

FRANCISCO BALON, PROTESTANT AND APPELLANT, VS. MANUEL MORENO, PROTESTEE AND APPELLEE.

G.R. No. 36514. August 18, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a judgment of the Court of First Instance of Camarines Norte in an election contest filed by Francisco Balon against Manuel Moreno for the office of member of the provincial board of Camarines Norte.

In the general election held in the Province of Camarines Norte on June 2, 1931, there were four candidates for the offices of members of the provincial board, namely: Simeon Garfin, Manuel Moreno, Francisco Balon, and Gabriel Pimentel. On June 6, 1931, the provincial board of canvassers of Camarines Norte certified the four candidates for the offices of members of the provincial board to have obtained the following votes:

Votes

Simeon Garfin 3,707

Manuel Moreno 3,619

Francisco Balon 3,563

Gabriel Pimentel 2,920

and proclaimed Simeon Garfin and Manuel Moreno as members elect of the provincial board of Camarines Norte.

On June 19, 1931, Francisco Balon filed a protest against the election of Manuel Moreno, and alleged that the election inspectors had committed the following irregularities, illegal acts, and frauds in the municipalities of Basud, Daet, Talisay, Labo, San Vicente, Indan and Paracale:

That certain votes (the number being stated) in the precincts (naming them) of each of the aforesaid municipalities were erroneously and fraudulently counted in favor of the respondent Manuel Moreno, and that certain valid votes (the number being stated) in favor of the petitioner Francisco Balon were erroneously and fraudulently rejected and not counted in favor of the petitioner;

That if it had not been for said irregularities and frauds the petitioner would have had 270 votes more, or a total of 3,833 votes, and the respondent Manuel Moreno would have had 350 votes less or a total of 3,269, so that the petitioner Francisco Balon would have been elected by a plurality of 564 votes over the respondent Manuel Moreno.

The respondent Manuel Moreno denied all the allegations of the petition, and as a counter-protest challenged the votes counted in favor of "the petitioner in each of the precincts of the municipalities of Basud, Daet, Talisay, Labo, San Vicente, Indan, and Paracale, and alleged that about 100 votes in favor of the respondent were erroneously not counted for him because he had no watchers in the precincts of the aforementioned seven

municipalities.

He challenged the votes counted by the election inspectors in favor of the petitioner in precincts 1 and 2 of the municipality of Mambulao and precincts 1, 2, and 3 of the municipality of Capalong-a, and alleged that certain valid ballots in his favor in said precincts were erroneously and fraudulently rejected.

He alleged that except for these irregularities and frauds he would have had 275 votes more, or a total of 3,894 votes, and that the petitioner Francisco Balon would have had 80 votes less, or a total of 3,483 votes, so that the respondent would have been elected by a plurality of 411 votes.

The trial court appointed two commissioners to examine and count all the ballots in the precincts in question. The resume of the court's order is as follows:

"Los comisionados haran un resumen por cada precinto electoral que revisen segun los trminos de esta orden, sobre los siguientes extremos, a saber:

"(a) Sobre el numero total de balotas en la urna blanca o urna de balotas utiles.

"(b) Sobre el numero total de balotas en la urna roja o pequena.

"(c) Sobre el numero total de balotas usadas en cada precinto, segun el resultado de la revisi6n hecha por los comisionados.

"(d) El numero total de estas mismas balotas usadas por cada precinto, segun se expresa en el acta de los inspectores de eleccion.

"(e) El numero de balotas del recurrente Francisco Bal6n objetadas y no objetadas.

"(f) El numero total de balotas del recurrido Manuel Moreno, objetadas y no objetadas respectivamente.

"(g) La cantidad o el numero de balotas no usadas que se encuentren dentro de las urnas."

The commissioners filed a report on September 7, 1931, and at the hearing on the same date the parties by stipulation admitted all the jurisdictional facts. The attorney for the petitioner asked that the boxes for spoiled ballots of precinct No. 1 of Indan be opened. The attorney for the respondent objected thereto on the ground that it was not alleged in the petition that any valid ballots had been placed in the boxes for spoiled ballots through mistake. The court first overruled the objection, but after further argument sustained the objection, and refused to examine the ballots in the boxes for spoiled ballots. Petitioner's attorney excepted to this ruling and moved for a reconsideration, which was overruled. The petitioner asked leave to present witnesses as to certain alleged valid ballots found in the red boxes, but the trial court refused to receive this testimony.

