

**TOMAS DIZON, PETITIONER, VS. THE PROVINCIAL BOARD OF
CANVASSERS OF LAGUNA, CONSISTING OF BALBINO KABIGTING
(PROVINCIAL TREASURER AND PRESIDENT OF THE BOARD),
CANDIDO HABAÑA (MEM...**

G.R. No. 30243. September 10, 1928

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-30243/>

STREET, J.:

This is an original petition for mandamus in this court whereby Tomas Dizon, petitioner, seeks to obtain an order requiring the provincial board of canvassers of the Province of Laguna, consisting of Balbino Kabigting, Candido Habaña, and Segundo Martinez, to incorporate in the results of their canvass the figures shown in an amended return from the first precinct of Biñan, as regards the votes for the office of provincial governor, to eliminate from said canvass the results shown in the original return from the same precinct, and to make proclamation of the result of the election for the office of provincial governor in conformity with the showing of said amended return.

The case has now been submitted to us for determination upon the allegations of the petition and answers, in connection with numerous documentary exhibits the authenticity of which is not in question. The case is in fact a sequel to Benitez vs. Paredes and Dizon, G. R. No. 29865;[1] and in what is to be said a knowledge of the situation involved in that case, and the decision made by this court thereon, will be assumed.

In the race for the office of provincial governor of the Province of Laguna, in the last general election, the votes received by the two leading candidates, Eulogio Benitez and Tomas Dizon, appear to be so nearly evenly balanced, that in so far as the present controversy is concerned, the result hinges upon the returns from the first precinct of the municipality of Bifian. In the original official return from this precinct Benitez is credited with 148 votes, while in the amended return he is credited with 129 votes, a reduction of 19 votes. The consequence is that, if the original return from this precinct be adhered to in the canvass made by the provincial board, Benitez wins by nine votes; while, if the amended return be accepted, Dizon will win by ten votes.

With this observation we proceed to give the history of the proceedings that have been thus far had in the matter by the provincial board of canvassers. In this connection it appears that the board convened on June 8, 1928, for the purpose of canvassing the returns from the various municipalities and precincts of Laguna in connection with the general election, which had taken place on June 5, 1928, prior thereto. The work of compiling and tabulating the results, as shown by the returns, was not completed until 4.20 p. m. on June 9, 1928. The results of the canvass, as regards all officers concerned, are shown in the tabulated statement accompanying the memorandum submitted by the provincial treasurer, Balbino Kabigting, as chairman of the provincial board of canvassers, on August 25, 1928. In this tabulation the board adheres to the original return from the first precinct of Biñan, with the result that Benitez is shown to be winner over Dizon, by nine votes, in a total of nearly thirty thousand votes for all candidates for the office of governor. At the bottom of the tabulated statement here referred to is appended the following statement, signed by each of the three members of the board: "We hereby certify that the counting

of votes cast in favor of each candidate as shown in the above statement is true and correct, the same having been taken from the election returns, in a canvass made which terminated on June 9, 1928." It will be noted that the date certified is the date when the tabulation was effected, and it does not purport to be the date when the certificate was made.

At about noon on June 9, 1928, while the results of the election were being thus canvassed, the three election inspectors for the first precinct of the municipality of Biñan, namely, Higinio Magbitang, Primo Carrillo, and Sixto Guico, presented themselves at the office of the provincial treasurer, where the canvass was being conducted, and informed the board that a mistake had been made by them in assigning 148 votes to Eulogio Benitez in the official return, instead of 129, the true number cast for said candidate; and they requested that they be permitted to correct the return from said precinct so as to show the true number of votes cast for Benitez. The chairman of the provincial board thereupon informed them that, inasmuch as they admitted that all copies of the election return made by them showed the same vote for Benitez, it was believed that the provincial board of canvassers was without the authority to permit the election inspectors to make the desired correction. They were advised, however, to bring the matter before the court or seek the provincial fiscal for necessary action. The inspectors then withdrew and the work of tabulating the returns was continued.

Nothing further was apparently done on that day, and the next day, June 10, was Sunday. Early on the morning of Monday, June 11, Tomas Dizon filed in the Court of First Instance of Laguna a petition for the writ of mandamus to compel Primo Carrillo, Sixto Guico, and Higinio Magbitang, constituting the board of inspectors of the first precinct of Biñan, to correct the official return from that precinct so as to show that Benitez had there received 129 votes instead of the 148 votes mentioned in their original return. The three defendants answered, admitting their mistake, and asking leave of the court to make the correction. The requested permission was granted by the court, and on June 12, an amended return, signed by the three inspectors, was delivered to the provincial board of canvassers. In the case of *Benitez vs. Paredes and Dizon*, G. R. No. 29865, to which reference was made at the beginning of this opinion, this court held that the amendment of this return had been ordered by a competent court, and that it should therefore be taken into account by the provincial board of canvassers.

