

**ALBERTO A. VILLAVERT, PROTESTANT AND APPELLANT, VS.
ALEJANDRO T. LIM ET AL., RESPONDENTS. ALEJANDRO T. LIM,
APPELLEE.**

G.R. No. 43563. September 28, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In the general elections of June 5, 1934, the petitioner Alberto A. Villavert and the respondents Alejandro T. Lim, Mamerto Portillo and Enrique Salvani were candidates for the office of provincial governor of Antique. After the canvass of the returns of all the election precincts of said province by the provincial board of canvassers, each of the said candidates obtained the following votes (Exhibit T-8)

Votes

Alejandro T. Lim 4,399

Alberto A. Villavert 4,340

Mamerto Portillo 2,512

Enrique Salvani 2,006

Having received the largest number of votes, Alejandro T. Lim was proclaimed provincial governor elect of the Province of Antique, with a majority of 59 votes over Alberto A. Villavert who received the next largest number of votes.

Not satisfied with this result, Alberto A. Villavert filed, on June 28, 1934, a protest with the Court of First Instance of Antique, alleging the commission of frauds, irregularities, and errors in precincts Nos. 1, 2, 3, 4 and 6 of the municipality of Culasi, precincts Nos. 1, 2, and 3 of the municipality of Tibiao, and precinct No. 2 of the municipality of San Jose.

Alejandro T. Lim demurred to said protest, alleging that the Court of First Instance of Antique lacked jurisdiction to hear the same on the merits because it did not state that the petitioner had duly presented his certificate of candidacy.

The trial court having overruled the demurrer, the respondent Alejandro T. Lim duly noted his exception and filed his answer to said protest, setting up special defenses and a counter-protest alleging the commission of certain frauds, errors, irregularities, and illegalities in precincts Nos. 1, 3, 4, 5, 6 and 8 of the municipality of San Jose and in precincts Nos. 1, 2, 4 and 5 of the municipality of Bugasong.

When the trial of the case, which lasted several days, was about to come to an end, Alberto A. Villavert, on December 3, 1934, filed a so-called "Amendment to the Protest" which was excluded in open court by the lower court on the day of its presentation because it contained grounds distinct from those alleged in the original protest.

After hearing all the oral and documentary evidence, the lower court rendered a decision declaring the respondent Alejandro T. Lim legally elected to the office of provincial governor of Antique with a majority of 36 votes over his rival, the petitioner Alberto A. Villavert, with costs and incidental expenses to the latter.

The petitioner appealed from the said decision and assigned in support thereof sixteen alleged errors as committed by the trial court in its decision, which we shall presently consider.

The respondent Alejandro T. Lim, under Rule 20 of the existing rules of this court, assigns eleven errors in his brief alleged to have been committed in the trial court's decision, which we shall likewise take up herein.

We shall first consider the preliminary question of procedure raised by the petitioner and appellant Alberto A. Villavert in his answer to the brief of the respondent and appellee Alejandro T. Lim, relative to said respondent-appellee's right to assign alleged errors as committed by the trial court without having appealed from said decision.

The petitioner-appellant relies on the decision of this court in *Mendoza vs. Mendiola* (53 Phil., 267), wherein appears the following:

"2. Id.; ELECTION CONTEST; CONSIDERATION BY THIS COURT OF ERRORS ASSIGNED BY CONTESTEE WHO DID NOT APPEAL FROM JUDGMENT OF COURT BELOW.—The points raised by the contestee's assignments of error should indeed have been considered, notwithstanding his failure to appeal from the judgment of the court below, inasmuch as the questions discussed in said assignments of error were raised by him during the hearing of the case. According to section 480 of the Election Law, the procedure on appeal in election contests is the same as in criminal cases, that is, they are tried de novo on appeal to this court. (*U. S. vs. Noriega and Tobias*, 31 Phil., 310; see the case of *Lucero vs. De Guzman*, 45 Phil., 852.)"

It will be seen that the above-quoted doctrine, far from supporting the petitioner-appellant's contention, runs counter to it and upholds the legality of the errors assigned by the respondent-appellee in his brief although he did not appeal from the trial court's decision.

While the pertinent portion of the above cited Rule 20 of the Revised Rules of this court simply states that "Appellees in election cases are permitted to make assignment of errors," this does not countenance the theory of the necessity for the respondent or protestee who may desire to make assignments of error, to appeal from the decision, because there would be no distinction between appeals in election cases and those in ordinary cases. Moreover, it would be unnecessary to state that the appellees in election cases may make assignments of error because the right to assign errors logically and necessarily arises from the appeal.

Consequently, under the doctrine of *Mendoza vs. Mendiola*, above cited, and rule 20 of the Revised Rules of this court, appellees in election cases have a right to assign errors in a decision rendered therein although they have not appealed therefrom.

Entering now upon a full consideration of the errors assigned by the petitioner-appellant as committed by the trial court in its decision, we shall examine said alleged errors severally.