After examining the ballots in the boxes for valid ballots, the trial judge found that the respondent had been elected by a plurality of 40 votes over the petitioner. The trial judge subsequently amended his decision and declared the respondent to be elected by 43 votes.

After the case had been submitted for decision, the petitioner filed a motion, praying that he be allowed to amend his protest. This motion was overruled. The petitioner also filed a motion for a new trial which was denied.

The petitioner appealed from said decision, and makes the following assignment of errors:

"The court a quo erred:

"1. In reconsidering its resolution directing the opening of the ballot boxes for spoiled ballots and in subsequently denying the protestant-appellant's petition to reconsider said resolution.

"2. In denying the protestant-appellant's petition for a reconsideration of the court's order denying the motion for opening the ballot boxes for spoiled ballots for the examination, revision and consideration of the valid ballots cast in favor of the protestant-appellant and invalidated during the counting by the election inspectors and placed in the boxes for spoiled ballots.

"3. In denying the protestant-appellant's motion to be allowed to introduce evidence to prove that those valid ballots cast in favor of the protestant-appellant and found by the commissioners of revision appointed by the court were illegally, fraudulently or erroneously placed by the election inspectors in the small red boxes for spoiled ballots during the counting.

"4. In refusing to consider, determine and adjudicate to the protestant-appellant ballots Nos. 5 to 11, precinct No. 1, ballot No. 1, precinct No. 2, ballots Nos. 1 and 2, precinct No. 5, ballots Nos. 1 and 2, precinct No. 7, of the municipality of Indan, Province of Camarines Norte; ballots Nos. 6 and 7, precinct No. 1, ballots Nos. 1 to 7 and 9, precinct No. 2, ballots Nos. 1 to 4, precinct No. 3, of the municipality of Basud; ballots Nos. 1 to 7 and 9, precinct No. 1, of the municipality of San Vicente; ballot No. 1, precinct No. 1, ballots Nos. 4 and 5, precinct No. 2, of the municipality of Talisay; ballots Nos. 2, 7 and 8, precinct No. 1, ballots Nos. 1, 6, 7 and 24, precinct No. 2, of the municipality of Mambulao; ballot No. 13, precinct No. 7, ballots Nos. 2, 3, and 4, precinct No. 10, ballots Nos. 23" to 37, precinct No. 11, ballots Nos. 12, 13 and 14, -precinct No. 12, of the municipality of Daet; ballot No. 19, precinct No. 1, ballots Nos. 1, 2, 3, 5, 8, 9, 12, 13, 15, 20, 26, 29 and 39, precinct No. 2, ballot No. 2, precinct No. 3, ballots Nos. 1, 3, 4, 7 and 9, precinct No. 4, ballot No. 13, precinct No. 5 of the municipality of Labo; ballot No. 5, precinct No. 1, ballots Nos. 1 and 2, precinct No. 2, ballots Nos. 1, 2 and 3, precinct No. 3, ballots Nos. 2 and 9, precinct No. 4, of the municipality of Paracale; ballots Nos. 2, 6, 12, 13 and 14, precinct No. 1 of the municipality of Capalonga; in all ninety-nine (99) valid ballots cast in favor of the said protestant-appellant, but were illegally, fraudulently or erroneously placed by the election inspectors in the small red boxes for spoiled ballots where they were found by the commissioners of revision.

"5. In declaring that the ballots found in the small red boxes for spoiled ballots and claimed by the protestant appellant as -valid votes cast in his favor were marked 'spoiled ballots' and signed at the back by the election inspectors.

"6. In denying the protestant-appellant's motion to amend in its form his motion of protest.

"7. In rejecting the ballots Nos. 188, 194, 195, 196 and 203, of precinct No. 1, ballots Nos. 143, 157, and 158, of precinct No. 2, ballots Nos. 180 and 188, ballots Nos. 169 and 170, of precinct No. 4, ballot No. 140 of precinct No. 5, ballot No. 153, of precinct No. ?, ballots Nos. 113, 117 and 128 of precinct No. 8, of the municipality of Indan, Province of Camarines Norte; ballot No. 145 of precinct No. 2, of the municipality of San Vicente; ballots Nos. 174 and 185 of precinct No. 2, ballots Nos. 100, 1Q2 and 109 of precinct No. 3, ballot No. 1 of precinct No. 4, of the municipality of Talisay; ballots Nos. 13, 16 and 23 of precinct No. 2, of the municipality of Mambulao; ballot No. 91 of precinct No. 1, ballot No. 30 of precinct No. 2 of the municipality of Capalonga; ballots Nos. 27 and 28 of precinct No. 1, ballots Nos. 1 and 5, of precinct No. 3, ballot No. 102 of precinct No. 5, ballot No. 145 of precinct No. 6, ballots Nos. 155 and 156 of precinct No. 10, ballot No. 148 of precinct No. 11, of the municipality of Daet; ballot No. 5 of precinct No. 4 of the municipality of Labo; ballot No. 87 of precinct No. 1, of the municipality of Paracale; in all 47 valid ballots cast in favor of the protestant.

