

ILDEFONSO COSCOLLUELA, PROTESTANT AND APPELLANT, VS. EMILIO GASTON, PROTESTEE AND APPELLEE.

G.R. No. 43891. March 25, 1936

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PER CURIAM:

In the general elections held on June 5, 1934, in the Province of Occidental Negros, the candidates who received votes for the office of provincial governor were the protestant Ildefonso Coscolluela and the protestee Emilio Gaston.

After the election and the counting of the votes by the boards of election inspectors of the various precincts of the municipalities of said province, and after the canvass of all the votes made by the provincial board pursuant to law, the latter proclaimed Emilio Gaston governor-elect of said province with a majority of 103 votes, having received 24,587 votes as against 24,484 votes received by his opponent Ildefonso Coscolluela.

Not agreeable to this result, Ildefonso Coscolluela filed a motion protest with the Court of First Instance of Occidental Negros on July 12, 1934, impugning the election and proclamation of Emilio Gaston as governor-elect of said province, and alleging the commission of irregularities by the members of the board of election inspectors in 57 precincts of 13 municipalities. On August 8, 1934, the protestee, Emilio Gaston, filed his answer and counter-protest alleging, in turn, the commission of irregularities in 47 precincts. The protestant filed his answer to the counter-protest on August 16, 1934.

After proper proceedings, the Court of First Instance of Occidental Negros, on June 21, 1935, rendered a decision the dispositive part of which recites:

"For all the foregoing considerations, the court renders judgment in this election case declaring that the respondent Emilio Gaston obtained a majority of 399 votes over the petitioner Ildefonso Coscolluela for the office of governor, and pursuant to the closing paragraph of section 479 of Act No. 3387, declares Emilio Gaston legally elected to the office of provincial governor of Occidental Negros.

"The clerk of the Court of First Instance of Occidental Negros is ordered to notify the provincial board of canvassers of this decision of the court.

"The petitioner Ildefonso Coscolluela is ordered to pay the expenses and costs of this election protest."

The rival candidates, Ildefonso Coscolluela and Emilio Gaston, appealed from said decision, each of them attributing to the lower court the various errors set out in their respective briefs.

Before considering the errors assigned by the protestant, it seems to us necessary to resolve the incidental question raised by the protestee in his motion for dismissal, found on page 32 of his brief.

Said motion to dismiss is based on the alleged fact that the protestant did not file with the lower court either the returns of the boards of election inspectors of the precincts mentioned in his motion protest (5 from Hinigaran, 5 from Isabela, and 5 and 7 from Victorias), or the certificate of proclamation of the provincial board as board of canvassers, thus making it difficult, according to the protestee, relying on the doctrine laid down in *Ayo vs.*

Flordeliza (48 Phil., 199), to determine the exact votes which should be adjudicated to him and to the protestant.

If the exact number of valid votes obtained by the protestee Emilio Gaston in each of the aforementioned precincts, 5 and 7 of Victorias, 5 of Hinigaran, and 5 of Isabela, is to be determined, undoubtedly there would be no means to do so, nor to make the necessary corrections if the revision of the ballots so warrants, without having the said election returns and certificate of proclamation of the provincial board. The question is not here, however, of the determination of the exact number of votes obtained by each of the contending candidates in each of the precincts of the municipalities of Occidental Negros, nor is there any allegation that in summing up the votes obtained by them, the trial court erred in not giving them their respective exact number of votes, which calls for an examination of the election returns to ascertain the true results. Consequently, accepting as correct the number of votes which the trial court states in the appealed decision having found in the aforesaid precincts, and it being unnecessary to state herein the number of those which should be deducted from the total appearing in said election returns in the determination of the correct number of valid votes received by the rival candidates, it being sufficient for this purpose to know the number of votes to be deducted from the total by taking all the votes cast for governor in the entire province, there is no need to have the aforesaid election returns before us.

The motion to dismiss is likewise made to rest on protestant's failure to indicate in his brief the pages of the record showing the resolutions of the court and its reasons for refusing the ballots which said protestant claims as valid. The protestee is right, because said omission violates the provisions of Rule 19, subsection (b), number 4, of the Rules of this court. This alone would suffice to brush aside the errors assigned wherein such omission is extant. This time, however, considering the public interest which might be affected by the motion protest before us, we are inclined to be indulgent, with the admonition to all, however, that in the future the Rules be complied with as faithfully and as strictly as possible.

We now pass to the errors assigned by the protestant in the order set forth in his brief.

Error I.—Under this alleged error, the protestant contends that the trial court erred in rejecting 232 ballots in his favor on the sole ground that only his surname "Coscolluela" is written on the line for the office of provincial governor, when, in truth, in some of said ballots, said surname is preceded by the initial "I" of his Christian name, Ildefonso. Only the surname "Coscolluela" is written on the line for the office of provincial governor in 217 of the said 232 ballots. There being a candidate for councillor in the municipality of Talisay, Occidental Negros, named Agustin Coscolluela, said 217 ballots should not and can not be counted in protestant's favor. This on the strength of the decision in *Ignacio vs. Navarro* (G. R. No. 37401, 57 Phil., 1000, 1011), and the cases therein mentioned. (*Medina vs. Noble*, G. R. No. 36018, 56 Phil., 833; and *Balon vs. Moreno*, 57 Phil., 60.)

Six (6) of the 232 ballots aforesaid bear the following characteristics: that marked Exhibit 532-DD, contains a vote for "Ildefonso Coscolela" as governor; ballots Exhibits 1154, 1273 and 2391-BB each contains a vote for the same office in favor of "I. Coscolluela"; and ballots Exhibits 2140 and 2899 contain respectively a vote for governor in favor of "I. oscolluela" and "Ild. Coscolluela". All the said six ballots should be counted for the protestant on the authority of *Reyes vs. Biteng* (57 Phil., 100); *Cailles vs. Gomez and Barbaza* (42 Phil., 496); *Lucero vs. De Guzman* (45 Phil., 852); *Mandac vs. Samonte* (49 Phil., 284). The initial of the Christian name, or the abbreviation thereof plus the surname, whether the latter is correctly or incorrectly written, as long as it falls within the idem sonans rule, should be considered as sufficient to identify the candidate voted for. Consequently, a ballot containing votes expressed in the manner found in the aforesaid six ballots, should be accepted as valid. (*Sarenas vs. Generoso*, 61 Phil., 549.)

Ballots Exhibits 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385 and 2791, with the name "E. Coscolluela" written on the line for the office of provincial governor, should not be counted for the protestant. In the certificate

of candidacy filed by him, he did not state that he was likewise called "E. Coscolluela", inasmuch as said name rather identifies his cousin, Enrique Coscolluela, so much so that a registered letter addressed to a person bearing said name (Exhibit Coscolluela-124-E and Exhibit Gaston-EEEE-1), was delivered by the post-office to said Enrique Coscolluela, because the latter was known as E. Coscolluela in Occidental Negros. Capital "E" not being the true initial letter of the protestant's Christian name, the trial court would have erred in giving him said nine ballots. (Reyes vs. Biteng, supra.)

Summarizing what has been said on the first alleged error assigned by the protestant, only six (6) of the 232 ballots rejected by the trial court should be counted in his favor.

Error II.—Under this error, the protestant claims 136 ballots which were rejected by the trial court because the name "E. Coscolluela" is written on the line for the office of provincial governor.

