

ANTONINO TANSECO, PETITIONER AND APPELLEE, VS. PEDRO R. ARTECHE, RESPONDENT AND APPELLANT.*G. R. No. 36300. September 13, 1932*

Ponente: STREET, J.

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This action of quo warranto was begun on July 10, 1931, by Antonino Tanseco, a voter registered in the list of voters of electoral precinct No. 4 of the municipality of Catbalogan, in the Province of Samar, for the purpose of having the respondent, Pedro R. Arteche, declared ineligible to the office of provincial governor of Samar. Section 408 of the Election Law permits an action of this sort to be begun either before the Court of First Instance of the province or before the Supreme Court of the Philippine Islands, within two weeks after the proclamation of election of the person whose right to hold the office is questioned; and this proceeding was begun by the filing of the complaint in the Supreme Court in Manila. It is undisputed that the respondent was in fact proclaimed governor-elect of the Province of Samar by the provincial board of canvassers on June 26, 1931, consequent upon his election to said office at the general election of June 2, 1931; and it results that this proceeding was started in the Supreme Court on the last day when, according to law, such a proceeding might have been begun. The Supreme Court, owing to pressure of work, thought best not to entertain the proceeding, and on July 14, by resolution, the court ordered that the petition be referred to the Court of First Instance of Samar. Accordingly, the clerk of the court inclosed the petition, together with a copy of the order, to the Court of First Instance of Samar by registered mail. These papers were received by the clerk of the Court of First Instance of Samar on July 29, 1931. The respondent had not been served with process from the Supreme Court, but after the case was filed in the Court of First Instance of Samar, service was had in due course and the respondent demurred on several grounds. The demurrer having been overruled in due time, the cause was heard on the merits, and on August 22, 1931, Judge M. L. de la Rosa filed an opinion declaring the election of the respondent to the office of governor of the Province of Samar illegal, for lack of the necessary pre-election residential qualification, and declaring him without right to take possession of the office, with costs in favor of the plaintiff. From this judgment the respondent appealed.

Before proceeding to consider the merits it is necessary to dispose of three technical questions raised by the respondent. Of these we shall deal in what appears to be their logical order. It is insisted that the allegations contained in the complaint are not sufficient to confer jurisdiction on the court over the cause, and in this connection criticism is made of paragraph No. 2 in which it is alleged that the respondent has been declared governor-elect of the Province of Samar in the election which took place in this province on June 2, 1931. Upon the authority of *Lino Luna vs. Rodriguez* (36 Phil., 401), it is insisted that this allegation is not sufficient. It will be noted, however, that though the language of the allegation in this case is general, it is true in all its statements; and we are of the opinion that the allegation is sufficient. The expression "the respondent has been declared governor-elect" is equivalent to an allegation that he had been proclaimed governor-elect, and as the provincial board of canvassers of the province is the only body competent to make such proclamation, it must be understood that proclamation was made by that body. In *Lino Luna vs. Rodriguez*, there was no allegation that the respondent

had been proclaimed elected by the provincial board of canvassers, and on the contrary the plaintiff's right was rested exclusively on a judgment of the Court of First Instance in a contest, and the court pointed out that in an election contest the Court of First Instance has no authority to declare anyone elected, its sole duty being to direct the provincial board of canvassers to correct its returns.

Again, the law requires that a proceeding in the nature of quo warranto shall be begun within two weeks after the proclamation of the election of the person whose right to hold the office is challenged. As already stated, this proceeding was filed in the Supreme Court within the time mentioned, but the period of two weeks had more than elapsed when the papers arrived in the Court of First Instance of Samar. Upon this it is insisted that the proceeding was not begun in time, that is, in the Court of First Instance of Samar. But it must be considered that the proceeding in the Court of First Instance of Samar was a mere continuation of the action which had been begun in the Supreme Court, there having been no break whatever in the continuity of the proceeding. In making the order for the transfer of the proceeding to the Court of First Instance of Samar, the Supreme Court evidently intended that the cause to be heard in that court would be the same that had been filed in the Supreme Court. There is therefore, in our opinion, nothing in the contention that this proceeding was not begun in time.

