

TIMOTEO CASTRO ET AL., PETITIONERS, vs. ADOLPH WISLIZENUS, JUDGE OF FIRST INSTANCE, ET AL., RESPONDENTS.

G.R. No. 4849. January 12, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The plaintiffs instituted this original action of certiorari for the same purpose as the one prosecuted by Gregorio Abendan vs. Martin Llorente et al., decided by this court on February 25 of this year (1908). (10 Phil. Rep., 216.)

The facts are the same as related in that decision. For the office of municipal president of Cebu, Province of Cebu, Vicente Sotto received 650 votes, Martin Llorente 483, and Timoteo Castro 9. Llorente protested the election, and the court did not allow Vicente Sotto to appear at the trial through his attorney, Filemon Sotto, the cause being proceeded with against Castro only, represented by this same attorney and another, Tomas Alonso.

The court in its judgment found the votes cast for Vicente Sotto to be illegal, declared Martin Llorente municipal president of Cebu, and ordered Vicente Sotto to pay the costs of the trial.

The proceedings of the Court of First Instance of Cebu having been brought to this court, we find:

1. That the motion filed by Martin Llorente before the court, in the sense of a protest against the result of the elections, reads as follows:

"Vicente Sotto is now, and was at the time of the said elections, ineligible for the above-mentioned office, and his ineligibility was of public knowledge, and was especially known to his electors since it dates from about one year, inasmuch as the said Vicente Sotto is under a sentence of prision correccional for a crime involving moral turpitude. Therefore the undersigned prays that the presentation of Vicente Sotto's candidacy be declared illegal; that the votes cast in his favor be declared illegal as the result of illegal acts, and that the election, as far as it concerns Vicente Sotto, be declared illegal, null, and void."

2. That among the proceedings the following appears:

"By agreement between the attorneys, it is admitted that the respondent Vicente Sotto, on and prior to November 5, 1907, had an appeal pending before the Supreme Court from a judgment rendered against him in the month of December, 1906, by the Court of First Instance of this province and judicial district, sentencing him to four years and two months of prision correccional for the crime of abduction. The said judgment was affirmed by the Supreme Court on the 23d of November, 1907, and after that date, and before the sentence could be executed, the aforesaid Vicente Sotto made his escape to a foreign country, where he is now a fugitive. Paragraphs 1 and 2 of the protest are also admitted. It is also admitted that the sentence rendered by the lower court against Vicente Sotto was of common knowledge in the city of Cebu, and was known not only by educated people, but also by the general masses. Attorney Franco rested his case. The attorneys of candidate Timoteo de Castro waived their right to offer evidence. Cebu, December 24, 1907."

3. That the lower court entered the following judgment :

"This court, having acquired the necessary jurisdiction to hear the above-entitled cause, which has been submitted for its decision, and after considering the allegations and the evidence offered, on the 4th of January, 1908, entered its decision and order for judgment. By virtue of the said order the present judgment is entered, adjudging and decreeing that the votes cast in favor of Vicente Sotto at the elections held in Cebu, Cebu, on November 5, 1907, for the office of president of the said municipality of Cebu, are declared illegal, null, and void; that the said votes shall not be taken into account, and that Martin Llorente, having obtained a majority of legal votes cast at the said election for the office of president of Cebu, be and is therefore declared to be legally elected for the said office and entitled to take possession of the same on the day appointed by law. Judgment is also entered in favor of the plaintiff Martin Llorente and against the said Vicente Sotto for his expenses and costs, assessed by the court in the sum of P100. Cebu, Cebu, P. I., January 4, 1908."

Section 27 of the Election Law [Act No. 1582], which establishes the jurisdiction of the Court of First Instance over the result of certain elections is as follows:

"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 election, 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."

In the present case the court below had nothing to decide in the matter of the scrutiny of the ballots, and nothing was asked for in the motion with respect to the operations showing the true and lawful result of the election for the office of municipal president of Cebu; in proof thereof, the contending parties admit that the result of the scrutiny was lawful and correct; so that it is not a matter of rectifying the examination of the ballots so as to accord with the facts resulting from the proofs offered at the trial held by virtue of the protest, nor is it a case of a void election that should be referred to the Governor-General. The whole of the question submitted to the court below is the status of the party who obtained the majority of votes, that is, whether the election of a person sentenced to four years of prison correccional should be confirmed or not, and by none of the sections of the Election Law is this question submitted to the jurisdiction of the Court of First Instance.

Therefore, deciding the appeal as brought to this court, it is hereby declared that all the proceedings before the Court of First Instance of Cebu in this matter are beyond its jurisdiction, and we hold the same to be null and void, especially the judgment therein rendered.

Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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