

AURELIO CECILIO, PETITIONER AND APPELLEE, VS. JACINTO TOMACRUZ, RESPONDENT AND APPELLANT.

G.R. No. 43719. December 21, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the respondent from the judgment of the Court of First Instance of Nueva Ecija, declaring that the petitioner obtained a plurality of 133 votes over him, and that, consequently, the said petitioner was elected legally to the office of governor of the said province.

In the general elections of June 5, 1934, in the Province of Nueva Ecija, the rival candidates for the office of provincial governor were the petitioner Aurelio Cecilio, the respondent Jacinto Tomacruz, Armesto Ramoso and Felino Cajucom. On June 27 of the same year, the provincial board, acting as a board of canvassers, announced that Tomacruz had obtained 14,933 votes for governor and Cecilio 14,279 votes, and proclaimed the former governor elect of the province with a plurality of 654 votes. The other candidates received less number of votes which need not be stated,

Aurelio Cecilio contested the election of Jacinto Tomacruz, alleging in his protest irregularities committed by the election officers in several precincts. Jacinto Tomacruz answered the protest and interposed a counter-protest, likewise alleging irregularities and frauds committed in various precincts by election officers and other persons who intervened in the counting of the ballots. The court appointed commissioners who proceeded to open the ballot boxes and to count the ballots, and, after the latter's report was submitted, entered judgment declaring that Aurelio Cecilio obtained 15,452 votes for governor and Jacinto Tomacruz 15,319 votes and proclaiming the former legally elected to the office of provincial governor with a plurality of 133 votes.

The respondent-appellant ascribes to the appealed decision twenty-eight errors hereafter to be taken up separately.

The first assigned error takes in various points, the first among which having reference to precinct No. 4 of Bongabong. In this precinct, the appellant alleges, the petitioner-appellee obtained 81 votes for governor and the court gave him only 41, or minus 40 votes for him. The appellee concedes the error assigned. Consequently, the appellee is entitled to 40 more votes.

The next point refers to precinct No. 4 of Cabiao. The appellant argues that the court adjudicated to him only 74 votes for governor, whereas he had in fact obtained 86. The appellee likewise acknowledges the error. Hence, the appellant is entitled to 12 additional votes.

The next point relates to precinct No. 6 of Cuyapo. In this precinct, the appellant contends, he obtained 74 votes for governor and the court adjudicated to him only 70. The appellee admits the error. The appellant is, therefore, entitled to 4 more votes in this precinct.

The next point bears on precinct No. 8 of Gapan. The appellant claims 1 additional vote which the court failed to adjudicate to him. The appellee concedes the error. The appellant has, therefore, another vote in this precinct.

In precinct No. 6 of Guimba, the court gave the appellant 66 votes for governor, whereas he received 67 therein; the appellant claims the discrepancy of 1 vote. The appellee admits this is an error. The appellant should, therefore, be awarded 1 vote in this precinct.

In precinct No. 10 of Guimba the appellant assigns another error beneficial to the appellee. The latter received 119 votes for governor, but the court adjudicated to him only 116. The appellee should receive in this precinct 3 additional votes.

In precinct No. 11 of Guimba, the appellant obtained 38 votes for governor, but the court only gave him 37; he claims the difference of 1 vote. The appellee admits the error, wherefore the appellant is entitled to the additional vote.

In precinct No. 12 of Guimba the appellant seeks to obtain an additional vote, because he obtained 114 therein for governor but the court gave him only 113. The appellee acknowledges the error, and the appellant is, consequently, entitled to 1 additional vote.

In precinct No. 1 of Laur, the appellant again claims another vote which was not adjudicated to him by the court. He received 136, but the court credited him with only 135. The appellee also accepts the error. The appellant has 1 more vote in this precinct.

In precinct No. 4 of Laur the court adjudicated to the appellant only 123 votes for governor, whereas he had obtained 124. The appellant lays claim to 1 more vote in this precinct, and the appellee is agreeable thereto, having admitted the error. Another vote for the appellant.

In precinct No. I of Peñaranda, the appellant again demands another vote, because he received 56 and the court credited him with only 55. In this the appellee concurs and admits the error. The appellant has another vote ifi his favor in this precinct,

The appellant obtained 49 votes for governor in precinct No. 6 of San Jose, but the court gave him 46 only. The appellee admits the error, and the appellant should receive 3 more votes in this precinct.

The appellant claims an additional vote in precinct No. 7 of Cuyapo. He obtained 48 votes for governor, but the court gave him 47 only. The appellee admits the error, and the appellant should be given another vote.

Agreeable to the foregoing, the appellant should receive 27 more votes and the appellee 43. According to the table attached as an appendix to the decision of the court, the appellant received a total of 4,876 votes and the appellee a total of 4,309, in the contested and counter-contested precincts. Giving each of them the votes which they obtained in the precincts just taken up and covered by the first assigned error, it appears that the appellant obtained 4,903 votes and the appellee 4,352, or a plurality of 551 votes in favor of the former.

The next point in the first assigned error bears on the error committed in the table showing the votes obtained by the parties in the uncontested nor counter-contested precincts, in considering precincts 4, 6, 7 and 8 of the municipality of Cuyapo. The protest covers these four precincts, hence, the votes adjudicated to the parties should not have been counted or included in the table of uncontested nor counter-contested precincts. In this table the appellant was given 216 votes and the appellee 277 votes in these four precincts. All of them should be deducted from the votes Which each party has obtained in this table of precincts which have neither been contested nor countercontested.

The last point of the first assigned error has reference to precinct No. 4 of San Isidro. According to the appellant, he received 171 votes as shown by the certificate of proclamation, Exhibit UU, and the statement of election, Exhibit SS-142, but the court adjudicated to him 121 votes, only. After the court rendered its decision, the

attorneys for the appellee presented a motion for reconsideration stating, among other things, that the court had not committed any error in adjudicating to the appellant 121 votes, instead of 171, in precinct No. 4 of San Isidro, because the statement of election, Exhibit SS-142 had been falsified as to the number of votes received by the appellant and that the falsification was verified by the copies of the statement which had been forwarded to the municipal treasurer of San Isidro and to the Department of the Interior, certified copies of which were attached as Exhibits AAAA and AAAA-1, respectively. The records show that this petition of counsel for the appellee was not acted upon by the court and as a result the papers attached thereto were not admitted and do not form a part of the evidence. Be that as it may, we hold that the court did not err in adjudicating only 121 votes to the appellant in this precinct, because an examination of Exhibit SS-142 shows clearly that the number of votes was in fact changed without the alteration having been initialed by any of the election officers. It is plainly apparent that the words "one hundred twenty" were originally written therein, and that later, the word "twenty" was changed to "seventy" and the word "one" added thereto in black ink, notwithstanding the fact that the original words were written in green ink. Presumably the court adjudicated 121 votes to the appellant because this is the number of votes stated in the certificate of the Department of the Interior taken from the copy of the statement transmitted to said office. In view of these discrepancies, we prefer to sustain the action of the court, and to hold that in this precinct the appellant obtained 121 votes for governor, representing 1 vote more than that originally appearing in Exhibit SS-142.

According to the table of the precincts which have neither been contested nor counter-contested of the decision of the court, deducting from each of the parties the votes received in precincts 4, 6, 7 and 8 of Cuyapo, the appellant obtained 10,227 votes and the appellee 10,866 adding to each of them the votes received in the contested and counter-contested precincts, it appears that the appellant obtained 15,130 and the appellee 15,218, that is, a difference or plurality of 88 votes in favor of the appellee.

This result does not tally with that set out on page 15 of the appellant's brief, wherein it appears that he gives the appellee a plurality of only 27 votes.

In his answer filed on July 30, 1934, the appellant, as protestee, interposed a counter-protest against the election of the appellee, alleging, among other irregularities, that in precincts 1 and 7 of the municipality of Talavera the election officers did not count about 20 votes in his favor but instead counted the same number of votes in favor of the appellee, which ballots were marked and, therefore, invalid. On September 14 of the same year, the appellee filed a motion praying that he be allowed to amend his protest so as to adjudicate to him the valid votes which he had obtained in the precincts which were not included in the protest and to count in his favor the votes in 36 ballots which he received in precincts 1 and 7 of Talavera which were not given to him by the election officers. The appellant vigorously objected to the petition on the ground that the amendment to the protest came too late and outside of the statutory period. The court granted¹ the petition and adjudicated to the appellee the valid votes obtained by him in said precincts. The admission of the amendment is questioned by the appellant in his second assigned error. He contends that the Election Law does not permit such amendment if filed beyond the period fixed for the presentation of the contest. We hold that the error assigned is untenable. Section 481 of the Election Law, as subsequently amended by Act No. 3387, provides that the contestant shall reply to the allegations of the countercontest within ten days after notification. It is true that appellee's reply, in the form of an amendment to the contest, was filed after the expiration of ten days, but as the trial was still pending and as the same precincts have been counter-contested, we rule that the court did not exceed its discretion in accepting the reply in the form of an amendment to the contest. We have held in several cases that election contests submitted to the courts affect the public interest, and that when the ballot boxes are opened by order of the court taking cognizance thereof, it is the latter's duty to examine all their contents and to adjudicate the valid votes found therein to either one of the candidates. And the reason for this rule is, that in such cases the primary aim must be to carry out the will of the

electorate as expressed in the ballots. (Lucero vs. Be Guzman, 45 Phil., 852; Yalung vs. Atienza, 52 Phil., 781; Quesada vs. Bagabaldo, G. R. No. 30262, February 13, 1929, not reported; Olano vs. Tibayan. 63 Phil., 168.) That the counter-protest relative to said precincts had been later withdrawn by the appellant does not alter the legal aspect of the case, nor did it warrant the striking out of the reply, especially in view of the fact that the ballot boxes were already opened and the ballots had been examined. We finally hold that the court did not err in adjudicating 164 votes to the appellee in precinct No. 1 of Talavera and 98 in precinct No. 7, instead of the number of votes appearing in the statements.

In the third assigned error, the appellant claims a group of ballots whose votes for governor were cast in his favor but wherein his name was subsequently erased and substituted by that of the appellee, or simply erased, or erased and then followed by the name or surname of the appellee. The appellant alleges that these changes were the result of fraud committed in the Philippine Senate where the ballot boxes had been forwarded and had remained for about four months by reason of the protest of Ricardo Gonzales Lloret against Senator Hermogenes Concepcion. The same boxes containing the challenged ballots were also transmitted to the House of Representatives in connection with the protest filed by Manuel Gallego against Representative Jose Robles. Abundant evidence has been adduced to establish that the changes occurred in one of the offices of the Senate as a result of the examination of the ballots to ascertain the number of votes received by the rival candidates for the office of Senator. It would be fruitless to set out the testimony of the witnesses who have testified on this score. For the purposes of this decision, we need only mention the establishment by a convincing preponderance of the evidence, that the changes were actually made and must have been engineered by some persons with the deliberate purpose of giving the appellee the advantage and the greatest possible number of votes.

The assignment of error covers precinct No. 10 of Cabanatuan, precincts Nos. 8, 9 and 10 of Gapan, precinct No. 6 of Munoz and precinct No. 5 of Penaranda.

In precinct No. 10 of Cabanatuan, the appellant claims ballots Exhibits 595 to 628, inclusive, that is, 34 ballots. In all of them the appellant was voted for governor, but his name was crossed out with a lead pencil, although the names were originally written in indelible ink. We need not go any further, however, in view of the fact that all the 34 ballots, or better still, the votes for governor, were counted by the court for the appellant.

In precinct No. 8 of Gapan, the appellant claims 28 ballots, which he divides into four groups. To the first group appertain 10 ballots, namely, Exhibits 753 to 762. In the space for governor in each of these ballots, the name of the appellant appears written in indelible pencil and crossed out with the same kind of pencil. The appellant argues that under the fraudulent plan above referred to, his name was erased by persons other than the voters in the manner indicated. After examining the ballots, we have reached the conclusion and so hold that, for want of any direct evidence to the contrary, it must be presumed that those who erased the name of the appellant were the voters themselves, because the erasures have been made with the same kind of pencil in which the appellant's name, as well as those of other candidates for different offices, was written. Consequently, these 10 ballots should not be counted for the appellant.

The next group includes 2 ballots, namely, Exhibits 774 and 776. In the space for governor in the first ballot, the name of Jacinto Tomacruz was written, later it was erased with an indelible pencil, and above it was written the name of Aurelio Cecilio. In the space for governor in the second ballot, "Tomacruz" was written, later it was crossed out with an indelible pencil, and following it was written "Cecilio". For the same reason set out in the preceding paragraph, we have decided not to count the votes in these ballots in favor of the appellant.

In the next group, the appellant seeks to obtain the votes for governor contained in 13 ballots, namely, Exhibits 771, 772, 773, 775 and 777 to 785. The appellant was voted for governor in these ballots, but his name was

crossed out and in its place appears the name of the appellee in varying forms. We have reached the same conclusion in examining these 13 ballots. In default of evidence demonstrative that the erasures and changes were made by persons other than the voters, it must be presumed, to give effect to the voter's will, that the erasures and changes were made by the voters themselves who prepared their ballots.

The last group includes 3 ballots, Exhibits 769, 770 and 786. In the first two ballots, the name of the appellant was crossed out with an indelible pencil; and following it the name of the appellee was written; in the last ballot the surname of the appellant was crossed out with an indelible pencil, and above it appears written the initial of the appellee's name and his surname. Neither should these 3 ballots be credited to the appellant, because it does not clearly appear that persons other than the voters themselves made the erasures and amendments or alterations. In viewing these ballots and kindred ones, we have not been able to free our minds of the belief that probably the voters themselves made the changes after mature reflection or change of mind as to the candidate for governor for whom they wanted to vote.

In precinct No. 9 of Gapan, the appellant claims the votes for governor contained in 12 ballots, namely, Exhibits 800, 801, 787, and 788 to 796, inclusive. In the first two, the name of the appellant appears on the lines for governor, but it was crossed out with an indelible pencil, which is the same kind used in writing the names of the other candidates voted for different offices. In the ballot, Exhibit 787, the appellant was also voted for governor, but his surname was canceled with an indelible pencil, and following it appears the name of the appellee. These three ballots should not be counted in favor of the appellant, because it may be presumed from their appearance that the crosses were made by the voters themselves who prepared them. In ballots, Exhibits 788 to 796, nine in all, the appellant was voted for governor. His name was erased, and in its place the appellee's name was written in indelible pencil. An examination of these 9 ballots reveals that the writers of the appellee's name were not the voters themselves, because the characters and outlines subsequently used plainly differ from those observed in the names of the other persons voted for different offices. Of the 12 ballots, therefore, 9 should be counted for the appellant and 3 should be rejected.

In precinct No. 10 of Gapan, the appellant claims 20 ballots, Exhibits 802 to 821, inclusive. Ballot Exhibit 819 was admitted by the court and the vote for governor credited to the appellant (table prepared by the appellant, page 229 of his brief). In the remaining 19 ballots, the appellant was voted for governor, but his name was erased or crossed out with an indelible pencil, and in its place or following it the appellee's name was written in each of them. It is plainly seen that those who wrote the appellee's name were not the voters who prepared the ballots and cast them for the appellant, because the characters and outlines used by them are clearly different from those appearing in the names of the other candidates voted for the different offices. The appellant has 19 more votes in his favor in this precinct.

