

JUAN A. SARENAS, CONTESTANT AND APPELLEE, VS. SEBASTIAN T. GENEROSO, RESPONDENT AND APPELLANT.

G.R. No. 42685. June 29, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

At the general elections of June 5, 1934, Sebastian T. Generoso and Juan A. Sarenas were candidates for the office of governor of the Province of Davao. The provincial board of canvassers proclaimed the former governor elect and the latter filed a motion of protest in the Court of First Instance of that province. After due hearing that court rendered judgment proclaiming: the contestant Juan A. Sarenas governor-elect of that province with a majority of eighty-two votes. The respondent Sebastian T. Generoso appealed to this court from that judgment.

In rejecting and admitting the questioned ballots in this case this court has followed, in so far as possible, certain fairly well established general rules. However, experience has shown that it is difficult to lay down any absolute rule as to what constitutes cause for rejecting a ballot as marred and, therefore, great care has been exercised in rejecting ballots. Furthermore, the presumption being in favor of the validity of the ballots they should not be rejected unless clear and sufficient reasons justify such action. Having this in mind, in our endeavor to obtain the expression of the voter's will, as shown by each ballot examined, we have been specially liberal in applying the *idem sonans* rule.

The following general rules, relating to the appreciation of ballots, have been applied in this decision in so far as they have been found applicable. Unless rejected for other reasons ballots containing the following have been held valid:

- (a) The initial of the first Christian name or its *idem sonans* and the surname of the candidate.
- (b) The initial of the second Christian name and the surname of the candidate.
- (c) The surname of the candidate followed by his initials in their proper sequence, or by one correct initial.
- (d) The Christian name and the surname incorrectly written when they have the same or a similar sound¹ to that of those names of the candidate.
- (e) An erasure of a name when another readable name is written by the voter over the erasure in order to correct his error.
- (f) The name of a candidate written in its greater part in the space provided for the office for which he is a candidate.
- (g) The name of a person written in a space designated for a particular office for which said person is not a candidate. ("Scattering vote.")
- (H) Names written in lead pencil or ink, in the absence of proof of fraudulent Intent.

- (i) Prefixes "D.", "Don", "Mr.", "Mister" or their equivalent in the local dialect, "Gov.", "Governor", etc.
- (j) Flourishes, touches or marks innocently or unconsciously placed on a ballot by the voter in the course of its preparation.
- (k) Undetached coupons bearing the number of a ballot The duty of detaching the coupon is placed by law upon the election officials.
- (l) The name of a person voted for two or more offices for one of which he is a candidate.
- (m) The surname alone of a candidate or its idem sonans, if there is no other candidate with that surname.

In case the legality of ballots containing the surname only or the surname and the initial of the second Christian name of a candidate is questioned on the ground that the identity of the candidate is not established it is incumbent upon the one objecting to the counting of such ballots to submit proof to sustain his objection.

Ballots have been rejected for the following reasons:

- (a) Those in which the nicknames of a candidate appear alone even though his certificate of candidacy recites the fact that he is known by such nicknames.
- (b) Those in which the name appearing in the space for the contested! office is illegible.
- (c) Those in which the voter has written impertinent words or phrases with the evident intention of marking his ballot for identification.
- (d) Those in which the wrong initial or Initials are written and those in which the initials are not written in proper sequence.
- (e) Those in which the initials alone are written.
- (f) Those in which only the Christian name appears.
- (g) Those in which two names are written in a space in which only one name should appear.
- (h) Those in which the name of a candidate claiming such ballots is written in only one space distinct from that intended for the office for which he is a candidate.

In the appellant's first assignment of error he alleges that the court erred in rejecting one hundred and ten ballots upon the ground that he was voted for in said ballots by his initials. It is admitted by the appellee that the court should have rejected only one hundred ballots instead of one hundred and ten. Therefore ten ballots should be and are hereby credited to the respondent-appellant Generoso. The one hundred ballots were properly rejected. This court has held continuously that initials alone do not sufficiently identify the person voted for.

