counter-protest of Justo Dacuycuy, hereinafter designated the intervener, are:

"(1) That the counter-protestant Justo Dacuycuy is a qualified voter and was one of the registered and voted candidates for the office of provincial governor of Ilocos Norte in the general elections held on June 2, 1925, in the Province of Ilocos Norte, within the jurisdiction of this court.

"(2) That the total number of votes cast for the office of provincial governor of Ilocos Norte was 13,909, of which Domingo J. Samonte received 4,249, the protestant Simeon Mandac 4,241, the counter-protestant Justo Dacuycuy 3,330, Ignacio Arzaga 1,734, and Eleuterio Ruiz 355, according to the election returns made by the provincial board of Ilocos Norte acting as the provincial board of canvassers.

"(3) That on June 10, 1925, the provincial board of Ilocos Norte, acting as provincial board of canvassers, proclaimed the protestee Domingo J. Samonte elected to said office and so certified to the office of the provincial governor of Ilocos Norte.

"(4) That the counter-protestant Justo Dacuycuy contests not only the election of the protestee Domingo J. Samonte, but of the protestant Simeon Mandac as well, on the following grounds:

"(a) That official valid ballots in blank of the election precincts disappeared, which irregularity permitted many ballots to be prepared outside of the election booths and precincts resulting in many ballots being found in a precinct which belonged to another.

"(b) Leaders, who were against the counter-protestant Justo Dacuycuy, went into the precincts and entered the election booths to electioneer and even forced the voters to vote for their respective candidates.

"(c) A considerable number of voters were not permitted to vote while others who were disqualified, were illegally permitted to do so.

"(d) Many persons appear to have voted who, in fact, had not done so and many imaginary votes were adjudicated to the protestant Simeon Mandac as well as to the protestee Domingo J. Samonte.

"(e) Many valid ballots were not counted by the election inspectors.

"(f) Many valid ballots, which would change the result of the election, were read and counted in favor of the protestant Simeon Mandac, or in favor of the protestee Domingo J. Samonte, which should not have been read nor counted, being illegal, stained, marked, illegible or the names of candidates placed on a space which did not pertain to the office of provincial governor.

"(g).Many valid and legal ballots in the name of the counter-protestant Justo Dacuycuy, for the office of provincial governor, were not read or counted by the election inspectors in his favor, the number of which is such as to change the result of the election.

"(h) Many votes belonging to the counter-protestant Justo Dacuycuy, which would change the result of the election, were rejected and counted in favor of the protestant, or the protestee Domingo J. Samonte.

"(i) That the election returns upon which the provincial board of canvassers acted are illegal or falsified.

"(f) That the ballot boxes having been tampered with, or not having been properly kept, no longer inspire

confidence,

" (k) With regard to the general elections held on June 2, 1925, the general belief is that frauds and irregularities were committed, ballot boxes tampered with and the election returns falsified.

"(5) That the protestant Simeon Mandac is disqualified for the office of provincial governor for which reason, and because so many frauds, falsifications, and irregularities of all kinds were committed that it is impossible to know the true will of the electorate, it is but just to declare the election of provincial governor of Ilocos Norte a failure.

"(6) That the counter-protestant Justo Dacuycuy joins in, the petition of the protestant Simeon Mandac, that all ballot boxes, ballots, registration lists, returns, and other matter and papers relating to the election of each and every one of the election precincts of each and every one of the municipalities that compose the Province of Ilocos Norte be brought to court and examined."

In view of the allegations of the protest and of the answer, as well as the allegations of the intervener, the proper legal proceedings were had; the ballots and ballot boxes were examined as well as the other papers found in the ballot boxes of the precincts in question, and the court, after a careful analysis of the evidence presented by the parties, on November 21, 1925, rendered a decision, composed of 217 pages, declaring that Simeon Mandac, the protestant, had obtained a majority of 119 votes over the protestee Domingo J. Samonte and 629 votes over the intervener.

From this decision the protestee Domingo J. Samonte and the intervener Justo Dacuycuy appealed in due time. The protestee Domingo J. Samonte, in his brief, makes the following assignments of error:

"MUNICIPALITY OF CURRIMAO

"1. In admitting the evidence of the protestant tending to show that the ballot boxes of both precincts of Currimao were tampered with, without the previous allegation in his motion of protest to that effect.

"2. In declaring the election in the two precincts which compose this municipality, for the office of governor, a failure and that no candidate for said office was legally elected.

"3. In not holding at least that the result of the original count made by the election inspectors, which appears in the election returns, Exhibits M and L or N. and N of precincts Nos. 1 and 2, respectively, of the municipality of Currimao, must prevail."

"MUNICIPALITY OF BATAAC

"4. In adjudicating to the protestant 68 votes instead of 66 in precinct No. 2 of Batac.

"5. In adjudicating to the protestant 97 votes instead of 93 in precinct No. 4 of Batac.

"6. In adjudicating to the protestee only 76 votes instead of 83 in precinct No. 4 of Batac.

"7. In adjudicating to the protestee only 90 votes instead of 95 in precinct No. 5 of Batac.

"8. In adjudicating to the protestant 123 instead of 122 votes in precinct No. 6 of Batac."

"MUNICIPALITY OF DINGRAS

"10. In crediting the protestee Domingo J. Samonte with only 55 votes instead of 60 in precinct No. 3 of Dingras.

"11. In not crediting the protestee Domingo J. Samonte with all of the 29 ballots in his favor contained in the 29 ballots found by the commissioners in the valid ballot box in precinct No. 4 of Dingras."

"MUNICIPALITY OF LAOAG

"12. In crediting the protestant with 100 votes instead of 97 in precinct No. 1 of Laoag.

"13. In admitting evidence tending to show that the ballot boxes were tampered with in precinct No. 2 of Laoag, without any previous allegation by the protestant in his motion of protest to that effect.

"14. In holding that the ballot boxes in precincts Nps. 2, 8, and 9 of Laoag were tampered with.

"15. In declaring that the ballots found by the revisors in the ballot boxes of precinct No. 2 of Laoag do not merit the confidence of the court and that the last count made cannot prevail over that made by the election inspectors.

"16. In crediting the protestant with only 15 votes instead of 129 stated in the election returns in precinct No. 2 of Laoag.

"17. In crediting the protestant with 80 votes instead of 76 in precinct No. 3 of Laoag.

"18. In adjudicating to the protestant a ballot extracted from the valid ballot box of precinct No. 4 of Laoag.

"19. In crediting the protestant with 141 votes instead of 136 in precinct No. 5 of Laoag.

"20. In crediting the protestee with only 56 votes instead of 62 in the same precinct.

"21. In crediting the protestant with 56 votes instead of 49 in precinct No. 6 of Laoag.

