

JOSE MORENTE, PETITIONER, VS. E. V. FILAMOR, JUDGE OF THE COURT OF FIRST INSTANCE OF MINDORO, AND ARTURO ARCE IGNACIO, RESPONDENTS.*G.R. No. 30364. October 26, 1928*

Ponente: VILLAMOR, J.

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This certiorari proceeding was originally instituted in this court to procure an order directing the respondent judge to forward the records of the protest and counter-protest filed in election contest No. 490 of the Court of First Instance of Mindoro, to this court; to render judgment vacating the order dated August 22, 1928 in so far as it grants the respondent Arturo Arce Ignacio a period of ten days within which to answer, and that dated September 14, 1928 whereby the respondent judge refused to dismiss the counter-protest, and whatever other action he may have taken thereafter with respect to the aforesaid counter-protest, to order the dismissal of said protest, and to desist and refrain from proceeding with the hearing of the counter-protest.

A perusal of the complaint and of the answer establish the following undisputed facts: (a) That on July 12, 1928 the protestant Jose Morente filed a protest against the election of the respondent Arturo Arce Ignacio to the office of provincial governor of Mindoro, in the Court of First Instance of Mindoro, the summons having been served on the protestee on the 24th of the same month; (b) that on August 7, 1928 (although it is dated July 28, 1928), the respondent demurred to the protest in said Court of First Instance of Mindoro; (c) that on August 22, 1928 the respondent judge, Honorable E. V. Filamor, heard the demurrer and thereupon denied it, granting the respondent Arturo Arce Ignacio a period of ten days from August 22, 1928, within which to answer; (d) that on August 25, 1928 the protestee was notified of the order overruling the demurrer, and on August 29, 1928, said protestee filed his answer and counter-protest in the Court of First Instance of Mindoro; (e) that after the election case No. 490 had been set for hearing on September 13, 1928, the protestant Jose Morente filed a special motion praying for the dismissal of the respondent's counter-protest on the principal ground that the Court of First Instance of Mindoro has no jurisdiction to take cognizance of said counter-protest, the latter having been presented after the expiration of the statutory period and (f) that the respondent judge denied the motion for dismissal of the counter-protest as well as the motion for reconsideration filed by the protestant.

In view of the averments made in the complaint and the answer, we believe that one of the most important questions to decide in this proceeding is to determine whether or not an election protest may be demurred to. This court has held in various decisions that the protestee in an election contest may set up all the defenses which in his opinion tend to uphold his rights, and, therefore, he may either demur or answer. (*Grecia vs. Salas*, 34 Phil., 948; *Santos vs. Miranda and Clemente*, 35 Phil., 643; *Sanchez vs. Court of First Instance of Rizal*, 40 Phil., 155; *De la Cruz vs. Revilla and Bustos*, 40 Phil., 234; *Orencia vs. Araneta Diaz*, 47 Phil., 830; and *Gallares vs. Casenas*, 48 Phil., 362.)

It is true that the Election Law, as lastly amended by Act No. 3387, in describing the procedure to be followed in

election contest cases, makes no mention of the filing of a demurrer, but this court has already held in the case of *Gardiner vs. Romulo* (26 Phil., 521), and latterly in that of *Lucero vs. De Guzman* (45 Phil., 852), that the rule of procedure applicable to ordinary civil cases are also applicable to election contests, when they do not conflict with the provisions of the Election Law, or have for their purpose to meet a need not provided for in the mode of procedure generally outlined in said Law.

The Election Law, as lastly amended by Act No. 3387, contains no prohibition against the filing of a demurrer by the protestee, and therefore following the constant jurisprudence of this court, we are of the opinion that he is entitled to demur to the protest filed by the protestant. If the protestee is entitled to demur, such demurrer must have the legal effect of staying the proceedings, pending the court's judgment whether the protestee is under the obligation to continue the litigation. The respondent judge in overruling the demurrer on August 22, 1928, granted the respondent Arturo Arce Ignacio a period of ten days from the date of the overruling of the demurrer within which to file his answer. The respondent Arturo Arce Ignacio was notified of the order overruling the demurrer on August 25th, on which date his counsel prepared his answer, which was received by the Court of Mindoro on the 29th of that month, that is, four days after the notification of said order. Therefore, the respondent's answer was submitted within the period designated by the judge, or, at any rate, within the period of five days fixed by the Rules of the courts for filing the answer after the overruling of the demurrer.