On examination of the said 136 ballots, we find that in 132 thereof, the said name "E. Coscolluela" is in fact written on the line for the vote in favor of the candidate for provincial governor. In the remaining four (Exhibits 3058, 3214-EE, 2912-EE and 3356-AA), said name does not appear on the indicated line, but those of "Eld. Coscolluela", "Ponsing Coscolluela", "Y. Coscolluela", and "I. Coscolluela", respectively.

In discussing the first assigned error, we said that the ballots wherein "E. Coscolluela" appears voted for provincial governor cannot be adjudicated to the protestant. The same reasons therein advanced hold true in rejecting said 132 ballots.

Ballots Exhibits 3214-EE and 3058, wherein "Ponsing Coscolluela" and "Eld. Coscolluela", respectively, appear voted for the office of provincial governor, are perfectly admissible as valid ballots for the protestant for the reasons to be set out in taking up the seventh assigned error.

Ballots Exhibits 2912-EE and 3356-AA are likewise admissible because the capital letters "Y" and "I" are the initials of the appellant's Christian name, and, moreover, it is common knowledge that the names Ildefonso, Isidro, Ignacio, Isabel, etc., were written until shortly, and perhaps they are written even now, according to the old usage, with the Greek letter "Y".

All the aforementioned four (4) ballots should be admitted as valid ballots for the protestant.

Error III.—Under this assigned error of the protestant, he claims the ballots marked Exhibits Coscolluela-16-VV, 16-YY, 16-EEE, 34-QQ, 34-NNN, 46-CC, 54-FF, 85, 106, 109, 192-CC, 278-DD, 380-RR, 719-DD, 767-EE, 1376-DD, 1376-EE, 1387, 1787, 1788, 1902-LL, 1902-MM, 1902-NN, 1902-OO, 1902-PP, 1909 and 3052-QQ, wherein appear written on the line for the office of provincial governor, the surname Coscolluela preceded in some by a capital letter like the Latin letter "I" but traced in the English style like the form of a "J", and in others by a letter like the capital letter "J" but with the circle or final stroke below the line.

Upon a careful examination of the aforesaid ballots, it is evident that the voters who prepared them, in attempting to form the Latin initial "I" of the Christian name "Ildefonso" of the protestant, adopted the English style but extending the formation of the final stroke below the writing line, thus giving the letter "I" (English style) the appearance of a "J", the current style in this country. This is noticeable in the ballots Exhibits 1376-DD, 1376-EE, 1787, 1788, 1902-MM, 1902-PP, and 1909.

All the said 27 ballots should be adjudicated to the appellant it being evident that the intention of the voters who prepared them was to vote for him.

Error IV.—Under this assigned error, the protestant claims 18 votes, marked Exhibits 34-LL, 34-MM, 376, 395, 1030, 1275, 1368, 1386, 1388, 1390, 1630, 1864, 1902-JJ, 1906, 1907, 1908, 2054, and 2081-CC. Only one of

these ballots, or Exhibit 2081-CC, should be adjudicated to the protestant because the vote it contains for the office of governor appears to be cast in favor of "I" (English style) Coscolluela. Ballot Exhibit 395, while containing a vote in favor of I. Coscolluela for provincial governor, cannot be adjudicated to the protestant because there appears on the back thereof the notation "Spoiled Ballot" signed by the election inspectors. The remaining sixteen ballots were properly not adjudicated to the protestant by the trial court because the names voted for governor are "L. Coscolluela" in 13 of them, "L. D. Coscolluela" in one, and "LL. Coscolluela" in another. The initial of the protestant's Christian name is not L, or LL, or D, and these are not and cannot be idem sonans with "Ild", his abbreviated Christian name, in spite of his effort to make us view them in that light. It would be going too far if we were to accept protestant's theory, and we would be going, moreover, against the very rule of idem sonans as enunciated in the cases of Cailles vs. Gomez and Barbaza (42 Phil., 496); Mandac vs. Samonte (49 Phil., 284); Lucero vs. De Guzman (45 Phil., 852), etc. The rule has never been enunciated, nor is it convenient to do so, that when one or two letters sound like the abbreviation of a Christian name, although followed by the proper surname, said letter or letters should be deemed idem sonans with the abbreviated Christian name.

Error V.—Under this assigned error, the protestant claims 9 ballots marked Exhibits 34-GG, 34-JJ, 1458, 18, 390, 447, 464, 976, and 1997-EE. In the space for the office of provincial governor of the last six ballots is written the initial "P" followed by the surname "Conscolluela", more or less spelled correctly. On the strength of what has been said in discussing the fourth assigned error, said ballots cannot be adjudicated to the protestant, because the initial "P" does not correspond to his Christian name (Ildefonso), which is "I". (Reyes vs. Biteng, supra; Ignacio vs. Navarro, G. R. No. 37401, 57 Phil., 1000, 1011.)

Neither can ballot Exhibit 34-JJ be adjudicated to the protestant, because the name written on the line for the office of provincial governor is indicated by an illegible and indecipherable letter and by the surname "Coscolluela". While this surname is that of the said protestant, it does not, however, indicate unequivocally that he is the candidate voted for the said office. There is another candidate bearing the same surname.

Ballots Exhibits 34-GG and 1458 are valid and the votes for governor therein contained should be adjudicated to the protestant. "I. Coscolluela", the name appearing in the first, is, as has been said, that of the protestant; and the name "I. Coscos" appearing in the second, cannot but be the equivalent of I. Coscolluela, especially if the question is considered in the light of the doctrine laid down in the case of Banguis vs. Bollozos (G. R. No. 37475, 57 Phil., 987), which has modified the decision in the case of Valenzuela vs. Carlos and Lopez de Jesus (42 Phil., 428). In the case of Banguis vs. Bollozos, it was said that Esco Bollos is equivalent to Isaac Bollozos. In the case of Baligod vs. Añgoluan (G. R. No. 36178, 56 Phil., 835), it was said that M. Angulo means Marcos Anguluan; and in the case of Sinogba vs. Reganit (G. R. No. 36244, 57 Phil., 955), a valid ballot was admitted for Pacifico Sinogba notwithstanding the fact that his name was written thereon as P. Gimba.

Error VI.—Under this error, the protestant claims 37 ballots from those rejected by the trial court on the ground that in the space for the office of provincial governor, the letter with which the voters who prepared them wanted to represent the initial of the Christian name of the candidate therein voted for, does not correspond to the Christian name of said protestant.

In ballots Exhibits 15-BB, 34-RR, 34-VV, 40-DD, 40-FF, 46-EE, 72-CC, 91-AA, 94-BB, 97-DD, 107, 109-DD, 380-KK, 1777-GG, 1902-KK, 1902-QQ, 1902-RR, 2008, 2081-BB, 2081-DD, 2081-EE and 2081-GG, mentioned in connection with the error in question, the words or name "I. Coscolluela" are written more or less correctly on the line for the office of provincial governor. There was no error in admitting said ballots, because the initial "I" corresponds to the protestant's Christian name.

The other ballots Exhibits 109-AA, 109-BB, 275, 466, 1007, 1031, 1389, 1391, 1462, 1563, 1564, 1789, 2044-BB, 2055, 2081-FF, are not valid. The lower court consequently ruled correctly in rejecting them. In ballots Exhibits 275, 1031, 1389, 1462, 1563, 1564 and 2055, the vote for governor is cast in favor of G. Coscolluela and not Ildefonso or I. Coscolluela which is the protestant's name; in ballots Exhibits 109-BB and 2081-FF, said vote is cast in favor of S. Coscolluela, which is not idem sonans with I. Coscolluela; and in ballots Exhibits 109-AA, 466, 1007, 1371, 1789, and 2044-BB, those voted for governor respectively are L. Coscolluela, N. Coscolluela, N. Coscolluela, H. D. cusculuyla, C. Coscolluela, Hd. Coscolluela, persons whose names are different from Ildefonso or I. Coscolluela.