In his first assignment of error, the petitioner-appellant contends that the trial court erred in rejecting ballots Exhibits 751 and 768 of precinct No. 1, ballots Exhibits 897 and 963 of precinct No. 4, and ballot Exhibit 803 of precinct No. 2, all of the municipality of Bugasong.

In the space for the office of provincial governor in ballot Exhibit 751 is written the following: "V. albeto". Said petitioner-appellant contends that the letter "V" stands for the initial of his surname placed before his Christian name "albeto". In *Ignacio vs. Navarro* (G. R. No. 37401, 57 Phil., 1000, 1011), relied upon in petitioner-appellant's brief, this court, through Justice Villamor, in passing upon the admissibility of the ballots wherein "Y. Arturo"

appears voted for the office of provincial governor, said: "The ballot showing the initial of the surname and the full Christian name is valid, provided it is the true initial of the surname." While the decision does not say "although the initial of the surname is transposed," that is what was intended, because the case involves precisely two ballots wherein the initial of the surname precedes the Christian name.

Exhibit 768, wherein "Alberto. V", appears voted for in the space corresponding to the office of provincial governor, Exhibit 897, wherein "alberto V" is voted for the same office, and Exhibit 963, wherein "Alberto V" is voted for the same office, are admissible and should be counted in favor of the petitioner-appellant, because "Alberto" is his Christian name and "V" is the initial of his surname, and "alberlo", where the latter "t" was not crossed presumably inadvertently, can be considered as the idem sonans of "Alberto", (*Bulan vs. Gaffud*, 49 Phil., 906; *Valenzuela vs. Carlos and Lopez de Jesus*, supra.)

Ballot Exhibit 803, wherein the name "P Villavert" is written in the space corresponding to the office of provincial governor, is invalid, because in his certificate of candidacy the petitioner-appellant has not stated that he is also known by the nickname "Pitong". (*Reyes vs. Mendiola*, G. R. No. 36304, 56 Phil., 851.)

Ballots Exhibits 751 and 768 of precinct No. 1, and 897 and 963 of precinct No. 4, all of the municipality of Bugasong, claimed by the petitioner-appellant, should consequently be adjudicated to him as containing valid votes in his favor.

Under his second assignment of error, the petitioner-appellant contends that the lower court erred in rejecting ballots Exhibits 45 and 55 of precinct No. 6 of Culasi, 567 and 571 of precinct No. 6 of San Jose, and 973 of precinct No. 5 of Bugasong.

In ballot Exhibit 45, "alberto Hayier" is voted for the office of provincial governor; in ballot Exhibit 55, "albisto haber"; in ballot Exhibit 567, "Alberto Javier"; in ballot Exhibit 571, "Abeytar" followed by another illegible word; and in the ballot Exhibit 973, "albirto V. gim."

It will be seen that "Hayier", "haber", "Javier" and "V gim" are not idem sonans of Villavert; consequently, although the Christian name "Alberto" preceding said words is written correctly in some and incorrectly in others, but sounding like the Christian name of the petitioner-appellant Alberto A. Villavert, said ballots should not be adjudicated to the latter.

Under the third assignment of error, the petitioner-appellant contends that the trial court erred in counting for the respondent-appellee ballot Exhibit A-2 of precinct No. 2 of Culasi, wherein said respondent and Eraigdio Nietes appear voted for together in the same space. It clearly appears in said ballot that Emigdio Nietes has been voted for the office of representative, and Alejandro T. Lim for the office of provincial governor, because said names are written in the respective spaces corresponding to said offices, although not upon the line but a little above it; consequently said ballot is valid and has been duly admitted as a vote in favor of said respondent.

Under the fourth assignment of error, the petitioner-appellant contends that the trial court erred in counting for the respondent-appellee ballots Exhibits S of precinct No. 2 and D-8 of precinct No. 6, both of the municipality of Culasi; ballots Exhibits F-33 of precinct No. 1 and G-2 and G-3 of precinct No. 2, both of the municipality of Tibiao; and in rejecting said petitioner's ballots Exhibits 150, 151 and 166 of precinct No. 1, M-4 of precinct No. 5, and 566 of precinct No. 6, all of the municipality of San Jose; ballot Exhibit 887 of precinct No. 4 and ballot Exhibit 959 of precinct No. 5, both of the municipality of Bugasong.

We have carefully examined one by one all of the ballots set out in the said fourth assignment of error and adjudicated to the respondent and appellee, in the light of the numerous doctrines enunciated by this court on the appreciation of ballots, and having the intention of the voter in mind, we have found no defect sufficiently fatal to

their validity or demonstrative that the person voted for the office of provincial governor is not the respondent-appellee Alejandro T, Lim.

With the same care and consideration of the voter's intention, we have examined the ballots claimed by the petitioner-appellant and rejected by the trial court, and we have not found sufficient justification to alter its findings, with the exception of ballot Exhibit 887 which should be adjudicated to him because the name "Alneto Vellavd", idem sonans of "Alberto Villavert", is written immediately below the line of the space for the office of provincial governor and the voter's intention to vote for him for said office is obvious.

