

PATRICIO FERNANDEZ, PROTESTANT AND APPELLANT, VS. HIGINIO MENDOZA, PROTESTEE AND APPELLEE.*G. R. No. 37523. December 10, 1932*

Ponente: VILLAMOR, J.

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At the general election held on June 2, 1931, Patricio Fernandez and Higinio Mendoza were official candidates for provincial governor of Palawan. The provincial board of canvassers proclaimed Higinio Mendoza governor-elect of the province with 2,871 votes as against Patricio Fernandez's 2,638, that is, with a majority of 233 votes.

On July 15, 1931, Patricio Fernandez filed a motion of protest against Higinio Mendoza, alleging falsification of the election returns, campaigning, threats, intimidation of voters, loss of official ballots, illegal construction of the booths in the polling places, improper preparation of ballots for illiterate voters by persons who had failed to take the oath required by the law, and frauds and other irregularities committed by the election inspectors in counting and awarding the votes in the eight precincts of the municipality of Coron. The contestee answered with a denial of the protest allegations and a counter-protest based upon fraud and irregularities committed by the contestant's inspectors in counting and awarding votes in the precincts of Cuyo, Puerto Princesa, Agutaya, and Balabac.

The case was heard from October 5, to November 4, 1931. After the appointed commissioners had filed their report, the court rendered a comprehensive and well-written decision of 285 pages, holding that the irregularities mentioned in the amended protest had not been proved, and that the irregularities practiced by the election inspectors were not sufficient to justify the quashing, of the election in the eight precincts of the municipality of Coron, and that contestee Higinio Mendoza had obtained 888 votes in that municipality, as against 253 obtained by contestant Patricio Fernandez in the same municipality or a plurality of 634 votes. Then taking up the counter-protest with reference to precincts 1, 3, 4, 6, and 7 of Cuyo, 3, 4, and 6 of Puerto Princesa, and those of Agutaya and Balabac, the court found that the contestee had obtained 716 votes as against the contestant's 1,051, finally summing up the votes in all the municipalities of Palawan, the court found that the contestant had obtained 2,590 votes and the contestee 2,850, by virtue whereof Higinio Mendoza, the contestee, was declared governor-elect of the Province of Palawan by a majority of 260 votes.

The protestant appealed from this decision, and assigns 16 errors under precinct 1 of Coron, 12 under precinct 2, 14 under precinct 3, 2 under precinct 4, 8 under precinct 5, 10 under precinct 6, 1 under precinct 7, and 14 under precinct 8.

CORON

Precinct 1.—One of the most salient assignments of error made by the appellant with respect to this precinct refers to the alleged use of "shuttles" in the preparation of ballots. This contention is deduced from the alleged loss of two ballots. On this point the lower court says that the protestant-appellant did not present any evidence showing the manner and form in which these two ballots disappeared for alleged fraudulent purposes, nor has he offered any proof to show that said ballots have been used in other precincts. Even the inspector for the

protestant, Pedro Vergara, did not make any mention of the disappearance of these two ballots in his testimony, nor do the minutes of the board show that any protest has been filed by Vergara on this matter.

The trial judge discusses the alleged use of "shuttle" in this precinct and says that his attention was called for the first time on October 22, 1931 to the existence of traces on ballots HM-947, -859, and -1003. Then he goes on describing the ballots, stating that not one of the two sets of commissioners who revised the same ballots on two occasions, October 5th and 21st, reported having found or discovered said traces. The court notes further that the commissioners have examined and revised minutely all the ballots found in the box of valid ballots not only in this case but also in another contest over the office of provincial board member, and in neither of these reports was such an irregularity ever mentioned. It should also be noted that the protestant himself and his representative on the revision committee, Pedro de Borja, had been handling these same ballots and they did not notice any of the traces here in question, notwithstanding the fact that the traces of the name "T. Pamado" on ballot HM-1003 are so pronounced that it necessarily should have been noticed by one handling said ballot if those traces were in fact already there at the time of the revision on October 5th and 21st, respectively.

In view of the evidence submitted on the point, the court found that the alleged discovery of the traces on the three ballots mentioned above after the presentation of appellant's oral evidence in connection herewith, without any of his witnesses having testified on the matter, leads to the conclusion that those traces were placed on the questioned ballots after election and said ballots are good and valid votes for the protestee. (Demeterio vs. Lopez, 50 Phil., 45; Gallardo vs. Aldana, 53 Phil., 388; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428.)

