

TOMAS DIZON, PETITIONER AND APPELLANT, VS. JUAN CAILLES, RESPONDENT AND APPELLEE.*G.R. No. 36928. March 30, 1932*

Ponente: VILLAMOR, J.

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At the general elections held on June 2, 1931 the candidates for the office of provincial governor of Laguna were Juan Cailles, Tomas Dizon, Mariano Calcetas, and Maximo Gutierrez.

On June 10, 1931, the provincial board of canvassers announced that Cailles had obtained 14,006 votes, Dizon, 13,914, Calcetas, 1,083, and Gutierrez, 2,086; and it therefore proclaimed Juan Cailles governor-elect.

Tomas Dizon contested the election of Juan Cailles in several precincts of the municipalities of the province. Juan Cailles, in turn, filed a counter-protest against Dizon challenging his election in all other precincts of the province. The other two candidates did not appear or take part in the election contest.

After the appointment of commissioners for review, and the examination of the ballots questioned by the parties, the trial court rendered a carefully prepared decision finding that Juan Cailles had obtained 14,033 votes and Tomas Dizon, 13,877; and therefore declared Juan Cailles governor-elect of the Province of Laguna, with a plurality of 156 votes, according to the order of. January 19, 1932 modifying the result of the decision of December 29, 1931.

Dizon duly appealed from the decision of the lower court, assigning twenty errors in his brief. For the purposes of this decision, those errors may be based upon two grounds: the first covers assignments of error 1, 2, 3, 4, and 20, wherein the appellant contends that certain ballots cast for him were rejected by the court, some through neglect, others because they were written by the same hand, and the rest for other reasons. The second ground covers assignments numbers 5 to 19, wherein the appellant, upon one ground or another, impugns certain ballots of the appellee which were admitted by the court.

I

The appellant claims 16 ballots which, he alleges, were not included by the trial court in the count of the unquestioned ballots. A comparison of the commissioners' report with the compilation made by the clerk of the court discloses the following:

UNQUESTIONED BALLOTS OF DIZON

Municipality and number of precinct

Commissioners' report

Courts' compilation

Los Baños, precinct 3

93

99

Luisiana, precinct 2

105

164

Pagsanjan, precinct 7

32

32

San Pablo, precinct 1

99

41

San Pablo, precinct 7

154

190

San Pablo, precinct 20

99

147

San Pablo, precinct 27

88

105

A mere glance shows that there is a difference between the numbers given by the commissioners and those given by the court. The explanation of said difference may be found in that portion of the court's decision which reads as follows:

"The ballots objected to and claimed were examined by the parties and their counsel. Later each party presented a list of his opponent's ballots which he desired to impugn and those which he claimed for himself, at the same time answering his opponent's objections. The ballots objected to by the commissioners and not included among those objected to by counsel in their respective lists were deemed to have been admitted without any objection, and those claimed by the commissioners from among the ballots rejected by the election inspectors, that the respective counsel did not include in their list of ballots claimed, were deemed abandoned."

The court then declares in its decision that the appellant obtained 13,046 unquestioned votes, and the appellee 13,300, but by its order of January 19, 1932, said court increased the number of unquestioned votes for the appellant to 13,146. We believe the appellant is entitled to the 16 votes he claims. (Error 1.)

The appellant asks that 10 of the 16 ballots impugned by the appellee on the ground of their having been written by the same hand, be adjudicated to him. (Error 2.) These ballots are classified into seven groups. The appellant admits that the 3 ballots of the second group (C10, C29, and C56 from precinct 10 of Nagcarlan) are written by one and the same hand and that the 16 others are by different hands. The appellant has not shown in his brief that the ballots of the second group belong to electors who were legally assisted by another. These three ballots must be rejected because no voter has a right to prepare any but his own ballot, except in the cases and under the conditions prescribed by law.