Under the fifth assignment of error, the petitioner-appellant argues that the trial court erred in counting in favor of the respondent-appellee Alejandro T. Lim, ballots Exhibits Q of precinct No. 2 of Culasi; F-5, F-7, F-28 and G-30 of precincts Nos. 1 and 2 of Tibiao, respectively; S-5 and S-17 of precinct No. 5 of Bugasong; and in rejecting ballots Exhibits 748 and 80 of precincts Nos. 1 and 2, respectively, and 885 and 886 of precinct No. 4, all of the municipality of Bugasong.

Ballots Exhibits Q, F-5, F-7, F-28, G-30, S-5, and S-17, wherein the words "Lehandro Lim", "alifandro i. Lim", "Leandro Lim", "Leandro o Alejandro Lim", Aleifro T. Lim", "Leandro Lim", and "Alehandro lim", respectively, appear in the space for the office of provincial governor, are all admissible notwithstanding the rule laid down in Valenzuela vs. Carlos and Lopez de Jesus, supra; Lucero vs. De Guzman (45 Phil., 852); Yalung vs. Atienza (52 Phil., 781) ; Bongabong vs. Dominguez (G. R. No. 36200, 56 Phil., 833) ; Dumpit vs. Rimando (G. R. No. 36160, 56 Phil., 834) ; Medina vs. Noble (G. R. No. 36018, 56 Phil., 833); Ignacio vs. Navarro, supra; and Reyes vs. Biteng (57 Phil., 100), that where the ballot contains a Christian name distinct from that of the candidate the ballot cannot be counted for him although the surname be the same, because in the cited cases and other later ones the Christian names appearing in the ballots are so different from those of the candidates, that it was not possible to confuse them; whereas, in the instant case, while Alejandro and Leandro are two distinct Christian names, they are pronounced so similarly that it is very easy to confuse them if one is not acquainted with the name of the candidate and has not seen it written several times but has only heard it. In enunciating the cited rule, this court meant that a candidate cannot claim in his favor a ballot containing a Christian name so different from his that the voter could not have been confused.

Ballots Exhibits 748, 802, 885, and 886 where the words "Norberto Vallavet", "Roperto Vallaert", "Mamerto Vellabir", and "mamerto Villavir", respectively, appear in the space for the office of provincial governor, are not admissible as votes cast in favor of the petitioner-appellant, because the Christian names "Roberto", "Roperto" and "Mamerto" cannot easily be confused with "Alberto", although they are idem sonans to a certain extent, but the scribes thereof fairly know how to write said names. In the case of Reyes vs. Biteng, supra, the name "Norberto" was not admitted for "Alberto" which was Reyes' Christian name.

Summarizing what has been said in the fifth assignment of error, the trial court did not err in adjudicating the aforesaid ballots Exhibits Q, F-5, F-7, F-28, G-30, S-5, and S-17 in favor of the respondent-appellee Alejandro T. Lim; and in not adjudicating the aforesaid Exhibits 748, 802, 885, and 886 in favor of the petitioner-appellant.

Under the sixth assignment of error, the petitioner-appellant contends that the trial court erred in counting in favor of the respondent-appellee ballot Exhibit F-51 of precinct No. 1, and ballots Exhibits G-11 and G-15 of precinct No. 2, both of the municipality of Tibiao; ballots Exhibits P-18 and P-19 of precinct No. 1, and Exhibit Q-33 of precinct No. 2, both of the municipality of Bugasong.

In the space for the office of provincial governor in ballot Exhibit F-51, appears "A. T. Lim", although the "A" is written like an "H"; in Exhibit G-15, "ali lim"; in Exhibit G-11, "A. T. Lim"; in Exhibit P-18, "A. Lim"; in Exhibit P-19, "A. Lim"; and in Exhibit Q-33, "A. Lim".

Ballots Exhibits F-51, G-15, G-11, P-18, P-19 and Q-33 are all admissible, because the initial "A" corresponds to the initial of the Christian name of the respondent-appellee Alejandro T. Lim, and the trial court committed no error in adjudicating them to said respondent-appellee.