In precinct No. 6 of Mufioz, the appellant claims 5 ballots, Exhibits 235 to 239. In the first two, "Tomi" and "Tomy" were voted for governor. The appellant lays claim to these votes upon the statement in his certificate of candidacy that he is known by said familiar name throughout the Province of Nueva Ecija, and upon the abundant testimony adduced by him that 'his friends and acquaintances have invariably called and known him by said nickname. We have uniformly held in the cases of *Molina vs. Nuesa* (G. R. No. 30548, June 5, 1929, not reported) ; *Alegre vs. Perey* (G. R. No. 31017, March 26, 1929, not reported); *Bayona vs. Siaotong* (G. R. No. 36065, 56 Phil., 831) ; *Marquez vs. Santiago* (G. R. No. 36502, 57 Phil, 969); *Fausto vs. Ramos* (G. R. No. 42601, 61 Phil., 1035) ; and *Sarenas vs. Generoso* (61 Phil., 549) ; that votes cast with only the nickname or familiar name should not be counted in favor of any candidate because they do not sufficiently identify the person voted for. In the instant case, another circumstance militates against counting these 2 ballots in favor of the appellant, consisting in appellee's proof that there are other persons in the province likewise known as "Tommy". The appellant earnestly

contends that his case, at least, calls for an exception justified by the abundant evidence adduced by him from which it may be deduced that the voters, in using the familiar name "Tommy", really intended to vote for him. While it must be conceded that there is some point in the argument, we are not inclined, however, to establish the exception asked for, in view of the fact that it would only bring about confusion in the uniform doctrine laid down on the subject. Furthermore, as has already been stated, it is proven that there are other persons also known by the same familiar name. In the 3 remaining ballots, Exhibits 237, 238 and 239, the appellant was voted for governor, but his name was crossed out with a lead pencil. From the use of this kind of pencil, which is different from the indelible pencil with which the names of the other candidates voted for other offices were written, we conclude that the crosses were made by persons other than the voters, and that the votes in these 3 ballots should be credited to the appellant.

In precinct No. 5 of Penaranda, the last of the third assigned error, the appellant claims 7 ballots, Exhibits 256 to 259 and 896 to 898. Ballot Exhibit 259 was received by the court (table prepared by the appellant, page 228 of his brief). In ballots Exhibits 256, 257 and 258, the appellant was voted for governor, but his name was crossed out with a pencil different from that used by the voters in writing the names of the other candidates for other offices for whom they voted, from which it must be presumed that the crosses were made by persons other than the voters. In the ballots Exhibits 987 and 988, the appellant was likewise voted for governor, but his name was erased and crossed out, respectively, and in its place the appellee's name was written. The latter's name is written in characters and outlines different from those found in the other names appearing in the ballots, from which we deduce that the alterations were made by persons other than the voters. In the ballot Exhibit 896, the vote for governor appears to be cast in favor of "tomy"; this familiar name was erased and following it was written the initial of the appellee's Christian name and his surname. It is plainly noticeable that the erasure and the name of the appellee were written by a hand other than that which wrote the other names of the candidates voted for different offices; for the reasons already stated, the vote cast in favor of "tomy" cannot be credited to the appellant. It appears that in this precinct the appellant has obtained 5 more votes.

Summarizing all that has been said so far on the third assigned error, it appears that the appellant should be credited with a total of 36 more votes.

At the continuation of the trial of the case on March 17, 1935, the attorney for the appellant announced to the court that the latter's witnesses, surnamed Valencia and Mendez, had already arrived, and offered them as part of the evidence of the counter-contest. The first witness would corroborate the allegation of fraud committed in the Senate in connection with the ballots taken up in the third assigned error, and the second, who was an election inspector of precinct No. 10 of Cabanatuan, would have testified that during the reading of the 34 ballots considered in the third assigned error in said precinct, the same did not contain changes or erasures particularly in the votes cast in favor of the appellant for the office of governor. The court refused to allow the two witnesses to testify. This action of the court motivates the fourth and fifth assigned errors of the appellant.

We rule that the fourth and fifth assigned errors are without merit, because the resolution of the court refusing to permit the two witnesses to testify, did not prejudice any substantial right of the appellant in view of our previous holding that the fraud has been in fact committed, and the 34 ballots of precinct No. 10 of Cabanatuan have been admitted both by the lower court and by this court. An assigned error which is not prejudicial to the interest of the parties should not be favorably considered by the appellate court, and the error which had been committed need not be corrected.

At one of the trials of the case, the attorney for the appellant was informed by Attorney Alfredo Santos that there was another attorney by the name of Angel Cecilio who likewise appeared in the case as one of the attorneys of the appellee, and who had presented himself as a candidate for representative at the special election of March

22,1926. In the certificate of candidacy, Exhibit 1033, which he filed, he had stated that he was also known as A. Cecilio and Cecilio only. According to the statement Exhibit 1032 then prepared, he had received 3,351 votes for representative. In view of this discovery the attorney for the appellant asked the court to allow him to mark, for purposes of identification, all the votes in favor of the appellee bearing the name of "A. Cecilio" and to admit Exhibits 1032 and 1033 as part of his evidence. The court denied the petition. This ruling of the court forms the basis of the sixth and seventh assigned errors of the appellant.

The reasons stated by the court in refusing the marking of those ballots, in rejecting Exhibits 1032 and 1033, and in counting the ballots containing votes for "A. Cecilio" in favor of the appellee, were that they were sufficiently identified with the marks placed by the attorneys for the appellee, and that the votes for governor cast in such form were clearly those of voters for the appellee. As to the rejection of the two documents, it seems that the ruling was based on the ground that they were unnecessary evidence.

The reasons which the court took into account in giving the appellee the votes for governor contained in said ballots and in denying the appellant's petition that they should be deducted and rejected, were that the ballots had already been admitted without objection of the attorney for the appellant, and that the votes were clearly cast for the appellee. Passing now this point, we are of the opinion and so hold that the said votes should not be deducted from the appellee, but should be adjudicated to him, because the evidence shows that Angel Cecilio was not a candidate in the elections, either for governor or for any other elective office, and he did not file a certificate of candidacy as required by law. For this reason, it is unreasonable and unwarranted to believe that the voters intended to vote for him for the office of governor to which he did not aspire. It being a legal requirement (sec. 404 of the Election Law, as amended), that the candidates for an elective office must file a certificate of candidacy and that those who contravene this provision are not eligible, it must be presumed that the voters were not only aware of this legal provision but in exercising their right of suffrage they cast their votes in favor of registered and eligible candidates. It is true that in one ballot, the photograph of which is attached to page 249 of the appellant's brief, Angel Cecilio was voted for the office of governor; but this isolated fact does not discountenance the proposition that we establish, nor does it give support to appellant's contention that the votes cast in favor of "A. Cecilio" were for Angel Cecilio and not for the appellee Aurelio Cecilio. We, therefore, conclude that the sixth and seventh assigned errors cannot be sustained.

In his eighth assigned error, the appellant impugns 78 ballots wherein the appellee was voted for by the name "Cecilio" only. All these ballots were admitted by the court without appellant's objection. In one of the following sessions, the appellant asked for the reconsideration of the admission of the 78 ballots on the ground that he just discovered that one, Cecilio Enriquez, was a candidate for councilor in the municipality of Gapan, and Cecilio Lazatin for the same office in the municipality of Guimba, and that the votes cast in favor of "Cecilio" only should not have been counted for appellee because there had been no means to ascertain for whom of the three Cecilios the voters had voted. The court denied the petition without stating its grounds therefor, but counsel for the appellee had alleged as reasons for overruling appellant's contention that the ballots had already been admitted without objection, and that Enriquez and Lazatin were not candidates for governor but for councilor in their respective towns. In aid of his contention, the appellant cites the decision of this court in *Ignacio vs. Navarro* (G. R. No. 37401, 57 Phil., 1000, 1011), denying the motion for a new trial therein presented and holding that the ballots containing votes for Navarro had not been counted because it appeared that there were other candidates for different offices with the same surname, and under those circumstances it could not be determined for whom the voters had voted. He also cites the decision of this court in *Sarenas vs. Generoso* (61 Phil., 549), in passing upon ballots wherein only the candidate's surname appeared voted for. It cannot be denied that in the cited case of *Ignacio vs. Navarro*, this court in truth said that the votes in favor of Navarro should not be counted as in fact they were not adjudicated to him; but the instant case is distinguishable from that of Navarro, indeed the distinction is

clear, because in the present case the two candidates for councilor did not bear the surname of Cecilio but instead are called by the same Christian name, and there is no other candidate for governor with the surname of Cecilio. In these ballots under study, it is noted that the voters invariably voted in favor of "Cecilio" for governor, and this is the surname of the appellee; there being no other candidate for the same office with the same surname, it would be illogical and improbable to suppose that the voters intended to vote for Cecilio Enriquez and Cecilio Lazatin who have not the same surname and who were not candidates for the same office. We, therefore, conclude that the eighth assigned error is without merit.

In his ninth assigned error, the appellant claims the vote for governor in ballot Exhibit 982. The vote is cast in favor of "J. toMacreu". The initial is that of the appellant's Christian name, and what follows is idem sonans with his surname. The vote is valid and should be adjudicated to the appellant.

In the tenth assigned error, the appellant claims the votes for governor in the ballots Exhibits 371, 179, 86, 87, 641, 765 and 65. In all of them the appellant appears voted for governor. The first ballot was rejected by the court because Matilde Bravo, a woman, was voted for councilor, and the ballot was thus considered marked. We rule that this ballot Exhibit 371 is valid and that the vote for governor should be adjudicated to the appellant. The name of a woman written in one of these spaces for councilors, although the vote is invalid, does not of itself constitute a mark or counter-mark which invalidates the entire ballot (Cailles vs. Gomez and Barbaza, 42 Phil., 496; Lucero vs. De Guzman, 45 Phil., 852; Dejarne vs. Castaneda, G. R. No. 30611, April 22, 1929, not reported; Sinogba vs. Reganit, G. R. No. 36244, 57 Phil., 955). The ballot Exhibit 179 was rejected by the court because after the name of Felix Palad, voted for senator, the voter added the word "mautog" which is an irrelevant, and, in this instance, indecent expression. The ballot was properly considered as marked, and for that reason ruled out. The 5 remaining ballots Exhibits 86, 87, 641, 765 and 65 were rejected by the court because at the foot thereof and outside of the columns assigned for councilors are written names and surnames of different persons which appear to be those of the voters who prepared them. We hold that these ballots are marked and were properly ruled out. The result is that under this assignment of error, the appellant has received 1 vote.

In the eleventh assigned error, the appellant claims 34 ballots whose votes for governor were not adjudicated to him by the court because his name and surname or the initial of his name and surname were not correctly written. These ballots are divided into 9 groups, the first group consisting of Exhibits 397, 61, 225, 231, 182, 78, 167, and 186. In the first 7 ballots, the votes for governor are cast in favor of "G. Tomacruz". The court rejected them undoubtedly because the initial of the Christian name does not dovetail with that of the appellant; nevertheless, said votes should be counted for the appellant because the initial "G" means in the instant case Ginoo in Tagalog, which is equivalent to Senor in Spanish. (Cailles vs. Gomez and Barbaza, 42 Phil., 496; Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil., 428; Lucero vs. De Guzman, 45 Phil., 852; Mandac vs. Samonte, 54 Phil., 706; Medina vs. Noble, G. R. No. 36018, 56 Phil., 833; Cauan vs. Pagulayan, G. R. No. 36849, 57 Phil., 967; Ignacio vs. Navarro, G. R. No. 37401, 57 Phil., 1000, 1011; and Sarenas vs. Generoso, 61 Phil., 549) ; furthermore, in his certificate of candidacy the appellant already stated that in the province he was so known and called. In the last ballot, Exhibit 186, the vote for governor is for "T. Cros". Granting that the last word is idem sonans with "Cruz", neither can it be a valid vote for the appellant, it being generally known that many persons bear the surname Cruz, and the initial preceding it is neither that of the appellant's name. This ballot should not be counted for the appellant. Under this group the appellant is entitled to 7 more votes.

The second group consists of the ballots Exhibits 304, 131, 128, 252, 204 and 173 where the votes for governor are for "T. Cruz". The same reason should be applied in not adjudicating these votes in favor of the appellant; neither the initial nor the surname corresponds with those of the appellant; Cruz is the surname of many persons and cannot be considered as idem sonans with appellant's surname.

The third group consists of the ballots Exhibits 763, where the vote for governor is written "L. Tomaeruz"; 977, 1007, 71, 102, 157, 227 and 202 where the votes for governor are cast in favor of "C. Tomaeruz", save the last one where the initial of the name is also like the capital letters "J" or "L". We have decided to count all these votes for the appellant because his surname appears clearly written, and in the vernacular it is usual to pronounce the name "Jacinto" "Casinto" as it is difficult to pronounce the "J". The appellant has obtained 8 additional votes in this group.

The fourth group covers the ballots Exhibits 594, 120, 145 and 146 wherein *A. Tomacruz" is voted for governor. In his certificate of candidacy, the appellant also stated that many write the initial of his name and his surname in said form because the less educated people believe that "Jacinto" is written "Acinto", without "J". The explanation is satisfactory, and as the appellant's surname is clearly written, we choose to credit him the votes in these 4 ballots.

In the fifth group, the appellant claims ballots Exhibits 992, 996, 119, and 191 wherein the votes for governor are written "J. Cruz". Although the initial tallies with that of appellant's name, nevertheless, the surname is not his, nor can it be considered as idem sonans therewith, because, as we have already said, "Cruz" is a surname generally used. These 4 ballots should not be counted for the appellant.

The ballot Exhibit 983 is claimed in the sixth group. The same contains no more than three names voted for the first three offices, and they are so poorly written that they appear to be illegible. The person voted for governor is similar to "O aoma oroma", which bears no resemblance whatever to the name and surname of the appellant. The vote for governor cannot be counted in the latter's favor.

In the seventh group the appellant claims ballot Exhibit 62, wherein the vote for governor is written "H. Tomacruz". This ballot is good for the appellant, because in the vernacular the "H" when sounded is equivalent to "J", hence, the name of "Jacinto" is very often written "Hacinto".

In the eighth group, the appellant claims ballot Exhibit 75, wherein the vote for governor appears written "K. Tomacruz", and in the ninth and last groupie claims ballot Exhibit 76, wherein the vote for governor is read "D. Tomacruz". Both ballots should be adjudicated to the appellant, because in the vernacular, people of scant education write the name "Jacinto" indiscriminately with "J" "IT" "C" or "K", and the initial "D" in the last ballot stands for "Don" or "Senor".

In resume, the appellant should be awarded 22 additional votes under the eleventh assigned error.