For the foregoing reasons, the protestant is entitled, under the sixth assigned error, to 22 more votes, because the aforesaid 22 votes should be adjudicated to him.

Error VII.—Under this assigned error, the protestant claims 57 ballots from those rejected by the trial court on the ground that the name written on the line for the vote of the candidate for provincial governor, is not correctly written. These ballots are those marked as Exhibits 34-NN, 46, 97-AA, 125, 126, 202, 204, 822, 927, 962, 963, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1392, 1430, 1634, 1636, 1637, 1835, 1902-DDD, 2081-NN, 2488, 2490, 2922, 3138, 3139, 3223, 3225, 3228, 3235, 3774, 4464, 24, 25, 34-GGG, 195, 387, 416, 465, 535, 597, 617, 926, 1168, 1623, 1861, 2445, 3106, 3137, 3906 and 4091. The first 38 ballots are valid and admissible for the protestant on the idem sonans rule and because he stated in his certificate of candidacy that he was also known as "I. Coscos" and "I. Cuela". The names appearing in said ballots as Eldeponsocolluel, I. Cosco, Eld. Cusco, Ild. Cosco, i. cosco, Eldifonso Coscos, are equivalent to the name Ildefonso Coscolluela, I. Coscos, or I. Cuela. (*Lucero vs. De Guzman*, supra; *Dizon vs. Cailles*, 56 Phil., 695; and *Cauan vs. Pagulayan*, G. R. No. 36849, 57 Phil., 967.)

In some of the 38 ballots in question, the names written on the line corresponding to the vote for the candidate for governor are "Ponsing Cosco", "Alponso Coscolluela", "Punso Cula", "Punso Coscoluela", "Ponzo Coscolela", "Ponsong Coscola", "Alfonzo Coscoluyla", "Ponsing Coscola", "Alponso Coscoloyla", "Alfonso Coscolluela", "Alponso Coscoluel", and "punso cuila". The incorrect spelling of the protestant's true name is not a bar to the adjudication of said ballots to him, because all the said names, under the idem sonans rule, are equivalent to his own name, especially considering that in this country, one named Alfonso or Ildefonso is known by either of said names; and in the family circle and among friends and acquaintances, whether the true name of one is Alfonso or Ildefonso, he is familiarly called Ponsing, Ponso, Ponsong, Punsong or Ponseng. For this reason, the votes for governor appearing in said 38 ballots should be counted for the protestant.

The 19 remaining ballots are invalid, and the lower court did not err in rejecting and not adjudicating them to the protestant, because in all of them other persons than the protestant are voted for the office of governor as will be seen from the names written on said ballots, like for instance, "Hibiendo Coscola", "Hil. Coscolluela", "Ponciano Coscolluila", "Isa-ac Coscolluela", "lid. Coscolluela", "Ponciano Cuscoela", "Erimhildo coscolloila", "LLd. Coscolluela", "I. Ponsing", "Eldeponso", "Eming Coscolluela", "Colscallo ilarina", "Consing Coscolluela", "Idpucoguila", "Ildeopoldo Cocolloea", "Iririmso coscolluela".

Error VIII.—Under this eighth assigned error, the appellant contends that the trial court erred in rejecting 14 ballots marked Exhibits 18, 65, 67, 68, 93, 452, 678, 1562, 1617, 2045, 2151, 2365, 2487 and 2502. After a careful examination of said ballots, we believe that those marked as Exhibits 67, 452, 678 and 2502, should be adjudicated to the protestant, because it will be readily seen that the voters who prepared them, voted for "Ild. Coasla", "led cugollueia", "Il soscolloal", "Pervincial Ild. Coscolluela", for provincial governor, and said names, which are badly spelled to be sure, are idem sonans with that of the appellant. It will be seen from said ballots that those who prepared them are illiterate and do not know how to write.

The remaining ballots are manifestly inadmissible because the words or signs appearing therein are not legible and decipherable.

Under the said eighth assigned error, the protestant is entitled to 4 votes only.

Error IX.—The protestant contends that the 20 ballots marked as Exhibits 34-III, 36, 46-KK, 463, 520, 834, 872, 875-QQ, 895, 896, 1331, 1447, 1606, 1801, 1859, 1886, 1939, 2030, 2312 and 3093, were erroneously not adjudicated to him. In ten of them, Exhibits 520, 834, 895, 896, 1331, 1859, 1886, 2030, 2312 and 3093, it will be seen that printed letters have been used in writing some of the names appearing therein, but this does not necessarily indicate that two persons prepared them; at most it shows that the voter who prepared each one of them intended to write the names of his candidates more clearly. It not appearing that in using such form of writing, his intention was to mark the ballots, none of the said ten ballots can be invalidated. (*Lucero vs. De Guzman*, supra; *Medina vs. Noble*, supra; *Yalung vs. Atienza*, 52 Phil., 781; and *Villavert vs. Lim*, 62 Phil., 178.) The other ten ballots bear no distinguishing marks which invalidate them.

The trial court undoubtedly erred in rejecting said 20 ballots and in not adjudicating them to the protestant, it appearing that his Christian name is written with its initial or its abbreviation and his surname in the proper place.

Error X.—Under the tenth assigned error, the protestant claims 15 ballots of those rejected by the trial court on the ground that in its opinion they were filled in using carbon paper. In passing upon this question, the trial court said:

"Ballots Exhibits 1484 to 1498 (15) are questioned because each and every one of them was written by a single person, with pin holes to distinguish them, and in Exhibit 1498, the person voted for the office of governor is 'Pedong Coscos'. We have carefully examined each and every one of these ballots, and it clearly appears that ballots Exhibits 1485, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1496, 1497 and 1498 (12) bear pin marks indicative of the use of carbon paper held to the ballot by a pin in order to get a copy thereof."

The pin marks appearing in the questioned ballots are found in pairs along the left side of ballots Exhibits 1485, 1487, 1488, 1489, 1492, 1494, 1496, 1497 and 1498; and almost all of the said marks coincide with one another when the ballots are placed one above the other. The marks appearing in ballots Exhibits 1490 and 1491 are found on the right side in the same form and order as those placed in the former ballots; and the marks appearing in ballot Exhibit 1493 are found on both sides thereof in the form and manner indicated. If the voters who prepared said ballots had used, as contended by the protestant, carbon paper to secure copies thereof, resorting to the use of pins to hold the carbon paper in place while they wrote, they would have done so more quickly, speedily, and naturally by pinning the ballot on its upper end.

The coincidence of the marks in most of the said ballots shows that they were prepared at the same time, and this operation could not have been done with the purpose of securing copies of their contents, because, as already said, in one of them the marks are found on both sides, and in others, on the right side. Moreover, there is nothing on the back of said ballots which shows in the least that they were filled in using carbon paper.

The inverted letter marks appearing in the spaces for the office of municipal councillors in ballot Exhibit 50, are not those of carbon paper but of the folding of the ballot itself before it was deposited in the ballot box. This is shown by the fact that the inverted letters appearing on the second line of the column intended for the votes for municipal councilors, coincide exactly with the initial "I" and the surname "Coscolluela"; and from the manner in which the ballot was folded it appears that what has been said is absolutely true; said inverted letters are marks of the said name.

In ballot Exhibit 1488 the name written on the line for the office of governor is not that of the protestant but that of "Pedong Cascos", and said name is not idem sonans with Ildefonso Coscolluela.

