

RAMON HONTIVEROS, PLAINTIFF, VS. JOSE C. ABREU, JUDGE OF FIRST INSTANCE OF THE FIFTEENTH JUDICIAL DISTRICT, AND ANTONIO HABANA, DEFENDANTS.

G.R. No. 4489. February 25, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this original action of mandamus in this court, asking for a judgment directing the defendant judge of the Court of First Instance of Capiz to proceed with an election contest then claimed to be pending before him. The defendants have appeared and demurred to the complaint and the case is now before us for resolution of the demurrer.

The complaint alleges that at the general election held on the 5th day of November, 1907, for the office of provincial governor of Capiz, the plaintiff was the candidate of the Partido Nacional Progresista, and that the defendant, Antonio Habana, was the candidate of the Partido Modernista; that the defendant, Habana, was declared elected by a majority of 250 votes; that the plaintiff presented a protest to the Court of First Instance in accordance with the provisions of section 27 of the Election Law (Act No.1582); that in this proceeding he asked that the ballot boxes of twenty-four of the election precincts in the province be opened and the ballots counted; that the judge of the court below ordered eight of these boxes to be opened and the votes counted, but refused to order the remaining boxes opened on the ground that as to the remaining boxes the plaintiff had presented no evidence showing that any fraud had been committed in those precincts.

The question which the plaintiff seeks to have decided in this proceeding is whether or not in an election contest the court is bound to open all the boxes specified in the protest or only those boxes therein specified as to which some, proof is offered of fraud or irregularity.

In our opinion the plaintiff has lost his right to have this question determined by this court by reason of subsequent proceedings taken by him in the court below. The complaint alleges that after the ruling of that court requiring proof of specific acts of fraud or irregularity, before ballot boxes could be opened, and on the 17th of December, 1907, he, the plaintiff, presented a motion therein wherein he recited that it was impossible for him to present such proof as the court required and ended his motion in the following manner:

"Said proceedings being thus against the interests of Señor Hontiveros, the undersigned attorney-at-law, acting on behalf and under instructions from the former, has the honor to state to the court that he is unable to proceed with the case on account of his inability to produce the evidence required, and for this reason he moves the court to dismiss the proceedings and to render such decision as it may deem proper in the case."

On the 21st of December, 1907, the court made the following order:

"Order.—Whereas, in the course of the trial of this case, the petitioner, by his attorney-at-law, Simeon Dadivas, on December 17 presented a motion praying that these proceedings be terminated because they were opposed to his interests;

"Whereas the petitioner has expressed his conformity to the terms of said motion;

"Whereas, by virtue of this motion for dismissal of the proceedings, it is proper to dismiss the protest made by the petitioner:

"It is therefore decreed that said petition be dismissed with the costs against the petitioner, and the proceedings are hereby declared terminated.

"Notice of this order shall be given to the honorable Executive Secretary, at Manila, P. I."

It will thus be seen that the election proceeding instituted in the court below by the plaintiff has been terminated and a final judgment entered therein, and that this determination and final judgment were made upon his own express request. Notwithstanding the fact that the plaintiff himself asked the court below to terminate the proceeding definitely, he now brings this suit in this court asking for a judgment directing the court below to proceed with that case. It is very evident that he is not entitled to that relief.

The demurrer is sustained and the plaintiff is given ten days from the date of this order in which to file an amended complaint. If no such amended complaint is filed within that time, the clerk, without further order of this court, will enter a final judgment acquitting the defendants of the complaint, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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