

EULOGIO BENITEZ, PETITIONER, VS. ISIDRO PAREDES, JUDGE OF FIRST INSTANCE OF THE TWELFTH JUDICIAL DISTRICT, AND TOMAS DIZON, RESPONDENTS.

G.R. No. 29865. August 18, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action of prohibition originally instituted in this court, is for the purpose of preventing the respondent Judge of the Court of First Instance of Laguna from proceeding with cases Nos. 4976, 4977 and 4978 of said court, instituted by the other respondent, Tomas Dizon; the first against the election inspectors of precinct No. 1 of Biñan, Laguna; the second against the election inspectors of precinct No. 1 of Loñgos, Laguna, and the third against the members of the provincial board of canvassers of said Province of Laguna.

As the ground for this action, it is alleged that the respondent judge lacks jurisdiction to try said cases, for the reason that the duties of the election inspectors, the defendants in cases Nos. 4976 and 4977, ceased with the remission of their election returns to the proper authorities, because the provincial board of canvassers is vested with the ministerial duty of making the proclamation in accordance with the returns received by them.

The respondents allege in their answer that the respondent judge has jurisdiction to try the cases presented to him through the complaints mentioned by the petitioner, invoking sections 465 and 469 of the Election Law in support thereof.

A careful examination of the record reveals:

(a) That after the general elections held on June 5, 1928, that is, on June 9th of that year, the respondent, Tomas Dizon, filed in the Court of First Instance of Laguna, presided over by the respondent judge, the complaint of mandamus No. 4976 against the election inspectors of precinct No. 1 of Biñan, Laguna, for the correction of all the copies of the election returns of said precinct so as to show that 129 instead of 148 votes were counted and adjudicated in said precinct to the protestant Eulogio Benitez for the office of provincial governor;

(b) That on the 11th of the said month of June, the respondent Tomas Dizon brought another action of mandamus in the court presided over by the respondent judge, against the election inspectors of precinct No. 1 of Loñgos (case No. 4977), for the correction of all the copies of the election returns of that precinct so as to show that 157 instead of 207 votes were counted and adjudicated to the protestant Eulogio Benitez for the office of provincial governor;

(c) That on the 11th of the said month of June, the respondent Tomas Dizon likewise brought another action of prohibition against the members of the provincial board of canvassers (case No. 4978) in order that it be restrained from counting the votes cast in said precincts No. 1 of Biñan and Loñgos abiding by the correction of the election returns as decided by the courts in said mandamus proceedings (cases Nos. 4976 and 4977);

(d) That, in accordance with the petition in these three actions, the court issued the proper orders, copies of which

are attached to the record in the present case;

(e) That on the 11th of the said month of June, the respondent judge acted upon the petition for mandamus against the inspectors of precinct No. 1 of Biñan, who were summoned and filed their answer in the following terms: (1) That the true number of votes obtained by Eulogio Benitez in the returns made on the night of the election in precinct No. 1 of Biñan is 129; (2) that an unintentional error has been committed by showing 148 votes in the returns, and it must have been that the inspector who dictated the figures erroneously, gave Mr. Benitez the 148 votes which Mr. Gomez obtained in the precinct for the office of representative; (3) that the respondents noting the error, went to the capital of the province as soon as they discovered it in order to correct the same, but were not permitted to do so; (4) that the respondents desire to have judicial authority to correct the error which they have made; (5) that with these explanations, the respondents admit the facts alleged in the complaint;

(f) That in view of this answer the respondent Judge on said June 11th rendered a judgment in civil case No. 4976 ordering the respondents to amend the election returns in precinct No. 1 of Biñan, Laguna, in regard to the office of provincial governor, adjudicating to Eulogio Benitez the true number of votes obtained by him in the canvass, or, 129 instead of 148 votes;