Under the seventh assignment of error, the petitioner-appellant contends that the lower court erred in adjudicating to the respondent-appellee ballots Exhibits Z, A-3, A-5, A-6 and A-16 of precinct No. 2, B-21 of precinct No. 3, C-5, C-14, C-20, C-24, C-38, C-40, C-41, and C-43 of precinct No. 4, D-1 and D-18 of precinct No. 6, E-9, E-12, E-13, E-21 and E-22 of precinct No. 7, all of the municipality of Culasi; ballots Exhibits F-1, F-7, F-20, F-30, F-38, F-41, F-57, F-58, F-72, F-78, F-85, F-95, F-96, F-99 and F-105 of precinct No. 1, G-7, G-12, G-21, G-45 and G-62 of precinct No. 2, H-1, H-12, H-14, H-15, H-16, H-23, H-38, H-40, H-42, H-44 and H-48 of precinct No. 3, all of the municipality of Tibiao; ballots Exhibits J-5, J-6 and J-10 of precinct No. 1, 1-3, 1-5, 1-6, 1-7 and 1-10 of precinct No. 2, K-5 and K-10 of precinct No. 3, L-2 and L-4 of precinct No. 4, N-3 and N-4 of precinct No. 6, O-21, O-30 and O-32 of precinct No. 8, all of the municipality of San Jose; and ballots Exhibits P-2, P-8 and P-9 of precinct No. 1, Q-6, Q-8, Q-10, Q-11, Q-12, Q-16 and Q-17 of precinct No. 2, R-6 and R-8 of precinct No. 4, all of the municipality of Bugasong.

Petitioner-appellant's objection to the ballots enumerated in his seventh assignment of error, which ballots have been adjudicated to the respondent-appellee, is that the person voted for the office of provincial governor in many of them is not Alejandro T. Lim; that some of them are marked, and others have been prepared by more than one person. All the names written in the spaces for the office of provincial governor are those of respondent-appellee Alejandro T. Lim. Some are clearly written and others are poorly written and poorly spelled, but the latter when read sound like or similar to the real name of the respondent-appellee. "Ando Lim" appears, however, in the ballot Exhibit F-96; "Ando" is the nickname of Alejandro T. Lim, and so appears in his certificate of candidacy (Reyes vs. Mendiola, supra).

As to the alleged marks and the intervention of other persons in the preparation of the ballots, the slight anomalies in the writing which the petitioner-appellant considers as identification marks are no more than stains, lines, and casual signs and beginnings of names only to be expected of voters who are ignorant, judging from their poor penmanship and spelling, and should by no means be considered as intentional marks of identification.

Ballot Exhibit H-38 which the petitioner-appellant believes to have written by two persons does not give us this impression, because the character of the writing is uniform, although there is a certain variation in the form, which is natural due to the inconvenience of writing in the precincts.

The trial court, therefore, did not commit the alleged seventh assignment of error attributed to it.

Under his eighth assignment of error, the petitioner-appellant contends that the lower court erred in adjudicating to the respondent-appellee ballots Exhibits F-19, F-35, F-83 and F-89 of precinct No. 1, G-11, G-13, G-25, G-34 and G-35 of precinct No. 2, and H-3, H-30 and H-43 of precinct No. 3, all of the municipality of Tibiao; ballots Exhibits 1-9 of precinct No. 2, O-20 of precinct No. 8, M-6 and M-7 of precinct No. 5, all of the municipality of San Jose; ballots Exhibits P-11 of precinct No. 1, Q-9, Q-14, Q-24, Q-26, Q-31 and Q-32 of precinct No. 2, and R-4, R-11 and R-13 of precinct No. 4, all of the municipality of Bugasong; ballots Exhibits C-1 of precinct No. 4, and D-13 of precinct No. 6, both of the municipality of Culasi.

In the space for the office of provincial governor in each of said ballots are written words which, while not exactly spelled as the name and surname of Alejandro T. Lim, sound like them when pronounced. In the ballots wherein appear the initial of the Christian name and the full surname, the initial is the capital letter "A," like that of the name "Alejandro", and the surname is "Lim".

The petitioner-appellant, however, calls special attention to ballots Exhibits G-34 and G-35, claiming that they were written by two persons, particularly pointing to the name of the councilor E. Fuentes in ballot Exhibit G-35 which, in his opinion, has been written by a person other than the one who prepared the rest of the ballot. We do not notice this disparity, but we do notice the peculiar form in which the capital letters "A" and "L" in "A. Lim" are written in the space for the office of provincial governor, and the capital letters "L" and "A" in "L. A. Importante" in the space for the office of municipal president, which differ decidedly from the capital letters used in the rest of the ballot. This different manner of writing, considering that ballots Exhibits G-34 and G-35 are well written, gives the impression of an intention to mark said ballots, and, consequently, the same should be rejected.

The petitioner-appellant likewise draws attention to the initials "C. A." appearing in the first space corresponding to the office of member of the provincial board and to the initials "P. M." in the space for the office of municipal president in ballot Exhibit H-30 for which offices there are no candidates whose names bear said initials. Carlos Z. Abiera was a candidate for representative and Pelagio Macalad was a candidate for municipal vice-president. In the challenged ballots, it has been seen that many electors have voted for candidates for offices for which they have not filed certificate of candidacy. It is very likely, therefore, that the elector who prepared ballot Exhibit H-30 had mistakenly voted for Carlos Z. Abiera for the office of member of the provincial board, and for Pelagio Macalad for that of municipal president, using their respective initials "C. A." and "P. M.", which do not constitute a distinguishing mark.