Ballot Exhibit 1637, wherein Ponsing Cosco appears voted for governor, has been considered in the seventh assigned error. It was there held valid for the protestant.

As to ballot Exhibit 1971, there is nothing on the back thereof indicative that carbon paper was used.

Summarizing our discussion of error X, only 13 ballots, marked Exhibits 50, 1485, 1487, 1489, 1490, 1491, 1492, 1493, 1494, 1496, 1497, 1498, and 1971, should be adjudicated to the protestant.

Error XI.—Under this assigned error, the protestant assails the trial court's decision in not adjudicating 7 ballots to him on the ground that his name and surname are not written on the line corresponding to the office for which he was a candidate. We find after a detailed examination that in ballots Exhibits 83 and 407, the voters who prepared them, instead of writing the names of their candidates in the spaces corresponding to the offices for which they wanted to vote for them, wrote them on the column for the votes for the councilors, but placing before said names the offices for which they voted. For instance, in the case of the protestant, they put before his name the word "gobernador" or "provincial coverno". In these two ballots, while the name and surname of the protestant are not written in the proper place, it is evident from the placing of the office before said names that the intention of those who prepared said ballots was to vote for the protestant. Consequently, the two ballots should be admitted as valid in his favor.

Ballots Exhibits 1217, 2136, 2626 and 3233 are not valid ballots for the protestant because in the first three and in the last one his name is written in the space for members of the provincial board and for representative, respectively.

In ballot Exhibit 2142, the protestant's name is written in the space for members of the provincial board, but preceded, however, by the word "governador", which sufficiently indicates that the voter's intention was to vote for the protestant for the office of provincial governor.

Hence, it is proper to adjudicate to the protestant, under his eleventh assigned error, the three (3) votes given to him in ballots Exhibits 83, 407, and 2142.

Error XII.—Under this twelfth assigned error, the protestant claims the 9 ballots which the lower court held invalid because they were signed by the voters who prepared them.

Four (4) of said 9 ballots, or those marked as Exhibits 1343, 1344, 1348 and 1455, are perfectly admissible for the protestant, as he appears therein voted for governor, although his name is abbreviated or incorrectly written or spelled: "I. coscolluela" in the first; "Ild. Coscolluela" in the second; "Eld. Coscolluela" in the third; and "edel Coscolluela", all abbreviations, as will be seen, more or less correct of Ildefonso preceding the said surname.

The rest, that is, ballots Exhibits 69, 1798, 1964, 3081 and 3386 are undoubtedly inadmissible because they are marked with the signatures of the voters who prepared them or with supposed names. In the first of said five ballots, there appears the mark or sign of a name written on the last line of the column for councillors, without any other name accompanying it in said column; in the second, the name of "Teopilo Patatao" below the last line; in the third, the name of "Potinciano Pinahilom"; in the fourth, the name of "J. Sayson" written diagonally across the column for councillors; and in the last, a signature written below or outside of the last line.

Error XIII.—Under this assigned error, the appellant claims ballot Exhibit 819 which was rejected by the trial court because it was found in the red box or that for spoiled ballots. Upon a careful examination of said ballot, it will be seen, however, that it is not spoiled but only rejected by the election inspectors, the signatures of two inspectors being noticeable on the back thereof. It is easy to guess why it was refused: the voter who prepared it, in writing the names of his candidates, did so by inverting the ballot and commencing at the last line; but, on noting his

error, he corrected it by turning the ballot, that is, placing it properly in order to begin where he should have begun. His error thus corrected it appears and it will be seen that he voted for Ildefonso Coscolluela, the protestant, for governor. This ballot should, therefore, be adjudicated to him.

Error XIV.—On this assigned error of the protestant, we believe that the lower court erred in rejecting 17 ballots marked as Coscolluela Exhibits 16-GG, 568, 573, 768, 769, 38, 41, 144, 1746, 1902-VV, 3431, 3432, 3909, 96, 188, 54-NN and 42.

Ballot Exhibit 16-GG was rejected as a marked ballot because on the line for the vote in favor of the candidate for vice-president, the voter wrote the word "Ponchong". This word is only the nickname of Ildefonso Reyes, candidate for vice-president of the municipality of Isabela (Gaston Exhibit UU, certificate of candidacy of Ildefonso Reyes). In writing said nickname, the voter expressed his intention to vote for a candidate for vice-president, perhaps for Ildefonso Reyes who, like all who bear his Christian name, as Ildefonso Coscolluela, is familiarly known as Ponchong or Ponsong.

Ballot Exhibit 568 contains the word "Ana" on the line for the office of vice-president. Said word must be the first three letters of the name Anastasio Cuaycon, candidate for vice-president. (Gaston Exhibit U.) There is no evidence indicative that in writing this word, the voter intended to mark or identify his ballot. It was error to reject said ballot.

Ballot Exhibit 573 contains on one of the lines for the office of municipal councilor, the word "Baler". Said word might be the beginning of the name Valeriano Gatuslao, candidate for membership of the provincial board. In the absence of any evidence to the contrary, the said word cannot be considered as a distinguishing mark. (Cailles vs. Gomez and Barbaza, *supra*; Valenzuela vs. Carlos and Lopez de Jesus, *supra*; Sinogba vs. Reganit, *supra*.)

Ballot Exhibit 768 contains seven zeros each placed on different lines. In the absence of any evidence to the contrary, said zeros do not constitute a distinguishing mark; they reasonably indicate the voter's intention not to vote, as in fact he did not vote for any candidate for the offices following which he placed said zeros. (Pimentel vs. Cabrera, G. R. No. 30675, April 17, 1929, not reported.)

Ballot Exhibit 769 contains on one of its lines the word or negative adverb "no". This cannot be considered as a distinguishing mark but as a clear indication that the voter did not want to vote, as in fact he did not vote for any candidate for the office indicated on said line.

Ballots Exhibits 38, 41, 144, 1746, 1902-VV, 3431, 3432 and 3909 are not marked ballots; the fact that some of the names appearing therein are written in capital letters and others in small letters or ordinary characters cannot be considered as a mark. The writing of the names in these ballots in two different styles, according to the particular manner or taste of the voters, does not justify the inference that they intended to mark said ballots fraudulently. (Salcedo vs. Hernandez, G. R. No. 42992, promulgated on May 17, 1935 [61 Phil., 1046, 1057]).

Ballots Exhibits 96 and 188 bear the initials "R. V." and "V. S. Ka" in some of their lines. These initials must be those of some candidates or persons for whom the voters wanted to vote. They cannot therefore be considered as a distinguishing mark. (Geirosa vs. Taningco, G. R. No. 30609, March 22, 1929, not reported; Medina vs. Noble, *supra*; Ignacio vs. Navarro, *supra*.)

Ballot Exhibit 54-NN shows a dot in the space for the vote in favor of the candidate for senator, and another dot in the space for the vote in favor of the candidate for governor. Said dots are not identifying marks. (Yalung vs. Atienza, *supra*.)

Ballot Exhibit 42 shows, according to the appellant, some stenographic signs. These signs are nothing more than

incomplete zeros by which the voter attempted to express his intention not to vote for anybody as councilor. These alleged signs cannot be considered as distinguishing marks, hence, the rejection of said ballot is error.

