

ARTURO A. IGNACIO, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF THE THIRTEENTH JUDICIAL DISTRICT, AND JUAN NAVARRO, RESPONDENTS.

G. R. No. 36484. December 31, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It is sought by these proceedings to require the respondent court to abstain forever from trying the counter-protest filed by the other respondent, Juan Navarro, in the election contest instituted by the petitioner in the Court of First Instance of Mindoro.

The ground of the petition is that when the respondent was summoned to answer the protest on September 3, 1931, he demurred to it without giving notice to the adverse party. The demurrer was overruled and the respondent given ten days within which to answer the protest.

Within the term fixed by the court, the respondent filed an answer and a counter-protest wherein he alleged that certain frauds and irregularities were committed in the voting and in the canvass by the inspectors and the petitioner's partisans in eight precincts of the municipality of Calapan, Province of Mindoro.

The petitioner objected to the court's jurisdiction to try the counter-protest, and prayed for its dismissal on the ground that: (a) The counter-protest was filed after the legal period of fifteen days from service of the summons on the respondent; (b) the court's order of October 6, 1931, is null and void, due to the fact that the petitioner was not notified of the demurrer; and, (c) the subsequent notice dated October 9, 1931, was given after the fifteen-day period for answering had expired, and could not therefore make valid the order entered on October 6th, while the judge of the Court of First Instance of Mindoro was in Pasig, Rizal, holding sessions there in pursuance of an administrative order from the Secretary of Justice. The demurrer forwarded to the district judge, who was at that time in Pasig, contained the following notice at the bottom:

"MR. ARTURO A. IGNACIO

"Calapan, Mindoro

"GREETINGS:

"You are hereby notified that the undersigned will ask the court to hear the foregoing demurrer on the first Saturday, after the first session day of the court, at eight-thirty in the morning, or as soon as possible.

"JUAN NAVARRO and M. P. LEUTERIO "Per.....

"M. P. LEUTERIO

"Counsel for the Respondent"

This notice, however, is not signed by the attorney for the respondent, as may be seen in the photograph marked

Exhibit P of the petitioner, although the lawyer's signature appears higher up, at the foot of the demurrer. We believe the learned judge who had cognizance of the protest, on reading the demurrer, saw, too, the unsigned notice at the bottom of it, and must have deemed it sufficient, when he entered the order of October 6, 1931. A subsequent notice of the hearing upon the demurrer was sent to the petitioner by the respondent on October 9th, but the demurrer had by that time been overruled.

Setting this matter aside, it may be said, and the respondent admits it, that the petitioner had not been duly notified of the demurrer when the court overruled it. The question then is, what was the legal effect of the order overruling the demurrer when the adverse party has not been notified of the hearing of the motion?

Rule 10 of the old Rules of Courts of First Instance, published on October 10, 1901, reads as follows:

"When no other provision is made by law no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof."

In 1915, the Supreme Court laid down the following doctrine in *So Chu and Limpangco vs. Nepomuceno and Reis* (29 Phil., 208):

"Where the court has jurisdiction over the person and subject matter of the action, a failure to give notice of a subsequent step in the action or proceeding is not jurisdictional and does not render an order made without notice void."

Subsequently, in 1918, the Rules of Courts of First Instance in the Philippine Islands were amended. Rule 9 provides:

"9. When no other provision is made by law no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof." And Rule 10 is as follows:

"10. All notices of motions shall be in writing, and shall state generally the nature and grounds of the motion and when and where it will be heard. They shall be accompanied with copies of the affidavits and other papers on which the motion is based. No demurrer or motion shall be accepted for filing without proof of notice thereof having been given the adverse party, at least three days in advance, that same will be submitted on the next motion day or on a date specifically designated by the court."

It may easily be seen that Rule 10 of the old Rules does not differ substantially from Rules 9 and 10 of the new Rules.

