

MAMERTO MANALO, PROTESTANT AND APPELLEE, VS. CATALINO SEVILLA, PROTESTEE AND APPELLANT. MARIANO MELENDRES, INTERVENER AND APPELLANT.*G.R. No. 8515. March 29, 1913*

Ponente: MORELAND, J.

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This is an election contest involving the office of governor of the Province of Rizal. The only candidates whose rights need to be considered in this case are Mariano Melendres, Mamerto Manalo, and Catalino Sevilla. The election took place on the 4th day of June, 1912. The protest was filed on the 18th of the same month. On the face of the returns Sevilla had a plurality of the votes and was duly declared elected by the provincial board of canvassers under section 27 of the Election Law. Manalo filed the protest. Melendres presented a petition praying that he be permitted to intervene and take part in the contest. The prayer was granted and he was allowed to intervene. After due hearing the court found in favor of the protestant, Mamerto Manalo, and ordered the provincial board of canvassers to correct its canvass in accordance with the facts as found. Appeals were taken by Sevilla and Melendres.

There are several questions raised here which We proceed to discuss.

Question 1: Was the protest filed in time?

In regard to this question the discussion turned upon the interpretation of that clause of the Election Law which provides that the protest shall be made "within two weeks after the election." Appellants contend (a) that the two weeks must be counted from election day—that is, the day on which the votes were actually cast—and (b) that, in so counting, the first day must be included and the last day excluded. Under this theory it is claimed that the protest came too late, having been made on the 15th day instead of the 14th, as required by law.

We stop only to discuss the first proposition, namely, that the time within which the protest must be filed is to be counted from the day on which the votes were cast, simply saying in regard to the other contention that, even if the first one is sound, still the protest was filed in time, as the correct method of computing the time is to exclude the first day and include the last. Two weeks from a Tuesday is not a Monday; and if one invites another to call on him two weeks from today (Monday) he would not expect him to disturb his quiet meditation by calling on Sunday. Two weeks from Tuesday, June 4, 1912, was Tuesday, June 18, 1912, and the 18th was as much within the two weeks as was the 15th.

Turning to the other, contention, we say at the outset that the question involved in that contention, in substance, has already been decided by this court in the case of *Navarro vs. Veloso* (23 Phil. Rep., 625). The reasons upon which that decision was based not having been fully set forth in the opinion, and the greater part of the arguments of counsel on this appeal having been directed to the question involved in that decision, we take the occasion to add to the reasons set out therein.

In that case we held that a protest concerning the office of provincial governor, filed prior to the proclamation of the provincial board of canvassers, was premature for the reason that it did not and could not, by reason of the time when the protest was filed, state facts sufficient to sustain a legal protest. In that case as in this the protest was filed before the recanvass by the provincial board of canvassers and before a proclamation of the result as required by section 24 of the Election Law. It came to us by way of an appeal from a judgment of the Court of First Instance of the Province of Leyte, entered upon an order dismissing the protest on the ground that it did not allege that the respondent had been duly declared elected provincial governor by the provincial board of canvassers, but, on the contrary, affirmatively alleged that the respondent had been declared elected by the board of inspectors of the various precincts of the province. In that case we said:

"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 law, the proclamation of the provincial board of canvassers. It is nowhere alleged in 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 consider question 1 from three aspects:

1. Let us take a concrete case: There are two candidates for the office of provincial governor; the protest is filed, issue is joined, the trial is had, and the judgment rendered before the meeting of the provincial board of canvassers. As we said in the case above cited, legally and logically speaking, a protest is impossible until the adversary of the protestant is elected. There being only two candidates, in the case assumed, if the respondent is not elected the protestant must be. Consequently, the indispensable element of the protest is the election of the respondent, it being impossible to assume that the protestant will contest his own election. A protest is based upon the injury which the protestant has received or which he is alleged to have received during the course of the election. The only possible way of proving that injury is to establish the election of his adversary. How, then, can the protestant know that his adversary was elected? Since that fact is fundamental and indispensable to a proper protest he must allege it in his protest and prove it upon the trial. How can he do this?

