

MARCOS YRA, PETITIONER AND APPELLANT, VS. MAXIMO ABAÑO, RESPONDENT AND APPELLEE.*G.R. No. 30187. November 15, 1928*

Ponente: MALCOLM, J.

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These are proceedings in the nature of quo warranto instituted by virtue of the provisions of section 408 of the Election Law, as amended, in the Court of First Instance of Bulacan by the petitioner, Marcos Yra, the vice-president elect of Meycauayan, Bulacan, who challenges the right of the respondent, Maximo Abaño, the municipal president elect of Meycauayan, to the position to which elected on the ground that the respondent is ineligible. The decision in the lower court, Judge Anastasio R. Teodoro presiding, was in favor of the respondent and declared the complaint as without merit.

Maximo Abaño is a native of the municipality of Meycauayan, Bulacan. At the proper age, he transferred to Manila to complete his education. While temporarily residing in Manila, Abaño registered as a voter there. Shortly after qualifying as a member of the bar and after the death of his father, Abaño returned to Meycauayan to live. From May 10, 1927, until the present, Abaño has considered himself a resident of Meycauayan. When the 1928 elections were approaching, he made an application for cancellation of registration in Manila which was dated April 3, 1928, but this application was rejected by the city officials for the reason that it was not deposited in the mails on or before April 4, 1928. Nevertheless Abaño presented himself as a candidate for municipal president of Meycauayan in the 1928 elections and was elected by popular vote to that office.

There can be no uncertainty as to the necessary facts. Undoubtedly, the petitioner-appellant would be the first to admit them. As addressed, however, to the decision of the trial court and the facts, the petitioner-appellant assigns and argues four errors. The first error assigned relates to a technical matter, which is the act of the trial judge in permitting the respondent to retire his second answer. This, of course, does not constitute either prejudicial or reversible error. Passing the second error for the moment, the third error assigned is found to assail the eligibility of the respondent because it is alleged that he had not been a resident of Meycauayan for at least one year previous to the election. In this connection, it is sufficient to point out that the question of residence is largely one of intention. At least since May 10, 1927, Abaño has been a resident of Meycauayan or more than the one-year period fixed by the law as a prerequisite to election. The fourth error assigned is a formal one.

As we see it, the issue in the case is suggested by the second error, and centers on the alleged non-eligibility of the respondent to hold a municipal office for the reason that he was not a "qualified voter in his municipality"—not a "qualified elector therein." In this connection, it is well to recall that Abaño was registered as a voter in Manila and not in Meycauayan in June, 1928, when the election was held. Is this sufficient to nullify his election?

The Election Law, as amended, in section 404 provides that "No person shall be eligible * * * for any elective * * * municipal office unless, within the time fixed by law, he shall file a duly sworn certificate of candidacy. Said certificate shall declare? * * * that he is a resident of the * * * municipality, * * * in which his candidacy is

offered; that he is a duly qualified elector therein, and that he is eligible to the office." The Administrative Code in section 2174, in giving the qualifications of elective municipal officers, also provides that "An elective municipal officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year." Section 431 of the Election Law prescribes the disqualifications for voters, section 432 the disqualifications. The question before us has arisen in a slightly different form in the other departments of the Government. In the early days of the Philippine Assembly, the election of Honorable Fernando Ma. Guerrero as a member of the Assembly from Manila was contested on the ground that he was not registered in his electoral district. The Committee of the Philippine Assembly reached the conclusion that the words "qualified elector" meant a person who had all of the qualifications provided by law to be a voter and not a person registered in the electoral list (Taken from Villamor's *Tratado de ElecHones*, 2d ed., p. 156). So also the Executive Bureau has been of the opinion that the term "qualified" when applied to a voter does not necessarily mean that a person must be a registered voter (Executive Bureau Unnumbered Provincial Circulars, May 19, 1925, May 2, 1925, May 7, 1925, cited in Laurel's *The Law of Elections of the Philippine Islands*, 1st ed., pp. 32, 33).

Senator Jose P. Laurel in his *Law of Elections of the Philippine Islands*, pages 32, 33, summarizes the law on the subject in the following language:

"One, of the qualifications required by law of a person who announces his candidacy is that he must be a duly qualified elector. The Executive Bureau has held that the term 'qualified' when applied to a voter does not necessarily mean that a person must be a registered voter. To become a qualified candidate a person does not need to register as an elector. It is sufficient that he possesses all the qualifications prescribed in section 431 and none of the disqualifications prescribed in section 432. The fact that a candidate failed to register as an elector in the municipality does not deprive him of the right to become a candidate and to be voted for."

It is not at all easy to disregard the forcible argument advanced by counsel for the appellant to the effect that when the law makes use of the phrases "qualified elector" and "qualified voter" the law means what it says. It is contended that it would be an absurdity to hold one a qualified elector who was not eligible to vote in his municipality. At the same time, the contemporaneous construction of the law by two departments of the Government—one the legislative branch responsible for its enactment, and the other the executive branch responsible for its enforcement—while not controlling on the Judiciary, is entitled to our respectful consideration. For the orderly and harmonious interpretation and advancement of the the courts should, when possible, keep step with the ier departments.

But we are not without other authority. The law of Kentucky provided that "No person shall be eligible to any office who is not at the time of his election a qualified voter of the city and who has not resided therein three years preceding his election." One Wood was elected a commissioner of the sinking fund. His eligibility was protested upon the ground that he was not, at the time of his election, a qualified voter of the city of Louisville since he had not registered as a voter in that city. The Supreme Court of Kentucky, considering the law and the facts in the case of *Meffert vs. Brown* ([1909], 132 Ky., 201), speaking through its Chief Justice, held that under the Kentucky statutes requiring officers in certain cities to be qualified voters, one's eligibility is not affected by his failure to register. It was said that "The act of registering is only one step towards voting, and it is not one of the elements that makes the citizen a qualified voter. * * * One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right."

It is but fair to say that if the question were strictly one of first impression in this jurisdiction, we would be more impressed with the potent points made by the appellant. In view, however, of the authorities hereinbefore mentioned, we are loath to depart from them, particularly as the language which goes to make up these authorities, on close examination, is found to rest on reason. The distinction is between, a qualified elector and the

respondent is such, and a registered qualified elector and the respondent is such although not in his home municipality. Registration regulates the exercise of the right of suffrage. It is not a qualification for such right.

It should not be forgotten that the people of Meycauayan have spoken and their choice to be their local chief executive is the respondent. The will of the electorate should be respected.

For all the foregoing, we conclude that the decision rendered in the lower court should be sustained. Accordingly, it will be affirmed, with the costs of this instance against the appellant.

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

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