

ONE YEAR OF ELECTION LAW

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Republic Act. No. 180, as amended by Republic Acts 599 and 867, is the present law that governs all elections of public officers by the people and all votings in connection with plebiscites.¹

The present law has been amended and is still sought to be amended. To be sure, such moves are all aimed at the maximum freedom and purity of elections, which after all is one of the more important and fundamental requisites of popular government.

The main features of the Election Code as now revised give effect to the intention of the voter; disregard mere technical errors and hold valid elections carried on in good faith rather than permit them to be defeated because of mere carelessness, ignorance or fault of officials; disregard elections against bribery and intimidation; and finally, secure rigidly the secrecy of the ballot.² Indubitably, all these features are fundamental in the institution of any democratic government. As it has been said, indeed, the essence of democracy is freedom of choice. Were it to be denied, then ultimately we reduce all freedoms to a mockery.

But this law, although how worthy its ends are, becomes only a meaningless expression in our statute books unless it is enforced and administered with effective force. It is to safeguard the sanctity of the ballot, and to preserve independence of choice that our people created an independent Commission on Elections. The fact that it is a constitutional creation³ makes more manifest the urgent necessity of having elections truly expressive of the people's will.

Our Supreme Court, in 1953, showed keen awareness of these fundamental ends, and 1953 being an election year, found the cases decided falling within the proper perspective of the national event. The Supreme Court moved fast, and public attention, focused on great happenings which attended activities before, during, and im-

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¹ Sec. 2, Revised Election Code.

² FRANCISCO, THE REVISED ELECTION CODE, ANNOTATED AND COMMENTED, 1953 ed., p. 10.

³ Art. X, Sec. 2.

mediately after elections, was either pleased or disappointed or remained skeptical.

1953 was a notable year in the field of Election Law. Past rulings have been further clarified, the pertinence of some doctrines has been subjected to severe re-examinations and new principles have been established.

One Year of Election Law, a survey of the leading 1953 cases in Election Law, opens with the discussion of the nature, extent and scope of the powers of the Commission on Elections. Never in a single year, have so many important questions been raised: Has the Commission on Elections the power to annul fraudulent registry lists alleged to have become permanent? What is the nature of the time limit prescribed for the disposition of annulment proceedings? What is the extent of the authority of the Commission on Elections over the appointment of election inspectors? Can the Commission on Elections order the municipal board of canvassers to reconvene and recanvass votes which said board refused to include in the canvass? Does the Commission on Elections have the power to refuse receipt and acknowledgment of certificates of candidacy? The answers to these questions are of far-reaching significance. In great measure, they will determine whether the transfer of the function of supervising the conduct of elections from the Secretary of Interior to an independent Commission on Elections has not been in vain. In a way, too, they shall be indicative of what a courageous Supreme Court—unyielding to political pressures—can do.

Other cases follow. The repeal of Sections 14 and 15 of the Election Code, prescribing the procedure followed in the voting of lepers, necessarily presented the problem of whether lepers have been deprived of the right to vote. The *obiter* in one case was raised to the firmer level of a majority opinion in a case of 1953 vintage which held that the time limit fixed for rendering decisions in election protests is merely directory in nature. The Supreme Court had occasion also to explain what "costs" in election contests include; what an election offense may consist of. In the remaining cases, the Supreme Court held firm to establish doctrines: An amendment of a motion of protest if it introduces a new ground, must be made within the period prescribed for filing the motion of protest; rules for appreciation of ballots, being a restatement of the doctrines enunciated and developed by the Supreme Court in various decisions, were applied; allegations of jurisdictional facts to confer jurisdiction on the Court of First Instance over an election contest do not require more proof than those prescribed by established jurisprudence; the duty of the court to order examination of ballots may either be optional or minis-

terial depending upon whether the requisites for opening the ballot boxes are present or not; the qualifications of electors registered in the voters' list having been already finally determined either by the board of election inspectors or by the corresponding circuit judges during the period for the inclusion of voters could no longer be inquired into in the election protest.

I. POWERS OF THE COMMISSION ON ELECTIONS

Article X, Section 2, of the Constitution which provides:

"The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court."

defines and at the same time limits the scope of the power of the Commission on Elections. The power thus given is expressly limited to that of administering and enforcing only so much of the election laws which refer to the conduct of elections, to that of deciding administrative questions affecting elections, like appointment of election inspectors and other election officials, determination of the number and location of polling places, annulment of fraudulent registry lists.⁴ The power to decide questions involving the right to vote has been expressly withheld from it, although the right to vote is provided in the Election Law, the enforcement and administration of which is placed under its exclusive charge. For that matter, it has no authority to annul elections, to decide contests relating to the election, returns and qualifications of members of Congress, that power having been given to the Electoral Tribunals of each House, nor to contests involving provincial and municipal officials, such power having been entrusted to the courts. The power granted to it is merely preventive, not curative. If it fails to accomplish its purpose of preventing election frauds, it does not have the duty to cure the resulting evil.⁵ And when for any serious cause, the holding of an election shall become impossible in any political subdivision or division, the Commission has the power only to recommend

⁴ *Prudente v. Genuino*, G. R. No. L-5222, November 6, 1951.

⁵ *Nacionalista Party v. Commission on Elections*, 47 O. G. 2851.

to the President the postponement of such election.⁶ The decisions, orders and rulings of the Commission are subject to review by the Supreme Court.⁷ As to whether judicial review extends to questions of facts, the opinion is equally divided.⁸ And certainly, the Commission on Elections, having only the expressed and limited power of administering and enforcing all laws relative to the conduct of elections, has no legislative power to determine the contents of, change or modify, election laws, nor may such power be delegated to it.⁹

The year 1953 furnished new occasions to examine the scope of the powers and functions of the Commission on Elections in the light of the above stated principles.

