

ALBERTO REYES, PROTESTANT AND APPELLANT, VS. LUPO BITENG, PROTESTEE AND APPELLEE.*G.R. No. 36891. August 29, 1932*

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-36891/>**IMPERIAL, J.:**

The protestant, Alberto Reyes, appeals from the decision of the Court of First Instance of Ilocos Sur declaring the protestee, Lupo Biteng, governor-elect of the said province, with costs and incidental expenses against the protestant.

In the general elections held on June 2, 1931, the protestant, the protestee and Alejandro Itchon were candidates for provincial governor of Ilocos Sur. After a recount of all the votes appearing in the election returns, the provincial board of Ilocos Sur, acting as provincial board of canvassers, certified that the appellant, Alberto Reyes, had received 11,670 votes, the appellee, Lupo Biteng, 11,775 votes and Alejandro Itchon, 2 votes, and proclaimed the appellee duly-elected provincial governor.

On June 18, 1931, the appellant filed his protest against the appellee's election on the ground that the latter's plurality of 105 votes was due to the commission of frauds and irregularities in many precincts; that the election held in the joint precinct of Concepcion and Sigay was illegal and should be annulled, and prayed that the ballot-boxes involved be opened and the votes therein recounted, after which he be declared the duly elected provincial governor.

On July 9, 1931, within the reglementary period, the appellee filed his answer in which he alleged various special defenses and interposed a counter-protest. In his defense, he declared that the election held in Concepcion and Sigay was orderly and valid and therefore should not be annulled, and that if the irregularities and frauds alleged by the appellant were committed, they only served to increase the number of votes illegally cast for the latter. In his counter-protest, he alleged that due to frauds and irregularities committed in many precincts, which deprived him of many valid votes, the appellant succeeded in obtaining the number of votes which he did.

Upon petition of the attorneys for both parties, the court appointed election commissioners who proceeded to recount the votes. After their reports had been submitted and evidence presented to substantiate them, the court found that the appellant had received 11,662 votes and the appellee, 11,778, or a plurality of 116 votes in favor of the latter, who was proclaimed duly elected provincial governor.

Pending the appeal, the protestee died and his attorneys filed a motion for dismissal, which the attorneys for the appellant opposed. Following the doctrine established in the case of *De Los Angeles vs. Rodriguez* (46 Phil., 595), in accordance with the provision of paragraph 3, of section 479 of the Election Law, the court dismissed the said motion on February 26, 1932.

We shall follow the same method adopted by the attorneys in their respective memorandums for a better understanding of this decision. The appellant assigns the following errors in the decision appealed from:

"I. The trial court incurred four errors in computation in counting the protestant-appellant's votes in precincts No. 2 of Santa Lucia, No. 3 of Santo Domingo, No. 5 of Tagudin and No. 4 of Candon.

"II. The court a quo erred in not considering as the appellant's votes 100 ballots in which he was clearly voted for by the names, nicknames and initials of names by which he is commonly known, as stated in his certificate of candidacy.

"III. The lower court erred in not counting 28 ballots, which are clearly valid votes, for the appellant by the rule of idem sonans.

"IV. The lower court erred in holding that eight (8) ballots of the appellant were marked and rejecting them as such.

"V. The court a quo erred in rejecting the appellant's ballots-'Reyes—100, 161, 171, 335, 343, 731, 1,105, 1,116, 1,195, 1,490 and 1,896,' which contained no defect that might legally invalidate them.

"VI. The court a quo erred in not annulling the election held in precinct No. 6 of Santa Cruz, in spite of documentary and oral evidence which clearly proved that grave irregularities and frauds were committed therein.

"VII. The presiding judge erred in not annulling the election held in the joint precinct of Concepcion and Sigay on the ground that the registration of voters took place on the day assigned exclusively for the correction of the list of voters and not during the two days assigned by law for that purpose, and on the further ground that persons not having the necessary qualifications to vote were registered therein.

"VIII. The lower court erred in adjudicating to instead of discounting from the appellee, Lupo Biteng, the 81 ballots marked 'Biteng-904' to 'Biteng-984', divided into nine groups, each of which was written by the same hand.

"IX. The presiding judge erred in not declaring that the election held in the municipal district of Suyo failed, or at least, in not deducting 51 of the 61 ballots, divided into 15 groups each of which had been written by the same hand and filled out for illiterate voters who had not previously taken the necessary oath required by law.

"X. The trial court erred in permitting the voters, recorded with educational qualifications in the list of voters of Suyo who had been summoned at the request of the appellant and kidnapped by the appellee, to abstain from writing at the trial, precisely to prove that they were in fact illiterate and, therefore, could not have voted without somebody's help.

"XI. The court a quo committed an error in computation when it counted the protestee-appellee's votes in precincts Nos. 1 and 3 of Santa Lucia.

"XII. The trial court erred in admitting and considering as valid votes for the appellee, Lupo Biteng, 214 ballots wherein the names or words written in the space for provincial governor did not correspond to his name or initials or were among the names, initials or words appearing in his certificate of candidacy.

"XIII. The court a quo erred in admitting and counting 76 marked and countersigned ballots as valid votes for the protestee, Lupo Biteng.

"XIV. The trial court erred in not declaring the protestant, Alberto Reyes, duly elected provincial governor of Ilocos Sur, with costs and incidental expenses against the protestee-appellee, Lupo Biteng and his bondsmen."

In the first assignment of error, it is contended that the court committed an error in computation in counting the votes obtained by the appellant in precincts No. 2 of Santa Lucia, No. 3 of Santo Domingo, No. 5 of Tagudin and No. 4 of Candon. It is alleged that the appellant was deprived of 2 votes in the first precinct, 1 in the second, 34 in the third and 5 in the fourth. The attorneys for the appellee admit in their brief the involuntary errors of

computation in the precincts of Santa Lucia and Candon. We are of the opinion that the error assigned with respect to precinct No. 5 of Tagudin is also well founded inasmuch as the court noted on the reverse side of its order dated January 20, 1932, that through oversight, the 34 votes claimed by Reyes in said precinct had not been credited him. We believe that the appellant's contention regarding precinct No. 3 of Santo Domingo is unfounded because ballot "Reyes-157" claimed by him had been credited him in the decision wherein the conclusions of the trial court mentioned by the appellant refer to precinct No. 1, not No. 3 of Santo Domingo.

