

GAUDENCIO AQUINO, CONTESTANT AND APPELLANT, VS. CRISPIN CALABIA AND ZACARIAS SAHAGUN, CONTESTEES AND APPELLEES.*G. R. No. 35857. August 26, 1931*

Ponente: JOHNS, J.

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Two important questions are here submitted for our decision: The dismissal of the petitioner's election protest, and the inadmissibility of his amended protest.

The lower court explains its action as follows:

"The protest of June 5, 1931, assails the proclamation and complains of the proceedings of the board of canvassers, and it is hardly necessary to declare that the contestant has adopted the wrong means. The proclamation is nothing more than proof of the election. The courts cannot revise the proclamation or the proceedings by which the board arrived at the result so proclaimed. This is especially so in this case, where the board of canvassers has not been impleaded. The jurisdiction of courts in election contests is over the ballots, not over the election returns, which are merely secondary or tertiary evidence. It is therefore clear that the contestant's original protest did not set out a sufficient ground of protest.

"The contestant has sought to cure the defect of the original protest by filing another on June 23, 1931, attacking not only the proclamation or proof of the election, but the election itself. The amendment, however, was filed too late, the period of a fortnight following the proclamation having already expired when it was filed. The doctrine has been laid down repeatedly, that no amendment will be admitted after said period, where the same is so essential and basic as virtually to constitute a new protest. (*Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil., 428; *Cailles vs. Gomez and Barbaza*, 42 Phil., 496; *Tengco vs. Jocson*, 43 Phil., 715; *Orencia vs. Araneta Diaz*, 47 Phil., 830; *Gallares vs. Casenas*, 48 Phil., 362)." (Pages 25 and 26, appellant's brief.)

Counsel for the appellant rebuts these conclusions in the various assignments of error.

The alleged facts in the original protest are as follows:

"2. That in said general election, according to the results of the voting in each and every one of the 27 precincts in said municipality and according to the inspectors' returns from each of said precincts, the contestant and the contestees, respectively, obtained the following number of votes:

Votes Gaudencio Aquino, ...	1,697
Crispin Calabia	1,683
Zacarias Sahagun	1,281

"3. That according to these results, Gaudencio Aquino obtained 14 votes more than Crispin Calabia, the next highest on the list of candidates voted for, and that Gaudencio Aquino should therefore have been proclaimed candidate elect for the office of municipal, president of San Pablo, Laguna, notwithstanding which, the municipal board of canvassers for the municipality of San Pablo, willfully, deliberately, and criminally, knowing they were about to commit a fraud, convened late at night, or about 3 o'clock in the morning of June 4, 1931, reduced the

number of votes cast for Gaudencio Aquino from 1,697 to 1,675, by subtracting 22 votes therefrom, in order to have a pretext for proclaiming, as they did proclaim, Crispin Calabia, candidate elect to the office of municipal president of San Pablo, by a plurality of 8 votes over Gaudencio Aquino.

"4. That in order to commit this fraud, the municipal board of canvassers of San Pablo made use of a falsified inspectors' returns, with reference to precinct No. 20 of San Pablo, showing that Gaudencio Aquino only obtained 31 votes for municipal president, when he really obtained 53 votes; and of this each and every member of the municipal board of canvassers was aware before proclaiming Crispin Calabia, for the election inspectors of precinct No. 20 had called the attention of the municipal board of canvassers to the falsified election returns considered by said board, and had showed it the authentic returns, the three tally sheets, and the certificate issued by the inspectors immediately after the count in said precinct, in every one of which it appears that Gaudencio Aquino had obtained 53 votes.

"5. That in order to perpetrate this fraud, the municipal board of canvassers of San Pablo connived with the municipal treasurer of said municipality, and such falsification is penalized by section 2639 of the Administrative Code as a violation of the Election Law." (Pp. 4, 5, and 6, appellant's brief.)

The court below has held that it cannot revise the proclamation or the proceedings of the municipal board of canvassers in arriving at the results proclaimed. But the power which the law confers upon the courts in relation to election contests is, not only to revise the count but also to cancel it, declaring which of the contending candidates has, according to the evidence of the case, been legally elected.

The Election Law (Act No. 2711) before it was amended by Acts Nos. 3030, 3210, and 3387, provided at the close of section 479, then 576:

"Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall be payable in the first instance out of the provincial treasury, and to issue its mandamus directed to the board of canvassers to correct its canvass in accordance with the facts as found." (Italics ours.)

And in the subsequent amendments, in order to simplify the final disposition of election contests and bring about its practical results with as little delay as possible for the benefit of the public interests, it is provided that the court after trying the case shall declare in each instance who has been elected, and without any further canvass the candidate declared elected, according to the final judicial decision, is entitled to assume possession of the office as soon as the clerk of the court has given notice of such judgment to the board of canvassers and to the interested party. (Vide Act No. 3030, sec. 44, and Act No. 3210, sec. 25.)