Under the Election Law primarily the only evidence of the election of a member of the Assembly or a provincial officer is the certificate of election issued to him by the provincial board of canvassers following its proclamation of the election based on the recanvass provided for in said section 25. That certificate, or the proclamation on which it is based, is the credential, and the only credential, which permits a person to take his seat as a member of the Assembly or which will permit him to assume a provincial office. Without it no one can take office as a member of the Assembly or draw the salary connected therewith. Without it no one can take a provincial office, discharge the duties, or receive the emoluments thereof. The incumbent of a provincial office has no authority to turn the office over to one who does not present such certificate. On the contrary, he must hold the office until his successor presents himself armed with that credential.

The protestant may be morally certain that the respondent was elected. After the election he may have visited every precinct in the province and personally seen the statements filed by the various boards of inspectors. By the mere process of addition he may have determined to his own satisfaction that his adversary received a majority of the votes allowed and counted by the boards of inspectors. But it must be remembered that courts are governed not by what the protestant knows but by the evidence which the law required. No person can take a seat in the Assembly or assume a provincial office on account of what a protestant or anyone else may know. Such offices can be assumed only by persons who present the kind of proof required by law. The statements of the various boards of inspectors of the province might possibly, under special conditions, be received as evidence of the

election of respondent, but it would be of a tertiary character and would be admissible, if at all, only upon the showing that the evidence required by the law, namely, the certificate or the proclamation of the board of canvassers, could not be obtained and that secondary evidence of their contents could not be presented. Even then, it is extremely doubtful if such statements could be accepted.

We, therefore, see that the protestant must not only morally know that respondent was elected, but he must legally know it—that is to say, he must know it in such a way that he can communicate that knowledge effectively to the court. The court must be satisfied from the allegations of the protest that there has been an election and that the respondent was elected. The allegation that the addition of certain figures found in the statements of the boards of inspectors of the various precincts of the province shows that the respondent received more votes than the protestant means nothing to the court. It gives the court not a single legal fact upon which it can predicate any sort of finding with respect to the election. The only fact upon which the election of an individual can be predicated is the certificate or the proclamation of the provincial board of canvassers. That is the only thing that can convey to the court the legal fact of an election; and that is the very fact the respondent does not know and cannot allege prior to the action of the provincial board of canvassers. When the law requires a certain fact to be proved in a certain specified way no one can legally know that fact until he has the evidence required by law to demonstrate its existence. One who cannot prove a fact as the law requires does not know it so far as the law is concerned.

It is clear, then, that, prior to the action of the provincial board of canvassers required by section 25, neither the protestant nor the respondent himself can know, legally speaking, who was elected.

2. Even if the protestant is morally certain who was elected, can he prove it?

This question has already been answered in substance. The only evidence of the election of the respondent which a court can receive would be the certificate of election issued by the provincial board of canvassers following its proclamation or the proclamation itself. Until that is produced the court cannot act. It has nothing to act upon; there is nothing before it. The statements of the various boards of inspectors mean nothing. They are not, under the law, proof or even evidence of the election of the respondent. Therefore, until the provincial board of canvassers has performed its duty under the law the protestant cannot prove the first and fundamental fact of his protest, namely, that he lost the election.