The other words and signs which the petitioner-appellant believes to be marks in the other ballots are not so in fact, under the doctrines enunciated by this court.

Neither do we find the intervention of two persons in the preparation of ballot Exhibit 1-9.

In resume, under the eighth assignment of error, the ballots Exhibits G-34 and G-35 should be rejected as marked ballots, and the admission of the rest should stand.

Under the ninth assignment of error, the petitioner-appellant contends that the trial court erred in counting in favor of the respondent ballots Exhibits A-8 and A-13 of precinct No. 2, B-14, B-15, B-22, D and B-29 of precinct No. 3, C-1, C-4 and C-16 of precinct No. 4, D-11, D-9, D-24 and D-25 of precinct No. 6, all of the municipality of Culasi; ballots Exhibits F-20, F-25, F-49, F-68 and F-91 of precinct No. 1, G-5, G-16, G-34 and G-35 of precinct No. 2, H-10, H-46 and H-51 of precinct No. 3, all of the municipality of Tibiao; ballots Exhibits J-1 and J-4 of precinct No. 1, N-8 of precinct No. 6, O-41 of precinct No. 8, all of the municipality of San Jose; ballots Exhibits R-12 of precinct No. 4, S-7, S-9 and S-12 of precinct No. 5, both of the municipality of Bugasong; and ballots Exhibits 89 and 90 of precinct No. 3 of the municipality of Tibiao.

The petitioner-appellant contends that ballots Exhibits A-8, A-13, B-15, B-14, B-22, B-29, C-1, C-4, C-16, D, D-11, D-19, D-24, D-25, F-20, F-25, F-49, F-68, F-91, G-5, G-16, G-34, G-35, H-10, H-46, H-51, 89, 90, J-1, J-4, N-8, R-12, S-7, S-9, S-12, and O-41 are each written with two kinds of letters, and, consequently, by two persons. We have carefully examined each of said ballots, and while in some of them lack of uniformity in the form of some letters is noticeable, nevertheless, the character thereof is the same, save in some where the difference in the penmanship is marked, as in the following:

In the ballot Exhibit B-22 the names of Matias Hilado and Ramon Maza appearing in the space for the offices of senator and representative, respectively, are written differently from the other names, indicating thereby that two persons prepared it. It cannot be determined, however, whether the said two names were written with the knowledge of the person who prepared the ballot, unless it be presumed that it had been used as a "shuttle". There is no evidence of record on this point. It is very possible and even probable that said two names had been written after the voter had deposited the ballot in the box for valid ballots, in which case it cannot be said that said two

names constitute a mark, because the rest of the ballot was so poorly written and the writer of the said two names was a good penman that it is not possible for the voter to have written them to mark his ballot; and if they were written by another after the ballot had been deposited in the ballot box, the secrecy of suffrage has not been violated inasmuch as the voter who wrote the said ballot is unknown and he could not have known him.

The form of the letters in which certain names of the candidates are written in ballots Exhibits D-II and D-19, D-25, F-25, and J-I—which is similar to the printed form and different from the ordinary form of the letters in which the other names are written—does not constitute a distinguishing mark, there being nothing either in the ballots themselves or in the testimony that the adoption of the form of printed letters in writing certain names is with a view to marking said ballots for purposes of identification. (*Yalung vs. Atienza*, supra.)

Under the tenth assignment of error, the petitionerappellant contends that the trial court erred in admitting in favor of the respondent-appellee ballots Exhibits N and V of precinct No. 2, C-8, C-18 and C-24 of precinct No. 4, both of the municipality of Culasi; ballots Exhibits F-I, F-34, F-36 and F-54 of precinct No. 1, G-18 and G-36 of precinct No. 2, H-17 of precinct No. 3, all of the municipality of Tibiao; ballots Exhibits N-7 of precinct No. 6 and O-41 of precinct No. 8, both of the municipality of San Jose; ballots Exhibits S-7, S-10, S-II, S-12, S-13, S-23, 1071-A, 1071-B, 1071-D, 1071-E, 1071-F and 1071-H of precinct No. 5 of the municipality of Bugasong; ballot Exhibit 1-9 of precinct No. 2 of the municipality of San Jose; and ballots Exhibits B-2 and B-7 of precinct No. 3 of the municipality of Culasi.

We have carefully examined each of said ballots mentioned in the tenth assignment of error, and while there appears a certain disparity in the formation of the letters in some of them, it is not sufficient to warrant the conclusion that the said ballots 'have been prepared by two persons, the character of the letters in each of them being the same. A slight variation in the formation of the capital letter may be due to the writer's caprice of the moment, particularly if he writes well. The trial court was, therefore, correct in admitting in favor of the respondent-appellee the ballots challenged in the tenth assignment of error.