"22. In holding that the apocryphal ballots found in the ballot boxes of precincts Nos. 8 and 9 were placed there, after the count was made.

"23. In declaring that the ballots contained in the ballot boxes of precincts Nos. 8 and 9 of Laoag are discredited and that the recount cannot prevail over the original count stated in the election returns.

"24. In not deducting from the 161 ballots found by the commissioners in the valid ballot box of precinct No. 8 of Laoag with votes in favor of the protestant, the 63 apocryphal ballots (Exhibits AA-1, AA-2, AA-7 to AA-67) instead of adjudicating to him the 164 votes stated in the election returns, and

"25. In not deducting from the 137 ballots found by the commissioners in the valid ballot box of precinct No. 9 of Laoag with votes in favor of the protestant the 56 apocryphal ballots (Exhibits Y-1, Y-3, Y-5 to Y-58), instead of adjudicating to him the 155 votes stated in the election returns."

"MUNICIPALITY OF PAOAY

"26. In not crediting the protestee with 26 instead of 25 votes in precinct No. 2 of this municipality."

"MUNICIPALITY OF PINILI

"27. In crediting the protestee with only 206 instead of 209 votes in precinct No. 1 of Pinilli "28. In crediting the protestant with 90 votes instead of 79 in the same precinct."

"MUNICIPALITY OF SOLZONA

"29. In crediting the protestant with 62 votes instead of 54 in precinct No. 1 of Solzona.

"30. In crediting the protestant with 58 votes instead of 57 in precinct No. 2 of Solzona.

"31. In crediting the protestant with 97 votes instead of 96 in precinct No. 3 of Solzona..

"32. In declaring the protestant provincial governor-elect of the Province of Ilocos Norte, with a majority of 119 votes over the protestee Domingo J. Samonte, and

"33. In not declaring the protestee provincial governor elect of Ilocos Norte, with a majority of 366 votes over the protestant Simeon Mandac, and 742 votes over the intervener Justo Dacuycuy."

On the other hand, the intervener Justo Dacuycuy alleges that the trial court committed the following errors:

- "1. In not annulling the election for the office of provincial governor in the municipality of Batac.
- "2. In not annulling the election for the office of provincial governor in the municipality of Laoag.
- "3. In not annulling the election for the office of provincial governor in the municipality of Pinili.
- "4. In not annulling the election for the office of provincial governor in the remaining municipalities of Bangui, Burgos, Pasuquin, Piddig, Banna, and Solzona as was done in the municipality of Currimao with the exception only of the municipalities of Vintar, Paoay, Dingras, Bacarra, Badoc, Nueva Era, San Nicolas, and Sarrat.
- "5. In not having declared Justo Dacuycuy as the provincial governor-elect of Ilocos Norte.
- "6. In ordering Justo Dacuycuy, and the protestee Domingo J. Samonte, to pay pro rata the costs of the action.
- "7. In denying the motion for a new trial filed by Justo Dacuycuy upon the ground that the decision was openly and manifestly contrary to law and the evidence presented at the trial."

In view of the allegation of the protestant that the election inspectors of the two precincts of the municipality of Currimao adjudicated to the protestee about 120 imaginary votes at the proposal of the parties, the court appointed commissioners of revision to examine the ballots contained in the ballot boxes. The revisors found the following ballots in the white box of precinct No. 1:

Votes

Simeon Mandac.

75

Domingo J. Samonte

161

Justo Dacuycuy

17

Ignacio Arzaga

9

Eleuterio Ruiz

6

Agustin Quiaoit

1

Total

269

Of the 75 ballots of the protestant, the revisors rejected 40 due to smears, rewriting, marks, and erasures; and of the 161 ballots of the protestee, they likewise rejected 78 ballots which they declared illegal and void. As to precinct No. 2 the revisors rejected, for various reasons, 60 ballots of the protestee, 27 of the protestant and 6 of the inter vener.

In the two precincts no election returns were found, but in precinct No. 2 the revisors found what appeared to be pieces of a hive of white ants. In view of this result, the protestant presented evidence, against the objection of the protestee, tending to show that the two boxes of valid votes in both precincts had been illegally opened and the ballots found in said boxes altered.

The protestee, in turn, introduced evidence tending to show that said boxes had not been clandestinely opened after the elections.

The trial court, after examining all the ballots, Exhibits O-1 to O-15 and P-1 to P-77 of precinct No. 1 and Exhibits R-1 to R-9, and Q-1 to Q-60 of precinct No. 2 reached the following conclusions:

"1. That the ballots with erasures on which were written various votes in favor of the protestant and the protestee in a hand notably different from many other of said ballots, were altered; and it is believed that the marks or small characters found on Exhibits R-1 to R-9 were not placed there by the voters themselves but by others after the canvass.

"2. That the names voted for in the ballots constituting Exhibits O-1 to O-15 are not imaginary, with the exception of said Simon Gonzales, ballot Exhibit Q-7, wherein the protestant Simeon Mandac is voted for and which is deducted.

"3. That the absence of the two copies of the election returns in the two valid ballot boxes of both precincts of Currimao not satisfactorily accounted for, leads to the belief, or creates suspicion at least, that the two copies of the returns were clandestinely removed from said boxes.

"4. That in Exhibits P-1 to P-77 of precinct No. 1, and Q-1 to Q-60 of precinct No. 2 which contain votes in favor of the protestee Domingo J. Samonte, there are more or less visible erasures in the space for the office of provincial governor, which circumstance or detail is not found, with the exception of a small number of ballots, in other spaces of the same ballots for other Insular, provincial, and municipal offices.

"5. That in the other Exhibits, R-1 to R-9 which are ballots taken from the valid ballot box of precinct No. 2, containing votes in favor of Simeon Mandac, various small marks and letters g, d, j, v, g, u, u, o, a "half moon with a dot, small triangles and the name of Simeon, in quotations, may be seen. These are other details which tend to increase the distrust of the court regarding the ballots found in the valid ballot boxes of these two

precincts and lead to the belief that irregularities and serious offences were committed after the elections."

And by virtue thereof the trial court declared that no candidate for the office of provincial governor was legally elected in the two precincts of the municipality of Currimao in the last general elections, and the votes of these two precincts were deducted from the sum of votes received by each and every one of the candidates for the office of provincial governor.

Against this finding of the trial court the appellant makes three assignments of error: The appellant alleges that the court erred in admitting evidence in regard to tampering with the ballot boxes of both precincts without previous allegation in the protest that said ballot boxes were illegally opened. This contention is untenable.

