

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. HIGINIO DE LA SERNA AND CESAREO CALLET, DEFENDANTS AND APPELLEES.

G.R. No. 4785. February 01, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 23d day of March, 1908, the fiscal of the Province of Oriental Negros filed the following complaint in the Court of First Instance:

"The undersigned fiscal charges Higinio de la Serna and Cesareo Callet, election inspectors of the district of the municipality of Tayasan, Oriental Negros, P. I., with the infraction of section 29 of Act No. 1582 of the Philippine Commission, known as the Election Law, committed as follows:

"That about November 5, 1907, during the general elections held on the above-mentioned date in the municipality of Tayasan, Oriental Negros, P. I., Basilio Ganagganag, Domingo Gallosa, Leon Gantalao, Jorge Ganagganag, Rosendo Camion, Cosme Acabodillo, Tomas Granton, Francisco Garsula, Basilio Pacturan, Rosendo Fabillar, Alejandro Dionaldo, Agustin Canete, Bruno Asentista, Martin Vidal, Clemente Gante, Terencio Pacolanang, Crisanto Ganalón, Cipriano Bulandres, Agapito Grapa, Mariano Grapa, Eustaquio Gantalao, Domingo Garis, Andres Fabillar, Juan Fabillaran, Lucas Estumagulang, Julian Pongcol, Ca Pito Fundador, (Juan Pacturan) Francisco Absin, Zacarias Domin, Damian Pacolanang, Braulio Fabruada, Juan Gadiano, Policarpio Absin, Alejo Acabo, Ciriaco Vallener, Lorenzo Pacatang, Severino Alberto, Faustino Paconla, Osorio Alverto y Wenceslao Telabangco, duly qualified electors of the municipality of Tayasan, having the right to vote but not being able to fill out the ballots, some on account of not knowing how to write and others by reason of physical defects, designated the accused referred to, as being duly appointed and qualified election inspectors of the election district of the said municipality of Tayasan, in accordance with the said Election Law, to fill out their respective ballots, informing the said inspectors that they voted for Pio Banogon, Pedro Teves, and Jose G. de la Peña, as president of Tayasan, governor, and third member of the provincial board of Oriental Negros, respectively.

"That the said accused, in filling out the ballots of the said electors, instead of writing in the names of Pio Banogon, Pedro Teves, and Jose G. de la Peña, for the offices above mentioned in conformity with the desires of the said electors, voluntarily and maliciously inserted in the said ballots the names of Benito Sanchez, Hermenegildo Villanueva, and Felix Montenegro, respectively, for the offices referred to, in this manner falsifying the votes of the said individuals and failing in their obligations as such election inspectors.

"Committed within the jurisdiction of this court, contrary to law."

On the 13th day of May, 1908, the defendants filed a demurrer in which it was alleged that the facts stated in the complaint did not constitute a violation of section 29 of Act No. 1582 of the Philippine Commission.

On the 26th day of May, 1908, the defendants filed an answer setting out at length various facts and in a general way denying the allegations of the complaint. No ruling was made by the lower court upon the effect of filing an answer in a criminal case by the defendants, after having presented a demurrer. The Attorney-General in this court

undertakes to make the point that the answer having been presented before the demurrer, such demurrer could not be considered. He, however, overlooked the fact that the answer was not presented until after the demurrer had been presented. It is true that the answer was dated the 25th of March, 1908, but it was not filed with the court until the 26th of May, 1908, or after the filing of the demurrer. The answer such as was presented in this case can not be considered for the reason that it does not comply with section 24 of General Orders, No. 58.

Upon consideration of the said demurrer the lower court held that the facts stated in said complaint were not sufficient to constitute a crime and sustained the demurrer. From this ruling of the lower court the prosecuting attorney appealed.

From an examination of the complaint it will be noted that the following facts are alleged:

First. That the defendants were inspectors of election for the municipality of Tayasan of the Province of Oriental Negros.

Second. That on the 5th of November, 1907, certain persons whose names appear in the complaint, being legally qualified voters of said municipality, but being unable to write and thereby unable to prepare their ballots, requested the said defendants, as members of said election board, to assist them in the preparation of their ballots.

Third. That the said voters requested the defendants to write the names of certain designated candidates in the proper places on the ballots, but the defendants, willfully and maliciously, and with intent to defraud, wrote the names of persons other than those designated by the voters in said ballots.

Section 29 of Act No. 1582 provides :

"Any inspector * * * who is guilty of any fraud or corrupt conduct in the duties of his office, shall be punished by imprisonment for not less than one month nor more than one year, or by a fine of not less than two hundred pesos nor more than five hundred pesos, or both, in the discretion of the court."

Section 22 of said Act, among other things, contains the following provision:

"A voter otherwise qualified who declares that he can not write, or that from blindness or other physical disability he is unable to prepare his ballot, * * * and that he desires one or two of the inspectors named by him to assist him in the preparation of such ballot * * *. The inspector or inspectors so named as aforesaid shall retire with the voter and prepare his ballot according to his wishes."

Under said section it is made the express duty of the inspector, under the conditions named, to prepare the ballot of the voter according to his wishes. Under said section 29 it is further provided that-

"Any member of any board of inspectors * * * who willfully declines or fails to perform any duty or obligation imposed by this Act [No. 1582] shall be punished by imprisonment or by a fine."

When the inspectors, as charged in the complaint, failed to write in the ballot the name or names expressly indicated by the voter, they thereby willfully failed to perform the duty or obligation imposed by said section 22. This failure to comply with their duty was a fraud practiced against the voter. Under section 29 if the inspector is guilty of any fraud or corrupt conduct in the performance of the duties of his office, he shall be punished, etc., by fine or imprisonment.

The complaint in the present case, in our opinion, clearly sets out facts, which if true, show a violation of the provisions of said section 29. The demurrer, therefore, should be overruled and it is so ordered.

After the expiration of ten days let the record be returned to the lower court with direction that the defendants be required to plead to the complaint filed in said cause. So ordered.

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

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