The appellant is, therefore, credited with 41 additional votes under the first assignment of error.

II

In the second assignment of error, the appellant claims 100 ballots rejected by the court on the ground that the names voted for governor therein either are illegible or belong to persons other than the appellant. After examining these ballots one by one, we found that only ballots "Reyes-85" of precinct No. 1 of Santo Domingo and "Reyes-1094" of precinct No. 4 of Sinait are valid. In the rest, the names are either so badly written as to be illegible or, if legible, not the appellant's. He insists, however, that the ballots bearing the names "B. Reyes", "V. Reyes", "R. Reyes", "Alberto", "Berto", "Loberto" and "Cayong" should be considered valid and credited to him because he stated in his certificate of candidacy that in Ilocos Sur he is also known as Ruperto, Lamberto, Loberto, Edilberto, Norberto, Eriberto, Filisberto and Roberto and nicknamed Cayong and Berto.

We believe that the appellant's contention on this point is unfounded. Although this court had held in various decisions that the names and nicknames appearing in a candidate's certificate of candidacy may be taken into consideration in interpreting the voters' will or intention, in no case has it held that a candidate can claim ballots clearly written in the name of different persons, because this practice would convert the certificate of candidacy into a sort of net or artifice with which to obtain invalid or scattered votes or those cast for other persons. In the present case, the appellant's intention to appropriate votes not intended for him can be clearly inferred from the fact that he assumed other persons' Christian names. Section 404 of the Election Law clearly provides that the certificate of candidacy shall contain the candidate's signature, that, is, his real name and surname, while section 452 requires voter to write clearly the name and surname of the candidate he is voting for. In view of such simple and specific legal provisions, we cannot comprehend how a candidate would enlarge upon his certificate of candidacy in such a way as to convert it into an elaborate instrument to improperly increase the number of his votes.

With respect to the trial court's reasons for rejecting the other ballots bearing the names, B. Reyes, V. Reyes, R. Reyes, Alberto, Berto, Loberto and Cayong, it is not amiss to repeat what has already been said in former decisions regarding ballots written in the same manner. For the purposes of this decision, suffice it to say that in the cases of *Mendoza vs. Mendiola* (53 Phil., 267); *Abiera vs. Abiera* (54 Phil., 793); *Lazatin vs. Dayrit* (56 Phil., 831); *Dizon vs. Cailles* (56 Phil., 695); *Mendiola vs. Mendoza* (56 Phil., 833); *Baligod vs. Angoluan* (56 Phil., 835); and *Sinogba vs. Reganit* (p. 955, post), it was held that ballots bearing the initials of Christian names other than that of the candidate, are invalid even when the surname is correctly written. In the cases of *Valenzuela vs. Carlos and Lopez de Jesus* (42 Phil., 428); *Cailles vs. Gomez and Barbaza* (42 Phil., 496); *Yalung vs. Atienza* (52 Phil., 781); and *Icay vs. Diapo* (G. R. No. 30671, promulgated May 11, 1929, not reported), it was also held that ballots in which names alone or their derivatives are written must not be credited to any candidate. The same rule was laid down in the cases of *Pontillas vs. Jurado* (56 Phil., 829); *Medina vs. Noble* (56 Phil., 833); *Moral vs. Morales* (56 Phil., 833); and *Bayona vs. Siaotong* (56 Phil., 831). In the case of *Alegre vs. Perey* (G. R. No. 31017, promulgated March 26, 1929, not reported) it was decided that ballots in which nicknames alone appear are not to be counted.

It is true that in the case of *Mandac vs. Samonte* (54 Phil., 706), it was held that certain ballots bearing the name or nickname alone of a candidate were valid, but such conclusion was arrived at because it was proven in that particular case that there was no other candidate for that office except that person known by that name and nickname. The same decision cannot be invoked in favor of the appellant in the present case because it has been proven that he was not the only candidate in Ilocos Sur in said election with the surname of "Reyes". Juan Reyes was a candidate for councilor in the municipality of San Vicente; Gregorio Reyes, for vice-president in Narvacan; Socorro Reyes, for councillor in Vigan; Teodoro D. Reyes, for vice-president in Santa Maria; A. Reyes, for councilor in Candon; Antonio Reyes, for president in the capital of Vigan; and Pedro Singson Reyes for representative. Although in the case of *Mandac vs. Samonte* it was held that the ballots bearing only the name or nickname were admitted because in that case there was only one candidate for the same office with the said name and nickname, this court has not adopted this rule in the other cases wherein the same question was raised. It will be seen from an examination of the decisions in the cases cited above that the rule uniformly followed by this court is that votes cast in which the name or nickname alone appears are not valid and should not be counted.

The appellant is entitled to only two votes under this assignment of error.

III

In the third assignment of error, the appellant claims 25 ballots rejected by the court either because they are illegible or the names voted for governor therein do not correspond to the appellant's.

After a careful examination of the ballots in question this court reached the conclusion that the appellant should only be credited with the following three ballots: "Reyes 42—Alvirto rallers", in precinct No. 3 of Santa Lucia, "Reyes-142-A: A. Reyes", in precinct No. 3 of Santo Domingo, and "Reyes-411: a. ryes", in precinct No. 5 of Narvacan. These three ballots are valid and admissible by the rule of *idem sonans*. The names voted for governor in the remaining ballots are either illegible or do not correspond to that of the appellant.

IV

In his fourth assignment of error, the appellant claims that 8 ballots rejected by the court as marked, are good and valid.

We have examined all these ballots, with the exception of "Reyes-73", in precinct No. 1 of Santo Domingo, which could not be found in any of the ballot-boxes, and we are convinced that only two are valid: "Reyes-392: Alberto Yeryes", in precinct No. 3 of Narvacan, and "Reyes-894: alberto Reyes", in precinct No. 5 of Candon, not precinct No. 6, as erroneously stated on page 27 of the appellant's brief. The remaining ballots are evidently inadmissible, being marked.