In the twelfth assigned error, the appellant claims the following ballots: Exhibit 405 wherein the vote for governor is written "Tomny"; conceding that this word is idem sonans with "Tommy", the vote cannot be counted for the appellant because, as we have already held, the vote containing a familiar name or nickname only is invalid; Exhibit 84 wherein the vote for governor is in favor of the appellant, although his name and surname are not correctly written, the ballot is good and the vote should be credited to the appellant; Exhibit 55 wherein the vote for governor is written "Juse tomaroz"; Hie first letter being clearly a capital "J" and the surname written being idem sonans with appellant's surname, the vote should be counted for the latter; Exhibit 135 wherein the vote for governor is written "josi Tomacros"; we consider what is written as idem sonans with the appellant's name and surname and the ballot is, therefore, good; Exhibit 169 wherein the vote for governor is written "Jusi tomaCrus" , the voter who prepared the ballot is almost illiterate and the name which appears voted for governor is idem sonans with that of the appellant, hence, it is a valid vote for him; Exhibit 170 wherein the person voted for is "gusi tomacrus"; this involves another almost illiterate voter and the name is idem sonans with that of the appellant and the vote is valid for him; Exhibit 178 wherein the appellant appears voted for as "Juse tomakor"; it is another ballot prepared by a voter little conversant with writing but who undoubtedly intended to write the

name and surname of the appellant, and what is written appears to be idem sonans with the appellant's name and surname, wherefore, it is another vote which should be adjudicated to the latter; Exhibit 185 wherein the name which appears voted for governor reads "josi lomacros"; it is idem sonans with appellant's name and we adjudicate the vote to him; Exhibit 270 wherein the name voted for clearly reads "Jose tomacruz"; the voter appears to be familiar with writing, so we decide not to count the vote for the appellant in view of the fact that the Christian name is not his; Exhibit 271 wherein "Juci tomacruz" is voted for governor; this involves another almost illiterate voter and examining the whole of what he wrote it appears that he intended to write the appellant's name and surname; we count this vote for the appellant; Exhibit 28, wherein "jose tomacros" is voted for governor; it is the ballot of another semi-illiterate voter, so we count the vote for the appellant because it appears that the voter intended to write the name and surname of the appellant; Exhibit 358 wherein the vote for governor is written "jusi Tumazros"; it is the ballot of another unacquainted with writing but who intended to write the name and surname of the appellant, so we count the vote in favor of the latter; Exhibit 828 wherein the vote for governor reads "Jose tomacruz"; it was written by a voter who is quite intelligent and there is no reason to count the vote for the appellant because the Christian name does not coincide with his; Exhibits 919, 998 and 1019, wherein the votes for governor are written "Juse tomaguros", "Jusi tomacrus" and "Jusi Tomakrus"; it is plain that these three ballots have been prepared by almost illiterate voters but who intended to write the name and surname of the appellant, so we adjudicate the 3 votes to the latter.

Under his twelfth assigned error, the appellant has obtained 13 additional votes.

In the thirteenth assigned error, the appellant claims the ballots Exhibits 829, 990, 100, and 175. In the first the vote for governor reads "J To"; this name is certainly not that of the appellant, nor is it idem sonans with his, so the vote cannot be adjudicated to him. In the remaining three, the votes for governor read, respectively, "aato tomacros", "Jasinto" and "Jn tomacruz"; the voters' intention to vote for the appellant as governor is evident, and the Christian name of Jacinto cannot be confused with others because there was no other candidate with the same name for the same office; these 3 votes should be counted for the appellant.

Four (4) ballots are discussed in the fourteenth assigned error, namely, Exhibits 402, 824, 121 and 253 wherein the votes for governor are claimed by the appellant. The surname of the appellant appears therein clearly written in the spaces for governor, but in the first the initial of the name is written with "S", in the second with "Y", in the third with "h" and in the fourth with "J", so poorly formed that it is mistaken for "V" at first sight. In view of the fact that the voters who prepared the ballots have practically no education, we hold that they intended to write the initial of the appellant's name and that the 4 votes should be adjudicated to him.

The votes for governor in the ballots Exhibits 948 and 949 are claimed by the appellant in his fifteenth assigned error. The court rejected the two ballots because they have been spoiled and deposited in the red ballot box during the voting. Neither of them contains on the back the word "useless" or "spoiled", but ballot Exhibit 948 still preserves the stub indicative that it was in reality a spoiled ballot deposited in the box for spoiled ballots. Exhibit 949 does not suffer from any defect, and being good the vote for governor should be adjudicated to the appellant; this ballot must have been deposited in the red ballot box by mistake or through inadvertence. Valid ballots deposited in the red box or box for spoiled ballots through error, mistake, or inadvertence are good and should be counted if they do not suffer from any defect invalidating them (*Lucero vs. De Guzman*, 45 Phil., 852; *Bulan vs. Gaffud*, 49 Phil., 906; *Mandac vs. Samonte*, 49 Phil., 284; *Aviado vs. Talens*, 52 Phil., 665; *Yalung vs. Atienza*, 52 Phil., 781; *Mendiola vs. Mendoza*, G. R. No. 36143, 56 Phil., 833; *Sinogba vs. Reganit*, G. R. No. 36244, 57 Phil., 955; *Cauan vs. Pagulayan*, G. R. No. 36849, 57 Phil., 967; *Bungubung vs. Madayang*, G. R. No. 42488, 61 Phil., 1033; *Ignacio vs. Navarro*, G. R. No. 37401, 57 Phil., 1000, 1011).

In the sixteenth assigned error, the appellant questions ballots Exhibits CC and CC-1, and prays that the votes for

governor cast in favor of the appellee be deducted from the latter on the ground that, whereas the two ballots came from precinct No. 2 of Penaranda, they were found in precinct No. 5 of the same municipality. No evidence has been adduced in explanation of this transposition or anomaly; in the absence of fraud, it must be attributed to a mere error or inadvertence in the distribution of the official ballots, and the votes should be counted, for it is not just that the voters should suffer from the mistakes committed in good faith by the officials in charge of distributing the ballots (*Ignacio vs. Navarro*, *supra*).

In the seventeenth assigned error, the appellant questions ballots Exhibits Y-1, F-5, BB-11, BB-12 BB-13, Y-8, Y-9, Y-18, E-7, E-9, E-10, CC-148, CC-149 and CC-150 and contends that the votes for governor should be deducted from the number obtained by the appellee. Ballots Y-1, Y-8, Y-9, and Y-18 of precinct No. 3 of San Antonio were admitted by the court, because although they were found in the red ballot box, it was established that they were deposited by mistake and as a result of the discussion had between the inspectors during the counting. We concur in this finding and hold the ballots valid. Ballot F-5 is challenged because on the back thereof appears the word "useless" ; this is another of the ballot erroneously deposited in the red ballot box during the counting; it is a good ballot and the vote should not be deducted from the appellee. Ballots BB-11, BB-12 and BB-13 of precinct No. 2 of Penaranda are challenged because the word "spoiled" appears on the back thereof; the court counted the votes and admitted the ballots because they are of those which were erroneously deposited in the red ballot box during the counting and the votes for the appellee are clearly stated; we accept the finding as correct, save as to ballot BB-11 which we rule should not be counted because containing an irrelevant expression in the next to the last line for councilors. Ballots E-7, E-9 and E-10 of precinct No. 3 of Lupao are challenged because they were found in the red ballot box and there appears on the back thereof the note "marked ballot"; the court admitted them and adjudicated the votes for governor to the appellee because it was established that they form a part of the ballots which were deposited by mistake in the box for spoiled ballots as a result of the discussion among the inspectors during the counting; we find no error in the action of the court and we hold the ballots valid. Ballots CC-148, CC-149 and CC-150 of precinct No. 5 of Penaranda are assailed because they have been found in the red box as spoiled ballots with the initials "A. L." of an inspector on the back thereof. With the exception of the first, we do not find the initials on the back of the remaining two; they were admitted by the court as being among the ballots deposited by mistake in the red box containing valid votes for governor in favor of the appellee; we concur in the court's finding, save as to ballot CC-149 which should be considered as spoiled because besides having been found in the red box it has also not been detached from the stub which shows that it was returned by the voter and substituted by another.

Two votes should be deducted from the appellee under this assigned error.

In his eighteenth assigned error, the appellant challenges ballots Exhibits HH-2, HH-3, HH-4, HH-5 and HH-7, of precinct No. 6 of Cabiao, and prays that the votes for governor be deducted from the appellant because they were found in the red box and are consequently spoiled ballots.

The court admitted the ballots because it was established that they were deposited in the red box not during the voting, but during the counting and as a result of a discussion among the inspectors, and the votes cast for the appellee for the office of governor are good. We approve the resolution of the court and we hold that the ballots are valid in harmony with the ruling on the subject laid down in the cases already cited in resolving the preceding assignments of error.

In the nineteenth assigned error, the appellant challenges 14 ballots of the appellee, containing votes for governor in favor of the latter, on the following grounds: Exhibit NN-2 because the voter cast his vote for only three candidates for councilors, and in the remaining spaces wrote in pencil semicircle similar to the number 6; the appellant contends that the presence of said sign constitutes a mark on the ballot; we understand that it is neither a

mark nor a counter-mark, by it the voter meant that he did not want to vote for other councilors. Ballot FF-4 is impugned because the only one voted for councilor is one, Muring Luna. This, to our mind, is not a mark, but the nickname of a person named Mauro and his surname. It is alleged that ballot A-31 is marked because in the upper part there appears written the number 97 and below the number 1. The person who prepared the ballot is more or less illiterate and we do not believe that he himself had written those numbers: In addition, the presence of said figures does not of itself constitute a mark. The ballot is valid. Ballot R-1 appears plainly marked with the word "tomacros", written at the foot thereof after the spaces for councilors; the vote should be deducted from the appellee. Ballot Exhibit DD is questioned because the person voted for governor is "A. Cilio"; the initial is that of appellee's name and what follows is idem sonans with his surname; it is good vote for the appellee. Exhibit Y-15 is questioned because at the bottom of the ballot the voter wrote two more names for whom he voted as councilors outside of the spaces for said offices. The presence of these two names in said places does not constitute a mark or a counter-mark if it is considered that the one who prepared the ballot had little or no education and was almost illiterate; the ballot is valid. On the back of each of the ballots LLL-1 and LLL-2 of precinct No. 5 of Jaen, not precinct No. 1 of Aliaga as stated in appellant's brief, appears a smear produced by the finger when it comes in contact with something written in indelible pencil; it is claimed that these smears constitute marks purposely placed to identify the ballots; after a careful examination thereof we have come to the conclusion that they were casually placed there, hence, the votes are valid for the appellee. Ballots AA-6, AA-7, AA-8 and AA-9 are challenged as marked because the names of those voted for are written in blue pencil; it is argued that in using this kind of pencil instead of the indelible pencil, the voters intended to identify their ballots; in the absence of evidence that such was the purpose of said voters, we hold that what took place was accidental and that the voters used the blue pencil because there must have been no indelible pencil in the booths; the ballots are good and the votes valid. Ballots W-2 and B-20 are challenged as marked; the first cannot be found and being unable to examine the same, we affirm the ruling of the court thereon; in the last ballot the voter voted for "Necomedes limang tabiog" as sole councilor; this, it is said, is a mark; it seems that such was not the voter's intention, rather, having forgotten the surname of Nicomedes, he wrote his nickname in its place; in this circumstance, what was written is neither a mark nor a counter-mark, and the ballot is valid.

The result is, that under the nineteenth assigned error, 1 vote should be deducted from the appellee, namely, that contained in ballot Exhibit R-1, of the precinct of Pantabangan.

The appellant challenges the five ballots YY, AAA-6, W, 6 and S in his twentieth assigned error, on the ground that they were marked. We have examined the 5 ballots and have reached the conclusion that they are not so. In the first, it appears that the voter is an expert scribe and so wrote some names voted for in the form of printed letters. The same was true of the second. In the remainder, the voters who prepared them also had varying forms of writing, and so wrote the name and surname of the appellee differently from the other names voted for other offices.

The twenty-first assigned error questions 7 ballots, Exhibits B-11, X-1, W-7, AA-2, AA-4, DDD-7 and MMM-5, on the allegation that the initials prefixed to the appellee's surname do not coincide with the initial of his real name. From an examination of the ballots, we drew the inference that the initial used in each of the 5 ballots is an A which, by its peculiar form, might be confused with H, G and T. They are good ballots for the appellee.

The twenty-second assigned error impugns 2 ballots, Exhibits BB-6 and BB-7 of precinct No. 2 of Peiiaranda, on the allegation that they form a part of the ballots in which fraud was committed by erasing the name and surname of the appellant and later placing thereover the initial of the name and the surname of the appellee. We have examined both ballots with a good magnifying glass and have not found the alterations referred to. We hold that the ballots are valid.

Ballots Exhibits YY-4, L-2, DD-5, H-1, 1-4 and BB-5, are challenged in the twenty-third assigned error on the allegation that the one voted for governor is written in indecipherable characters. It is true that the name or the initial and the surname of the appellee are somewhat poorly written in these ballots, indicating thereby that the voters are not Well educated; but after all is said and done, we encounter little difficulty in reaching the conviction that the votes are for the appellee and that such was the intention of the voters. The 6 ballots are admitted.

In the twenty-fourth assigned error, the appellant challenges ballots Exhibits ÑÑ-6, WW-3, R and DDD-12 because the voters wrote an additional name after the last space for councilors; it is urged that these last names are marks or counter-marks to identify the ballots. We have examined these ballots, and considering the meager education of those who prepared them, have come to the conclusion that the additional names do not constitute marks, but are other votes in favor of candidates for councilors voted for in the voter's belief in good faith that they are entitled thereto. They are valid ballots for the appellee,

In the twenty-fifth assigned error, ballot Exhibit QQ-2 is sought to be invalidated, because on the back thereof appears written the note "excess ballot"; it is alleged that this is a surplus ballot and should not have been counted. The court admitted it because according to the counting made by the commissioners and by the court, there was no excess of ballots in the box of precinct No. 10 of Gapan to which the ballot pertains. We adhere to the ruling of the court and the vote contained in the ballot in favor of the appellee should be adjudicated to him.

Ballots Exhibits C-10, J-19 and DD-6 are impugned in the twenty-sixth assigned error because the person voted for governor is not the appellee. The ballot J-19 has not been located, so we abide by the ruling of the court admitting the same. In C-10 the vote for governor reads, "A aulio"; the "A" is the initial of the appellee's name, and what follows is idem sonans with his surname. In DD-6 the vote for governor is written "A Cilio"; the "A" is the initial of the appellee's name, and what follows is idem aonans with his surname. Both ballots are likewise valid.

Ballots Exhibits KK, GG, PP-2, CCC-5, ff-1, BB, N, MMM-1, J-9 and J-11, ten in all, are questioned in the twenty-seventh assigned error on the allegation that different persons intervened in their preparation. Ballots J-9 and J-11 of precinct No. 1 of Laur have not been found and in their stead there have been found ballots J-9 and J-11 of precinct No. 4 of the same municipality; probably the appellant referred to these last ballots. On the supposition that these last ballots were not the ones referred to in the assignment of error we affirm the ruling of the court. From an examination of all the ballots, we have drawn the conclusion that different persons have not intervened in their preparation. There is a slight difference in the characters used, but taking them as a whole, the conclusion is in order that the votes for the appellee have been written by the voters themselves who prepare the ballots. We accept all the said ballots as valid.

In the twenty-eighth and last assigned error, the appellant challenges 21 ballots containing votes for the appellee, namely, Exhibits JJ-6 to JJ-26, on the ground that they are marked ballots because they are mutilated in the lower, left-hand corner. The court admitted all these ballots because it was established that the mutilation was done by the chairman of the board of inspectors in separating the stubs, the torn portions having been found in the stubs which were kept and adduced during the trial. We fully agree with the court that, the mutilations not having been done by the voters who prepared the ballots, the latter should not be deprived of the right of suffrage. The ballots are not marked, and the votes for governor were legally adjudicated to the appellee.

After passing on the first assigned error, we said on page 7 of this decision that the appellee had a plurality of 88 votes in his favor. In the third assigned error the appellant obtained 36 additional votes; in the ninth, 1; in the tenth, 1; in the eleventh, 22; in the twelfth, 13; in the thirteenth, 3; in the fourteenth, 4; and in the fifteenth, 1, or a

total of 81 votes. Deducting this number from the plurality of 88 votes of the appellee, it appears that the latter still has 7 votes in his favor. As a result of the seventeenth assigned error, 2 votes should be deducted from the appellee, and under the nineteenth assigned error, 1. Deducting these 3 votes from his plurality of 7, it appears that he still has four (4) votes over the appellant.