A question is also made as to whether the Court of First Instance may not have lost jurisdiction over the case by failure to decide it within the time fixed by law. In section 408 of the Election Law it is provided that a proceeding of the character of that now before us shall be decided by the court within thirty days after the filing of the complaint. The decision in this case was filed in the Court of First Instance on August 22, 1931, which was within thirty days of the receipt of the papers in that court but more than thirty days after the proceeding had been begun in the Supreme Court. Upon this the argument is planted that, supposing the proceeding in the Court of First Instance of Samar to be a mere continuation of the proceeding that had been filed in the Supreme Court, it must follow that the decision was not filed within the necessary thirty days; and as a consequence, so it is claimed, the court of origin had no authority to make any decision at all. The contention is untenable. The provision of law that the proceeding shall be decided within thirty days after the filing of the complaint is in its nature directory only, and a failure to comply with such requirement does not affect the jurisdiction of the court. We are accordingly of the opinion that none of the technical objections made against the proceeding by the respondent are valid.

The principal controversy in the case arises on the question whether the respondent, Pedro R. Arteche, had requisite residential qualification at the time he was chosen provincial governor of Samar in the election of June 2, 1931. In section 2071 of the Administrative Code it is declared that no person shall be eligible for election to a provincial office unless at the time of the election he is a qualified elector in the province and has, among other things, been a bona fide resident therein for at least one year prior to the election. The relator (plaintiff) in this case asserts that the respondent had not had his residence in the Province of Samar during the year prior to the election, having been in fact during that time a resident of the City of Manila, where he had his home. The facts are rather simple, and about them there is scarcely any dispute. The contention is mainly over the proper inferences to be drawn therefrom.

It appears that Pedro R. Arteche was born in the municipality of Zumarraga, Samar, and upon the date of the hearing of this cause he was thirty-one years of age. When he was a mere baby his parents removed to Catbalogan, where they have since lived. As a child the respondent attended the lower grades in the public schools of Catbalogan. As the two last years of high school were not taught in Catbalogan, the youth was sent to Calbayog, Samar, to take the third year of instruction, and subsequently to Tacloban where he took his fourth year and graduated. At the end of the school sessions in Calbayog and Tacloban, the respondent returned to his home in Catbalogan.

After graduating from the high school the respondent obtained employment in the postal savings bank of the Bureau of Posts in Manila. He remained in this position for some eight months at the expiration of which he again returned to Catbalogan, Samar. In the year 1921-1922 the respondent was teacher in a public school in Catarman, Samar,—a position which he gave up on March 23, 1922. Later, in the same year, he was given a fellowship (becato) in the University of Santo Tomas in Manila, and having accepted the appointment, he repaired to the university and matriculated in the course of Arts, Philosophy, and Law. In March, 1926, he graduated from the Santo Tomas University as Bachelor of Laws; and in March, 1928, he took the degree of Licentiate in Civil Law in the same institution. In March, 1930, he likewise received the degree of Licentiate of Philosophy and Letters.

Meanwhile, in 1926, he had taken the bar examinations in Manila, and having been successful in these exercises, he was admitted to the bar in March, 1927.

Up to this time the right of the respondent to be considered a resident of Samar is unquestionable, for his absence from Samar during the years preceding March, 1927, was due to the fact that he was busy obtaining an education and preparing himself for serious work in life. Absence of this character from his home town could not deprive him of his domicile in Samar.