A. POWER TO ANNUL FRAUDULENT REGISTRY LISTS

Feliciano v. Lugay,¹⁰ a petition for certiorari instituted for the purpose of setting aside the resolution of the Commission on Elections of June 8, 1953, which made the pronouncement that the Commission on Elections has the power to annul fraudulent registry lists notwithstanding the fact that they have been used in an election, presented two novel questions:

- (1) Whether the Commission on Elections has the power to annul fraudulent registry lists of voters which have been used in the last elections of November 13, 1951, in view of the provisions of Section 95¹¹ of the Revised Election Code as amended by Republic Act No. 599 that the list of voters prepared in the election of 1951 constitute the permanent list of voters until its renewal in 1963.
- (2) Whether the period to dispose of the proceeding for annulment by the Commission on Elections within fifteen days as required in Section 5 of the Revised Election Code is mandatory or directory in nature.

With respect to the first question, the Supreme Court pointed out that the authority of the Commission on Elections to annul fraudulent or illegal registry lists of voters has in effect already been

⁶ Sec. 8, Revised Election Code.

⁷ Art. X, Sec. 2.

⁸ *Sotto v. Commission on Elections*, 76 Phil. 517.

⁹ *Cortes v. Commission on Elections*, G. R. No. L-1679.

¹⁰ G. R. No. L-6756, September 16, 1953.

¹¹ Sec. 95 provides: "Permanent list of voters every twelve years.—There shall be in each municipality or municipal district a permanent list of voters which shall be completely renewed every twelve years. The new list of voters shall be prepared in the elections which will be held in nineteen hundred and fifty-one and said list with such additions, cancellations, and corrections as may be proper, shall constitute the permanent list of voters until its renewal in nineteen hundred and sixty-three." (*As amended by Rep. Act No. 599.*)

decided in *Remigio Prudente, et al. v. Angel Genuino, et al.*¹² To the contention that the disputed lists have become permanent and therefore unrenovable until 1963, the Supreme Court answered that—

- “assuming said lists to have become permanent on November 3, 1951, the petitioners filed with the Commission as early as November 2, 1951, a petition in the form of a letter, praying for the annulment of the lists in question. Although upon order of the Commission, the respondents filed the petition in proper form only on November 7, 1951, we are inclined to rule that, for the purpose of giving effect to the constitutional powers of the Commission, the petition presented on November 2 was sufficient.”

In essence, the Supreme Court found it not necessary to answer the first question as presented, considering that the petition was filed *before* the disputed lists had become permanent. It merely reiterated its ruling in the *Genuino* case that the Commission on Elections has authority to annul illegal or fraudulent registry lists. The deeper issue involved in the first question, therefore, has not been laid at rest. Paraphrasing the first question, does the Commission on Elections have authority to annul illegal or fraudulent registry lists if such lists have become permanent? Or, stating it otherwise, if the petition has been filed *after* the disputed lists have become permanent can this authority of the Commission on Elections be invoked, or if invoked, be exercised?

Of course, it is necessary first to determine when registry lists become permanent. Would the fact that this list of voters was prepared for the elections held in 1951 make such list permanent until its renewal in 1963?

An authority in Political Law, in answer to the question, made this observation:

“To preserve the purity of the electoral process, the writer submits that for the list of voters to become permanent within the meaning of the Election Code, only those having the qualifications and none of the disqualifications can remain therein. If it could be shown then at anytime before the next election that persons not entitled to exercise said rights are registered, then the list should not be considered permanent and the Commission on Elections empowered to rid it of such names in an appropriate proceeding. Only then would the right to suffrage receive its due protection.”¹³

The laws regulating the manner of how registration shall be conducted are laws relative to the conduct of elections. These are

¹² G. R. No. L-5222, November 6, 1951. This case, however, does not involve registry lists that have already become permanent.

¹³ Enrique M. Fernando, *Notes on Recent Decisions*, 28 Philippine Law Journal, No. 5, p. 813.

the laws that the Commission on Elections is expressly assigned by the Constitution to enforce and administer. It is, therefore, submitted that the Commission on Elections, in its duty to see to it that the preparation of the registry lists of voters is accomplished in accordance with the laws, may at any time annul registry lists of voters, the preparation of which has been tainted with wholesale fraud, intimidation and terrorism. In fact, it may even be accused of being recreant to its duty if it fails to insure the preparation of lists of voters in accordance with the requirements of laws. The aim and purpose of election laws demand no less than that.

With reference to the second question touching on the nature of the time limit prescribed for disposing of annulment proceedings, the Supreme Court ruled that the failure of the Commission to dispose of the proceedings for annulment within fifteen days as required in Section 5¹⁴ of the Revised Election Code, does not result in the loss of its jurisdiction inasmuch as said provision must be considered merely directory,¹⁵ in the same way that similar provisions for the disposition of election contests were held directory. The Supreme Court believed that the same considerations which control the jurisdiction of the courts over election contests likewise apply to the authority of the Commission on Elections over matters placed under it by the Constitution.¹⁶

E. THE POWER TO APPOINT ELECTION INSPECTORS

*Rodriguez v. Aganon*¹⁷ presented this issue: Is the matter of determining as to who should be the recognized genuine repre-

¹⁴ "Sec. 5. Powers of Commission.—The Commission on Elections or any of the members thereof shall have the power to summon the parties to a controversy pending before it, issue subpoenas and subpoenas duces tecum and otherwise take testimony in any investigation or hearing pending before it, and delegate such power to any officer. Any controversy submitted to the Commission on Elections shall be tried, heard and decided by it within fifteen days counted from the time the corresponding petition giving rise to said controversy is filed. The Commission or any of the members thereof shall have the power to punish contempts provided for in rule sixty-four of the Rules of Court, under the same procedure and with the same penalties provided therein. * * *"

¹⁵ Section 8 of Commonwealth Act No. 652, the former provision on this point, did not provide a time limit for the Commission on Elections to decide controversies submitted to it. When the bill of the House of Representatives revising Election Code adopted as Section 5 thereof, Section 8 of Commonwealth Act No. 657, a time limit was imposed. FRANCISCO, REVISED ELECTION CODE, ANNOTATED AND COMMENTED, 1953 ed., p. 21.