Having reached this result, it becomes unnecessary to consider and resolve appellee's assignments of error.

Wherefore, we modify the appealed judgment and declare that the protestant-appellee has obtained a plurality of four (4) votes over the protestee-appellant, and that, consequently, the former has been legally elected to the office of provincial governor of Nueva Ecija, with the costs of both instances and other court costs to the appellant. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment modified,

DECISION ON APPELLANT'S MOTION FOR RECONSIDERATION

January 29, 1936

IMPERIAL, J.:

The protestee-appellant filed a motion for reconsideration of the decision rendered in this case, promulgated on December 21, 1935, praying that said decision be set aside and that he be declared legally elected to the office of provincial governor of Nueva Ecija, with a plurality, at least, of 97 votes. The six (6) grounds for the motion shall hereafter be considered and resolved separately

At pages 5 and 7 of our decision, we said that the parties had obtained the following votes:

Appellant

Appellee

Votes obtained in the contested and counter-contested precincts

4,903

4,352

Votes obtained in the precincts not contested or countercontested, already excluding the duplicate votes in precincts 4, 6, 7 and 8 of Cuyapo

10,227

10,866

Total votes

15,130

15,218

Subtracting the result

15,218

-15,130

= 88

we said at page 7 of our decision that there was a difference of 88 votes in favor of the appellee, which constituted his plurality so far.

Later in the decision, as a result of the errors assigned by the appellant, we adjudicated 81 votes to him and deducted 3 votes from the appellee. The appellee's plurality was, therefore, reduced to 4 in this wise:

88

- 81

= 7

- 3

= 4

We shall presently resolve the six (6) grounds of the motion for reconsideration, proceeding on the aforesaid assumption that the appellee's plurality has been reduced to only 4 votes.

In the first ground of his motion for reconsideration, the appellant claims a plurality of 7 votes resulting from the error committed by the count in twice summing up in the table prepared by it the votes obtained by the parties in each of the precincts Nos. 1, 2, 3, 5, 9 and 10, which have neither been contested nor counter-contested, of the municipality of Cuyapo. The number of votes which the parties received twice in these six precincts which have neither been contested nor counter-contested is as follows: appellant, 508; appellee, 510,

Subtracting both numbers of votes from the total received by the parties, we have:

Appellant

Appellee

15,130

15,218

- 608

- 519

= 14,622

= 14,699

Subtracting the former totals, we find the following:

14,69'9

$$\begin{array}{r}
 -14,622 \\
 \hline
 = 77
 \end{array}$$

These 77 votes now represent the plurality of votes of the appellee as reduced; but we have to deduct therefrom the 3 votes which, according to the decision must be deducted, and also the 81 votes which, according to the same decision, should be added to the appellant, thus giving the following result:

$$\begin{array}{r}
 77 \\
 - 8 \\
 \hline
 = 74 \\
 \hline
 81 \\
 - 74 \\
 \hline
 = 7
 \end{array}$$

It, therefore, appears under the first ground of the motion for reconsideration that the appellant is now winning over the appellee by a plurality of 7 votes which is, as has been stated, the number of votes claimed in the said first ground.

The error which has been committed in the precincts which have neither been contested nor counter-contested, Nos. 1, 2, 3, 5, 9 and 10 of the municipality of Cuyapo, was not touched upon in any of the 28 assigned errors of the appellant. Had the attention of this court been drawn to the error from the beginning, the same would have been seasonably corrected. In his brief the appellant insisted on a numerical result different from that set out in the decision, but nowhere in his brief did he mention that there had been a duplication which he now alleges, in summing up the votes in said six (6) precincts. Having discovered the arithmetical error, it is our duty to ratify it and to hold, as we have held, that under the first ground of the motion it is the appellant who has a plurality of seven (7) votes over the appellee.

In the second ground of his motion for reconsideration, the appellant claims 50 additional votes in precinct No. 4 of San Isidro. In the decision we said that in this precinct the appellant received 121 votes only, instead of 171 as contended by him, thus affirming the appealed decision of the court. Counsel for the appellant now vigorously insists that this court erred in not adjudicating the difference of 50 votes to the appellant and in not admitting as conclusive evidence Exhibits SS-142 and UU, quadruplicate of the electoral statement in the possession of the provincial treasurer and the certificate of proclamation by the provincial board, respectively. On this point, counsel for the appellant earnestly argues that this court erred in holding that the quadruplicate of the electoral statement Exhibit SS-142, referring to the votes received by the appellant, was fraudulently altered and falsified.

At first we really doubted if said quadruplicate had been voluntarily and illegally tampered with, because summing up the valid votes cast in favor of the candidates for governor and the number of spoiled and unused ballots, all of which appeared on the first page of the quadruplicate, gave exactly the same result as the total number of official ballots received by the inspectors of precinct No. 4t of San Isidro.

Accepting appellant's invitation that we spare no pains to discover the truth and to mete out justice to the parties litigant, and relying on the power vested in courts by sections 479 of the Election Law, as amended, and 501 of the Code of Civil Procedure, and bearing in mind that the public interest is directly affected by any election contest, we did not hesitate to call for the ballot boxes of precinct No. 4 of San Isidro as well as the quadruplicates of the electoral statement in the possession of the Department of the Interior and of the municipal treasurer of San

Isidro. Fortunately all these evidentiary means were brought forward and carefully examined.

Our examination shows that the quadruplicates of the statement in said precinct No. 4 of San Isidro do not tally as to the votes obtained by the candidates for governor. In the quadruplicate found aside the white ballot box, Exhibit J, Tomacruz appears with 120 votes; Cecilio with 93; Ramoso with 54 and Cajucom with nothing. In the quadruplicate Exhibit SS-142, which was transmitted to the provincial treasurer, Tomacruz appears with 171 votes (altered writing); Cecilio with 93; Ramoso with 54, and Cajucom with nothing. In the quadruplicate forwarded to the Department of the Interior, Tomacruz appears with 121 votes; Cecilio with 93; Ramoso with 54, and Cajucom with nothing; and in the quadruplicate sent to the municipal treasurer of San Isidro, Tomacruz appears with 120 votes (the word seventy being crossed out); Cecilio with 93; Ramoso with 54, and Cajucom with nothing.

We did not arrive at the true facts by an examination alone of the four (4) quadruplicates, although we had the incontrovertible evidence that they did not coincide with the number of votes received by Tomacruz. Hence, we proceeded to open the boxes.

In the white box were found the following: 332 ballots with votes for governor distributed thus: 125 for Tomacruz; 97 for Cecilio; 54 for Ramoso; 2 for Gonzales; 1 for Gabaldon; 1 for Aldama; 1 for Aglipay and 51 in blank. In the red box, or box for spoiled ballots, 16 ballots were found. Two hundred sixty-five unused official ballots were found, and this number tallies with that certified to by the inspectors on the first page of the quadruplicates of the statement. Summing up all the ballots gives a total of 613, or an excess of 13 ballots, as only 600 official ballots were received by the inspectors in the precinct.

It was necessary to account for the extra 13 ballots. A reexamination followed and 13 official ballots were found corresponding to precinct No. 6 of San Isidro. In these 13 ballots are 4 votes for governor in favor of Tomacruz; 1 in favor of Aldama and 1 for Cecilio; in the remainder the spaces for governor appear in blank.

In view of the result of the examination of the contents of the ballot boxes and the counting of the ballots found therein, there can be no doubt that fraud was committed in Cecilio vs. Tomacruz preparing the electoral statement and that the appellant did not in fact receive more than 121 votes and the appellee 96. As we said, the appellant appeared with 125 votes, but deducting therefrom the 4 votes in the 4 ballots corresponding to precinct No. 6, gives him actually only 121 votes. Cecilio appeared with 97 votes, minus 1 vote in the ballot corresponding to precinct No. 6, gives him only 96.

The foregoing, we believe, definitely resolves the second ground of the motion for reconsideration. We overrule it as groundless, and we repeat that the appellant received only 121 votes for governor in precinct No. 4 of the municipality of San Isidro.

In the third ground of his motion for reconsideration, the appellant prays that he be credited with the votes cast in favor of "Tomy" in the 4 ballots, Exhibits 235 and 236 of precinct No. 6 of Muiioz, 896 of precinct No. 5 of Peiiaranda and 405 of precinct No. 4 of Bongabong, setting aside that portion of the decision referring to said ballots. As grounds therefor, the appellant advances the same arguments found in his brief and by way of conclusion urges that justice demands that the will of the voters who prepared the ballots should not be set at naught and that the votes thus cast should be reckoned with. Our grounds for rejecting the aforesaid ballots are clearly set out in the decision and a repetition thereof seems to us useless; no new reason occurs to us calling for a change in our view, nor do we find any new ground of sufficient persuasion to overthrow by a stroke of the pen, legal precedents and doctrines which have uniformly been laid down in the cited cases and which have served as a guidepost in the appreciation of ballots. We repeat that "Tomy" is a common nickname of persons bearing the name Tomas; it is not a nickname in the sense that it conveys a visible physical defect of one; neither is it, in the

instant case, derived from the appellant's surname. We hold that the third ground should be overruled as devoid of merit.

In the fourth ground of his motion for reconsideration, the appellant asks that he be credited with the votes for governor cast in ballots 762 and 784 of precinct No. 8 of Gapan and 800 and 801 of precinct No. 9 of the same town which we did not adjudicate to him in our decision because upon their face and from what the ballots themselves evidenced, the crosses and alterations had been made by the voters who prepared the ballots. After a reexamination of the said ballots, the members of this Division have thought it just and reasonable to change their opinion in favor of the sound arguments newly advanced by the appellant, and have finally decided to count these four (4) votes in his favor. The reason which has been formerly considered is that these ballots form a part of those which were tampered with as a result of a fraudulent scheme. We, therefore, hold that the appellant should be given four (4) additional votes.

In the fifth ground of his motion for reconsideration, the appellant claims 28 ballots in precincts Nos. 8 and 9 of the municipality of Gapan (pp. 106 [a] and 109 [b] of the motion for reconsideration) which were rejected in our decision and whose votes for governor were not counted for the appellant, on the ground that it plainly appeared that the crosses, erasures, and changes had been made by the voters who prepared the ballots. After revising the ballots, the members of this Division have changed their opinion and have decided to adjudicate the votes in said ballots in favor of the appellant, upon the same ground which was taken into account in adjudicating the four (4) ballots touched upon in the fourth ground of the motion. However, from these 28 ballots should be deducted 4, Exhibits 762 and 784 of precinct No. 8 of Gapan and 800 and 801 of precinct No. 9 of the same town, whose votes have been adjudicated to the appellant as a result of the fourth ground. We conclude, therefore, that under the fifth ground the appellant has obtained 24 additional votes.

In the sixth and last ground of his motion for reconsideration, the appellant prays that we adjudicate to him the votes for governor in the five (5) ballots, Exhibits 65 of precinct No. 5 of Lupao, 86 and 87 of precinct No. 3 of Rizal, 641 of precinct No. 10 of Cabanatuan and 765 of precinct No. 8 of Gapan. The votes in these five (5) ballots were not counted for the appellant in the decision because we ruled that they were marked or countersigned by the signatures of the voters who prepared them; said signatures appeared far below the last space for councilors, and we find no good reason to hold that they were scattered votes cast in favor of candidates for the office of councilor. The appellant argues that like votes were counted for the appellee, and particularly directs our attention to the ballot Exhibit WW-3, which we held to be countersigned and which was admitted as valid by the Division of Three of this court in G. R. No. 42673, Faigal vs. Calica (61 Phil., 1029). With respect to the ballots counted for the appellee, we reckoned with other circumstances which plainly appeared therein and convinced us that the additional names appearing at the foot of the ballots were not signatures of the voters but votes in favor of other candidates for councilors or scattered votes. It must be admitted that in the appreciation of ballots challenged on the ground which we took into account, or for being marked or countersigned, it is difficult, if not impossible, to lay down a hard and fast rule; for this reason, cases will not be wanting evidencing apparent contradictions and inconsistencies like those pointed out in this ground of the motion for reconsideration under study. As to ballot WW-3, which was admitted as valid in another case, had our attention been drawn thereto, we would, in all probability, have rejected the ballot at least for the sake of uniformity. We hold, therefore, that the sixth ground should be, as it is hereby, overruled as without merit.

Summarizing now the result of the six (6) grounds of the motion for reconsideration, it appears that the plurality of the appellant has been increased as follows:

Votes obtained by him under the first ground

Votes obtained by him under the fourth ground

4

Votes obtained by him under the fifth ground

24

Total plurality of the appellant

35

In view of this result, we shall now proceed to consider and resolve the ten (10) errors assigned by the appellee in his brief.

In his first assigned error, the appellee claims the following votes in these precincts: Forty in precinct No. 4 of Bongabong, 3 in precinct No. 10 of Guimba, and 6 in precinct No. 1 of Muiioz. All these votes were adjudicated to the appellee when we passed upon the appellant's first assigned error in our decision; wherefore, we overrule the appellee's first assigned error.

In his second assigned error, the appellee questions 40 ballots marked as follows: Exhibits 46, 47, and 48 of precinct No. 4 of Bongabong; Exhibit 593 of precinct No. 10 of Cabanatuan; Exhibits 362 and 363 of precinct No. 3 of Caranglan; Exhibit 766 of precinct No. 8 of Gapan; Exhibits 232, 233, 234, 240, 241, 242 and 243 of precinct No. 6 of Munoz; Exhibits 210 to 220, inclusive, of precinct No. 7 of Mufioz; Exhibits 254 and 255 of precinct No. 5 of Pefiaranda; Exhibit 95 of precinct No. 3 of Rizal; Exhibits 244 and 850 of precinct No. 3 of San Antonio; Exhibits 165 and 166 of precinct No. 12 of San Jose; Exhibits 137, 138, 139, 140, 141, 142 and 144 of precinct No. 2 of San Leonardo, and Exhibit 104 of precinct No. 4 of Rizal. In these ballots, the votes for governor were cast in favor of "Tomy" "Tomi", "Tome" and "Toma". The court adjudicated all these votes to the appellant. On pages 14, 15 and 16 of our decision, in passing upon the appellant's third assigned error, we said that the votes cast for "Tomy" cannot be counted for nor adjudicated to the appellant; in so deciding the question raised, we stated at length our reasons in support of the conclusion which we had reached. This second assigned error of the appellee brings up the same question; we do not believe that its merit has changed. The grounds, precedents and doctrines upon which we relied in holding that said votes should not be counted, subsist and should be taken as reproduced herein to support the ruling that the second assigned error is well taken and that the 40 votes should be deducted from the appellant. We, therefore, conclude that the 40 votes cast in these ballots in favor of the appellant should be deducted from him.

In his third assigned error, the appellee likewise impugns the 61 ballots specified on pages 90 and 91 of his brief, whose votes for governor were adjudicated to the appellant by the court. Said votes are cast in favor of "J. Tomy", "J. Tome", "J. Tomi" and "J. Toma". The substantial difference between these 61 ballots and the 40 ballots taken up in the second assigned error, is plain. In these ballots, the nicknames "Tomy", "Tome", "Tomi" and "Toma" are prefixed by a "J", which is the initial of Jacinto, the appellant's Christian name. For this reason and because the votes for governor in these 61 ballots sufficiently identify the appellant, we hold that the third assigned error cannot be sustained and overrule the same.

