

LEONARDO OSORIO, PLAINTIFF AND APPELLANT, VS. MARIANO TRIAS, DEFENDANT AND APPELLEE.*G.R. No. 5710. August 29, 1910*

Ponente: JOHNSON, J.

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The plaintiff and defendant were each a candidate for the office of governor of the Province of Cavite at the election held on the 5th of November, 1907. When the ballots cast at said election were counted it was found that the plaintiff had received a plurality of the votes for said office.

On the 20th of November, 1907, the defendant presented a protest against the said election, alleging that he and not the plaintiff had been elected governor. This protest was duly heard by the Court of First Instance of the Province of Cavite and was finally decided by the Hon. Ignacio Villamor, then judge of said court, in favor of the plaintiff, charging the defendant with the costs.

In the taxation of the costs in the Court of First Instance the plaintiff attempted to have taxed as a part of the costs the sum of P2,212, as attorney's fees and expenses incurred by his attorney, etc., as well as the sum of P62, the actual expenses of the court. Later, and on the 4th day of April, 1908, the attorney for the plaintiff presented a petition for and obtained permission to commence an ordinary action against the defendant for the purpose of recovering said costs. The attorney for the defendant objected to the procedure adopted by the plaintiff for the purpose of recovering the costs. No question is presented here, however, by the appellant, with reference to the method of procedure adopted.

After hearing the respective parties, the Hon. Vicente Jocson, then judge of the Court of First Instance of the Province of Cavite, denied to the plaintiff the right to recover any portion of said costs except the sum of P62, the expenses actually incurred in court. From this decision, the plaintiff appealed.

This court has already decided in analogous cases (*Mendiola vs. Villa*, 8 Off. Gaz., 391,[1] and *Vargas vs. Ross*, No. 5912 [2]) that "The costs to which a party is entitled in the Court of First Instance are regulated by section 492 of the Code of Civil Procedure, by which section attorney's fees are not allowed and they can not, therefore, be included in the costs."

Section 489 of the Code of Procedure in Civil Actions provides that "No lawyer's fees shall be taxed as costs against the adverse party except as herein specially provided." The only special provision contained in said code is that found in section 494, which provides for the collection of an attorney's fee amounting to P40 in the Supreme Court.

There being no provision of law, therefore, for the recovery of an attorney's fees and his expenses, as costs, and adhering to the above decisions, we are of the opinion and so hold that the judgment of the lower court should be and hereby is affirmed with costs.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

[1] 15 Phil. Rep., 131.

[2] 15 Phil. Rep., 665.

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