The respondent's objection refers mainly to the filing of the counter-protest. It must be noted here that the counter-protest was filed at the same time as the answer as a part thereof. And we are of the opinion that if the answer was presented in time, it must be admitted that the counter-protest was also presented in due time. Granted that the summons was served upon the respondent on July 24, 1928, having filed his demurrer on August 7th, which was overruled on the 22d of the same month on which date the protestee was granted a period of ten days to file his answer; and furthermore, having answered on August 29th according to the protestant's theory, the answer was filed after the fifteen-day period provided by section 481 of the Election Law, computed from the date on which the respondent was summoned; but according to the respondent's theory, said answer was filed within the period designated by the court, or, at any rate, within five days after the demurrer was overruled. Section 481, among other things, prescribes:

"* * * The candidate whose election is contested and all other registered candidates voted for may reply thereto within fifteen days after the summons, or if they have appeared without being summoned "within fifteen days from the date of their appearance, but in any cases before the beginning of the hearing of the case in court. The reply shall yerse only on the precinct or precincts covered by the allegations of the contest. If the candidate whose election is contested or any other registered candidate voted for desires to contest the votes obtained by the contestant in other precincts, they shall file a counter contest within the time limit designated in this paragraph and serve a copy thereof upon the contestant by registered mail or personal delivery, established by a receipt signed by the contestant or his duly authorized agent. The contestant shall reply to the counter-contest within ten days after notification. If no reply is made to the contest or counter contest within the time limits designated therefor, a general denial shall be deemed to have been entered."

It will be seen, upon a careful reading of this provision of the law, that the protestee may file his answer within fifteen days after his summons, or from the date of his voluntary appearance, but in any case before the beginning of the hearing of the case in court. We are of the opinion that, as a general rule, the protestee should file his answer within the said fifteen days; but if he has demurred to the protest, as was done in the present case, and the demurrer was passed upon after the fifteen days previously fixed, then the protestee may file his answer within the time set forth in the Rules, or by a special order of the court, but in any cases before the beginning of the hearing of the case in court; otherwise, the legal provision "but in all cases before the beginning of the hearing of the case in court," would be meaningless. And we are likewise of opinion that this same legal provision necessarily implies

the authority of the court to fix a date for answering the protest after the lapse of fifteen days, if, as in the instant case, the respondent demurred and the ruling on the demurrer was handed down after the aforementioned fifteen days. Without this authority, the protestee might be deprived of his right to present his defense against his opponent.

It should be noted, furthermore, that the above quoted section 481 provides that "if the candidate whose election is contested or any other registered candidate voted for desires to contest the votes obtained by the contestant in other precincts, they shall file a counter-contest within the time limit designated in this paragraph," that is, fifteen days, with the formalities provided by law. To our mind, the period of fifteen days here designated for the filing of a counter-protest must be followed as a general rule, to which the exception is the case where a demurrer has been filed and the latter passed upon after the expiration of the fifteen days from the service of the summons on the protestee. It would be unjust to require the protestee to file his counter-protest even before the court has ruled on his demurrer, and therefor we are of the opinion that the said counter-protest, like the protest, may in cases similar to the present one, be filed even after the fifteen days' time but before the beginning of the hearing of the case in court.

In the case of Valenzuela vs. Judge of the Court of First Instance of Bulacan (40 Phil., 163), this court held:

"A counter-protest is tantamount to a counterclaim in a civil action. The protestee may, by a counter-protest, show that by reason of fraud and irregularities the protestant cannot be declared elected, and that notwithstanding the frauds and irregularities alleged by the protestant, the protestee is still entitled to be proclaimed elected to the particular office. * * * The counter-protest being a part of the answer, it is clear that it need not be presented until the answer is presented. To require the counter-protest to be filed within the time the protest itself is filed would perchance defeat a counter-protest at all. There is no occasion for the presentation of the counter-protest until after the protest is presented. The counter-protest may be presented as a part of the answer and within the time the protestee is required to answer."

The counter-protest having been filed within the time designated by the court for the filing of the answer before the hearing of the case in court, we are of opinion that the protestant's contention is untenable.

The principal ground for the present proceeding is that the respondent judge acted without or in excess of his jurisdiction in taking cognizance of the counter-protest of the respondent Arturo Arce Ignacio, notwithstanding the fact that the latter was not filed in court within the fifteen days' period following the service of the summons on said protestee. Upon this point, it must be noted that the court's jurisdiction over the protest arises when a motion containing proper jurisdictional averments is filed within the statutory period; and the court's jurisdiction cannot later be resolved by what it might or might not do. There is no question that the court had jurisdiction over the protest as well as over the persons of the protestant and the protestee. And when a court has jurisdiction over an action, it also has jurisdiction to pass upon every question pertinent thereto. (Herrera vs. Barretto and Joaquin, 25 Phil., 245; Valdez vs. Court of First Instance of Pampanga, 42 Phil., 718.)

In the case of Venturanza vs. Court of First Instance of Batangas, and Cabrera (36 Phil., 545), it was held that "the fact that a Court of First Instance, acting in an election contest, struck out, on motion of the contestant, a 'counter-protest' offered by the defendant as a part of his defense, furnishes no ground for a writ of certiorari. A writ of certiorari will not issue to an inferior court unless that court acted without or in excess of its jurisdiction in performing the act complained of." We believe that neither does the fact that the respondent judge admitted the protestee's counter-protest offered as a part of his defense, after the fifteen days fixed by section 481 of the Election Law had elapsed, but before the beginning of the hearing in court, is a ground for a writ of certiorari, by virtue of the doctrines enunciated in Alvendia vs. Moir and Dinio (35 Phil., 356). In this case it was held: "Section 576 (now 479) of the Administrative Code confers plenary jurisdiction on Courts of First Instance with respect to