Upon the opening of the ballot boxes of the two precincts of Currimao the contents found were such as to indicate, in the opinion of the protestant, that the said ballot boxes must have been tampered with and the original ballots altered. In view of this state of the ballots, the trial judge admitted evidence tending to show that said ballot boxes had not been faithfully kept and that they had been tampered with after having been sealed by the election officers.

Counsel for the protestee objected to the admission of this evidence and excepted to the ruling of the court. This point was duly raised in this court through the proper assignment of error and we are now called upon to determine whether or not said evidence is admissible in view of the fact that the protest did not contain any allegation that the ballot boxes in question had been tampered with.

Upon this point we are of the opinion that the trial court committed no reversible error in admitting said evidence. When the ballot boxes were opened and it was found that their contents were such as to indicate, in the opinion of the court, that there was something wrong, the evidence of tampering has been properly admitted as explanatory of the state of the contents of the ballot boxes. The act of opening a ballot box and altering its contents is an offense highly condemnable which is always committed with the utmost secrecy, and the person or persons committing same always try to cover up their tracks.

It often happens that the tampering cannot be suspected or detected and is revealed only by an examination of the contents of the box. The protestant, in many instances, cannot possibly have the necessary knowledge of the tampering in order that he may make an allegation in his protest as to the tampering with the ballot boxes, and it would serve no useful purpose to announce a rule that would require the parties in an election contest to make allegations as to tampering; with the ballot boxes based on invisible facts. We believe that the correct rule is that it must be left to the discretion of the trial court to determine when, in view of the facts revealed by the opening of the boxes, evidence concerning the tampering with the ballot boxes is admissible as explanatory of the state of the ballots.

Section 298, No. 15, of the Code of Civil Procedure itself, which we believe is applicable to election cases, permits the introduction of evidence of any other facts from which the facts at issue may be presumed or logically deduced. While it has not been specifically alleged in the protest that the ballot boxes have been tampered with, yet the tampering, being intimately connected with the disputed fact alleged in the protest that the election inspectors of the two precincts of Currimao had adjudicated to the protestee 120 imaginary votes, may be the subject of proof on the part of the protestant.

The appellant also alleges that the trial court erred in holding that there was a failure of election in the two election precincts of Currimao, for the office of provincial governor, and in not holding that the count made by the election officers in accordance with the election returns Exhibits M and L and N and it must prevail.

We have carefully examined the 173 ballots found in the ballot boxes in the two precincts of Currimao and are

persuaded that these ballots were altered after the election in such a way that, due to the erasures and rewriting found in many of the ballots of the protestant as well as in those of the protestee, it is really difficult, as the trial court held, to ascertain the true result of the election in that municipality with respect to the office of provincial governor.

We have found, especially in the ballots of the protestee, many not only with erasures, but with the name of Domingo J. Samonte written therein apparently by persons other than those who filled in the remainder of the ballot. We are of the opinion that under these circumstances it is not possible to separate the legal ballots of the protestant and the protestee from the illegal ones and, therefore, the election in said precinct must be declared void. In the case of *Cailles vs. Gomez and Barbaza* (42 Phil., 496), we have held that in those cases wherein the legal votes cannot be separated from the illegal, it is not proper to deduct an uncertain number of votes from those which a candidate has obtained and adjudicated them to the other, but that the election must be held void in said precinct.

In the case of *Garchitorena vs. Crescini and Imperial* (39 Phil., 258), the following doctrine was upheld:

"Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct. The evidence in the present case shows an unmistakable intention and design on the part, not only of the election inspectors, but many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipality. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. The rule is so well established that authorities need no longer be cited in its support that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected and those who are guilty of such frauds and irregularities should be punished to the very limit of the law."

The appellant alleges that in this case the lower court should have abided by the official count made by the election inspectors, Exhibits L and M, N and ft. But these documents have been impugned as false by the protestant, and we have found them with erasures and rewritings, and some with corrections made with a different kind of ink, which make them entirely unreliable. Even in the tally sheet of precinct No. 1 on the first line of the rows in front of the name of Domingo J. Samonte, there are four groups of five lines which appear to have been made by a different hand with a lighter ink than the rest of the lines.

In view of the fact that the records do not furnish a sure means of separating the good from the bad ballots, and it being difficult to solve this uncertainty due to the condition in which we found the above-mentioned ballots, the election returns, and tally sheets of precinct No. 1, we are compelled to affirm the judgment of the trial court. The courts have often laid down the rule that when fraudulent and legal ballots are so mixed that they cannot be counted separately, the election must be annulled. (*State vs. Fulton*, 42 Kansas, 164.) We are therefore of the opinion that the finding of the trial court in annulling the election of the provincial governor in the municipality of Currimaos is in accordance with the law.

The appellant assigns twenty-four errors, the solution of which depends upon the interpretation of the rule of law known as *idem sonans* and of the provision of paragraph 3 of section 19 of Act No. 3210. In dealing with these errors, and in order to avoid repetition, it is well to note:

1. The *idem sonans* rule does not require exactitude nor perfection in the spelling of names; it means only that if the name as spelled in the ballot, although different from its orthographically correct spelling, sounds practically the same when pronounced, according to our methods of pronunciation, it is a sufficient designation; of the

individual to whom it refers, and the error of the writer must not be taken into account. The question whether or not a name sounds the same as another is not one of spelling but of pronunciation. (See 21 American and English Encyclopedia of Law, p. 313.)

The rules governing such irregularities are well established by American courts. A large number of cases have arisen in which the name of a candidate is not correctly spelled in the ballot. Thus, in some cases the initial only of the Christian name is given; in others no middle initial or an incorrect one is given; suffixes, such as Jr., are sometimes added; sometimes only the family name is given and frequently the Christian name is misspelled or a wrong initial used; and while there are a few cases holding the contrary view, it may be said that according to the weight of authority, both in the courts and legislative bodies, a ballot should not be rejected for such a mistake, if, from the ballot itself and the circumstances surrounding the election, the intention of the voter can be determined. Even where the strictest rule prevails it has been held that bad spelling will not vitiate a ballot, when the name on the ballot is idem sonans with the name of the candidate. (10 Am. & Eng. Ency. of Law, p. 723, and cases cited.)

A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded. (Ibid.)

It may now be considered as well settled that tribunals trying cases of contested elections will count votes for a candidate by his initials upon clear evidence, and that it is not necessary to prove the intention of the voters by their testimony. (10 Am. & Eng. Enc. of Law, p. 723, and cases cited.)

It was said in the case of *People vs. Stevens* (5 Hill [N. Y.] 616), that where there was only the surname of a candidate on the ballot, it should not be counted by the canvasser; but this is frequently done by the courts or legislative bodies upon the trial of contested cases, when there is no claim that there is more than one candidate of the same name. (10 Am. & Eng. Enc. of Law, p. 723, and cases cited.)