With reference to the 16 ballots of groups 1, 3, 4, 5, and 6 (pp. 4 and 5, appellant's brief), we have examined the same and believe they have been written by different hands and should be admitted in favor of the appellant, although he only claims 10 ballots to have been erroneously rejected by the court,

The appellant also claimed 11 out of the 16 ballots rejected by the court as written by the same hand. (Error 3.) In his brief, the appellant does not question these ballots as having been written by the same hand, but he contends that the voters' list of 1931 was copied by mistake from that of 1928 with regard to the qualification of eighteen voters. It is too late to assail the voters' list of 1931, and inasmuch as it has been finally corrected, the same is conclusive with respect to those entitled to vote at that election.

Assuming that these 11 ballots were written by one and the same hand, in order to sustain their validity it must be shown that they belong to voters who were legally assisted by another person in the preparation of their ballots, and this has not been done in the present case. The appellant's petition, therefore, cannot be granted.

As for the 5 ballots described in the fourth assignment of error judging by the characteristics noted in the letters of ballots C16, C38, and C39 from precinct No. 18 of San Pablo, we believe that they have been written by different hands, and therefore these three ballots must be adjudicated to the appellant.

With reference to the 22 ballots claimed by the appellant (error 20) and which were rejected by the trial court either as being illegible or for some other reason, we are of opinion that the following must be adjudicated to him:

- C-1, precinct 5 of Binan, "T. Disoen"
- C3, precinct 5 of Los Baiios, "to na diso"
- C6, precinct 5 of Los Baiios, "Di Tuma"
- C24, precinct 4 of Nagcarlan, "tomis dison Gobna" (governor?)
- C29, precinct 4 of Nagcarlan, "tonadicon" (Tomas Dizon)
- C36, precinct 4 of Nagcarlan, "t Disino"
- C16, precinct 2 of Pagsanjan, "Dizon"
- C-1, precinct 3 of Pangil, "T. Dizon"
- AA2, precinct 4 of San Pablo, "Tumas Dizon"
- C14, precinct 9 of San Pablo, "Tomades"
- D, precinct 19 of San Pablo, "T. Dizon" and
- C, precinct 26 of San Pablo, "Troms Dos."

These make a total of 12 votes.

In the other 8 ballots, the names written on the line intended for the candidate for the office of provincial governor really can not be made out, and were rightly rejected by the court. There are two ballots, however, containing the name of Tomas Dizon written in the space intended for members of the provincial board, marked D-4, precinct 10 of Calamba, and D-2, precinct 21 of San Pablo. These two ballots were properly rejected.

It should be borne in mind, before proceeding further, that in this jurisdiction rules have been laid down for the reading and interpretation of ballots incorrectly filled in and for the understanding of the rule known as *idem*

sonans, as well as for the appreciation of ballots with the initial of the Christian name and the surname, with the surname alone, or the Christian name alone, with the Christian name and the initial of the surname, or with the name of a candidate voted for two different offices. We do not deem it necessary to repeat these rules, which have been applied in the present case. (Cailles vs. Gomez and Barbaza, 42 Phil., 496; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428; Lucero vs. De Guzman, 45 Phil., 852; Mandac vs. Samonte, 49 Phil., 284; Bulan vs. Gaffud, 49 Phil., 906; Echarri vs. Gomez, 50 Phil., 629; Ditching vs. Jalandoni, 52 Phil., 796; Penson vs. Parungao, 52 Phil., 718; Adeser vs. Tago, 52 Phil., 856; Aviado vs. Talens, 52 Phil., 665; Namocatcat vs. Adag, 52 Phil., 789.)

II

We now pass to the second ground of appeal, comprising the appellant's fifth to nineteenth assignments of error, regarding the 320 ballots of the appellee impugned by the appellant upon different grounds.

There are 10 ballots of the appellee classified under three groups in the appellant's brief. (Error 5.) The court rejected 4 of them, and the appellant now contends that the remaining 6 should also be rejected because they were written by one and the same hand. These ballots of group 2 are D-21, D-22, D-26, D-27, D-28, and D-29, precinct 3 of Bifian. These 6 ballots were written according to the appellant, by Pedro Morales for five voters who, according to the voters' list, were qualified by education, and should therefore be rejected. To which the appellee replies: "Exhibits CC-1 to CC-15 show that fifteen (15) voters were assisted in the-preparation of their ballots. It does not matter that according to the voters' list, Exhibit K, there are only three (3) illiterates, and that the rest of the voters who were assisted, were qualified by education. The illiterates are not the only ones entitled to be helped. Any voter suffering from some physical incapacity, may be assisted, even if he knows how to read and write. Their very oath states that they were incapacitated to fill out their ballots on the day of the election."