Finally, under this subdivision, we call attention to the fact that the Election Law nowhere authorizes the court to bring before it the statements of the boards of inspectors of the various precincts of the province. We repeat, in this connection, that we must bear always in mind the imperative necessity of alleging and proving the election of the respondent, that is, the loss of the election by the protestant. Now, prior to the action of the provincial board of canvassers, the only possible way of proving the election of the respondent, not the protestant, is by the statements of the boards of inspectors of the various precincts filed in accordance with section 24 of the Election Law. Apart from the action of the provincial board of canvassers, his election is shown, as the usual expression goes, "on the face of the returns." In other words, he won according to the figures contained in the statements of the various boards of inspectors. The different bases upon which the election of the respondent and the election of the protestant rest must be clearly noted. While the election of the respondent rests solely upon the returns, the election of the protestant, if he is elected, depends upon a recount of the ballots. This distinction is fundamental and is recognized clearly in the Election Law. It is in the light of this distinction that we are able to conclude that the proof of the election of the respondent, apart from the action of the provincial board of canvassers, was not contemplated by the framers of the Election Law, because the court is not authorized by that law to bring before, it the statements of the inspectors of the various precincts. The Act provides that the court, on the filing of a protest, "shall forthwith cause the registry list and all ballots used at such election to be brought before it and examined." No mention is made of the statements of the boards of inspectors. This is significant. If it had been at

all contemplated that the election of a respondent could be proved in any other way than by the certificate or proclamation of the provincial board of canvassers, certainly the court would have been expressly authorized by that law to bring before it such statements, as they would, in such case, constitute the only evidence of such election. The Legislature clearly intended that the court should accept as the only evidence of election the certificate or the proclamation of the provincial board of canvassers, and that that would be conclusive so far as the returns were concerned. If the Legislature had intended that the court should declare the election of the respondent upon the face of the returns and in complete independence of the action of the provincial board of canvassers, it would probably have authorized the court to bring before it the only evidence upon which the court could base such a finding. It is no sufficient reply that such express authorization would be unnecessary, as the court has inherent power to bring before it any evidence pertinent to pending inquiries. The same may be said of the registry list and ballots, yet they are expressly mentioned in the law. Besides, it may be doubted that such plenary power exists in the court. The statute seems to restrict the functions of the court to the examination of the ballots and registry list and to such competent and material evidence as refers to them. There may have been a purpose in this. If the statements of the boards of inspectors can be presented by one party, they may be attacked by the other. In such case there would follow a result that would, if valid, seriously affect the action of the provincial board of canvassers and complicate the election machinery. However, upon the existence of the power referred to we express no opinion. What seems to us clear is that the court cannot find as a fact the election of the respondent on evidence apart from and independent of the action of the provincial board of canvassers.

3. It is apparent from what has been said and from a general view of the whole scheme of the Election Law that the beginning of a protest takes for granted the election of some other person than the protestant. It was not intended that the court should have anything to do with that question. That is conceded before the protest starts. It was assumed that such election would come to the court entirely resolved beforehand by officers belonging to another branch of the Government and that there would never be any occasion for a contest concerning it or any necessity of a finding relating to it, and especially no occasion for a trial at which conflicting evidence relating to it would be introduced. It was never contemplated that the court should have anything to do with the returns. They are left by the law in the custody of another branch of the Government, are subject to its exclusive orders and commands, and have nothing whatever to do with an election contest. It cannot be assumed that the resolution of the same and identical question was left by the Legislature to two different bodies belonging to different departments of the Government, differently constituted, proceeding according to different methods, and exercising wholly different functions—the one acting almost mechanically, very largely ministerially, permitting no appearances, hearing no evidence, having no discussions, making no decisions; the other acting judicially, with a full trial, permitting appearances, evidence, and discussion, and rendering decisions upon disputed questions of fact and of law. The election of a person other than the protestant, upon the face of the returns, is regarded by the Election Law as an inviolable and an untouchable fact in an election protest, to be accepted by the court from the hands of the provincial board of canvassers absolutely without question. The acceptance of that fact is the sole cause of the protest, is the sole basis for an examination and recount of the ballots, and is the sole reason for a judgment favor of the protestant.

We conclude, then, that the court in an election contest has no power or authority to find or declare the election of a respondent on the statements of the boards of inspectors of the various precincts, or on any other evidence except the proclamation or certificate of the provincial board of canvassers. Even the finding on this evidence is not so much a finding of the fact of the election as it is the acceptance of a fact already found. It is rather the recognition of the existence of a thing already determined than the finding of the thing itself.

