

CANDIDO POBRE, PROTESTANT AND APPELLANT, VS. PEDRO QUEVEDO ET AL., PROTESTEES AND APPELLEES.

G.R. No. 30046. November 09, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This is an appeal taken by the protestant Candido Pobre from an order of the Court of First Instance of Ilocos Norte dismissing the election protest filed by him against Pedro Quevedo and Fructuoso Carpio, on the ground that the court did not acquire jurisdiction over said protest because the same failed to state that copies thereof had been delivered to the sheriff in order to give notice to and serve summons on the respondents as registered candidates voted for.

In support of his appeal, the appellant assigns three alleged errors as committed by the trial court, which simmers down to the following single proposition: That the lower court erred in holding that it did not acquire jurisdiction over the protest because the motion presented for that purpose does not state that copies thereof were delivered to the sheriff in order to give notice to and serve summons on the protestees as registered candidates voted for, and in dismissing the protest.

In the election contest of Ferrer vs. Gutierrez David and Lucot (43 Phil., 795), this court laid down the following doctrine:

"Under the provisions of Act No. 3030 the protestant does not have to allege in his protest that all the candidates registered and voted were duly notified, for under the amendment introduced by said Act, it is the sheriff or his deputy, and not the protestant, who is bound to serve the notice and summons to the protestee and the other registered and voted candidates (Palisoc vs. Tamondong and Medina Cue, 43 Phil., 789)."

Moreover it is impossible to state in the protest that copies of the same were delivered to the sheriff so that he might serve notice and summons on the registered candidates voter for, since copies presuppose an original, and as the latter is made before the copies, it cannot state something which happened subsequent thereto.

On the other hand, we should not overlook the fact that in order to confer jurisdiction on the Court of First Instance over an election protest, it is sufficient to file a motion to that effect, stating the following facts: (a) That the protestant has duly registered his candidacy and received votes in the election (Tengco vs. Jocson, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (Manalo vs. Sevilla, 24 Phil., 609); and (c) that the motion of protest was filed within two weeks after such proclamation (Navarro vs. Veloso, 23 Phil., 625; Manalo vs. Sevilla, supra; Hontiveros vs. Altavas, 39 Phil., 226), and it is not necessary to state that copies of the same were furnished the sheriff to notify and summon the protestees, inasmuch as the purpose of the summons is to give the court jurisdiction over the persons of said protestees and not over the subject matter in controversy. (Ferrer vs. Gutierrez David and Lucot, 43 Phil., 795).

The motion of protest in question contains all these requisites, and hence, by virtue of the filing of said motion, the trial court acquired jurisdiction to take cognizance of said protest. For the foregoing, and following the

doctrines cited above, we are of the opinion and so hold that the trial court erred in dismissing the protest merely because said protest did not state that the sheriff was furnished copies thereof, in order to give notice to and serve summons on the registered candidates voted for.

In virtue whereof the order appealed from is revoked, and let the case be remanded to the Court of First Instance of Ilocos Norte for further proceedings, with the costs against the protestee and appellee Pedro Quevedo. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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