

MAURO NAVARRO, PLAINTIFF, VS. CASIANO GIMENEZ, DEFENDANT.*G.R. No. 4576. February 27, 1908*

Ponente: WILLARD, J.

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This is a proceeding in quo warranto brought by the plaintiff under the provisions of section 519, in connection with sections 197 to 216 of the Code of Civil Procedure. The complaint alleges that at the municipal election held in Lingayen, in the Province of Pangasinan, on the 5th day of November, 1907, the plaintiff was declared elected president of the municipality of Lingayen by 221 votes, against 210 votes for the defendant, Casiano Gimenez,, 119 votes for Jose Lopez, 113 votes for Antonio Ramos, and 14 votes for Fernando Castro.

The complaint also alleges that the defendant, Casiano Gimenez, presented to the Court of First Instance of the Province of Pangasinan a motion protesting against the election, in the manner required by section 27 of the Election Law (Act No. 1582); that the Court of First Instance took jurisdiction of the proceeding and on the 7th day of January, 1908, entered a final judgment therein declaring that the defendant in this action, Casiano Gimenez, had received 211 legal votes and that the plaintiff, Mauro Navarro, had received 203 legal votes, and ordering the election board of Lingayen to revise its returns and to declare elected as president of Lingayen the defendant, Casiano Gimenez; that the court arrived at this result by rejecting 17 votes cast for the plaintiff, Mauro Navarro, on the ground that the names of the candidates originally voted for on said ballots had been erased and the name Mauro Navarro written on all the said 17 ballots by the same person; and that the court also rejected one ballot on the ground that it was on yellow paper instead of being on white paper, as required by law.

The plaintiff in his complaint in this action alleges that the court committed error in rejecting these 18 votes and with the complaint is presented a large number of affidavits to sustain his claim. The prayer of the complaint is as follows:

"The honorable Supreme Court is respectfully requested by the petitioner to give him leave to commence this action against the defendant Casiano Gimenez, and after the charge of usurpation, intrusion, or illegal retention of the office of municipal president of Lingayen now held by him is fully established, the court is also petitioned to render judgment ousting the defendant from said office and putting the plaintiff in possession thereof, with the costs against said defendant."

It is evident that the plaintiff considers it necessary to obtain leave of the court for the filing of this complaint. If he has a right to maintain this action, we do not think it is necessary for him to obtain it. Section 200 of the Code of Civil Procedure, which requires that formality, relates only to cases where the Attorney-General or the fiscal of the province wishes to bring an action at the request of a third person. In such cases the Attorney-General and the fiscal must first obtain permission of the court to file the complaint. Section 201 is as follows:

"An individual may commence such action.—A person claiming to be entitled to a public office, unlawfully held and exercised by another, may bring an action therefor."

That section was considered by this court in the case of *Acosta vs. Flor* (5 Phil. Rep., 18). It gave a person in the

situation of the plaintiff in this case a right to maintain an action in his own name without the intervention of the Attorney-General or the fiscal.

We think, however, that in no event can this action be maintained. The important question is, Whether the provisions of this section 201 and other sections relating to the same matter have or have not been modified by the Election Law, and particularly by section 27 thereof? That section is as follows:

"Election contests.—The Assembly shall be the judge of the elections, returns, and qualifications of its members. Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such elections, which motion must be made within two weeks after the election, and such court shall have exclusive and final jurisdiction and shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall be payable in the first instance out of the provincial treasury, and to issue its mandamus directed to the boards of canvassers to correct its canvass in accordance with the facts as found. If in any case the court shall determine that no person was lawfully elected it shall forthwith so certify to the Governor-General, who shall order a special election to fill the office or offices in question as hereinbefore provided.

"Before the court shall entertain any such motion the party making it shall give a bond in an amount to be fixed by the court with two sureties satisfactory to it, conditioned that he will pay all expenses and costs incident to such motion, or shall deposit cash in court in lieu of such bond. If the party paying such expenses and costs shall be successful they shall be taxed by the court and entered and be collectible as a judgment against the defeated party.

"All proceedings under this section shall be upon motion with notice of not to exceed twenty days to all candidates voted for and not upon pleadings or by action, and shall be heard and determined by the court in the judicial district in which the election was held regardless of whether said court be at the time holding a regular or stated term. In such proceedings the registry list as finally corrected by the board of inspectors shall be conclusive as to who was entitled to vote at such election.

"The clerk of the court in which any such contest is instituted shall give immediate notice of its institution and also of the determination thereof to the Executive Secretary."

It is very evident that the legislature intended to provide a summary and exclusive way for determining the facts in relation to certain elections held under the law. It is expressly provided by section 27 that the decision of the Court of First Instance shall be final and conclusive. No appeal is allowed from that decision. In the present case there was such a proceeding. The present plaintiff was a party thereto. He had an opportunity to try and have decided the very questions which he now asks to have decided by this court in this proceeding. Those questions were, in fact, tried and decided in the court below and if this action can be maintained it would amount to an allowance of an appeal from the judgment of the court below in the election proceeding, the very thing which section 27 prohibits.

It can not be believed that the Legislature, after providing a special and exclusive manner for determining the facts in an election case, and after declaring that that determination should be final, intended that the defeated party should have a right to try the same questions over again by virtue of the provisions of section 201, above quoted. That the provisions of section 201 have been modified to some extent by the Election Law is very clear. Whether or not it still remains in force and may be availed of by a defeated candidate, who claims that the possessor of an office is not entitled thereto for some reason not connected with the method of casting and counting the votes, we do not decide. We do decide, however, that it has been so far modified that no person claiming a right to a public office can now maintain an action by virtue of this section when the grounds alleged

by him in his complaint relate to the facts which the Court of First Instance in proceedings under said section 27 had acquired a right to and did determine.

In the case at bar the only grounds of action are based upon the facts which the Court, of First Instance in the election proceeding had jurisdiction to try and determine. This action, therefore, can not be maintained, and is hereby dismissed. So ordered.

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

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