

DOMINGO T. GUANIO ET AL., PETITIONERS, VS. LEANDRO FERNANDEZ ET AL., RESPONDENTS.

G. R. No. 35146. March 12, 1931

Ponente: VILLAMOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-35146/>

VILLAMOR, J.:

These proceedings were originally instituted in this court to peremptorily compel the faculty committee on regent election composed of the respondents (1) to prepare immediately the official ballots to be used in the election of the alumni regent who is to succeed Regent Regino R. Ylanan, wherein it should appear that March 20, 1931 is the closing date of the polls in the election, and from which the name of candidate Carlos P. Romulo should be eliminated; (2) that a sufficient number of official ballots thus prepared be sent to all the alumni of the university; and (3) that the votes deposited or which may be deposited by the alumni for candidate Carlos P. Romulo be not counted nor considered by the committee in favor of said candidate.

Both parties in their oral argument on the day of the hearing, agree that these proceedings involve no question of fact to be decided, and that the point submitted to the decision of the court is purely a matter of law.

The record shows:

- (a) That on January 5, 1931, the president of the University of the Philippines published a proclamation of the election to be held to fill the office left vacant by Regent Ylanan as alumni regent, fixing the period for the nomination of candidates to be admitted by the registrar of the university, and assigning the 27th of March, 1931, as the day for the closing of the polls in the election;
- (b) That on January 13, 1931, the president appointed a faculty committee on regent election;
- (c) That on January 26th the faculty committee on regent election met and fixed March 20th, instead of March 27, 1931, as the date for the closing of the polls in the election;
- (d) That on January 27, 1931, the president was notified of this change;
- (e) That on January 28th the president sent an endorsement to the committee stating that he did not see any necessity of changing the date for the closing of the polls in the election;
- (f) That on January 30th the committee notified the president that owing to technical difficulties they had not been able to resolve upon a reconsideration of the change in the date for the closing of the polls in the election;
- (g) That on January 30, 1931, the president replied to the committee that the power of fixing the date for the closing of the polls in the election, as well as for fixing the period of nomination, had been consistently exercised by the president in making the proclamation for the election of the alumni regent, ever since the first election; that the president is the representative of the university in its relations with the public and that such a notification to the alumni made in the name of the whole university must be deemed one of the duties imposed upon the president of the institution;
- (h) That, meanwhile, the registrar of the university was instructed by the president to send the necessary ballots to the alumni in accordance with the proclamation of January 5, 1931;
- (i) That in view of this the faculty committee on regent election resolved in its session of January 31, 1931, to follow the order of the president fixing March 27, 1931, as the day for the closing of polls in the election, although some members reiterated their belief that the date should be fixed by the committee.

The respondents' answer alleges, uncontradicted by the petitioners', that the registrar of the university, with the knowledge and consent of the committee, had the official ballots printed stating, among other things, that the date of the closing of the polls in the election is March 27, 1931, which were distributed among the alumni of the university throughout the Islands.

The university charter, as amended by Acts Nos. 2759 and 3197 approved on February 23, 1918, and December 2, 1924, respectively, provides in section 4 [No. 3197] that the board of regents shall consist, among others, of two alumni of the university elected by the alumni of the university under such rules and regulations as may be promulgated by the board of regents. The same section also provides:

"All members of the board of regents shall be citizens of the Philippine Islands or of the United States, and shall be residents of the Philippine Islands. No person in the employ of the university in any capacity whatsoever, whether as dean, professor, instructor, lecturer, or otherwise, shall be eligible to membership on the board, whether by appointment by the Governor-General or by election of the alumni, with the exception of the regent elected by the university council."

In its session of May 3, 1918, the board of regents approved the regulations for the election of the alumni regent, as follows:

"SECTION 1. Qualification of voters.—Every person, regardless of sex and age, holding any degree, or the title of Associate in Arts, or the High School Teachers Certificate granted by the University of the Philippines shall be entitled to vote.

"SEC. 2. Manner of election.—The president of the university shall fix a period within which nominations may be received at the office of the registrar of the university.

"Every nomination shall be signed by at least twenty- five alumni who are qualified to vote. No alumnus shall sign more than one nomination.