Under his fifth assignment of error, the appellant claims 11 ballots rejected by the court, either because they bear two names voted for governor, or, the appellant's name was written below the line and outside the space assigned for governor, or the appellant was voted for member of the provincial board.

From an examination of the ballots, except "Reyes-100" and "Reyes-1195", which could not be found in any of the ballot-boxes, it appears that only "Reyes-1105" is valid, on the ground that the voter's intention to vote for the appellant for governor is clear. He was compelled to write the appellant's name below the line assigned for governor because, not being able to write it correctly at first, he was forced to erase it twice. The remaining ballots cannot be credited to the appellant. The court justly rejected ballots, "Reyes-335" and "Reyes-1490" because the former is fraudulent containing lines and spaces for senator and representative for which no election was held in precinct No. 4 of Tagudin, and because in the latter the voter did not vote for the appellant but for

Antonio Reyes, candidate for president of the municipality of Vigan. This is evident from the fact that the voter added the word "president" after the initial and surname "A. Reyes".

Under this assignment of error, the appellant has gained only one vote.

VI

In the sixth assignment of error, the appellant seeks to annul the election held in precinct No. 6 of the municipality of Santa Cruz on the following grounds: (1) That no inspector was appointed to represent the democrata party in that precinct; (2) that the deceased appellee, with some of his leaders, remained in the polling place during the whole election, entered the booths where the electors prepared their ballots and induced them to vote for him; (3) that many voters who qualified by reason of education and knew how to read and write had been unduly assisted by persons who had not previously taken the necessary oath required by law; (4) that the voters' list and certain ballots had been falsified in order to allow absent and sick persons to vote, as in the cases of Bartolome Fabro and Severo Habon who were in Hawaii, Canuto Oville who was in Baler, Tayabas, Eusebio Ramirez who was in La Union, and Florentino Lasmarias who died a few days before the election after having been ill for many years; and (5) that 16 voters who qualified claiming to be property owners, and 10 who qualified claiming to have held the office of councillor during the Spanish regime were permitted to vote with the help of other persons without previously taking the required oath that they did not know how to read or write.

We are of the opinion that the grounds alleged above are insufficient to annul the election held in the said precinct. It appears that the municipal council appointed Pio Salvio to represent the democrata party, although the party did not propose the appointment of any person to represent it on the board of election inspectors. The said inspector Was proposed by the democrata party to substitute for inspector Hermogenes Gomintong, so that the party was in reality represented in that precinct.

With regard to the other frauds and irregularities alleged to have been committed in precinct No. 6 of Santa Cruz or Sevilla, the lower court, after carefully analyzing the evidence presented, declared that certain irregularities had reall" been committed. It excluded the illegal ballots, but arrived at the conclusion that the extent and nature of such irregularities did not justify the annulment of the entire election held in said precinct. Its findings are as follows:

"PRECINCT NO. 6 (SEVILLA)

"This precinct was located in and assigned to the voters of the barrio of Sevilla. The protestee was a native and resident thereof. There was no partisan strife for the, office of governor in that place. The election inspectors previously appointed by the municipal council of Santa Cruz were dismissed because of charges for violation of the Election Law filed against them by the provincial fiscal. But the truth of the matter is that Hermogenes Gomintong, who was an inspector of the democrata party and chairman of the board of election inspectors, is a first cousin of the protestee, Biteng, the nacionalista candidate for governor. His successor was proposed by no other than the representative of the democrata party to act as a substitute in another precinct. No proceeding for the appointment of any other democrata inspector for the precinct in question was ever instituted in any court of justice.

"There is absolutely no doubt but that a great majority of the voters in this precinct were partisans of the protestee but, for the same reason that they practically had absolute control of the situation, some of them took so much liberty that it gave rise, in a certain way, to the violation of the secrecy of the ballot. As proof of this, two different persons appear to have written each of, the ballots, Exhibits E to E-34, with the exception of ballots, E-8, E-10, E-12, E- 16, E-18, E-19, E-26, E-29, E-30, E-31, E-32, E-33 and E-34. The total number of ballots, which are hereby rejected for having been written by two different persons, is twenty-two.

"In justice to the protestee, Biteng, it should be stated that his name was written by the first hand or legitimate voter on 14 of the 22 ballots. It is names of candidates to other offices below the space for governor which had been written by the second hand. It is, therefore, evident that the electors voluntarily voted for Biteng and that the 14 valid votes in his favor must be rejected as simply through a mere technicality of the law.

"The protestant contends that each group of the following ballots were written by one hand. The court finds that ballots, F to F-25 (25) were written by one hand; G to G-22 except G-18 and G-22 by another hand; H to H-6 (7) by another; I to 1-4 except 1-4 by another; J to J-3 by another; K to K-2 "by another; L to L-2 except L-1 by another; LL to LL-2 by another; and Q and Q-1 by another; R and R-1 by another; S and S-1 by another; M to M-2 by another; N to N-2 by another; ft to ft-2 by another hand. Ballots, O and O-1 and P and P-1 were not written by another hand. The total number of ballots written by 16 hands is 89.

"By deducting from these 89 ballots the 16 ballots prepared by the helpers for themselves, it results that 73 ballots had been prepared by these for other persons. According to the list 33 illiterates voted in the last elections.

"None of the other ballots is defective. A total of 63 ballots, consisting of 41 written by helpers for literate and absent voters and the 22 written by two hands, should be deducted from the 212 ballots cast for Biteng in this precinct.

"The evidence presented does not confirm the other irregularities pointed out by the protestant. Witnesses presented by him are not deserving of credit, having made contradictory statements. It should be remembered that these witnesses testified after the representatives of the protestant had revised the ballots. There was no protest against the procedure followed by the inspectors of this precinct. Lieut. Babista of the. Constabulary and Assistant Fiscal Alagar who had supervision over the activities in this precinct had not found any anomaly.