Therefore, it is seen that the American courts have been liberal in solving these questions; and we are of the opinion that, under the circumstances of the majority of the voters of this country, our courts must be as liberal, if not more so, as the American courts.

2. Section 19, paragraph 3, of Act No. 3210, amending section 452 of the Election Law, provides: "Any ballot cast for a deceased or imaginary person or for a person for an office for which he is not a candidate, or when circumstances show the purpose of the voter to identify the ballot, shall likewise be unlawful, null and void." Formerly section 35, paragraph 2, of Act No. 3030, amending section 464 of the Election Law, provided that votes for persons who have not filed certificates of candidacy for any municipal office shall be counted in the count of votes as scattering votes. Admitting that this provision of Act No. 3030 is incompatible with that of Act No. 3210 just cited, we are of the opinion that the provision of the latter law must prevail under the well-known rule that a subsequent law repeals a former one.

Let us now see the errors alleged by the appellant.

Batac, precinct No. 2, error 4.—The appellant complains against the court having adjudicated to the protestant two votes in excess in this precinct. The court held that the protestant obtained 68 votes in this precinct, but added two

more with the name of Francisco Apostol because it does not appear, according to the trial court, that the latter had withdrawn his candidacy, and at the same time rejected two ballots with the name of Donato Villanueva who is not a candidate, which, therefore, left the protestant with the same number of votes (68). This error is overruled.

Batac, precinct No. 4 error 5.—The appellant assails the action of the trial court in adjudicating to the protestant four votes in excess in this precinct, alleging that ballots 3, 5, and 28 (of the decision of the trial court) must be rejected; ballot 3 for the reason that the name of councilor Maximinano Torres which appears therein is not similar to that of the registered candidate Maximiano Torres; ballot No. 5 because one named Poluno, without surname, is voted for councilor, and ballot No. 28 because one of the persons voted for is disqualified.

Ballots 3, 5, and 28 were properly admitted, leaving but one vote to be deducted from the protestant through error of computation, for, according to the trial court, there are 10 ballots to be deducted from the protestant, whereas only 9 were deducted from him. Therefore, error No. 5 is overruled, with the exception of one vote which must be deducted from the protestant.

Batac, precinct No. 4, error 6.—The appellant also complains because six ballots in his favor marked Nos. 4, 9, 13, 18, 26, and 29 (of the decision of the trial court, p. 83) were deducted from him in this precinct, which were objected to by the protestant.

These ballots were wrongfully rejected under the *idem sonans* rule, for the name of Emeiano Tures and Ameriano Torres sound the same as Maximiano Torres; that of Juse Bayani sounds like Jose Agbayani and that of Gonifacio Abin like Bonifacio Ablin. Six more votes must therefore be added to the appellant. The error is sustained as to the six ballots.

Batac, precinct No. 5, error 7.—The appellant claims 4 votes in this precinct or the ballots marked Nos. 9, 14, 21, and 23 (of the decision of the trial court, p. 94). Applying the liberal rule of *idem sonans*, these ballots have been wrongfully rejected. The name of Bonifacio Baclin sounds the same as Bonifacio Ablin, just as Sempleseo Roboyo sounds like Simplicio Rubio, and that of Apolonio Sugui to that of Apolonio Duque and Florenciaco de la Cruz is similar to Florencio de la Cruz. Four votes more must be adjudicated to the appellant.

Batac, precinct No. 6, error 8.—The appellant complains because one vote more was adjudicated to the protestant in this precinct. Francisco Apostol appears to be voted for in this ballot for councilor, but who it is alleged is not a registered candidate. One vote must be deducted from the protestant in this precinct.

The appellant also claims the ballots in this precinct wherein appear the names of Pacarda Ulit, Domingo Simit, and Teodolo Ruiz, but not having made this assignment of error (9) he has no right to raise this question now. Dingras, precinct No. 3, error 10.—The appellant claims five ballots in this precinct: The first, because although the ballot is apparently written in pencil, it is indelible and cannot be invalidated; the second, because the smears which appear on some letters have evidently been caused by the tip of the finger of the voter; the third, wherein the name of "Santia Apunacier" appears, because it sounds like Santiago Fonacier, just as "Mariano Porigan" sounds like Mariano Puriran; the other ballot with the name of Domingo Samonte for governor is written over a name previously erased, but it is clearly seen that the intention of the voter was to vote for Domingo Samonte. Five votes more are adjudged to the appellant.

Dingras, precinct No. k, error 11.—The appellant claims two ballots with the names of Emitiro Saldares and Sepso Prado. It is very clear that these names when pronounced give a similar sound to that of the candidates Emeterio Saldares and Celso Prado. Two more votes must be adjudicated to the appellant in this precinct.

Laoag, precinct No. 1, error 12.—The appellant asks that three votes of the appellee, that is, the ballots wherein the names of Martos Guerrero, Ygnacio Polor, and Purin Hernando appear, be rejected. Under the *idem sonans* rule,

said names give, respectively, the same sounds as Marcos Guerrero, Ignacio Flores and Florencio Hernando. This error is groundless.

Laoag, precinct No. 3, error 17.—In the decision of the lower court relative to precinct No. 3 it is stated that of the 18 ballots of the protestant impugned by the revisors, 10 were admitted by the trial court. Adding to the 66 votes not questioned by the protestant, the 10 votes admitted by the lower court, it is clear that the protestant must have 76 and not 80 as wrongly appears in the computation. Four votes must therefore be deducted from the protestant in this precinct.

Laoag, precinct No. U, error 18.—The appellant alleges that one vote found in the box of invalid ballots should not be counted in* favor of the protestant. The trial court counted this ballot in favor of the protestant, holding that it being valid was erroneously put in the red box by the inspectors. We see no error in this that must be corrected. Laoag, precinct No. 5, errors 19 and 20.—The lower court adjudicated 141 correct votes to the protestant in this precinct. Of the 39 ballots of the protestant rejected by the revisors, the lower court admitted 5, applying the idem sonans rule. After examining these ballots, we believe that the lower court has properly applied the rule, and therefore this assignment is overruled. So, by adding 5 to the 136 which the protestant obtained, according to the election returns, it results in 141 which is what the lower court awarded to him in its decision.

In this same precinct (error 20), the appellant complains because ballots Nos. 2, 3, 5, 7, and 10 (p. 279, second part of Commissioners' Report) were not adjudicated to him. Under the same idem sonans rule, said ballots must be adjudicated to the appellant, because the names which appear therein, Alecandro Barangan, Teofilo Maa, Emilio Miguel, Mauro Cevedo, and Gregorio Saguerrero have, respectively, the same sounds as that of the candidates Leandro Barangan, Teofilo Mata, Emiliano Miguel, Mauro Quevado, and Gregorio Guerrero. Five votes must be added to the appellant in this precinct.