"Election shall be by ballot, signed by the alumnus voting and sent to the office of the registrar. The president shall appoint a faculty committee on elections, of which the registrar of the university shall be a member, and whose duty it shall be to prepare the official ballot, to see to it that the election is legally carried out, to count the votes cast, and to report the result of the election to the president of the university. Upon receipt of the committee's report, the president shall present the same to the board of regents.

"SEC. 3. What constitutes a choice.—The candidate receiving the highest number of votes shall be declared elected.

"In case of tie, the tied candidates or their representatives shall draw lots in the presence of the faculty committee on elections, and the successful candidate shall be declared elected.

"SEC. 4. Election contests.—In case of election contests, the same shall be decided by the president of the university, after both parties have been given an opportunity to be heard."

In view of all this, the question arises, who is to exercise the power of fixing the date for the closing of the polls in the election?

As may be seen by section 2 of the regulations, as to the manner of the election, there is nothing expressly said in favor either of the president of the university or of the faculty committee on regent elections; but it positively appears that such power has always been exercised by the president ever since the first election of the alumni regent, which took place on August 31, 1918. This, statement is borne out at least by the four proclamations here exhibited as evidence corresponding to the years 1927) 1928, 1930, and 1931, where it is seen that the president, after fixing the period of nomination, also specified the date for the closing of the polls in the election. The

president of the university in his communication dated January 30, 1931 to the faculty committee on regent elections, assures the latter that the president has always exercised this power since the election of the first alumni regent, and we are disposed to believe this statement, not only because it comes from a university president, but also because we believe that the fixing of the date for the closing of the polls in the election falls within the executive powers of the president, who, because of his knowledge of the conditions which prevail in the university and among the alumni, is better able to exercise discretion in fixing such a date, than any other officer or employee of the university.

However defective the manner of election outlined in the regulations may seem, the university authorities have evidently been applying it since 1918 without serious difficulties. And it is a rule repeatedly followed by this court that the construction placed upon a law at the time by the officials in charge of enforcing it should be respected. (In re Allen, 2 Phil., 630; Government of the P. I. vs. Municipality of Binalonan, 32 Phil., 634; Molina vs. Rafferty, 37 Phil., 545; Madrigal and Paterno vs. Rafferty and Concepcion, 38 Phil., 414.)

Furthermore, it should be borne in mind that the board of regents, having knowledge of the president's proclamations for the election of the alumni regent fixing the date for the closing of the polls in said elections, did not adopt any resolution to contravene the president's action in this regard; and it may legally be presumed that such silence amounts to tacit approval of the act performed by the president.

As stated heretofore, section 2 of the regulations, governing elections does not confer on the faculty committee on regent elections, appointed by the president, the power to fix the date for the closing of the polls in the election, for we are clearly of the opinion that from the duty to prepare the official ballot, to see to it that the election is legally carried out, to count the votes cast, and to report the result of the election to the president of the university, it by no means follows that said committee is also empowered to fix the date for the closing of the polls in the election. Those duties are simply clerical and involve no exercise of executive or administrative power. Now then, if it is not the duty of the committee to fix the date in question, how can it be compelled by mandamus to change the date fixed by the president?

"In accordance with elementary principles mandamus will not lie to compel a municipal board or officer to do any act which he is without authority or power to perform. It is also essential to the right to have the writ issued that the respondent officer or board should be under a plain legal duty to perform the act. The writ will not issue where the duty or power is doubtful." (38 C. J., 691, 692.)

Supposing the power under discussion is conferred upon the president of the university or on the faculty committee on elections, we are of the opinion that the fixing of the date for the closing of the polls in the election is an act which falls within his sound discretion, and therefore cannot be the object of mandamus proceedings. (Lamb vs. Phipps, 22 Phil, 456; Felismino vs. Gloria, 47 Phil., 967.)

On the other hand, it appears from the answer of the respondents, uncontradicted by the petitioners, that the majority of the faculty committee on regent elections finally agreed to follow the date fixed in the president's proclamation of January 5, 1931, and with the knowledge and consent of said committee the university registrar already had the official ballots printed and distributed among the alumni of the university scattered throughout the Islands. Mandamus will not lie to compel a person or board to undo a previous act.

