

IRINEO D. AVIADO, PETITIONER AND APPELLEE, VS. TEODORO TALENS ET AL., RESPONDENTS. TEODORO TALENS, APPELLANT.*G.R. No. 30574. January 23, 1929*

Ponente: STREET, J.

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This election protest was instituted in the Court of First Instance of Nueva Ecija by Irineo D. Aviado against Teodoro Talens and others, for the purpose of establishing the contestant's right to the office of municipal president of San Isidro, in the Province of Nueva Ecija, as a result of the election held on June 5, 1928' Upon hearing the cause the trial judge declared the contestant to have been elected to the office in question, and ordered that the municipal council, as the board of canvassers for the municipality, should be notified of the decision for its proper effects, with costs against the contestee. From this judgment the contestee appealed.

It appears that when the returns from the election of June 5, 1928, were canvassed by the municipal council of San Isidro, Nueva Ecija, as board of canvassers, the contestee, Teodoro Talens, was found to have received 282 votes, and the contestant, Irineo D. Aviado, 278 votes, with the other candidates for the same office,—named as codefendants herein,—receiving smaller numbers. Accordingly, on June 17, 1928, the municipal board of canvassers proclaimed Teodoro Talens as the candidate elected to the office of municipal president. The judgment which is the subject of appeal reverses this conclusion, and places the contestant Aviado in the lead by 7 votes. In this instance the errors assigned bring before us for revision the conclusions of the trial judge with respect to about 32 different ballots. Upon examining these ballots in relation with the assignments of error, we have no hesitancy in arriving at the conclusion that the trial judge was correct in all his conclusions.

Among the irregularities supposed to invalidate various of these ballots we note the following: In ballot "A-65," of the first precinct, two persons were voted as candidates for the office of member of the provincial board, while only one could be elected; in ballots A-66 and A-67, of the same precinct, as well as in ballots B-71, of precinct No. 2; C-III, of precinct No. 3; D-55 and D-56, of precinct No. 4; as well as E-79 and E-81, of precinct No. 5, one or more persons, who were not candidates for any office at all, were voted for for various offices other than that of municipal president. All of these ballots were allowed by the trial judge as good votes for the contestant.

In connection with these ballots we note that, under the last paragraph of section 452 of the Election Law, as amended by Act No. 3210 of the Philippine Legislature, a ballot was absolutely invalidated by votation for any person for any office when the person voted for was not a candidate; and the language of the statute was so explicit that this court did not hesitate to give effect to it in this sense (*Mandac vs. Samonte*, 49 Phil., 284, 302). But the Legislature speedily changed this section by eliminating that unfortunate provision (Act No. 3387, amending section 452). The omission of this provision from the law clearly indicated, we think, an intention on the part of the Legislature that a vote for a particular candidate should not be invalidated by the fact that other persons are voted for in the same ballot for different offices when they are not candidates.

But the attack now made on these ballots is not based upon the abrogated provision but on the contention that a ballot in which a person is voted for who is not a candidate for office ought to be considered as a marked ballot, and rejected for that reason. With this we are unable to agree. In our opinion the circumstance that a person who is voted for for a particular office is not a candidate, is not alone sufficient to fix upon the ballot the stigma of being a marked ballot.

Under the same principle, of course, must be considered good, the ballot in which more persons are voted for than are to be elected to a particular office, and the same rule must apply to the single ballot B-72 in which a single name was improperly twice written in the space for member of the provincial board.

In the ballot C-112, the voter, in writing the name of his candidate for senator, unnecessarily prefixed to it the word "Senator;" and a similar error appears in other ballots. The trial court refused to treat these as marked ballots and we are of the opinion that no error was thereby committed. The irregularity referred to was due, we believe, merely to lack of skill on the part of the voter and no dishonest intention should be ascribed to the ballot from the mode in which it is filled out.

Exception is taken to the admission of ballot C-116 as a valid ballot in favor of the contestant. This ballot is regular in form, but was found in the box of spoiled ballots. The reason why his Honor allowed it as a good vote for the contestant is found in the fact that the election returns here showed that the valid ballots cast in the election were 254 and the spoiled ballots were 33, whereas in the box of used ballots only 253 ballots were found and in the box for spoiled ballots 34, including the good one now in question. In view of the additional circumstance mentioned in the opinion of the trial court in the discussion of the merits of this ballot, we are of the opinion that error on his part in accepting it as a valid-ballot for the contestant has not been shown.

Error is assigned to the action of the court in admitting several ballots which were alleged to be illegible. We have examined them and are of the opinion that the intention of the voter to vote for the contestant is clearly indicated and that his name, though in artificially written on said ballots, is intelligible. In one ballot we note that the word intended for Irineo is written after the surname Aviado. This is not fatal to the ballot.

A number of ballots is claimed by the protestee which were rejected by the trial court on the ground that the name of the contestee was written in the spaces intended for the name of candidates for other offices, as where the contestee's name appeared in the space for member of the provincial board or municipal vice-president. It is a tenable supposition, of course, that the voter intended in these cases to vote for the contestee for the office of municipal president, for which he was in fact a candidate; but it is impossible to count the vote in this sense when the name is clearly written in the space reserved for another office.

The other irregularities mentioned in the appellant's brief are not in our opinion of sufficient weight to merit discussion; and our conclusion is that the errors assigned to the decision of the trial court are not well taken.

The judgment appealed from will therefore be affirmed, and it is so ordered, with costs against the appellant.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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