Laoag, precinct No. 6, error 21.—According to the decision appealed from, there must be added to the 59 ballots of the protestant found by the revisors in the white box, a ballot which was found in the box of invalid ballots, resulting in 60 for the protestant. The lower court accepted the report of the revisors which rejected four ballots of the protestant on account of containing the names of persons who were not candidates, thus leaving 56, which were adjudicated to him by the lower court in its judgment. We see no valid reason for sustaining this error.

Paoay, precinct No. 2, error 26.—The appellant claims one of the ballots rejected by the lower court wherein the name of one of the persons voted for the office of third member appears illegible. This is a valid ballot for the appellant and therefore one vote must be adjudicated to him.

Pinili, precinct No. 1, error 27.—The lower court, accepting the recommendation of the revisors, rejected 7 ballots of the protestee-appellant because the names of persons appear therein who have not registered their candidacy. The appellant does not show in his brief that the three ballots claimed by him are perfectly legal. This assignment is overruled.

Pinili, precinct No. 1, error 28.—The appellant asks that 11 votes be deducted from the appellee in this precinct. It appearing from the report of the revisors, approved by the court, that the 11 votes referred to by the appellant have already been deducted from the appellee, this error is groundless.

Solzona, precincts Nos. I, 2, and S, errors 29, SO, and 31.—The appellant prays that 8 ballots be deducted from the appellee in precinct No. 1, one in precinct No. 2 and one in precinct No. 3. We have examined the ballots referred to by the appellant with the result that these errors are groundless.

Laoag, precinct No. 2.—Another aspect of the subject vigorously discussed by the parties to this protest is relative to the result of the elections in precinct No. 2 of the municipality of Laoag.

In view of the allegations set forth in the protest that the provincial board of canvassers and the election inspectors of the nine election precincts of the municipality of Laoag failed to adjudicate to the protestant more than 100 legal votes, and, on the contrary, adjudicated to the protestee several illegal votes which must be declared void, the revisors, duly appointed by the trial court, proceeded to open, the ballot boxes of this precinct in order to examine and qualify the ballots contained therein. The commissioned revisors rendered the following report:

Questioned

Not questioned

Total

Domingo J. Samonte.....

Simeon Mandac.....

Justo Dacuycuy

7

101

9

35

23

37

42

124

46

The protestant then exhibited to the court the 101 marked ballots as Exhibits A-1 to A-101, alleging that each and every one of the 101 ballots thus marked had been voted in his favor for the office of provincial governor; but after the election the names of imaginary and deceased persons were inserted in these ballots; that the letters of these added names are written differently from those of the other names voted for, for which reason the revision officers, appointed by the court, rejected them in their report (pp. 236 to 241 of the second part of the record). Said ballots were found by them in the box of valid ballots.

In support of this claim the protestant introduced oral evidence, over the objection of the protestee, trying to prove that the genuine ballots were altered after the ballot boxes had been turned over to the treasurer of Laoag. The protestee, in turn, presented evidence of the conservation of the ballot boxes that contained the ballots used in the election until they were delivered to the clerk of the court. All of the witnesses explained to the trial court the procedure followed by the election inspectors in reading the ballots turned in by the voters and the manner of qualifying them, how they deposited them in the ballot boxes and locked them, how they delivered them to the municipal treasurer and sent the keys of the ballot boxes to the officers charged with the custody thereof.

The trial court, in view of the evidence presented by both parties, reached the following conclusions:

"While it seems incredible, or impossible, in view of the said precautions, to remove the ballots from the locked ballot boxes, yet, when the facts show that the ballots have been altered, there is no other explanation than the clandestine opening thereof, and it is reasonable to suppose that they tampered with in order to alter the contents, that is, the ballots. In that case, these ballots have lost their legal value and it is but right and

proper to decide, in order to obtain the probable result of the elections in precinct No. 2 of Laoag, that the election returns, the authenticity of which has not been disputed, must prevail and to uphold the total number of votes stated therein. (*Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428.)

"It is believed that the discovery of the facts set forth and established by the evidence of the contestant in regard to precincts Nos. 2, 8, and 9 of Laoag, occurred after the revision of the ballots by the revising officers appointed by the court in accordance with section 479 of the Election Law as amended by Act No. 3210, for while the aforesaid facts are not alleged in the motion of protest they were well known to all who may have seen the disputed ballots.

"Therefore, the court hold that the ballots found by the revision officers do not merit the confidence of the court, in which case the last count made cannot prevail over that made by the election board set forth in the election returns, in accordance with which the successful candidates were proclaimed elected to the various Insular, provincial, and municipal offices."

Against these findings of the trial court, assignments of error 13, 14, and 15 are directed:

The appellant contends that the lower court erred in admitting evidence as to the tampering with the ballot boxes of precinct No. 2 of Laoag without any previous allegation by the protestant in his protest of said tampering.

This contention of the appellant is untenable. It having been discovered by the protestant, according to him, that after the opening of the ballot boxes by the revisors, some of the ballots, wherein he was voted for the office of provincial governor, had been altered, he had a perfect right to prove the condition of the ballot boxes in order to explain a fact which was unknown to him before the filing of the protest.

The appellant also alleges that the trial court erred in holding that the ballot boxes of precinct No. 2 of Laoag had been tampered with; that the ballots found by the revisors in the ballot boxes of said precinct do not merit the confidence of the court and that the count made by the revisors cannot prevail over the count made by the election officers. We are of the opinion that these two assignments of error are well taken.

The testimony of the witnesses for both parties on the procedure followed by the election board must be received with much caution; but it cannot be said that the testimony of some of the witnesses, due to their personal interest in the success of each of the candidates, has more weight than that of the others. But the records contain certain data which should not be overlooked. According to the trial court, the protestant has established the fact that the ballot boxes of precinct No. 2 of Laoag had been kept by the deceased municipal treasurer, the keys of the same having been sent, in envelopes, to the respective officers provided for by the Election Law, at about 3 o'clock in the afternoon of June 3, 1925; that said ballot boxes, with their respective padlocks and keys, were delivered to the municipal treasurer. It also appears from the record that the keys for the commanding officer of the Constabulary were received by him between 5 and 6 o'clock in the afternoon, and those for the provincial treasurer were also received by him on the morning of the 4th, while the keys for the clerk of the court were received by him on the morning of the 5th. Just why the delivery of the keys to the clerk of the court was delayed, is not clearly shown in the record. But an envelope is attached to the record which contained the keys, which was sealed with wax and signed by the election inspectors, and it does not appear, nor was there any attempt to prove, that it had been opened before it was received by the clerk of the court.

