

**FRANCISCO ANIS, GABRIEL ABRAHAM, AND CANUTO DE JOYA,
PETITIONERS, VS. FRANCISCO CONTRERAS, EVARISTO BRUAL,
MAXIMO GENEROSO, AND PEDRO MA. SISON, JUDGE OF FIRST
INSTANCE OF BATAN...**

G. R. No. 35796. August 08, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The petitioners filed an election contest against the respondents with the Court of First Instance of Batangas because of certain irregularities committed by the board of inspectors in recounting the votes.

The office in question is that of councillor for the municipality of Bauan, Province of Batangas.

The respondents impeached the motion of protest and the jurisdiction of the court, on the ground that said protest did not state the number of votes cast for each candidate who presented a certificate of candidacy, neither did it allege that the petitioners were voted for at the general election held in the municipality of Bauan on the 2d of June, 1931.

Having heard the cause, the judge dismissed the protest upon the grounds submitted by the contestees, respondents herein. The contestants instituted these proceedings to have the order of dismissal set aside and to compel the respondent judge to reinstate the cause and proceed to the trial of the protest, on the ground that said judge exceeded his jurisdiction in dismissing the protest, and the petitioners have no other plain and speedy remedy to enforce their rights.

The respondents in their answer denied the allegations of the petition as to the respondent judge's failure to perform a ministerial duty and the lack of another plain, speedy, and adequate remedy to enforce the petitioners' rights.

The election protest alleges as follows:

1. That among others, the petitioners and the respondents filed certificates of candidacy for the office of municipal councillor for the municipality of Bauan.
2. That according to a resolution of the municipal board of canvassers for the municipality of Bauan, at its session of June 6, 1931, based upon the election returns sent in by each and every one of the seventeen precincts in said municipality, the following obtained a majority and were elected to the eight posts or offices of municipal councillor:
Marcelo Caraan with 894 votes.
Francisco Manigbas with 719 votes.
Hilarion Marquez with 633 votes.
Francisco Aldovino with 624 votes.
Francisco Contreras with 603 votes.

Pedro Garcia with 585 votes.
Evaristo Brual with 573 votes. And
Maximo Generoso with 558 votes.

3. That the petitioners herein, according to the inspectors' statement of each and every one of the seventeen precincts aforesaid, obtained a total number of votes as follows:

Francisco Anis 634
Gabriel Abraham 511
Canuto de Joya 437

(There follow other allegations discussing the votes given to the respondents.)

The grounds alleged to support the dismissal of the election protest filed by the petitioners are: (a) That the protest does not set forth the number of votes cast for each candidate who has filed a certificate of candidacy; (b) that it does not allege that the petitioners were voted for in the general election held in the municipality of Bauan on June 2, 1931.

(a) The first ground is of no consequence, as the protest sets forth the number of votes cast for the eight municipal councillors-elect, among them the respondents, and also for the contestants, petitioners herein. What the law requires to be alleged in order that the court may acquire jurisdiction is that the contestant is a candidate voted for at such election and that he has duly filed his certificate of candidacy. (Sec. 479 of the Election Law, as recently amended by Act No. 3387.) These qualifications which must reside in the contestants, are averred in the protest, which alleges that the candidates for councillor in that municipality, among them the petitioners and the respondents, filed certificates of candidacy. The respondents' answer does not allege that the contestants' certificates of candidacy were not duly filed, and there is the legal presumption that they were so filed, because otherwise the certificates would not have been admitted by the municipal secretary and the names of the petitioners and the respondents would not have been included in the list of the candidates.

The word "duly" has acquired a fixed legal meaning, and when used before any word implying action, it means that the act was done properly, regularly, and according to law, or some rule of law. In pleading the term imports but a conclusion relating only to the formalities observed or non observed, and tenders no issue. While it does not vitiate a pleading, it is surplusage, and had better be omitted. (19 C. J., 833.)