"In the opinion of this court, the irregularities committed in this precinct do not justify a judgment of nullity against all the votes cast therein. The illegal ballots can be separated from the valid ones.

"Reyes has ten undisputed ballots."

We have reviewed the evidence presented and are convinced that the conclusions reached by the lower court are correct and that there is nothing to warrant the annulment of the election held in the precinct in question, principally, for the reason that the irregularities committed did not affect the entire election and the votes illegally cast have been rejected.

"* * * Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until, it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters of said precinct or municipality * * *." (Garchitorena vs. Crescini and Imperial, 39 Phil., 258, 261.)

"All of the alleged irregularities in the preparation of the ballots of voters with educational qualifications, besides not having been proven, are not sufficient to annul the election in the precincts in which they were committed, inasmuch as it does not appear that they have made the result of the election in said precincts doubtful, because the trial court could not identify the illegal ballots and deduct them from the votes of the candidate to whom they belonged. 'Elections should never be held void unless they are clearly illegal; it is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained. It has even been held that gross irregularities not amounting to fraud do not vitiate an election. * * *' (20 C. J., 181, par. 222.)" (Demeterio vs. Lopez, 50 Phil., 45, 59.)

VII

In the seventh assignment of error, the appellant seeks the annulment of the election held in the joint precinct of Concepcion and Sigay on the ground that the election inspectors did not make the lists during the two days fixed by law for that purpose, but on the day fixed for its correction. Because of this irregularity, many voters without any qualification whatsoever who succeeded in having their names inscribed in the official list could not be stricken therefrom.

April 11th and 18th were the days fixed by law for the registration of voters and May 23d for the correction thereof, in accordance with whatever orders the competent courts might have issued in that respect. The inspectors, however, inscribed 28 voters on April 17, 112 on the 21st and 306 on May 23, the day fixed for the correction of the lists, making the total number of illegally inscribed voters 446. Furthermore, there is a discrepancy between the number of voters inscribed on the list and those appearing in the records prepared by the inspectors.

We have carefully reviewed the evidence presented on this point and we have unhesitatingly arrived at the conclusion that the irregularities committed were so grave as to really constitute fraud, thus vitiating the result of the election. There is not the least shadow of a doubt that the election officers completely ignored the law by registering voters outside the days fixed bylaw and that their acts resulted in the registration of and voting by unqualified voters, whose right could not be challenged due to the material lack of time. It being impossible to segregate the legal, from the illegal votes and because the frauds and irregularities committed had affected the entire election to such an extent that it is impossible to ascertain the true will of the voters authorized to exercise the right of suffrage, we believe we are justified in holding, as we hereby hold, that the entire election held in the joint precinct of Concepcion and Sigay is null and void.

VIII

In the eighth assignment of error, the appellant questions the validity of 81 ballots, "Biteng-904" to "Biteng 984" adjudicated to the protestee-appellee. The annulment of the election held in the joint precinct of Concepcion and Sigay makes it necessary to examine the disputed ballots, or decide any question involved. The only thing to be done, and which will be done when the votes received by each candidate are computed, is to deduct from the appellee's votes the plurality he obtained in said precinct.

IX

In his ninth assignment of error, the appellant contends that the election held in the precinct of Suyo should be annulled or, at least, that 51 of the 61 ballots, divided into 15 groups, should be deducted from the appellee in view of the fact that each group had been written by the same hand.

The grounds stated for the annulment of the election held in this precinct are the alleged falsification of the list of voters' and the irregularities committed in helping the voters prepare their ballots. We agree with the findings of the trial court that no fraud was committed and its conclusion that no vote should be deducted from the appellee because the 38 votes appearing to have been written by a few persons correspond to the 38 illiterate voters registered in the list. The court also concludes that the evidence presented does not prove the appellant's allegations that absent persons succeeded in voting during the election.

The assignment of error is, therefore, unfounded.

X

In the tenth assignment of error, the appellant contends that the trial court erred in permitting the voters, who were registered by reason of educational qualifications in the precinct of Suyo, summoned by him, to abstain from writing during the trial to prove his contention that they were illiterate.

The action of the trial court tended to sustain the timely objection made by the attorneys for the appellee. It is evident that appellant, in calling these persons to the witness stand was for no other purpose than to prove that they violated the provisions of paragraph 1 of section 2645 in connection with paragraph 2 of section 427 of the Election Law, by making affidavits to the effect that they had educational qualifications knowing full well that they were illiterate. It is unnecessary to indulge in lengthy discussions to show that the trial court had not erred as alleged, inasmuch as it was only protecting the constitutional rights of the said voters in not permitting them to incriminate themselves. Of course, the appellant could prove that they were illiterate and that they violated the provisions of the law by voluntarily affirming in their oath that they were literate, but it is clear that he could not utilize their testimony when they signified their intention not to testify.

This assignment of error cannot be sustained.

XI

In his eleventh assignment of error, the appellant contends that the trial court erred in adjudicating to the appellee 4 additional votes in precinct No. 1 and 2 more in precinct No. 3 of Santa Lucia.

The appellant bases this assignment of error on the figures appearing in the commissioners' report with respect to these two precincts, but we find no error in the figures contained in the decision of the trial court by whose conclusions it is our duty to abide, and not those of the commissioners. Page 6 of the trial court's decision, speaking of the votes received by the contending parties in precinct No. 1 of Santa Lucia, mentions the existence of an agreement supposed to have been entered into by both parties to the effect that they abided by said part of the decision specifying the number of votes obtained by them. Having been the subject matter of a stipulation between the parties, the figures of the court referring to that precinct, at least, cannot be erroneous.

This assignment of error is hereby denied.

XII

In his twelfth assignment of error, the appellant alleges that the court erred in holding as valid votes of the appellee 214 ballots in which the names or initials voted for provincial governor therein do not correspond to those of the appellee.