¹⁶ The Supreme Court was referring to *Querubin v. Court of Appeals et al.*, 46 O. G. 1554, and *Cachola v. Cordero*, G. R. No. L-5780, February 28, 1953. These cases are discussed elsewhere in this article.

¹⁷ G. R. No. L-7215, November 9, 1953.

sentative of the national directorate of a political party having the authority to nominate inspectors within the province of party rules and regulations, or expressed simply, has the Commission on Elections the power to accept or reject choice made by the national directorate of a party of its congressional representative authorized to nominate its inspectors?

The facts as found by the Commission are these:

"• • • on April 22, 1953, the national directorate of the Nacionalista Party approved the following resolution: 'Resolved to authorize and empower the President of the Nacionalista Party, Hon. Eulogio Rodriguez, Sr., as he is hereby authorized and empowered to propose to the Hon. Commissioner on Elections the name of the persons authorized to propose the appointment of one inspector and one substitute by the Commission on Elections for all election precincts.' According to Exhibit 'B' presented by the petitioner, the national directorate of the Nacionalista Party on July 11, 1953, adopted a resolution appointing Mr. Arsenio Lugay, as the representative of the national directorate with authority to propose for the appointment by the Commission on Elections one inspector and one substitute for each precinct in all municipalities of the first legislative district with Atty. Tirso U. Aganon. On September 5, 1953, Hon. Eulogio Rodriguez, Sr., President of the Nacionalista Party, acting in behalf of the national directorate of the said party, addressed a letter to this Commission wherein among other things, he stated that Jose J. Roy was authorized to nominate the inspectors and their substitutes for the Nacionalista Party in the first legislative district of Tarlac, revoking previous authority made. On September 10, 1953, another letter was addressed to this Commission by Honorable Eulogio Rodriguez, Sr., President of the Nacionalista Party, amending his afore-cited letter of September 5, 1953, in the sense that Messrs. Jose J. Roy and Arsenio Lugay are jointly appointed as the authorized representatives of the Nacionalista Party to propose inspectors and their substitutes in the first legislative district of Tarlac. It further appears that on September 21, 1953, Hon. Eulogio Rodriguez, Sr., President of the Nacionalista Party, again sent a letter to this Commission amending his afore-cited letter of September 10, 1953, stating that Mr. Jose J. Roy is the only authorized representative of the Nacionalista Party to propose inspectors and their substitutes in the first legislative district of Tarlac."

The Supreme Court, in resolving the issue, held that—

"There is no rule that restricts the Nacionalista Party to appoint as inspectors only those belonging to it. If the Nacionalista Party through its directorate believes that the designation of one who does not belong to it would be the surest way to enhance its interests there is no lawful reason for the Commission to interfere."

As to the allegation that the designation of Roy has not been made in accordance with the rules of the Nacionalista Party, the Supreme Court answered that there being no question that the na-

tional directorate of the Nacionalista Party, through its President, approved the Roy selections, the violation of party rules is a matter within the party itself—not a complication to be straightened out before and by the Commission, since under the Election Law ¹⁸ it is the national directorate that makes the selection.

From the decision of the case could be deduced the following principles in the matter of appointment of election inspectors:

1) That the power of the Commission on Elections is limited only to the ministerial act of appointing those nominated by the authorized representatives of the national directorates of the parties, exercising no discretion whatsoever, except only in so far as to inquire whether the inspectors nominated by the authorized representatives of the national directorates of the parties possess the qualifications prescribed by law.

2) That the appointing power is no longer restricted in the exercise of his power by the party affiliation of the inspectors to be appointed.

3) That the appointment must be made only of those proposed by the authorized representatives of the national directorates of the parties.

4) That no qualifications have been prescribed for the authorized representatives of the national directorates of the parties, it being sufficient that these representatives are the legitimate representatives chosen by the political party to be its representatives, regardless of whether they belong or not to the party making the choice, thus showing that the law gives absolute discretion in the choice of representatives of a party to the national directorate.

5) That the Commission on Elections has no jurisdiction over matters regarding violation of party rules.

The resolution of the Commission on Elections which stated:

"The provisions of Section 76 of the Revised Election Code as quoted above clearly bestows upon the political party which polled the second largest number of votes in the Philippines in the last presidential election

¹⁸ "Sec. 76. *Representation of Parties in the board of inspectors.*—The appointment of one inspector and his substitute shall be proposed by the party presenting candidates for election which polled the largest number of votes in the next preceding presidential election and the other inspector and his substitute shall be proposed by the party also presenting candidates for election which polled the next largest number of votes in the Philippines. The Commission on Elections shall appoint the poll clerks in each election precinct, who shall be public school teachers. The party affiliation of the candidates voted for shall be determined from their certificates of candidacy. The national directorates of political parties shall choose their respective representatives in each legislative district who shall submit in writing, at least ten days before the date fixed for the appointment of the board of election inspectors the names and addresses of the persons whom they propose to be appointed as election inspectors. If said representatives shall fail to propose the names of persons to be appointed as election inspectors, or if no political party is entitled to propose the appointment of either inspectors, the Commission shall, at its discretion, choose said inspectors and their substitutes." (As amended by Sec. 2, Rep. Act No. 599.)

the right to propose the appointment of one inspector and substitute in each and every precinct in the whole Philippines, including the first legislative district of Tarlac. A careful deliberation over the purpose of this provision shows that it had no other purpose than to provide the minority political party with an instrument through which it can protect its rights and through which at the same time the people may be able to have an effective guaranty to assure that the elections would be held in a free, orderly and honest manner by the board of inspectors which has been invested with a broad scope of authority in connection with the conduct of elections. For this reason, we believe that the law has taken pains to establish the requisites that a political party must possess in order to be able to acquire this right and one of the most important requisites is that the party must have participated in the last presidential elections and obtained the second largest number of votes throughout the Philippines. We have no doubts that the law would never have intended to allow or to permit any political party to make use of this right for selfish ends to defeat its rightful purpose."

deserves a well-merited consideration. The purpose of the law in providing for a system of political representation in the boards of election inspectors is to insure the purity of elections. This is the reason for giving an election inspector to the minority party, provided that it polled the next largest number of votes. As eloquently enunciated in the case of *Alquizola v. The Municipal Council of Barili, Province of Cebu*.¹⁹

"So long as the legal system of bipartisan representation in the board of inspectors is in force in this country, the Commission on Elections will follow the uniform practice of the courts in allowing the minority party representation in the election board so as to make the election as pure as possible and will not permit any party a monopoly of the members of said board. In this manner only shall democracy in our country be preserved."