Having been admitted to the bar in March, 1927, the respondent began to cast about for a suitable place to establish himself as a lawyer. At first he thought of opening an office in Catbalogan, where his parents lived, and where his own early associations had been formed; but upon looking over the field, he gave up the idea on account of the limited field for professional work in that place. Instead, he selected Manila as future forum of his professional activities, for he found that in this city he could extend his studies in Law, Philosophy, and Letters, and at the same time earn something with which to maintain himself. In Manila, therefore, he opened an office and procured an appointment as notary public. To these activities he thereafter mainly applied himself, supplementing his strictly professional duties for a time with work as a teacher in the University of Santo Tomas.

The respondent is an unmarried man who, until he settled in Manila in 1927, had made his home with his parents at Catbalogan, Samar. In Manila he has lived in various places, namely, in the dormitory of the University of Santo Tomas, in the house at No. 64 San Juan de Letran St., at No. 229 General Solano St., in the house at 908 Trabajo St., and latterly in the home of his brother, Melecio S. Arteché, at No. 910 Trabajo Street.

We note that in the general elections of 1922 and 1925 the respondent voted as an elector in Catbalogan. In the general election of 1928 he did not vote, being at that time in the town of Antipolo on business, but he appears to have been then registered as a voter not only in Catbalogan but also in the City of Manila. Just how he happened to be inscribed as a voter in Manila is not clear, but the trial court inferred that the inscription had been made in usual course at the instance of the respondent. In 1931, the respondent made application to the proper authority in Manila to cancel his registration as an elector in that city "due to the transfer of his residence from Manila to Catbalogan, Samar." In response to this request his name was struck from the list of voters in Manila. Since the second semester of 1930 the respondent has paid his personal cedula and taken out his license to exercise the profession of law in the municipal treasury of Catbalogan; and at the general election of 1931 he voted as an elector in the same place.

On March 13, 1928, a brief was submitted to the Supreme Court by the firm of Arteché & Ycasiano, of which firm the respondent was a member, in a case where he had been prosecuted for the offense of "injurias graves"; and in the first paragraph of this brief it is stated that the respondent was, prior to June 17, 1927, a bona fide resident in the City of Manila.

A number of other facts, not very significant, may be gleaned from the record showing that the respondent had, after his removal to Manila, retained an interest in the affairs and in the people of his native province, and that he

had bought property in that province.

The outstanding feature of the situation, so far as affects the residential status of the respondent subsequent to March, 1927, is that he lived practically continuously in the City of Manila, which he had adopted as the scene of his professional labors, and that he thereafter made rare and merely casual visits to the province of his nativity, until he repaired to Catbalogan in 1931 to open his campaign as a candidate for governor. We believe, as his own firm stated in the brief submitted in this court in his behalf, that he had become a bona fide resident of the City of Manila, years before he became candidate for the office of governor of Samar.

Upon these facts we are of the opinion that the trial court committed no error in finding that the respondent had not been a bona fide resident of the Province of Samar during the year immediately antedating the election of June 2, 1931. When the statute says that, in order to be eligible to a provincial office, the candidate must have been a bona fide resident in the province for at least one year prior to the election, it implies not only an intention to reside in the place but also personal presence. Bona fide residence under this statute means residence in fact coupled with an intention to make the place a home. (*Nuval vs. Guray*, 52 Phil., 645, 651.) In the case before us the respondent, by fixing his residence in Manila and engaging in a profession which implies dedication to a life work, effectually severed his home ties and made a new residence in the place of his chosen abode.

Looking to the purpose and intent of the law in fixing this qualification, it is evident that the lawmaker intended that persons filling provincial offices should be acquainted with the conditions and needs of the province wherein official service is intended. The purpose was to prevent a non-resident from seeking and holding office in a province other than that in which he actually lives. The question of domicile is admittedly a question largely of intention, but this intention must be sought in contemporaneous words and acts. The circumstance that the respondent, after removing to Manila and fixing his residence in that place, may have had what is called a floating intention to return to his former domicile upon some indefinite occasion, does not give him the right to claim such former domicile as his residence. (19 C. J., 407.) It was the fixing of his home in Manila with the intention of remaining there for an indefinite time that severed the respondent's domiciliary relation with his former home.