"8. In not admitting ballot No. 162 of precinct No. 1, ballot No. 170 of precinct No. 2, ballot No. 148 of precinct No. 6, ballot No. 222 of precinct No. 8, of the municipality of Indan, Province of Camarines Norte; ballot No. 193 of, precinct No. 1, ballot No. 51 of precinct No. 2, ballot No. 124 of precinct No. 3, of the municipality of Daet; in all U valid ballots cast in favor of the protestant-appellant.

"9. In admitting and counting the ballots Nos. 123, 124 and 126, of precinct No. 1, ballots Nos. 174 and 176 of precinct No. S, ballots Nos. 206, 207 and 208 of precinct No. 4, ballots Nos. 129, 131 and 133 of precinct No,

5, ballots Nos. 191, 192, 193 and 194 of precinct No. 7, ballots Nos. 207 to 211, 214, 215, 216 and 218, of precinct No. 8, of the municipality of Indan; ballots Nos. 166 and 169 of precinct No. 1, ballots Nos. 165, 168, 170, 171, 172, 173 and 175 of precinct No. 2, of the municipality of Basud; ballots Nos. 154, 156, and 157 of precinct No. 1 of the municipality of San Vicente; ballot No. 167 of precinct No. 2, ballots Nos. 121 to 130 of precinct No. 3, of the municipality of Talisay; ballot No. 122 of precinct No. 1, ballot No. 139 of precinct No. 2, of the municipality of Mambulao; ballot No. 133 of precinct No. 1, ballots Nos. 171, 172, 221, 222 and 223, of precinct No. 2, ballots Nos. 151, 153, 154, 155 and 156 of precinct No. 5, ballots Nos. 172 and 175 of precinct No. 6, ballots Nos. 44 and 45 of precinct No. 7, ballots Nos. 137 to 140 of precinct No. 8, ballot No. 187 of precinct No. 9, ballots Nos. 130, 131, 132, 133 and 135 of precinct No. 10, of the municipality of Daet; ballot No. 148 of precinct No. 1, ballot No. 10 of precinct No. 2, ballot No. 1 of precinct No. 3, ballot No. 1 of precinct No. 4, ballot No. 258 of precinct No. 5 of the municipality of Labo; ballot No. 148 of precinct No. 3, ballot No. 77 of precinct No. 5, of the municipality of Paracale; in all 80 ballots in favor of the protestee-appellee.

"10. In admitting and counting ballot No. 146 of precinct No. 5, ballots Nos. 134 and 135 of precinct No. 8 of the municipality of Indan; ballots Nos. 122 and 123 of precinct No. 3 of the municipality of Basud; ballot No. 216 of precinct No. 1 of the municipality of Mambulao, in favor of the protestee-appellee.

"11. In adjudicating and counting" ballot No. 171 of precinct No. 3, ballots Nos. 134 and 135 of precinct No. 8, of the municipality of Indan; ballot No. 216 of precinct No. 1 of the municipality of Mambulao, in favor of the protestee-appellee, which ballots were already adjudicated and counted in his favor by the commissioners of revision, but which were claimed by the protestant-appellant as also containing valid votes in favor of the said protestant-appellant.

"12. In declaring the protestee-appellee legally elected member of the provincial board of Camarines Norte with a majority of forty-three (43) votes over the protestant-appellant.

"13. In not declaring the protestant-appellant the one duly and legally elected member of the provincial board of Camarines Norte.

"14. In denying the protestant-appellant's motion for a new trial."

