

5 Phil. 18

[ G.R. No. 2122. September 13, 1905 ]

**PEDRO T. ACOSTA, PLAINTIFF AND APPELLANT, VS. DAVID FLOR, DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**MAPA, J.:**

It is alleged in the complaint that at the municipal elections held on the 1st day of December, 1903, in the town of Laoag, Province of Ilocos Norte, the plaintiff and the defendant were candidates for the office of municipal president of the said town; that as a result of the said election the plaintiff was elected to the said office by a majority of 100 votes, and that notwithstanding this fact the defendant has usurped said office and unlawfully held the same since the plaintiff was the person entitled to the exercise of said office. The complaint further sets out other acts in regard to illegalities alleged to have been committed during the election. The prayer of the complaint is to the effect that judgment be entered against the defendant, excluding him from the exercise of such office and that the plaintiff be declared to be entitled to the same and that he be given possession thereof, and for such other and further relief as the facts in the case would warrant in favor of the plaintiff.

The case having proceeded to trial, the plaintiff introduced various witnesses, all and each of whom testified to facts which, if true, would more or less gravely affect the legality of the election. Not a single witness, however, confirmed the allegations contained in the complaint, to the effect that the plaintiff had obtained a majority of 100 votes at the said election, nor can it be inferred from the evidence introduced by the plaintiff that he, as a result of the said

election, or for any other reason, was entitled to the office of municipal president of Laoag, now held by the defendant.

In view of the evidence introduced at the trial by the plaintiff, and before the defendant had presented his, the court, on the latter's motion, acquitted the defendant, imposing the costs upon the plaintiff. The court based its action upon the following grounds: (1) That the plaintiff could not maintain the action brought by him because he had failed to establish his alleged right to the exercise of the office in question; and (2) that there was no necessity to inquire into the right of the defendant to hold the said office for the reason that this question had already been determined by the provincial board after a consideration of the various protests presented to it in regard to irregularities committed during the last election held at Laoag for the office of municipal president and other municipal officials, and for the further reason that the presumption is that a person holding a public office was duly appointed or elected thereto.

The plaintiff excepted to this ruling of the court, moved for a new trial, and thereafter brought the case to this court for review. An examination of the evidence of record supports the finding of the court below to the effect that the plaintiff has failed to prove in any way, shape, or form that he was entitled to the office in question, as alleged by him in his complaint. There is no dispute upon this question. The appellant, himself, when the motion of the defendant to dismiss was argued, and from the decision of which he appealed to this court, clearly admitted that he had failed to establish his right to the exercise of the office in question. (Page 17 of the bill of exceptions.) And on page 52 of his brief, he also assumes that he *had been unable to establish* his alleged right to the office in question.

The question that we have to decide, therefore, is whether, notwithstanding what has already been said, and notwithstanding the fact that the plaintiff has failed to show that he had any right to the office of municipal president of Laoag, he can maintain an action such as this for the purpose of excluding the defendant from the exercise of said office on account of illegalities alleged to have been committed

in the elections.

The right to maintain such an action is especially and expressly governed by the provisions of sections 197 to 216 of the Code of Civil Procedure.

The code, after enumerating in sections 197 and 198 the cases in which such an action may be brought and the persons against whom they may be brought, goes on to determine with careful distinction those who have the right to maintain such action.

Section 199 provides that “the Attorney-General of the Islands, or the fiscal of any province, when directed by the Chief Executive of the Islands, *must* commence any such action; and when upon complaint or otherwise he has good reason to believe that any case specified in the two preceding sections can be established by proof, he *must* commence such action.”

Section 200 provides that “the Attorney-General of the Islands or the fiscal for a province, *may*, at his own instance, bring such an action, or he may, on leave of the court in which the action is to be commenced, or a judge thereof in vacation, bring the action upon the relation of and at the request of another person; but, if the action is brought at the request of and upon the relation of another person, the officer bringing it may require an indemnity for expenses and costs of the action, to be given to him by the party at whose request and upon whose relation the same is brought, before commencing it.”

Finally, section 201, under the heading “An individual may commence such action,” provides as follows:

“A person claiming to be entitled to a public office, unlawfully held and exercised by another, may bring an action therefor.”

If the legislator had intended to give to all citizens alike the right to maintain an action for usurpation of public office, he would

have plainly said so in order to avoid doubt on a subject of such far-reaching importance. A simple provision would have sufficed for this purpose. Far from it, the legislator has on the contrary especially and specifically provided in sections 199, 200, and 201 who must and who may bring such actions; and it is very clear that it was his intention to give such right to those expressly mentioned in the above-cited sections and to no other, following the well-known rule of law "*inclusio unius est exclusio alterius.*" It has been noticed that the above referred to three sections only mention the Attorney-General, the provincial fiscal, and the individual *claiming to be entitled to the office* unlawfully held and exercised by another. It is to be inferred from this last provision that the individual who does not claim to have such a right can not bring an action for usurpation of public office.