This being so, how can it be asserted that an election contest can be maintained prior to the action of the provincial board of canvassers, or that the court can render any judgment in a contest so begun and so maintained?

Moreover, the only act which a court is authorized to perform as the final and concluding act of the contest is "to issue a mandamus directed to the board of canvassers to correct its canvass in accordance with the facts as found." (Section 27, Election Law, as amended by Act No. 2170.) From this it is clear that the court has no power to declare the election of anybody, even in its final judgment rendered after a complete trial of all the issues. Much less, then, has it authority to declare, upon the face of the returns merely, the election of the respondent as the basis and fundamental fact of the contest and the one absolutely indispensable to its inception and maintenance. It may establish the facts upon which the provincial board of canvassers will later re-proclaim the election, but it cannot declare the election itself. In this connection it must be noted that even that which the court is authorized to do as the crowning act of the contest, namely, issue its mandamus to the provincial board of canvassers, is based upon a recount of the ballots and has nothing whatever to do with the statements of the municipal boards of inspectors. The last act of the court, as well as the first, in no way touches the statements of the inspectors of the precincts and they are in no way used by the court as a basis for any of its acts or decrees. That being the case, upon what theory may it be maintained that the statements of the various boards of inspectors of the precinct may be introduced to prove the election of the respondent? The court has no authority to declare anyone elected even after trial. Its power is exhausted with the issuance of the mandamus.

It may be argued that the election on the face of the returns of a person other than the protestant will always be conceded and evidence establishing it will never be required. In reply it may be said, in the first place, that it is not quite true that the election of a given person will always be conceded so far as the face of the returns is concerned. Occasions will certainly come in which there will arise a contest as to that matter. Where one alleges a fact which is absolutely necessary for his success, it may be taken as assured that some time or other his adversary will deny that fact and stoutly contest its existence. Moreover, such an argument overlooks the essential feature of the whole matter under discussion. Such a concession would be insufficient in law to establish the fact sought to be conceded. A concession made before the meeting of the provincial board of canvassers could rest upon nothing more for its basis than the statements of the various municipal boards of inspectors would show, but, as we have seen, the very question at issue is whether the court can receive such statements as evidence of the election of a given person, and whether they are sufficient evidence thereof even if received. If such statements are not admissible to prove an election, then a concession based upon such statements is inadmissible and ineffective. The public has an interest in an election and as to who is elected. Its rights cannot be affected by the concessions of private individuals. The law provides the only way in which the election of a person can be proved. No concession among contestants for an office will be permitted to circumvent that provision. A concession relating to the election of a person to a provincial office must be based on the action of the provincial board of canvassers. Such concession can do nothing more than concede that the provincial board of canvassers proclaimed the person elected and issued its corresponding certificate to him.

There is another view of the matter: If the Court of First Instance is permitted, in an election contest, to declare the election of the respondent upon evidence apart from the action of the provincial board of canvassers, then there immediately arises opportunity for conflicts between the two bodies. The court declares the respondent elected on the face of the returns. Thereafter the provincial board of canvassers meets and declares the protestant elected on the face of the returns. Which will prevail? But the question naturally comes in reply, the election on the face of the returns being purely a mathematical calculation made from the statements of the various municipal boards of inspectors, how could the court and the provincial board of canvassers differ? Laying aside the matter of errors which may and frequently do occur in gathering, aggregating, tabulating, calculating and presenting such statements, we must not forget that the two bodies which deal with those statements are, as we have seen, altogether different in their constitution and are provided with altogether different functions. The court, when the statements are presented to it as evidence, may, perhaps, not only perform the mathematical calculations required,

but may also go behind the statements and determine all questions relating to their validity, such as whether they are genuine, whether they are forged, whether they are changed after filing, whether the persons signing were authorized, and a number of other questions. The provincial board of canvassers can do only part, if any, of these things. On the other hand the provincial board of canvassers has authority to return the statements for correction in form. The court has no such authority. The court acts judicially; the provincial board of canvassers, ministerially. Bodies with such widely different powers and functions are certain to come into conflict where they are required to resolve the same question; and this is especially so when the one can receive evidence and decide, while the other can do neither.