The power of appointment in order to be rational must involve discretion on the part of the appointing power. If the appointing power has reasonable grounds to believe that the party entitled to an inspector surrenders its right to another party, which has no lawful claim under the Revised Election Code, its sworn duty to conduct a clean, free, honest and orderly election should authorize it to ignore the nominees presented to it for appointment.

C. THE POWER TO CANCEL CANVASS OF ELECTION RETURNS

The case of *Abendante v. Relato* ²⁰ raised the issue as to whether the Commission on Elections has the power to cancel the canvass of

¹⁹ 43 Phil. 286.

²⁰ G. R. No. L-6813, November 5, 1953.

the election returns made by the legally constituted board of canvassers which proclaimed the mayor-elect after the period for filing a protest had expired.

Briefly, the facts are as follows: On November 28, 1951, the Board of Canvassers of Cabusao canvassed the result of the November 15, 1951 elections and proclaimed Abendante, protestant, as mayor-elect. Since the votes cast by lepers in precinct No. 11 were not included in the canvass, another Board of Canvassers was constituted which Board, after canvassing the election returns, including the votes cast in precinct No. 11, proclaimed protestee Relato as mayor-elect. On December 17, 1951, the Commission on Elections revoked the two certificates of canvass and the two proclamations made by the Boards of Canvassers and directed the original Board to reconvene and make a new canvass of the election returns, including therein the votes cast in precinct No. 11. Protestant Abendante questioned this act of the Commission on Elections in cancelling the canvass of the election returns made by the legally constituted Board of Canvassers which proclaimed him as mayor-elect after the period for filing a protest had expired. He contended that the Commission on Elections has no such power and therefore the proclamation made by the Board of Canvassers after said period, upon the instruction of the Commission, has no valid effect.

The Supreme Court ruled that the Commission on Elections was justified in ordering the Board of Canvassers to reconvene and make a new canvass by including the returns in said precinct. It even went farther and said that—

“Even supposing that the Commission on Elections has exceeded its authority because the period for filing a protest has already elapsed when it acted on the matter, appellant is deemed to have waived his right to question such irregularity when he failed to take the matter to the Supreme Court by way of certiorari as required by law.”²¹

As to why the Commission on Elections was deemed to have the authority to order the Board of Canvassers to reconvene and make a new canvass, the Supreme Court reasoned out that this could be inferred from the constitutional power and duties conferred upon the Commission on Elections relative to the enforcement and administration of laws pertinent to the conduct of elections,²² and also

²¹ “Sec. 5: Any decision, order or ruling of the Commission on Elections may be reviewed by the Supreme Court by writ of certiorari in accordance with the Rules of Court or with such rules as may be promulgated by the Supreme Court.”

²² Article X, Section 2. See page 83.

from the power given by the Revised Election Code²³ which confers to it direct and immediate supervision over the local government officials designated by law to perform the duties relative to the conduct of elections.

The part of the decision which held that—

"The duties of the municipal Board of Canvassers are ministerial in character, and extend only to the counting of votes as they appear in the statements of election received from the Municipal Treasurer and to the issuance of the necessary statement of the result of their canvass. (*Galang v. Miranda, et al.*, 36 Phil., 316, 319-320.) Its duty being ministerial, it follows that the Board of Canvassers can not pass on the validity of an election return, and much less exclude it from the canvass on the ground that the votes cast in the precinct where the returns came from are illegal. The Board of Canvassers of Cabusao failed to do its duty when it excluded from the canvass the returns coming from precinct No. 11."

expresses a well-settled doctrine.²⁴

But that part of the decision cited above which held that the Commission on Elections has the authority to order the board to reconvene and make a new canvass after the period of filing a protest has expired, establishes a new principle.

It is to be noted that the constitutional provision cited by the Supreme Court as source for authority of the Commission on Elections in ordering the municipal board of canvassers to reconvene and make a new canvass of the election returns, including the votes cast at the leprosarium, also withholds expressly from the Commission on Elections the power to decide questions involving the right to vote.

²³ "Sec. 3. *Supervision of elections.*—The Commission on Elections shall, in addition to the powers and functions conferred upon it by the Constitution, have direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections. It may suspend from the performance of said duties any of said officials who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes and, upon recommendation of the Commission, the President of the Philippines may remove any or all such officials who shall be found guilty of non-feasance, malfeasance, or misfeasance in connection with the performance of their duties relative to the conduct of elections."

²⁴ *Galang v. Miranda, et al.*, 36 Phil. 316, 319-320; *Dizon v. Provincial Board of Canvassers of Lapina*, 52 Phil. 47; *Cordero v. Judge of First Instance of Rizal*, 40 Phil. 246; *Municipal Council of Las Piñas v. Judge of First Instance of Rizal*, 40 Phil. 279, 282, 283, 284; 20 C. J., 200-201; 20 C. J., 202-203; *Dalton v. State* (Ohio), 1 West. Rep., 773; *Justices' Opinions*, 58 N. H., 621; *People v. Wayne Co. Canvassers*, 12 Abb., N. Y., New Cases, 7; 64 How. N. Y. Pr., 334; *Kortz v. Greene Co. Canvassers*, 12 Abb., N. Y. New Cases, 84; *Leigh v. State*, 69 Ala., 261; *Page v. Letcher*, 11 Utah 119, 39 Pac. Rep. 499; *State v. Van Camp*, 36 Neb., 91; *People v. Board of State Canvassers*, 129 N. Y., 360; *Mead v. Carrol*, 6 D. C., 338.

