

MAURO NAVARRO, PLAINTIFF VS. ELISEO JIMENEZ, DEFENDANT.

G.R. No. 8350. December 03, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action of quo warranto, begun in this court. It appears that the plaintiff was duly elected president of the municipality of Lingayen, Province of Pangasinan. After his election the defendant protested that election upon two grounds:

First. That the plaintiff was ineligible to hold the office of municipal president upon the ground that he had been convicted of a crime involving moral turpitude.

Second. That ballots had been counted in favor of the plaintiff which, as a matter of fact, should not have been counted for him and which were sufficient to reduce the number of votes which he actually received below that received by the defendant.

The court heard the protest and decided in favor of the defendant upon the ground last mentioned, declining the consideration of the eligibility of the plaintiff to such office.

This action was begun upon the sole theory and founded upon the single ground that the decision of the court in the protest mentioned was null and void for the reason that not all of the candidates voted for for that office had been notified of the protest as required by law and that, therefore, the court was without jurisdiction or power to enter the judgment which it did enter in favor of the defendant. It is the contention that the court being entirely without jurisdiction and, therefore, its judgment in favor of the defendant being null and void, the defendant is usurping the office and unlawfully excluding the plaintiff therefrom.

While this is an action of quo warranto, we have so far treated it in the nature of a certiorari as to require the elevation to this court of the record made in the court below relative to said protest. From that record it appears that the very question of the notice to all of the candidates voted for at said election for the office, of municipal president was raised before the court below and fully considered and decided by it. After the entry of the judgment in favor of the defendant, a motion was made by the plaintiff to vacate and set aside said judgment and to dismiss the whole proceeding upon the ground that not all of said candidates had been notified of the protest as required by law. The motion was heard. The question was litigated. The evidence was discussed and considered. The arguments of counsel were presented. The court found from the evidence that all of the candidates had been notified of the protest and that the notice was in the form and served in the manner and within the time required by the statute. That question having been raised before the court below and passed upon there, we are unable to see at this moment how an action of quo warranto can be maintained, based upon the theory that such notice was lacking. That question having been determined in the court below, and the decision never having been questioned in the only manner in which such a decision can be, we must hold it conclusive in this action, quo warranto not being a method by which that decision can be reviewed. We are, therefore, of the opinion that the action must be dismissed.

The complaint is hereby dismissed. So ordered.

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

ON REHEARING

JANUARY 22, 1913.

MORELAND, J.:

A motion for permission to proceed with the action of quo warranto and to take testimony relative to the question whether all the candidates voted for at the election referred to in these proceedings had been regularly notified of the initiation of the protest.

We have to say, in amplification of our former opinion on this question, that the general rule is that, where the jurisdiction of the court depends upon the existence of facts, and the court judicially considers and adjudicates the question of its jurisdiction, and decides that the facts exist which are necessary to give it jurisdiction of the case, the finding is conclusive and cannot be controverted in a collateral proceeding. (*Phelps vs. The Mutual Reserve Fund*, 112 Fed., 453; *S. C.*, 61 L. R. A., 717; *Johnson vs. The Brewers Insurance Company*, 51 Wis., 570; *Wyatt vs. Steele*, 26 Ala., 639; *Wilkins vs. McCorkle*, 112 Tenn., 688; *Milner vs. Neel*, 114 Ga., 118; *Brockenborough vs. Melton*, 55 Tex., 493; *Merritt vs. Home*, 5 Ohio St., 307; 67 Am. Dec, 298; *Lancaster vs. Snow*, 184 111., 534; *Swift vs. Yanaway*, 153 Ill, 197; *Fairchild vs. Fairchild*, 53 N. J. Eq., 678; *Hotchkiss vs. Cutting*, 14 Minn., 537; *Bruce vs. Osgood*, 154 Ind., 375; *Ketchum vs. White*, 72 Iowa, 193; *Axman vs. Dueker*, 45 Kan., 179; *Hiatt vs. Darlington*, 152 Ind., 570; *Goodell vs. Starr*, 127 Ind., 198; *Davis vs. Dresback*, 81 Ill., 393; *Cincinnati Railroad Co. vs. Belle Centre*, 48 Ohio St., 273; *Sipe vs. Copwell*, 59 Fed., 970; *Rogers vs. Milner*, 13 Wash., 82; *Rotch vs. Humboldt College*, 89 Iowa, 480; *State Insurance Co. vs. Waterhouse*, 78 Iowa, 674; *Flannery vs. Baldwin Fertilizer Co.*, 94 Ga., 696; *Delphi vs. Startzman*, 104 Ind., 343; *Bumstead vs. Read*, 31 Barb., 661; *Evers vs. Watson*, 156 U. S., 527; *Dowell vs. Applegate*, 152 U. S., 327; *Laccasane vs. Chapuis*, 144 U. S., 119; *Kent vs. Lake Superior Co.*, 144 U. S., 75.)

There being in the record evidence to support the finding of the court below relative to its own jurisdiction over the subject matter and over the persons. involved, this court will not, in this proceeding, review the finding.

The motion to be permitted to go forward is denied.

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

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