We have examined said ballots one by one and found that they are all valid with the exception of the following which should be rejected for the reasons mentioned: "Biteng-5: Lupo V", because the initial of the surname is not that of appellee; "Biteng-6: Lupo V", for the same reason; "Biteng-28: Lupo V", for the same reason; "Biteng-82: Ropa Velin", because it was not cast in the appellee's name; "Biteng-85: (Lupo Ayotan) Biteng", for being a ballot marked with the word "Ayotan"; "Biteng-86" (not 66 as mentioned in the appellant's brief), because the name of the candidate voted for governor is illegible; "Biteng-87: Lopo . . .", because the surname is illegible; "Biteng-216", because the name "L. Biteng" is written in the space assigned for members of the provincial board; "Biteng-322", because the word "Luro" alone is legible; "Biteng-383: betin", because it is not even the appellee's surname; "Biteng-436: Beding", for the same reason; "Biteng-497: lopo", for not being the appellee's name; "Biteng-605: lupo Bilizno", because the surname is not the appellee's; "Biteng-659", because the name of the candidate voted for governor is illegible; "Biteng-665: Otng", because the surname does not belong to the

appellee; <!--Biteng-668: . . . Veleng", because it is illegible and is not the appellee's surname; "Biteng-702", because the name voted for governor is illegible; "Biteng-715: V. Toco veten", because it does not refer to the appellee; "Biteng-718", because the name voted for governor is illegible; "Biteng-725: Lupoe Bubeno", because it does not refer to the appellee; "Biteng-726", because the name voted for is illegible; "Biteng-801: Vitign . . .", because it does not refer to the appellee; "Biteng-803", because the name voted for governor is illegible; "Biteng-809: Bitong", because it is not the appellee's surname; "Biteng-831: lugbiti", because it was not cast for the appellee; "Biteng-852: lupo . . .", because the surname is illegible; "Biteng-854: lopo V", because it is not the initial of the appellee's surname; "Biteng-878", because the name voted for governor is illegible; "Biteng-1119: Lopeling", because it is not the appellee's name; "Biteng-1268: Ropo Viteng", because it is not the appellee's name and the surname is erroneously written, and furthermore, because this ballot may be considered marked inasmuch as some of the names appearing in the ballot are written with an indelible pencil while others are written in blue ink; and "Biteng 1282", because the voter wrote the names of his candidates at the back of the ballot leaving the spaces for governor and other offices blank.

Of the 32 illegal ballots mentioned in the preceding paragraph, only 30 should be deducted from the appellee because ballots, "Biteng-659" and "Biteng-878", have already been rejected and deducted from the appellee by the trial court.

XIII

In his thirteenth assignment of error, the appellant conterids that the trial court unduly adjudicated 87 marked and countersigned ballots to the appellee.

From an examination of the ballots in question, we have found that, only the following are marked and should, therefore, be rejected: "Biteng-20: Biting Abogado", marked with the word, abogado; "Biteng-225", because the space for governor is left blank and the voter wrote the names of his candidates in the reverse order; "Biteng-348", because the space for governor is left blank and the Voter wrote the names of his candidates in the reverse order; "Biteng-351", because the appellee's name appears in the space for members of the provincial board; "Biteng-720", because the ballot is marked with the sign of equal under the name of the candidate for senator, and with a hyphen under the name of the candidate for municipal president; and "Biteng-1099", because it is marked by writing the name of the appellee in english or slanting letters while those of the other candidates are written in vertical letters.

There are in all 6 marked or countersigned ballots but only 4 should be deducted from the appellee because the ballots, "Biteng-225" and "Biteng-348" have already been rejected by the trial court and deducted from the appellee.

Ballots, "Biteng-586-587-588-711-773-774-820-860-1088-1233 and 1284 could not be found in any of the ballot boxes and for this reason we accept the conclusion of the trial court that they are valid.

XIV

This last assignment of error in which the appellant makes a resume of the votes the candidates for governor ought to have received, needs no further discussion being a mere corollary of the preceding ones.

We shall now proceed to the examination of the special defenses and counter-protest interposed by the appellee. In the decision appealed from, he assigns seven errors embodied in what he calls, in his brief, arguments XV to XXI, to wit:

"XV. The lower court erred in counting 33 ballots in which the name Roberto or Lamberto Reyes appears as

the one voted for the office of the provincial governor, as valid votes in favor of the protestant and appellant, Alberto Reyes.

"XVI. The lower court erred in counting 49 ballots in which appear the name of Norberto Reyes as the person voted for the office of provincial governor, as valid votes in favor of the protestant and appellant, Alberto Reyes.

"XVII. The lower court erred in counting 75 ballots as valid votes in favor of the protestant and appellant when they should have been rejected because they are marked.

"XVIII. The lower court erred in counting 441 ballots as valid votes in favor of the protestant and appellant, which ballots should not be counted because they are either illegible or clearly not for said protestant and appellant.

"XIX. The lower court erred in not rejecting 146 ballots divided into 16 groups, each written by one hand, and in counting the same as valid votes in favor of the protestant and appellant.

"XX. The lower court erred in computing the votes of the protestant and appellant in precincts Nos. 1 and 3 of Santa Lucia and in precinct No. 2 of Tagudin.

"XXI. The lower court erred in rejecting 15 ballots, and in not counting them as valid votes in favor of the protestee. and appellee."

XV

In this assignment of error, the appellee questions the validity of 33 ballots bearing the name Roberto or Lamberto Reyes for governor, counted by the trial court as valid votes cast in favor of the appellant.

We have carefully examined all the ballots and found that the names voted for the office of governor therein are written Ruperto Reyes, Lamberto Reyes, Roberto Reyes or Loberto Reyes. Following the rule laid down in the case of Lucero vs. De Guzman (45 Phil., 852), said ballots should not be counted as validly cast in favor of the appellant because the Christian names do not correspond to his name. In the case cited above, it was said:

"In examining the ballots cast for the contestee it becomes apparent that confusion existed in the minds of many voters as regards the Christian name of the candidate. For instance, it appears that the contestee has a brother named Bernabe Guzman, and more than twenty ballots scattered through various precincts were found to have the name of Bernabe Guzman written in the place where provincial governor should be voted for. Numerous other ballots were found bearing such names as Juan Guzman, Gregorio Guzman, Anastasio Guzman, Alejandro Guzman, Genaro de Guzman, Pedro Guzman, Mariano Guzman and the like. None of these ballots can, in our opinion, be lawfully counted for the contestee, and the trial court was in error in admitting them as lawful votes for him."