(g) That the provincial board of canvassers and the Executive Bureau were notified of this judgment on the said 11th of June, and by virtue of said judgment the respondent inspectors amended the election returns of said precinct in regard to the office of provincial governor, so that the election returns relative to the said office should read as follows:

Votes

Eulogio Benitez

129

Tomas Dizon

85

Proceso Echarri

12

Santos Doria

7

These amended election returns were sent to the provincial board of canvassers and the president of said board, the provincial treasurer, acknowledged receipt thereof, stating that the same would be submitted to the provincial board of canvassers for the proper action;

(h) That it appears in the first election returns sent to the provincial board of canvassers by the inspectors of

precinct No. 1 of Biñan that Mr. Benitez had received 148 votes;

(i) That by virtue of the writ of preliminary injunction issued by this court, the proceedings in said civil cases Nos. 4977 and 4978 were suspended.

The pleadings, as may be seen, raise the question of the jurisdiction of the respondent judge to try the said cases, this question being the turning point on which hinges the extensive and brilliant memoranda presented by the distinguished attorneys for both parties in the trial of the case.

It is to be noted, first of all, that the mandamus proceedings (case No. 4976) against the election inspectors of precinct No. 1 of Biñan, had already been decided on June 11th by the respondent judge, the judgment which ordered the amendment of the returns of that precinct, executed (June 11th) by the inspectors, and the amended returns, received by the provincial board of canvassers, when the Vacation Justice of this court issued the writ of preliminary injunction against the respondent judge. Therefore, this order of the court cannot have any effect with respect to the said complaint No. 4976, for it is a well-known rule of law that an act already performed cannot be prevented. But, did the respondent judge have jurisdiction to entertain the complaint in which it was prayed that the election inspectors of the precinct in question be ordered to correct the copies of the election returns of said precinct? Section 465 of the Election Law reads as follows:

"SEC. 465. Inspectors' statement and certificate of result.—Within three hours after the completion of the count the inspectors shall make, complete and sign a written statement thereof in quadruplicate, showing the date of the election, the name of the municipality, and the number of the precinct in which it was held, the whole number of ballot stubs received from the municipal treasurer, the whole number of ballots deposited in the ballot box, the whole number of votes adjudicated to each candidate for each office, the whole number of ballots rejected as marked, the whole number objected to because marked but not rejected, the whole number of ballots objected to and rejected for other reasons, the whole number of the ballots objected to for the same or different reasons, but accepted, the whole number of spoiled ballots, the whole number of ballots remaining on hand, and the whole number of ballots not used, writing out at length in words and not in figures, and at the end thereof a certificate signed by the inspectors to the effect that the statement is in all respects correct, and any protest filed by the watchers. Every such statement shall be made upon a single sheet of paper, or if this cannot be done, each sheet thereof shall be signed on the margin by all the inspectors. Forthwith thereafter, but in any event within one hour after the proclamation, one copy thereof shall be filed with the municipal treasurer, one shall be forwarded in the manner provided in the next following section to the provincial treasurer, and one, also sealed, shall be forwarded to the Chief of the Executive Bureau. The fourth shall be placed by the board in the valid-ballot box upon sealing the same.

"Upon the completion of such count and of the statements of the result thereof, the chairman of the board of inspectors shall make public oral proclamation of the whole number of votes cast at such election at such polling place for all candidates, by name for each office.

"After publication of the result and before retiring, it shall be the duty of the inspectors of the polling place to furnish a certificate of the number of votes cast for each candidate for Insular and provincial office and municipal president and vice-president to all and each of the watchers present at the polling place, who may request the same. The statements and certificates of votes referred to in this section shall be delivered before, and not after, four o'clock in the afternoon of the day next following the election. After the said proclamation, no changes or amendments shall be made by the board of inspectors in such certificates of votes, unless so ordered by a competent court."