Ballots Exhibits 674, 677 and 1134 contain respectively the following impertinent expressions: "Pors", "Toteng" and "I like the two Presidents." Said expressions, in our opinion, constitute marks of identification. The cases of *Marquez vs. Santiago* (G. R. No. 36502, 57 Phil., 969), and *Castueras vs. Barcelo* (G. R. No. 30429, May 20, 1929, not reported), cited by the appellant, are not in point, because the expressions "all the democrata candidates for councilors" and "blank for others" contained in the ballots wherein they appear, only show the manner the voters who prepared them wanted to vote, and said expressions are pertinent.

Ballot Exhibit 2811 was properly rejected, for the simple reason that it was prepared in two different forms of writing, indicating thus that the secrecy of the ballot was violated.

The ballot Exhibit 2082 was likewise properly rejected, because there appears far below the last name of the candidate voted for, the initials P. B. which cannot but be an identification mark. Ballots Exhibits 17, 721, 1618 and 1892 are defective on sight, and the protestant himself admitted that they are so and that they were correctly rejected by the lower court. Ballot Exhibit 68 was considered in the eighth assigned error and said ballot was rejected because it is illegible.

Error XV.—For the reason stated by the lower court on pages 144 to 148 of its printed decision (Appendix A), this court is of the opinion that the lower court committed no error in rejecting the 21 ballots claimed by the protestant. As a wise rule we reiterate the following doctrine of this court in the case of *Fausto vs. Ramos* (G. R. No. 42601, April 11, 1935 [61 Phil., 1035]): "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." We may add that in several cases (*Cailles vs. Gomez and Barbaza*, supra; *Valenzuela vs. Carlos and Lopez de Jesus*, supra), this court deemed the Christian name of itself insufficient to identify a candidate; a fortiori, a nickname is less sufficient for this purpose. Consequently, the fifteenth assigned error is overruled.

Error XVI.—The protestant assigns as error the fact that the lower court ordered the revision of the uncontested ballots referred to in the commissioner's report, ratified by the parties in open session. As to the existence of such ratification, the record shows that when the protestant proposed to consider without discussion the votes adjudicated to him and to the protestee, stated in the said report, the protestee conformed thereto without prejudice to the presentation of evidence he then had. This naturally involved a reservation on his part to impugn some of the said ballots.

In addition, we do not consider the order of the lower court erroneous, because a court is empowered to revise and count the ballots again even after the presentation of the evidence (*Santos vs. Court of First Instance of Cavite*, 49 Phil., 398). It can be said with more reason that the lower court was so authorized in this case, because the parties asked for the revision before adducing any evidence, and because the said parties were given the opportunity to claim some of the ballots which they had not previously claimed, and they availed themselves of said opportunity. This assigned error is, therefore, without merit.

Error XVII.—Under this assigned error, the protestant contends that the lower court erred in counting for the protestee 1,761 ballots, divided into groups, alleging that the ballots of each group were written by one man.

In the case of *Olano vs. Tibayan* (53 Phil., 168), we held that the mere fact that a group of ballots appears to be written by one man is not, in itself, sufficient to destroy the presumption of their legality, arising from their being found in a box of valid ballots. In order to justify the invalidating of some ballots which appear to have been

written by one man, it must be shown, as stated in the cited case, "that their preparation was a part of a scheme devised to adulterate the suffrage". Otherwise stated, the fraud must be established by evidence aliunde. In the instant case there is no evidence that the questioned ballots were fraudulently prepared. On the contrary, the parties expressly stipulated in open court, to repudiate the allegations of fraud in their respective pleadings.

Furthermore, mindful of the importance of the protestant's objection, we have gone into the trouble of examining the questioned ballots, and after grouping those which, to our mind, were written by one person, we have found that there are only about a hundred ballots falling under this category. It is true that the character of the handwriting appearing in many of the aforesaid ballots is similar to that appearing in others, but, as has been observed by a well-known authority, "handwritings of the same system as taught in the same schools, and writing by different writers of the same nationality, must inevitably be similar in certain ways." (Osborn, *The Problem of Proof*, p. 388.) Even deducting the 100 ballots referred to from those adjudicated to the protestee, the result of the canvass would not be changed.

Error XVIII.—We believe that the 10 ballots discussed under this assigned error, which will be mentioned in the following paragraphs, were correctly admitted and counted by the lower court in favor of the protestee.

- Ballot Gaston Exhibit 1034: The protestant impugns this ballot as having been incorrectly admitted because the name of the protestee Emilio Gaston is allegedly written "Gobernado F. Gaston". An examination of said ballot convinces us that the name is that of "E. Casten", the "E" having been so poorly written as to look like "F". The word Casten is idem sonans with Gaston; and the word "Gobernado" is not a distinguishing mark but the office for which the voter wanted to vote for the protestee. (Valenzuela vs. Carlos and Lopez de Jesus, *supra*; Aviado vs. Talens, 52 Phil., 665; Mandac vs. Samonte, *supra*; Ignacio vs. Navarro, *supra*.)

- Gaston Exhibits 1875, 5799, 3579 and 3754: The protestant questions the first of said four ballots alleging that on the line for governor only the name "Emilio" was written. An examination of the ballot shows that the full name Emilio Gaston was written, but the surname Gaston was placed a little lower than the line corresponding to the vote for the candidate for governor. The name of the candidate voted for representative having been written in the same way, we believe that the voter, who must be an illiterate, intended to write the full name on the line reserved for the purpose, but the surname was written a little lower than the said line.

The other three ballots were likewise correctly admitted by the lower court, because while the names of the candidates in said ballots were written rather outside of the corresponding line, this was due to the lack of expertness of the voters who prepared them.

- Gaston Exhibits 3205, 3454, 4059-BB, 5169 and 5373. There is abundant reason for the admission of these 5 ballots by the lower court. In some of them, the initial of the protestee was even stupidly written, but the intention of the voters who prepared them to vote for the appellee is evident. In others, while the protestee's surname was not correctly written, it is clear, however, that what was written is idem sonans with his surname.

As to ballot Exhibit 3454, it seems to us that the "J" (capital) in "J. E. Gaston" was written by the voter who prepared said ballot in the same way that he wrote the "S" preceding the name of Matias Hilado. He erased said letters afterwards when he realized his error.

On the other hand, we are of the opinion that the 5 ballots hereafter enumerated were erroneously admitted and counted by the lower court in favor of the protestee. They are:

- Ballots Gaston Exhibits 1931 and 4069. In these ballots, the persons voted for governor are "J. Gaston" and "I. Gaston" respectively. The initial of the protestee's Christian name is not "J". Neither is it "I". Had the one who prepared the ballot, instead of writing "J" or "I", written "Jmilio" or "Imilio", the ballot would be valid, but the

initial "I" or "J", of itself, without the protestee's full Christian name, even if followed by his surname, does not sufficiently identify him.

- Ballot Gaston Exhibit 3051. In this ballot the initials "E. G." are written in the space for governor. The lower court erred in admitting and counting the same in favor of the protestee, because the doctrine laid down in this jurisdiction is that the initials of a candidate, of themselves, are insufficient to identify him. (*Dejarne vs. Castañeda*, G. R. No. 36011; *Deles vs. Alkonga*, 53 Phil., 93, 95, and various other cases.)

- Ballot Gaston Exhibit 4963. In this ballot, the person voted for governor is "Emilio", without any surname. The Christian name alone is insufficient to identify a candidate. (*Cailles vs. Gomez and Barbaza*, supra; *Sarenas vs. Generoso*, supra, and various other cases.)

- Ballot Gaston Exhibit 5775. In this ballot Emilio Rodriguez and Emilio Gaston were voted for governor. The same should not have been counted in favor of either of the two candidates voted for the said office. (*Cailles vs. Gomez and Barbaza*, supra, and other cases.)