election contests; and, as a necessary consequence, they have full power to decide every question within the issues which may arise during the progress of the contest. The exercise of that jurisdiction does not involve the loss of jurisdiction or its entire absence simply because the question under consideration in the exercise of that jurisdiction is determined wrong. The fact that the question is determined erroneously is of no consequence so far as the jurisdiction of the court is concerned. It still maintains its jurisdiction over the proceeding and still acts within that jurisdiction no matter how the particular question may be decided." In other words, the writ of certiorari will not lie to remedy errors of law or of fact committed by the inferior court in the due exercise of its jurisdiction. (Guerrero vs. Villareal and Guerrero, 41 Phil., 50.)

Considering the facts of the present proceeding, and after duly weighing the reasons adduced by both parties in their arguments and memoranda submitted in support of their respective contentions, and by virtue of the provision contained in section 481 of the Election Law, "but in all cases before the beginning of the hearing of the case in court," we believe and so hold that the protestee Arturo Arce Ignacio could validly demur, as he did in fact demur, to the petitioner's protest; that in overruling said demurrer, the respondent judge has authority to assign a reasonable period within which the protestee must file his answer in all cases before the beginning of the hearing of the case in court; and that the respondent judge likewise has jurisdiction to entertain the answer with the counter-protest filed by the respondent Arturo Arce Ignacio.

Wherefore, the petition should be, as it is hereby, denied with costs against the petitioner.

The preliminary injunction issued at the commencement of this proceeding is hereby dissolved, and let the record be remanded to the court of origin for further proceedings. So ordered.

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

DISSENTING

MALCOLM, J., WITH WHOM CONCURS VILLA-REAL, J.:

The pole star for the court in the decision of this case, as in all other cases, is the law. And the law is here plain and simply requires application to the admitted facts.

Act No. 3387, the Election Law, in its amended section 481, provides: "If the candidate whose election is contested or any other registered candidate voted for desires to contest the votes obtained by the contestant in other precincts, they shall file a counter contest within the time limit designated in this paragraph * * *." That is as prescribed in this paragraph, "The candidate whose election is contested and all other registered candidates voted for may reply thereto within fifteen days after the summons, or if they have appeared without being summoned, within fifteen days from the date of their appearance, but in all cases before the beginning of the hearing of the case in court." The law also contains this general provision: "If no reply is made to the contest or counter contest within the time limits designated therefor, a general denial shall be deemed to have been entered."

Giving expression to the meaning of the law, it may well be doubted that when the Legislature made use of the word "contestation" in Spanish, appearing in English as "reply," but undoubtedly signifying "answer," it was intended to permit of dilatory pleas in the nature of demurrers. However this may be, when the contestee makes "reply" whether by demurrer or answer, he is doing so in a defensive manner. But when the contestee files a counter-protest, he is taking the offensive and must take action in strict accordance with the law. If a protestee demurs to the protest but also desires to maintain his position as a counter-protestant, he is in duty bound to file his counter-protest within the statutory period of fifteen days. The provisions of the Election Law pertaining to

election contests are mandatory. (*Ocampo vs. Mina and Arejola* [1920], 41 Phil., 880.) The Courts of First Instance in election contests are courts of special jurisdiction, and the statutory requirements must be strictly complied with. (*Palisoc vs. Tamondong and Medina Cue* [1922], 43 Phil., 789.)

The policy of the Legislature is to expedite the disposition of election contests. As expressed in the law itself, the courts "shall hear election contest in preference to all other cases and shall try and decide them as soon as possible, * * *." Enforce the law as it reads, and this praiseworthy idea will be carried out. Amend the law by judicial construction, and delay will ensue as can be demonstrated by turning to the facts in the instant case. Here the protest was filed on July 12, 1928. On July 24, 1928, the protestee was served with summons. On the fourteenth day after the receipt of the summons, that is on August 7, 1928, the protestee filed a demurrer to the protest. Within the statutory fifteen-day period, the protestee did not present a counter-protest. On August 22, 1928, the demurrer was overruled and the protestee was given ten days within which to file his answer. On August 29, 1928, the protestee filed his answer and counter-protest. The contestant now has the right to reply to the counter-protest within ten days after notification, and, of course, under the majority holding this reply could take the form of a demurrer. This demurrer being overruled, eventually the contestant will then have to be allowed another period within which to make answer. Instead, therefore, of the election case being ready for trial in all of its phases shortly after the election, the holding of the trial will be retarded, and this will be to the benefit of the protestee. In some cases known to the court, the candidate proclaimed elected has been able to keep in office until it was nearly time to hold the ensuing election.

It is our view that the law permits of only one interpretation, and this is that a protestee in an election contest must file his counter-protest within the limit designated in the Election Law, which is the peremptory period of fifteen days after summons. Promptness in commencing and prosecuting election contests is of paramount importance.

The writ prayed for should be granted and the temporary injunction made permanent.

Petition denied and case remanded with instructions.

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