If the 6 ballots here questioned belong to electors by education who were assisted by another, after having sworn that they were unable to fill out their ballots, there is no valid reason for deducting them from the candidate therein voted for.

The appellant impugns (error 6) 52 ballots of Cailles, on the ground that the initial of his Christian name is different. We have examined these ballots and actually found that a great number of them contain only the initial of the Christian name and the surname, but in such wise that said initials do not correspond to the initial J, of the Christian name, Juan. 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. Upon this ground, of the aforesaid 52 ballots, the following must be rejected.

- D-1, precinct 3 of Biiian, "F. Cailles"
- D2, precinct 3 of Biiian, "G. Cailles"
- D4, precinct 8 of Biiian, "G. Cailles"
- D19, precinct 2 of San Pedro, "G. Cailles"
- D1, precinct of Sta. Maria, "S. Kailles"
- D4, precinct 2 of Sta. Rosa, "H. Cillis"
- D36, precinct 1 of Calamba, "H. Cailles."

Ballot D2, precinct 1 of Lumban, contains the name "I. Kelles" between the printed titles of provincial governor and members of the provincial board, and this circumstance makes the voter's will doubtful; for which reason the ballot is rejected.

The appellant in his seventh assignment of error assails 102 ballots of the appellee upon the ground that they are

illegible. All these ballots were admitted by the trial court. We have carefully examined said ballots and find that they have been duly admitted by the court, with the exception of the following 5:

- D14, precinct 3 of Loiigos, "Jon Culles Enutil"
- D9, precinct 1 of Lumban, "Celeses J."
- D12, precinct 3 of Lumban, "J. Eeles"
- D44, precinct 3 of Pila, "C. Kallr" and
- D37, precinct 4 of Pila, "hoan lies."

Two ballots described in the eighth assignment of error are assailed by the appellant on the ground that the name voted for governor is written on a space that has been erased. Ballot D-11, precinct 2 of Bay, is really inadmissible, because the name is erased, which would seem to indicate that the voter changed his mind about his vote. The other ballot, D35, precinct 1 of Pila, has the appellee's name written over another name that has been erased; according to the doctrine laid down in *Cailles vs. Gomez and Barbaza*; and *Lucero vs. De Guzman*, supra, said ballot is admissible.

Two other ballots are impugned by the appellant in his ninth assignment of error. The appellee is entitled to these two ballots. The surname "Hernandez" written after "Cailles" in ballot D5, precinct 3 of Cabuyao, was by mistake written, by the voter after "Cailles", but there is no doubt that "Hernandez" is the surname of "Demetrio" voted for the office of member of the provincial board.

In the tenth assignment of error, the appellant impugns 10 ballots of the appellee, on the ground that the surname of the appellee is only indicated with the letters "C", "Ce", or "Ca." We have examined these ballots and the Christian name of the appellee with the initial of his surname, or the first syllable thereof is written on the line intended for governor. According to the doctrines laid down in the cases cited above with regard to the interpretation of ballots, these ballots have been duly admitted for the appellee by the court a quo.

The appellant impugns in his eleventh assignment of error, 57 ballots of the appellee on the ground that they are marked or bear identification marks. The alleged marks consist in the use of two kinds of letters in one and the same ballot. After examining these ballots, we find that the following 17 ballots must be deducted from the appellee:

- D5, precinct 5 of Alaminos
- D-10, precinct 1, D2, precinct 5, and D3, precinct 7 of Bifian
- D-1, precinct 6 of Cabuyao
- D4, precinct 2 of Calamba
- D26 and D-40, precinct 1 of Calauan
- D5, precinct 1 of Lilio
- D-15, precinct 1 of Loñgos
- D3, precinct 1 of Los Baños
- D22, precinct 1, and D3, precinct 7 of Nagcarlan
- D-18, precinct 4 of San Pedro
- D6, precinct 1 of Sta. Cruz, and D3, precinct 7, same municipality and
- D7, precinct 6 of Sta. Rosa.