In the third assignment of error regarding the voters with educational qualifications, it is alleged by the appellant that these electors were allowed to vote with the assistance of third persons without the corresponding oath of incapacity as required by law. This contention of the appellant was overruled by the court below, stating that, according to the evidence, the electors Silvestre Doreses and Catalino Bigonte subscribed the requisite oath for incapacitated electors on April 11, 1931, as shown by Exhibits 25-a-48 and 25-a-49, owing to the fact that although their qualifications was "education", they were incapacitated from preparing their own ballots due to physical disability. The protestant, however, alleges that besides the two persons above named, there were other incapacitated electors who did not subscribe the required oath of incapacity but voted on election day, such as Nicolas Bagalay, Estanislao Severino, Nicanor Bejar and Florentino Bero. This is not entirely true. These four electors presented their affidavits, Exhibits 25-a-37, 25-a-1, 25-a-26 and 25-a-7, respectively, the affidavit (Exhibit 25-a-1) of Estanislao Severino having been subscribed by the leader of the protestant, Anacleto Rose, who also prepared the former's ballot on election day. The fact that these affidavits were subscribed on the very day of the election should not be accorded much importance taking into account the fact that the real qualification possessed by these electors was not "education" but "property". It is evident that through error on the part of the inspectors the qualification noted in the registry list was "education" instead of "property" and this being the case, it seems perfectly legal that the affidavits of the four persons above named should have been prepared even on the day of the elections.

Appellant assigns several other errors in this precinct, all of which were, in our opinion, properly overruled by the lower court.

In paragraph 9 of the amended protest and in the second assignment of error, precinct 1, the protestant claims that 93 ballots of the protestee appear to be in the handwriting of only a few persons. The protestee, on the other hand, contends that of these 93 ballots only 59 could be sorted out into 14 different groups with the same handwriting in each group. The trial judge states that the existence of these 59 ballots appear to be well justified, inasmuch as deducting from the 50 ballots of illiterates 5 which were written out by protestant's leaders, Pedro Mambog and Anacleto Rose, would leave 45 affidavits, to which should be added the personal votes of the 14 helpers chosen by the illiterates to assist them in the preparation of the ballots, making a total of 59 ballots.

As to the annulment of the election in this precinct, the lower court held that the protestant-appellant has failed to prove the frauds and irregularities alleged in the 14 paragraphs of his amended protest, stating further that if errors had been committed, said errors are due more to the carelessness and inexperience of the inspectors. The result of the election in precinct 1 of Coron during the last election, as well as during the elections of 1925 and 1928, already demonstrate that it was the evident will of the over-whelming majority of the electors to vote openly in favor of the protestee, and it would be highly unjust now to frustrate it simply on the strength of errors committed by the election inspectors of that precinct." The court goes on to summarize the evidence submitted and declares that the few errors committed by the inspectors in the annotation of ballot numbers, in the registry list, and in the preparation of a few affidavits for incapacitated voters on June 2d instead of the first two sessions of the board, on April 11th and 18th, respectively, were due to ignorance and inexperience of said election inspectors. The voters cast their ballots freely and without any compulsion whatever. The secrecy of the ballot remained inviolate. The court is of the opinion that the result of the election in this precinct represented the true expression of opinion and wishes of the voters of said precinct and municipality. The court thereupon upheld the validity of the election in this precinct, citing jurisprudence on page 59 of his decision. After examining the ballots cast in this precinct the court found that the protestant obtained 40 votes and the protestee 197. In view of the evidence set forth in the decision of the court a quo and not contradicted in appellant's brief, we are constrained to hold that said evidence fully supports the findings of fact of the trial court.

Precinct 2.—In the amended protest, the appellant prayed for the annulment of the election in this precinct on 14 grounds all of which appear on pages 66 and 67 of the decision of the lower court.

In its discussion of the different grounds alleged by the protestant, the court made special reference to the evidence of record from which it draws the following conclusions:

- That the electors excluded by the circuit justice of the peace had appealed on time.
- That all ballots were fully opened before being read.
- That no marked ballots were illegally counted.
- That no electors were registered after April 18th.
- That there was no electioneering within a radius of 30 meters from or inside the polling place.
- That only qualified voters were permitted to register and vote.
- That no absentees voted during election.
- That no electors in other precincts voted for the second time in this precinct.
- That no electors voted twice in this precinct in his own name.
- That the number of ballots prepared by other persons for illiterate voters tallies with the number of said electors.
- That no incapacitated voters were permitted to vote without subscribing the requisite oath of incapacity.
- That there has been no fraudulent disappearance of official ballots.

As stated, the trial judge made a careful analysis of the evidence on the different points raised in the amended protest, and, in our opinion, his conclusions are fully supported by the record.