Also, it should be noted, that on June 11, in the civil case of *Dizon vs. Provincial Board of Canvassers*, No. 4978, of the Court of First Instance of Laguna, Judge Paredes issued a temporary injunction against the board, restraining it from further proceedings in the matter of the election of the provincial governor, until further order of the court; and of this action the board was notified on the same day.

For the purposes of this decision it is important to ascertain whether the tabulation of the returns, which was completed on the afternoon of Saturday, June 9, and consequently two days before the board received the amended return, constituted a complete performance of the duties of the board with respect to the canvass of the returns and the proclamation of the results, or whether after the returns had been thus tabulated, there still remained to be done other acts necessary to the complete discharge of the board's duties. In this connection we note that when the provincial board of canvassers convenes for the purpose of canvassing the results of the election, it becomes its duty to make one statement of all votes cast for each candidate for legislative office in each district, and one statement of all the votes, if any, cast for provincial officers. Upon the completion of such statements, it becomes the duty of the board to determine who has been elected, except in the cases where the province comprises only a part of the territory concerned in the election of a particular officer, such as senator. In a case of this kind the determination of the result must be effected by the Governor-General, who makes proclamation accordingly. (Sec. 469, Election Law.) From this it will be seen that the law contemplates that the provincial board of canvassers shall determine who has been elected to provincial offices and legislative offices comprising only one province; and in section 470 of the Election Law it is declared that "such determination"

shall be reduced to writing, in duplicate, and signed by the members of the provincial board or a majority of them, or by the Governor-General, as the case may require. In section 471 of the same Law the provincial board of canvassers, or the Governor-General, as the case may be, are required to certify, as elected to particular offices, only persons who have obtained a plurality of votes and who have complied with the provisions of law relative to the filing of their certificates of candidacy.

Now it appears that the provincial board of canvassers of the Province of Laguna has interpreted the provisions which we have condensed above as requiring some sort of public announcement from the board as to the election of those officials whose election they are required to determine. As stated in the memorandum of the provincial treasurer accompanying his answer in this case: "The law provides that upon completion of such canvass it is the imperative duty of the provincial board of canvassers to make out a statement of all the votes cast for each candidate which is the one understood to be a proclamation." We accordingly find that the provincial board of canvassers of Laguna made proclamation on June 13 of the election of all provincial officers except for the office of governor, the reason for this exception being that the board was then enjoined from taking such step with respect to that office.

No proclamation was made with respect to the office of provincial governor until after *Benitez vs. Paredes and Dizon*, G. R. No. 29865, *supra*, was decided by this court, and the board convened, on August 25, 1928, for the purpose of proclaiming a provincial governor. A copy of the minutes of the session of the provincial board of canvassers held on that day is before us (Exhibit A to answer of Segundo M. Martinez). From these minutes it appears that, after the session had been opened, the board proceeded to deliberate on the subject of the proclamation of the governor elect; and it was decided, after discussion, that proclamation should be made with respect to said office. The board thereupon proceeded to consider which of the two returns from the first precinct of Biñan should be taken into account, and it decided to adopt the result shown in the original figures. Proclamation was accordingly made to the effect that Eulogio Benitez had been elected governor of the province. These proceedings show that the board recognized the necessity for an official announcement of the result of the election for the office of governor, in addition to the mechanical tabulation of the returns which it had finished on June 9, 1928,—a necessity which was also deducible from the interpretation of the law adopted by this court in *Manalo vs. Sevilla* (24 Phil., 609), where it was held that an election for the office of provincial governor cannot be considered complete until proclamation of the result is made by the provincial board of canvassers.

But when the board met on this last occasion (August 25) it had before it the amended return from the first precinct of Biñan; and its failure to give effect to this return is the cause of the present lawsuit. The question, therefore, now before us is whether the board was bound to follow the amended return, making *casus omissus* of the original return; and supposing said question to be answered in the affirmative, whether *mandamus* is a proper remedy to compel the proper determination of the result.