This section provides as the duties of the election inspectors: (a) To make the election returns and certify to the correctness of the contents thereof; (b) to proclaim the number of votes obtained by each candidate; (c) to forward a copy of the election returns to the municipal treasurer, another to the provincial treasurer, another to the

Executive Bureau and another to be deposited in the valid-ballot box at the time of presenting it; and (d) to issue a certificate of the number of votes obtained by each candidate of Insular and provincial offices and municipal president and vice-president to all and each of the watchers present at the polling place who may request the same. And, lastly, the said section contains a prohibition, and that is, that after the proclamation of the result of the canvass the election inspectors shall not make any change or amendment in the certificates of votes, unless so ordered by a competent court. That the certificate of votes and the election returns are two different things is recognized in the same law in that said section 465 provides that the returns and the certificate of votes shall be delivered before, and not after, 4 o'clock in the afternoon of the next day following the election. In other words, the returns are the documents to be sent to the authorities indicated in the law, and the certificate of votes is the document that is delivered to the watchers when they request it. But, in a broad sense, the returns are also certificates of votes in regard to the result of the election.

This being granted, it seems that the prohibition to make amendments or changes without judicial authority, refers only to the certificates of votes, according to the terms of the last clause of section 465. But such interpretation is inadmissible, because it tends to produce contradictory results in a law which it is supposed has been promulgated as a harmonious whole, as will be seen by comparing the legal provision contained in the clause in question with other provisions of the same law relative to the canvass by the provincial board (sec. 469) and the canvass by the municipal board (sec. 477). In the first of said sections, it is provided:

"SEC. 469. * * * The board shall also examine the statements on file and if it clearly appears that material matters of form are omitted, such statements shall be returned for correction to the board of inspectors by special messenger or in such manner as may be most expeditious. Such statements may not, however, be returned for a recount. * * *"

And in the second it is prescribed:

"SEC. 477. * * * The municipal board of canvassers shall not have the power to recount the votes or to inspect any of them, but shall proceed upon the statements rendered, as corrected, if corrections are necessary * * *."

It is thus seen that while the last two provisions permit the correction or amendment of the election returns by the election inspectors, section 465 prohibits it if we abide solely by the letter of its final clause. There is no reason to believe that it was the intention of the legislature to produce such a result. In our opinion, and we so hold, it was the intention of the legislature to permit the inspectors to make the necessary correction or amendment in the election returns and in the certificates of votes after the proper judicial authority. (Black on Interpretation of Laws, pp. 325-331; Sutherland Statutory Construction, vol. II, 2d ed., p. 706; People vs. Concepcion, 44 Phil., 126; Lichauco & Co. vs. Apostol and Corpus, 44 Phil., 138; Borromeo vs. Mariano, 41 Phil., 322.)

Now then, has the respondent judge the power to authorize the election inspectors of precinct No. 1 of Biñan to correct the election returns sent to the provincial board? The actual facts above-mentioned in connection with case No. 4976 being granted, this question must be answered in the affirmative in virtue of the provision contained in the last clause of said section 465.

The inspectors, themselves, of precinct No. 1 of Biñan, in their answer to the complaint, asked the court that inasmuch as they were not permitted to correct the returns after having sent them to the provincial board of canvassers, that they be authorized to make the correction in said returns, which petition was granted, the respondent judge issuing the necessary authorization therefor, which is in accordance with the provisions of section 465 in question. As has been said, this section prohibits the inspectors from making changes or amendments in the election returns and in the certificates of votes, and only permits them to do so by judicial authority. The proviso contained in this legal provision is permissive and, as such, gives the inspectors permission

which they may or may not exercise as they deem most convenient. (Nicholl vs. Allen, 1 B. & S., 934; Brockbank vs. Whitehaven R. Co., 7 H. & N., 834; Rockwell vs. Clark, 44 Conn., 534; Sutherland Statutory Construction, vol. II, 2d ed., p. 640, par. 335.)