On the other hand, the revisors appointed by the court state the following in their report: "Before proceeding to open the ballot box, the commissioners examined it and found it to be in good condition. The key-holes of the padlocks which fastened said ballot box were not sealed with wax, nor was there any wax on the edges of the same, with the exception of that of the seal of the office of the clerk of this court. The upper opening was duly covered by a paper, sealed with wax, on which appeared the signatures of Casto Mata, Cayetano Lucas, and

Anastacio Ventura, election inspectors of this election precinct."

We are of the opinion that it cannot necessarily be inferred from the foregoing that the ballot boxes of precinct No. 2 of the municipality of Laoag were fraudulently opened after they had been delivered to the municipal treasurer. So long as it is not shown by convincing evidence that the ballots Exhibits A-I to A-101 were really altered by the addition of the names of imaginary and deceased persons, it does not in any way follow that said boxes were fraudulently opened after having been delivered to the municipal treasurer. And so long as it is not established that the letters in which the imaginary names are written are different from those of the other names voted for in the ballots, neither can it be said that the ballots were surreptitiously altered.

We have studied this case with the utmost care, a committee of three members of this court having been appointed to personally examine the ballots in question, aside from the opportunity which the other members have had to personally see said ballots, and we have reached the conclusion that the said ballots were used by the voters on the day of the election, among others, for the following reasons:

1. Of the names which, according to the appellee, were added to the ballots, 55 appear among the names voted for and 46 at the end of the ballot.
2. Judging by the strokes of the letters on the ballots, the latter were written by several different hands, so that it is difficult to say, with reasonable certainty, that there are two or three groups of two or three ballots prepared by one single hand.
3. That probably about 38 ballots were written by different persons more or less accustomed to write, whereas the form of the remaining 63 indicates that they are of persons not familiar with the use of either pen or pencil, who prepared their ballots with great care.
4. Some names voted for for a particular office are candidates registered for a different one.
5. On the spaces of the ballots where the new names are supposed to be added to those previously written, no erasures are noticeable upon which the supposed names must have been written.

All of which shows, in our opinion, that these 101 ballots in question were not surreptitiously removed from the box of valid ballots after it had been closed with padlocks by the election inspectors, in order to write therein the supposed additions, as contended by the protestant.

The appellee argues that the increase in votes for the councilors in the recount by the revisors, as compared with the election returns, is further proof that the ballots in question were added after the election. The trial court has noted this difference, which may be explained by an error in computation. Supposing that the comparative schedule on page 58 of the third part of the record is correct, we notice the same difference, so that of the 20 persons voted for for councilor in precinct No. 2, 16 have received an increase of one or two votes in the revision, and the remaining four, from three to eight, with an average of five votes. This change may be accounted for by the fact that the revisors have been more liberal in their application of the *idem sonans* rule than the election inspectors, aside from the fact that the latter may have committed an error in listing the votes for councilor, as the trial court believes. At any rate, this difference is not sufficient to overthrow the reasons we have indicated for holding that the ballot boxes have not been tampered with.

It is a well settled rule in election contests that when the protest alleges that the election officers have improperly judged the ballots, the latter constitute the best evidence and the court must examine them to determine the claim of the protestant, unless the same shall have been substituted after the election or altered in any manner, for then they lose their probatory value and the election returns must prevail.

The conclusion we have arrived at compels us to proceed to examine the 101 ballots in question.

Of the 101 ballots of the contestant rejected by the revisors, the trial court held (p. 130 of the decision) that 8 must be admitted, which bear the numbers 8, 23, 25, 35, 38, 59, 90, and 96 of the commissioners' report (second part of the record) pages 238 to 240. We agree with this ruling of the trial court; but besides the 8 ballots, 10 other ballots must be admitted in favor of the protestant, that is to say, the following:

A-28. Because there is no doubt that the name of Simin Mandae which appears in this ballot, corresponds to Simeon Manda Cj just as Dinio Cid corresponds to Dionisio Cid, official candidates for governor and municipal vice-president, respectively.

A-33. Because the names appearing therein, Simoin Mandae, Giregorio Girriro, and Pulurcio Valdi, sound, respectively, the same as Simeon Mandae, Gregorio Guerrero, and Florencio Valdez, who were registered candidates for governor, vice-president, and councilor.

A-36. Because the name of councilor Ireneo Locas sounds the same as Arsenio Lucas registered candidate for councilor.

A-37. Because the name appearing as Martos Guerrero is intended for Jose Martos Guerrero.

A-38. Because it is evident that the intention of the voter in writing the name "Pulurincio Her" was to vote for the official candidate Florencio Hernando.

A-39. Because it is evident that the intention of the voter in writing the name Miguel Sambrano for councilor, was to vote for Fidel Sambrano who is the registered candidate.

A-52. Because the name voted for for municipal president Puren Hernando is that of the registered candidate Florencio Hernando.

A-84. Because the name of councilor Inigo Binga is intended for Inigo Bitanga, registered candidate for councilor.

A-95. Because the names of representative Silio Hernaeb, Simenion Dae, and Ignacio Polris sound, respectively, the same as those of the registered candidates, Severo Hernando for representative, Simeon Mandac for governor, and Ignacio Flores for third member.

A-97. Because the name Senion Mandac means Simeon Mandac and that of Fulnio Castor means Apolonio Castro, candidate for municipal president.

So that after deducting 18 ballots from the 101 in question, there remain 83 which must be rejected in accordance with the provisions of paragraph 2, section 19, of Act No. 3210, because they contain votes in favor of persons who had not registered their candidacy officially, and one is marked.

We are not unmindful of the fact that many ballots which are perfectly legal in other respects become invalid by the mandate of the law. Formerly Act No. 3030, in its section 35, paragraph 2, provided that votes given to persons who had not been candidates for the office of councilor, were considered as scattered without affecting the validity of the whole ballot; but as above stated, Act No. 3210 has introduced a radical measure, providing that the whole ballot is void when it appears that a person has been voted for therein for an office for which he has not presented his certificate of candidacy. While such a measure might injure the rights of other candidates voted for in a particular ballot, who may be foreign to the combination, if any, consisting in the voter writing the name of a person not registered as a candidate, yet the legislature deemed it more convenient to annul the whole ballot and it is our duty to apply the law as we find it.

The appellant in his assignment of error No. 16 alleges that of the 129 votes that the protestant obtained in precinct No. 2 of Laoag only 15 must be given him. We have carefully examined the ballots rejected by the revisors appointed by the court and we are of the opinion that to the 8 ballots admitted by the court, there must be added 10 votes more, as above stated, and that these 18 votes must be deducted from the 101 votes in question, leaving 83 which must be deducted from the 129 votes obtained by the protestant according to the election returns, and thus it must be held that the protestant has obtained 47 votes in precinct No. 2 of Laoag, the protestee-appellant 40 and the intervener 47, the computation of the trial court being modified to this extent.