(b) In their memoranda, the parties discuss the second ground at length, to wit: That the protest in question does not allege that the petitioners, contestants heretofore, were voted for in the general election held in the municipality of Bauan on June 2, 1931. The protest alleges that the three petitioners, Francisco Anis, Gabriel Abraham, and Canuto de Joya, obtained 534, 511, and 437 votes, respectively. No stretch of the imagination is needed to understand that when it is said that the contestants obtained a certain number of votes it means they were voted for; how could they have obtained any votes if they had not been voted for? May the board of inspectors or the municipal board of canvassers adjudicate votes to a person who did not obtain them in the election? May the board of inspectors adjudicate votes to a person who has not filed a certificate of candidacy? Section 464 of the law itself answers, No.

The pleadings must be liberally construed in order not to nullify the rights of the parties, and so construed, it is plain to the average intelligence that the allegation that the contestants obtained a given number of votes means nothing more or less than that they were voted for in the election in controversy. It cannot here be said that this is a matter of presumption: It is simply a matter of understanding the plain meaning of the words used in the protest. The motion of protest does not use the words of the law, i. e., "candidate votado," but employs a phrase of equivalent meaning, "el candidato ha obtenido votos," a Spanish expression both clearer and more in keeping with

the rules of correct speech.

In *De Castro vs. Salas and Santiago* (34 Phil., 818), it was held that:

"If the court has erroneously dismissed an action upon a preliminary objection and upon an erroneous construction of the law, then mandamus is the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits."

The same doctrine was laid down in *Galang vs. Miranda and De Leon* (35 Phil., 269), where it was held:

"When an election protest is dismissed upon an erroneous view of the law, mandamus will issue, for the purpose of compelling a reinstatement of the protest for the purpose of giving the protestant an opportunity to be heard upon the merits of his protest."

Once more the doctrine was upheld in *Galang vs. Miranda and De Leon* (36 Phil., 316):

"When a municipal election contest is dismissed on a pure technicality, which does not affect the merits or the jurisdiction of the court, mandamus will lie to compel a reinstatement of the case and to proceed to final determination."

Wherefore, the grounds alleged in support of the order of dismissal are overruled, and in accordance with the doctrine enunciated in the cases cited above, the respondent judge is hereby required to reinstate the protest filed by the petitioners and proceed to its determination upon the merits. Without special pronouncement of costs. So ordered.

Avanceña, C. J., Street, Malcolm, Romualdez, and Imperial, JJ., concur.

DISSENTING

VILLA-REAL, J., with whom concurs JOHNSON, J.,:

Section 479 of the Election Law, as amended by Act No. 3387, relevantly provides:

"SEC. 479. Contested election to office in general.—Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election and who has duly filed his certificate of candidacy. The contest shall be filed with the court within two weeks after the proclamation."

* * * * *

It should be noted that this provision vests a special and limited jurisdiction in Courts of First Instance to try election contests, and they may exercise this jurisdiction only "upon motion of any candidate voted for at such election and who has duly filed his certificate of candidacy." In other words, a Court of First Instance cannot take cognizance of an election contest unless the motion of protest be filed by a candidate voted for, who has duly filed his certificate of candidacy. In order that a Court of First Instance may know that the person presenting a motion of protest is a candidate voted for, who has duly filed his certificate of candidacy, this should be pleaded, either by using the words of the law, or by employing any other word or phrase showing the court that the contestant is a candidate who has filed his certificate of candidacy in accordance with the requisites of the law.

In *Tengco vs. Jocson* (43 Phil., 715), this court laid down the following doctrine:

- ELECTION CONTEST; COURTS OF FIRST INSTANCE ARE COURTS OF SPECIAL JURISDICTION IN ELECTION CONTEST CASES.—In courts of special and limited jurisdiction the record must show

jurisdictional facts. The Election Law makes the Court of First Instance a court of special jurisdiction, and provides a special procedure for hearing and determining a 'motion of protest' in election cases. The Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the 'motion of protest.' There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. When a court is given special statutory jurisdiction, under proceedings different from the ordinary proceedings, the special jurisdictional facts must appear, both with respect to the subject matter as well as with respect to the parties. Such court cannot, by any supposed analogy to ordinary proceedings, exercise any power beyond that which the legislature has given."

See also *Viola vs. Court of First Instance of Camarines Sur, and Adolfo* (47 Phil, 849).