In paragraph 10 of his amended protest and in the third assignment of error, precinct 2, the protestant objected to the admission of 69 ballots of the protestee on the ground that they appear to be in the handwriting of only a few persons. The protestee, however, admits that of the 101 ballots in which he is voted for governor in this precinct,

only 56 ballots may be separated into 11 different groups each of which appear to be in a different handwriting. The trial judge says: "The existence of these 56 ballots' in similar handwriting for each of the 11 groups of ballots of which they consist appears to be well justified, inasmuch as of the 47 affidavits for illiterate voters we should deduct the two ballots prepared by protestant's leaders, leaving still 45 affidavits to which should be added the 11 personal votes of the persons chosen by the illiterates to assist them in the preparation of their respective ballots, or a total of 56 ballots. Upon the foregoing facts there is, therefore, nothing extraordinary or anomalous in the finding of such ballots in the same handwriting."

As to the annulment of the election in this precinct the court said: "After considering the evidence of both parties, the court finds that the election in this precinct was conducted in an orderly and legal manner; that the secrecy of the ballot has been maintained; that the popular will in this precinct has been in favor of the protestee in the same way as in precinct 1 of this municipality. To be sure, anomalies of this nature bordering on gross negligence or dereliction of duty may have been committed by the inspectors due to their ignorance and carelessness. For this reason the petition for the annulment of the election in this precinct is not in order." (*Demeterio vs. Lopez*, 50 Phil., 45; *Rosanes vs. Peji*, 53 Phil., 25; *Kiamzon vs. Pugeda*, 54 Phil., 755.)

As in the resolution of the various alleged irregularities in precinct 1, the court proceeded to scrutinize the ballots in this precinct and found that the protestant obtained 18 votes and the protestee 104.

Appellant assigns in his brief 12 errors in precinct 2 of Coron, but as the questions involved therein are ones of fact, we do not consider it necessary to discuss them at length, inasmuch as the lower court has already made an exhaustive analysis of the evidence sustaining its findings which, in our opinion, requires no correction.

Precinct 3.—Protestant alleged 14 grounds for the annulment of the election in this precinct, quoted in the decision of the lower court, pages 99 to 101. The alleged irregularities in the precinct are, in legal effect, of the same nature as the alleged irregularities in precincts 1 and 2. As in the case of precincts 1 and 2, the lower court, after examining the evidence of record, decided to overrule all 14 grounds, stating that the protestant has failed to adduce competent evidence to convince the court of the truth of the allegations in his amended protest relative to this precinct. Therefore, the court found that the election in this precinct was conducted in substantial compliance with the requirements of law; that the secrecy of the ballot has been maintained; that the popular will has been in favor of the protestee, adducing that "If there were any illegal votes, said votes did not exceed 17 ballots which could very well be segregated from the votes, since they constitute but a very negligible part of the 155 valid votes emitted in this precinct. As to these 17 illegal votes, relate merely to the ballots prepared for illiterate voters without corresponding electors' oath, it shows that the petition to quash the election in this precinct should likewise be ignored." And the court proceeded to examine the ballots and declared that in this precinct the protestant obtained 28 votes and the protestee 65.

On appeal, the protestant assigns 14 errors which, in our opinion, require no special discussion for the reason that they refer to questions of fact which were properly decided by the lower court. And finding no ground for reversal, we are of the opinion that the conclusions of the lower court must be upheld.

In paragraph 10 of his amended protest and in the twelfth assignment of error, precinct 3, the protestant objected to the admission of 88 ballots (excluding repetitions) of the protestee on the ground that they appear to be in the handwriting of only 19 persons. Whereas the trial judge states (page 25, decision) that only 30 ballots could reasonably be classified as being in the handwriting of 4 persons, the appellee admits that there are 45 ballots which appear to be written by 12 persons. In this precinct there were 14 illiterate voters registered, but only 7 of them were able to fill out the requisite oath of their illiteracy. Accepting that only 30 ballots, as the trial judge found, appear in the handwriting of only 4 persons, and considering that both contending parties agree with the

trial judge that only 4 persons assisted said 7 illiterate voters, 11 ballots deducted from 30 would leave 19 ballots of illiterate voters without the corresponding affidavits.

The appellant contends that the excess number of ballots over 11 should be deducted from the appellee's votes. The trial judge, however, overruled this contention there being no evidence of fraud. And even granting that the number of ballots in excess is 77, according to the appellant, or 35, according to the appellee, such discrepancy is immaterial. There being no evidence of fraud, any excess of ballots of illiterates over the number of affidavits cannot be held inadmissible, for the provision of the Election Law requiring the administering of oaths to helpers and illiterate voters alike is mandatory only before the election and merely directory thereafter. (*Olano vs. Tibayan*, 53 Phil., 168; *Gallardo vs. Aldana*, supra; *Ignacio vs. Navarro*, G. E. No. 37401[1].)