"Mandamus is ordinarily a remedy for official inaction, and in a large number of decisions it is either held or said that mandamus is not the proper remedy to compel the undoing of acts already done or the correction of wrongs already perpetrated, and that this is so, even though the action taken was clearly illegal." (38 C. 3., 592.)

With regard to the question of whether the faculty committee on regent elections should or should not erase from

the official ballots the name of candidate Carlos P. Romulo, one of the respondents, suffice it to say that the disqualification established in section 4 of the university charter is not applicable to said candidate, for, according to the answer filed by the respondent committee, candidate Carlos P. Romulo has been duly nominated and his nomination accepted in good faith.

According to the evidence here submitted, said respondent Romulo filed his resignation as professorial lecturer effective immediately on November 1, 1930; the dean of the faculty acknowledged receipt of the communication with regret, stating that he would propose the appointment of Lieutenant Turner to fill the vacancy left by Romulo; on November 6th, the head of the English Department of the College of Liberal Arts recommended the appointment of Lieutenant E. G. Turner as temporary instructor, for one year with a salary of W50 a month, effective from November 6th; the dean of said college endorsed it to the president of the university, recommending the approval of the appointment of Lieutenant Turner as instructor to fill the position vacated by Professor Romulo; the board of regents, in its session of November 13, 1930, approved the appointment of Lieutenant Turner as temporary instructor, following the recommendation of the university president. We Relieve that at the time of his nomination, candidate Carlos P. Romulo showed his intention of resigning from the office he had been filling in the university, and that the appointment of his successor should be looked upon as a tacit acceptance of the resignation tendered by said professor and lecturer, Romulo. Without entering into a discussion of the legal doctrines touching eligibility in connection with the resignation of an office and the acceptance thereof, we are of opinion, and so hold, that the disqualification prescribed in section 4 of the university charter, mentioned above, is not applicable to candidate Carlos P. Romulo, and therefore the respondent faculty committee on regent elections cannot be compelled to erase from the official ballot the name of candidate Carlos P. Romulo, duly appointed in accordance with the terms of the regulations.

"The writ has been granted to compel the omission of the names of certain candidates in preparing ballots. But where election officers act in good faith and within the scope of their authority in placing a candidate's name on the ballot, mandamus will not lie to compel them to rescind their action." (38 C. J., 724.)

With reference to the petitioners' prayer that the faculty committee on regent elections be enjoined from counting the ballots deposited or to be deposited in favor of candidate Romulo, this is really an application for a preliminary injunction* and this court has repeatedly held that it has no authority to grant such applications if presented in the form in which the one in question has been filed. (Garcia Gavieres vs. Robinson, 8 Phil., 332; Diokno vs. Reyes, 7 Phil., 385; Madarang vs. Santamaria, 37 Phil., 304.)

Before concluding this opinion, we should like to take up the respondents' contention that this court has no jurisdiction to take cognizance of the subject matter of the second cause of action, namely, the deletion from the official ballots of the name of candidate Carlos P. Romulo. Such a contention is untenable. Section 515 of the Code of Civil Procedure provides that the Supreme Court shall have concurrent jurisdiction with the Courts of First Instance in all cases where an inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office of trust or station, or unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully excluded by such inferior tribunal, corporation, board, or person.

It is true that the university charter, as amended, provides that the University of the Philippines shall have the powers set forth in section 13 of Act No. 1459, and that the government of said university and the exercise of its corporate powers are consequently conferred exclusively on the board of regents and on the president of the university in so far as the latter is authorized by said board. But in our opinion this does not deprive the Supreme Court of the jurisdiction conferred upon it by section 515 of the Code of Civil Procedure. If the respondent committee, of which the university registrar is a member, had unlawfully and negligently included in the official

ballots the name of candidate Carlos P. Romulo, knowing that he had not been duly nominated in accordance with the election regulations, and that he is really disqualified by section 4 of the university charter, then mandamus might lie, in default of another plain and adequate remedy, if proceedings had been instituted before the distribution of the ballots among the alumni of the university, to compel said committee to perform its inherent duty and strike out the name of said candidate. But the facts of the instant case are entirely different as has been stated elsewhere in this opinion.