In his fourth assigned error, the appellee questions 8 ballots of the appellant containing votes cast in favor of "H. Tomacruz". These votes were adjudicated to the appellant by the court. We have already decided that the initial "H" is equivalent to "J" in the vernacular writing, for in Tagalog at least, the "H" when sounded is used as the equivalent of a "J". We overrule the fourth assigned error as devoid of merit.

In his fifth assigned error, the appellee asks that there be deducted from the appellant the vote for governor cast in favor of "J. Cruz" in the ballot 1015 of precinct No. 5 of Jaen. The contention is correct. The initial "J" is not exclusively for the appellant's Christian name, and the surname "Cruz" is common and is used by many Filipinos of different families and is not the correct surname of the appellant. The fifth assigned error is, sustained as well taken, and 1 vote should be deducted from the appellant.

In his sixth assigned error, the appellee questions six (6) ballots and asks that the votes for governor be deducted from the appellant. We have examined these ballots one by one and we have reached the conclusion that they are not vitiated by the defects pointed out. We hold the votes for the appellant valid and overrule the sixth assigned error as devoid of merit.

In his seventh assigned error, the appellee questions 46 ballots whose votes for governor were counted and adjudicated by the court in favor of the appellant. The appellee alleges that these 46 ballots, taken together, appear to have been written by one person and that there was a deliberate plan to tamper with and frustrate the true will of the electorate. We have carefully examined the ballots and we have found that they are not vitiated by the defect pointed out, and we are convinced that no irregularity was committed. We overrule the seventh assigned error as groundless.

In his eighth assigned error, the appellee claims the votes for governor contained in 10 ballots which the court rejected and did not adjudicate to the appellee. These ballots are marked as Exhibits C-8, XX-6, AAA-3, Y-3, Y-4, MM, MM-1, NN-5, W-3 and DDD-3. We have carefully examined said ballots and have seen that, with the exception of XX-6, all the rest are valid and the votes for governor should be counted in favor of the appellee. In the ballot C-8, the initial of the Christian name is an "A", although it resembles a "U" at a glance; the voter is not a good scribe, hence, the defect. In AAA-3 the vote is for "A. Ceselo"; the last word is idem sonans with the appellee's surname. In Y-3 the vote is for "Cisillo oRello"; it identifies the appellee, although his name and surname are inverted. In Y-4 the initial of the Christian name is an "A", although imperfectly written as to resemble a "V"; the surname, although badly spelled, is that of the appellee. In MM the initial "A" is clear, and so also is the surname "Cecilio"; it is said that the initial is a "U" because the upper angle is rather open than closed. In MM-1 the vote is for "A. Ceollo"; the last word is idem sonans with Cecilio. In NN-5 the initial and the surname of the appellee were written in the line for representative and C. Padilla in the line for governor; having noticed his error, the voter drew two crossed arrows indicating that his desire is to vote for Cecilio as governor and for Padilla as representative. In W-3 the person voted for is "A. Ceselie", although the initial bears a resemblance to a "C"; the surname is clearly idem sonans with that of the appellee. And in DDD-3 the vote is for "A. Ceillos"; the surname is idem sonans with that of the appellee. The ballot XX-6 was rejected by the court because marked with the word "Sagap". We agree with this finding. We, therefore, hold that under the eighth assigned error, the appellee has obtained nine (9) votes.

In his ninth assigned error, the appellee asks the invalidating of the 34 ballots of precinct No. 10 of Cabanatuan, Exhibits 595 to 628, inclusive, whose votes for governor were counted for the appellant by the court. It is alleged that the crosses, alterations and erasures were made by the voters who prepared the ballots, and, furthermore, that in some of them the vote for governor is cast for "Tomy". We have examined the ballots and we are convinced that the crosses, alterations and erasures were made by different persons and that they were the result of the fraud committed which is referred to in our decision. The votes were originally cast for the appellant. As to the second ground of the challenge, we have not found any vote for "Tomy". We overrule the ninth assigned error as groundless.

In his tenth assigned error, the appellant claims 52 ballots whose votes for governor were altered, crossed, and erased. The court invalidated the ballots and did not count the votes for governor. These ballots were likewise

claimed by the appellant in his third assigned error. We find no merit in the appellee's contention and overrule his tenth and last assigned error.

Recapitulating what has been determined so far shows that under the appellant's motion for reconsideration, he had obtained a plurality of 35 votes over the appellee. As a result of the appellee's second assigned error, 40 votes should be deducted from the appellant. From this it follows that the appellee has now a plurality of 5 votes. Numerically stated, the result is the following:

Votes to be deducted from the appellant under appellee's second assigned error

40

Minus the appellant's plurality under his motion for reconsideration

— 35

Appellee's partial plurality

= 5

In the appellee's fifth assigned error, the appellant lost one (1) vote, and in his eighth assigned error the appellee obtained nine (9); which, computed in figures shows:

Partial plurality of the appellee

5

Result of appellee's second assigned error

1

Obtained in appellee's eighth assigned error

9

Total plurality of the appellee

= 15

It, therefore, appears that, after resolving the appellant's motion for reconsideration and the appellee's assigned errors, the appellee has obtained a plurality of 15 votes over the appellant.

All the findings and conclusions made in our decision promulgated on December 21, 1935, which have not been reversed, modified or affected by our conclusions herein, are hereby made a part of, and incorporated in, this amendatory decision, and it is hereby declared that the appellee Aurelio Cecilio has been legally elected to the office of governor for the Province of Nueva Ecija with a plurality of fifteen (15) votes over the appellant, and to this extent, the dispositive part of our decision promulgated on December 21, 1935, is set aside. The costs on appeal and other incidental expenses should be taxed against the appellant.

In view of the foregoing, the appellant's motion for reconsideration is overruled as without merit. So ordered.

Villa-Real, Butte, Goddard, and Diaz, JJ., concur.

Motion overruled

ORDER

January 29, 1936.

It appearing from our amendatory decision rendered in this case that the four (4) quadruplicates of the election statement of precinct No. 4 of San Isidro, Province of Nueva Ecija, have been deliberately and illegally tampered with and falsified in the statement of the number of votes obtained by the candidates for provincial governor, Jacinto Tomacruz and Aurelio Cecilio, and those cast in favor of Gonzales, Gabaldon, Aldama and Aglipay; it is hereby suggested that the Solicitor-General order the provincial fiscal of Nueva Ecija to make a prompt investigation of the facts and to prosecute the guilty parties for the crimes or violations of law which the evidence warrants.

Let a copy of the amendatory decision be served upon the Solicitor-General who may examine all the documents relating to the case. The clerk shall retain and place at the disposal of said officer the ballot boxes of precinct No. 4 of San Isidro, their contents, the quadruplicates of the election statement and such other documents as may be necessary.

Villa-Real, Imperial, Butte, Goddard, and Diaz, JJ.

DECISION ON THE MOTION FOR RECONSIDERATION AND NEW TRIAL FILED BY COUNSEL FOR THE RESPONDENT-APPELLANT.

March 30, 1936

IMPERIAL, J.:

In a so-called motion for reconsideration or new trial, under date of February 13, 1936, the appellant sets out nine grounds in support of his prayer to set aside the judgment rendered in the case and to declare him provincial governor elect of Nueva Ecija.

Upon the granting of the motion for reconsideration and new trial by resolution of March 3, 1936, the amended decision rendered in the case was set aside in accordance with Rule 39 of this court, and the rehearing was set on March 7, 1936, when counsel for both parties orally reargued the case.

The first ground of the motion reads: "The Supreme Court erred in not counting three votes of the respondent corresponding to the group of 27 ballots which is the subject matter of the fifth ground of our first motion for reconsideration."

In the fifth ground of his first motion for reconsideration, the appellant claimed the votes for governor contained in 28 ballots of precincts Nos. 8 and 9 of the municipality of Gapan. In passing thereon, we said on page 9 of our amended decision that the number of ballots claimed under said fifth ground of the first motion for reconsideration was 28, as specifically alleged on pages 106 (a) and 109 (b) of the first motion for reconsideration. We next stated that after a reexamination of the ballots, the members of the Second Division had taken a different view and had decided to adjudicate all the votes in favor of the appellant (p. 9 of the amended decision). The appellant now contends that in the said fifth ground of his first motion for reconsideration he had claimed 31 ballots or votes and that this court, in deciding it favorably, failed to give him the remaining 3 votes. These three ballots which the appellant now claims are Exhibits 769, 770 and 786. Without conceding the omission or error attributed to us, we have decided to adjudicate the 3 votes to the appellant in view of the fact

that, after a reexamination of the 3 ballots we have been convinced they have the same conditions as those whose votes were credited to the appellant, as the alterations and erasures seem not to have been made by the same voters who prepared the ballots, and because these 3 ballots form a part of those which were tampered with as a result of a fraudulent plan. The first ground of the motion is, therefore, sustained, and by virtue of it the appellant has obtained 3 votes.

In passing upon the eighth assigned error of the appellee, we said on page 15 of our amended decision that the vote for governor in the ballot Exhibit MM-1 should be counted in his favor, because the vote is for "A. Ceolleo" and the last word is idem sonans with Cecilio. In the Second ground of his motion for reconsideration and new trial, the appellant contends that this vote should be deducted from the appellee because it had already been adjudicated to the appellee by the court in its decision. This is true, and so likewise is the fact that a ratification of what has been decided would result in the adjudication of this vote twice in favor of the appellee. But the reason now alleged by the appellant was not stated in his answer, hence, this court could not take it into account. It is ruled that 1 vote should be deducted from the appellee under this second ground.

In passing upon the sixth ground of appellant's first motion for reconsideration, we said on pages 9, 10, and 11 of the amended decision that the vote for governor in ballot Exhibit WW-3, among others, should have been counted in favor of the appellee because the ballot was not marked by the mere fact that at the foot thereof, outside of the spaces for councilors, appeared the name "A. Or same". We made some observations which now appear incorrect due to the omission of the negative adverb "no". To correct the clerical error which has been committed in the sentences "which we hold to be marked" "which was admitted as valid" on page 10 of the amended decision, and "which was accepted as valid in another case" on page 11, the same should read, respectively, thus: "which we hold not to be marked" "which was not admitted as valid" "which was not accepted as valid in another case."

It is insisted in the third ground of the motion for reconsideration and new trial that the vote in this ballot WW-3 should not be counted for the appellee because the said ballot was held illegal, because marked, in case G. R. No. 42673, Faigal vs. Calica (61 Phil, 1029) decided by a Division of Three of this court. After further consideration of the case, the members of this court have finally decided to deduct said vote from the appellee.

In passing upon the sixth ground of the appellant's motion for reconsideration, we said on pages 9 and 10 of the amended decision that ballots, Exhibits 65 of precinct No. 5 of Lupao, 86 and 87 of precinct No. 3 of Rizal, 641 of precinct No. 10 of Cabanatuan and 765 of precinct No. 8 of Gapan (5 ballots in all) were marked, and consequently the votes for governor should not be adjudicated to the appellant. In the fourth ground of his motion for reconsideration and new trial, the appellant assigns said ruling as error, and asks that the said five (5) votes be adjudicated to him. Disregarding the circumstance that the prayer, as to said five (5) ballots, is really a second motion for reconsideration the presentation of which was without prior leave of this court, in violation of the provisions of Rule 39, we are of the opinion, and so hold, that the contention is groundless because the ballots are marked and our reasons therefor have been stated already on page 10 of the amended decision. The fourth ground of the motion for reconsideration and new trial is overruled.

In his eleventh assigned error specified in his brief, the appellant claimed the votes for governor in 34 ballots which the court did not adjudicate to him. Among those ballots were Exhibits 304 (precinct No. 5 of Cabiao), 131 (precinct No. 3 of Laur), 128 (precinct No. 4 of Laur), 252 (precinct No. 2 of Penaranda), 204 (precinct No. 8 of San Antonio), 173 (precinct No. 15 of San Jose) and 186 (precinct No. 1 of Pantabangan). In passing upon the error assigned, we said on pages 23 and 24 of the original decision that the votes for governor in these seven (7) ballots should not be counted for the appellant because the votes were cast in favor of T. Cruz" and this name is not that of the appellant, nor is it idem sonans with his Christian name and surname. In the first motion for reconsideration filed by the appellant, under date of January 20, 1936, he did not question the ruling on these

seven (7) ballots, nor were they touched upon in any of the six grounds or reasons of said first motion for reconsideration. The appellant for the first time questions the ruling on these seven (7) ballots in the fifth ground of his motion for reconsideration and new trial dated February 13, 1936. This motion, in connection with the ruling in the original decision which has not been the subject matter of any of the grounds of the first motion for reconsideration, is and must be considered as a second motion for reconsideration. Thus viewed, it is plain, therefore, that the appellant cannot be permitted to raise this question for the first time in his said second motion for reconsideration. To adopt a different rule or standard would be to give neither finality to decisions of courts nor end to litigations. It may perhaps be argued in the present instance that the decision rendered in the case ceased to exist upon the granting of the motion for reconsideration and new trial last filed, but to this we answer that all that has been determined in the first decision which has not been the subject matter of the two motions for reconsideration, continues in being as a matter already discussed and decided, for otherwise parties would be at liberty to raise anew questions which they themselves have already conceded as sufficiently discussed and correctly decided. We do not believe that this result is the meaning and scope of the provisions of Rule 39 on the matter.

Independent of the procedural question above decided, and going into the merits of the fifth ground of the motion for reconsideration and new trial, we believe that the same is groundless. The first six ballots were rejected because the votes for governor were for "T. Cruz", and this name was held not to be idem sonans with that of the appellant. Ballot 186 was likewise rejected because the vote for governor was for "T. Cros", and it was decided that, conceding that "Cros" is idem sonans with "Cruz" it also fails to identify the appellant. We are convinced that the rule thus laid down is correct, and there being no reason for a change in view, we overrule the fifth ground of the motion for reconsideration and new trial.

In the sixth ground of his motion for reconsideration and new trial, the appellant claims the votes cast for governor in ballots Exhibits 992, 996, 119, 191, and 1015. The votes in the first four ballots were rejected because we said on pages 24 and 25 of the original decision that they were cast in favor of "J. Cruz" and that this name does not identify the appellant, nor is it idem sonans with his name. We then added that "Cruz" is a name commonly used by numerous Filipino families. Aside from this, it appears that the ruling on these four (4) ballots in the original decision was not questioned by the appellant in his first motion for reconsideration. He questions it for the first time in the sixth ground of his motion for reconsideration and new trial. We hold that the ruling on this procedural question is equally applicable to the four (4) ballots.

The ballot 1015 was one of those involved in the fifth assigned error of the appellee, and it was resolved for the first time in the amended decision not to count the vote in favor of the appellant. In this respect, the motion for reconsideration last filed cannot be considered improper; but it appearing that the vote was in the name of "J. Cruz", for the reasons above stated, this vote cannot be counted for the appellant. We rule that the sixth ground of the motion for reconsideration and new trial is unfounded.

In the seventh ground of his motion for reconsideration, the appellant insists that the ballots, Exhibit CC and Exhibit CC-1 be rejected. These two ballots correspond to precinct No. 2 of Penaranda, but they were found in the box of precinct No. 5 of the said municipality, and notwithstanding this fact the votes for governor were adjudicated to the appellee. We said on pages 29 and 30 of the original decision that the votes were correctly counted and adjudicated by the court because it was not established that the transposition was due to a fraudulent plan, and that in the absence of fraud, it may be presumed that the transposition resulted from error or inadvertence of the election officers. In his first motion for reconsideration, the appellant did not question the ruling in the original decision. In his motion for reconsideration and new trial he asks for the first time that said two votes be deducted from the appellee. We repeat that the appellant cannot properly do so, and that such

practice cannot be countenanced because it would render the doctrine of *res judicata* illusory.