Now then, are the words used in the motion of protest, viz., "that among others, the petitioners and the respondents filed certificates of candidacy for the office of municipal councillor for the municipality of Bauan,"—sufficient to confer upon the Court of First Instance of Batangas jurisdiction to take cognizance of said motion of protest?

The majority so hold, on the ground that "the respondents' answer does not allege that the contestants' certificates of candidacy were not duly filed, and there is the legal presumption that they were so filed, because otherwise the certificates would not have been admitted by the municipal secretary and the names of the petitioners and the respondents would not have been included in the list of the candidates."

According to the doctrine laid down in *Tengco vs. Jocson*, cited above, "the Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the motion of protest," and "there is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction" The word "duly" used in the law, which is equivalent to according to law or that the certificate of candidacy has been filed not less than ten days before the day of the election (sec. 405, par. 3, Act No. 3387), represents a jurisdictional fact, and must therefore be alleged in the motion of protest, because without it or the fact it represents, the Court of First Instance where said motion is filed has no means of knowing whether it has acquired jurisdiction or not.

Inasmuch as the motion of protest in question does not allege that the contestants duly filed their certificates of candidacy, and as this jurisdictional fact cannot be presumed, the respondents were under no obligation to deny it in their answer.

Neither does the motion of protest contain any allegation of fact from which it may be presumed that the certificates of candidacy of the petitioners were duly filed. The officer in charge of receiving the certificates of candidacy for municipal offices is the municipal secretary, according to the last paragraph of section 405 of the Election Law, as amended by Act No. 3387. The motion of protest does not allege that contestants' certificates of candidacy were received by the municipal secretary of Bauan, whence it might legally be presumed that they had been duly filed, in accordance with section 334 of the Code of Civil Procedure, which establishes the *juris tantum* presumption that "official duty has been regularly performed."

The fact that the names of the petitioners are included in the list of candidacy cannot give rise to the presumption that they filed their certificates of candidacy duly or in accordance with law, since the preparation of that list is not a duty imposed upon any municipal official, and there is no requirement of law that only the names of candidates who have duly filed their certificates of candidacy are to be included.

The only legal presumption which may be deduced from the allegations in the motion of protest is to the effect that the contestants filed their certificates of candidacy, for the last paragraph of section 464 of the Election Law provides that "votes for persons who have not filed certificates of candidacy for any office shall be counted in the

count of votes as scattering votes." But from this the other presumption cannot be deduced that said candidates duly filed their certificates of candidacy, for the reason that the duty of receiving the certificates is incumbent, as we have said, upon the municipal secretaries, and there is no allegation in the motion of protest that the municipal secretary of Bauan received said certificates, from which it might be presumed that he duly performed his duty.

The majority also hold that the adverb "duly" in the phrase "duly filed his certificate of candidacy" is superfluous and consequently may be omitted, citing, in support thereof, the following:

"DULY. The word has acquired a fixed legal meaning, and when used before any word implying action, it means that the act was done properly, regularly, and according to law, or some rule of law. * * *. In pleading, the term imports but a conclusion relating only to the formalities observed or non-observed, and tenders no issue. While it does not vitiate a pleading, it is surplusage, and had better be omitted." (19 C. J., 833.)

In *Miles vs. Mc Dermott* (31 Cal., 271), whence the doctrine in *Corpus Juris* was taken, the point was whether the word "duly" before the clause "made and passed a resolution" in a complaint, being a conclusion of law rather than an issuable fact, made the complaint defective, and the Supreme Court of California declared that such word was surplusage, since the fact in controversy is whether or not the resolution was passed.

In the case before us the question is whether the petitioners' certificates of candidacy were duly filed, that is, in accordance with the law, and not simply whether they were filed, which is a jurisdictional fact that must be expressly alleged.

"Under a statute permitting a party in pleading performance to state generally that he 'duly performed' conditions precedent, the pleader must either make his general averment in the statutory form or set out facts showing in detail that all conditions were performed, and a general allegation that plaintiff performed, not including the allegation that he 'duly' performed, is insufficient." (49 *Corpus Juris*, 147, sec. 161.)

In view of the foregoing, I am of the opinion that the writ of mandamus should be denied.

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