However, the ballot "Reyes-830", should be counted for the appellant because it appears that the vote for governor was cast in the name of Alberto Reyes.

From the foregoing, it is concluded that 32 votes should be deducted from the appellant under this assignment of error.

XVI

In this assignment of error, the appellee alleges that the court unduly counted for the appellant 49 ballots wherein the electors voted for Norberto Reyes for governor.

After an examination of the ballots, we find that all of them, with the exception of "Reyes-851", should be

rejected because they were cast for Norberto Reyes which is not the appellant's name. Ballot, "Reyes-851" is valid because the name, Alberto Reyes, appears to have been voted for therein.

Therefore, under this assignment of error, 48 votes should be deducted from the appellant.

XVII

In this assignment of error, the appellee also questions 75 ballots adjudicated to the appellant. He contends that they should have been rejected by the trial court for being marked.

The only ballots found by us to be marked and should be rejected are the following: "Reyes-376", of precinct No. 2 of Narvacan, marked with the word "Pilato"; "Reyes 501" of the precinct of Banayoyo, marked with the word "Bunska" written on the line for senator; "Reyes-526" of precinct No. 1 of Burgos, in which the names of the candidates were written in pencil and then written over in blue ink; and "Reyes-877" of precinct No. 3 of Candon bears the voter's thumbmark.

The conclusion of the lower court should be accepted with respect to ballot, "Reyes-431", which could not be found in any of the ballot-boxes. The rest of the ballots are valid and were rightfully counted in favor of the appellant.

Therefore, four votes should be deducted from the appellant.

XVIII

In this assignment of error, the appellee contends that 441 ballots should be deducted from the appellant because the names voted for governor therein either are illegible or clearly belong to persons other than the appellant.

We have examined the ballots one by one and found them all to be good and valid with the exception of the following which should be rejected: "Reyes-36" of precinct No. 3 of Santa Lucia bearing the name, Riis Robirto; "Reyes-108", of precinct No. 2 of Santo Domingo, in the name of B. Riys; "Reyes-120", of precinct No. 2 of Santo Domingo wherein Antonio Purisima and Alberto Reyes are voted for governor; "Reyes-132" of precinct No. 3 of Santo Domingo, in which the name voted for governor is illegible; "Reyes-20", of precinct No. 3 of Tagudin, in which A. Reyes and L. Clarin appear to have been voted for governor; Reyes-508", of the precinct of Banayoyo in the name of Verto Rese; "Reyes-544", of precinct No. 2 of Burgos, wherein M. Gaerlan is voted for governor and A. Riyis, for member of the provincial board; "Reyes-1651", of precinct No. 3 of Santa, in the name of Berto ReB; "Reyes-1665", of precinct No. 4 of Santa, in the name of a B. Reyes; "Reyes-666", of precinct No. 1 of Santiago, in the name of Birto Rires; "Reyes-741", of precinct No. 3 of Santiago, wherein Mariano Gaerlan appears to have been voted for governor and A. Riyis, for member of the provincial board; "Reyes- 755", of precinct No. 2 of Santa Maria, in the name of Nureto Riz; "Reyes-829", of precinct No. 1 of Candon, in the name of Nurveto Yres; "Reyes-866", of precinct No. 3 of Candon, in the name of Reyes Berto; "Reyes-886", of precinct No. 4 of Candon, in the name of Berto R; "Reyes-909", of precinct No. 6 of Candon, in the name of Bertoris; "Reyes-912", of precinct No. 6 of Candon, in the name of Norbirto Vicsis; "Reyes-917", of precinct No. 7 of Candon, in the name of berto risi; "Reyes-1069", of precinct No. 3 of Sinait, in the name of uobito Raisi; and "Reyes-1632", of precinct No. 7 of Vigan, in the name of birti riyes Rieyes.

Under this assignment of error, 20 votes should, therefore, be deducted from the appellant.

XIX

In his nineteenth assignment of error, the appellee contends that the trial court should have deducted from the appellant 146 ballots divided into 16 groups each of which had been written by only one hand.

After an examination of the ballots in question, we have arrived at the conclusion that the alleged error is unfounded. The contention of the appellee is not supported by sufficient evidence.

XX

In his twentieth assignment of error, the appellee maintains that the trial court erred in computing the votes received by the appellant in precincts Nos. 1 and 3 of Santa Lucia and precinct No. 2 of Tagudin.

It appears that the alleged error of computation has actually been committed in the pertinent part of the decision. The appellant was adjudicated 2 additional votes in precinct No. 1 of Santa Lucia, 1 in precinct No. 3 of the same municipality, and 2 in precinct No. 2 of Tagudin, or an excess of 5 votes in all.

XXI

In his last assignment of error, the appellee contends that the trial court erred in not adjudicating to him 15 ballots from different precincts.

From an examination of the ballots in question, we find that only ballot, "Biteng-396", of precinct No. 1 of Burgos is valid and should be credited to him. The decision of the trial court should be accepted with respect to ballots, "Biteng-659", "Biteng-661", and "Biteng-878", which could not be found in any of the ballot-boxes. The rest of the questioned ballots have justly been rejected by the trial court on the grounds stated in its decision.