Precinct 4.—The frauds and irregularities alleged to have been committed in this precinct are seven in number and they appear enumerated on pages 138 and 139 of the appealed decision.

During the trial of the case the protestant, according to the lower court, did not offer any oral evidence in support of his allegations. The appeal refers only to the illegal votes of Juan Pabalan, a minor, Felipe Antiqueno, a blind man, and Andres Aberion, who qualified by education but who voted with the assistance of another person without the corresponding oath of incapacity. It is also alleged by the appellant that Juan Echague and Valeriano Agutaya voted twice.

With regard to Pabalan and Antiqueno the lower court found that neither of them was challenged during the legal period and, consequently, any evidence tending to show that these voters were registered and that they voted although not possessing the necessary qualifications is immaterial, citing the case of *Dejarne vs. Castaieda*, G. R. No. 30611.[2]

With respect to Juan Echague the lower court ruled that his votes stands in precinct 4 inasmuch as his vote in precinct 1 was already discarded. As to Agutaya, witnesses Santiago Daco and Gregorio Rodriguez testified not having seen him in precinct 5, and so the court held that his vote in precinct 4 is good and valid. The appealed decision makes no reference of the case of Andres Aberion, and neither does the appellant show any error on the part of the lower court.

Precinct 5.—The irregularities pointed out in the amended protest are repeated on pages 143 and 144 of the appealed decision. After examining the evidence the trial court found that none of said alleged irregularities was committed.

With regard to the use of "shuttles" alleged by the appellant in connection with the supposed disappearance of official ballots, it is worthy of note that the protestant attempted to establish by the testimony of two witnesses, Valentin Daco and Gregorio Rodriguez, that several official ballots in this precinct were prepared outside the polling place by one Francisco Zumarraga. On this point the lower court says: "These two witnesses took the stand after protestant's witness Santiago Daco had already finished his lengthy testimony on the frauds and irregularities alleged to have been committed in this precinct by the leaders of the protestee. As a matter of fact, after counsel for protestant had finished with his lengthy direct examination of Santiago Daco, in which the latter was asked to name all the anomalies he had seen committed and of the protests he was supposed to have lodged with the board of inspectors regarding these alleged anomalies, shortly before counsel placed his second witness, Valentin Daco, on the stand, an attempt to establish some connection regarding the alleged use of a few ballots as 'shuttles' in this precinct was made by asking witness, Santiago Daco, the following question on re-direct examination:

"DEL ROSARIO. You stated this morning that some of your protests were not attended to and recorded in the minutes of the board of election inspectors. Will you state some of these protests which were not recorded?

"SANDOVAL. Objection to the question on the ground that it is not a proper question for redirect examination.

"COURT. Sustained.

"Santiago Daco was not able to testify to a fact which he had absolutely failed to mention or to even insinuate during his long direct-examination and cross-examination, and which fact must have undoubtedly been learned by him afterwards (during the interval between Santiago Daco's occupying the witness-stand on direct and cross-examination and the succeeding recesses occurring in the meantime before Valentin Daco testified). To be sure, Santiago Daco would have been able to place a connecting link between what he had already testified and what was afterwards to burst forth from the cunning witnesses, Valentin Daco and Gregorio Rodriguez, when the latter began to tell the story of the alleged use of the 'shuttle' in this precinct. As to what these last two witnesses afterwards testified, Santiago Daco was conspicuously mum and silent.

"Valentin Daco in effect stated that he was one of the watchers for protestant in this precinct on June 2d; that at 10.30 a. m. that day, when he went out of the polling place to answer the call of nature, he saw near the school shop several electors surrounding one Francisco Zumarraga, who was writing the names of candidates such as Gil Montilla on official ballots; that from a distance of about 18 meters and while squatting on a nearby toilet where he stayed five minutes, he could see through a hole 1 1/2 inches in diameter Francisco Zumarraga handing over official ballots which the latter had already filled out to some six electors, who forthwith proceeded to the polling place; after which said electors would return back to where Zumarraga was and give back another piece of paper to the latter.

"Declaring further, Valentin Daco stated that upon his return to the polling place, he forthwith reported the matter to Gregorio Rodriguez, who told him to keep quiet because he (Rodriguez) wanted to catch the anomaly himself; that when Rodriguez returned to the polling place, Rodriguez then informed Santiago Daco, the protestant's inspector, who in turn brought up the question before the board; that the chairman then informed Daco that he could not order the arrest of the persons charged because there was no proof. At this juncture Valentin Daco attempted to repeat before the court the exact words he claims were used by Santiago Daco in making the protest to the board (after failure to) Santiago Daco who had just left the stand to testify that he had never made any such protest.