One point about which there can be no discussion is that the amended return was in due form and that it was the duty of the provincial board of canvassers to take account of it. This point was decided in *Benitez vs. Paredes and Dizon*, *supra*; and while it is wholly unnecessary to speculate about whether the figures shown in the amended return constitute a true statement of the votes cast for Benitez in the first precinct of Biñan, it is but fair to observe that the Court of First Instance of Laguna appears to have had ample material before it on which to base a conclusion that a mistake had been made in the original return. The true secret as to the number of votes cast for these candidates in said precinct is of course locked up in the ballot box and will never be absolutely known until the ballots, if honestly conserved, are examined at some future time. But when the court permitted the amended return to be drawn up, it had before it not only the sworn statement of the election inspectors but also two important pieces of documentary evidence. The first consisted in one of the tally sheets which had been made

when the votes were counted and had been preserved in the possession of inspector Magbitang. This tally sheet not only shows that Benitez received only 129 votes in the first precinct of Biiian, but it affords a clue to what the inspectors say is the explanation of the error made by them in assigning 148 votes to Benitez in the original return. This is found in the fact that the names of the candidates for representative appear on the tally sheet in the lines above the name of Benitez. The candidate who received the most votes for representative in this precinct was Feliciano Gomez, and the marks recording the number of votes cast for him, one hundred and forty-eight in number, make a longer line on the sheet than the record of the votes for any other candidate for said office. At the end of the line containing the tally marks the inspectors in each case placed the Arabic numerals representing the total vote. The number indicating the votes cast for Gomez therefore stands out conspicuously on the tally sheet a few lines above the number "129" showing the votes cast for Benitez. The explanation suggested in behalf of the inspectors concerning the mistake in the return is that the person reading out the number of votes from the tally sheet, to be recorded by another inspector, by mistake read of the figures for Gomez and thus caused them to be recorded for Benitez. But perhaps it would be equally tenable to suppose that the individual recording the votes in the official return may himself have made a mistake in putting down figures which were already in his head in connection with the other office.

Supposing the inspectors to have dealt candidly with the court, the explanation of the manner in which the error occurred is plausible. Mistakes of all sorts are too common in human experience to justify anyone in denying the possibility of honest error in a case like that now under consideration; and it was in contemplation of the possibility of such errors that the lawmakers provided for their correction with judicial approval. The circumstance that the inspectors have admitted their mistake and sought judicial approval for its correction also gives color to the inference that a mistake was in fact made.

The other piece of documentary evidence showing that Benitez really received only 129 votes in the precinct referred to is the formal certificate issued at the end of the count to one of Dizon's watchers showing that Benitez received that number. While this document is not primary evidence in the strict sense, it was nevertheless made in obedience to the precepts of the law and was so nearly contemporaneous with the making of the return that it is entitled to weight.

But however the truth on the controverted point may be, the fact that the amended return was properly made is a foreclosed question, so far as this court is concerned. When *Benitez vs. Paredes and Dizon*, supra, was decided, it was of course obvious to us that the provincial board of canvassers of the Province of Laguna, the present respondents, would be presently confronted with the necessity of passing upon the amended return, but inasmuch as these respondents were not then before us, we merely observed, in the opinion in that case, that when the amended return should be presented to the board, it should be given its proper legal effects. As the present respondents were not parties to that action, it was not then proper for the court to go further and command them to take said return into account.

With the premise, therefore, that the amended return ought to have been taken into account by the provincial board of canvassers in its session of August 25, 1928, the question remains, what legal effect should be conceded to it? Upon this point it is obvious enough that, inasmuch as the amended return was proper in form, authentic, and of later date than the original return, it necessarily had the effect of abrogating that return. To pretend the contrary is to go against the most rudimentary elements of jurisprudence and common sense. Where power is conceded to any person to modify a legal act, the document expressive of such modification necessarily takes precedence over the thing modified.

But the respondents suppose that, upon convening, on August 25, 1928, to make pronouncement as to the results of the election for the office of provincial governor, they were clothed with some discretion in determining

whether to give effect to the original return or the amended return; and the memorandum prepared by respondent Kabigting for the provincial board and submitted to it on the day mentioned contains a discussion the purpose of which is to demonstrate that the original return is probably right and the amended return erroneous. The principal fact relied upon in this memorandum in confirmation of the original return is that Jose L. Amante, municipal treasurer of Biñan, has made affidavit to the effect that the figures posted on the blackboard in Biñan after the count was concluded on June 6, 1928, showed that 148 votes had been cast in that precinct for Benitez; and Mr. Amante says that he personally took those figures from the blackboard and reported it by telephone to the provincial treasurer at Santa Cruz. Furthermore, it is said, no doubt truly, that the figures showing the relative votes for the candidates for the office of provincial governor, which were posted on the blackboard at the capital, concur with the original return in showing 148 votes for Benitez.