The first five assignment of errors relate to the refusal of the trial court to examine the ballots in the boxes for spoiled ballots and to receive evidence with respect thereto. We think the trial court erred in this matter. When the petitioner alleged in his protest that irregularities, illegal acts, and frauds had been committed in the precincts of the different municipalities named in the protest, and that certain valid ballots in favor of the petitioner had been erroneously and fraudulently rejected and not counted for him, it "was incumbent upon the court to examine all the ballots in the precincts in question. It was not necessary for the petitioner to allege that certain valid ballots had been erroneously or fraudulently placed in the boxes for spoiled ballots. Section 479 of the Election Law (Act No. 3387) provides that "Upon petition of an interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents 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 not exceed five pesos per diem each and shall be payable in the first instance out of the provincial treasury." The law does not except therefrom the ballot boxes for spoiled ballots or the ballots therein contained, and it clearly implies that the court shall cause all the registration lists, ballot boxes, ballots and other documents used at such election to be brought before it and examined. It is true that whereas section 479 of Act No. 2711 provided that the court shall forthwith cause the registration list and all ballots used at such election to be brought before it and examined, the word "all" has been omitted from section. 479 of Act No. 3387, but it is not to be inferred therefrom that only the ballots in the boxes for valid ballots are to be examined by the court. When the law provides that the court shall cause the registration lists, ballot boxes, ballots, and other documents

used at such election to be brought before it and examined, it undoubtedly means all the registration lists, ballot boxes, ballots, and other documents used at the election (See *De la Merced vs. Revilla and Camacho*, 40 Phil., 190).

The ballots found in the boxes for spoiled ballots are presumed to be spoiled ballots, and if it was the duty of the court to examine said ballots, the petitioner had, of course, the right to present evidence with respect thereto.

As already stated, the trial judge directed the commissioners to examine all ballots and they did so, but the trial judge subsequently refused to examine the ballots in the red boxes or to receive evidence respecting said ballots. It further appears from the decision that, after the case was submitted for decision, the trial judge examined some of the ballots in the red boxes in the absence of the parties and found them to be marked "spoiled ballots". It was error for the trial judge to examine these ballots in the absence of the parties and to base a finding thereon. (*Denver Omnibus & Cab Co. vs. Ward Auction Co.*, 47 Colo., 146; and *Moran*, *The Law of Evidence in the Philippine Islands*, page 114.)

As to appellant's sixth assignment of errors, we think that his motion to amend his protest, which was filed after the case had been submitted for decision, was filed too late.

In the seventh assignment of errors, the petitioner alleges that the trial court erred in rejecting the following Ballots cast in favor of the petitioner:

MUNICIPALITY OF INDAN

Precinct No. 1.—Ballot No. 188, reading "Palncisco Valon", should have been admitted under the rule of *idem sonans*.

Ballot No. 194, reading "Prancis Balu." The voter evidently intended to vote for Francisco Balon, but he did not have room to place the final "n" in the surname on the ballot. "U" and "o" are frequently interchanged.

Ballot No. 195, reading "Franco Palon", should be admitted as a ballot for Francisco Balon, Franco being an abbreviation of Francisco and Palon being read for Balon under the rule of *idem sonans*.

Ballot No. 196, reading "Francu Balun," should be admitted for the same reasons.

Ballot No. 203, reading "Francisco Balu". The surname is not complete, but the Christian name of the petitioner is written correctly, and there being no other candidate with the Christian name of Francisco, it may be safely inferred that the intention of the voter was to vote for Francisco Balon.

In the case of *Namocatcat vs. Adag* (52 Phil., 789), this court held that where it appears that no other candidate for the same office has the same Christian name and surname, or the same initials, and the voter's intention to vote for the candidate with the Christian name and the initial of the surname which he writes in his ballot is manifest, the will of said voter must be complied with.

Precinct No. 2.—Ballot No. 143, reading "Prancisco B", should be counted for the petitioner Francisco Balon in accordance with the aforementioned decision in the case of *Namocatcat vs. Adag*.

Ballot No. 157, reading "Pansco Balun", should be counted for the petitioner Francisco Balon under the rule of *idem sonans*.

Ballot No. 158, reading "Frasisco Ban", should be counted for the petitioner in accordance with the rule laid down in the *Namocatcat-Adag* case.

Precinct No. 3.—Ballot No. 180, reading "Pansico Balino", was properly rejected.

Ballot No. 188, reading "Franco Balun". The surname is not clearly written, but it is evident that it was the intention of the voter to write the name of Francisco Balon.

Precinct No. 4.—Ballot No. 169, reading "Pransisco Babon". It is evident that it was the intention of the voter to write the name of Francisco Balon.

Ballot No. 170, reading "Francisco Ba-1". The surname is incomplete, but the letters "Ba-1" appearing on the ballot show the intention of the voter to vote for Francisco Balon.

Precinct No. 5.—Ballot No. 140. Both the Christian name and surname are illegible. This ballot was properly rejected.