If the inspectors are at liberty to use or not to use this permission to correct the election returns by authority of the court, it cannot be held that it is their ministerial duty to do so and they cannot, therefore, be compelled to do so by mandamus. In the present case, however, the inspectors of precinct No. 1 of Biñan having petitioned the court for authority to correct the election returns and the respondent judge having rendered a judgment in that case and the inspectors having complied therewith, before the issuance of a writ of injunction by this court against the respondents, the mandamus proceedings instituted by the respondent Tomas Dizon in case No. 4976 must be considered as a mere action or motion for the purpose of securing the authority of the court in order that the inspectors might amend the election returns in question; and thus corrected and finally sent to the provincial board of canvassers, it must have all its legal effects with respect to the canvass of votes for the office of provincial governor, in accordance with sections 465 and 469 of the Election Law.

We reach this conclusion without having lost sight of the legal provisions and doctrines laid down by this court on mandamus. We have examined the decisions of this court on the subject, especially the plain and conclusive rulings in the case of the Municipal Council of Las Piñas vs. Judge of First Instance of Rizal (40 Phil., 279); Vigilia vs. Municipal Council of Guimba, G. R. 25246,[1] and we find it as a clearly settled proposition that the board of election inspectors, like the municipal and provincial boards of canvassers, can be compelled, by mandamus, to comply with their ministerial duties in connection with an election. There can be no doubt that municipal boards of canvassers in this jurisdiction, and similarly boards of election inspectors, before Act No. 3387 was passed, which is the last amended Election Law, could be compelled by mandamus to correct their certificates to agree with their proper returns, for the reason that it is their ministerial duty to make and complete the exact returns. But, from the enactment of said Act No. 3387 (December 3, 1927), the correction of election returns and certificates of election by said board of election inspectors and municipal boards of canvassers ceased to be a mandatory legal provision and became permissive, according to the terms of the last clause of section 465, which constitute the amendment to the Election Law:

"After publication of the result and before retiring, it shall be the duty of the inspectors of the polling place to furnish a certificate of the number of votes cast for each candidate for Insular and provincial office and municipal president and vice-president to all and each of the watchers present at the polling place who may request the same. The statements and certificates of votes referred to in this section shall be delivered before, and not after, four o'clock in the afternoon of the day next following the election. After the said proclamation, no changes or amendments shall be made by the board of inspectors in such certificates of votes, unless so ordered by a competent court."

As may be seen, the amendment to the Election Law prohibits, after the proclamation of the result of the election, any amendments or changes in the election returns, and only permits the inspectors to make amendments by authority of a competent court. The consent of the inspectors is necessary to make the correction in order that the court may grant the authority requested. Of course, the court has the power to authorize that the corrections be made in the returns.

From the moment that the inspectors or any of them do not agree with the corrections of the returns, the case become contentious and, as such, requires the presentation of evidence in order that the court may determine on what ground to grant or not grant authority to amend the returns in question. Such procedure must, of necessity, be subject to contingencies which will prevent the prompt termination of elections, which must be avoided in the interest of public good. The necessity for the prompt termination of elections is evident when it is taken into

account that political rivalry generally disturbs the peace that is so necessary for the progress of the people in the different activities of life. The law presumes that the inspectors have drawn up their returns in good faith. In order to prevent falsifications, the same law imposes upon the inspectors who voluntarily make or sign a false report of the result of an election, or a certificate of votes, changing the result of the canvass, a penalty of from one month to five years and a fine of P100 to P2,000, with deprivation of the right of suffrage and disqualification from holding public office for a period of from 7 to 14 years. (Sec. 2639, Adm. Code.) And in justice to the inspectors on whom such a severe penalty is imposed, the law permits them, by judicial authority, to correct their returns when they have committed errors in drawing up the same without malicious intent, before such errors can have effect on the result of an election.

