

**CIPRIANO ABANIL ET AL., PETITIONERS AND APPELLEES, VS.
JUSTICE OF THE PEACE COURT OF BACOLOD, NEGROS
OCCIDENTAL, ET AL., RESPONDENTS AND APPELLANTS.**

G.R. No. 47243. June 17, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

In the year 1937 the total number of registered voters in the municipality of Talisay, Negros Occidental, was 3,658. In 1938 the electoral census of the place, after the registration on September 24 and October 1, 1938, showed that the number of registered voters had increased to 18,288. A few days before the election for Assemblymen on November 8, 1938, or on October 18, 1938, 17,344 petitions were filed in the justice of the peace court of Bacolod, Negros Occidental, for the exclusion of the names of an equal number of persons from the permanent list of registered voters of Talisay, Negros Occidental, on the grounds that they were not residents of Talisay in accordance with the Election Code, that they could not prepare their ballots themselves, and that their registration as voters was not done in accordance with law. The hearing of the petitions for exclusion was held on October 28, 1938. After attorneys Hilado, Parreno, Remitio and Severino entered their appearance for the challenged voters, the justice of the peace of Bacolod ascertained who of the challenged voters were present in court and who were absent. Thereafter the said justice of the peace declared those who were absent in default. Failing to obtain a reconsideration, the attorneys for the challenged voters moved that, since the presentation of evidence had not yet commenced, all the petitions be forwarded to the Court of First Instance of Negros Occidental which was then presided over by two Judges. The attorneys for the petitioners in the said 17,344 exclusion cases objected on the ground that the aforesaid attorneys had no authority to represent those who were absent. Whereupon the justice of the peace of Bacolod ruled that said attorneys could represent only the 87 challenged voters who were present in the court room and accordingly remanded their cases to the Court of First Instance of Negros Occidental. At the same time the justice of the peace dismissed 253 of the petitions upon motion of the petitioners themselves. Although no evidence was presented by the petitioners in support of their petition against those who were declared in default, the justice of the peace of Bacolod ordered their exclusion from the list of voters on the ground that it was the duty of the challenged voters to appear in court in order to be personally examined in accordance with section 118 (/) of the Election Code, as one of the grounds for their exclusion from the list of voters was that they could not prepare their ballots themselves, that is, that they could not read and write. The attorneys for the challenged voters received notice of the decision of the justice of the peace of Bacolod on November 2, 1938, when the present petition for certiorari was instituted in the Court of First Instance of Negros Occidental by the petitioners in their own behalf and in behalf of the other challenged voters for the purpose of having the judgment of the justice of the peace of Bacolod in the aforesaid exclusion proceedings set aside. After hearing, the Honorable Judge Sotero Rodas of the Court of First Instance of Negros Occidental rendered judgment setting aside the decision of the respondent justice of the peace of Bacolod and ordering the restoration of the excluded voters in the permanent electoral census of Talisay, Negros Occidental. From this judgment the instant appeal was brought, and the respondents-appellants make an elaborate assignment

of nine errors. In view of the result hereinbelow reached, we do not consider it necessary to consider seriatim these errors.

While the present controversy may seem academic because the 1938 election is over, we have nevertheless assumed the task of deciding the same on its merits in view of the imperative necessity and importance of having a correct electoral census in the municipality of Talisay, Negros Occidental, and for that matter in any municipality or city in the Philippines, for use in future elections. In the scheme of our present republican government, the people are allowed to have a voice therein through the instrumentality of suffrage to be availed of by those possessing certain prescribe qualifications (Article V, Constitution of the Philippines; sections 93 and 94, Election Code). The people in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect constitute him a representative of the whole people. This duty requires that the privilege thus bestowed should be exercised, not exclusively for the benefit of the citizen or class of citizens professing it, but in good faith and with an intelligent zeal for the general benefit and welfare of the state. (*U. S. vs. Cruikshank*, 92 U. S., 588.) In the last analysis, therefore, the inclusion in or exclusion from the permanent electoral list of any voter concerns not only the latter in his individual capacity but the public in general.

Section 113 of the Election Code provides that if the Judge of the Court of First Instance is in the province, the proceeding for the inclusion in or exclusion from the list of voters shall, upon petition of any interested party filed before the presentation of evidence, be remanded to the said Judge who shall hear and decide the same in the first and last instance. When, therefore, the attorneys for the challenged voters moved the justice of the peace of Bacolod to remand all the exclusion cases to the Court of First Instance of Negros Occidental, then presided over by two Judges, it was mandatory on said justice of the peace to grant the motion. Without deciding whether the attorneys who appeared for the challenged voters were in fact authorized by all, it is our opinion that, in view of the extraordinary circumstance that the challenged voters were more than seventeen thousand and a representative number thereof were present, and in view of the nature of the proceedings which affect public interest, it was error for the aforesaid justice of the peace not to have remanded all the petitions for exclusion to the Court of First Instance of Negros Occidental. Thereafter, in the interest of prompt and economical administration of justice the necessary arrangement could have been made to enable the corresponding judge of First Instance of the province to proceed to Talisay and hear the cases there.

The judgment appealed from will accordingly be reversed and in the exercise of our discretionary power (*Cason vs. Rickards*, 5 Phil., 611; *Rementeria vs. Lara*, 6 Phil., 532; *Agonoy vs. Ruiz*, 11 Phil., 204; *Muerteguy & Aboitiz vs. Delgado*, 22 Phil., 109; *Hongkong & Shanghai Banking Corporation vs. Aldanese*, 46 Phil., 713; *Tinsay vs. Yusay*, 47 Phil., 639; *Singh vs. Tan Chay*, 51 Phil., 259; *Province of Tayabas vs. Perez*, 56 Phil., 257), the case is remanded to the Court of First Instance of Negros Occidental with instruction to hear and decide the petitions for exclusion on the merits, in the first and last instance (section 113, Electoral Code), giving the parties every opportunity to present their respective evidence, so that it may thereafter make such corrections in the electoral census of Talisay, Negros Occidental, as may be proper (section 90, Electoral Code), and to refer to the Solicitor-General such violations of the Election Law as might have been committed. Without pronouncement as to costs.

Avanceña C.J., Imperial Diaz, Concepcion, and Moran, JJ., concur.

Judgment reversed.

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