Precinct No. 7.—Ballot No. 153, reading "Frans Balon". The surname is correctly written, and the Christian name as written is evidently intended for Francisco. This ballot should be counted for the petitioner.

Precinct No. 8.—Ballot No. 113, reading "Pasido Balu". should have been counted for Francisco Balon. Although the final "n" in the surname was omitted, it was undoubtedly the intention of the voter to write "Balun"; the Christian name as written was undoubtedly intended for Francisco.

Ballot No. 117, reading "Fanceco Balon". The surname being written correctly, and the Christian name as written being evidently intended for Francisco, this ballot should have been counted for the petitioner. Ballot No. 128, reading "Parnsisco balna". The surname as written being quite distinct from that of Balon, this ballot was properly rejected.

MUNICIPALITY OF SAN VICENTE

Precinct No. 2.—Ballot No. 145, reading "Cekoy Balon". The surname being written correctly and Cekoy being a nickname for Francisco, this ballot should have been counted for the petitioner.

MUNICIPALITY OF TALISAY'

Precinct No. 2.—Ballot No. 174, reading "Prancisco Balon". "F" and "P" being frequently interchanged, it was evidently the intention of the voter to vote for Francisco Balon.

Ballot No. 185, reading "F. Barpu". The surname as written bears no resemblance to that of the petitioner, and this ballot was properly rejected.

Precinct No. 3.—Ballot No. 100, reading "P. Balu". Although the final "N" of the surname is omitted, it was undoubtedly the intention of the voter to write "Balun", and "P" and "F" being frequently interchanged, this ballot should have been counted for Francisco Balon.

Ballot No. 102, reading "P. Balu", should have been admitted for the same reason.

Ballot No. 109. The Christian name and the surname as written being illegible, this ballot was properly rejected.

Precinct No. 4.—Ballot No. 1. The surname as written being illegible this ballot was properly rejected.

MUNICIPALITY OF MAMBULAO

Precinct No. 2.—Ballot No. 13, reading "Francisco Ba—". The surname as written is illegible, but as the Christian name is correctly written and the surname begins with a capital "B" and is followed by the letter "a", we think it is sufficiently clear that the elector intended to vote for Francisco Balon.

Ballot No. 16, reading "Farco Balon". As the surname is clearly written and as Farco is probably a nickname for Francisco, this ballot should have been counted for the petitioner.

Ballot No. 33, reading "Balon". Only the surname is written, but there being no other candidate of the name of Balon, it is clear that it was the intention of the voter to vote for the petitioner.

MUNICIPALITY OF CAPALONGA

Precinct No. 1.—Ballot No. 91, reading "Francisco Balce". As the surname in this case is distinct from that of the petitioner and there is no resemblance in the sound, this ballot was properly rejected.

Precinct No. 2.—Ballot No. 30, reading "Simeon Balon". This is a complete and distinct name from that of the petitioner and the ballot should be rejected (*Lucero vs. De Guzman*, 45 Phil., 852).

MUNICIPALITY OF DAET

Precinct No. 1.—Ballots Nos. 27 and 28 are completely illegible, and were properly rejected.

Precinct No. 3.—Ballot No. 1. This ballot was rejected because of the names written on the back thereof.

Ballot No. 5, reading "Francisco Ba—". It was evidently the intention of the elector to vote for the petitioner, although the surname is not complete.

Precinct No. 5.—Ballot No. 102, reading "Francisco Banglon". This ballot should have been counted for the petitioner under the rule of *idem sonans*.

Precinct No. 6.—Ballot No. 145, reading "Paranco Balon". Although badly written, it is sufficiently clear that the voter intended to write the name of Francisco Balon.

Precinct No. 10.—Ballot No. 155, reading "Simeon Balon". As this name is complete and distinct from that of the petitioner this ballot was properly rejected.

Ballot No. 156. The name as written is illegible, and this ballot was properly rejected.

Precinct No. 11.—Ballot No. 148, reading "Cemion Balon." As this name is complete and distinct from that of the petitioner, this ballot was properly rejected.

MUNICIPALITY OF LABO

Precinct No. 4.—Ballot No. 5, reading "Francisco Balo". Although the final "n" in the surname is omitted, it was evidently the intention of the voter to vote for Francisco Balon.

MUNICIPALITY OF PARACALE

Precinct No. 1.—Ballot No. 87. (We were unable to find this ballot.)

In the eighth assignment of errors, the petitioner alleges that the trial court erred in not admitting the following ballots cast in favor of the petitioner:

MUNICIPALITY OF INDAN

Precinct No. 1.—Ballot No. 162. The name is completely illegible and this ballot was properly rejected.

