

MIGUEL ARRIETA, PROTESTANT AND APPELLANT, VS. MARIANO RODRIGUEZ, PROTESTEE AND APPELLEE.*G. R. No. 37524. December 12, 1932*

Ponente: VILLAMOR, J.

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This is an appeal from the decision of the court below in the protest filed by the appellant, Miguel Arrieta, against his opponent, Mariano Rodriguez, both of whom were official candidates for the office of member of the provincial board of Palawan in the elections held on June 2, 1931.

It should be noted, in the first place, that the election for the said office was declared a tie by the provincial board of canvassers between appellant and appellee, each of whom received 2,054 votes. Thereupon the case was submitted to the Philippine Senate in pursuance of the provisions of section 475 of the Election Law. On August 20, 1931, the senate passed a resolution proclaiming Mariano Rodriguez elected a member of the provincial board of Palawan.

On September 2, 1931, Miguel Arrieta filed a motion of protest in the Court of First Instance of Palawan, praying for the annulment of the election in the eight precincts of the municipality of Coron on the grounds specified in his motion, pages 2 to 12 of the record. The protestee, Mariano Rodriguez, was summoned on September 8, 1931, and on October 2d his counsel filed an answer denying the allegations of the protest, setting up certain special defenses, and, at the same time, a counter-protest disputing the election in the municipality of Cuyo, precincts 1, 3, 4, 6, and 7; Puerto Princesa, precincts 3, 4, and 6; and the only precincts of Agutaya and Balabac.

At the commencement of the trial, and also after the protestee had rested his evidence on the counter-protest, the counsel for the protestant moved the court to dismiss said counter-protest on the ground that it had been filed outside the statutory period and therefore the court lacked jurisdiction to hear and determine the said pleading. This motion was denied by the court and protestant duly excepted. (Page 4, decision.)

A similar motion to dismiss the counter-protest was filed by the protestant with this court, before presenting his brief, which petition was denied by resolution of this court dated October 18, 1932, without prejudice to the appellant's right to discuss said question in his brief.

The 79 grounds of the protest in this case for the annulment of the election in the eight precincts of the municipality of Coron are the same as those which were alleged for the annulment of the election in said precincts in case G. R. No. 37523, Patricio Fernandez vs. Higinio Mendoza.[1] At the trial, both parties agreed to present the same exhibits offered in case 107 (G. R. No. 37523) inasmuch as the protest is worded, and the allegations therein contained are the same as those in the amended protest in case G. R. No. 37523. Both parties further stipulated that the oral testimony adduced in said case be reproduced in the present one and admitted as evidence of the protestant and protestee.

In view of the evidence the court a quo sustained the validity of the election in the eight precincts of Coron,

declaring that in said municipality the protestant obtained 137 votes as against 638 received by the protestee. And, after considering the ballots involved in the counter-protest, the trial court finally decided that the protestee obtained in the whole Province of Palawan, 2,076 votes as against 2,010 obtained by the protestant, wherefore the protestee was declared elected a member of the provincial board of Palawan with a plurality of 60 votes. From this decision the protestant appealed and assigns twelve errors in his brief.

The decision rendered by the court below in case G. R. No. 37523 (with reference to the office of provincial governor of Palawan) having been affirmed recently as regards the municipality of Coron, this case must be decided in the same manner, inasmuch as the alleged irregularities and the evidence submitted are the same in both cases. The most important question raised in the appeal refers to the lack of jurisdiction of the court to hear and determine the counter-protest by the protestee.

The record shows: (a) That Miguel Arrieta filed his motion of protest on September 2, 1931; (b) that Mariano Rodriguez was summoned on September 8, 1931; (c) that protestee's answer and counterprotest was filed with the clerk of the Court of First Instance of Palawan on October 2, 1931. No demurrer to the protest was filed by the protestee. Under these undisputed facts the question which arises is whether or not the answer and counter-protest was filed within the statutory period prescribed in section 481 of the Election Law. This section reads, in part, as follows:

"The candidate whose election is contested and all other registered candidates voted for may reply thereto within fifteen days after the summons, or if they have appeared without being summoned, within fifteen days from the date of their appearance, but in all cases before the beginning of the hearing of the case in court. The reply shall verse only on the precinct or precincts covered by the allegations of the contest. If the candidate whose election is contested or any other registered candidate voted for desires to contest the votes obtained by the contestant in other precincts, they shall file a counter contest within the time limit designated in this paragraph and serve a copy thereof upon the contestant by registered mail or personal delivery, established by a receipt signed by the contestant or his duly authorized agent. * * *"

The same question was raised and decided by this court in the case of *Morente vs. Filamor and Arce Ignaeio* (52 Phil., 289). After a careful consideration of the case, the majority of the court held: That as a general rule, the protestee should file his answer within fifteen days from summons, but if he has demurred to the protest and the demurrer was passed upon after the fifteen days previously fixed, then the protestee may file his answer within the time set forth in the rules, or, by special order of the court, but in all cases before the beginning of the hearing of the case in court. The counter-protest in the instant case having been presented after the fifteen days' period fixed by law, and the protestee not having demurred to the protest, we are of the opinion, and so hold, that the court had no jurisdiction to pass upon and decide the question raised in the counter-protest. In accordance with this conclusion, we cannot examine and decide the admissibility or inadmissibility of the ballots involved in the counter-protest and so the election returns for the municipalities counter-contested must stand.

As to the other assignments of error, we believe that, for the purpose of this decision, it is unnecessary to discuss them, for their resolution would, at all events, only serve to increase the appellant's plurality. Therefore, accepting the certificate of canvass by the provincial board of canvassers (Exhibit B in case G. R. No. 37523), except as to the municipality of Coron, wherein the trial court adjudicated to the contending parties the number of votes already indicated, the result of election here in question is as follows:

Per certificate of canvass by the provincial board of Arrieta Rodriguez canvassers

2,054

2,054

Discard Coron results as per said certificate

132

687

1,922

1,367

Substitute results as per decision of the court below

137

638

Total.

2,059

2,005

In view of the foregoing, the decision appealed from is affirmed as to the municipality of Coron and reversed as to the counter-protest, and it is hereby held that the protestant-appellant, Miguel Arrieta, is elected a member of the provincial board of Palawan with a plurality of 54 votes over the protestee-appellee, Mariano Rodriguez, with costs against the appellee. So ordered.

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

[1]Page 687, ante.

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