Laoag, precinct No. 8.—A similar case occurred in precinct No. 8 of the municipality of Laoag. The commissioned revisors rendered the following report:

Questioned

Not questioned

Total

Domingo J. Samonte.....

Simeon Mandac.....

Justo Dacuycuy

2

67

55

94

8

57

161

8

The same revisors stated in their report the following: "On September 22, 1925, at 2.30 p. m., the commissioners began to examine the boxes of valid ballots of precinct No. 8 of the municipality of Laoag, Ilocos Norte, and before opening the same they found them to be in good condition, closed with three bronze padlocks with their key-holes not sealed with wax. The opening in the box was covered with paper, the edges being sealed with sealing wax, and appeared to be signed by the inspectors Gabino Domingo, Gregorio Paulino, and Sabas Pascual and sealed with paper signed and sealed by the clerk of the court and the upper opening bore a piece of paper sealed with wax but without the signatures of the inspectors. The clerk of the court opened one of the padlocks with a key and Teodilo Mata and Bruno Patricio did the same with the keys coming from the captain of the Constabulary and the provincial treasurer, respectively."

The protestant then presented oral evidence and the same ballots rejected by the revisors and marked Exhibits AA-1 to AA-67 and BB-1 to BB-14 extracted from the box of valid ballots of this precinct in order to show that the ballot boxes of precinct No. 8 had been clandestinely and illegally opened.

The trial court, in view of the evidence, found as follows:

"The point to be decided is whether the disputed ballots were used during the elections or clandestinely deposited After the proclamation of the candidates-elect and the four copies of the election returns prepared

and signed. The first supposition is improbable, because the perforations marked with small lines in black ink do not justify it and because the stubs and the detachable coupon numbers separated from said ballots or Exhibits AA--1, AA-2, AA-7 to AA-67 showed the contrary, for small lines in black ink, are found in the perforations, as above stated, and the ballots which were separated therefrom show this detail, that is, the small lines in black ink. It is more probable, therefore, that the said exhibits or disputed ballots were deposited in the box of valid ballots in precinct No. 8 at the end of the elections, in which case, the ballots contained in this box of valid ballots are discredited and the recount of the same cannot prevail over the election returns, the authenticity of which has not been questioned; for which reason the court abides, exclusively, by the election returns and ignores the contents of the ballots.

"In this case, the presumption as to the preservation of this ballot box is untenable, because the irregularities discovered by the court in the disputed ballots, rebut said presumption."

The appellant attacks this resolution and to that end assigns errors 22, 23, and 24, to the effect that the lower court erred in holding that the illegal ballots found in the ballot boxes of precinct No. 8 were deposited after the canvass; that the ballots contained in said boxes are discredited and that the recount thereof cannot prevail over the election returns, and in not deducting from the 161 ballots found by the commissioners in the box of valid ballots of precinct No. 8, with votes in favor of the contestant, the 63 apocryphal ballots, Exhibits AA-1, AA-2, AA-7 to AA-67.

We are of the opinion that these assignments of error are well taken. We have studied the record of this contest, especially the testimony of the witnesses of the protestant and the ballots exhibited, and we cannot accept the conclusion of the trial court based on a mere probability.

An examination of ballots AA-1, AA-2, AA-7, AA-10 to AA-67 convinces us that these ballots are false, as may be seen from a mere comparison of the same with ballots AA-3 to AA-6, and BB-1 to BB-14, which are indisputably official, differing from the latter in many respects.

In said 63 ballots the coat of arms of the Government of the United States appears clearer and the eagle has a darker breast; the type used in the schedule at the top on the reverse side of the ballot is clearer and of a different style and the inside lines of the schedule are broader and are not uniformly joined together, indicating that the lines of the square are not those of a molten mould as are the lines in the official ballots. The body of the type used on the face of the ballot is different from that used in the official ballot, and the paper is of an inferior quality, whiter, less glazed and not so strong. The perforations at the upper and lower ends of these ballots are closer than those of the official ballots and there is no small black line in the perforation as there is in the official ballots.

How were these ballots deposited in the boxes of precinct No. 8 ? Were they used by the voters of said precinct and delivered by them to the election inspectors?

Difficult as it is to give a categorical answer to these questions, we have, however, the report of the revising commissioners (p. 223, second part of the record) which shows that the total number of ballots used in precinct No. 8, according to the stubs, is 328, and that of the ballots found in the two boxes, white and red, is 323, whereas the detachable stubs, series A, B, C, and E compared with the number of ballots used show there are 41 detachable coupon numbers missing. This, in our opinion, explains the presence of the 63 unofficial ballots in the white box, the detachable parts of which, if any, were not deposited in the red box.

The chairman of the election board, Gabino Domingo, witness for the protestant, testified to having requested his companions, because he was ill, to take the boxes to the municipal building. He placed the keys which he had in his possession in an envelope which he sealed with glue and affixed his signature to the reverse side, at the

opening, and delivered it to his two companions-inspectors; that all of the rejected ballots were placed in one envelope and that the boxes were sealed with their signatures and closed with their respective padlocks.

On the other hand, the revisors appointed by the trial court have reported that, before opening the box of valid votes in precinct No. 8 of Laoag, they found it apparently in good condition, fastened with three bronze locks the key-holes of which were not sealed with wax.

From this evidence we cannot hold that the boxes were opened in the office of the municipal treasurer in order to deposit therein the ballots in question. By examining these ballots it will be seen from the strokes of the letters that they were written by different hands, with the exception probably of a few that appear to have been written by the same hand, whereas about nine of these ballots have been written by persons not accustomed to write, which destroys the belief that they have been falsified for the purpose of depositing them in the boxes.

In fact, the circumstance that the detachable coupon numbers separated from the ballots bear the sign of small black lines in the perforations as in the official ballots, seems to deny the possibility that the ballots in question, which do not bear the same sign, were deposited in the white box on the day of the election; but that difficulty disappears if the missing 41 detachable coupons, as compared with the number of ballots used, are taken into account. Whatever procedure may have been followed in depositing said ballots in the boxes, the fact, which appears to be indisputable, is that these ballots, which both parties admit to be unofficial ballots, were found by the revisors in the box of valid ballots of precinct No. 8. And, it not having been proven that the boxes were illegally opened after they had been delivered to the municipal treasurer, we are of the opinion that the said ballots must be deducted from the canvass of the votes, for the reason that section 443 of the Election Law prohibits the use or the inclusion in the canvass of other than official ballots, except in the case where official ballots have not been received in time, or they may have been destroyed, or the number of voters in a precinct exceeds 300 and under such circumstances as to be impossible to secure others from the Director of the Bureau of Printing.