Precinct No. 2.—Ballot No. 170. The name as written is completely illegible, and this ballot was properly rejected.

Precinct No. 6.—Ballot No. 148, reading "Micong Liban". The name as written is distinct from that of the petitioner, and this ballot was properly rejected.

Precinct No. 8.—Ballot No. 222. The name as written is illegible, and this ballot was properly rejected.

MUNICIPALITY OF DAET

Precinct No. 1.—Ballot No. 193. The name is illegible, and this ballot was properly rejected.

Precinct No. 2.—Ballot No. 51, reading "p. balun". As "p" and "f" are frequently interchanged and Balon is frequently written Balun, this ballot should have been counted for the petitioner.

Precinct No. 3.—Ballot No. 124. The Christian name is illegible and the surname is distinct from that of the petitioner. This ballot was properly rejected.

In the ninth assignment of errors, the petitioner alleges that the following ballots should not have been admitted and counted in favor of the respondent Manuel Moreno:

MUNICIPALITY OF INDAN

Precinct No. 1.—Ballot No. 123, reading "Mannil Marieno." This ballot was properly counted for the respondent, as it clearly appears that the intention of the voter was to vote for Manuel Moreno.

Ballot No. 124. This ballot was properly counted for the respondent for the same reason.

Ballot No. 126, reading "M. Morino". This ballot was properly counted for the respondent.

Precinct No. 3.—Ballot No. 174, reading "Bocalis Manil Morino". This ballot was objected to on the ground that it contains distinguishing marks. The objection is not well taken, the alleged distinguishing marks being apparently the word "Bocalis".

Ballot No. 176 was objected to on the same ground, but what is alleged to be distinguishing marks is merely a smear caused by an indelible pencil.

Precinct No. 4.—Ballot No. 206, reading "Manulro Moreno". In this ballot the surname is correctly written, and Manulro is intended for Manolo, a nickname for Manuel.

This ballot was correctly counted for the respondent.

Ballot No. 207. Although the surname is not very legible, it was evidently the intention of the voter to vote for Manuel Moreno.

Ballot No. 208. This ballot was objected to because of distinguishing marks which were not specified. The objection is not well taken.

Precinct No. 5.—Ballots Nos. 129, 131 and 133 were objected to on the ground that the names appearing on the ballots are the names of other persons. The objection is not well taken.

Precinct No. 7.—Ballots Nos. 191, 192, 193 and 194. These ballots were objected to on the ground that the name appearing on each of these ballots is not the name of the respondent, but the name of another person. The objection is not well taken.

Precinct No. 8.—Ballots Nos. 207, 208, 210, 211, 214, 215, 216 and 218. These 8 ballots were objected to on the ground that the name of the person voted for therein is different from that of the respondent. The objection is not

well taken as it appears from the ballots that it was the intention of the voters to vote for the respondent.

MUNICIPALITY OF BASUD

Precinct No. 1.—Ballot No. 166, reading "Mannil Morelno". This ballot was properly counted for the respondent.

Ballot No. 169, reading "Manuel Mo". Although the surname is not complete, it was evidently the intention of the voter to vote for Manuel Moreno.

Precinct No. 2.—Ballot No. 165. This ballot is rejected because the surname as written is illegible.

Ballot No. 168. Although badly written, it appears that it was the intention of the voter to vote for the respondent.

Ballot No. 170, reading "Man Morio". This ballot is rejected, because both the Christian name and surname are different from those of the respondent.

Ballot No. 171, reading "M. Moreno". The objection is not well taken as to this ballot.

Ballot No. 172. This ballot is objected to on the ground that the name is not legible. The objection is not well taken as to this ballot.

Ballot No. 173. The surname as written is illegible. This ballot should be rejected.

Ballot No. 175. Although the Christian name and surname are badly written, they are clearly intended for Manuel Moreno.

MUNICIPALITY OF SAN VICENTE

Precinct No. 1.—Ballot No. 154. Although badly written,, it appears that it was the intention of the Voter to vote for the respondent.

Ballot No. 156, reads "M. Manuel", and is rejected, because the surname as written is distinct from that of the respondent.

Ballot No. 157, reading "Manil Moreno" was property counted for the respondent.

MUNICIPALITY OF TALISAY

Precinct No. 2.—Ballot No. 167, reading "Minuel Moreno" was properly counted for the respondent.