The object, then, of an election contest is precisely to correct the canvass of which the proclamation is a public manifestation, and certainly the power granted by law to the courts must agree with and be adequate to such an object, being limited before to ordering the board of canvassers to correct the canvass and now is enlarged to the extent of being able to make the canvass by itself, declaring directly which candidate is elected in consequence of which the canvass made by the proper board becomes null and void in order that the candidate so declared elected may, without any further canvass by the board of canvassers, assume possession of the office upon proper notice of the final judgment.

But the petition in the original protest under consideration is not to revise the proclamation or the manner in which the board of canvassers arrived at the results proclaimed, but that "after due hearing, the contestant be declared elected." It is true that the contestant in his aforesaid protest assails the proclamation of the contestee as being false and fraudulent; but this statement is not an allegation of a ground or a prayer for the relief sought, and

being mere surplusage which may very well be disregarded without in the least touching the force of the protest, it constitutes a mere expression of the contestant's attitude, who, on the grounds he alleges and for the ends he pursues, here alleges something which was unnecessary, that is, that he impeaches the declaration of his opponent's election made by the board of canvassers.

Such a surplus allegation as is here made neither confers nor lessens jurisdiction over the subject matter.

What is important to consider in the contestant's first motion is whether the alleged facts constitute a sufficient ground for an election protest.

Our laws do not specify the grounds upon which protests of this kind are to be based; but an illustrious member of this court, Justice Ignacio Villamor, in his work entitled *Tratado de Elecciones* (A Treatise on Elections), in section 733, page 453, aptly and ably sums them up as follows:

"Every protest must be based upon those grounds which, according to law, would quash an election, invalidate it, or change its result. The first class refers to ineligibility of the winning candidate; the second, to the non-compliance of the mandatory provisions of the law, that is, the violation of the proceedings essential to election; and the last, to frauds committed at the polls or anomalies in the count of votes, which affect the election results."

And the grounds alleged in the original protest under consideration belong to the third class enumerated in this work by Justice Villamor.

The North American cases have held that a mistake in the count of votes, whether made innocently or maliciously by the board of canvassers, is a good ground for contesting an election.

"* * * A mistake in the count of votes received by a candidate for an office made by the board of canvassers whether innocently or otherwise is also good ground for contesting an election." (20 C. J., 217, and cases cited therein.)

The original protest alleges that the municipal board of canvassers made use of a false inspectors' return in a certain precinct, showing by such unlawful means that the contestee, and not the contestant is the candidate elect: We deem such alleged facts to be a sufficient ground for an election protest.

Hence, we are of opinion that the dismissal of the motion of protest which gave rise to this proceeding was erroneous.

Passing to the amended protest, we note that it does not allege any fact different from those set forth in the original protest. That the amended protest attacks the proclamation and the election, whereas the original protest only assailed the proclamation, does not alter the protest. We have already held that such an expression is surplusage, and unnecessary in this protest.

Furthermore, the original protest also impugned the contestee's election, for that was the contestant's aim when he alleged that the election was fraudulent, for the reasons which he gave, and in praying that he, being the real candidate elect, should be declared so by the court. The fact that in the amended protest the production of the ballot box of the precinct and of the recounted ballots in court was requested, does not change the nature or scope of the original protest, nor deprives the court of the jurisdiction it had acquired over this case for in said protest, in the first place, the production of all the documents used in the election was already requested, and this included impliedly the ballots in the ballot box; and in the second place, in said first election protest, the legality of the contestee's proclamation as candidate elect was assailed upon the grounds there stated; we hold that, even though the contestant does not pray for it, the court may order the production of such ballots and ballot box if, in order

duly to decide the questions raised in the protest, such production is necessary. The law authorizes such action on the part of the court both motu proprio and at the instance of the interested party, and such a prayer, which is not therefore jurisdictional, inasmuch as it refers to a mere evidence, and the granting of which is, in many cases, discretionary with the court, was not necessary to be set forth in the original protest.

In our opinion the court a quo should have admitted the amended protest.

Counsel for the appellant contends that the motion of dismissal filed by the contestee, which originated the judgment appealed from, constitutes an implied admission of the facts alleged in the protest. We do not think so. Said motion for dismissal implies no admission, and its purpose is simply to raise before the court the question of jurisdiction over the subject matter, in view of the contestee's opinion that the protest does not allege a good jurisdictional ground.

With reference to the contestee having filed a counter-protest, he waived nothing in doing so.

Wherefore, the judgment appealed from is reversed, and it is ordered that the record be remanded to the court of origin for trial upon the merits, after admitting the amended protest, giving the contestee an opportunity to answer it, and the parties to produce evidence of their respective allegations, and later deciding the case in accordance with the facts proved and the law.

This judgment is rendered without express pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villa-Real, and Imperial, JJ., concur.

CONCURRING

VILLAMOR, J., :

I agree with the conclusion of the court in this case. I simply desire to state that the citation of my humble work was not indispensable to such conclusion. Judgment reversed and case remanded with instructions.

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