

MANUEL SALAK, CONTESTANT AND APPELLANT, VS. LUIS ESPINOSA, CONTESTEE AND APPELLEE.*G.R. No. 30610. March 30, 1929*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Tarlac, dismissing an election contest instituted by Manuel Salak against Luis Espinosa, for the purpose of obtaining a declaration to the effect that the contestant is entitled to the office of municipal president of Tarlac.

As a result of the election held on June 5, 1928, the contestee, Luis Espinosa, was declared elected over his opponent, Manuel Salak, by 1,191 votes against 1,175, that is, with a majority of 16 in favor of Espinosa. Upon hearing the cause the trial court came to the conclusion that Espinosa had received only 1,187 votes while Salak had received 1,175, or a majority of 12 votes in favor of Espinosa. His Honor accordingly confirmed the election of Espinosa and dismissed the contest.

All of the assignments of error involve the appreciation of particular ballots and, after careful examination of said ballots, in relation with the assignments of error of the appellant, we adhere to the appreciation of the ballots made by the court a quo, except as hereinafter stated:

Error IV, directed towards ballot Exhibit L-E-3, is well taken. In this ballot the name of Luis Espinosa is not written in the space designed for municipal president. Instead, he is voted for as one of the municipal councilors. The counting of this vote in favor of the appellee was due to evident oversight.

Error VI, directed to ballot "rollo B," is well taken. The ballot should have been counted for the appellant. His name is clearly written in the space for municipal president, and the vote for him for that office is not invalidated by the fact that the voter inadvertently first voted for him also as vice-president. But, doubtless perceiving the mistake, the voter cancelled said name for vice-president and wrote another under it.

Error VII, directed to ballot "rollo E,-" is well taken. It should have been counted as a good vote for the appellant. The ink spots appearing in the right-hand corner do not make this a marked ballot. The presence of these spots may have been due to mere accident or the malicious act of some other person than the voter.

Error VIII, directed to ballot Exhibit M-S-8, is well taken. This ballot is correct in form and was not rendered invalid by the fact that the voter saw fit to vote for the three election inspectors as councilors, though they were not candidates.

Error XII, directed to ballot Exhibit E-6, is well taken. The name of the appellee is here written in the space where members of the provincial board should have been voted for, and the fact that "presidente" appears written after the name of the appellee in that space does not make it a good ballot for him as municipal president.

Error XVII, directed to ballot "S-22," is well taken, and the ballot should be counted as a good vote for the appellant. It is not rendered invalid by the fact that only one person is voted for as councilor and the name

written at the bottom of the space for councilors.

It appears that the name commonly used by the appellee is Luis Espinosa, but several votes were counted for him in which his name was written "Jose Espinosa." In this connection we note that in his certificate of candidacy, Espinosa made it appear that he was also known by the name "Jose Luis Espinosa" among others, and there is some proof tending to show that the name "Jose" is sometimes prefixed by his acquaintances to the surname Espinosa. We maintain the criterion of the court of origin in holding that these votes were intended for the appellee, although some ambiguity is introduced into the situation by the fact that one Jose Espinosa was a candidate in the same election, and in the same municipality, for the office of representative. We see no good reason why we should differ here from the conclusion reached by the inspectors and the trial court.

The result of our revision of the ballots is that the appellant gains 3 votes and the appellee loses 2, with the consequence that the appellee still remains ahead by 1,185 votes to 1,178, or with a plurality of 7 votes.

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

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

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