Under the eleventh assignment of error, the petitionerappellant alleges that the trial court erred in adjudicating to the respondent-appellee ballots Exhibits B-I and B-27 of precinct No. 3, and E-16 of precinct No. 7, both of the municipality of Culasi; the ballots Exhibits F-3, F-32, F-56 and F-99 of precinct No. 1, and Exhibit 85 of precinct No. 3, both of the municipality of Tibiao; and the ballots Exhibit Q-8 of precinct No. 2 of the municipality of Bugasong.

The use of lead pencil, indelible pencil, and pen in the ballots Exhibits B-I, F-99 and A-8, of indelible pencil and lead pencil in ballots Exhibits B-27, F-3 and F-32, of lead pencil in ballot Exhibit E-16, of indelible pencil and pen in ballot Exhibit F-56 is not of itself sufficient to nullify said ballots as marked, in the absence of other circumstances or evidence indicative that the voter's intention in availing himself of said writing instruments was to mark his ballot; because the point of the indelible pencil may break, and the voter has to resort to a lead pencil, and the latter may also break, necessitating the use by the voter of a pen, in view of the fact that the top of the writing desk or table in the election precincts is rough not being provided with a table-cover. (*Valenzuela vs. Carlos and Lopez de Jesus*, supra; *Sinogba vs. Reganit*, G. R. No. 36244, 57 Phil., 955.)

Ballot Exhibit F-3 contains another fatal defect, which consists in the voter having used the words *part pari*, meaning "fake priest", before the name "Mariano" in the space for the office of senator. Being impertinent, irrelevant, and unnecessary, said words have been and are considered distinguishing marks. (*Valenzuela vs. Carlos and Lopez de Jesus*, supra; *Lucero vs. De Guzman*, supra; *Penson vs. Parungao*, 52 Phil., 718; *Fausto vs. Villarta*, 53 Phil., 166; *Pajarillaga vs. Bote*, G. R. No. 30488, Feb. 13, 1929, not reported; *Medina vs. Noble*, G. R. No. 36018, 56 Phil., 833; *Dizon vs. Cailles*, supra; *Sinogba vs. Reganit*, supra; *Cauan vs. Pagulayan*, G. R. No.

36849, 57 Phil., 967; Reyes vs. Biteng, supra.)

Summarizing what has been said on the eleventh assignment of error, ballot Exhibit F-8 should be ruled out as marked with the impertinent, irrelevant, unnecessary, and immaterial words *pari part* (fake priest).

Under the twelfth assignment of error, the petitioner-appellant contends that the trial court erred in adjudicating to the respondent-appellee ballots Exhibits A and B of precinct No. 1, B-7 of precinct No. 3, C-26 of precinct No. 4, D-46 of precinct No. 6, E-3 and E-23 of precinct No. 7, all of the municipality of Culasi; ballots Exhibits F-42 and F-71 of precinct No. 1, G-4 and G-29 of precinct No. 2, H-11 of precinct No. 3, all of the municipality of Tibiao; ballot Exhibit O-36 of the municipality of San Jose; and ballot Exhibit U of precinct No. 2 of the municipality of Culasi.

In the space for the office of provincial governor in ballot Exhibit A there is written above the name which appears to be that of "Alberto Villaver" the name of Alejandro T. Lim; in ballot Exhibit B, after writing the name "Alejandro T. Lim" in the space for the office of representative, the voter crossed it with a horizontal line and wrote over it the name of "Calixto Zaldivar", and in the space for the office of provincial governor he wrote the name of "Alijandro T. Lim"; in ballot Exhibit B-7, already mentioned in the tenth assignment of error, the name "Alijandro Lim" was written over an erasure in the space for the office of provincial governor; in ballot Exhibit C-26 the same thing was done as in Exhibit B; in ballot Exhibit D-43 appears written "Alijandro Lim"; in the ballot Exhibit E-3 "Alijandro Lim" appears written over an erasure; in ballot Exhibit E-23, "Alijandro Lim" appears written over an erasure; in ballot Exhibit F-42 appears written "Alejandro Lim"; in ballot E-71 appears written "Alejandro Lim"; in ballot Exhibit G-4, which was prepared with a lead pencil, the name "A. Lim" appears written after the erased name "L. A. Importante"; in ballot Exhibit G-29 the name "A. Lim" appears written over the name of "L. Importante", and the name "L. Importante" appears only in the space for the office of municipal president; in ballot Exhibit E-11 appears written "A. Lim"; in ballot Exhibit O-36 appears written "Alejandro Lim"; and ballot Exhibit U is like ballot Exhibit B. There is no doubt that a voter who erroneously writes the name of his candidate in another space has a right to correct his mistake by erasing it and writing it anew in the proper space, just as he may do when he erroneously writes the name of another person by erasing it and writing above it or immediately after it the name of his candidate. The corrections made in the ballots before us are in the handwriting of the voters who wrote the ballots. All those ballots are valid. As to ballot Exhibit G-29, wherein the name "A. Lim" was placed above the name "L. Importante" in the space for the office of provincial governor, while the rule in such case is that the ballot should be rejected as due to manipulation after its preparation or to intrigue inside the voting booths, as laid down in the cases of Reyes vs. Biteng, supra; Dumpit vs. Rimando, supra; nevertheless, in the instant case, the voter erroneously wrote "L. Importante" in the space for the office of provincial governor, and on noting his mistake, erased the same and wrote over it the name "A. Lim", inasmuch as in the space for the office of municipal president he wrote the name "L. Importante". (Valenzuela vs. Carlos and Lopez de Jesus, supra; Lucero vs. De Guzman, supra; Mandac vs. Samonte, 54 Phil., 706; Salak vs. Espinosa, 53 Phil, 162; Dianela vs. Obias, G. R. No. 30710, Feb. 21, 1929, not reported; Dizon vs. Cailles, 56 Phil., 695.)

