

PEDRO SALDAÑA, PROTESTANT AND APPELLANT, VS. TRANQUILINO NAVARRO, PROTESTEE AND APPELLEE.

G. R. No. 42386. October 11, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Pedro Saldana appeals to this court from the judgment of the Court of First Instance of Bataan which reads as follows:

"Acting upon Attorney Vicente J. Francisco's motion for dismissal of the election protest filed by Pedro Saldafia against Tranquilino Navarro in the above entitled case, on the ground that it is not stated in said protest that the protestant or the protestee are 'duly registered candidates', which is an indispensable requisite prescribed by the Election Law to confer jurisdiction upon the courts to take cognizance of these cases, the court, after having carefully examined all the pleadings for and against said motion, has arrived at the conclusion that said motion for dismissal should be granted. (See *Tabada vs. Zanduetta and Vergara*, 47 Phil., 859.) Even granting that the word 'inscribed' is synonymous to 'registered', inasmuch as the law precisely requires that there be an allegation to the effect that the certificate of candidacy of a candidate has been 'duly filed', and there being no such allegation in the motion of protest, the court lacks jurisdiction to take cognizance of said case.

"Wherefore, the motion for dismissal filed by said Attorney Vicente J. Francisco, representing Tranquilino Navarro, the protestee in this case, is granted, and this case is dismissed, with costs against the protestant. So ordered."

In support of his appeal, the protestant assigns the following alleged errors as committed by the trial court in its said resolution, to wit:

"1. The lower court erred in declaring that the protestant should allege in his motion of protest that his certificate of candidacy was 'duly filed'.

"2. The lower court erred in ordering the dismissal of this case with costs against the protestant/'

The only question to be decided in this appeal is whether or not the facts alleged in the motion of protest filed by the appellant Pedro Saldana are sufficient to confer jurisdiction upon the Court of First Instance of Bataan to take cognizance of said case.

Paragraph 2 of said motion of protest reads as follows:

"2. That said protestant and protestee are qualified voters of the municipality of Samal, Province of Bataan, the only two inscribed candidates for the office of municipal president of said municipality, and that they were voted for for said office in the general elections held on June 5, 1934."

The trial court, in ordering the dismissal of the motion of protest under consideration, based its opinion on the ground that it did not allege that the certificate of candidacy has been "duly filed" as required by section 479 of

Act No. 3834.

In the case of Acerden vs. Tonolet (52 Phil., 409), the motion of protest contained the following allegation of jurisdictional facts: "That in the general elections held on June 5, 1928, the protestant and protestee were the only two candidates registered and voted for who contended for the office of municipal president of the municipality of Carigara." The question having been raised whether or not the above facts were sufficient to confer jurisdiction upon the court, with which said motion was filed, in order to take cognizance of the case, this court decided it in the affirmative.

Between the allegation of jurisdictional facts contained in the motion of protest in the above cited case of Acerden vs. Tonolet and that contained in the motion of protest under consideration, there is no essential difference. Neither is there any essential difference between the word "registered" used in the motion of protest in the former case and "inscribed" used herein, inasmuch as they are synonymous. (IV Escriche, Dictionary of Law and Jurisprudence; Dictionary of the Spanish Language.)

In view of the foregoing consideration, we are of the opinion and so hold that the allegation "That said protestant and protestee are qualified voters of the municipality of Samal, Province of Bataan, the only two inscribed candidates for the office of municipal president of said municipality, and that they were voted for for said office in the general elections held on June 5, 1934," contained in a motion of protest, substantially complies "with all the requisites prescribed by section 479 of Act No. 3834 to confer jurisdiction upon a Court of First Instance to take cognizance of an election protest.

Wherefore, the resolution appealed from is reversed and it is ordered that the motion of protest be reinstated and the proceedings therein continued, with costs against the appellee. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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