The respondents also allege that this case should be dismissed for defect of the necessary parties for the determination of the faculty to fix the date of the closing of the polls of the election. It is true that the petitioners discuss the power exercised by the president of the university in fixing said date by his proclamation; but his inclusion in this case is not necessary to decide the question here raised, for it is here sought directly to compel the faculty committee on regent elections to change the date of March 27th, fixed by the president in his proclamation, to March 20th, which said committee, without any authority in the regulations on elections, deemed expedient to fix in its session of January 26, 1931. Furthermore, all that the president could allege, if he were included as respondent, appears in his endorsements which the parties themselves have reproduced in their pleadings, as integral parts of their contentions.

Finally, the respondents contend that the petitioners cannot invoke the extraordinary remedy of mandamus, for they have not exhausted the administrative recourse to the university board of regents, which is authorized by law to amend the regulations on elections. We agree with the respondents on this point, and if there were not other reasons, such as those set forth in the course of this opinion, their contention here Would be sufficient to deny the relief sought.

In view of the foregoing, the writ prayed for is denied and the case is dismissed with the costs against the petitioners. So ordered.

Avanceña, C. J., Street, Romualdez, and Villa-Real, JJ., concur.

CONCURRING

JOHNSON, J.:

The law provides for the election of alumni of the University of the Philippines to the position of members of the board of regents. The law provides a system for the election of the alumni. While the system for the election is somewhat defective in its details, yet nevertheless that power is by the law conferred upon the university authorities, and when they have acted in accordance with the law the courts have no jurisdiction to control their conclusions. The Supreme Court is without jurisdiction to entertain the present petition for mandamus. The right to control the election belongs exclusively to the university authorities, and the courts have no jurisdiction to interfere with the exercise of that authority by mandamus.

The record clearly demonstrates that Carlos P. Romulo is completely eligible to become a candidate for the position of a member of the board of regents of the University of the Philippines; and even though he is not, his eligibility cannot be questioned in this proceeding.

The petition for the writ of mandamus should be and is denied, with costs to the petitioners.

MALCOLM, J., concurs in the result with the observation that the questions presented are for the exclusive determination of the board of regents of the University of the Philippines, as provided by the university charter, and that the court should not meddle in the internal administration of the university.

DISSENTING

JOHNS, J., with whom concurs Ostrand, J.:

Following the custom of all old established universities, the law has wisely provided for the election of two regents of the University of the Philippines from out of and by the alumni of the university.

It has also wisely provided that no member of the alumni in the employ of the university is eligible to be elected by the alumni. There is a sharp conflict in the authorities as to whether or not a person, who is not eligible at the time of his nomination and who becomes eligible before his election, is entitled to hold the office. Those decisions apply to the election of the officers of the government, but here the purpose and intent of the law is to disqualify a member of the alumni, who is in the employ of the university, from holding the office of regent of the university as a member of the alumni.

In the instant case, it is admitted that Carlos P. Romulo was a member of the faculty of the university for most of the year of 1930, and that a very large number of the graduates for the year 1931 to be, were students in his classes, and in the very nature of things, there would be a personal acquaintance between him and his students, and that fact alone would give him an unfair, unjust, and undue advantage over the petitioner, who is not and never was a member of the faculty, and in our opinion would violate the spirit, purpose, and intent of the law. It is claimed that Romulo tendered his resignation about the 1st of November, 1930, but the record shows that it was never accepted by the board of regents, and that in truth and in fact he is now subject to be called to duty by them at any time. But even so, the fact that Romulo was a professor of the university for most of the year of 1930, ought to disqualify him from being elected by the alumni as a regent of the university, for the simple reason that the purpose and intent of the law is to give the alumni two members of the board of regents from and out of their own number, free and clear of the atmosphere in and around the university; otherwise, that atmosphere will destroy and defeat the purpose and intent of the law, and in actual practice will take away from the alumni the power to elect their own regents.

Upon that point and for such reasons, we dissent from the majority opinion.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.