"On cross-examination, Valentin Daco admitted not having reported the anomaly he had seen committed by Francisco Zumarraga to the Constabulary soldier whom he met in the afternoon, not only because he had already reported the matter to Gregorio Rodriguez, but also because he did not know it was the business of the Constabulary soldier detailed there to watch the proceedings in connection with the elections, although he knew that any person preparing official ballots inside of the polling place was guilty of a criminal and punishable act. This witness, moreover, gave an exhibition of his extraordinary well trained sense of observation made at the eleventh hour when, in reply to question propounded to him by the court and by counsel for the protestee on cross-examination, he mentioned literally, all of the characteristics which differentiated a private from an official ballot, as recited in several decisions of the Supreme Court, one of the differences mentioned by him being that of the texture of the paper used, the texture of the official ballot, according to him, being finer than the paper on which the private ballot is printed. Valentin Daco could tell whether one kind of paper was finer or coarser than another, from the appearance of the paper itself and without touching it, as he claims to have seen this difference when he passed by the place where Francisco Zumarraga was writing on official ballots while being surrounded by the six electors named by him.

"Gregorio Rodriguez, on the other hand, testified that upon being informed by Valentin Daco that Zumarraga was writing on official ballots outside of the polling place, he hastened to catch Zumarraga, but was unable to do so;

that he then informed Santiago Daco of this anomaly, and Daco in turn protested to the board against this preparation of official ballots outside, and at the same time requested the chairman of the board to have Zumarraga arrested, which request was, however, turned down. The witness then repeated that the chairman is supposed to have replied to Santiago Daco, using almost the same identical and memorized sentences as those used by Valentin Daco.

"When Gregorio Rodriguez was asked on cross-examination whether he reported this matter to the Constabulary soldier in precinct 5, or to the provincial commander and the provincial fiscal when he went to Coron on June 4th, he replied in the negative.

"The court cannot believe the testimony of Valentin Daco and Gregorio Rodriguez on the alleged anomaly of the use of the 'shuttle' in this precinct. If such a gross election fraud had in fact been perpetrated, it cannot be conceived how it has come to pass that Santiago Daco was absolutely silent regarding this matter. Santiago Daco at least could have made efforts to mention this fraud when he was asked to name the anomalies he had seen committed and the protests he had filed with the board on election day. It is now claimed by counsel for protestant that he had purposely desisted from making Daco testify on this fact because Santiago Daco's testimony would be hearsay, but if this is the contention, the court believes it is more of a hearsay testimony to just let either Valentin Daco or himself be supposed to have spoken to the board concerning Santiago Daco's petition for the arrest of the person responsible for the preparation of official ballots outside the polling place. Moreover, if this fraud had really been committed, why is it that the only election irregularity reported by Gregorio Rodriguez to the provincial fiscal had reference to the action of the board in allowing Juan Aboratigue and Eugenio Dadaya to vote despite the order of exclusion of the circuit justice of the peace against these electors? And why is it that up to the present, no criminal complaint has been filed against Francisco Zumarraga?

"Besides, this alleged anomaly is not borne out by the minutes of June 2d, Exhibits 11 and 11-a. This document does not contain any protest filed to that effect by Santiago Daco, whose signature is affixed thereon. Had such a gross anomaly as the preparation of official ballots outside the polling place been really committed, Santiago Daco would, without doubt have inserted his energetic protests in said minutes, and the absence of any protest to that effect forces the court to conclude that said anomaly did not in fact exist. While it is true that Santiago Daco attempted to deny having voluntarily affixed his signature not only to the election returns and the minutes of June 2d, but also to all the other election documents used in this precinct, which he claims to have signed only through intimidation, threats of violence and force brought to bear upon him by the chairman of the board, nevertheless the stubborn fact remains that Daco's signature on said minutes, election returns and registry lists indubitably show upon their face that they were written in the most natural and ordinary manner possible, even clearer than the signature prepared by him in open court on the paper Exhibit 12 handed to him by the undersigned judge during the trial of this case.

"In the opinion of the court, the mere failure of Santiago Daco to testify upon this point is sufficient to taint the testimony of Valentin Daco and Gregorio Rodriguez with the earmarks of evident falsehood."

The other assignments of error regarding this precinct refer to questions of fact which, in our opinion, were properly decided by the trial court. For this reason we shall not discuss them here again.