In his second assignment of error the appellant alleges that the court erred in not counting nineteen ballots marked as Exhibits G-79, G-230, G-266, G-303, G-305, G-352, 4 G-386, G-396, G-440, G-496, G-497, G-534, G-575, G-718, G-724, G-802, G-811 and G-897. Although the appellant alleges that nineteen ballots were improperly rejected he enumerates and discusses only eighteen, as listed above. This assignment of error is sustained as to ballot G-79 which is admissible under the idem sonans rule as the name appearing in this ballot is S. T. Genora; ballot G-440 in which appears G. S. Genirso, as the evidence shows that G stands for "Ginoo" (Mister), the letter S f or Sebastian and Genirso is idem sonans with Generoso; ballot G-497 in which appears Si ba Hinoros, as Si ba is the contraction of the name Sebastian and Hinoros is idem sonans with Generoso; ballot G-718 in which appears S. T. Guruso, the latter being idem sonans with GenerosoX ballot G-724 in which appears C. Enrso, C being idem sonans with letter S and Enrso idem sonans with Generoso. These five ballots should be and are

hereby credited to the appellant Generoso. The other thirteen ballots mentioned in this assignment of error were properly rejected by the trial court.

In his third assignment of error the appellant alleges that the trial court erred in rejecting forty-one ballots for him in which only his nicknames appear. The fact that a candidate certifies that he is known by numerous nicknames does not justify a court in admitting and counting ballots upon which any one of such nicknames appears without his family name. This assignment of error is therefore overruled except as to ballot G-472. The word "Neroso" written in the space for provincial governor is idem sonans with Generoso.

In his fourth assignment of error the appellant alleges I that the trial court erred in rejecting one hundred and thirty ballots on the ground that the respondent-appellant was voted¹ for in said ballots by his nicknames only. It is true that the appellant filed a certificate in which he made it appear that he is known by over two hundred names, but in spite of this fact the doctrine just announced in commenting on the third assignment of error holds good here. ij; Therefore the trial court did not err in rejecting the one hundred thirty ballots on the ground above mentioned. Furthermore the doctrine laid down in *Adeser vs. Tago* (52 Phil., 856), and *Namocatcatvs. Adag* (52 Phil., 789), jii still holds good subject to the qualification made in *Aure Alegre vs. Aure Perey* (G. R. No. 31017),^[1] and *Bayona vs. ii Siaotong*, G. R. No. 36065 (56 Phil., 831). The rule in *Balji yona vs. Siaotong*, *supra*, that the nickname must be affixed to the surname of the candidate is applicable even if no ij other person is known by a particular nickname except the candidate claiming it. In the case of *Moral vs. Morales* (56 Phil., 833), although the contestant proved that there was no other person known by the nickname of "Bolitog" in the municipality of Casiguran, Tayabas, this court held that ballots in which that nickname appeared alone were invalid. Notwithstanding the able argument of counsel for the appellant upon this point we do not believe it expedient to modify the above enunciated rule with regard to nicknames. Therefore this assignment of error must be and is hereby overruled.