The 5 ballots above-mentioned should be deducted from the votes adjudicated to the protestee.

The 6 ballots marked Gaston Exhibits 1522, 2070-DD, 3273, 2844, 4368 and 4579 are included among those questioned in the twenty-ninth assigned error. We will there have occasion to say whether they should be admitted or rejected.

Error XIX.—Under this nineteenth assigned error, the protestant impugns 658 ballots wherein the protestee appears voted for the office of governor. The votes for said office, stated in said 658 ballots, with the exception of some later to be discussed, appear cast in favor of Emilio Caston, Emilio Saston, Emelio Caston, Emilio Ganson, Emilio Gontas, Emilio Caslon, Emilio Agaston, Emelio Haston, Emilco Gaton, Emilio Callon, Emeleo Gator, EM. Lo Gason, Emilio Joston, etc. Due to the poor spelling of said names, the protestant contends that the said votes cannot and should not be adjudicated to the protestee because they do not coincide with his name and surname. A good number of said ballots are written by voters of meager education, which explains the incorrect spelling and the use of improper letters; but a careful examination of said ballots has shown us that the voters who prepared them, intended to write the name and surname of the protestee, and that the different forms in which they are written are idem sonans with the name and surname of the protestee, for which reason the court did not err in counting said votes as valid ones for governor in favor of the protestee.

The ballots which in our opinion are not valid because the votes for governor do not sufficiently identify the protestee, are those marked as Exhibits 1645, 4472, 2068, 2562, 3918 and 5417. The first two fall under the twenty-ninth assigned error of the protestant, and we have decided not to count the votes which they contain for governor in favor of the protestee for the reasons set out in this decision discussing said twenty-ninth error assigned.

In ballot Exhibit 2068 the vote for governor is in favor of "Emilio Gatuslao". This vote does not identify the protestee, consequently, it should not be adjudicated to him because his surname is not Gatuslao but Gaston.

In ballot Exhibit 2562 the vote for governor is cast in favor of "emetio gaston gatuslao". Neither should this vote be adjudicated to the protestee, because it does not appear that his surname is Gaston Gatuslao, and because there is a candidate for member of the provincial board named Valeriano Gatuslao.

In ballot Exhibit 3918, the vote for governor is in favor of "Emilio Gatuslao", and this is not protestee's name. For this reason said vote should not be counted in his favor.

And in the ballot Exhibit 5417 the vote for governor is cast in favor of "Emelio Lacson". This vote cannot be

counted in favor of the protestee because said name does not coincide with his.

For the foregoing, it is evident that, under the nineteenth assigned error of the protestant, the said four votes should be deducted from the protestee, without counting the two which are included among those discussed in the twenty-ninth assigned error.

Error XX.—This assigned error, whereby the protestant questions the 17 ballots presently to be enumerated, is without merit. We are of the opinion that said ballots were very properly admitted and counted by the trial court for the protestee.

- Ballots Gaston Exhibits 644, 320, 3950, 3951, 4917, 5776, 5837, 3753, 4916 and 5492. The protestant states that the name of the protestee is not written in said ballots, on the line reserved for the vote in favor of the candidate for governor. In seven of the said ballots, it is noted that the names of the candidates voted for the different offices mentioned therein, were written immediately below the line corresponding to each of said offices; and in three of them, it is likewise noted that the voters who prepared them wrote the names of their candidates below the printed designation of the offices for which they wanted to vote for them. In all the said 10 ballots it is manifest that the intention of the voters who filled in the same was to vote for the candidate of their choice precisely for the office under which his name is found.

The lower court acted correctly in admitting and adjudicating the aforesaid ballots to the protestee.

- Ballots Gaston Exhibits 645 and 3127. In these ballots the voter wrote the name of the office on the line reserved for the name of the candidate for whom he should vote for said office, and thereafter wrote the name of his candidate for said office on the line following. This he did not only with respect to one particular office, but with respect to almost all the offices. It seems to us evident that the voter's intention was to vote for those whose names he wrote under the designation of the different offices which he indicated in his ballot. The lower court did not err in admitting the two ballots in question.

- Ballots Gaston Exhibits 4437, 4713 and 5044. In these ballots, the voter, not being satisfied with the printed designation of the offices to be filled by election, indicated the same in his handwriting in casting his vote, placing them before the names of his candidates. One of those voted for by him in this manner was the protestee. The repetition committed by him does not invalidate his ballot nor does it stamp it as a marked ballot.

- Ballot Gaston Exhibit 638. This ballot shows upon its face that the names of the candidates voted for representative and governor were written upon the line immediately above that on which they should be written respectively. Considering, however, all the other details appearing thereon, it is patent that the intention of the voter who prepared it was to vote for the protestee for the office of governor.

- Ballot Gaston Exhibit 3483. While the protestee's name does not appear written exactly on the line reserved for the vote in favor of the candidate for governor, considering all the other circumstances and details appearing therein, no one can doubt in the least the voter's intention to vote for the protestee as governor.

As to ballots Exhibits 2956, 2957, 3752, and 4436, we are of the opinion that the lower court erred in admitting and counting the votes contained therein in favor of the protestee, for the following reasons:

In each of the said 4 ballots, the names of the candidates were not written on the line reserved for that purpose; and there is no means to determine for what offices they intended to vote for the candidates therein named. Consequently the votes of the protestee contained in these 4 ballots should be deducted from those adjudicated to him by the lower court.

Our opinion on ballots Exhibits 1350 and 3457 is found in that portion of this decision relating to the nineteenth

assigned error; and we will pass on ballots Exhibits 4211 and 4539 later when we come to consider the twenty-ninth assigned error.

Error XXI.—As to this assigned error, we hold that, after examining the ballots to which it refers, we are convinced that those marked Exhibits 730, 1033, 1516, 1625, 1626, 2073, 2331, 2332, 2333, 2575, 3057, 3058, 3059, 3755, 3756, 4896, 5040 and 5491 are not defective, wherefore the lower court properly admitted and counted them in favor of the protestee. The names of the candidates voted for the office of governor are perfectly legible in each and all of the said ballots.

The ballots Exhibits 3061 and 3947 should not have been received and counted in favor of the protestee for the following reasons:

In the first, the name of the candidate voted for the office of governor is absolutely illegible; and in the last there appears on the line reserved for the vote in favor of the candidate for governor an erasure of such a character that there is no means to decipher what name had been written thereon. The votes contained in said two ballots should be deducted from those adjudicated by the lower court to the protestee.

The ballots Exhibits 97, 98, 101, 755, 1928, 2404, 2405, 2962, 3033, 4034, 4703 and 5801 are included among those questioned in the twenty-ninth assigned error. We will consider them in discussing the said error assigned.