If the amendment to section 465 has any meaning, in our opinion it means that the correction of the returns, which was formerly considered as a ministerial duty of the board of election inspectors and municipal and provincial boards of canvassers, now, after the enactment of Act No. 3387, is only a discretionary act of said boards and cannot, therefore, be the subject of a mandamus proceeding. And, it being our duty to apply the law as we find it, we are therefore forced to deviate somewhat from the legal doctrines so wisely enunciated by this court in the case of the Municipal Council of Las Piñas vs. Judge of First Instance of Rizal, *supra*, in accordance with the Election Law in force in 1919 when said case was decided.

The contention of petitioner's counsel that the court lacks jurisdiction to try the said cases by reason of the fact that the election inspectors ceased to be such with the remission of the returns to the proper authorities, must be overruled for the reason that the inspectors, even after remitting their returns to the authorities provided in the law, must be subject to the jurisdiction of the court, if not by virtue of a mandamus proceeding, by an ordinary complaint filed for the purpose of obtaining, as in the case herein, the correction of the election returns.

Respondent's counsel argues that the petitioner has no capacity to institute an action of prohibition in this court, not having been a party in cases Nos. 4976, 4977 and 4978 referred to. This argument has no ground. Suffice to recall the opinion of Mr. High expressed in his work on Extraordinary Legal Remedies, third edition, section 431, which says:

"As regards the degree of interest on the part of the relator requisite to make him a proper party on whose information the proceedings may be instituted, a distinction is taken between cases where the extraordinary aid of a mandamus is invoked merely for the purpose of enforcing or protecting a private right, unconnected with the public interest, and cases where the purpose of the application is the enforcement of a purely public right, where the people at large are the real party in interest. And while the authorities are somewhat conflicting, yet the decided weight of authority supports the proposition that, when the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject matter, since he is regarded as the real party in interest and his right must clearly appear. Upon the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws." (Citing numerous cases.)

In the case of *Severino vs. Governor-General and Provincial Board of Occidental Negros* (16 Phil., 366), this court had occasion to discuss the petitioner's right to institute a mandamus proceeding, and after examining authorities on the matter, said:

"* * * the relator, in order to obtain an injunction, must show that he is entitled to the relief demanded and that the continuance of the acts complained of or threatened to be done would probably work an injustice to the plaintiff. Also in order to obtain a mandamus he must allege and show that the respondents are excluding him from a right or office to which he is entitled, and that the respondents are unlawfully neglecting the

performance of an act or acts which the law especially enjoins as a duty resulting from their office, trust, or station."

It appearing from the record that the petitioner in this case was one of the candidates for the office of provincial governor, and it appearing that he has a special interest in the matter, the subject of the proceeding for the protection of his personal right, it seems evident to us that said petitioner has the capacity to institute this proceeding.

In regard to the action of prohibition (case No. 4978) instituted by the respondent against the provincial board of canvassers, it is not necessary to enter into a lengthy discussion. In accordance with section 469 in connection with section 465 of the Election Law, it is the duty of said board in making the canvass of the votes cast in the province for members of the legislature or provincial officers, to examine all of such returns as they have been presented, or corrected by the inspectors by judicial authority if a correction was necessary, or by requirement of the said board if there has been an omission of an important requisite of form. The provincial board of canvassers has no discretion to examine some of the returns that have been presented to it and not examine the others, because, by doing so its canvass would not be complete. If, by mandate of the law, it is the duty of the board to examine all of the returns that are before it, the action of prohibition to prevent it from complying with its duty will not lie, even under the allegation that some of the returns were falsified, for if there are errors in the returns committed by the inspectors, the law permits their correction by judicial authority, and the returns thus corrected must be taken into account by the provincial board of canvassers.