The revisors appointed by the trial court rejected 67 of the 164 ballots of the protestant credited to him by the election returns, upon the grounds that they contained, according to the revisors, the names of persons who had not registered their candidacies. We are disposed to accept the grounds set forth by the revisors as to the four Exhibits AA-3, AA-4, AA-5, and AA-6, which are official ballots; but in regard to Exhibits AA-1, AA-2, AA-7 to AA-67 (63), wherein the protestant appears to be voted for, we reject them as falsified ballots.

Therefore, after deducting said 67 ballots from the 164 votes which in the canvass were adjudicated by the inspectors to the contestant, it results that he has 97 votes in this precinct, the contestee 55 and the intervener 8, and to this extent the computation of the trial court must be modified.

Laoag, precinct No. 9.—A similar irregularity took place in precinct No. 9. The revisors appointed by the court make the following remarks with regard to the ballot boxes of precinct No. 9.

"The lateral openings of each of the white and red boxes of precinct No. 9 of Laoag, Ilocos Norte, are not closed with paper sealed with sealing wax, but only the upper openings pasted with paper sealed with sealing wax and signed by the election inspectors Antonino Montano, Francisco Raymundo, and Antonio Saturnino. On each of the white and red ballot boxes paper was pasted with sealing wax, signed and sealed by the clerk of the court."

Their report to the trial court gives the following results : Questioned Not questioned

Questioned

Not questioned

Total

Domingo J. Samonte.....

Simeon Mandac.....

Justo Dacuycuy

2

67

55

94

8

57

161

8

The revisors rejected the 58 ballots wherein the protestant appears to be voted for, as containing the names of persons not registered as candidates for the office for which they were voted.

The total votes cast for the candidates for the office of governor is 225, according to the returns of the inspectors, distributed as follows:

Votes

Simeon Mandac

155

Domingo J. Samonte

39

Justo Dacuycuy

20

Eleuterio Ruiz

9

Ignacio Arcega.

2

In this precinct the revisors found 219 ballots in the white box and 55 in that of the invalid ballots, or a total of 274 ballots.

In view of the result of the revision, the protestant, as in precinct No. 8, presented oral and documentary evidence in order to show that the ballot boxes of precinct No. 9 were not properly kept. The protestee and the intervener also produced their evidence.

Antonino Montano, witness for the protestant, testified as to the procedure followed by the board in judging the ballots, saying that the ballots wherein it appeared that persons were voted for who had not registered their candidacy, were considered by them invalid, adding that they delivered the boxes and the keys of precinct No. 9 at

11 o'clock in the morning of June 3d to the municipal treasurer of Laoag; that said keys were kept in an envelope which was sealed by the inspectors themselves with sealing wax; that the ballot boxes were sealed and the election inspectors in the precinct affixed their signatures to the seals.

The trial court, taking the same view as that adopted with regard to precinct No. 8, held that Exhibits Y-1 to Y-58, with the exception of Y-2 and Y-4, are illegal ballots and the election returns found by the revisors in the white box must prevail and it exclusively abides thereby.

Against this ruling the appellant assigns errors 22, 23, and 25 in that the court held that the apocryphal ballots were deposited in the ballot boxes of precinct No. 9 after the canvass; that the ballots found in the ballot boxes of precinct No. 9 are discredited ballots; that the recount thereof cannot prevail over the election returns, and that it did not deduct the 56 apocryphal ballots, Exhibits Y-1, Y-3, Y-5 to Y-58, from the votes of the protestant.

As the circumstances which occurred in precinct No. 9 are analogous to those of precinct No. 8, it is not necessary to repeat here the reasons we have stated there for not holding that the ballot boxes of this precinct were illegally opened in order to deposit therein the ballots in question, Exhibits Y-1, Y-3, Y-5 to Y-58, which are undoubtedly falsified ballots the same as the ballots Exhibits AA-1, AA-2, AA-7 to AA-67 of precinct No. 8, and for the reason above set forth they must be rejected.

So after deducting from the 155 votes, which the election returns adjudicated to the protestant, the 56 falsified ballots it results that he has 99 votes in this precinct, the protestee 39 and the intervener 20 and the computation of the trial court is thus modified.

In regard to the appeal of the intervener, we believe that it is without legal grounds inasmuch as he gives no sufficient reason in his brief for annulling the election for the office of provincial governor in the municipalities of Batac, Laoag, Pinili, Bangui, Burgos, Pasuquin, Piddig, Banna, and Solzona, nor is there any evidence in the record to warrant the annulment of the election.

The intervener assigns as error the finding of the trial court whereby he is ordered to pay the costs pro rata, with the protestee. Ordinarily, the defeated litigant is ordered to pay the costs, but section 487 of the Code of Civil Procedure authorizes the courts, for special reasons, to order any of the parties to pay the costs of the suit, or to divide the costs, between them as may be just. Taking into account the result of this contest, we are of the opinion that the parties, the protestant, the protestee, and the intervener, must each pay the costs caused by his instance.

A resume of our revision, resulting from a deduction of the votes from the protestant-appellee, and the addition of those to the protestee-appellant, is indicated in the following table:

Municipality

Precinct

Mandac

Samonte

Batac

4

— 1

Do

4

+6

Do

5

+4

Do

6

— 1

Dingras

3

+ 5

Do

4

+ 2

Laoag

2

— 83

Do

3

— 4

Do

5

+ 6

Do

8

- 67

Do

9

- 56

Paoay

2

+ 1

—212

+24

According to the decision appealed from the parties to this contest have obtained, respectively, the following votes:

Mandac Samonte Dacuycuy

Deducting from the protestant
and adding to the protestee

the result is.

3,885

212

3,673

3,766

24

3,790 3,256

3,256

There is, then, in favor of the appellant. Domingo J. Samonte, a plurality of 117 votes.

By virtue of the foregoing, the judgment appealed from is reversed in so far as it conflicts herewith and affirmed in so far as it does not, and it is adjudged and decreed that the protestee-appellant Domingo J. Samonte was elected to the office of provincial governor of the Province of Ilocos Norte in the general elections held on June 3, 1925, having obtained 3,790 votes as against 3,673 in favor of the protestant-appellee Simeon Mandac, and 3,256 obtained by the intervener Justo Dacuycuy. Therefore the Court of First Instance of Ilocos Norte is hereby ordered to issue a mandamus to the provincial board of canvassers directing them to correct their returns in conformity with the result arrived at by this court, and to issue in favor of Domingo J. Samonte the certificate of election as prescribed by law. And without any special pronouncement as to the costs, it is so ordered.

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

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