At the time when the order was made by the Commission on Elections, the question of whether the lepers could still vote or not, considering the fact that the provisions of law governing the procedures followed by lepers in voting had been repealed, was not yet resolved. It is well-settled that questions of whether certain persons can vote or not, or questions touching on the validity or invalidity of votes cast, are questions involving the right to vote which the Commission on Elections is not empowered to decide. The inclusion or exclusion of votes cast goes to the very essence of the validity of the votes.²⁵ That question is not administrative but judicial, since it involves the constitutional right of suffrage granted by Section 1, Article V, of the Constitution.

With respect to Section 8 of the Revised Election Code conferring upon the Commission on Elections direct and immediate supervision over the local government officials designated by law to perform the duties relative to the conduct of elections, it may likewise be pointed out that the word "ministerial" in the old election law preceding the phrase "duties relative to the conduct of elections", was nowhere to be found in said Section 8. The word "ministerial" was eliminated in the amendment of the law. Was this the result of a deliberate omission or a mere oversight?

The power to reconvene the board of canvassers for the purpose of recanvassing the votes, following a line of authorities²⁶ would seem to have been lodged in the courts. This same line of authorities maintains that mandamus is the proper remedy in case the board of canvassers refused to canvass a part of the votes cast. Besides, there are specific legal provisions in the Revised Election Code which logically compel any candidate, within short time limits, to seek in the Court of First Instance the corresponding relief against the regularity of a canvass of election.²⁷ Before the proclamation of election, any candidate may petition the Court of First Instance to recount the votes cast in any precinct in case of discrepancies between copies of statements of election.²⁸ After the proclamation, any candidate may file an election protest within two weeks.²⁹

²⁵ *Nacionalista Party v. Commission on Elections*, 47 O. G. 2851.

²⁶ See note 24. Also *Cordero v. Judge of First Instance of Rizal*, 40 Phil. 246; *Blaquera v. Municipal Council of Langangilang*, S. C. G. R. No. 16092; 18 Am. Jur. Sec. 256, p. 349, 9 R. C. D., 1111; 15 Cyc. 379, et seq.

²⁷ *Ramos v. Commission on Elections*, G. R. No. L-1882, April 10, 1948.

²⁸ Sec. 163 provides: "When statements of a precinct are contradictory.—In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any

D. RECEIPT AND ACKNOWLEDGMENT OF CERTIFICATES OF CANDIDACY

The Commission on Elections, taking cue from the decision in *Ycaín v. Caneja*²⁰ that Section 86 grants to the Commission on Elections discretion on the matter of receiving and acknowledging receipt of the certifications of candidacy, issued resolution of August 28, 1958²¹ providing—

“* * * that in accordance with Section 86 of the Revised Election Code it shall first determine before giving due course to any certificate of candidacy for the office of President, Vice-President, or Senator by ordering the printing and distribution, whether such certificate of candidacy had been filed in good faith and that if the Commission finds after appropriate inquiry that a candidate for any of the above-mentioned offices is not a *bona fide* candidate, it shall require the person filing to at the same time furnish this Commission with such number of printed copies of the certificate of candidacy at his own expense equivalent to four times the number of polling places throughout the Philippines.” (Italics ours).

The *Ycaín* case held—

“In order that a certificate of candidacy may be so considered, two acts are necessary: (1) its presentation, and (2) the acceptance by the official authorized by law giving it due course. If it is rejected it cannot be considered a certificate of candidacy for legal purposes, but a simple piece of paper which the candidate has in his pocket.”

candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected.”

The last part of Sec. 168 (*Canvass of the election for municipal offices*) provides: “* * *. The municipal board of canvassers shall not recount the ballots nor examine any of them but shall proceed upon the statements presented to it. In case of contradictions or discrepancies between the copies of the same statements, the procedure provided in section one hundred and sixty-three of this Code shall be followed.”

²⁰ Sec. 174 provides: “*Contested elections for provincial and municipal offices.*— A petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province by any candidate voted for in said election and who has presented a certificate of candidacy, within two weeks after the proclamation of the result of the election. Each contest shall refer exclusively to one office, but contests for the offices of the vice-mayor and councilor may be consolidated in a single case.”

²⁰ 46 O. G. 433.

²¹ *Re Filing Certificates of Candidacy*, Aug. 28, 1953.

Section 36³² should however, be read together with Section 37.³³ The clear context and legislative history of Section 37 give no other recourse but to conclude that the duty imposed on the Commission on Elections on the matter of receiving and acknowledging receipt of the certificate of candidacy is merely ministerial. Even before the said provision was inserted in the law, the Attorney-General had ruled that the provisions regarding the matter were mandatory and gave no room or opportunity for the exercise of discretion by the Executive Bureau to accept or reject a certificate of candidacy, or even to determine whether it is legal, proper or otherwise. It is evidently to remove all doubts that the word "ministerial" was employed.³⁴

The only instance under the Revised Election Code when the Commission on Elections can exercise discretion on the matter is provided for in Section 30, which states:

"Sec. 30. *Ineligibility of officer found disloyal to the Government.*—When a special election is called for the purpose of filling a vacancy as a result of a protest on the ground of his disloyalty to the constituted Government, said officer shall be ineligible in such election, and his cer-

³² "Sec. 36. *Filing and distribution of certificates of candidacy.*—At least sixty days before a regular election, and thirty days at least before a special election, the certificates of candidacy shall be filed with the office hereinbelow mentioned, together with a number of clearly legible copies equal to four times the number of polling places; *Provided, That with respect to certificates of candidacy of candidates for President, Vice-President and Senators, ten copies thereof shall be filed with the Commission on Elections which shall order the preparation and distribution of copies of the same to all the election precincts of the Philippines. The certificates shall be distributed as follows:*

"(a) Those of candidates for national offices, with the Commission on Elections, which shall immediately send copies thereof to the secretary of the provincial board of each province where the elections are to be held, and the latter officer shall in turn immediately forward copies to all the polling places. The Commission on Elections shall communicate the names of said candidates to the secretary of the provincial board by telegraph. If the certificate of candidacy is sent by mail, it shall be by registered mail, and the date thereof if confirmed by a telegram or radiogram addressed to the Commission on Elections on the same date.