In 1921 this court rendered the decision in the case of *Manakil and Tison vs. Revilla and Tuano* (42 Phil., 81). It was a mandamus proceeding to compel the judge to pass upon a motion for a new trial filed in a civil case pending before the Court of First Instance of Pampanga. The motion did not contain a notice of the time and place of its hearing. It was not passed upon by the court. Forty-one days after he had received a copy of the court's decision the petitioner filed another motion for a new trial fixing the time and place for the hearing of the second motion. The respondent demurred. The Supreme Court sustained the demurrer and denied the writ. In the course of the decision, the court reiterated the imperative necessity of complying with the requisites of the Rules of Courts of First Instance, and declared in very strong terms that motions which did not observe Rule 10 of those Rules were not really motions, and should not be acted upon by the courts; but no statement was made reversing the rule laid down in the *So Chu and Limpangco* case, *supra*.

In *Gamay vs. Gutierrez David* (48 Phil., 768), which was a certiorari proceeding in connection with a motion for the issuance of a writ of execution of a judgment, the adverse party was not given notice of the motion. The Supreme Court granted the writ of certiorari, citing the *Manakil and Tison* case, *supra*, and holding that to pass

upon such a motion without the adverse party having been notified, as provided in Rules 9 and 10 of the Rules of Courts of First Instance, was to exceed jurisdiction.

It is evident that with motions in general, as with a demurrer, the adverse party must be given three days' notice of the time and place of hearing. But by an exception recognized in Rule 9 of the Rules, the movant need not notify the adverse party of a motion for a new trial, inasmuch as section 146 of Act No. 190 expressly provides that such notice is to be given as the judge may direct. (*Soriano vs. Ramirez*, 44 Phil, 519.)

According to Rule 10, the clerk of the court had no right to docket the demurrer, nor the judge to overrule it, unless it first appeared that the adverse party had notice of the hearing. But if, notwithstanding the failure to give notice, the clerk docketed the demurrer and the court overruled it, we believe the ruling in *So Chu and Limpangco*, supra, is to be followed, despite the *Manakil* and *Tison and Gamay* cases. And this opinion is also supported by the *Encyclopaedia of Pleading and Practice*, volume 18, page 1265, which contains the following doctrine:

"Parties to actions and their attorneys are justified in presuming that rules will be enforced, nor are they chargeable with negligence in relying upon this presumption and acting accordingly, and where the court violates its rules to their prejudice, such violation constitutes reversible error. An appellate court, however, may refuse to interfere where it appears that substantial justice has been done, and that no prejudice has resulted."

In view of the foregoing, we are of the opinion that the failure to give notice of the demurrer decided by the court, does not deprive the latter of jurisdiction, even assuming that its ruling may be reversed by the court on appeal. If the learned respondent judge had jurisdiction over the person of the contestant and the contestee, and over the subject matter of the contest, any irregularity in the course of the proceedings could not deprive him of said jurisdiction. As this court held in *Ivancich vs. Odlin and Pacific Export Lumber Co.* (1 Phil., 284), " * * * this error is not such an excess of jurisdiction as can be cured by prohibition, and the petitioner has other means whereby this error of procedure may be corrected or remedied." And in the *So Chu and Limpangco* case, supra, this court held that "the sole basis for an action of prohibition is lack or excess of jurisdiction on the part of the inferior tribunal, corporation, board, or person committing the acts complained of."

Passing now to the question as to whether a demurrer may be filed in an election contest, suffice it to say that this matter has been affirmatively decided in the cases of *Grecia vs. Salas* (34 Phil., 948); *Santos vs. Miranda and Clemente* (35 Phil., 643); *Orencia vs. Araneta Diaz* (47 Phil., 830); and *Morente vs. Filamor and Arce Ignacio* (52 Phil., 289).

As to whether the counter-protest should have been filed within the period of fifteen days from the summons of the contestee, this point has already been decided in the case of *Morente vs. Filamor and Arce Ignacio*, supra. It was there held that as the contestee had filed a demurrer, he could validly enter his answer and counter-protest within the period fixed by the court.

Wherefore, the writ is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, and Romualdez, JJ., concur.

Malcolm and Imperial JJ., dissent.

VILLA-REAL, J., dissenting:

I dissent on the ground that the counter-protest was filed out of time.

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