The appellant in his fifth assignment of error alleges that the trial court erred in not counting thirty-nine ballots in his favor. It appears from the record that the appellant erred in alleging that two of these ballots, Exhibits G-493 and G-494, were not counted in his favor by the trial court. These ballots were correctly admitted in his favor by the trial court as the name appearing in the space for provincial governor is Generoso. The A before that name was written by a person other than the voter. The ruling of the trial court is sustained as to the following ballots: G-533 (A. B. Generoso), G-549 (A. Naruso), G-552, (A, Garuso), G-555 (A. Garuso) and G-563 (A. Margoso). This assignment of error is sustained as to the following ballots: Q-492, G-502, G-505, G-508, G-510, G-511, G-512, G-519 and G-572. In all of these ballots the surname Generoso is written in the space for provincial governor. It is evident that in ballot G-502 the voter started to spell the. name Generoso with J and then corrected it by writing that name properly. The A written before the name Generoso in the other ballots were written by a person other than the voter. Ballot G-506 should be counted for the appellant as it clearly appears that the voter wrote in the space for provincial governor S. Generoso and that the B superimposed on the S was evidently written by another person; G507 should be counted for the appellant as it clearly appears that the voter wrote in the space for provincial governor S. T. Generoso and that the B superimposed on the S was evidently written by another person; G-513 should be counted in favor of the appellant as it clearly appears that the voter wrote in the space for provincial governor Sebastian T. Generoso and that the A written before Sebastian was evidently written by another person; G-521 should be counted for the appellant as it clearly appears that the voter wrote in the space for provincial governor S. T. Generoso and that the M before the S and the H superimposed on that letter were written by a person other than the voter; G-532, the voter wrote S. T. Generoso and the letter M superimposed on the S was written by another person; G-523, the voter wrote S. T. Generoso and the :letters B and F were superimposed on the letters S and T by another person; G-524, the voter wrote S. T. Generoso I and the letter N was superimposed on the S by another person; G-529, the voter wrote S. T. Generoso and the 1] letter M was

superimposed on the S by another person; G-550, the voter wrote S. T. Generoso and the letters B and Jr N were superimposed on the letters S and T by another person; G-531, the voter wrote "Sebastian de Gso" and the letter M was written before Sebastian by another person, Gso stands for Generoso; G-532, the voter wrote Geneiroso S. T» and the letter A appearing before Generoso was written by another person; G-536, the voter wrote S. T. I Henirosp and the letters A and M were superimposed on the S by another person; G-537, the voter wrote S. T. Generoso and the M appearing before the S was written by another person; G-538, the voter wrote Sebastian Generoso and the letter A appearing before Sebastian was written by another person; G-539, the voter wrote Sebastian T. Generoso and the letter A appearing before the word Self bastian was written by another person; G-540, the voter I wrote Sebastian Generoso and the letters M and A appearing before the word Sebastian were written by another person; G-542, the voter wrote S. T. Giniroso and the letters B and M superimposed over the S and T were made by another person; G-543, the voter wrote S. T. Geniros and the letter G, superimposed over the letter S, and the letter M, appearing after the letter T, were written by another person; G-561j the voter wrote s. te Geniroso and in view of the fact that the above mentioned ballots have been tampered with in the form mentioned we have concluded that the small square, above the letter s and over the word "marca" in the printed instructions of the ballot, was made by a person other than the voter, as said square appears to have been made by a blunter pointed pencil than that used by the voter. In G-569 the voter wrote S. T. Generoso and the square appearing before the letter S was evidently made by another person; G-570, the voter wrote S. T. Generoso, the cross appearing before the letter S and the A superimposed on that letter were evidently made by a different person; G-571, the voter wrote S. Generoso and the letter A superimposed upon the S was written by another person; G-573, the voter wrote S. T. Generoso and the cross appearing before the letter S was made by another person. As a result of the above the appellant should be and is hereby credited with thirty-two more votes.

Under his sixth assignment of error the appellant alleges that the trial court erred in rejecting G-533 twice. This assignment of error is well taken and the appellant should be credited with one more vote. Under his seventh assignment of error the appellant alleges that the trial court erred in rejecting thirty-six ballots, Exhibits G-763 to G-796, G-798 and G-799, on the ground that they were written by the same hand. The record shows that these ballots were found in the box for valid ballots of precinct No. 1 of the municipal district of Pantukan. They were rejected by the trial court on the ground that they were fraudulent. In commenting upon these ballots that court said:

"Cotejadas las unas con las otras con detencion, presentan realmente rasgos identicos de caligrafia. Y, anadiendose a esto la circunstancia de que en to das y en cada una de ellas aparecen uniformemente votadas las mismas personas para los mismos cargos, la objeccion de que son fraudulentas esta bien fundada."