"(b) Certificates of candidacy for provincial offices shall be filed with the secretary of the provincial board of the province concerned who shall immediately send copies thereof to the polling places concerned, to the secretary of the provincial board, and to the Commission on Elections."

³³ "Sec. 37. *Ministerial duty of receiving and acknowledging receipt.*—The Commission on Elections, the secretary of the provincial board, and the municipal secretary, in their respective cases, shall have the *ministerial duty* to receive the certificates of candidacy referred to in the preceding section and to immediately acknowledge receipt thereof." (Italics ours).

³⁴ LAUREL ON ELECTIONS, 2nd ed., p. 100.

tificate of candidacy shall not be received nor shall the votes cast in his favor be counted."

The Commission on Elections, as pointed out, has no power to amend the Election Law, its power being limited to its enforcement and administration. It is true that its resolution was merely following the doctrine laid down in *Ycaïn v. Caneja*. It is, however, to be stressed that the *Ycaïn* decision is contrary to the explicit provision of the law.

It is a well-settled principle of statutory interpretation that a statute clear and unambiguous on its face need not and cannot be interpreted by a court and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation; that a plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity.³⁵

The *Ycaïn* case has "reshaped" the law in point.

II. COULD LEPERS VOTE AFTER REPEAL OF SECTIONS 14 AND 15?

*Macolor v. Amores*³⁶ and *Abendante v. Relato*³⁷ involved the question of whether the repeal of Sections 14 and 15 has the effect of depriving the lepers of the right to vote.

The relevant facts in *Macolor v. Amores* were as follows: In the November 18, 1951 elections, after the returns from all the precincts in the municipality of Coron, Palawan, had been received and canvassed, the Municipal Board of Canvassers proclaimed Carlos Amores, protestee, as mayor-elect. It appears that in three precincts situated within the Culion Leper Colony, which comes under the jurisdiction of the Department of Health, Simeon Macolor, protestant, received 89 votes and Carlos Amores, protestee, received 430 votes. In making the canvass, these votes were added to those cast in the other precincts of the municipality where the protestee received 444 votes and the protestant 623 votes. These votes are decisive because if they are discarded the result would give the protestant a plurality of 179 votes, otherwise, the protestee would have a plurality of 212 votes. Protestant maintains that the votes in said three precincts are illegal because they were cast by persons residing in the island of Culion, which is a national reservation, and that these persons cannot exer-

³⁵ SUTHERLAND, STATUTORY CONSTRUCTION, 3rd ed., sec. 4502, p. 316.

³⁶ G. R. No. L-6806, November 5, 1953.

³⁷ G. R. No. L-6813, November 5, 1953.

cise the right of suffrage due to the repeal of Sections 14 and 15 governing the procedures followed by lepers in voting.

The argument of the protestant carried weight. In view of the repeal of Sections 14 and 15³⁸ of the Revised Election Code by Rep. Act No. 599, doubt was entertained as to whether said repeal should be interpreted in the sense that the intention of Congress was to deny them the right of suffrage.

The Supreme Court arrived at the conclusion that:

³⁸ Sec. 14 of the Election Code, before its repeal, originally provided: "*Voters confined in leprosaria.*—Patients confined in leprosaria shall exercise the right of suffrage in the municipality where they lawfully resided immediately before they were taken to said leprosaria, and for that purpose, every elector not yet registered in the existing permanent list shall accomplish the voter's affidavit, in quadruplicate, before the justice of the peace of the municipality where the leprosarium is located, on the days set by law for registration, and for this purpose said justice of the peace shall be at the leprosarium at seven o'clock in the morning and remain therein until the last elector desiring to register has accomplished the voter's affidavit. The justice of the peace shall prepare a list of these affidavits and send a certified copy of the portion thereof and corresponding to each municipality to the board of election inspectors of the aforesaid municipality designated by the Commission on Elections, to the register of deeds of the province comprising the same, and to the Commission on Elections, together with copies of the affidavits of the voters concerned, and said officers shall enter in the list of voters of the respective precinct the names of said voters and such entry shall have the same force and effect as if the said voters had personally appeared before the board of inspectors of the said precinct. All questions regarding the inclusion and exclusion of those voters shall be decided within the time limits fixed by law by the justice of the peace of the municipality where the leprosarium is located."

Section 15 of the Election Code, before its repeal, originally provided: "*Voting in the leprosaria.*—On the day of voting, said voters shall vote in the leprosarium before the justice of the peace, for which purposes said officer shall be at the leprosarium at seven o'clock in the morning of that day to receive the votes of the voters of the same, and at two o'clock in the afternoon or as soon as the voters who desire to vote have finished voting, shall make a canvass and prepare a statement of the result thereof, transmitting such result by telegraph at six o'clock in the evening of the day of the voting or as soon after the canvasses as possible, to the municipal treasurer and to the Commission on Elections, so that it may be included in the final computation of the votes and at the same time he shall send to said officers certified copies of the statement by rush and registered mail.

"The municipal treasurer shall immediately transmit a certified copy of the telegram to the proper election precinct of the municipality, and the board of inspectors thereof shall include in its canvass the votes set forth in the telegram, provided the same is received by the board before the result of the canvass is proclaimed.

"In the leprosaria where there are more than two hundred and fifty voters, the justice of the peace shall form as many polling places as may be necessary so that in each of them not more than two hundred and fifty voters may cast their votes, and shall designate a deputy to act as inspector in each polling place and to perform the duties herein entrusted to the justice of the peace."

"We do not believe that such interpretation is warranted. The repeal of said provisions can only mean that the intention is to return the lepers to the status they enjoyed prior to their enactment which must necessarily be traced to the legislation then governing the exercise of the rights of suffrage as applied to the citizens as a whole. It should be noted that prior to the enactment of said Sections 14 and 15 the law was, as is now, completely silent as to the right of suffrage of those confined in the different leprosaria. This silence notwithstanding, it cannot be said that these lepers are bereft of such right for there is nothing in the law which disqualified them from voting simply because of their ailment. The mere fact that they are segregated for precautionary reasons is not in itself a disqualification. The only thing to be considered is whether they have the requisite residence. This question has already been answered in the affirmative by this Court in a case involving the right to vote of lepers of the same colony in connection with the plebiscite in 1935."