All the ballots set out in the twelfth assignment of error have, therefore, been properly admitted.

The petitioner-appellant draws attention to certain irregularities committed in the second precinct of the municipality of Tibiao, consisting in having permitted voters qualified to read and write to vote without a previous sworn statement of their incapacity. The only evidence adduced on this score is the sworn statements Exhibits T-58, T-60 and T-65 of those who took an oath that they had been appointed by the voters to prepare their ballots and of the watchers who took an oath that they had been designated to accompany those who had been appointed to prepare their ballots; and the report of the committee on revision wherein appear the sworn

statements found in the ballot boxes among which the sworn statements relative to the incapacity of those who asked others to prepare their ballots are not to be found. Not one of those who took an oath that they had been appointed to prepare the ballots of other voters and of those who took an oath that they had been designated to accompany those who had been appointed for said purpose, testified at the trial; consequently, there is no conclusive evidence that they in fact assisted the voters who had appointed them to prepare their ballots. It might be that at the eleventh hour, the voters who had the educational qualifications and Who, at the beginning, asked for assistance, desisted from their intention to be assisted and prepared their own ballots. Inasmuch as the judicial procedure in election cases is legally the same as that in criminal cases, it must be proved beyond doubt by the testimony of the person who assisted a voter to prepare the latter's ballot that he in truth assisted him; and the mere absence of a voter's sworn statement relative to his physical disability is not conclusive evidence that another prepared his ballot without making a sworn statement of his physical disability. Neither has any voter who is claimed to have ordered another to prepare his ballot without the sworn statement of physical disability, been called as a witness to testify that he in fact ordered the preparation of his ballot without said sworn statement.

Another alleged irregularity pointed out by the petitioner-appellant is that minors had been permitted to be registered and to cast their ballots as voters. The only evidence presented to establish this fact is Exhibit T-27, namely, a certified list, issued by the municipal treasurer of Culasi, of some minors whose names coincide with those of some electors who voted. Relying on the presumption that identity of name implies identity of person, the petitioner-appellant claims that those who voted in said precinct were the minors whose names appear in said list. It is a well known fact that there are persons in a municipality bearing the same names and surnames, hence the mother's surname is added to that of the father's to distinguish the one from the other. The alleged minor voters not having been called to testify in, order to ascertain if they were really not of age at the time they voted, the mere presentation of the aforesaid certified list is not conclusive evidence that those who voted were those whose names appear in the said list.

It is likewise pointed out as an alleged irregularity that the names of dead persons appear among those who voted during the elections. Again it has not been established that in the municipalities where the said dead persons had resided there are no other living persons bearing their names. In fact, it turned out that there are persons living who have the same names as those who have died. And the fact that living persons bearing the names of some of the dead have not been found does not conclusively establish that said persons did not exist, considering the rapid means of communication nowadays which readily permit persons to travel from one place to another.

For. lack of any conclusive and pertinent evidence, we cannot rule out the ballots claimed to have been prepared by persons qualified to read and write who caused their ballots to be prepared without first having made a sworn statement of physical disability; the ballots of those alleged to have been minors at the time of the voting; and the ballots of those persons who are alleged to have cast their ballots in lieu of voters already dead.

Under the thirteenth assignment of error, the petitioner-appellant contends that the trial court erred in adjudicating to the respondent-appellee ballots Exhibits C, E, H, L, R, T, X, A-15, A-14, A-16, B-6, B-10, B-13, B-15, B-16, B-17, B-18, B-28, C-1, C-6, C-8, C-10, C-13, C-15, C-18, C-23, C-28, C-31, C-32, C-33, C-41, D-2, D-3, D-10, D-23, D-35, D-36, D-38, D-39, D-43, D-44, D-47, E-7, E-18, F-6, F-9, F-13, F-14, F-16, F-19, F-23, F-37, F-38, F-43, F-52, F-57, F-59, F-66, F-67, F-72, F-73, F-80, F-81, F-83, F-90, F-102, G-1, G-34, G-37, G-39, G-41, G-42, G-43, G-44, G-47, G-48, G-62, H-4, H-6, H-8, H-15, H-25, H-28, H-30, H-33, H-36, H-38, H-39, H-50, 100, 103, 1-2,, 1-3, 1-4, 1-10, 1-1, M-10, 466, 0-33 0-34, 0-44, P-3, P-4, P-5, P-6, Q-27, Q-30, R-6, and S-2.