Passing upon the merits of the seventh ground, we hold that the same is groundless because we see no good reason to change our opinion already stated. There is no evidence of fraud, and fraud cannot be presumed. If their votes are invalidated, the innocent voters will be deprived thereof. This result is obnoxious to the letter and spirit of the Election Law. The seventh ground of the motion for reconsideration and new trial is overruled.

In the eighth ground of his motion for reconsideration and new trial, the appellant asks for the rejection of the votes for governor cast in favor of the appellee in ballots Exhibits AA-6, AA-7, AA-8 and AA-9 of precinct No. 1 of Peiiranda. The names of those voted for different offices in these four ballots are indistinctly but uniformly written in blue pencil. On pages 33 and 34 of the original decision we said that these four (4) votes should be counted because in the absence of proof of fraud or of intention to mark the ballots, the use of blue pencil should be considered as accidental and probably due to the fact that the voters did not find any other kind of pencil or that they brought blue pencils with them beforehand. A further examination of the four (4) ballots has led us to the conclusion that these ballots were apparently prepared by persons who assisted illiterate voters. If such were the case, it is not strange that the person or persons who wrote said ballots had blue pencils with them. We find no reason to change our opinion.

The same question of procedure arises in the present instance and should be resolved against the appellant. The latter did not question in his motion for reconsideration the ruling on these four (4) ballots in the original decision. He challenged it for the first time in his motion for reconsideration and new trial. The eighth ground of the motion for reconsideration and new trial is overruled as groundless.

In the ninth ground of his motion for reconsideration and new trial, the appellant again claims the votes for governor cast in 44 ballots in favor of the aliases or nicknames. Of these ballots, three are for "Toma", seven for "Tome", seven for "Tomi" and the rest for "Tomy". Counsel for the appellant vigorously contends that, according to the oral evidence adduced, said aliases or nicknames conclusively identify the appellant and for this reason the votes should be adjudicated to him. As has been stated in the original and amended decisions in passing upon this question, this court has uniformly held in former decisions that the aliases or nicknames should not be counted as valid votes in favor of a candidate. But inasmuch as the legal provisions upon which the doctrine was based were not then stated, we will now try to point them out to show that the judicial precedent is based upon clear and unmistakable provisions of the Election Law and its amendments.

The legal provisions bearing on the manner the votes for different offices should be cast by the voters, in force on the date the elections in question took place, are found in sections 404, 442, 452 and 464 of the Election Law, as amended, pertinent portions of which read:

"SEC. 404. Certificate of candidacy.—No person shall be eligible for the office of Senator, Representative, or for any elective provincial or municipal office unless, within the time fixed by law, he shall file a duly sworn certificate of candidacy

"Said certificate shall declare that the person whose signature it bears announces, or permits to be announced, his candidacy for the position in question; * * * Provided, further, That in case there are two or more candidates for the same elective office who have the same name and surname, any one of them who has at any time been elected to any elective insular, provincial, or municipal office may continue using the name and surname, set forth in his previous certificate of candidacy, while the others shall be obliged to state in their certificates of candidacy, in addition to their name and surname, their second name or maternal family name ,* and in case these candidates present themselves for the first time for the same elective office, they shall all be obliged to state in the certificate of candidacy, in addition to their name and surname, the second name or maternal family name."

"Sec. 442. Official ballots.—Official ballots shall be provided at public expense for every election held under this chapter. There shall be at each polling place but one form of ballot, which shall be of ordinary white printing paper in shape a strip one hundred and forty millimeters wide and three hundred and four millimeters long, and contain a printed heading of the title of each office to be voted for and the number of candidates for which the voter may vote on the left margin, with a corresponding number of spaces opposite the title. Such titles shall be printed both in Spanish and English in ten point (long primer) roman type and at the top of the ballots shall appear in eight point (brevier) gothic type both in English and Spanish the legend, 'Do not make any mark on this ballot or write anything thereon but the names of the candidates you vote for. Any violation of this instruction will invalidate the ballot.' "

"Sec. 452. Preparation of ballot by voter.—The voter on receiving his ballot shall forthwith retire alone to one of the empty polling booths and shall there prepare his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. No voter shall be allowed to occupy a booth already occupied by another voter, or to occupy a booth more than ten minutes in case there are voters waiting to occupy booths, or to speak or converse with any one other than as herein provided while within the polling place. It shall be unlawful to erase any printing from the ballot or to add any distinguishing feature thereto, or to intentionally tear or deface the same, or to make any mark thereon other than the name of the candidates voted for. It shall likewise be unlawful to use carbon paper for making a copy of the ballot or make use of any other means of identifying the vote of the voter."

"SEC. 464. Mode of procedure in counting votes.—The board shall then proceed to count the votes in the manner following:

" 'The ballots shall be arranged in piles in front of the chairman of the election board, who shall take them one by one and read therefrom, jointly with the other inspector of the party opposed to that of the chairman of the board, in the order in which they appear thereon, the names of the persons voted for, assuming such a position as to enable all, or at least a majority of the watchers to read such names * * *.' "

"Votes for persons who have not filed certificates of candidacy for any office shall be counted in the count of votes as scattering votes."

It will be observed from a reading of said sections that the law invariably requires that the voters cast their votes in favor of registered candidates by writing their names or their signatures appearing in the certificate of candidacy. By name should not be understood any other but the Christian name and surname of the candidate, with his accustomed initial. Thus, section 404, requiring the filing of the certificate of candidacy, provides that a person who announces his candidacy should sign his name in the certificate which must be sworn to by him, and that in case there are two or more candidates who have the same name and surname, the one who has not been elected to any office shall state his maternal family name, and in case neither has, been elected to any office, both of them should state their maternal family names in their certificates. Section 442, prescribing the form of the official ballot and the printed words that it should contain, requires that at the top thereof should appear in gothic type both in English and Spanish the legend "Do not make any mark on this ballot or write anything thereon but the names of the candidates you vote for. Any violation of this instruction will invalidate the ballot" Section 452, which deals with the preparation of the ballot, provides that the voter should fill the proper space for each office by writing the names of the candidates for whom he desires to vote; and section 464, which speaks of the mode of procedure in counting votes, provides, among other things, that the chairman of the election board shall read in the presence of the other inspector the names of the persons voted for, and in another paragraph, provides that votes cast for persons who have not filed certificates of candidacy shall be considered as scattering votes.

From this clear and controlling provisions, the only logical inference is the law's intention not to permit electors to vote for their candidates by their aliases or nicknames. Otherwise the law would not have enjoined the voters to

write the names of the candidates or would not have directed the printing in a conspicuous place of the official ballots as a legend that any violation of the instruction thus set out would immediately invalidate the ballot. Construing the law, this court has uniformly held in all the cases where the same question has been raised that the aliases or nicknames should not be counted as votes legally cast in favor of a candidate because they do not sufficiently identify anybody. Thus, in the case of *Molina vs. Nuesa* (G. R. No. 30548, the decision of which was promulgated on June 5, 1929, not reported), it was said:

"As to the 34 ballots which were rejected by the lower court as votes in favor of the protestee-appellant Sotero Nuesa, because on the space for the office of municipal president appear the words 'Apo Sotero' only, and which are the subject matter of the second assigned error, this court, in *Cailles vs. Gomez and Barbaza* (42 Phil., 496), has held that the ballots bearing the Christian name only should be rejected as insufficient to identify the person voted for. 'Sotero' is the Christian name of the protestee and appellant, and 'Apo', according to the evidence, is an Ilocano word of respect corresponding to 'Senor' or 'Don', which is used in addressing a respectable person or when his name is mentioned. The fact that the protestee and appellant, in stating in his certificate of candidacy the names by which he is known in the municipality of Gamu, had included the words 'Apo Sotero', is not sufficient to know to a certainty that the voter, in writing on the space of his ballot corresponding to the office of municipal president, the words 'Apo Sotero' undoubtedly refers to the protestee, because the word of respect 'apo' being applicable to all respectable persons bearing the name of Sotero, the voter could have intended to vote for any one of them. It comes to pass not infrequently that persons who are not candidates for an office have been voted therefor, thus the Election Law has seen it fit to declare it a scattering vote. It has been attempted to establish that in the municipality of Gamu there is no other person, except the protestee and appellant, known by 'Apo Sotero', but it has not been proven that there is any other respectable person bearing the Christian name Sotero and to whom an Ilocano voter would naturally apply the word of respect 'apo'. Moreover, the protestee-appellant is not, so to speak, a venerable man, from age or position, deserving the exclusive title 'apo' or 'Don', in such a way that he is known to all as 'Apo Sotero', inasmuch as he is only 37 years of age and is a mere purchasing agent of tobacco of the Alhambra and the Compania Tabacalera whose duty was to go from one barrio to another during the harvesting season in order to buy tobacco; nor is he believed, by the ignorant and credulous, to be endowed with some supernatural power like 'Apong Iro' and 'Apoug Ipi.'"

In the case of *Aure Alegre vs. Aure Perey* (G. R. No. 31017, the decision of which was promulgated on March 26, 1929, not reported), in passing upon the same point, this court said:

"It is contended by the appellant Pedro Aure Alegre that the 177 ballots, in every one of which appears written the word 'Tandac' which were admitted by the court as vote in favor of the respondent and appellee Pedro Aure Perey, should be rejected. 'Tandac' is a Tagalog adjective which in Spanish means low, or of a low stature. It is applicable to all persons having that stature. It does not appear that Pedro Aure Perey is the "only person in the municipality of Mendez Nunez, Province of Cavite, who is low in stature in such a way that one who hears the word "Tandac" immediately gets the impression that reference is made to Pedro Aure Perey. Usually, when it is desired to identify a person by a peculiar physical defect or by any characteristic in doing or saying anything, there is added to his Christian name the word indicative of said defect in order to distinguish him from other persons bearing the same Christian name. The fact that Pedro Aure Perey is ordinarily known as 'Tandac' and had stated such circumstance in his certificate of candidacy is not sufficient to identify him, as the adjective 'Tandac' being applicable to persons without number, it is not possible to know to a certainty if, in writing the word 'Tandac' in his ballot, the voter had desired to vote for Pedro Aure Perey and not for another person of the same stature. Moreover, the law requires that voter should write the name of the person for whom he desired to vote, and this court has already held that the Christian name alone is insufficient to identify a candidate, hence, much less can a generic adjective alone serve to identify a candidate."

In the case of *Marquez vs. Santiago* (G. R. No. 36502, the decision of which was promulgated on July 27, 1932, 57 Phil., 969), it was said among other things:

"Error 11. The appellant questions the ballot Exhibit 63 of precinct 4 wherein appears the name 'Lore' voted for municipal president. This ballot was erroneously admitted by the court because, even granting that 'Lore' is the nickname of Laureano Marquez, that alone is not sufficient to identify him, and the ballot thus prepared should be deducted from the appellee." (Cailles vs. Gomez and Barbaza, supra.)

In the case of Fausto vs. Ramos (G. R. No. 42601, the decision of which was promulgated on April 11, 1935 [61 Phil., 1035]), it was said:

"The second assignment of error is also overruled. The trial court correctly rejected Exhibit 1-3. In the space for municipal president the voter has written the name 'Ambrocios' Even if he had written the Christian name of the appellant correctly this ballot could not have been admitted. This court has held that the writing of the Christian name of a candidate for office on a ballot is not sufficient identification to justify the counting of said ballot in favor of any candidate. In each of the ballots, Exhibits F and F-I, in the space for municipal president, the word 'licio' appears. If the entire Christian name is not sufficient to properly identify a candidate, it is certain that a nickname will not identify him. The fact that a candidate certifies that he is known by numerous nicknames will not justify a court in admitting and counting a ballot upon which any one of such nicknames appears without his family name."

In the case of Moral vs. Morales (G. R. No. 36147, the decision of Which was promulgated on February 10, 1932, 56 Phil., 833), this court said:

"It suffices to say that, while we are inclined to disagree with his Honor, the trial judge, relative to certain ballots, the total of these would not exceed ten. For instance, we would reject ballots simply containing the word 'Bolitog', and a ballot simply containing the word 'Nicolas'. But as intimated, there are not enough of these ballots as to which we differ in appreciation with the trial judge to change the result."

And in the case of Sarenas vs. Generoso (61 Phil., 549, the decision of which was promulgated on June 29, 1935), wherein this court again made a revision of the doctrines laid down in connection with the use of aliases and nicknames, it was said:

"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 that the trial court erred in rejecting one hundred and thirty ballots on the ground that the respondent-appellant was voted 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. Therefore the trial court did not err in rejecting the one hundred and thirty ballots on the ground above mentioned. Furthermore the doctrine laid down in Adeser vs. Tago (52 Phil., 856), and Namocatcat vs. Adag (52 Phil., 789), still holds good subject to the qualification made in Aure Alegre vs. Aure Perey (G. R. No. 31017, March 26, 1929, not reported), and Bayona vs. Siaotong (G. R. No. 36065, 56 Phil., 831). The rule in Bayona vs. Siaotong, supra, that the nickname must be affixed to the surname of the candidate is applicable even if no 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."

In support of his contention that the questioned ballots should be counted in his favor, the appellant relies on the decisions of this court in *Namocatcat vs. Adag* (52 Phil., 789), *Adeser vs. Tago* (52 Phil., 856), *Bayona vs. Siaotong* (G. R. No. 36065, 56 Phil., 831), and *Raymundo vs. De Ungria* (G. R. No. 43044, 61 Phil, 1054), wherein, it is alleged, this court counted as valid votes cast through aliases or nicknames. We have carefully examined said decisions and have not found anything in support of the contention. If the questioned votes in the said cases were considered valid and counted, it was because the nicknames were accompanied by the Christian name or surname of the candidate, or by the initials of his surname, and in such circumstances it was said that the votes sufficiently identified the persons in whose favor they were cast. The truth is that none of the aforesaid cases validated a single vote cast in favor of a nickname only.

It is said that the 44 votes under consideration sufficiently identify the appellant, because he, through the oral evidence which he presented, showed that he was known in the community by said nickname. In answer to this argument, it would suffice to state that all the oral evidence consisted in that the appellant was known and called by his friends and applauded in occasional political gathering or meeting by the said nickname. The voters who prepared the ballots did not testify; neither was there evidence to the effect that there was no other person in the community known and called by the same nickname. On the contrary, it has been proven that there are two Thomases in the province who are familiarly known and called as "Tomy". It is judicially known that "Tomy" is the diminutive of "Thomas" and that the Filipinos, since the implantation of the Anglo-American system of education, have used and applied it to those named Tomas. In view of this evidence and circumstances, it is evident that the oral evidence availed of by the appellant has not been sufficient to identify such votes, and this on the assumption that it is proper to adduce evidence aliunde tending to show the true intention of the voters in cases where that intention is not revealed by the ballots.