The rejection of these thirty-six ballots is not justified upon the grounds stated by the trial court in the absence of conclusive evidence that these ballots are fraudulent as it appears that in that precinct there were fifty-nine illiterate and incapacitated voters. The appellee, on page 71 of his brief, contends that although there were fifty-nine illiterate and incapacitated voters in that precinct the persons who wrote the ballots and the number written by each one of them are as follows:

R. R. Legal 28

Pantaleon Terrado 19

Basilio Cordoba 6

A. Samonte 1

Tobias Amador 1

C. Artes 4

Total 59

However, the appellee does not point out the evidence sustaining the above statement. He does not refer to any page of the transcript of the stenographic notes nor to any exhibit. This court is not obliged to search the voluminous record in this case for the purpose of verifying whether or not the appellee's statement is true. However, in looking over the index of witnesses, apparently none of the above listed persons testified during the hearing of this case. The fact that the attorney for the appellant requested the court to reconsider its ruling on similar ballots in precinct No. 11 does not estop him from insisting upon his rights as to those ballots. Consequently the appellant, under this assignment of error, should be and is hereby credited with thirty-six more votes.

Under his eighth assignment of error the appellant alleges that the trial court erred in rejecting four ballots on the ground that they are marked. The ballot G-12 is a marked ballot in view of the fact that the following words are written on the back thereof:

"PROVINCIAL GOVERNOR

"S. T. Generoso

"MEMBERS OF THE PROVINCIAL BOARD

"T, Doromal

"MUNICIPAL PRESIDENT

"Leoncio Enriquez."

Ballot G-38 was properly rejected as marked in view of the fact that the words Alfonso "Supersticioso" appear below the space which should be utilized by the voter. As to ballot G-7 the appellant is mistaken in alleging that it was rejected. It was admitted by the trial court as may be seen on page G of the decision of the trial court, Appendix A of appellant's brief. The appellant is also mistaken as to ballot G-108 which was admitted by the trial court. In view of the above this assignment of error is overruled.

Under his ninth assignment of error the appellant alleges that the trial court erred in not counting the following ballots: G-103, G-499 and G-509. The trial court's ruling should be sustained in view of the fact that in all of these ballots the name of the appellant is written in the first space under the heading "Members of the Provincial Board" and therefore they cannot be counted as votes for him as governor.

In his tenth assignment of error the appellant alleges that the trial court erred in not counting seven ballots in his favor written in Arabic. The record shows that no competent proof was offered by the appellant to identify the person for whom these ballots were cast for provincial governor. He reserved the right to present evidence as to the contents of these ballots as shown on page 8 of the transcript where the following appears:

"Sr. Chaves. Nos reservamos el derecho de aportar pruebas en cuanto a la balota emitida en arabe.

"Juzgado. Para no perder tiempo, ino van ustedes a presentar pruebas sobre eso?

"Sr. Panlilio. Su Sefioria, citamos el articulo 431 de la Ley Electoral en donde se dice: (leyendo.)

"Juzgado. Pero alii no sehabla de alguna escritura en arabe.

"Sr. Panlilio. Excepci6n." (T. s. n., p. 8.) If proper proof had been offered we see no reason why these ballots should not have been counted for the candidates whose names appear written thereon. The courts should take

judicial notice of the fact that a large number of the natives of these Islands write and speak the Arabic language and under competent evidence their votes, although written in that language, should be counted.

In his eleventh assignment of error the respondent appellant alleges that the trial court "erred in counting sixtysix (66) marked and fraudulent ballots in favor of the contestant-appellee, Juan A. Sarenas."