Again, and merely as a straw. Conflicts may arise as to the possession of the statements referred to. Both bodies may demand possession at the same time.

Further touching the lack of power in the court independently to declare the election of anyone in an election contest, let us consider the results which, if the power were conceded, would normally follow its exercise. Let us suppose that, upon an examination of the statements of the municipal boards of inspectors, the court finds that the protestant received a majority of the votes cast for that office. Can the court declare him elected? And would that decree be binding upon the provincial board of canvassers? Would that decree admit the successful contestant to a provincial office? Or let us suppose that, upon the same evidence, namely, the statements of the municipal boards of inspectors, the court finds that the respondent was elected as alleged in the protest; and thereupon the protestant, having acquired further information, or for some other reason, concedes in open court the election of the respondent and joins with the latter in a request that he be duly declared elected by the court. Can the court make such a declaration? And, if made, does it bind the provincial board of canvassers? Would that decree be a sufficient credential to admit the respondent to the office of member of the Assembly or to permit him to assume a provincial office?

In addition, remembering that the court is authorized by the Election Law to do nothing more than issue a mandamus to the provincial board of canvassers, how can it render an effective judgment or issue an effective mandamus prior to the action of the board to which the mandamus must be directed? The mandamus is only to correct the canvass. The canvass cannot be corrected until it exists. Prior to its meeting the provincial board of canvassers cannot be ordered to correct its canvass because it has not yet made any.

Finally, there is at least one province in the Archipelago in which the means of communication between the different parts thereof are so inadequate that it would be impossible for any candidate for a provincial office to determine, during the two weeks within which the protest must be filed, who received the majority of the votes. In fact, in such province the provincial board of canvassers is unable to collect from the various precincts of the province the statements of the municipal boards of inspectors until some days, or even weeks, after the time when the law requires them to meet and recanvass the statements. If the period of two weeks were to be counted from election day, that period would expire before it could be determined who had received the majority of the votes cast in the province. In order to protect himself, therefore, each candidate would be obliged to file a protest in anticipation of what possibly might appear when the statements of the municipal boards of inspectors were examined. It is clear that the law did not contemplate this and does not require it.

An election is not complete until the results thereof have been proclaimed in the manner required by law. Until that moment the election of a particular person cannot be proved in any court. The proclamation of the provincial board of canvassers is a necessary part of the election. It is the last act thereof. The popular will has not been entirely expressed until it has been proclaimed by that board. We do not hesitate, therefore, to hold that the word "election" includes every step necessary to make that election complete and that the time within which a protest must be filed should be counted from the last act in the process of the election which makes that election

complete. This being so, and we not believing that the Legislature asks men to perform impossibilities or that it enacts legislation which leads to absurdities, we find and declare that question 1 should be answered affirmatively.

Question 2: Did the court err in permitting the intervention of Mariano Melendres?

We experience no difficulty with this question. The Election Law provides that an election contest "shall be upon motion with notice of not to exceed twenty days to all candidates voted for." Melendres was duly notified. Upon the service of that notice he at once became a party to the proceeding with all the rights which pertained to any other party. His application for intervention was unnecessary. Being already a party he could exercise any right, present any affirmative demand, allege any kind of a defense which any other party to the contest could present or allege.

Question 3: Did the court err in opening the ballot boxes without further proof than the allegations of the protest?

We think not. The allegations of the protest are made under oath; they set out in detail the irregularities complained of. These allegations, if true, lay a sufficient foundation for the recount. This is especially the case in view of the wording of the statute. It provides that, upon filing the protest, the "court shall forthwith cause the registry list and all ballots used at such election to be brought before it and examined."