The case adverted to was *Alcantara v. Secretary of the Interior*³⁰ where it was held that lepers could vote in the places where they are confined, provided that they evince their desire to do so, and have resided there for at least a period of six months. The fact that lepers have the intention to return to their former homes if at some future time they are cured, does not necessarily defeat their residence before they actually do return.

The Supreme Court took note also of the fact that the intention of the government in establishing the Culion Leper Colony was to create a reserved territory with its own government machinery separate and distinct from the municipal government of Coron, and this is so not only for the purposes of government but also for political purposes such as the exercise of the right of suffrage.

This opinion was considered decisive in deciding the other question: For what officials can they vote? The Supreme Court answered this question by stating that the only conclusion that can be drawn, in line with the principle underlying the right of suffrage, is that these lepers can only take part in elections involving national officials and not those referring to a municipal government. The reasoning of the court is as follows:

"Inasmuch as they have no connection whatsoever with the municipal government of Coron, politically or otherwise, they should not be expected to intervene in the election of its officials upon the theory that they do not form part of the people to be governed by said officials. The right of suffrage is predicated upon the theory that the people who bear the burden of government should share in the privilege of choosing the officials of that government. That is the theory of a representative form of government."

³⁰ 61 Phil. 459.

In *Abendante v. Relato*, analogous facts were present, except that the votes questioned were those cast in a precinct created within the Bicol Leprosarium. After ruling that lepers can vote, following the case of *Macolor v. Amores*, provided that they have the requisite residence qualifications in the leprosarium, the Supreme Court pointed out the differences in the two cases:

"In the case of *Simson Macolor vs. Carlos Amores*, G. R. No. L-6806 we said that the Cullion Leper Colony is a national reservation created by an executive order of the then Civil Governor of the Philippines and as such should be considered as an administrative organization separate and distinct from the municipality of Coron because by express provision of law it was placed under the exclusive administrative control of the Department of Health. The establishment of the Cullion Leper Colony is a class by itself, which should be distinguished from other leprosaria. While the administration of the Cullion Leper Colony is expressly provided for in the Revised Administrative Code (Sections 1066-1068), the Bicol Treatment Station was established by virtue merely of an administrative order issued by the Department of Health segregating a portion of the municipality of Cabusao for the treatment of lepers in the Bicol region. This segregation cannot have the effect of separating the leprosarium from the political territory of the municipality comprising it. It still continues to be part and parcel of it and under its municipal government. This has to be so unless there is an express law to the contrary. Here there is none. This being so, it follows that the lepers who voted in precinct No. 11 who are all residents of said municipality should be declared as having the requisite residence to vote in said precinct if their intention is to vote in that municipality."

The decision in these two cases invites this question: If the repeal of Sections 14 and 15 of the former Election Law did not result to the deprivation of the right of suffrage of lepers, what procedure will be observed in the voting of lepers? Sections 14 and 15 which prescribed the procedural steps to be followed by lepers who have the requisite qualifications, having been repealed, there seems to be a necessity to provide for such a procedure. And the Supreme Court, by constitutional restrictions, can not do this.

III. TIME TO RENDER DECISION IN ELECTION PROTEST

*Cachola v. Cordero*⁴⁰ was a petition instituted for the purpose of compelling the respondent Judge of the Court of First Instance of Ilocos Sur to dismiss the election protest filed by the respondent Cordero against the petitioner, Cachola, on the ground that the respondent Judge had failed to decide said case within six months after its presentation. Since the protest involved the position of municipal

⁴⁰ G. R. No. L-5780, February 28, 1953.

mayor, Section 177 of the Revised Election Code governs. Section 177 provides that "the court shall decide the protest within six months after it is presented in case of a municipal office * * *." ⁴¹

According to the petitioner, this provision is mandatory, thereby leaving the respondent Judge with no alternative except to dismiss the protest in accordance with petitioner's motion filed six months and five days after the filing of the election protest.

The question presented in this case, as to whether the time fixed for deciding an election protest is mandatory or directory in nature, is not a new one. Way back in 1929, the provision in the former law, Act No. 8887, came up for interpretation for the first time in the case of *Portillo v. Salvani*.⁴² The Supreme Court, through Mr. Justice Malcolm, held that the provision of law was mandatory and that where the proceedings in the contest were not terminated within the period specified, the trial court lost authority over the case and a judgment thereafter sought to be rendered was void for want of jurisdiction. This conclusion was reached by the Supreme Court after it inquired into the legislative history of the provision which revealed that the real purpose of the legislature was peremptorily to require the termination of electoral contest from the time they were actually, and legally initiated.⁴³ This doctrine was, however, modified in later cases,⁴⁴ where it was stated that the limitation period was applicable only to proceedings in the first instance in the trial court, and has no application to cases on appeal or to proceedings below on a new trial ordered by the appellate court. It was not until the case of *Querubin v. Court of Appeals* ⁴⁵ that the doctrine was sought to be abandoned. But it is to be noted that the *Querubin* case dealt with the time limit fixed for deciding an appeal in election

⁴¹ Sec. 177. *Decision of the contest*.—The court shall decide the protest within six months after it is presented in case of a municipal office, and within one year in case of a provincial office, and shall declare who among the parties has been elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final. A copy of such final judgment shall be furnished the Commission on Elections.

⁴² 54 Phil. 543.

⁴³ LAUREL ON ELECTIONS, 2nd ed., p. 315.

⁴⁴ *Cacho v. Abad*, 61 Phil. 606; *Salcedo v. Hernandez*, 62 Phil. 584.