In view of the foregoing, we hold:

- (a) That the respondent judge had jurisdiction or power to grant, as he did grant, the board of election inspectors in precinct No. 1 of Biñan the authority sought by the said board to correct an error committed in the canvass of votes cast in that precinct for the office of provincial governor;
- (b) That the returns of precinct No. 1 of Biñan amended by judicial authority, must be taken into account by the provincial board of canvassers and not the former one which was erroneous;
- (c) That the correction of the returns by the board of election inspectors may be made in accordance with the provision of the last clause of section 465 and not by a mandamus proceeding, but in an ordinary proceeding on petition of the board of election inspectors or by the interested party with the consent of said board;
- (d) That the respondent judge lacks jurisdiction to continue entertaining the action of mandamus instituted by the respondent Tomas Dizon against the board of election inspectors of precinct No. 1 of Loños, and the said case No. 4977 must therefore be dismissed, unless the parties in said case consent only to petition the court for authority to correct the returns of that precinct;
- (e) That the respondent judge lacks jurisdiction to continue entertaining the action of prohibition against the provincial board of canvassers instituted by the respondent Tomas Dizon, and therefore case No. 4978 of the Court of First Instance of Laguna must be dismissed; and
- (f) That the preliminary injunction issued by the respondent judge against the provincial board of canvassers is hereby dissolved, and the writ of preliminary injunction issued by this court against the respondent judge in case No. 4978 is set aside, said writ in connection with cases Nos. 4977 and 4978 being absolute, with the proviso stated in the preceding paragraph (e) hereof relative to case No. 4977.

Therefore, the remedy applied for by the petitioner, Eulogio Benitez, is hereby denied in part and granted in part, without any special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

[1] Promulgated October 26, 1926, not reported.

DISSENTING

AVANCEÑA, C. J., with whom concurs ROMUALDEZ, J.:

I dissent.

In proceeding No. 4976 presented by the respondent Tomas Dizon in the Court of First Instance of Laguna against the election inspectors of precinct No. 1 of the municipality of Biñan, it is alleged that, according to the result of the election for the office of provincial governor in this precinct, as proclaimed by the chairman of the board of inspectors and as appears in the certificate issued to the watchers, Eulogio Benitez obtained 129 votes, and that, notwithstanding this, said inspectors stated in the election returns sent to the provincial treasury that Eulogio Benitez obtained 148 votes for this office.

In proceeding No. 4977 presented by the respondent Tomas Dizon in the Court of First Instance of Laguna against the election inspectors of precinct No. 1 of the municipality of Loñgos, it is alleged that according to the result of the election in that precinct for the office of provincial governor, as proclaimed by the chairman of the board of inspectors and as appears in the certificate issued to the watchers, Eulogio Benitez obtained 157 votes, and that, notwithstanding this, said inspectors stated in the election returns sent to the provincial treasury that Eulogio Benitez obtained 207 votes.

In both cases it is asked that the board of election inspectors of both precincts of Biñan and Loñgos, be ordered to correct the copies of the returns of said two precincts sent to the provincial treasury, so as to show the number of votes obtained by Eulogio Benitez in said two precincts, in accordance with the result proclaimed and as given in the certificate of votes issued.

In proceeding No. 4978 presented by the said respondent Tomas Dizon in the Court of First Instance of Laguna against the provincial board of canvassers, it is asked that said board be ordered to follow, in respect of precincts No. 1 of Biñan and Loñgos and the office of provincial governor, the election returns of said precincts in conformity with the decision which the court may render in the two former proceedings.

The question now raised in the proceeding before this court, in connection with those instituted by the respondent Tomas Dizon is whether or not the Court of First Instance of Laguna has jurisdiction to try them.

According to section 465 of the Election Law, upon the completion of the count, the inspectors shall make and sign a statement of the same in quadruplicate; once the count and the statement of the result thereof have been made, the chairman of the board of inspectors shall proclaim the total number of the votes cast at such election and at such polling place for each of the candidates for each of the offices; forthwith thereafter, and in any case within one hour after the proclamation, one of the copies of the statement of the count shall be forwarded to the provincial treasury; after the publication and before the inspectors retire, it shall be their duty to furnish all and each of the watchers present in the polling place, who should request it, a certificate of the number of votes cast for each candidate for each office.