While the statute seems to require all ballots to be brought before the court, the practice should be, in the first instance, to bring before the court for examination only such ballots as are questioned by the protest.

Question 4: Did the court err in refusing the request of respondent Sevilla that it examine the ballots in the precinct of Taguig?

Again we think not. The respondent Sevilla alleged irregularities in this precinct. The protestant denied the allegation. Evidence was introduced by the contending parties touching the issue. Upon that evidence the court found that the alleged irregularities had not been proved and refused to examine the ballots cast therein. A careful examination of the evidence fails to disclose error in the ruling.

Question 5: Should an illiterate or other voter, who, through physical disability, is unable to cast his ballot without assistance, be permitted to vote without first taking oath to his illiteracy or disability?

He should not. The provision of the Election Law relative to this matter is as follows (sec. 22):

"A voter otherwise qualified who declares that he cannot write, or that from blindness or other physical disability he is unable to prepare his ballot, may make an oath to the effect that he is so disabled and the nature of his disability and that he desires one or two of the inspectors named by him to assist him in the preparation of such ballots. The board shall keep a record of all such oaths taken which shall show the name or names of the inspector or inspectors assisting the voter and file the same with the municipal secretary with the other records of the board after the election. The inspector or inspectors so named as aforesaid shall retire with the voter and prepare his ballot according to his wishes. The information thus obtained shall be regarded as a privileged communication."

Under these provisions the oath of illiteracy or disability is a condition precedent to the right to vote. To permit voters to receive assistance in casting their ballots without any evidence as to their disability would be to open the door somewhat to fraud, coercion, and intimidation and to remove to some extent the secrecy of the ballot. This cannot be permitted, and to that end the oath must be taken before the elector may be allowed to cast his ballot.

Question. 6: Did the court err in declaring null and void the election in the precinct of Jalajala?

It did not. The Election Law provides for the greatest secrecy in casting the ballot and at the same time the

greatest publicity—secrecy as to the contents of the particular ballot cast, but publicity as to the manner of preparing and casting it. Full publicity as to everything that transpires from the time the voter enters the polling place until he goes out of it, except, of course, as to the contents of the ballot he casts, is the strongest influence going to protect him against undue influence, imposition, coercion, intimidation, and fraudulent practices in the exercise of his franchise. It cannot be permitted that publicity be abridged in the slightest degree. In the precinct in question the law was violated in many ways: (1) The registry lists were improperly prepared and signed; (2) not enough voting booths were prepared and furnished; there should be a booth for every 50 voters and one for a fractional part thereof; (3) the ballot boxes were not presented to the public for inspection prior to the opening of the polls as required by law; (4) no person, aside from the election officials, was permitted inside the polling place except the person engaged in casting his ballot; (5) voters were not permitted freely to approach and enter the polling place or witness the balloting as required by law; (6) voters and the public generally were prohibited from approaching the polling place or entering the same; (7) voters desiring to vote were not permitted to approach or enter the polling place except in alphabetical order, and then only singly and as called by the policemen guarding the entrance; (8) the entrance to the polling place was guarded by officers of the law under instructions from the election officials to permit no one to enter except those designated by such officials; (9) the election was carried on as follows: The chairman of the board of inspectors called the name of a voter; the name was taken up by the policemen guarding the door and repeated to the body of electors which was kept waiting thirty meters from the polling place; the voter whose name was called, if present, thereupon stepped forward and was permitted to enter the polling place and vote; after he retired another name was called and the process repeated.

This manner of conducting an election cannot be tolerated. The law should be carefully studied by the election officials and strictly complied with. While courts always hesitate before declaring an election absolutely void, as it results in disfranchising innocent voters, we feel bound, under the facts in this case, to so declare.