As to the annulment of the election in this precinct, the lower court concluded that the protestant's evidence does not justify it, citing the doctrine laid down in the case of *Demeterio vs. Lopez*, *supra*.

In connection with the irregularities alleged in paragraphs 6 and 7 of the amended protest, the trial judge says: "Counsel for the protestant in the course of his objection to the admission of protestee's ballots in this precinct objected to 144 ballots on the ground of alleged similarity in penmanship. On the other hand, an examination of

the ballots themselves shows that only 54 ballots could reasonably be separated into 17 different groups of ballots, the handwriting of which appears to be similar for each group. The existence of these 17 groups of ballots of the same handwriting for each group is, however, justified by the 37 affidavits for illiterate voters and the personal votes of the 17 persons who prepared the ballots of illiterate voters as appearing in the affidavits (Exhibits 69-a-1 to 69-a-37), or a total of 54 ballots which must of necessity appear to be in the same handwriting for each group. Therefore, there can be no anomaly in the finding of these 54 ballots."

The trial judge then proceeded to examine the ballots cast in this precinct, and, deducting from the protestant 1 vote and from the protestee 6 votes which were considered illegal, the court adjudicated 35 votes to the protestant and 147 to the protestee.

Precinct 6.—Nine grounds, enumerated on pages 186 and 187 of the appealed decision, are alleged in the amended protest, and, on appeal, ten errors are assigned by the appellant regarding the irregularities committed in this precinct. Said irregularities were decided correctly by the lower court after a careful revision of the evidence submitted by both parties.

In connection with the allegation that illiterate voters were permitted to be assisted by other persons in the preparation of their ballots without requiring them to file the necessary oath, it appears that during the revision of the ballots by the commissioners appointed by the court, the commissioner for the protestant claimed that 28 of the protestee's ballots appear to be in the handwriting of a few persons only. That number was raised to 39 by the counsel for the protestant. The protestee admits that of the 61 ballots in which he is voted for governor in this precinct, only 28 may be separated into 10 groups in the same handwriting for each group. The lower court held: "The existence of these 28 ballots in similar handwriting for each of the ten groups, appears to be well justified. Out of the 23 affidavits for illiterates, the 5 ballots prepared by the protestant's watchers must be deducted, leaving still 18 affidavits to which should be added the 10 votes of the persons chosen by said illiterates to assist them in the preparation of their respective ballots, or a total of 28 ballots which, of necessity, have to appear in the same handwriting for each group." Accordingly, the court found that the preparation of said ballots was done in compliance with the requirements of the law and should therefore be admitted in favor of the protestee.

The other assignments of error require no further discussion, for, in our opinion, the conclusions of the lower court, which appellant impugns, are fully supported by the evidence in the record.

As in the case of the other precincts, the lower court examined the ballots cast in this precinct and found that the protestant received 14 votes and the protestee 61.

Again, appellant prays for the annulment of the election in this precinct. The lower court held, and we believe rightly, that the election in this precinct must be upheld. The trial judge observes that, while it is true that in the discharge of their functions the inspectors might have committed anomalies, due in a large measure to ignorance, pressure of work or inefficiency, still, the facts proved inevitably show that such anomalies were not done with fraudulent intent. The overwhelming majority of the people in the municipality of Coron clearly manifested their desire to entrust to the protestee the direction of the provincial government of Palawan, and their desire should be respected by all means, since it would be highly unjust to punish the innocent electors for the anomalies alleged to have been committed by the election inspectors.

Precinct 7.—There are six grounds quoted on page 20f of the appealed decision for the alleged irregularities committed in this precinct. All of them were decided adversely by the lower court after having reviewed the evidence presented by both parties. The result of the examination of the ballots cast in this precinct gives 99 votes to the protestee and 96 to the protestant. The appellant states in his brief that although frauds and violations of the Election Law in this precinct were similar to those in other precincts, they do not materially affect the election,

because the voters in this precinct were educated.

Precinct 8.—Eleven grounds, enumerated on pages 218 and 214 of the lower court's decision, are alleged in the 'amended protest and 14 errors are assigned on appeal in support of appellant's petition for the annulment of the election in this precinct.

As in other precinct, the trial judge made a thorough analysis of the testimony of the witnesses offered by the protestant, and he draws therefrom the following conclusions: First, that the official inspector of the protestant was not a registered voter in this precinct; second, that the official watchers for the protestant and protestee were not allowed to remain inside the polling place after all the voters had already cast their respective ballots third, that no absentees voted in this precinct on election day; fourth, that no marked ballots were illegally counted; fifth and sixth, that the; number of ballots prepared by other persons for illiterate voters tallies with the number of same illiterates; seventh, that no incapacitated voters were assisted by other persons without filling out the requisite oath of incapacity; eighth, that no disqualified elector was permitted to be registered and to vote; ninth, that no registered elector in this precinct voted in other precincts for the second time; tenth, that there has been no disappearance of official ballots; eleventh, that the annulment of the election is not justified.