There is no plausible reason for using in one ballot two or more kinds of letters, unless it be the intention of distinguishing them or making it easy to identify the voter, and this is prohibited by the law.

The appellant also impugns in his twelfth assignment of error, 18 ballots of the appellee as written in two kinds of letters. We have examined these ballots, and find that they have been duly admitted by the court, except the 5 following:

D36, precinct 1 of Longos
D-1, precinct 5 of Majayjay
D2, precinct 3 of San Pablo
D5 and D-13, precinct 3 of Sta. Rosa.

Again the appellant impugns 10 ballots of the appellee described in his brief (error 13), as bearing a mark of identification, consisting in the name of a person voted for an office for which he was not a candidate. After examining said ballots, we are of opinion that the fact that a person has received votes for an office for which he has not filed his certificate of candidacy does not by itself constitute a sign of identification, nor does it annul the ballot. (*Mandac vs. Samonte*, supra; *Valenzuela vs. Carlos and Lopez de Jesus*, supra; *Aviado vs. Talens*, supra; *Namocatcat vs. Adag*, supra.)

In the appellant's fourteenth assignment of error, 18 ballots of the appellee are also attacked as marked with unnecessary words. Examining these ballots we are of the opinion that they have been duly admitted by the trial court, with the exception of two of them, namely, those marked D5 and D9, precinct 4 of Cabuyao: the former, because the word "Sakdal" appears on one of the lines for councilor; and the latter, because on the last line for councilor the following words are written: "Peo Rubina Concijal Manila."

In the fifteenth assignment of error the appellant attacks 43 ballots of the appellee as bearing marks of identification. These ballots have been duly admitted by the court, with the exception of the 3 following:

D-1, precinct 4 of Alaminos, with the initials "E. R" on the last line for councilors
D-1, precinct 3 of Sta. Rosa, with the letters "A. I" on the first line for councilors and
D3, precinct 3 of Siniloan, because the letters of five names are connected.

A ballot of the appellee's contains his name in the space for governor and in the first of the spaces for members of the provincial board. (Error 16.) This ballot is valid for the office of governor, for which Cailles filed his certificate of candidacy. (*Cailles vs. Gomez and Barbaza*, supra; *Valenzuela vs. Carlos and Lopez de Jesus*, supra.)

Three ballots of the appellee are assailed by the appellant in his seventeenth assignment of error, as marked. We are of the opinion that ballot D7, precinct 2 of Cavinti, must be rejected because the name "J. Kallis" appears on the line for member of the provincial board, but the other ballots have been properly admitted by the court.

One of the appellee's ballots is assailed by the appellant in his eighteenth assignment of error, on the ground that it was copied with carbon paper. An examination of this ballot shows that the appellant's contention is unfounded.

Lastly, the appellant impugns a ballot of the appellee's (D-3, precinct 3 of San Pedro), on the ground that the same has been written through a perforated sheet. (Error 19.) The shape of the letters used in writing the names on this ballot is really odd, and we are inclined to believe that this ballot has been prepared with the manifest intention of identifying the voter; for which reason it must be rejected.

Summing up what has been stated with reference to the ballots claimed by the appellant Dizon and to the ballots of Cailles questioned by said appellant, the votes of the contending parties are as follows:

JUAN CAILLES:

Votes awarded by the court..... 14,033
From which must be deducted.....43

13,990

TOMAS DIZON:

Votes awarded by the court..... 13,877

To which must be added.....47

13,924

Plurality of Juan Cailles.....66

Having arrived at this result, we deem it unnecessary to resolve the questions raised by the appellee, who claims 21 ballots rejected by the court, and attacks 170 ballots of the appellant admitted by the court; inasmuch as the resolution of the appellee's contentions, if it will ever affect such result, would only tend to increase the plurality in favor of the appellee.

Wherefore, the judgment appealed from is modified so far as it is inconsistent herewith, and affirmed in other respects, and it is declared that Juan Cailles is the governor elect of the Province of Laguna, with a plurality of 66 votes. With costs against the appellant. So ordered.

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

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