We affirm the finding of the trial court upon all of the ballots except the following:

Precinct of San Mateo: Exhibit No. 66, Sevilla, was counted in favor of Mariano Melendres. We think this was error. The name found upon the ballot is not sufficiently like that of Mariano Melendres to warrant its being counted in his favor.

Second precinct of Malabon: Exhibit 39, Sevilla, where the name of Catalino Sevilla is found in the space allotted to the candidate for member of the Assembly. This ballot ought not to have been counted for Sevilla for provincial governor.

Precinct of Morong: Exhibit 42, Sevilla; this exhibit is composed of two ballots. One of them is rejected for the same reason as the last exhibit, namely, that the name of Catalino Sevilla occupies the space allotted to the candidate for member of the Assembly. It cannot be counted.

Precinct of Pasay: Exhibit No. 48, Sevilla; this ballot must be rejected for the same reason.

Precinct of Pililla: Exhibit No. 59, Sevilla, must be rejected on the ground that the name found upon the ballot is not sufficiently like the name of Catalino Sevilla to warrant its being counted in his favor.

Second precinct of Caloocan: Exhibit No. 34, Sevilla, must be rejected, as there is a distinguishing mark upon the back of the ballot which was not shown to have been placed there either before or after the voting occurred.

Precinct of Parañaque: Exhibit No. 20, Melendres, must be counted in favor of Sevilla. The marks made upon the ballot were made accidentally. They are not identifying marks.

Second precinct of Pasig: Exhibit No. 36, Manalo, was improperly rejected by the court. The ballot should be

counted.

Precinct of Tanay: In Exhibit No. 42, Manalo, one ballot was improperly rejected. The name in the space allotted to candidate for the office of provincial governor is that of Mamerto Manalo, while the name in the space allotted to candidate for member of the Assembly is not the name of Mamerto Manalo, although somewhat similar to it; so that there exists no confusion as to whether the voter intended to vote for Mamerto Manalo for provincial governor or member of the Assembly.

First precinct of Caloocan: Exhibit No. 6 was improperly admitted in favor of Mamerto Manalo, inasmuch as the name actually voted is so much different from that of candidate Manalo that it is impossible to say for whom the voter intended to cast his ballot. The ballot should have been rejected.

Second precinct of Pasig: For the same reason Exhibit No. 35, Manalo, must be rejected.

First precinct of Pasay: Exhibit No. 38, Manalo, must also be rejected for the same reason.

Precinct of San Mateo: Exhibit No 39, Manalo, must be rejected for the same reason.

Precinct of Parañaque: Exhibit No. 48, Manalo, must be rejected as a vote for Manalo for provincial governor on the ground that his name appears solely in the space allotted to the candidate for member of the Assembly.

First precinct of Pateros: Exhibit No. 39, Melendres, consisting of 8 votes in favor of Mamerto Manalo, must be rejected on the ground that each one contains a distinguishing or identifying mark on the back thereof; and it does not satisfactorily appear that these marks were made before or after the ballot was voted.

Precinct of Mariquina: Exhibit No. 16, Melendres, should have been counted in his favor for the reason that the inversion of the names was not sufficient to require its rejection.

Precinct of Binarigonan: One of the ballots in Exhibit No. 2, Melendres, should have been counted in his favor, the marking of two of the spaces in blank not having been intended as a distinguishing or identifying mark.

First precinct of Caloocan: Exhibit No. 6, Melendres, must be rejected on the ground that the name written in the space allotted to the candidate for provincial governor is not sufficiently like the name of Mariano Melendres to warrant us in finding that the voter intended to vote for him.

Second precinct of Malabon; For the same reason Exhibit No. 14, Melendres, must be rejected.

Precinct of San Mateo: Exhibit No. 44, consisting of one ballot, should be rejected for the same reason.

Precinct of Taytay; Exhibit No. 46, Melendres, must be rejected on the ground that the name of Mariano Melendres is written in the space allotted to candidate for member of the Assembly.