With the exception of ballots Exhibits C-13 and G-44, none of the ballots set out in the thirteenth assignment of error contains a distinguishing mark, inasmuch as those found therein by the petitioner-appellant are nothing more than casual marks more or less natural in illiterate voters who scarcely know how to write and spell and who have

to exert great pains to write the names of their candidates, failing partly, if not completely, in their effort as will be seen in many ballots.

As to ballot Exhibit C-13, there appear on the back thereof the words "Official Ballot", "Official Slip", "Fourth Precinct of Culasi" and "June 5, 1934". The character of the writing of the scribe thereof is the same as that of the person who prepared the ballot, and as said words are unnecessary, irrelevant and immaterial, the same constitute distinguishing marks, and the ballot wherein they are found should be rejected under repeated doctrines of this court.

In ballot Exhibit G-44 are found the words "Miguel Toro Damac" written in the space for the office of senator. "Damac" is a Visayan word which means "dirty" in English, and not being the name or surname of any candidate, it is irrelevant, unnecessary, and immaterial, and consequently ballot Exhibit G-44 containing it should be rejected.

The petitioner-appellant contends that the ballot Exhibit D-44 of precinct No. 6 of Culasi should be rejected because the word "Blanko" appears in the space for senator; D-39 of the same precinct because the letters "OO" appear in the space for the office of senator; F-5 of precinct No. 1 of Tibiao, because the same letters "OO" appear in the same space; G-32 of precinct No. 2 of Tibiao, because the word "Blanco" appears in the same space; H-8 of precinct No. 3 of Tibiao, because the word "Blanco" appears in the same space; O-33 of precinct No. 8 of San Jose, because two joint and not well-defined letters which might be two "OO" appear in the same space; and R-6 of precinct No. 4 of Bugasong because the word "bianco" appears in the same space. The word "bianco" written in a space which does not show the name of any candidate, simply means that the voter did not want to vote for any candidate for said office. The same may be said where one or two zeros appear in the space where no name of a candidate is written. It is true that the voter need not write the word "bianco" or put one or more zeros to indicate that he does not want to vote. The fact that he did so, however, does not of itself establish his intention to mark his ballot; it is necessary that the ballot itself or other circumstances or evidence show that such has been his intention. These circumstances and evidence do not exist as to said ballots, and the latter should be considered valid and admissible. In thus ruling we are not overlooking the case of *Castueras vs. Barcelo* (O. R. No. 30429, May 20, 1929, not reported).

As to the fourteenth assignment of error, relative to eleven voters registered in precinct No. 3 of the municipality of Tibiao who are qualified to read and write and who, it is claimed, voted without first making a sworn statement of physical disability, and another who substituted for a dead person, the evidence adduced on these points is the same as that presented in respect of the same question raised in the twelfth assignment of error.

As to the fifteenth assignment of error, after what has been said on the appreciation of the ballots in considering the other errors assigned, we find the said fifteenth assignment of error untenable.

The same may be said of the sixteenth and last assignment of error which is merely a repetition of the various errors assigned.

Summarizing all the foregoing, under the first assignment of error, four (4) ballots should be adjudicated to the petitioner-appellant, namely, ballots Exhibits 751, 768, 897, and 963; under the fourth assignment of error, one ballot should be adjudicated to said petitioner-appellant, namely, Exhibit 887; that is, five ballots in all.

On the other hand, there should be deducted from the respondent-appellee, under the eighth assignment of error, two (2) ballots, namely, Exhibits G-34 and G-35; under the eleventh assignment of error, one (1) ballot, namely, Exhibit F-3; and under the thirteenth assignment of error, two (2) ballots, namely, Exhibits C-13 and G-44, that is, five (5) ballots in all.

According to the decision of the lower court, the respondent-appellee obtained 4,385 votes as against 4,349 votes of the petitioner-appellant, that is, a majority of 36 votes. Deducting five (5) votes from those obtained by the respondent-appellee, a total of 4,380 votes should be adjudicated to him; and adding five (5) votes to those obtained by the petitioner-appellant gives the latter a total of 4,354 votes, the said respondent-appellee Alejandro T. Lim still having a majority of twenty-six (26) votes over the petitioner-appellant Alberto A. Villavert.

Having reached this conclusion, we find no occasion to discuss the errors assigned by the respondent-appellee in his brief.

Wherefore, with the sole modification that the respondent-appellee Alejandro T. Lim has obtained a majority of twenty-six (26) votes over the petitioner-appellant Alberto A. Villavert, the appealed decision is affirmed in all other respects, with the costs and other expenses to the appellant. So ordered.

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

Judgment modified.

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