And in the last provision of this section it is added that after the proclamation the board of inspectors shall not make any change or amendment in said certificates of votes unless so ordered by a competent court. As stated in

the majority decision, this prohibition refers, not only to the certificates of votes, but also to the statement of the result of the canvass. I believe this opinion is correct, as it would be an absurd to prohibit any change or amendment in the certificate, and yet permit it in the original statement, of which it should be an exact copy. The purpose of the law in requiring that this certificate be issued to the watchers is precisely to give the latter a means of seeing to it that the returns are not tampered with. Considering that the certificates of votes issued to the watchers, after being issued, are presumed to be no longer in possession of the board of inspectors, it follows that the law cannot refer to them, but rather to the statement which, after all, is also a certificate of the result of the canvass.

According to this, the duty imposed by this section upon the election inspectors to send a copy of the statement of the result of the election to the provincial treasury, is precisely to send the copy of the statement as proclaimed, without any change or amendment not ordained by a competent court. Inasmuch as the statement must be sent to the provincial treasury after the proclamation, and since no change or amendment can be made in the statement thus proclaimed after the proclamation, it seems logical to presume that it was the intention of the law to impose upon the board of inspectors the duty of forwarding the statement as proclaimed, to the provincial board without any change or amendment. Therefore, if, in violation of this express provision of the law, the board of inspectors forwards to the provincial board, not the true statement as proclaimed, but changed and amended after its proclamation without any judicial order to that effect, said board does not comply with its duty. Upon such a premise, as are the cases in question, there seems no doubt that the election inspectors of both precincts, Biñan and Loños, may be compelled by means of mandamus to comply with this duty, which is clearly ministerial. If the election inspectors refuse to forward the statement of the count to the provincial board, I do not think there would be anyone who would question the fact that they can be compelled, by means of mandamus, to comply with this duty. I see no difference between not sending this statement and sending one different from that which the law requires them to send, or rather, one which the law prohibits them to send. As was said in the case of *Municipal Council of Las Piñas vs. Judge of First Instance of Rizal* (40 Phil., 279), mandamus is the proper remedy in cases in which the election officers fail to comply with their ministerial duties in connection with the election.

There is nothing in the new law on elections to justify a change in the doctrine so clearly and explicitly established in the *Las Piñas* case, nor do I find any ground to support the theory that the amending of the statement of the count is now merely discretionary with the board of inspectors, and that the latter cannot be compelled to make this amendment. The provision to which the majority opinion refers in support of this theory seems to be that which says: " * * * After the said proclamation, no changes or amendments shall be made by the board of inspectors in such certificates of votes, unless so ordered by a competent court." It is to be noted that the law does not say unless so authorized, but unless so ordered, which includes the case in which the inspectors acquiesce in or request, as well as that wherein they refuse to make the amendment.

In fact, and this is in my opinion, the real point in controversy, the proceedings instituted by the herein respondent Tomas Dizon in the Court of First Instance of Laguna were intended to compel the inspectors not to amend, but rather to amend. If it is prayed in these proceedings that the inspectors be compelled to amend the statement sent to the provincial treasury, it is because this statement, contrary to the express provision of the law, was altered without a judicial order, and in order that this statement thus sent be the same one that was proclaimed without any change or amendment.

Furthermore, it is obvious that in substantiating the two proceedings instituted by respondent Tomas Dizon, the Court of First Instance need not examine the ballots nor make a new canvass. These proceedings only raise the question of fact as to which statement was proclaimed, and which statement was sent to the provincial treasury.

In my opinion the Court of First Instance of Laguna has jurisdiction to take cognizance of the proceedings instituted before it by the respondent Tomas Dizon against the inspectors of Biñan and Loñgos. If the judgments rendered by said court in such proceedings are to have any effect at all, I must also believe that it has jurisdiction likewise to try the proceeding instituted against the provincial board of canvassers.

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