This assignment of error is well taken: All of these ballots were cast in the first precinct of the municipal district of Malita and should be and are hereby rejected on the ground that all of them are marked for identification. The marks consist in the fact that in the spaces destined for writing the names of the candidates for members of the provincial board, there are impertinent and unnecessary words, names of places and of persons who were not candidates for office.. The trial court properly rejected fourteen additional ballots from this same precinct, six of which were rejected because the voters who prepared them testified that they placed distinguishing marks in the spaces for members of the provincial board upon instructions received from one Domingo Uson. On five more of these fourteen ballots, the names of prominent men were written in the spaces for members of the provincial board. Ballots S-270 ("Quezon" in the second space), S-298 ("Senator Arranz" in the second space), S-302 ("Osias" in the second space), S-326 ("Juez Sison" in the second space), S-351 ("S. Osmina" in the second space). The remaining three ballots of the fourteen are S-83 ("Police force" in the second space), S-343 ("Honorable Juez" in the first space) and S-349 ("Ocho" in the second space).

The identification marks above mentioned and those appearing on the sixty-six ballots under this assignment of error clearly indicate a preconceived plan to commit fraud. The originator of this idea can easily identify every one of these ballots and thereby determine whether or not the voters who cast them complied with his instructions.

The sixty-six ballots under discussion are marked as follows:

- "S-258 ('Merto Lebat' on the second space)
- "S-259 ('Lapo Lapo' on the second space)
- "S-260 ('Megil Cuienco' on the second space)
- "S-261 ('Helen Wood' on the second space)
- "S-262 ('Tilipi [Felipe] Uson' on the second space)
- "S-263 ('Albaracin' on the second space)
- "S-266 ('Taling' on the first space)
- "S-267 ('Bagas' on the second space)
- "S-271 ('A. H. Hing' on the second space)
- "S-273 ('Chonga' on the second space)
- "S-274 ('Rasonable' on the second space)
- "S-275 ('Sicon' on the second space)
- "S-276 ('Dumingo Sra/ on the first space)
- "S-277 ('Suto' on the second space)
- "S-278 ('Cuneco' on the second space)
- "S-279 ('Culaman' on the second space)
- "S-280 ('Madiliket' on the second space)
- "S-281 ('Malita' on the second space)
- "S-282 ('Tantala' on the second space)
- "S-284 ('Caloboy' on the second space)
- "S-285 ('Nini Unson' on the second space)
- "S-287 ('Mena' on the second space)
- "S-288 ('Naidas' on the second space)
- "S-289 ('Domingo Uson' on the second space)
- "S-291 ('D. Uson' on the second space)

"S-292 ('Felis' on the second space)
"S-293 ('Datu Macalalangan' on the second space)
"S-294 ('Domingo Uson' on the second space)
"S-295 ('Votetor' before the name of Braganza on the first space)
"S-296 ('Ates' on the second space)
"S-299 ('Mapad'ot' on the second space) 'S-300 ('Toting' on the second space)
"S-301 ('Talaon' on the second space)
"S-303 ('D. Villanueva' on the second space)
"S-304 ('Juana' on the second space)
"S-305 ('Kimpoy, Braganza, Garcia, Doromal and Uson' on the second space)
"S-307 ('Naidas' on the second space)
"S-308 ('Vicente Kintanar' on the second space)
"S-309 ('Maria Oson' on the second space)
"S-310 ('Babooy' on the second space)
"S-314 ('Colog' on the second space)
"S-315 ('Mariano Bangcalao' on the second space)
"S-316 ('Osorn' on the second space)
"S-317 ('Ibangao Malita' on the second space)
"S-321 ('Camunmangan' on the second space)
"S-322 ('Tiolog' on the second space)
"S-324 ('Petrona Sanches' on the second space)
"S-325 ('C. S. Harvey' on the second space)
"S-329 ('Epilardo' on the second space)
"S-331 ('Te Ding' on the second space)
"S-332 ('3 ma' below the word 'barrio de Central Malita')
"S-333 ('Tlasido Alba' on the second space)
"S-334 ('Badol' on the first space)
"S-335 ('Ylongo' on the first space)
"S-336 ('Batay' on the second space)
"S-337 ('Tolicia dumado' on the first space)
"S-339 ('bisaya' on the first space)
"S-340 ('Onirca' on the first space and 'M. Rosario' on the second space)
"S-341 ('Te Ding' on the second space)
"S-344 ('D. Sumalpong' on the first space)
"S-345 ('Ibanes' on the second space)
"S-346 ('Vab' on the first space)
"S-347 ('cosa' on the first space)
"S-348 ('Sarabao' after the name 'D. Braganza on the first space)
"S-352 ('Sahason' on the first space)
"S-354 ('Engracia' on the first space)