It is needless to observe that the situation here presented is different from that of one who, being a resident of a particular province, is chosen to represent that province in the Legislature, and who, upon removing to Manila for the necessary performance of his official duties, sees fit to open a law office in this city. In the case of a senator or representative the making of a home in Manila, at least temporarily, is incident to the performance of official duties, and a stay in the city so induced would of course not sever his political relation with the province represented by him.

In conclusion we refer to one or two cases that have been cited as authority in support of the contention of the respondent. One of these is *Yra vs. Abano* (52 Phil., 380), wherein the right of Maximo Abano to the office of municipal president of Meycauayan was questioned. In that case the right of Abano was upheld for the reason that, although it appeared that Abano had qualified himself as a voter in the City of Manila while he was attending school in that city, nevertheless, shortly after qualifying as a member of the bar, he returned to Meycauayan more than a year before the election, when he was chosen president. If, in the case before us, the respondent had, upon qualifying as a lawyer, returned to the province of Samar and had established himself as a lawyer there, his right to the office to which he was elected would have been unquestionable. Likewise, in *Vivero vs. Murillo* (52 Phil., 694), the right of one Murillo to hold the office of municipal president was upheld notwithstanding the fact that he had lived for a time in another place, it appearing that he was single and supported by his parents while acquiring an education. Neither of these cases are of any value as precedents in favor of the respondent. On the other hand, the case falls within the principle stated in *Nuval vs. Guray* (52 Phil., 645), where it was held that, after a person has abandoned his residence in one municipality, it is necessary to reacquire residence in such municipality by

living there for the length of time prescribed by law before he can be qualified to be a candidate for office. This requires, so this court held, personal presence in said municipality.

From what has been said it results that the judgment appealed from must be affirmed, and it is so ordered with costs against the appellant.

Avanceña, C. J., Ostrand, Villa-Real, Abad Santos, Hull, pickers, Imperial, and Butte, JJ., concur.

DISSENTING

MALCOLM and VILLAMOR, JJ.,

The admitted facts in this case disclose that the respondent Pedro R. Arteehe was born in the Province of Samar, there had his home, there received his elementary education, there became a property owner and active in various associations, and there has appeared as a qualified voter on the election list since 1922. The admitted facts further disclose that after finishing his high school education, Arteehe was in Manila until 1930 for the principal purpose of completing his higher education. While in Manila, he opened a law office, became a notary public for which, however, no residence qualifications are required, and was registered as a voter in 1928, although not actually voting in Manila. Arteehe removed whatever doubt might exist as to his legal right to become a candidate for the governorship of Samar when on February 22, 1931, he filed an application cancelling his registration as voter in the City of Manila, and stating that he had moved and established his residence at Catbalogan, Samar, since May 30, 1930. Residence is pretty much a matter of intention, and in the verified certificate of candidacy of Arteehe, it has been made to appear that he has been, and actually is, a bona fide resident in the Province of Samar, for at least one year prior to June 2, 1931.

Local conditions are such in the Philippines, and current practice is such as to make impossible a literal and technical compliance with the law as to residence for candidates for office. The City of Manila is the capital and metropolis of the country, and it is natural to suppose that to the capital and metropolis there will be attracted students coming from their home provinces, and lawyers and politicians who are afforded a wider field for their activities. In this instance, for example, the question of residence for the purposes of the election law being largely one of intention, and Arteehe having amply demonstrated his intention to remain a resident of Samar and to cure any defect in his qualification by cancelling his registration in the City of Manila, that intention should be judicially confirmed. Moreover, it is to be observed that the voters of Samar have seen fit to elect Arteehe as their provincial governor, and as it is possible to respect the will of the electorate, that should be done.

For these reasons we dissent and vote to reverse the appealed judgment.

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