It is likewise argued that in the instant case the votes in question should be admitted and counted for the appellant because "Tomy" is a derivative of his surname. In the first place, there is not the slightest indicia of evidence that such word is derived from the surname Tomacruz. All the questions propounded to the witnesses who have testified on this point and their answers thereto show that "Tomy" is a nickname and not a derivative of Tomacruz. Counsel for the appellant never took the ground in first instance that this word is a derivative of the surname of the appellant. His theory from the beginning to the end was that "Tomy" is a nickname of the appellant. In the second place, granting that it is a derivative, neither does it identify the appellant with any degree of certainty. This is because it has been proven that there are two persons named Tomas who is known to his friends and acquaintances as "Tomy", and, in addition, sixteen persons named Tomas were candidates for vice-president and councilor at the elections which took place. To be convinced of the weakness of the argument, it would suffice to bear in mind that if the appellant were, for instance, surnamed Santacruz, Veracruz or Villacruz, under the same argument, he could claim all the votes cast in favor of Santa, Vera and Villa, and, on the same reasoning, it would not be logical to reject votes cast in favor of Cruz alone, because if, as alleged, "Tomy" is a derivative of the full surname Tomacruz, Cruz would be another derivative of the same surname as it is one of its components. Nevertheless, no one has seriously contended that the votes cast in favor of Cruz alone should be counted for the appellant.

As to the seven ballots with votes for "Tomi", seven ballots with votes for "Tome" and three ballots with votes for "Toma", we are of the opinion and so hold, that they should not also be counted for the appellant because they do not identify him. "Tomi" is the same alias or nickname "Tomy", the only difference being that the last letter is a Latin "i". What has been said with respect to "Tomy" is applicable to the votes for "Tomi", and it is unnecessary to repeat the same reasons already stated leading to the conclusion that said votes should be rejected. "Tome" and "Toma" are not idem sonans with the contractions of the surname Tomacruz. They are rather aliases or nicknames which do not identify the appellant; for this reason these votes should not be counted in his favor.

We conclude, therefore, that the forty-four (44) votes claimed by the appellant under the ninth ground of his second motion for reconsideration should not be counted as valid votes cast in his favor, wherefore, the said ninth ground is denied.

Summarizing what has been determined so far, it appears that under the first ground the appellant obtained three (3) votes, under the second ground one (1) vote should be deducted from the appellee, and under the third ground another vote should be deducted from the appellee. With respect to the remaining grounds, the votes of the parties have remained intact. From this it follows that, from the appellee's plurality of fifteen (15) votes, as has been held in the amended decision, five (5) votes should be deducted, thereby reducing the plurality to ten (10) votes only.

Wherefore, reproducing in this decision all the findings and rulings laid down in the original and amended decisions on all the ballots and questions of fact and law which are not in conflict with this decision, as if they had been incorporated and made an integral part thereof, it is declared that the protestant-appellee Aurelio Cecilio has been elected provincial governor of Nueva Ecija with a plurality of ten (10) votes, with the costs of both instances and other legal expenses to the protestee-appellant. So ordered.

Abad Santos, and Diaz, JJ., concur.

CONCURRING IN THE RESULT

LAUREL, J.,

I concur in the result in favor of the protestant-appellee.

The admission of 44 ballots on which the protestee-appellant, Jacinto Tomacruz, appears voted as "Tomy", "Tomi", "Tome" and "Toma" has given rise to considerable discussion. As I voted against their admission, I desire to express my reasons for so doing, in addition to those given by Justice Imperial.

It is conceded that this court has always adhered to the principle of liberality in the appreciation of ballots (see *Valenzuela vs. Carlos and Lopez de Jesus* [1921], 42 Phil., 428; *Mandac vs. Samonte* [1926], 49 Phil., 284, 301). Slight irregularities or imperfections in the written names do not vitiate the ballot, the underlying principle being that it should be admitted so long as it expresses the intention of the voter with reasonable certainty. But, if the ballot is not reasonably certain, if it does not sufficiently designate the candidate intended to be voted for, it can not be counted, as where only the initials or the Christian name of the candidate appears therein. It is the duty of the courts to give effect to the intention of the voter only if that intention is discoverable. The court can go no farther. It can not read into ballots names which do not there appear. It can not cast a new vote. It can not hold a new election.

The Election Law in section 452 requires the voter to write on the ballot the names of the persons for whom he desires to vote. "Tomy", "Tomi", "Tome" and "Toma" are not the names of the protestee-appellant, Jacinto Tomacruz: It is not even contended that any one of them is a derivative or contraction of the surname "Tomacruz". In point of fact, the whole attempt by the protestee-appellant in the trial in the court below was to prove that he was known throughout the Province of Nueva Ecija by the nickname "Tomy". He contends that under the authority of the earlier cases of *Namocatcat vs. Adag* ([1929], 52 Phil., 789, 793), and *Adeser vs. Tago* ([1929], 52 Phil., 856, 859), a nickname, standing alone, if manifested by a candidate in his certificate of candidacy as a name by which he is otherwise known, is sufficient to identify him. The settled rule in this jurisdiction however is that a nickname alone is not a sufficient identification of a candidate voted for. It is only where the nickname is accompanied by an additional description, such as the Christian name or a contraction of

the same, the surname, or other identifying circumstance, that the ballot is acceptable.

In the case of *Namocatcat vs. Adag*, supra, relied upon by the appellant in support of his contention, it was observed :

"* * * But even if the protestant-appellee had been adjudicated ballots in which appeared the name of Juan Gading, such adjudication would have been correct, because in his certificate of candidacy, Juan Namocatcat sets forth that he is also known by such name or nickname. In order to interpret the will of the Philippine voter of a slight education, we can not disregard the sociological fact that among the ignorant people, a person is better known, if not by his Christian name, then by his nickname alone." In the case of *Adeser vs. Tago*, supra, this court admitted in favor of Serapion Adeser, two ballots containing the name of "Apion Cerila". It was there said:

"* * * inasmuch as among Filipinos of scant education it very frequently happens that a person is better known by his nickname than by his Christian name and surname, and as it does not appear that there is any other person with the nickname 'Apiong Cerila' (except Serapion Adeser), the voters who wrote such nickname in the space for the office of municipal president of Dimiao could not have voted for any other than Serapion Adeser. This being the will of the two voters who used such nickname in voting for him, we must give it effect and hold said two ballots valid and admissible in favor of Serapion Adeser."

In the case of *Aure Alegre vs. Aure Perey* (G. R. No. 31017, March 26, 1929, not reported), this court in rejecting 177 ballots for the protestee, Aure Perey, said:

"Sostienes por el apelante Pedro Aure Alegre que las 177 balotas, en cada una de las cuales aparece escrita la palabra 'Pandac', que fueron admitidas por el Juzgado como votos a favor del recurrido y apelado Pedro Aure Perey deben ser rechazadas. 'Pandac' es un adjetivo tagalo que en castellano significa bajo, o de estatura baja. Es aplicable a todas las personas que tienen dicha estatura. No consta que Pedro Aure Perey sea la unica persona en el Municipio de Mendez Nunez, Provincia de Cavite, que tenga la estatura baja de tal suerte que al mencionarse la palabra 'pandac' el que lo oiga entiende inmediatamente que se refiere a Pedro Aure Perey. Ordinariamente cuando se le quiere identificar a una persona por algun defecto fisico peculiar o alguna costumbre que tenga de hacer o decir alguna cosa se agrega a su nombre de pila la palabra indicativa de dicho defecto para distinguirla de otras personas que tenga el mismo nombre de pila. El que a Pedro Aure Perey se le conozca ordinariamente por 'pandac' y haya hecho constar tal circunstancia en su certificado de candidatura no es suficiente para identificarle, puesto que siendo aplicable el calificativo 'pandac' a una infinidad de personas, no se puede saber con certeza si al escribir la palabra 'pandac' en su balota el elector haya querido votar por Pedro Aure Perey y no por otra persona que tiene la misma estatura. Ademas la ley exige que el elector escriba el nombre de la persona por quien desea votar, y esta Corte ya ha declarado que el nombre cristiano solo no es suficiente para identificar a un candidato, por consiguiente un adjetivo generico solo menos puede servir para identificar a un candidato"

In the case of *Molina vs. Nuesa* (G. R. No. 30548, June 5, 1929, not reported), one of the important questions brought to the attention of this court by the appellant, Sotero Nuesa, referred to 34 ballots found in precinct No. 3 of Gamu, Isabela. In these ballots, only "Apo Sotero" was written in the space for municipal president. This court said that in the case of *Cailles vs. Gomez and Barbaza* ([1921], 42 Phil., 496), the Christian name alone was held insufficient to identify a candidate. "Sotero" was the Christian name of the appellant and "Apo", according to the evidence, was an Ilocano expression of respect corresponding to "Seior" or "Don" and used when referring to a respectable person or when the name of such person was mentioned. In rejecting the 34 ballots this court said:

"* * * Se ha tratado de probar que en el Municipio de Gamu no hay otra persona, fuera del protestado y apelante, conocida por 'Apo Sotero', pero no se ha probado que no haya otra persona respetable que lleve el nombre de pila Sotero y a quien un elector Ilocano aplicaria naturalmente la voz de respeto 'Apo'. Ademas, el protestado apelante no es, que digamos, un hombre venerable por su edad y por su posicion que merezca el

titulo exclusivo de 'Apo' o 'Don' de tal manera que todo el mundo le conozca por Apo Sotero, puesto que no cuenta mas que con 37 años de edad y es un mero agente comprador de tabaco de la Alhambra y de la Compania Tabacalera con obligaci6n de ir de barrio en barrio en la epoca de acopio para comprar. tabaco; ni es un hombre a quien la gente ignorante y credula le cree dotado de algun poder sobrenatural como 'Apong Iro' y 'Apong Ipi' "

In the case of *Cribe vs. Palma* ([1932], G. R. No. 36649, 56 Phil., 852), 39 ballots with "Ticong Palma" were counted for Escolastico Palma because "Ticong" is an abbreviation or contraction of the Christian name. The case of *Echarri vs. Gomez* (50 Phil., 629, 634), was relied upon here where this court held that—

"* * * When, instead of writing the full Christian name of a candidate, a diminutive or an augmentative, or a contraction or abbreviation of said name in Spanish, or in any local dialect is used, the ballot for that reason alone does not become null, if from the reading of the name and surname of the candidate, it may be clearly inferred that the intention of the voter was to vote for said candidate." (See also *Mechem on Public Officers*, sec. 199, p. 122, and 45 C. J., sec. 11, p. 375.)

In the case of *Bayona vs. Siaotong* ([1931], G. R. No. 36065, 56 Phil., 831), it was held that a ballot wherein "Bernardo" followed by the nickname "Ogg", appeared or where "Pedro Sastre" was written could properly be counted, but not, if only the nicknames "Ogg" or "Sastre" were written. In that case this court said:

"* * * Hemos declarado mas de una vez que los apodos o mote con los nombres de los candidatos en una balota, como 'Juan Bombay', 'Pedro Sastre', 'Rafael Catsila', etc., no son marcas de identificaci6n; pero creemos que el empleo de un apodo, sin expresar el nombre de la persona a que corresponde, no es suficiente para identificar al candidato. (*Aure Alegre contra Aure Perey*, R. G. No. 31017, no publicado). Una balota, por ejemplo, en que se votara a 'Bernardo' seguido de su apodo 'Ogg' o a 'Pedro Sastre' serian balotas admisibles para estos candidatos, porque los apodos con los nombres identifican suficientemente al candidato. Mas, cuando la balota contiene un apodo, como 'Ogg' o 'Sastre' simplemente, semejantes balotas serian inadmisibles porque no identifican suficientemente al candidato."

In *Trillanes vs. Macatangay* ([1932], G. R. No. 36358, 56 Phil., 851), "Juan" followed by the word "Guinhaua" or "Gumhaua" was declared valid for Juan Macatangay because it appeared that this candidate was also known and called "Juan Guinhawa".

In the case of *Balon vs. Moreno* ([1932], 57 Phil, 60), "Cekoy Balon" was held valid for Francisco Balon since "Cekoy" is a nickname for Francisco. "Franco Balon" was also held valid, as "Franco" is an abbreviation of Francisco. In the case of *Reyes vs. Biteng* ([1932], 57 Phil., 100, 107, 108), this court said:

"* * * Although in the case of *Mandac vs. Samonte* it was held that the ballots bearing only the name or nickname were admitted because in that case there was only one candidate for the same office with the said name and nickname, this court has not adopted this rule in other cases wherein the same question was raised. It will be seen from an examination of the decisions in the cases cited above that the rule uniformly followed by this court is that votes cast in which the name or nickname alone appears are not valid and should not be counted." (See also *Fausto vs. Ramos*, G. R. No. 42601, April 11, 1935 [61 Phil., 1035].)

In the case of *Bungubung vs. Madayang* (G. R. No. 42483, March 30, 1935 [61 Phil, 1033]), "Salsalape" or "Salape" preceded by the Christian name of the protestant was admitted because it was shown that "salape" was his nickname.

In the case of *Katipunan vs. Antiporda* (G. R. No. 43043, July 30, 1935 [61 Phil., 1056]), "J Bolotong" was held admissible for Julio Antiporda. "J" stood for the Christian name "Julio".

In the recent case of *Sarenas vs. Generoso* ([1935], 61 Phil., 549), this court said:

"* * * 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 * * *.

"* * * the doctrine laid down in *Adeser vs. Tago* (52 Phil., 856), and *Namocatcat vs. Adag* (52 Phil., 789), still holds good subject to the qualification made in *Aure Alegre vs. Aure Perey*, G. R. No. 31017, and *Bayona vs. Siaotong* (G. R. No. 36065, 56 Phil., 831). The rule in *Bayona vs. Siaotong*, *supra*, that the nickname must be affixed to the surname of the candidate is applicable even if no 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. * * *"

It is contended that there is abundant evidence showing that the protestee-appellant, Jacinto Tomacruz, is generally known in the locality by the nickname "Tomy". But this is not decisive. It proves that "Tomy" is the nickname of the protestee-appellant but it does not necessarily follow that when the word "Tomy" is mentioned or used he, and he alone, is meant or intended. As a matter of fact, there is also evidence to show that there are other persons in the Province of Nueva Ecija known by the same nickname. Besides, even if he can prove that he is the only person in his locality known by that nickname still, under the doctrine laid down in the case of *Moral vs. Morales* ([1932], G. R. No. 36147, 56 Phil., 833), ballots bearing that nickname alone should not be counted for the protestee-appellant, Jacinto Tomacruz.

In the case of *Sarenas vs. Generoso*, *supra*, the evidence presented by the protestee, Sebastian T. Generoso, in support of his claim that the nickname "Sebas" sufficiently identified him, was substantially the same as that presented in the instant case. In that case as in the present, the candidate attempted to prove that he was generally and commonly known in the province concerned by his nickname alone; In that case, letters of President Manuel L. Quezon (Exhibit X-8) and Senator Manuel C Briones (Exhibit X-9), among others, were introduced as evidence. In those letters the protestee was referred to as "Sebas". In the present case, Judge Serafin Hilado (Exhibit 974) and Solicitor-General Jose P. Melencio (Exhibit 975), among others, deposed that the protestee is known by the nickname "Tomy". In the case of *Sarenas vs. Generoso*, there was evidence showing that the protestee was not the only person who had as nickname "Sebas" and this court, on abundant authority, held that the nickname "Sebas" did not sufficiently identify Sebastian T. Generoso. In the present case, there is also evidence that other persons, besides the protestee, were known by the nickname "Tomy", and no reason is perceived why the protestee should be considered as sufficiently identified by the use of the nickname "Tomy". It should further be observed that in *Sarenas vs. Generoso* there was one circumstance which might have weighed in favor of the protestee there, which does not exist in the present case, and that was that the election was held in Davao, a province inhabited by many non-Christians who had names sans surnames. If there was no reason to depart from the doctrine in *Sarenas vs. Generoso*, it is not seen why there should be any occasion for departure in the present case.

