

JOAQUIN SURTIDA, JUAN DE LA RIVA, ALFONSO PANTINO, EUSEBIO TALION AND EDUARDO GIANAN, PETITIONERS, VS. JUAN G. LESACA, JUDGE OF FIRST INSTANCE OF ALBAY, JOSE F. ARCILLA, PRIMO P...*G.R. No. 46191. September 12, 1938*

Ponente: ABAD SANTOS, J.

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On December 15, 1937, the petitioners and respondent Ariston Sarmiento were proclaimed councilors-elect of the municipality of Virac, Catanduanes, Province of Albay. On December 29, the respondent Primo Pantí sent by registered mail from Virac to the clerk of the Court of First Instance at Legaspi, same province, a motion of protest against the election of the petitioners and the respondent Ariston Sarmiento. On December 31, Pantí sent to the clerk of court, by telegraphic transfer, the sum of P39 to cover the fees for docketing of the motion of protest and the sheriff's fees for the service of summons. It appears that both the motion of protest and the transferred amount were received by the clerk on January 4, 1938, and the motion was docketed on the same date.

In due time the petitioners filed a demurrer to the motion of protest on the ground that the Court of First Instance of Albay had no jurisdiction to try the case, inasmuch as the said motion was not filed within the period of two weeks from the date of proclamation of the election of petitioners, as required by the Election Law. This demurrer was overruled on February 15, 1938, the court holding that the motion of protest was filed within the prescribed period. Subsequently, on May 23, 1938, the petitioners filed a motion of dismissal based on the same ground of lack of jurisdiction, the reason alleged this time being: the fact that the docketing fees were not sent to the clerk of court until December 31, 1937; that is, two days after the mailing of the motion of protest on December 29, 1937, which was the last day of the period prescribed by law for the filing of the motion of protest. The motion of dismissal was denied by the court.

Petitioners now seek to have all the proceedings had in the court below on the motion of protest quashed on the ground of lack of jurisdiction.

We find no error in the ruling of the respondent judge that the motion of protest was filed within the period prescribed by law. The date of the mailing of the motion of protest is deemed to be the date of its filing. (Rule 13, Supreme Court; *Henning vs. Western Equipment and Supply Company*, 35 Off. Gaz., 827.) This is a sound rule. It is based upon considerations of justice and equity. It has the effect of affording litigants the equal protection of the laws. It places litigants residing in remote towns—far from the provincial capital which invariably is the seat of the Court of First Instance³¹⁵¹; on equal footing, as far as the filing of pleadings is concerned, with those who reside in the provincial capital and in nearby towns. It is a matter of public knowledge, of which this court may take judicial notice, that there are towns, at least in some of the provinces, which are so isolated that it takes days and even weeks of travel for those who reside in such towns to reach the provincial capital. To rule, as to litigants so situated, that the date of filing must be the date when the pleading is received in the office of the clerk of court would be to place them at a great disadvantage vis-a-vis those who reside in the provincial capital and in towns

connected therewith by modern means of transportation.

From a purely technical standpoint, the objection that the amount required for docketing¹ fees was not sent until two days after the mailing of the motion of protest would seem to carry some weight. But when we take into consideration that the money was sent by telegraphic transfer and that it was received by the clerk of court at the same time as the motion of protest, the objection loses every vestige of substance. It is something which should not prevail in an enlightened system of administration of justice. The rules of law are intended to promote justice, not to defeat it. Substantial compliance with such rules is sufficient if justice is thereby promoted. Substantial rights should not be sacrificed for purely technical considerations. In the instant case, it is clear that the petitioners have suffered no prejudice whatever by reason of the fact that, instead of being mailed with the motion of protest, the amount required for docketing fees was sent by telegraphic transfer, and so timed as to be received by the clerk of court on the same date as the motion of protest.

The petition for a writ of certiorari is denied, with costs against the petitioners. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

DISSENTING

IMPERIAL, J.:

By concession the motion of protest was filed with the clerk of court beyond the statutory period of two weeks from the date of proclamation of the election result. Indeed, both the motion of protest and the docketing fees were received by the clerk on January 4, 1938. I am little concerned with the majority's ruling on the docketing fees, for the Election Law does not fix any period within which the same should be paid, although I believe the rule in ordinary cases with respect to such fees should govern. But I dissent from the majority opinion in so far as it applies Rule 13 of this court to the case at bar, considering the mailing of the motion of protest as the date of its filing with the court.

Rule 13 of the Rules of this court reads as follows:

"13. All notifications required by these rules shall, unless otherwise expressly provided, take effect five days from service. This period shall be computed from the day upon which the notice is served. The date of the mailing of motions, pleadings, or any other papers or payments or deposits required by the rules of this court, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court."

It seems obvious that the aforequoted rule, is without application to the filing of motions of protest in election cases. The last part of said rule clearly speaks of motions, pleadings, or any other papers or payments or deposits required by the Rules, and it is undoubted that the filing of motions of protest in election cases is a subject foreign to and not covered by any provision of the Rules of this court.

In applying Rule 13 the court amended section 479 of the Election Law providing that "* * * The contest shall be filed with the court within two weeks after the proclamation and shall refer to specific charges: * * *." Certain it is that the Supreme Court, under section 13, Title VIII, of the Constitution, is vested with the rule making power; but I am of the opinion that whatever rule or amendment to any existing procedural rules it may deem proper to introduce, to be fair and just, should be prospective and not retroactive in its effects. (St. Lawrence, 1 Black, 522; 17 Law. ed., 180; Rumsey vs. New York L. Ins. Co., 59 Colo., 71; 147 P., 337; Poyntz vs. Reynolds, 37 Fla., 533;

19 S., 649; Owens vs. Ranstead, 22 Ill., 161; Dewey vs. Humphrey, Pck., 187; Dalton vs. Register, 248 Mo., 150; 154 S. W., 67; Smith vs. Lee, 10 Nev., 208; Reist vs. Heilbrenner, 11 Serg. & R., 131; Kase vs. Pennsylvania R. Co., 28 Pa. Co., 228; Fernandez vs. Carreras, 1 Porto Rico Fed., 85; Lee vs. Unkefer, 85 S. C, 199; 65 S. E., 989; 67 S. E., 246; Rawlings vs. Neal, 122 N. C., 173; 29 S. E., 93.) In the instant case petitioners are entitled, as a matter of right, to have section 479 of the Election Law applied as the law in force at the time the motion of protest was mailed and received by the clerk.

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