The respondent-appellant alleges in his twelfth assignment of error that the trial court erred in admitting seven marked ballots in favor of the contestant-appellee Juan A. Sarenas. An examination of the questioned ballots shows that they are from different precincts and there is nothing to indicate that the alleged distinguishing marks were placed on the ballots by reason of a preconceived plan. This assignment of error is overruled as the trial court properly admitted these seven ballots in favor of the contestant-appellee.

In his thirteenth assignment of error the respondent-appellant alleges that the trial court erred in admitting twelve marked ballots in favor of the contestant-appellee Juan A. Sarenas. This assignment of error is not well taken. The words "Arenas" on ballot S-477 and "Arina" in ballot S-479 are idem sonans with the surname Sarenas.

In his fourteenth assignment of error the respondent-appellant alleges that the trial court erred in admitting in favor of the contestant-appellee seven ballots containing impertinent and unnecessary words or expressions. This assignment of error is not well taken as to six of the ballots mentioned. However, on one of them, Exhibit S-25, in the space for municipal vice-president, the words Amadeo "Criminal" appear. This assignment of error is sustained as to this ballot and the same should be and is hereby deducted from the total number of votes received by the contestant-appellee.

In his fifteenth assignment of error the respondent-appellant alleges that the trial court erred in admitting five ballots marked with initials in favor of the contestant appellee. This assignment of error is sustained as to two of the ballots mentioned therein, i. e., in ballot S-94 the capital letter D is written below the only space for councilor; in Exhibit S-138 the capital letters R. S. D, appear below the space for councilor wherein appears the word Pastoral. It is evident that the capital letters written on these ballots serve to mark and identify them. Therefore under this assignment of error two votes should be deducted from the total number received by the contestant-appellee. The rest of the ballots mentioned are valid.

In his sixteenth assignment of error the appellant alleges that the trial court erred in counting seven signed ballots, mentioned therein, in favor of the contestant-appellee. An examination of these ballots shows that this assignment of error is not well taken and the same is hereby overruled.

In his seventeenth assignment of error the appellant alleges that the trial court erred in counting twelve ballots in precinct No. 3, municipality of Manay, in favor of the contestant-appellee. This assignment of error is overruled as to nine of the ballots mentioned. In ballot S-421 the surname Sarinas, which is idem sowans with Sarenas, appears. In ballot S-422 the name Juan A. Sarenas appears in the first space under the words "Members of the Provincial Board" and therefore this ballot cannot be counted as a vote for him as governor. In ballots S-428 and S-429 only the initials of the persons voted for appear written on said ballots. Therefore these three^ ballots, S-422, S-428 and S-429, should be and are hereby deducted from the total number of votes received by the contestant-appellee.

In his eighteenth assignment of error the respondent-appellant alleges that the trial court erred in admitting for the contestant-appellee twelve ballots containing illegible names in the space for provincial governor. Upon examining these ballots we find that the names appearing in the space for provincial governor are all legible and consequently the ballots mentioned in this assignment of error are valid and properly counted in favor of the contestant appellee. This assignment of error is overruled.