Considering the evidence referred to in the appealed decision, we are constrained to hold that said evidence fully supports the conclusions of the trial court. Appellant's assignments of error are, therefore, not well taken.

In this precinct, however, mention should be made of the action of the chairman of the board of election inspectors in excluding from the polling place all the watchers/both for the protestant and for the protestee, upon the termination of the voting. The trial judge says: "While the action of the chairman in requesting the watchers of the contending parties in said precinct to stay out of the polling place during the counting and reading of the ballots seems unique, and although said chairman had placed a rather strange interpretation of the provision of law governing this matter, still, on the whole, the court considers that no frauds were committed even in the absence of said watchers." And consequently, the trial judge holds that this irregularity does not suffice to invalidate the election in this precinct. According to the lower court, the ballots themselves show that the sending away of the watchers did not in any manner affect the result.

In concluding that the frauds alleged by the protestant in connection with this ground of the protest have not been proved, the trial judge observes:

"If the action of the chairman of the board in sending away all the watchers for both factions after the close of the voting had been maliciously and intentionally done to enable the board to commit frauds, as claimed by the witnesses for the protestant, the result of the revision of the ballots would have confirmed said contention. The truth of the matter, however, is that the report of the commissioners, clearly contradicts and runs counter with this claim. According to said report (Exhibits Z-1 and 44-A, Rec. pp. 222-224), 121 ballots (HM-1 to HM-121, inclusive), were found bearing the name of the protestee, Higinio Mendoza, although only in 114 of these does his name appear written in the proper space (Rec. p. 223); and that only 8 ballots (PF-1 to PF-8) were found for the protestant. According to the election return (Exhibit 111-35), the protestee obtained 123 votes, while the protestant 2 votes, from which it is evident that the discrepancy is only slightly different. If fraud had in fact been contemplated, and if the inspectors had really intended to commit fraud upon asking the watchers for both factions to leave the polling place, the difference would have been much bigger.

"The protestant attempted to prove that one Sabino Yalung was employed by the board to coerce the electors and to watch their manner of voting. Upon this point, Pedro Nangit asserted that said Sabino Yalung, a policeman from Coron, frequently went to the booths, peeping into said booths at times, and sometimes even leaning one-half of his body thereon while electors were inside writing their ballots. This testimony is contradicted by his own cousin, Esteban Nangit, also a watcher of the protestant in this precinct, who

immediately followed Pedro Nangit on the witness-stand, and categorically admitted in open court that the policeman Sabino Yalung only peeped into the booths for the purpose of finding out whether a booth was occupied or not; that upon finding a booth to be vacant, he called another voter from outside to get in to prepare his ballot; that as soon as Yalung noticed that a booth was occupied, Yalung immediately left the place, without in any way interfering with the voters who happened to be preparing their ballots. This assertion, when taken in connection with the previous admission made by both Pedro Nangit and Esteban Nangit, that nobody could see the names of the candidates written by the voters on their ballots while inside the booths, and that policeman Yalung did not mix with the electors while the latter were preparing their ballots, nor did this policeman, or for that matter, any of the members of the board of inspectors, or any other persons whomsoever, ever intimidate, or force or threaten any elector to vote for one or the other of the contending candidates in said elections, said electors having freely and voluntarily, and without any interference or hindrance, prepared their respective ballots inside the booths, entirely discredits the testimony of Pedro Nangit upon this point.

"It is not only in this particular testimony that these two principal witnesses for the protestant contradict each other. Besides their inconsistent versions relative to the question of whether or not the names of the voters were announced or not by the chairman before delivering the corresponding official ballot, their testimony is conflicting in regard to the place where they both stayed after being sent out of the polling place at the time of the reading of the ballots.

