

PASTOR NAVARRO, PETITIONER AND APPELLANT, VS. JOSE MARIA VELOSO, RESPONDENT AND APPELLEE.

G.R. No. 8299. December 12, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Leyte entered upon an order sustaining a demurrer to an election protest, alleging that said protest did not state facts sufficient sustain a contest under the statute.

The court dismissed the protest upon two grounds:

First. That it did not allege that the protestee had been duly proclaimed governor of the Province of Leyte.

Second. That it appeared from the allegations of the protest that not of the candidates for the office of provincial governor, the office concerning which the protest was filed, had been notified of the protest as required law.

We are satisfied, after a careful examination of the protest, that the decision of the court below is well founded.

Of course, one of the fundamental facts necessary to appear before a contest can be maintained is the election of the person against whom the protest is made. If there is no election there can be no protest. The best evidence, in fact, the primary evidence of such election is, under the proclamation of the provincial board of canvassers. It is nowhere allege the protest that such board proclaimed the election of the protestee. On the contrary, it affirmatively appears that such board did not do so, the protestant alleging that the protestee was declared elected by the various municipal boards of inspectors.

We have already decided in a cause not yet published that the Election Law is a special law providing within itself a complete procedure highly special in its nature by which the protest may be carried on; and that it be strictly followed. The statute requires that a protest shall be inaugurated by motion upon notice to all of the candidates receiving votes for that particular office. That requirement must be literally followed. It was evidently the purpose of the Legislature, to bring into the proceeding every person who was interested in the result of the election and to give him a opportunity to be present at the hearing of the protest and to be heard. What that purpose was, we do not now stop to inquire. It is sufficient us that the Legislature has so required.

In the case at bar it was found by the court below that the protest did allege and that the record did not demonstrate that all of the candida had received the notice of protest as required by law. A perusal of the protest demonstrates at once the correctness of this conclusion. The service the notice as required by law is one of the steps necessary to give the court jurisdiction to proceed. This step not having been taken, the court acquired no jurisdiction. (*Topacio vs. Paredes*, p. 238, ante; *Navarro vs. Jimenez*, p. 557, ante,)

The judgment appealed from is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

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