In his nineteenth assignment of error the respondent-appellant alleges that the trial court erred in counting twenty-two ballots in favor of the contestant-appellee under the idem sonans rule. An examination of the ballots mentioned under this assignment of error shows that all but four of them were properly admitted under that rule by the trial court. In ballot S-145 "A. Yurenciz" is written; in ballot S-204, "J. Polinos" is written; in ballot S-356 the name appearing in the space for provincial governor is illegible; in ballot S-462 the name Jum Sins is written. This assignment of error should be and is hereby sustained as to the four ballots mentioned above which should be deducted from the total number of votes received by the contestant-appellee.

In the twentieth assignment of error of the respondent-appellant it is alleged that the trial court erred in admitting in favor of the contestant-appellee two ballots containing wrong Christian names. The ballot S-129 cannot be found and therefore the finding of the trial court as to the legality of this ballot is hereby sustained. In ballot S-438, in the space for provincial governor, "gro. Sarenas" appears. This assignment of error is sustained as to this ballot and the same should be deducted from the total number of votes received by the contestant-appellee.

In this twenty-first assignment of error the respondent-appellant alleges that the trial court erred in counting in

favor of the contestant-appellee twenty-three ballots. However the appellant only calls attention to twenty ballots, Exhibits S-95 to S-114. An examination of these ballots shows that they were all written in the same handwriting and all of them are votes for the contestant-appellee Juan A. Sarenas. Exhibit X-18 is composed of eleven oaths of electors chosen by illiterate voters to prepare their ballots. The appellee asserts that there were forty illiterate electors who had their ballots prepared by others but this assertion is based wholly on hearsay evidence. If this be true it is strange that only the oaths in Exhibit 18 were found in the ballot box of precinct No. 11 of Davao. This assignment of error is sustained and these twenty ballots should be and are hereby deducted from the total number of votes adjudicated to the appellee Juan A. Sarenas.

The respondent-appellant in his twenty-third assignment of error alleges that the trial court erred in counting fourteen ballots in favor of the contestant-appellee which contain initials distinct from that of the Christian name of said appellee. Of these ballots we find that ballot S-145 was mentioned¹ in assignment of error No. 19 and was rejected by this court under that assignment and that ballot S-239 was rejected by the trial court. This assignment of error is sustained as to ballot S-4 in which the name A. J. Sarenas appears written in the space for provincial governor as the correct sequence of the initials of the appellee is J. A. Therefore ballots S-4 was erroneously counted by the trial court in favor of the appellee Juan A. Sarenas and should be deducted from the number of votes received by him.

Turning to the assignments of error of the contestant-appellee Juan A. Sarenas, in his first assignment it is alleged that the trial court erred in admitting in favor of the appellant forty-four ballots containing wrong initials, five marked ballots, five illegible ballots, three ballots not containing appellant's name and three ballots containing only nicknames. This assignment of error should be and is hereby sustained as to the following ballots: G-16 in which V. Generoso is written in the space for provincial governor; G-2B2 in which V. Hisuroso is written in that space; G-233 in which appears V. T. Generoso; G-263 in which appears B. T. himroso; G-309 wherein appears written T. S. Generoso, initials transposed; G-392 in which appears A. G. Genirosso; G-400 could not be found and therefore this court ¹I will not change the ruling of the trial court as to that ballot; G-829 and G-848 in which appears B. T. Generoso; and G-858 in which appears B. F. Genirosso. Exhibits ... G-493 and G-494 have already, been discussed under appellant's fifth assignment of error. In ballots G-381, G-387, G-389, G-403, G-407 the letter A appearing before the name Generoso was written by a person other than the voter. The cross written before Generoso in G-406 and the N before that name in G-409 were also written by a person other than the voter. These ballots were properly admitted by the trial court in favor of the respondent appellant

Of the five ballots which the appellee claims are marked ballot G-74 cannot be found and consequently the ruling of the trial court will not be disturbed. In ballot G-298 the surname Generoso appears written in the space for provincial governor and the X appearing before said name was evidently written by a person other than the voter and the same may be said of G-299 and G-717. These three ballots and ballot G-720 were properly admitted by the trial court. As to the five ballots which, it is alleged, are illegible, in ballot G-29 the surname Generoso appears written in the space for provincial governor; ballots G-167 and G-168 cannot be found and the finding of the trial court will therefore be sustained as to them. The other ballots G-35 and G-350 are good ballots. The trial court did not err in admitting these ballots.