Summarizing all that has been said in the preceding paragraphs, it follows that the litigants received the following number of votes, to wit:

VOTES OF THE APPELLANT

Votes

According to the trial court's decision, the appellant received 11,662

Under his I assignment of error, he should also receive 41

Under his II assignment of error, he should also receive 2

Under his III assignment of error, he should also receive 3

Under his IV assignment of error, he should also receive 2

Under his V assignment of error, he should also receive 1

Total

11,711

VOTES TO BE DEDUCTED FROM THE APPELLANT

Under his VII assignment of error, precincts of Concepcion and Sigay 79

Under the XV assignment of error of the appellee 32

Under the XVI assignment of error of the appellee 48

Under the XVII assignment of error of the appellee 4

Under the XVIII assignment of error of the appellee 20

Under the XX assignment of error of the appellee_ 5

Total

188

Votes received by the appellant 11,711

Votes to be deducted from him 188

Total of votes of the appellant 11,523

VOTES OF THE APPELLEE

According to the trial court's decision, the appellee received 11,778

Under his XXI assignment of error, he should also receive 1

Total

11,779

VOTES TO BE DEDUCTED FROM THE APPELLEE

Votes

Under the VII assignment of error of the appellant 202

Under the XII assignment of error of the appellant. 30

Under the XIII assignment of error of the appellant 4

Total

236

Votes received by the appellee 11779

Votes to be, deducted from him 236

Total number of votes of the appellee 11543

SUMMARY

Total number of votes obtained by the appellee 11,543

Total number of votes obtained by the appellant 11,523

Plurality of the appellee over the appellant 20

It may be seen therefrom that the appellee leads the appellant by a plurality of 20 votes.

Wherefore, the decision appealed from is hereby affirmed and the appellee, the late Lupo Biteng, is declared duly elected provincial governor of Ilocos Sur, with costs and other incidental expenses against the appellant. So ordered.

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

RULING ON THE MOTION FOR RECONSIDERATION

September 22, 1932

IMPERIAL, J.:

The attorneys for the appellant have filed a motion for reconsideration of the decision rendered in this case, on the following grounds:

"I. One hundred and three (103) votes bearing the name, 'Rufo Biteng or similar, but different from the name of the protestee-appellee, 'Lupo Biteng', should be rejected and deducted, because the Christian name voted for therein is 'Rufo', which is different from 'Lupo', the Christian name of the protested, in the same manner and for the same reason that eighty (80) votes written with the name of 'Norberto Reyes', 'Lamberto Reyes', 'Loberto Reyes', and 'Roberto Reyes' were rejected and deducted from the protestant-appellant inasmuch as this court considered such names distinct and different from 'Alberto Reyes', the name of the protestant-appellant.

"II. One hundred and sixty-eight (168) votes should be deducted from the protestee-appellee, Lupo Biteng, either because some of the corresponding ballots are marked, or in others his surname is accompanied by an initial of a Christian name which is not his, or in others the appellee's Christian name is accompanied by an initial of a surname, different from that of his correct surname, or in others still the names voted for governor do not refer to him and, finally, because in others the name voted for governor is illegible.

"III. Forty (40) ballots in precinct No. 3 of Tagudin, which had been written by a few hands without the necessary oath, should also be deducted from the appellee.

"IV. Ten (10) ballots, 'Biteng-586-587-588-773-774-820-860-1088-1233 and 1284', which were stated in the decision as missing, may be found in the ballot-boxes.

"V. Eleven (11) votes consisting of ballots, Biteng-11-204-206-455-498-734-850-881-1240-1257-1288 and 1290', should be deducted from the appellee in accordance with the rule established by this court in its decision in the case at bar.

"VI. One (1) vote in precinct No. 4 of Tagudin should be deducted from the appellee because of error in computation.

"VII. One (1) vote, 'Biteng-396', also marked 'Reyes-538', should be deducted from the appellee.

"VIII. Three (3) of the four ballots rejected by this Honorable Court in connection with the appellee's XVII assignment of error should remain adjudicated to the appellant.

"IX. Two (2) more votes should be given to the appellant in precinct No. 1 of Santo Domingo, due to an error in computation."

I

The question raised in the first proposition is entirely new. The 103 votes which the appellant seeks to be deducted from the appellee on the ground that the name voted for governor therein was written "Rufo Biteng", were not the subject matter of any assignment of error in the printed brief submitted by him. Consequently, the first question arising therefrom is whether the appellant has the right to discuss the said 103 votes by means of a motion for reconsideration. According to the rules of this court, it is evident that he does not have such right. Section 19 of said rules requires the appellant to specify, by means of assignments of error all the questions he desires to submit and discuss in the case, while section 20 provides that "no error not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and relied upon in the brief." These rules have been uniformly followed in the determination of cases, otherwise decisions would never become final and there would be no way of putting an end to litigations.

But another reason unfavorable to the proposition under consideration is the fact that the 2 ballots mentioned on pages 5 and 6 of the motion for reconsideration as a basis justifying the proposition, have not been rejected on the ground stated by the appellant. The ballots referred to are "Biteng-1268: Ropo Viteng", (not 1263 as erroneously stated in the motion for reconsideration) and "Biteng-82: Ropa Velin". As may be seen from pages 25 and 26 of the decision rendered by this court, the first was rejected because "it is not the appellee's name and the surname is erroneously written, and furthermore, because this ballot may be considered marked inasmuch as some of the names appearing therein are written with an indelible pencil while others are written in blue ink", and the second, "because it was not cast in the appellee's name." From the foregoing, it may be inferred that the two ballots were not rejected because the candidate's name was written "Rufo" as the appellant asserts.

It is suggested that this court enunciated a new doctrine in rejecting the ballots of the appellant containing Christian names of other persons with his surname, as: Lamberto Reyes, Edilberto Reyes, Roberto Reyes, Ruperto Reyes, etc. and that this circumstance is responsible for the appellant's failure to specify said 103 ballots in a separate assignment of error. We should say, however, that at least in this jurisdiction, such rule is neither new nor unknown. In the case of *Mendoza vs. Mendiola* (53 Phil., 267), the same doctrine had already been laid down when we said, in considering some questioned ballots: "But the ballots marked Exhibit A-125, Exhibit I and Exhibit K, cannot, in our opinion, be adjudicated to the appellant. Although by the rule of *idem sonans*, the name 'Midosa' in Exhibit A-125 (not 'Midora' because in the same ballot the s's in 'Sotto' repeated and in 'Espinosa' have the same shape as the 's' in 'Midosa'), and 'Mendsa' in Exhibit I may, by the rule of *idem sonans*, be taken, to mean 'Mendoza' as much as in Exhibit K, where this surname is plainly written; but the initials D, V and D placed before these surnames in the three aforementioned ballots, respectively, prevent them from being counted in favor of the appellant. The record contains nothing to prove that the initials D, V and D stand for the name 'Godofredo'. Nor is it so stated in Godofredo Mendoza's certificate of candidacy. Therefore, the ballots marked as Exhibit A-125, Exhibit I and Exhibit K, cannot and must not be adjudicated to the appellant." And in deciding ballots written with the initials and surname of the candidate in the case of *Dizon vs. Cailles* (G. R. No. 36928),¹ this court afforded a clearer explanation of the foregoing rule when it said: "Notwithstanding the rule laid down in various decisions of this court, to the effect that a ballot is valid when the candidate is voted for by his surname and the initial of his given name, we believe that such a rule must be strictly applied so that the initial must be identically the same as the initial of the Christian name of the candidate voted for."