Error XXII.—The protestant impugns under this assigned error 26 ballots marked Exhibits 2402, 2445, 4897, 5170, 5774, 2678, 2679, 5227, 5495, 2403, 2805, 4244, 2, 3, 598, 1876, 599, 2288, 2327, 2564, 3034, 3124-OO, 5040, 3043, 4302 and 4441, on the ground that they contain unnecessary and impertinent expressions. After an examination of the said ballots, we are of the opinion that the twelve following were properly admitted as valid:

- Ballot Exhibit 2402. This ballot in fact contains the expression "Amen Jesus"; but it will be seen at a glance that it was placed there by a person other than the voter and in all probability after it was deposited in the ballot box.
- Ballot Exhibit 2445. This ballot contains the expression "ono mas", which is possibly the name of a candidate which the voter did not know how to write due to his lack of education or to his inexperience. This is the more evident because the other name appearing in the ballot is very poorly written.
- Ballot Exhibit 4897. This ballot bears on the back thereof the phrase "ballorta" which, to all appearances, was placed there by a different person. The outlines of its letters are different from those of the letters appearing on its face.
- Ballot Exhibit 5170. This ballot bears the surname "Gamboa" below a name. This does not constitute a mark; it simply indicates the voter's desire to make plain that the candidate for whom he voted was surnamed Gamboa whose name appears above said surname.
- Ballot Exhibit 5774. This ballot does not contain the phrase "Batin ton" attributed to it. It is perfectly valid in all respects.
- Ballots Exhibits 3678, 2679, 5227 and 5495. In these ballots, "Claro Pancho", "Mr. Stevenson" and "Rafael Alunan" appear voted for an office. We believe that they are valid because said names cannot be considered as marks of identification, as they are not. In the contemplation of law, the votes for said persons are no more than scattered votes; and
- Ballots Exhibits 2403, 4244 and 2805. These ballots do not contain any expressions which may be considered as marks of identification.

We are of the opinion, however, that ballots Exhibits 2, 3, 598, 1876, 2288, 2327, 2564, and 3004 are fatally

defective, hence, they should have been rejected. Unnecessarily written on one of their lines respectively are the expressions or phrases "Veba", "biva", "Boys", "madamo nga salamat", "Pilising 6 Z", "conforme sang masonod", "Julia ta-i" and "Nicio Gago", and "Salgan los que salieren".

The ballots Exhibits 599, 3124-OO and 5040 have been considered in our discussion of the nineteenth assigned error of the protestant; and ballots Exhibits 3043, 4302 and 4441 will be discussed in his twenty-ninth assigned error.

Error XXIII.—Twenty-four ballots are questioned by the appellant in this assigned error, alleging that they have been signed by the voters who prepared them. Only 4 of said ballots suffer from said defect, namely, Exhibits 1569, 3321, 3463, and 4819 bearing far from the last line respectively the following signatures: "Manuel Bayaid", "Pedro Siquinpan", an illegible name and "Bienvenido Garin".

Eleven of the remaining eighteen, that is, ballots Exhibits 1510, 1629, 2399, 2572, 2605, 2607, 4551, 4614, 5035, 5036 and 5247 do not appear to have been signed. The apparent signatures therein are those of persons to whom the voters also gave their votes.

And the rest, that is, the 9 ballots, Exhibits 4580, 2080, 2570, 4045, 4199, 4604, 4625, 5119 and 5331 are questioned, the first in the nineteenth assigned error, and the last eight in the twenty-ninth assigned error.

Under the said assigned error, 4 votes should be deducted from the protestee.

Error XXIV.—Alleging that they are spoiled ballots found in the box for spoiled ballots, the protestant contends under this assigned error that the following 18 ballots marked Exhibits 3618, 4531, 5093, 3464, 5015, 1300, 2683, 3463, 3621, 5028, 5044, 5163-DD, 3465, 3619, 3620, 4530, 5018 and 5102 should be rejected.

Ballots Exhibits 3618 and 4531 bearing the following inscriptions: "rejected" and "protested". This does not mean that they are spoiled ballots; it simply indicates that they were protested before the election inspectors and rejected by the latter, but they were held valid by the lower court because of the fact that they do not present any sign of irregularity invalidating them. We are of the opinion that they were admitted and counted with much reason in favor of the protestee.

Ballot Exhibit 5093 was found in the white box. It is true that it bears the following note: "spoiled ballot," but it is also true that it bears this other note: "reconsidered," which shows that the said ballot is not what the protestant claims it to be, and there being no irregularity therein, was properly admitted.

Ballots Exhibits 3464 and 5015 are marked "spoiled ballot" and "Spoiled Ballot", respectively, without the signatures of the election inspectors who voted for their alleged rejection. The said two ballots are apparently regular upon their face, not presenting as they do not present anything to invalidate them, this effect not being produced by the said notes "spoiled ballot" and "Spoiled Ballot". They might have been erroneously marked with said notes and thereafter placed in a box not destined for that purpose, that is, the box for spoiled ballots. In our opinion, they were properly admitted and counted in favor of the protestee.

The seven ballots marked Gaston Exhibits 1300, 2683, 3463, 3621, 5028, 5044 and 5163-DD are discussed in the nineteenth assigned error, and the other six marked Gaston Exhibits 3465, 3619, 3620, 4530, 5018 and 5102 are discussed, in turn, in the twenty-ninth assigned error. Our opinion on said ballots appears in that part of this decision where the said errors are considered.

Error XXV.—The protestant questions under this assigned error the 12 ballots Exhibits 608, 609, 610, 612, 615, 5514, 5515, 5516, 611, 1607, 614, and 613, on the ground that they are marked with the names of "Bonifacio Tamba" and "Alpidio Eucadin".

In the first seven, the said names appear voted for councilors, and in the eighth, for municipal president. In the absence of any proof that said names were used as a mark of identification, written as they are on the lines reserved for the purpose, they should only be considered as scattered votes.

In ballot Exhibit 611 we find that the name "B. Tamba" is written at the foot thereof by a different person. This is so because the characters of the letters which compose it differ materially from those of the other letters.

We, therefore hold that the said 9 ballots are valid and were duly admitted by the lower court.

The remaining 3 (Exhibits 1607, 614 and 613) should not have been adjudicated to the protestee because they are marked to facilitate their identification. In each of them are written respectively very far from the last line, the following names: "B. Tamba", "Bonifacio Tamba" and "Bonifacio Tambo".

Under the protestant's twenty-fifth assigned error, 3 votes only should be deducted from those of the protestee.

Error XXVI.—Under this assigned error the protestant questions 13 ballots, alleging that they are marked. Said ballots are Exhibits 3332, 1562, 3486, 3287, 2942, 1361, 3033, 3045, 3128, 4169, 533, 1629 and 2526.

After an examination of each of the thirteen ballots, we find that the first five are not defective. The alleged peso sign "P" appearing in ballot Exhibit 3332 is the initial of a name which the voter erased when he desisted from voting for the person who bears said initial. What appears to be an interrogation mark in ballot Exhibit 1562 is only a cross made with certain characteristics (elaborations) of the small "t" in "Gatuslao" voted for member of the provincial board. The three "* * *" written at the foot and on the left-hand side of ballot Exhibit 3486, bear all the indications of having been placed there by a person other than the voter which prepared it; and we do not find any mark of identification on the ballots Exhibits 3287 and 2942. No error was, therefore, committed in admitting said 5 ballots as valid for the protestee inasmuch as he appears voted for therein for the office of governor.

Ballots Exhibits 1361, 3033, 3045, 3128, 4169 and 533 will be passed upon when we consider the reasons advanced by the protestant in support of his twenty-ninth assigned error; and ballots Exhibits 1629 and 2526 have already been considered in our discussion of the nineteenth assigned error.

Error XXVII.—Under this assigned error, the protestant impugns the validity of 7, and not 6 ballots, as erroneously stated by him in said error. They are ballots marked Exhibits 1025, 2052, 4240, 4241, 4306, 4325 and 5517, wherein the protestee is voted for the office of governor. The allegation that carbon paper was used in their preparation finds no support as to the first two (Exhibits 1025 and 2052); and as to the remaining five (Exhibits 4240, 4241, 4306, 4325 and 5517), as they are included in the twenty-ninth assigned error, we reserve our opinion as to their validity until we pass on to consider and resolve the said error.

