

POLICARPO RADAZA, PROTESTANT AND APPELLANT, VS. FRANCISCO D. ENAJE, PROTESTEE AND APPELLEE.

G.R. No. 30837. March 27, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

In these proceedings the protestee filed the following motion for dismissal of the protestant's petition:

"Comes now the protestee in the above entitled case through his undersigned attorneys, and respectfully prays the court to finally dismiss the case, on the ground:

"That the court has no jurisdiction over the subject matter of the controversy; or

"That there is no subject matter involved, which may be submitted to the court's jurisdiction."

This motion is based upon the following facts, to wit:

"1. It appears from the motion of protest itself: (a) That luck favored the protestant in the lots drawn on August 16, 1928, in the presence of the municipal board of canvassers, between said protestant and the protestee, who tied as candidates for the office of municipal president of Naval in the elections held on June 5, 1928; and (6) that, for this reason, the protestant was proclaimed municipal president-elect of Naval, Province of Leyte, by the municipal board of canvassers; and

"2. That immediately after said proclamation of the municipal board of canvassers of Naval that the petitioner was the 'municipal president-elect of Naval, the latter, on October 16, 1928, which is the date fixed by law for the induction into office of the new officers elected on June 5, 1928, qualified and took possession of the office of municipal president of the municipality of Naval, of this province, having first taken the required oath.

"There is therefore no subject matter herein involved, which calls for the exercise of court jurisdiction.

"In support of this motion, the protestee offers to present evidence to prove the fact alleged in paragraph 2, that the protestant took possession of the office of municipal president of Naval on the 16th instant"

When this motion came up for hearing, both parties adduced evidence, and, considering the petition well-grounded, the court below dismissed the protest.

The protestant attacks this judgment, and assigns the following errors alleged to have been committed by the court below:

"1. In finding that the protestant held and now holds the office of municipal president, simply because he attempted to take possession thereof by taking the required oath;

"2. In not finding that only the protestee really took possession of said office, and still holds it.

"3. In holding that there is no justiciable subject matter in the record which confers jurisdiction on the court.

"4. In declaring the protestant barred from filing a protest, and without any legal ground to protest."

In the third paragraph of his protest, the protestant alleges the following:

"3. That according to the canvass of the board of election inspectors, both candidates in the aforementioned last elections held in said municipality of Naval, the protestant and the protestee, each obtained 358 votes, in each and every one of the election precincts of said municipality; whereupon the municipal council of NavaJ, constituting the municipal board of canvassers, in its session of June 6, 1928, declared the election for office of municipal president of said municipality tied; and in accordance with the provisions of the Election Law in cases of a tie for the office of municipal president, lots were drawn before the council constituted as the municipal board of canvassers, in its session of June 14, 1925; but the Court of First Instance of Leyte, to which the herein protestee applied, issued a writ of mandamus to the aforesaid municipal council of Naval, ordering it, in its decision of July 8, 1928, to have the two candidates, the protestant and the protestee, agpin draw lots; and in compliance with this order of the court, lots were again drawn on August 16, 1928, luck having been with the herein protestant, who was forthwith proclaimed president-elect of Naval by the aforementioned council. But the Court of First Instance of Leyte to which the herein protestee again appealed, issued a writ of mandamus to the municipal council of Naval, again ordering it in its decision of October 3, 1928, to proclaim the herein protestee, Francisco D. Enaje, president-elect of Naval, as in fact the said municipal council of Naval, constituted as the municipal board of canvassers, proclaimed Francisco D. Enaje elected in its session of October 8, 1928, in compliance with the aforesaid order of the court."

We see nothing in this paragraph questioning the legality of the tie between the protestant and the protestee. It is true that in the following paragraph, it is alleged:

"4. That the municipal council of Naval would not have declared the election for the office of municipal president tied, by reason and in virtue of the results of the general elections held on June 5, 1928, nor proclaimed the herein protestee, Francisco D. Enaje, as president-elect, as alleged above, had not the boards of election inspectors of the second and fourth election precincts of the municipality of Naval, acted illegally, and for this reason, the protestant contests the election of the protestee upon the following grounds, to wit:" and it goes on to enumerate cases in which the aforementioned boards of election inspectors, unduly adjudicated some ballots and rejected others.

It is also true that while an apparent inconsistency exists between the allegations of the third paragraph, copied above, and those of the fourth, which we have just transcribed, yet it might be contended that paragraph 3 is a mere statement of facts, which neither attacks nor admits the legality of the election tie between the protestant and the protestee.

But it is no less true that, according to the evidence presented by the parties at the hearing of the motion for dismissal, the protestant, on the ground that he had been proclaimed the winner in the drawing of lots held on August 16, 1928, that is, admitting the legality of the tie that gave rise to said drawing of lots, took possession of the office in question, by taking the required oath. Furthermore, according to the lower court, whose findings of fact are, in our opinion, based upon the result of the proceedings, the protestant, after taking the oath of office and taking possession thereof, did the following:

"The same day that the protestant took possession of the office of municipal president-elect of Naval, he sent a telegram to provincial governor-elect, the Hon. Vicente de la Cruz, stating that he had assumed the presidency of Naval, and extending his hearty congratulations to said governor on his induction into office, signing said telegram as municipal president of Naval (Exhibit B). On the afternoon of that day, October 16, 1928, the Hon. Vicente de la Cruz sent Mr. Policarpo Radaza a telegram ordering him to immediately turn over to Mr. Francisco D. Enaje the office of municipal president. Mr. Radaza ignored said order of the governor, locked up his desk and office, and took all the keys of said office with him, being still in his possession, and left Naval the same day for

Tacloban, where he still remains." (Appealed order.)

These acts of the protestant constitute a full acknowledgment of the legality and efficacy of the aforementioned tie and, consequently, of the canvass made in all the precincts of that municipality, including the second and fourth, which canvass resulted in a tie.

The protestant alleging and contending that he was proclaimed the winner in the drawing of lots by reason of the tie, and thereafter in taking possession of the office, and attempting to prevent the protestee from holding it, may and should be considered to have deliberately induced his opponent to believe that the drawing was legal, and to act upon said belief in the legality and validity of said tie, and, therefore, he cannot be permitted to deny his own acts. Between him and the protestee, there exists, with respect to the election herein disputed, the presumption *juris et de jure*, which cannot be rebutted in any way, that the said tie of votes between them in the election for municipal president of Naval, was valid and lawful, and consequently that the canvass of all the precincts of that municipality, which resulted in said tie, is also valid and lawful. The protestant is estopped, and the law forbids him from attacking now the validity and legal effect of the canvass in the precincts mentioned in his motion of protest. (Sec.333, No. 1, Code of Civil Procedure.)

In view of the foregoing, we hold that even supposing that the allegations in the motion of protest conferred jurisdiction upon the court below to try this case, it is a fact that there has arisen against the protestant the indisputable and conclusive presumption that the election returns which he now tries to attack were made in full accord with the laws and regulations.

The dismissal of this protest is affirmed with costs against the appellant. So ordered.

Johmon, Street, Malcoim, Ostrand, Johns, and Villa-Real, JJ., concur.

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