As to the three ballots which the appellee alleges do not contain the name of the appellant, he calls attention to only two, ballots G-722 and G-844. The ruling of the trial court is sustained.

As to the three ballots containing nicknames, G-452, G-455 and G-457, Felixberto Samudan testified that he prepared the first ballot for Procopio Aslon and that he wrote the word "Sebas" in the space for provincial governor; he likewise testified that he prepared the second ballot for Basilio Cebuntanan and also wrote the word "Sebas" appearing in the space for provincial governor on that ballot. It is the duty of the person chosen to prepare

ballots for illiterate or disabled voters to write the proper names of the candidates for whom such voters desire to vote. In view of the above, the trial court was right in counting these two ballots for Generoso. As to ballot G-457 on which the word Sebas is written in the space for provincial governor Froilan Palma Gil, who claimed to be an old acquaintance of Sebastian T. Generoso, identified this as his ballot and testified that he used the word "Sebas" because he has been accustomed to vote for Generoso by using that word. Under the rule that nicknames are not proper identification of the person voted for, even though said nickname is mentioned in the certificate of candidacy, this ballot should be and is hereby rejected and deducted from the total number of votes received by the appellant Generoso. If this court should give credence to the testimony of this witness and count this ballot for the appellant unscrupulous candidates could, when a nickname is written on a ballot, utilize false witnesses to testify that they prepared such ballots and that they meant to vote for certain candidates.

Under this assignment of error ten votes should be and are hereby deducted from the number of votes received by the appellant.

The appellee in his second assignment of error alleges that the trial court erred in rejecting fifteen ballots cast in his favor. This assignment of error is sustained as to ballots S-375 on which, in the space for provincial governor, the name Juan Sarenas is written and S-248 in which the name Arena, idem sonans with Sarenas, appears written in the space for provincial governor. These two ballots should be counted in his favor. As to the other ballots mentioned therein some of them have not been found as the appellee has not indicated the precincts in which said ballots were cast. As to these and the other ballots mentioned in this assignment of error the ruling of the trial court is sustained.

In accordance with the above we find that Sebastian T. Generoso should be credited with a gain of eighty-five (85) votes under his first, second, third, fifth, sixth and seventh assignments of error and that from this gain there should be deducted ten (10) votes under the first assignment of error of Juan A. Sarenas giving a total net gain to Generoso of seventy-five (75) votes which should be added to the 6,472 votes adjudicated to him by the trial court or a total of 6,547 votes.

Under the appellant Sebastian T. Generoso's assignments of error Nos. 11, 14, 15, 17, 19, 20, 21 and 23 there should be deducted from the total number of votes adjudicated to Juan A. Sarenas ninety-eight votes less two credited to him under his second assignment of error. Therefore ninety-six votes should be deducted from the 6,554 votes adjudicated to Juan A. Sarenas by the trial court leaving a total of 6,458 votes in his favor.

In view of the foregoing it is unnecessary to discuss the appellant's twenty-second assignment of error. The judgment of the trial court is reversed and the respondent appellant Sebastian T. Generoso is hereby declared governor elect of the Province of Davao, Philippine Islands, with a plurality of eighty-nine (89) votes over the contestant appellee Juan A. Sarenas, with costs against the latter in both instances.

Avanceña, C.J., Hull, Vickers, and Diaz, JJ., concur.

Judgment reversed.

[1] Promulgated March 26, 1929, not reported.

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