Error XXVIII.—The protestant, alleging that the 12 ballots Exhibits 770, 775, 781, 845-BB, 1081-AA, 1300-AA, 1532, 1914-AA, 5246-HH, 1515, 779 and 1066 were written by the voters using a perforated sheet in order to be able to write on the ballots by simply following with the point of the pencil the perforation on said sheet, contends that all the said ballots should have been rejected by the lower court.

After carefully examining the first 10 ballots, we are not convinced that the protestant's contention is tenable. The mere similarity between the capital letters appearing in said ballots neither argues nor proves necessarily that they were prepared in the manner alleged by the protestant.

We have considered ballot Exhibit 1515 in the ninth assigned error; and we shall consider Exhibits 779 and 1066 in the twenty-ninth assigned error.

Error XXIX.—Under this assigned error, the protestant attempts to nullify not only 1,855 ballots, but 1,870 ballots of those adjudicated to the protestee, alleging that some are prepared by two persons and others suffer from other

defects.

From a careful revision of said ballots, we find only 4 which show upon their face as having been filled in by two persons, namely, ballots Exhibits 1644, 1645, 2533 and 23.

In the first of the said ballots (Exhibit 1644), the names of the three candidates voted for the office of member of the provincial board and for that of second councilor, are written very differently from the other names. At a glance it is noticeable that the person who wrote said three names is more expert than the one who wrote the other names. In the second ballot (Exhibit 1645), the names of "Isaac Lacson", "Ramon Torris" and "Emilio Cuzton", which are hardly legible, are written by one who does not know how to write, and the other names are written by one who writes well. In the third ballot (Exhibit 2533), the first five names are written with ease and speed, judging from the outlines of the letters composing them, and the last three names were written laboriously and stupidly. And in the last ballot (Exhibit 23), exactly the same thing is noticeable: the names "Isaac Lacson" and "Emilio Gaslao" are written without symmetry, tremblingly, and with a pencil whose color is different from that used to write the names of Emilio Gaston, Clanding and Vicente Soto which appear to have been written therein by an expert hand. The said 4 ballots should be rejected, and the votes for governor should be deducted from those of the protestee.

We find 4 ballots which should not be counted for the protestee because they bear defects which invalidate them. They are ballots Exhibits 3039, 4302, 4441 and 4472. The first of the said 4 ballots (Exhibit 3039) shows on its face that the candidates voted for the insular and provincial offices and for the office of municipal president, are, in the same order, also voted for the office of municipal councilors. The second ballot (Exhibit 4302) bears the following mark of identification: "Good Lirazan." The third (Exhibit 4441) is marked, bearing as it does at the end of the name of Faustino Cadahuda, the conventional abbreviation "O. K."; and the last ballot, Exhibit 4472, also shows upon its face that the candidate voted for the office of governor is not the protestee but "Emilio Gatoslao", an entirely different person.

In the other ballots, we find nothing to change the findings of the lower court. The erasures made with an eraser or with horizontal lines, and the corrections otherwise made, were not intentional; they are due manifestly to the inexpertness of those who prepared them. Under this category fall ballots Exhibits 1017, 1081-MM, 1928, 2155-BB, 2430, 2718, 2842, 2938, 2953, 2962, 3033, 3204-JJ, 3427, 3824, 3960, 4045, 4145, 4213, 4315, 4316, 4318, 4354, 4499, 4508, 4532, 4607, 4715, 4719, 4832, 4838, 4840, 5101, 5197, 5498, 5693, 5695, 5712, 5800, 5801 and 5813.

In some ballots we have seen that there are names written with two kinds of letters: some, capital or printed, and others, small or printed, or in script. In the absence of any evidence that they have been fraudulently prepared,—and it should be said in passing that we have not found any such evidence—the doctrine laid down in the cases of *Yalung vs. Atienza*, *supra*; and *Villavert vs. Lim*, *supra*, should be followed. Of this class are the ballots Exhibits 89, 93, 94, 1358, 1367, 2091, 2726, 2729, 3279, 3341, 3344, 3346, 3347 and 4451.

In others, like ballots Exhibits 3913, 3915, 3927, 4540, 4544, 4545 and 4547, we have seen that the candidate voted for the office of governor is either "Emilio Castan", or "Emelio Galuston", "Emilio Gaslon", "Emellio Ogoslon", "Emilio Gagaton", "Emilio Gaton" or "Emion Buston". The lower court adjudicated said votes to the protestee, and we believe that it did not thereby err. By the *idem sonans* rule, said votes should be counted in favor of said protestee, because said names have the same sound as his name. Furthermore, judging from the letters appearing in said ballots, it may be said that those who prepared them were possessed of little education.

And in others, we have also seen that ink was used to prepare them partially or totally, and in others pencil and ink were used for the purpose, or vice versa. Of this class are ballots Exhibits 762, 2292, 2350, 2387-II, 2387-JJ,

2387-ZZ, 2494, 4661 and 4839. In the absence of any evidence that the voters resorted to said means in order to mark their ballots, or that they proceeded in that manner in order to commit fraud, the decision in the case of *Sarenas vs. Generoso*, supra, should be followed, that is, the ballots prepared in that manner should be held valid.

In resume, the 1,870 ballots impugned by the protestant under this twenty-ninth assigned error, with the exception of 8 defective and invalid ballots already mentioned, are all valid.

Consequently, it should be held that the lower court acted correctly in admitting and adjudicating the same to the protestee, because he appears voted for therein for the office of provincial governor.

Summarizing the votes won by the protestant on the one hand, and those lost by the protestee on the other, by virtue of the former's motion protest based on the twenty-nine assigned errors in his brief which have just been considered, it may and should be said that the protestant won 262 additional votes and the protestee lost 38 votes of those which were adjudicated to him by the provincial board of Occidental Negros acting as a board of canvassers.

Availing ourselves now of the data supplied by the case, inasmuch as the lower court found that the protestee had a majority of 399 votes over the protestant, the same, that is, said 399 votes should be deducted from those which the provincial board adjudicated to the protestee, in order to determine the number of votes which the protestant received in the elections which are the subject matter of his motion protest. Under this operation the result is a difference of 24,188. These 24,188 votes are those received by the protestant in the aforesaid elections, to which should be added the 262 votes won by him through his motion protest, or a total of 24,450 votes. Availing ourselves of the same data, we have to deduct from the votes adjudicated by the provincial board to the protestee the 38 votes which he lost by virtue of the protestant's motion protest, thereby giving a balance of 24,549 votes only. Comparing this figure 24,549 with the total votes which we have just adjudicated to the protestant, that is, 24,450, the difference in favor of the protestee is 99.

The figure just indicated (99) represents the protestee's majority over the protestant, after adjudicating to the latter the 262 votes won by him, and after deducting from the votes of the protestee the 38 votes which we have found to have been erroneously admitted by the lower court.

This result may be proved by first deducting from the majority of 399 votes which the lower court gave to the protestee, the 38 votes which we have found to have been erroneously adjudicated to him, and then the 262 votes of the protestant which we have found to have been rejected without justification by the said court, and the resulting difference is exactly the same: 99 votes.

Having arrived at this conclusion, it would be useless to enter upon a consideration of the thirtieth assigned error of the protestant, because it is based on the supposition that the first twenty-nine assigned errors are true; and it is unnecessary to discuss and consider the errors assigned by the protestee in his brief, because even without the votes claimed by him therein, he wins with a majority of 99 votes.

With the modification of the appealed decision and judgment in the manner herein indicated, the same is affirmed in all other respects, with the costs of this instance to the protestant and appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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