

**GODOFREDO MENDOZA, CONTESTANT AND APPELLANT, VS.
TEODORO MENDIOLA ET AL., CONTESTEES. TEODORO MENDIOLA,
APPELLEE.***G.R. No. 30532. August 05, 1929*

Ponente: ROMUALDEZ, J.

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The contestee and appellee filed a motion for reconsideration of the judgment rendered in this case. It was referred to the court in banc, and upon consideration thereof, was found meritorious and was therefore granted on July 20, 1929, with respect to the points of the motion, ordering both parties to file memoranda, the appellee within five days from notice, and the appellant within five days from receipt of a copy of the appellee's memorandum.

Counsel for the petitioner-appellee relied on his brief filed on April 5, 1929, attached to the record, furnishing the adverse party with a copy thereof. Counsel for the appellant filed a motion and a memorandum raising two questions, to wit; One referring to jurisdiction, alleging that this court can no longer reconsider its judgment, and the other touching the ballots mentioned by the appellee in his motion for reconsideration.

In regard to the jurisdiction, appellant contends that as the petitioner-appellee did not appeal from the denial of his motion for reconsideration by the Vacation Justice until April 15, 1929, that is, after more than fifteen days had elapsed from the promulgation of the original decision, on March 25, 1929, said judgment has become final and this court can neither reconsider, annul, nor modify it; and in support, of this contention appellant cites the case of *Arnedo vs. Llorente and Liongson* (18 Phil., 257). The doctrine enunciated in said case is not applicable to the case at bar, because when the appellee filed his motion for reconsideration on April 5, 1929, that is, on the eleventh day after the promulgation of the decision, the period prescribed by law for the judgment to become final was suspended; and the suspension was not terminated by the Vacation Justice's denial of the motion, for such denial was not final in its effects, inasmuch as in designating the Vacation Justice this year, the court voted that the latter's resolutions should be subject to the final action of this court, and such final action upon the motion for reconsideration is only now taken in this decision. The period, therefore, is still suspended and, consequently, the original judgment rendered by this court in the case at bar has not yet become final.

We shall consider the question involving the ballots contested by the appellee, in passing upon the motion for reconsideration.

This motion sets forth three grounds upon which it is based: First, that the errors assigned by the appellee were not considered in the original decision; second, certain ballots which should not have been adjudicated to the appellant; and third, one ballot, Exhibit A-15, which should not have been rejected.

As to the first ground, we find that notwithstanding the contested's failure to appeal from the judgment of the court below, his assignments of error should have been taken into consideration, for, according to section 480 of the Election Law, the procedure on appeal in election contests is the same as in criminal cases, that is, they are

tried de novo on appeal to this court (U. S. vs. Noriega and Tobias, 31 Phil., 310). It was so held in the case of Lucero vs. De Guzman (45 Phil., 852).

Passing to the second ground of the motion for reconsideration in question, it is noted that with regard to ballots Exhibits A-62, A-67, A-69, A-71, A-72, A-73 and A-75, the appellee withdrew his objection thereto during the hearing (pp. 59 and 71, t. s. n.) ; and he cannot therefore now maintain said objection.

In regard to ballots Exhibits A-13, A-16, A-51, A-52, A-54, A-92, A-101, A-124, and A-160, we believe that these nine ballots were rightly adjudicated to the appellant, Godofredo Mendoza. In our opinion, the initial of the name appearing in ballots Exhibits A-13, A-51, A-52, A-54, A-92 and A-101 is a capital "G" more or less plainly and correctly written. The word "Medosa" with the initial "G" before it, in the ballot marked as Exhibit A-16, must be taken for the appellant's surname, "Mendoza." The ballots marked Exhibits A-124 and A-160, bearing the words "Godoprido M." and "Gudo Fridom" are also to be counted in favor of the appellant. There can be no doubt that the last "M" (correctly capitalized in the first ballot, but, doubtless, due to lack of training, written in small letter in the second ballot) stands for the surname "Mendoza" by reason of the clearness in which the name "Godofredo" is written.

But the ballots marked Exhibit A-125, Exhibit I and Exhibit K, cannot, in our opinion, be adjudicated to the appellant. Although by the rule of idem sonans, the name "Midosa" in Exhibit A-125 (not "Midora" because in this same ballot the s's in "Sotto" repeated and in "Espinosa" have the same shape as the "s" in "Midosa"), and "Mendsa" in Exhibit I may, by the rule of idem sonans, be taken, to mean "Mendoza" as much as in Exhibit K, where this surname is plainly written; but the initials D, V and D placed before these surnames in the three aforementioned ballots, respectively, prevent them from being counted in favor of the appellant. The record contains nothing to prove that the initials D, V and D stand for the name "Godofredo." Nor is it so stated in Godofredo Mendoza's certificate of candidacy. Therefore, the ballots marked as Exhibit A-125, Exhibit I and Exhibit K, cannot and must not be adjudicated to the appellant.

As to Exhibit A-15, which is the subject matter of the third ground of the motion, and which the movant claims should have been adjudicated to him, we here reproduce and incorporate the following remarks from our original decision:

"The second ballot is Exhibit A-15, wherein, for the office of municipal president, the following name appears: D. Mindiosa. Although the letter D might, according to the contestee, be the first letter of Doring, which is the contestee's nickname, as it appears from his certificate of candidacy Exhibit X-2, yet certainly the surname Mindiosa sounds more like Mendoza than like Mendiola, because the sibilant s is confused with the z among the Filipinos in the pronunciation, while it is never confused with the I. Therefore, while the letter D might be the abbreviation of the contestee's nickname Doring, yet, the surname Mindiosa sounds more like the surname Mendoza of the contestant, than Mendiola, of the contestee. The presence of the i in the second syllable is not as noticeable in pronunciation as the presence of the s in the last; wherefore, under the idem sonans rule, Mendiosa is nearer to Mendoza. These considerations prevent us from adjudicating the ballot to either party."

It must be observed that the surname in this ballot is not "Mindiola" but "Mindiosa." As we see it, the letter which the contestee maintains is an "l" is not an "l" but an "s." We are confirmed in this belief by the fact that the same ballot contains another word with an "s" written in the same hand (judging by the strokes), namely "Mesa," and the "s" is very much like the "s" in "Mindiosa." The same ballot contains other P's, in the names "Pilemon," "Delgado" and "Alcantara," and they are all shaped very differently from the "s" in "Mindiosa." We find no merit in the third ground of the motion for reconsideration.

Notwithstanding what we have just stated, and although many of the ballots assailed by the appellee were duly and lawfully adjudicated to the appellant, the fact that the three ballots marked as Exhibit A-125, Exhibit I and

Exhibit K cannot be counted in the appellant's favor, changes the result of our original decision; for, taking these three votes in ballots Exhibits A-125,1 and K, from the 730 votes adjudicated to the appellant, the contestant obtains 727 votes as against the 728 votes Anally adjudicated to the appellee, and therefore, the latter obtains a plurality of one vote over the appellant.

For the foregoing, the decision promulgated by this court on March 25,1929, is hereby modified, and it is held that the appellee obtained a plurality of one vote over the appellant, and the judgment of the court below is thereby affirmed with costs against the appellant. So ordered.

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

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