

**GREGORIO ABENDAN, PLAINTIFF, VS. MARTIN LLORENTE ET AL.,
DEFENDANTS.***G.R. No. 4512. February 25, 1908*

Ponente: WILLARD, J.

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The plaintiff brought this original action of certiorari in this court for the purpose of having reviewed a judgment entered in the Court of First Instance of the Province of Cebu on the 4th of January, 1908. The defendants, one of whom is the judge of that court, having been directed to show cause why the record in the case in which that judgment was entered should not be remitted to this court and here examined, appeared and objected to such an order, alleging, among other things, that the plaintiff had no right to have such judgment reviewed, and the case is now before us for the purpose of deciding the question thus presented.

It appears from the complaint herein, that at the municipal election held in the city of Cebu on the 5th day of November, 1907, for the office of municipal president, Vicente Sotto received 650 votes, Martin Llorente 483, and Timoteo de Castro 9 votes. On the 18th day of November the defendant Llorente filed in the Court of First Instance of Cebu a protest against the election, alleging that Vicente Sotto was not eligible for the office of municipal president and asking that the votes cast for him be declared void and that he, Martin Llorente, be declared elected. In that proceeding the lawyer who appears for the plaintiff in this action appeared in behalf of Vicente Sotto, but the Court of First Instance refused to hear him on the ground that Vicente Sotto was a fugitive from justice. Such proceedings were thereafter had in that case that on the 4th day of January, 1908, the judgment here sought to be reviewed was entered, by which the court declared that the votes cast for Vicente Sotto were void, and held that the defendant Llorente was the duly elected president of Cebu. The judgment also ordered Vicente Sotto to pay 100 as cost of that proceeding.

The prayer of the complaint in this court asks that this judgment be declared void and that the defendant Judge Wislizenus be restrained from issuing any execution against the property of Vicente Sotto.

The plaintiff in this action, Gregorio Abendan, was not a party, to, the proceeding in the Court of First Instance. That litigation was carried on exclusively between Martin Llorente on the one hand and Vicente Sotto and Timoteo de Castro on the other. The only allegation in the complaint in this action which can be claimed to show any right upon the part of this plaintiff to have the judgment in that proceeding reviewed is the allegation that he is a duly qualified elector of the municipality of Cebu. In our opinion, this fact does not give him any standing in this court to ask for the review of that judgment. There is nothing in the complaint to show whether or not he voted at the election in question, or if he did so vote, whether he voted for Llorente, Sotto, or Timoteo de Castro. We find nothing in the Election Law (Act No. 1582) which allows a voter who was not a candidate to take any proceedings in court to contest the legality of an election. Section 27 of that act provides, among other things, as follows:

"Contests * * * shall be heard by the Court of First Instance * * * upon motion by any candidate voted for at

such election, which motion must be made within two weeks after the election,.

"All proceedings under this section shall be upon motion, with notice of not to exceed twenty days to all candidates voted for * * *"

The plaintiff, Gregprio Abendan, was not only not a party to the proceeding in the court below, but he had no right under the law to become a party thereto and he has no right to maintain a proceeding in certiorari for the purpose of reviewing the judgment above-mentioned.

Upon the other questions presented by the answer of the defendants, we express no opinion. Let this proceeding be dismissed, with costs against the plaintiff. So ordered.

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

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