But all such discussion is superfluous and misdirected; and the respondents are in error in supposing that they had authority to conduct an examination of their own into the relative merits of the two returns. No decision of this court can be pointed to which recognizes any such authority, and the provisions of law relative to the functions of the provincial board of canvassers will be searched in vain for anything to support the suggestion. On the contrary, the provisions of law seem to be carefully drawn with a view to the total suppression of any discretionary or judicial function to be exercised by the board of canvassers. Under section 469 of the Election Law the provincial board of canvassers is given authority to procure by messenger or otherwise any missing return. Furthermore, in case material matters of form are omitted, the board may require the correction of such matters by the board of inspectors. Finally, when all the returns are before it, the board is directed to proceed to a canvass of all the votes. All of these functions are of a purely ministerial nature; and the canvassing of the returns consists merely of the act of compiling and adding up the results. In no part of the process is any judicial or discretionary power exercised. But it may be contended that the mere fact of the presence before the board of two different returns from the same precinct necessarily implies the power of the board to decide which of the two shall be used. This suggestion overlooks the fact that the two returns are not contemporaneous and hence not equally cogent as evidence of the true number of the votes cast. The amended return is of later date than the original return, and of a character such as necessarily abrogates the original in so far as the office in question is concerned. As is well said in the argument for the petitioner in this case, there can be no room for choice between a thing that exists and another that has ceased to exist; and even if the board had any discretion it could not be lawfully exercised for the purpose of setting up what has been abrogated in the place of something that actually subsists.

Legal authority in support of the conclusions above stated, as reflected in treatises and judicial decisions, is so unanimous and decisive that it would be idle to attempt to exhibit the jurisprudence on the subject. And at any rate a few general observations and citations will suffice. In dealing with the duties and powers of boards of canvassers, the author of the monographic article on Elections in Ruling Case Law begins as follows:

"The board of official canvassers to whom the boards of election of the several divisions return their certificate showing the number of votes cast for each candidate, is liable to err in overestimating its powers. Whenever it is suggested that illegal votes have been received or that there were other fraudulent practices at the election, it is apt to imagine that it is its duty to inquire into these alleged frauds and to decide on the legality of the votes. Its duty, however, is almost wholly ministerial to take the returns as made from the different voting precincts, add them up, and declare the result. Questions of illegal voting and fraudulent practices are passed on by another tribunal. The canvassers are to be satisfied of the genuineness of the returns, that is that the papers presented to them are not forged and spurious, that they are returns, and are signed by the proper officers; but when so satisfied they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the election. The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. All other questions are to be tried before the court or other tribunal for

contesting elections or in quo warranto proceedings." (9 R. C. L., p. 1110.)

To the same effect is the following observation from the author of the article on Elections in another standard encyclopedic treatise:

"* * *Where there is no question as to the genuineness of the returns or that all the returns are before them, the powers and duties of canvassers are limited to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained." (20 C. J., 200-201.)

Again says the same author:

"It is settled beyond controversy that canvassers cannot go behind the returns. The returns provided for by law are the sole and exclusive evidence from which a canvassing board or official can ascertain and declare the result. The canvassers are not authorized to examine or consider papers or documents which are transmitted to them with the returns, or as returns, but which under the statutes do not constitute part of the returns." (20 C. J., 202-203.)

Various aspects of the propositions above quoted have been judicially considered in decisions too numerous to cite, and the views of the courts are further set forth in the separate elaborate treatises on Elections written the one by Paine the other by McCrary.

Among other things the last named author says:

"It is well settled that the duties of canvassing officers are purely ministerial, and extend only to the casting up of the votes and awarding the certificate to the person having the highest number; they have no judicial power (Dalton vs. State [Ohio], 1 West Rep., 773; Justices' Opinions, 58 N. H., 621; People vs. Wayne Co. Canvassers, 12 Abb., N. Y., New Cases, 7; S. C., 64 How, N. Y. Pr., 334; Kortz vs. Greene Co. Canvassers, 12 Abb., N. Y., New Cases, 84; Leigh vs. State, 69 Ala., 261; Page vs. Letcher, 11 Utah 119; 39 Pac. Rep., 499; State vs. Van Camp, 36 Neb., 91; People vs. Board of State Canvassers, 129 N. Y., 360; Mead vs. Carroll, 6 D. C., 338). In State vs. Steers (44 Mo., 223), which was a case in which the canvassing board had undertaken to throw out the returns from one voting precinct for an alleged informality, the Court said: 'When a ministerial officer leaves his proper sphere, and attempts to exercise judicial functions, he is exceeding the limits of the law, and guilty of usurpation.' And again: 'To permit a mere ministerial officer arbitrarily to reject returns, at his mere caprice or pleasure, is to infringe or destroy the rights of parties without notice or opportunity to be heard, a thing which the law abhors and prohibits.' (McKinney vs. Peers, 91 Va., 684; In re Woods, 5 Misc. Rep., 575; State vs. Wilson, 24 Neb., 139.) A common council sitting as a board for the canvassing of election returns of members elected to that body is bound by the returns, and cannot go behind the returns and inspect the ballots in order to determine the result. (State vs. Trimbell, 12 Wash., 440.)

"But of course it does not follow from this doctrine that canvassing and return judges must receive and count whatever purports to be a return, whether it bears upon its face sufficient proof that it is such or not. The true rule is this: They must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose, and this necessarily implies that if a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself. (State vs. Hill, 20 Neb., 119; State vs. Mcfadden, 46 Neb., 668.) The duties of the Secretary of State of the State of Louisiana in promulgating the returns of election held to be purely and exclusively ministerial. (State vs. Mason, 44 La. Ann., 1065.) Thus, in New York, it has been held that the duties of the canvassers were to attend at the proper office and calculate and ascertain the whole number of votes given at any election and certify the same to be a true canvass; this is not a judicial act, but merely ministerial; they have no power to contravert the votes of electors. (People vs. Van Slyck, 4 Conn., 297, 323. To the same effect is the ruling in Ex parte Heath, 3 Hill., 47. See also Commonwealth vs. Emminger, 74 Pa., 479; Moore vs.

Jones, 76 N. C, 182.)" McCrary on Elections, 4th ed., p. 198, secs. 261, 262.

From what has been said it inevitably follows that respondent provincial board of canvassers erred in not giving effect to the amended return from the first precinct of Biñan, and it likewise follows that the writ of mandamus is an appropriate remedy to compel the individuals comprising said board to reconvene and perform the ministerial duty which the law enjoins upon it. Direct authority upon the latter point is found in *Municipal Council of Las Piñas vs. Judge of First Instance of Rizal* (40 Phil., 279).

But it is said in the memorandum for the respondents that an obstacle to the admission of mandamus as an appropriate remedy in this case is found in the decision of this court in *Benitez vs. Paredes and Dizon*, G. R. No. 29865, *supra*, since, among other things, we there held that the writ of mandamus cannot now be used to constrain the election inspectors of a municipality to amend an election return against their will. But apart from the particular provision of law now applicable to that point, it must be remembered that the inspectors of election in a municipality perform many duties decidedly not of a ministerial character. These officers are the judges of the election, and it is incumbent upon them in such capacity to ascertain the true number of votes cast and make return accordingly. They are therefore more than mere canvassers. The provincial board of canvassers, on the other hand, exercise duties which, aside from determining the regularity and authenticity of the returns, are purely of a ministerial nature.

From what has been said it follows that the petitioner is entitled to the relief sought, and the respondents, Balbino Kabigting, Candido Habaña, and Segundo Martinez, comprising the provincial board of canvassers of the Province of Laguna, are therefore conunanded promptly to reconvene in their character as such board and to amend the tabulated statement showing the results of the election held on June 5, 1928, for the office of provincial governor, by eliminating therefrom the figures taken from the original return from the first precinct of the municipality of Biñan, showing Eulogio Benitez to have received 148 votes in said precinct and to incorporate therein the figures taken from the amended return from said precinct, effected by judicial approval, showing 129 votes for the said Benitez, with corresponding amendment in the total votes for the office of provincial governor, with the result that Tomas Dizon will appear to have received a total of 11,301 votes for said office and Eulogio Benitez a total of 11,291 votes; and upon effecting said amendment in the tabulated statement, the same respondents are enjoined to publish the result in accordance therewith, declaring Tomas Dizon to be the person elected to said office; and they shall certify the same result to the Chief of the Executive Bureau for transmission to the Governor-General, for proper effects in the premises. So ordered, without costs.

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

[1] P. 1, ante.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.