Precinct No. 3.—Ballot No. 121, reading "Manuel Mo". Although the surname is not complete, this ballot should be counted for the respondent.

Ballot No. 122. As the name is illegible, this ballot is rejected.

Ballot No. 123, reading. "Maul Moreno" was properly counted for the respondent.

Ballot No. 124, reading "Unil Murino" was properly counted for the respondent.

Ballot No. 125, reading "Man Morino" was properly counted for the respondent.

Ballot No. 126, reading "Manali Morino" was properly counted for the respondent.

Ballot No. 127, reading "Manoel Moreno" was properly counted for the respondent.

Ballot No. 128, reading "Mamel Moreo*" was properly counted for the respondent under the rule of idem sonans.

Ballot No. 129. The surname is correctly written, and the first two syllables of the Christian name, which is "Manu", are those of the respondent. This ballot was therefore properly counted for the respondent.

Ballot No. 130, reading "Manoel Morno" was evidently intended for Manuel Moreno.

MUNICIPALITY OF MAMBULAO

Precinct No. 1.—Ballot No. 122, reading "Moreno" was properly counted in favor of the respondent, there being no other candidate with the name of Moreno.

Precinct No. 2.—Ballot No. 139, reading "Manel Moru".

Although the surname as written is not complete, it appears to have been the intention of the voter to vote for Manuel Moreno.

MUNICIPALITY OF DAET

Precinct No. 1.—Ballot No. 133, reading "Manuel Murno" was properly counted for the respondent.

Precinct No. 2.—Ballot No. 171, reading "Manoel Moreno" was properly counted for the respondent.

Ballot No. 172, reading "Menuel Moreno" was properly counted in favor of the respondent.

Ballot No. 221. In the case of this ballot, the voter turned the ballot upside down and wrote the name of Manuel Moreno and six other names in the spaces intended for municipal councillors. This ballot is rejected.

Ballot No. 222. The voter did not fill out the spaces in the ballot, but wrote the names on the reverse side of the ballot. This ballot is rejected.

Ballot No. 223, reading "Manuel Moreno". The objection to this ballot is obviously without merit.

Precinct No. 5.—Ballot No. 151, reading "Manoel Moro (or More)". Although the surname is not complete, it was undoubtedly the intention of the voter to vote for Manuel Moreno.

Ballot No. 153, reading "'Mannil Mono". Although the surname is not complete, it is evident that it was the intention of the voter to vote for Manuel Moreno.

Ballot No. 154, (reading "Manil Morno", was properly counted for the respondent under the rule of idem sonam.

Ballot No. 155, reading "M. Morino". The objection to this ballot is not well taken.

Ballot No. 156, reading "Manoil Muno". It is evident that the intention of the voter was to vote for Manuel Moreno.

Precinct No. 6.—Ballots Nos. 172 and 175. These ballots were objected to by the petitioner on the ground that they contain distinguishing marks. He does not specify what the distinguishing marks consist of. These ballots were properly counted for the respondent.

Precinct No. 7.—Ballot No. 44, reading "Manel Mreno". It is evident that it was the intention of the voter to vote for Manuel Moreno.

Ballot No. 45. The name as written is "Manlo Moroni". This ballot was properly counted for the respondent.

Precinct No. 8.—Ballots Nos. 138, 139 and 140, reading "Manoel Moreno", "Manuel Morino" and "Manuel Morino". The objection to these ballots is without merit.

Precinct No. 9.—Ballot No. 187. As the name is illegible, this ballot is rejected.

Precinct No. 10.—Ballot No. 130, reading "Manoil Moreno". The objection as to this ballot is not well taken.

Ballot No. 131, reading "Senorito Manuel". This ballot is rejected.

Ballot No. 132, reading "Don Manuel". This ballot is rejected.

Ballot No. 133, reading "M. Manol". This ballot is rejected, the surname as written being distinct from that of the respondent.

Ballot No. 135, reading "Moreno Maning", was properly counted for the respondent.

MUNICIPALITY OF LABO

Precinct No. 1.—Ballot No. 148, reading "Marino Moreno". As the first name is distinct from the Christian name of the respondent, this ballot is rejected.

Precinct No. 2.—Ballot No. 10, reading "Manuel No", is rejected. Although there was sufficient space, the voter did not write anything further.

Precinct No. 3.—Ballot No. 1. This ballot was objected to by the petitioner on the ground that it contains a distinguishing mark, Coupon No. 48, which is not detached. It is the duty of the chairman of the election inspectors to remove the coupon from the ballot. If through an oversight the chairman fails to remove the coupon, the ballot ought not to be invalidated for that reason.