This inference is supported by the provisions of section 202 which says that when the action is against a person for usurping an office, the complaint shall set forth the name of the person *who claims to be entitled thereto, with an averment of his right to the same.* Why should this be required as an essential requisite if it were not necessary that the individual bringing the action should claim the right to exercise the office in question?

Our opinion is that the law has reserved to the Attorney-General and to the provincial fiscals, as the case may be, the right to bring such action, and in but one case does the law authorize an individual to bring such an action, to wit, when that person claims to have the right to the exercise of the office unlawfully held and exercised by another. Aside from this case an individual can not maintain such action. The law, in our opinion, does not allow of any other construction. If an individual, whether or not he has the right to the office alleged to have been usurped by another were to be permitted to maintain such an action, it would serve no purpose and section 201 would be evidently superfluous. It would be a useless and redundant provision of the code.

As a consequence of what has been said no individual can bring a civil action relating to the usurpation of a public office without

averring that he has a right to the same; and at any stage of the proceedings, if it be shown that such individual has no such right, the action may be dismissed because there is no legal ground upon which it may proceed when the fundamental basis of such action is destroyed as is the case here. This is what actually happened in this case. After all of the evidence presented by the plaintiff had been introduced, it was found, and he himself so admitted that he had failed to establish in any way, shape, or form that he had any right to the office of municipal president of the town of Laoag as he had alleged in his complaint without foundation for such allegation. Consequently the judge very properly acquitted the defendant of the complaint.

The appellant contends that the court below should have first inquired into the right of the defendant to the office in question and that no other question can be raised or investigated until this point has been determined, and alleges that the question of the right of the plaintiff to the said office does not arise until it has been determined that the defendant is not entitled to the exercise of such office. In support of his contention he relies upon the provisions of section 202 of the Code of Civil Procedure.

This section provides as follows: "When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right to the same; and that the defendant is unlawfully in possession of the same; *and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled*, or only upon the right of the defendant, as justice requires.

From the words above italicized the appellant infers that the court below should have *first* passed upon the right of the defendant and *afterwards* upon the right of the plaintiff. In our opinion this should be done at the same time and in the same judgment. It is immaterial what method the court may follow in the statement and determination of the questions in the rendition of his judgment because even though the court may pass upon the right of

the plaintiff first, and the right of the defendant afterwards, or *vice versa*, this procedure would not vitiate the judgment, provided the court does not fail to state therein what the rights of the contending parties to the office are. But all of this, of course, presupposes that the action has been properly brought and duly prosecuted to a judgment. This, at the same time, presupposes that the plaintiff had a right to maintain his action upon the evidence submitted by him at the trial. It is impossible to prosecute a suit without a cause of action. Therefore, whenever before judgment it is conclusively proven that the plaintiff has no right to maintain the action since he has not the essential conditions required by law in order to bring and maintain such action, his complaint should be dismissed and it becomes unnecessary to pass upon the right of the defendant who has a perfect right to the undisturbed possession of his office, unless the action is brought by a person having a right to maintain the same under the law.

It may be said that under section 202 the court may only pass upon the right of the defendant when the justice of the case so demands. This is true, but this only refers to cases where the action is brought by the Attorney-General or by the provincial fiscal, as the case may be. In such cases it is not necessary that there be a person claiming to be entitled to the office alleged to have been usurped, because although there be no such person, as in the case of a vacant office, for instance, the fiscal could and even should bring such action against the person usurping the office in accordance with the provisions of sections 200 and 199, respectively, as the case may be. The manner in which judgment should be rendered according to section 202 perfectly meets the various cases provided for in the three preceding sections; and it becomes the duty of the court to pass upon the rights of the defendant only whenever it is not an essential requisite for the due prosecution of the action that there be a person claiming to be entitled to the office thus usurped, something which only happens where the Attorney-General or the fiscal of any province brings the action against the usurper.

As a result of the foregoing, we can not here pass upon the validity

or nullity of the election of the defendant, for the reason, among others which it is not necessary to state here, that the defendant has no right to maintain such an action as this.

The order of the court below appealed from, is hereby affirmed. After the expiration of twenty days let judgment be entered in accordance herewith and let the case be remanded to the court from whence it came for further proceedings in accordance with the law. So ordered.

*Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.*  
*Willard, J., did not sit in this case.*

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