"It should be borne in mind that both these witnesses insinuated that after the proclamation of the results had been made, at about 10 o'clock p. m. on June 2d, the three inspectors and the policeman and poll clerk continued to remain inside the polling place making a lot of noise until about 5 a. m. on June 3d when the board adjourned. Up to this point, their versions are still uniform. They wholly disagree, however, in one important particular. While Pedro Nangit, insisted that after the announcement of the results had been published by the chairman, he and his cousin Esteban Nangit proceeded to the house where they were both residing in San Miguel, a short distance from the polling place, where they both remained with other electors of their faction, chatting and watching what the inspectors were supposedly doing inside the polling place, until 5 o'clock the next morning, said inspectors having passed by said house on their way home at about 4.30 a. m. June 3d; Esteban Nangit's version on the other hand, is that after he and the other watchers were sent away by the chairman at 6 o'clock in the evening, he and Pedro Nangit stayed outside in the open air near the polling place to wait for the reading of the ballots and the announcement of the results, after which he and Pedro Nangit continued to remain in the same place in the open air from 10 p. m. on June 2d until 4 a. m. on June 3d, looking at what the inspectors were doing inside; and that Pedro Nangit never left him there, nor did they two enter any house during said interval of time. Their testimony is so inconsistent and conflicting in material points in the case that the court cannot help but doubt of their veracity."

The contention of the appellant that the court erred in not holding that 100 ballots are in the handwriting of only a few persons, is untenable. Of the 100 ballots, the admission of which was questioned by the appellant on the ground of identical handwriting, the trial judge found that only 40 could reasonably be classified as being in the handwriting of 4 persons, adding that the existence of these 40 ballots is amply justified by the 18 affidavits for illiterate voters, to which must be added the 4 votes of the persons who prepared said ballots and the 18 thumb-marks of 18 illiterate voters, or a total of 40 ballots which of necessity must appear to be in the same handwriting for each group. As to the alleged falsification of the election returns, this contention is also untenable. It appears on the election returns that 133 ballots were used in this precinct on election day. This statement is confirmed by the report of the commissioners, Exhibits' Z-1 and 44-a, and by the ballot pads found inside the box for valid ballots. Thus, according to said reports, the total ballots used is 133, which tallies exactly with the remaining official ballots found inside the ballot box. (Page 235, decision.)

The appellant prays for the annulment of the election in this precinct, which petition was denied by the trial court.

On this point we deem it advisable to repeat here the grounds upon which the trial judge denied appellant's prayer for annulment:

"The action of the board, in unseating Juan Macanas as inspector, and in sending away all of the watchers of both contending candidates in this precinct during the reading of the ballots, does not, in the opinion of this court, constitute sufficient cause to invalidate the elections. It has been sufficiently proved by the positive admissions of the witnesses of the protestant, Pedro Nangit and Esteban Nangit, that the voting was legally conducted from 7 a. m. until 6 p. m. on June 2, 1931, that only electors who presented themselves before the board on election day and whose identity was proved beyond doubt through previous consultation with and verification of the registry lists by the inspectors were handed the corresponding ballot in the presence and without any protest whatsoever on the part of the four watchers of the protestant, Pedro Nangit, Esteban Nangit, Romualdo Llanera, and Mamerto Dalabahan; and that each and every one of the electors who voted on said date prepared their respective ballots inside the voting booths in utmost privacy and secrecy, without any molestation or interference whatsoever, and without any force, threats or intimidation of any kind, or nature brought to bear upon them by any person. Upon such a state of facts, the court is convinced that the elections were on the whole legally conducted, the results of which represented the true expression of, the opinion and wishes of the voters in this precinct."

The trial judge examined the ballots cast in this precinct and found that the protestant received 8 votes and the protestee 96.

And finally summarizing the total votes obtained by the contending parties in the 8 precincts of Coron, the judge a quo makes the following tabulation:

Contested precincts in Coron

Total number of votes

1

2

3

4

5

6

7

8

H. Mendoza

197

104

122

65

147

61

96

96

888

P. Fernandez

40

18

12

28

35

14

99

8

254

Total majority for Higinio Mendoza

634

Accordingly, the court declared that in the 8 precincts of the municipality of Coron the protestant received 254 votes and the protestee 888.

In view of the foregoing we are of the opinion, and so hold, that the decision of the lower court sustaining the validity of the election in the eight precincts of the municipality of Coron is supported by the evidence of record. This conclusion disposes of the appeal as regards the pro- test filed by the protestant.

The appellant contends, however, that on account of the counter-protest filed by the protestee the lower court erred in deducting from the protestant 72 ballots, and in adjudicating to the protestee 70 ballots enumerated on pages 123 and 124 of the appellant's brief. But, having decided to sustain the election in the eight precincts of the municipality of Coron, we deem it unnecessary to examine the ballots referred to by the appellant in connection with protestee's counter-protest, inasmuch as, even admitting the appellant's contentions in this respect, the result will be the same; for, by deducting from the protestee's plurality of 260 votes said 142 ballots which were involved in the counter-protest, appellee would still have a plurality of 118 votes over the appellant.

The decision appealed from is, therefore, affirmed with costs against the appellant. So ordered.

Street, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

[1] Page 1000, post.

[2] Promulgated April 22, 1929, not reported.

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