By carefully examining the two decisions referred to in the preceding paragraphs, it will be observed that the rule had already, been laid down therein to the effect that ballots bearing the initials of the Christian names and the

complete surnames of the candidates, must be well written in order to be accepted. The reason taken into account in the cases cited above was that the use of erroneous initials of Christian names makes it practically impossible to identify the candidate or candidates voted for and to interpret the intention of the voters. Now then, if ballots written in such a manner should not be counted, with greater reason, ballots bearing Christian names entirely different from that of the candidate should be rejected, even when his surname is correctly written. Therefore, what this court said in its decision regarding the ballots referred to as a basis of the first proposition in the motion for reconsideration, cannot be invoked as a newly established doctrine.

II

In his second proposition, the appellant questions 168 ballots and seeks their deduction from the votes received by the appellee. The reasons alleged by him are as follows: that some of them are marked; that in others, the appellee's surname is accompanied by an initial of a Christian name that is not his; that in others, the appellee's Christian name is accompanied by an initial of a surname different from his; that in others, still, the vote cast for governor was not intended for him; and that in the rest, the names of the persons voted for are illegible.

Upon consideration of the ballots impugned on the above grounds, we found that some of them had already been discussed and decided under the XII assignment of error in the appellant's brief, while the others had not been the subject matter of any assignment of error and are questioned for the first time in the motion for reconsideration.

To the first group belong the ballots marked: "Biteng-2-17_47_61-63-64-72-80-83-91-96-99-210-215-220-222-269-326-328-342-372-375-380-391-395-443-485-502-504-578-585-591-593-600-603-607-618-656-657-666-670-703-714-717-724-772H77&-788-792-79a-800-842-868-875-1200-1201-1205-1216-1219-1220-1222-1223-1225-1229-1267-1270", and, the rest, to the second group.

With regard to the first group, we do not believe it proper for the appellant to again discuss them in his motion for reconsideration even on different grounds from those first alleged in his brief. This unjustifiable and intolerable practice would only tend to prolong election protests unnecessarily. With regard to the second group, we again repeat what we have already said concerning the first proposition ; that they cannot be the subject matter of a motion for reconsideration inasmuch as they had not been specified in any assignment of error as required by the rules of this court. In an election protest like the case at bar where hundreds of ballots had been questioned, it is not to be expected that the court, of its own accord, seek new grounds to impugn each ballot in addition to those assigned in the briefs. This duty devolves upon the parties or their attorneys who should see to it that they are specified in the assignments of error.

III

In his third proposition, the appellant questions 40 votes which, in his opinion, should also be deducted from the appellee. The ballots representing them were, likewise, not impugned in any assignment of error in the brief. The trial court, after weighing the evidence presented adjudicated these votes to the appellee and we find no justifiable motive to change its conclusions.

IV

In his fourth proposition, the appellant insists that the ten ballots mentioned in our decision as missing from the ballot-boxes be deducted from the appellee. He reasons that said ballots are in the ballot-boxes but they belong to precincts other than those mentioned in his brief. In other words, he admits that he committed a mistake in identifying them in his brief. We are of the opinion that this contention is untenable. Admitting, as he does, that he

had committed a mistake, then our assertion in the decision that the questioned ballots could not be found in the ballot-boxes, is true. , There is no reason why the court should now examine entirely different ballots on which the adverse party has had no chance to express his views for the reasons that they were not specified in any assignment of error.

V

Among the eleven ballots discussed in the fifth proposition, we find that the ballots, "Biteng-455", "Biteng-498" and "Biteng-850" had already been considered and decided by this court under the XII assignment of error in the appellant's brief; There is no reason sufficient to justify a second decision on the matter even if the grounds alleged were different. With regard to the remaining 8 ballots, suffice it to say that they are discussed for the first time in the motion for reconsideration and were not the subject matter of any assignment of error.

VI

The sixth proposition is likewise held to be untenable. This is the first time the appellant noticed the alleged error in the computation of votes in precinct No. 4 of Tagudin. He could very well have included it in his first assignment of error wherein he questioned and claimed 42 ballots from different precincts by invoking the same error in computation.

VII

The seventh proposition appears to be more unjustifiable still. It had already been decided by this court that the questioned ballot, "Biteng-396", is valid. The vote for governor was cast for "1 Birtieng". The initial is "1" and not "A" as claimed, and the surname is idem sonans of "Biteng".

VIII

The appellant, in the eighth proposition of his¹ motion, again claims ballots, "Reyes-376", "Reyes-501" and "Reyes-877" which had been rejected in our decision for being marked. We are of the opinion that the explanations offered therefor are unsatisfactory. The truth is that said ballots are marked as described in the decision and their rejection is sanctioned by law.

IX

In his ninth or last proposition, the appellant claims two more votes which, he alleges, the trial court failed to adjudicate to him through an error in computation. That his claim cannot be sustained becomes at once apparent when it is considered that the appellant should have included it in his first assignment of error wherein he discussed questions of a similar nature. Furthermore, it appears from the motion for reconsideration that the appellant raises said question for the first time and that the attention of the court had never been called to it through presentation of the corresponding motion. We are of the opinion that the conclusions of the lower court in this particular cannot now be altered through a motion for reconsideration, there being no sufficient grounds to warrant such action.

In view of the foregoing considerations, the motion is hereby denied. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.