Precinct of Taytay: Exhibit No. 47, Melendres, must be rejected for the same reason given for the rejection of Exhibit No. 6.

Precinct of Montalban: one of the ballots composing Exhibit No. 17, Melendres, must be rejected on the ground that the name of Mariano Melendres is found in the space allotted to candidate for member of the Assembly. It cannot, therefore, be counted as having been voted for the office of provincial governor.

Precinct of Mariquina: Exhibit No. 70, Sevilla, a ballot counted in favor of Melendres, must be rejected for the same reason.

We find that all of the ballots written with lead pencil or with ink and otherwise free from defect should be counted. Of these, 40 were cast in favor of Sevilla and only 2 were allowed him by the court; 17 were cast for

Manalo and none were allowed him by the court; 42 were cast for Melendres and only 18 allowed him by the court.

In all particulars not hereinabove specifically stated otherwise the judgment of the court below is affirmed.

Making the proper computations from the data heretofore given we find and decide that, at the election held in the Province of Rizal on the 4th day of June, 1912, Sevilla received 1,876 votes, Manalo 1,877, and Melendres 1,881. We therefore find and adjudge that Mariano Melendres received a larger number of votes than any other candidate for provincial governor at said election.

The cause is returned to the Court of First Instance of Rizal, with instructions to issue its mandamus to the provincial board of canvassers to correct its canvass in accordance with the facts as found by the Supreme Court.

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

DISSENTING IN PART AND CONCURRING IN PART

JOHNSON, J.,

I cannot agree with my associates with reference to the interpretation of the Election Law relating to the time when the protest must be presented. In my opinion the word "election" used in the Election Law relates to the day on which the election is held and not to the final promulgation or announcement of the result of said election. Practically every section of the law contains proof that the word "election" refers to the day on which the election is held. (See secs. 3, 4, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, and 30 of Act No. 1582, and secs. 1, 4, 8, and 12 of Act No. 2045, as well as the sections of the other amendments which have been made.)

I find no reason for giving the word "election" in section 27 a different meaning from the very evident meaning which said word has in every other section of the Election Law. If the protest cannot be made until after the provincial board has proclaimed the result of the election and has issued the certificate of election to the successful candidates, then the protest in the present case was premature and should have been so declared. Under the theory of the majority decision the protest was made before any cause of protest had arisen. Even the protestant did not know but that the provincial board might declare that he was elected, until after the result of the election had been promulgated by the provincial board. The protest is the beginning of the action. An action begun before the cause accrues will be dismissed. This is true in both civil and criminal cases. The defect of commencing an action before the same accrues or matures cannot be cured by amendment. The error can only be cured by commencing an entirely new action, by filing a new complaint, by the presentation of a new protest.

The majority opinion holds that the protest should have been made within two weeks after the proclamation of the provincial board. It was actually made within two weeks after the "election." In my opinion it was made within the time prescribed by law. In my opinion the discussion relating to the time of the protest was unnecessary and foreign to the real question presented by the protestee.

Seldom have I seen so much strength exercised in an effort to give a borrowed meaning to a law which is perfectly plain and easy to understand.

The question relating to the time when the protest must be presented was not raised nor discussed in the case of Navarro vs. Veloso, and in my opinion the discussion is not necessary for the decision in the present case. The long and forceful argument sustaining the contention that the protest should be filed two weeks after the result of the election is proclaimed is not supported by a single authority, even though the authorities are numerous upon

the question and all to the contrary. The law is not a new law. It is patterned after the laws of many of the States of the United States. Many of its provisions are exactly analogous to similar laws in many of the States. Provisions similar to those contained in section 27 have been construed many times by the courts of last resort in many States of the Union.

I cannot secure the consent of my mind to conform to the interpretation given by the majority opinion to the phrase "within two weeks after the election" as found in section 27 of Act No. 1582, and as amended by Act No. 2170. In all other respects I agree with the facts and the conclusions of the majority opinion.

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