Precinct No. 4.—Ballot No. 1, reading "Manuel Morno". The objection to this ballot is not well taken.

Precinct No. 5.—Ballot No. 258. This ballot was objected to on the ground that the name appearing therein is not that of the respondent and that it has a distinguishing mark. The name on the ballot is Manuel Moreno, and the first objection, therefore, is without merit. The petitioner does not specify what the distinguishing mark consists of. A name written under that of Manuel Moreno has been erased, but that fact alone is not sufficient to constitute a distinguishing mark.

MUNICIPALITY OF PARACALE

Precinct No. 5.—Ballot No. 148, reading apparently "M.Mrno". It was clearly the intention of the voter to vote for Manuel Moreno, and this ballot was properly counted for him.

Precinct No. 5.—Ballot No. 77. This ballot, reading "Morino", was properly counted for the respondent.

In the tenth assignment of errors, the petitioner alleges that the trial court erred in admitting and counting the following ballots in favor of the respondent:

MUNICIPALITY OF INDAN

Precinct No. 5.—Ballot No. 146. This ballot is rejected because the name of the respondent, Manuel Moreno, is written in the space opposite the words "Provincial Governor".

Precinct No. 8.—Ballots Nos. 134 and 135. These two ballots were counted for Manuel Moreno by the commissioners. They were also claimed by Francisco Balon. In disapproving the claim of Francisco Balon, the court erroneously adjudicated them to Manuel Moreno, although they had been previously counted in his favor by the commissioners.

MUNICIPALITY OF BASUD

Precinct No. 3.—Ballot No. 122. This ballot is objected to on the ground that the name of the respondent is written in the space corresponding to the provincial governor. The objection is without any foundation in fact.

Ballot No. 123. The name of the respondent is written in the space corresponding to the provincial governor, and this ballot is therefore rejected.

MUNICIPALITY OF MAMBULAO

Precinct No. 1.—Ballot No. 216. This ballot was counted in favor of Manuel Moreno by the commissioners. It was also claimed by Francisco Balon. In rejecting the claim of Balon, the court erroneously counted it in favor of Moreno a second time.

ELEVENTH ASSIGNMENT OF ERROR

In this assignment of error the appellant maintains that ballot No. 171 of precinct No. 3 of the municipality of Indan and ballots Nos. 134 and 135 of precinct No. 8 of the municipality of Indan should not be counted in favor of the appellee. Precinct No. 3 is clearly a clerical error and should read precinct No. 2. Ballot No. 171 was counted in favor of Manuel Moreno by the commissioners. It does not appear from the decision, as alleged by the appellant, that it was counted by the court a second time in favor of Moreno.

Appellant's assignment of errors as to ballots Nos. 134 and 135 of precinct No. 8 of the municipality of Indan in a repetition of his tenth assignment of errors as to said ballots.

As to ballot No. 216 of precinct No. 1 of the municipality of Mambulao, this is also a repetition of appellant's tenth assignment of errors.

The respondent did not appeal from the decision of the trial court or make any assignment of errors, and it is therefore unnecessary to examine the ballots adjudicated to the petitioner by the lower court.

In accordance with the foregoing findings, it results that 25 of the ballots mentioned in the seventh assignment of errors that were rejected by the lower court should have been counted in favor of the petitioner, and that one of the ballots mentioned in the eighth assignment of errors should have been counted in favor of the petitioner, making a total of 26 votes to be added to the votes of the petitioner.

Under the ninth assignment of errors, 13 votes adjudicated by the lower court to the respondent should be deducted, and 5 votes under the tenth assignment of errors, making a total of 18 votes to be deducted from those adjudicated by the trial court to the respondent.

The trial court adjudicated to the petitioner Francisco Balon 3,537 votes, and to the respondent Manuel Moreno 3,580 votes. If we add 26 votes to those adjudicated to Francisco Balon and deduct 18 votes from those adjudicated to Manuel Moreno, the result is that Francisco Balon will have 3,563 votes and Manuel Moreno 3,562. The plurality of the petitioner over the respondent is therefore one vote.

In view of this result, it is unnecessary to order a new trial because of the refusal of the trial court to examine the ballots in the boxes for spoiled ballots and to receive evidence with respect thereto, or for this court to examine said ballots.

The decision of the trial court is reversed, and the petitioner Francisco Balon is declared elected with a plurality of one Vote. The respondent will pay the costs.

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

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