Nor does the fact that the protestee-appellant, Jacinto Tomacruz, mentioned the nickname "Tomy" in his certificate of candidacy justify the adjudication of forty-four ballots in o/aestion in his favor. In the case of *Reyes vs. Biteng* ([1932], 57 Phil, 100, 106), it was observed:

"* * * Although this court had held in various decisions that the names and nicknames appearing in a candidate's certificate of candidacy may be taken into consideration in interpreting the voters' will or intention, in no case has it held that a candidate can claim ballots clearly written in the name of different persons, because this practice would convert the certificate of candidacy into a sort of net or artifice with which to obtain invalid or scattered votes or those cast for other persons. * * *. Section 404 of the Election Law clearly

provides that the certificate of candidacy shall contain the candidate's signature, that is, his real name and surname, while section 452 requires voter to write clearly the name and surname of the candidate he is voting for. In view of such simple and specific legal provisions, we cannot comprehend how a candidate would enlarge upon his certificate of candidacy in such a way as to convert it into an elaborate instrument to improperly increase the number of his votes."

It is contended in the instant case, however, that "Tomy" is a nickname derived from the surname and not from the Christian name of the protestee-appellant, Jacinto Tomacruz. The theory advanced is that since the Christian name alone is not sufficient to identify a candidate, a nickname derived therefrom is, for stronger reason, not sufficient but that since the surname alone is sufficient, a nickname derived therefrom should also be considered sufficient. The principle invoked is that of liberality in the appreciation of ballots with a view to the ascertainment of the will of the electors. It is thus contended that considering the evidence presented in the case at bar to the effect that the protestee-appellant, Jacinto Tomacruz, is known all over the Province of Nueva Ecija by the nickname "Tomy", the will of the electors should not be frustrated by any strict interpretation. This is however begging the question. Identification as the final objective is one thing and the sufficiency of a nickname for this purpose is quite another thing. Upon the other hand, if a nickname, standing alone, derived from the Christian name is insufficient to identify a candidate, there is no reason why a nickname should be sufficient simply because it is derived from the surname, instead of the Christian name. There is no magic in a surname that would impart to a nickname derived therefrom a greater quality of identification. In the case at bar, it is also significant to note that "Tomy" is also the nickname of persons bearing the Christian name of "Thomas" or "Tomas". Certainly, when "Tomy" appears on a ballot without any other identifying circumstance, we can not say whether it is derived from the Christian name or from the surname of the person intended to be voted for by the elector. I believe that we should adhere to the settled rule and not yield to any subtle distinction. This is not advocating idolatrous reverence for precedent. I would hate to subordinate legal reason to a bad rule. But where the rule has not been shown to be bad and has been consistently and invariably relied upon in the past, it should not be altered at the last hour.

It is also contended that the passage of Act No. 4203 by the Philippine Legislature providing that certificates of candidacy "should not contain any nicknames or aliases of the candidates" (sec. 4) and that no ballots shall "be counted on which the candidate is designated by his nickname or alias, although mentioned thereof is made on his certificate of candidacy" (sec. 16), is an implied admission of the fact that prior to the passage of said Act the Legislature recognized the validity of nicknames as sufficient identification of candidates. It seems to me, however, that, in the light of the decisions that we have quoted at length hereinabove, the more reasonable view is that the passage of that Act is a recognition by the Legislature of the ratio decidendi deduced from said cases. Considering the trouble that nicknames have caused in the determination of election protests, the Legislature has gone farther than the courts and by the passage of Act No. 4203 has entirely prohibited the use of nicknames. According to said Act, ballots containing the nickname of a candidate even when coupled with the Christian name or surname or any other identifying circumstance are not admissible. And who knows but that the following observations made by the late Justice Villamor in the case of *Bayona vs. Siaotong* ([1931], G. R. No. 36065, 56 Phil., 831), had found a favorable echo in the halls of our Legislature:

"Pero la Ley Electoral solo prescribe que se escriban en la balota los nombres de los candidatos a quienes se desea votar (art. 452) y que los votos para las personas que no han presentado certificado de candidatura a algun cargo se contarán en el escrutinio como votos desperdigados (art. 464). El Hon. Juez que conocio de esta protesta critica con justicia el empleo inusitado de apodos, contracciones y transposiciones de nombres y apellidos en los certificados de candidatura y en las balotas del apelante, si bien aiiade que de entre las balotas del apelado solo ha encontrado 30 en que tambien aparecen apodos y contracciones de nombres. Tambien nemos notado un prurito de parte de los candidatos de uno y otro bando, incluyendo los concejales, de indicar

en sus certificados de eandidatura varias combinaciones de sus nombres, a tal grado que si el apelante hizo constar en su certificado de candidatura 34 combinaciones de nombres con que el es conocido en la localidad, el apelado tambien hizo constar en el suyo 167 combinaciones de nombres con que se le conoce en el municipio. Seria conveniente, en vista de los procedimientos cada vez mds ingeniosos que se emplean en las elecciones, que la Le~ gislatura dictase reglas prohibiendo el empleo de apodos o combinaciones de nombres tanto en los certificados de candidatura como en las balotas, y hasta seria conveniente eliminar a los pocos electores que no saben o no pueden preparar por si mismos sus balotas, para suprimir el origen de tantas protestas electorales; pero hasta que esto se haga, no nos sentimos justificados para declarar nulas las balotas en cuestion." (Underscoring ours.)

Regarding the fifth ground alleged in the motion for reconsideration or new trial, I do not agree with the following passage of the opinion penned by my brother Justice Imperial:

"Independent of the procedural question above decided, and going into the merits of the fifth ground of the motion for reconsideration and new trial, we believe that the same is groundless. The first six ballots were rejected because the votes for governor were for "T. Cruz", and this name was held not to be idem sonans with that of the appellant. Ballot 186 was likewise rejected because the vote for governor was for "T. Cros", and it was decided that, conceding that "Cros" is idem sonans with "Cruz" it also fails to identify the appellant. We are convinced that the rule thus laid down is correct, and there being no reason for a change in view, we overrule the fifth ground of the motion for reconsideration and new trial."

I express the opinion that the seven ballots on which "T. Cruz", or "T. Cros" is written are admissible as valid votes for the protestee-appellant, Jacinto Tomacruz, they being, in my opinion, contractions of the surname of the paid candidate. It should be observed that some ignorant voters or poor scribes write Christian names or surnames by dividing them into syllables, beginning each syllable at times with a capital letter. Realizing this fact, this court, in the case of *Mendoza vs. Mendiola* ([1929], 53 Phil., 267, 270, 271), read "Gudo Fridom" as "Godofredo M" and held it valid for Godofredo Mendoza. And in the case of *Bongabong vs. Dominguez* ([1932], G. R. No. 36200, 56 Phil., 833), "Hermenegildo D. Gus" and "H. Dom ges" were held valid for Hermogenes Dominguez although the surnames were defectively written. The letter "T" in "T. Cruz", "T. Cruz" and "T Cros" represents the first syllable of the surname "Tomaeruz." Instead, however, of writing the first syllable "Toma" completely the voters wrote only the initial letter "T" and, considering the first syllable independent of the second and last, they put a period or not at all after that letter "T". I am of the opinion that the surname "T. Cruz" or "T Cros" as written is idem sonans with the complete surname "Tomaeruz". And the surname alone has been consistently held by this court sufficient to identify a candidate. The fact that said surname has been defectively written does not render the ballots on which it has been written inadmissible. In the case of *Valenzuela vs. Carlos and Lopez de Jesus* ([1921], 42 Phil., 428, 465), it was said:

"* * * With respect to errors of spelling, or lack of finish in the written name, it may be said that no honest mistake due to ignorance or illiteracy, should be permitted to defeat the intention of the voter, if that intention is discoverable; and in this connection the utmost liberality of construction must prevail."

Regarding the sixth ground of the motion for reconsideration or new trial, I am of the opinion that the five ballots on which are written "J. Cruz" were properly rejected. It has been repeatedly held by this court that where a ballot contains a surname distinct from that of the candidate the ballot should not be counted in his favor even if it be accompanied by his full Christian name (*Valenzuela vs. Carlos and Lopez de Jesus*, supra; *Mencfoza vs. Meridiola* [1929], 53 Phil., 267; *Dumpit vs. Rimando* [1932], G. R. No. 36160, 56 Phil., 834; *Cauan vs. Pagulayan* [1932], G. R. No. 36849, 57 Phil., 967; *Balonvs. Moreno* [1932], 57 Phil., 60; *Reyes vs. Biteng* [1932], 57 Phil., 100; *Ignacio vs. Navarro* [1932], G. R. No. 37401, 57 Phil., 1000, 1011). "Cruz" is not "Tgmacruz", and it is a matter of common knowledge that "Cruz" is a very popular surname in the Islands. For obvious reasons,

ballots with "J. Toma" should also have been rejected, but having taken no part in the deliberations on this point, I did not have the opportunity of expressing my views then and before the decision of this court was promulgated on January 29, 1936.

In all other respects, I concur in the foregoing opinion of Justice Imperial.

DISSENTING

AVANCEÑA, C.J.,

I dissent.

I do not agree with the majority opinion as to the thirtyfour ballots cast in the name of "Tomi" and "Tomy", which, in my opinion, should be counted in favor of the protestee.

Numerous unimpeachable witnesses testified that the respondent is known in the province as "Tomi" or "Tomy", and with this name has been presented and applauded at public meetings during the last election campaign. Counsel for the protestant himself admits that he knows the protestee as "Tomy". The original decision of this court, in counting the ballots cast in favor of "J. Tomy" and "J. Tomi", as votes for the protestee, likewise concedes that "Tomi" and "Tomy" refer to the protestee. In his certificate of candidacy, the protestee states that he is known as "Tomy". All the election inspectors, including those of the protestant, in the precincts where the questioned ballots appeared, counted them as votes for candidate Tomacruz. To this the watchers of the protestant did not object. This combination of circumstances shows that up to the filing of this contest, it was undoubted that candidate Tomacruz was voted for in the ballots in question, and that the lower court committed no error in adjudicating them to this candidate.

It is, consequently, a fact that the protestee is known in the province as "Tomy", which is, as will be seen, a contraction or abbreviation of his surname Tomacruz. If "Tomy" and "Tomi" are equivalent to the protestee's surname Tomacruz, the ballots containing this name should be counted as votes in his favor, as this court has held that the surname, standing alone, suffices to identify, when there is no other candidate for the same office bearing the same surname, as there is none in this case.

Furthermore, it can be stated, in accordance with the results of this case, that the names "Tomy" and "Tomi" cannot be applied to any other candidate. The protestant has attempted to prove that one, Tomas de Castro, a chauffeur, is known in the municipality of Quezon as "Tomy". But the fact, however, is that not a single ballot containing the names "Tomy" and "Tomi" was cast in the municipality of Quezon, and it is utterly unreasonable to suppose that the ballots cast in other municipalities with these names, for the office of governor, could be intended for this chauffeur Tomas de Castro.

The instant case is different from those wherein this court held that the nicknames used by the voters do not sufficiently identify the person voted for: the nickname "Pandac" being a physical trait which may be present in many other persons, and the contractions "Lore" of Laureano, "Ucio" of Ambrosio and "Sebas" of Sebastian, being those of Christian names which, standing alone, according to other decisions, do not sufficiently identify the persons intended by the voter. In the instant case the contraction or abbreviation is that of surname, which, standing alone, according to their decisions, is sufficient to identify the candidate. To show that this is the opinion of the court, there can be cited the case of Sarenas vs. Generoso (61 Phil, 549), wherein a ballot cast in favor of "Neroso", which is a contraction or abbreviation of the surname of Generoso by eliminating the syllable "Ge" was accepted as a valid vote for Sebastian Generoso.

In the appreciation of ballots, the cardinal rule is to give effect to the voter's will, if this is reasonably discernable. In the instant case, the evidence is overwhelming, and the attempt to overthrow it has proved futile, that the thirty or more voters of Nueva Ecija who voted for "Tomy" or "Tomi" for the office of provincial governor, intended to vote for candidate Tomacruz. This will being known, the form of its expression is of secondary consequence.

VILLA-REAL, J.:

I concur in the dissenting opinion of Chief Justice Avancena.

DISSENTING

RECTO, J.,

I hold to the dissenting opinion of Chief Justice Avancena, and likewise register my dissent from the majority opinion in so far as it overrules the fifth, sixth, seventh, and eighth grounds of the second motion for reconsideration bearing on the ballots with the names "J. Cruz" and "T. Cruz", voted for the office of governor; the two ballots of precinct No. 5 found in one of the boxes of precinct No. 2, both of Penaranda, and the four ballots written in blue pencil of precinct No. 1 of the same municipality.

- In the second decision of this court, it appears that the ballots with "J. Toma" written on the space for the office of provincial governor, have been reckoned with as valid votes for the protestee Jacinto Tomacruz. The same reason which has induced this result militates in favor of counting the ballots containing "J. Cruz." "Tomacruz" is made up of the words "Toma" and "Cruz". If "Toma", as this court holds, stands for "Tomacruz", similarly, "Cruz" should stand for "Tomacruz". In other words, if by "J. Toma" the court means Jacinto Tomacruz, it follows that "J. Cruz" is equally so meant. It should further be kept in mind that in the municipalities disclosing the ballots with the name "J. Cruz", voted for the office of governor, no other person surnamed "Cruz" or "De la Cruz" was a candidate for any insular, provincial, or municipal office, and that the protestee's certificate of candidacy duly stated that he is also known as "J. Cruz".

- The ballots with the name "T. Cros" or its idem sonans "T. Cruz", with or without a period after the "T" should also be counted as votes for the protestee, because "T. Cruz" is only the abbreviation of "Tomacruz". If "Tomacruz" alone, without the Christian name "Jacinto" or its initial "J", sufficiently identifies, so, the court holds, the protestee, as no other candidate bore the identical surname during the election in question, necessarily "T. Cruz", which is abbreviatory of "Tomacruz", also adequately identifies the protestee. It is likewise to be noted, that the protestee has stated in his certificate of candidacy that he is also known as "T. Cruz".

As to the point made in the majority opinion that this court cannot go into the fifth and sixth grounds of the second motion for reconsideration at this stage of the case, because they involve questions not raised in the first motion for reconsideration, I need only state that the granting, by this court of this second motion for reconsideration has operated to set aside both the first and second decisions and to throw open the whole case. Election contests affect the public interest, and their consideration should be without subjection to technicalities. There is here the further circumstance that at least four of the seven members of this court had not participated in the former consideration of this case, and they should not now be deprived of the opportunity to examine it in full. The hearing has been reopened without reserve, and it is not proper to confine it to particular questions to the exclusion of others the determination of which may affect the ultimate result of the case.

- The four ballots of precinct No. 1 of Penaranda, written in blue pencil, should not be counted, because this fact, to my mind, constitutes a distinguishing mark in the light of the uncontradicted evidence of record that in

said precinct only indelible pencils were used on the day of the election. Different from this is the case of ballots written in ink which, under former decisions of this court, should be deemed valid, because of the general availability of fountain pens, unlike colored pencils, for immediate use. The use of the latter in the four ballots in question must have been for the deliberate purpose of marking them.

- The two ballots of precinct No. 5 of Pefiaranda, which were found in precinct No. 2 of the same municipality, should be rejected, because this circumstance alone constitutes a grave irregularity, and there is nothing to show that it was due to an honest mistake of the voters or election officials. Both in this case as in the one next preceding, the burden that such irregularity is not indicative of fraud is on the party who seeks to have the ballots accepted as valid.

CONCURRING

VILLA-REAL, J.,

I concur in the dissenting opinion of Justice Recto.

Judgment modified.

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