

PABLO DE LA ROSA Y CLIMACO, PROTESTANT AND APPELLANT, VS. HERMOGENES YONSON, MARCOS MAHILUM AND ANGELICO MEDINA, PROTESTEES AND APPELLEES.*G.R. No. 30314. December 15, 1928*

Ponente: VILLAMOR, J.

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It appears from the record that on June 15, 1928, the protestant filed a pleading entitled "Protest," in the Court of First Instance of Occidental Negros, alleging:

"1. That he and the protestees are qualified voters residing in the municipality of Calatrava, Province of Occidental Negros, Philippine Islands, and are candidates who presented themselves and had their legal certificates of candidacy filed, and were voted for the office of municipal president of the aforesaid municipality in the general elections held on June 5, 1928, within the jurisdiction of this court.

"2. That the following were voted for and received the votes as shown below, according to the proclamation made on June 8, 1928 by the municipal board of canvassers of the municipality of Calatrava, of the aforementioned province:

Names and surnames of persons voted for— Votes obtained and counted

Pablo de la Rosa y Climaco	277
Hermogenes Yonson	323
Marcos Mahilum	186
Angelico Medina	176

"3. That on said June 8, 1928, the aforementioned municipal board of canvassers proclaimed the respondent Hermogenes Yonson elected municipal president of the town of Calatrava, Province of Occidental Negros.

"4. That said proclaimed municipal president elect and protestee Hermogenes Yonson is not eligible for the office of the municipal president, not having completed 23 years of age at the date of the election (sec. 2174, A. C.), and he filed the following voter's affidavit: (Here follows a transcript of the 'Voter's Affidavit' signed by Hermogenes Yonson on April 13, 1928).

"5. That the protestant has delivered three copies of this protest to the provincial sheriff in order to summon the defendants, and the protestant believes and so alleges that sections 408 and 2659 of the Election Law do not deprive the court of the jurisdiction conferred upon it by section 479 thereof over protests filed by the same legally registered candidate voted for.

"6. That the protestant attaches a thousand peso (P1,000) bond to the protest to answer for the costs and expenses incidental to the contest."

On July 12, 1928, the protestee, Hermogenes Yonson, entered a special appearance and challenged the jurisdiction of the court.

The latter, however, upheld it. And on July 19, 1928, said protestee demurred to the protest on the following grounds:

"1. That said motion of protest fails to allege a legal cause of action and the court lacks jurisdiction to take cognizance thereof.

"2. That said motion of protest is not a pleading of quo warranto, and even if it were, it still fails to allege a legal cause of action; and besides, the court already lacks jurisdiction, for it was not filed as a pleading of quo warranto within the period prescribed by law.

"3. That the only allegation in said pleading which deserves to be discussed is that contained in the fourth paragraph; but, after the sovereign will of the people has elected the protestee, Hermogenes Yonson, with a majority of votes, and as the latter will be 23 years of age when he takes the oath of office, such an allegation no longer constitutes, a cause of action."

In reply to the demurrer on the same date, or July 19, 1928, the protestant moved for its overruling maintaining that the protest contains allegations constituting and calling for a remedy in the nature of a quo warranto.

On July 19, 1928, the court ruled that, in accordance with the protestant's theory, this proceeding was treated as an election contest under the procedure established by section 479 of Act No. 3387, and not according to the procedure of quo warranto which is of a different legal character; that to admit the change of theory maintained by the protestant in his pleading of July 19th, would be to permit him to file a complaint outside the period of two weeks from June 8, 1928, when the protestee, Hermogenes Yonson was proclaimed; that inasmuch as the motion of protest filed by the protestant is not susceptible of amendment, the demurrer filed by the protestant must be sustained, and so the protest was dismissed, with costs against the protestant.

The latter appealed from said order alleging that the court erred in sustaining the protestees' demurrer and in ordering the dismissal of the case with the costs of the action against the protestant.

We think this appeal lacks legal grounds. It is true that Courts of First Instance have jurisdiction to consider an election contest under section 479 of Act No. 3387, and also to entertain a complaint in the nature of a quo warranto under section 408 of the same law; but it is likewise true that the two procedures are very different and are governed by different legal provisions; and that the court's jurisdiction cannot be exercised jointly and in the same proceeding.

That the protestant chose to invoke the provisions of section 479 in filing his protest is shown by the fact that in paragraph 5 of said protest, he alleges, "that sections 408 and 2659 of the Election Law do not deprive the court of the jurisdiction conferred upon it by section 479 thereof over protests filed by the same legally registered candidate voted for;" and in praying "that the protestee Hermogenes Yonson be declared ineligible for the office of municipal president of the municipality of Calatrava, Province of Occidental Negros, and his election a failure; and that the proper municipal board of canvassers be ordered to correct its returns in accordance with this court's decision, and to proclaim the protestant elected to the office of municipal president of the said town of Calatrava, Province of Occidental Negros.

There is no doubt that the protestant herein could have pursued either proceeding; but once he has chosen the procedure of election contest, he cannot, after the period of fifteen days from the proclamation of the protestee, change his theory and maintain that the motion of protest was also a complaint of quo warranto.

"An election once made between coexisting remedial rights which are inconsistent is not only irrevocable and cannot be withdrawn without due consent, even though it has not been acted upon by another to his detriment, but it is also conclusive and constitutes an absolute bar, to any action, suit, or proceeding based upon a

remedial right inconsistent with that asserted by the election; or to the maintenance of a defense founded on such inconsistent right. In some decisions it is said that an election to pursue one of two inconsistent remedies operates as an abandonment or a waiver of the other, and in others, that the party making the election is estopped from again electing and resorting to the other remedy. Having chosen between inconsistent theories, a party must adhere to such choice all through the case, and take the logical consequences upon every issue." (20 C. J., pp. 38, 39.)

Adhering to the doctrine herein enunciated, we hold that the order appealed from must be, as it is hereby, affirmed with costs against the appellant. So ordered.

Johnson, Malcolm, Ostrand, and Romualdez, JJ., concur.

Avanceña, C. J., and Street, J., dissent.

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