⁴⁵ 46 O. G. 1554. "The doctrine in the case of *Portillo vs. Salvani* (54 Phil. 543), holding that a provision in the former law that 'all proceedings in an electoral contest shall be terminated within one year' is mandatory, should be abandoned, even as modified in the case of *Cacho vs. Abad* (61 Phil. 606), where it was stated that the Supreme Court 'has assumed jurisdiction over a considerable number of election cases which arrived here after the expiration of the year period without any protest being made against this practice.'"

contests, specially governed by Section 178.⁴⁶ Its observation, therefore, that "the provision of Section 178 of the Revised Election Code, that the appeal in election contests be decided within three months after the filing of the case in the office of the clerk of court to which the appeal has been taken, *the same as the provision in Section 177 of the same code requiring that the trial court shall decide a protest within six months or one year from its filing when contesting a municipal or a provincial office is directory in nature*" is merely dictum in so far as Section 177 is concerned. Thus, when it continued to state that—

"To dismiss an election contest or the appeal taken therein because the respective courts, regardless of cause or reason, have failed to render final decisions within the time limits of said sections, is to defeat the administration of justice upon factors beyond the control of the parties. That would defeat the purposes of due process of law and would make of the administration of justice in election contests an alcatory process where the litigants, irrespective of the merits of their respective claims, will be gambling for a deadline. The dismissal in such case will constitute a miscarriage of justice. The speedy trial required by the law would be turned into a denial of justice." (pp. 1556-1557.)

the Supreme Court should be understood as explaining its reason only for holding that Section 178 is directory in nature, which reason is not necessary at all in so far as Section 177 is concerned as it was not involved in the case. And in that respect the Supreme Court would be merely reiterating its past ruling that the limitation period does not apply to appeals in election cases pending in the appellate courts.

These observations in the *Querubin* case, were, however, deemed controlling in *Cachola v. Cordero*. Thus, the Supreme Court, in the light of the above, dismissed the petition of petitioner Cachola and ruled that Section 177 of the Revised Election Code is merely directory in nature. At the same time, the Supreme Court indicated that—

"Section 177 of the Revised Election Code, while directory in nature, of course enjoins the court to speed up the termination of election con-

⁴⁶ "Sec. 178. *Appeal from the decision in election contests.*—From any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be, within five days after being notified of the decision, for its revision, correction, annulment or confirmation, and the appeal shall proceed as in a criminal case. Such appeal shall be decided within three months, after the filing of the case in the office of the clerk of the court to which the appeal has been taken."

tests, and urges the parties to cooperate in this direction. The law, consistent with public interest, authorizes the court to dismiss a protest that drags on beyond the statutory period where either of the parties or both may be shown to be guilty of bad faith, with a design to frustrate the purposes of the law and the just administration of justice."

And to further bolster its belief in the rightness of its adherence to the observations of the *Querubin* case, the Supreme Court, speaking through Mr. Chief Justice Paras, made its own observation that notwithstanding the ruling in the *Querubin* case, the lawmakers have so far not seen fit to amend the law so as to impose upon the court, in an unequivocal way, the mandatory duty to dismiss a protest not decided within the fixed period.

In answer to this observation, it may be pointed out that the lawmakers might not have deemed it necessary at all to amend the law just for the purpose of nullifying an *obiter dictum*, which after all is a mere observation or opinion of a justice and does not embody the professed resolution or official determination of the court.

With respect to the necessity of a law unequivocally imposing upon the courts the mandatory duty to dismiss a protest not decided within the fixed period, the present provision under discussion seems to have already been invested with that character. The legislative intent behind the provision is succinctly stated, thus:

"The purpose of the law in Sections 177 and 178 of the Revised Election Code is to impress the need of speedy disposal of election contests, as imperatively demanded by public interest. The terms of office of elective positions are short. Any cloud as to the true result of an election should be dispelled as soon as possible.

"Public faith, confidence and cooperation, essential to the success of government, are jeopardized by controversies as to who have been actually chosen by the electorates. These controversies should be settled as soon as possible. Doubts as to the true expression of the will of the people in the polls should be cleared out without delay. The legislative policy, as embodied in Sections 177 and 178 of the Revised Election Code, of hastening the administration of justice in election contests, is aimed at making more effective the constitutional principle that sovereignty resides in the people." 47

Of significant consideration also in the determination of the problem presented is the nature of an election protest and the jurisdiction of Courts of First Instance in election contests .

The Legislature has the undisputed right to provide for the mode and manner in which an election contest should be instituted. Clear

⁴⁷ *Querubin v. Court of Appeals*, 46 O. G. 1554.

from the provisions of the Revised Election Code is the manifest intention to make an election contest a summary procedure in which the periods are short and fatal,⁴⁸ and trials rapid and preferential⁴⁹ as the peremptory nature of the litigation requires. Amendments to motions of protest which virtually introduce new grounds not alleged in the original protest are even required to be filed within the period fixed by law for filing protests, so that litigations may be promptly determined.⁵⁰

IV. NATURE OF REGISTRY LISTS IN ELECTION CONTESTS

*Naval v. Sana*⁵¹ and *Abendante v. Relato*⁵² reaffirmed the ruling that the qualifications of electors registered in the voters' list having been already finally determined either by the board of election inspectors or by the corresponding circuit judges during the period for the inclusion of voters, could no longer be inquired into in the election protest. Thus, evidence to show that certain electors who were registered in the voters' list and voted in the election were not qualified, is not admissible.

Naval v. Sana dealt with a motion of protest wherein it was alleged that no less than 100 minors were registered in the voters' list and that those minors actually voted in the election. In *Abendante v. Relato*, the facts of which have been stated elsewhere in this article, the claim was that the lepers who cast their votes in precinct No. 11 created within the Bicol Treatment Station, do not have the residence qualification because they were allegedly residents of the municipality of Libmanan. In both cases, the Supreme Court ruled that Section 176(f) of the Revised Election Code which says that:

⁴⁸ *Demetrio v. Lopez*, 50 Phil. 45.

⁴⁹ "Sect. 79. *Preferential disposition of contests.*—The court of first instance and the appellate courts, in the respective cases, shall give preference to election contests over all other cases, except those of *habeas corpus*, and shall hear and decide them without delay, within the time limits fixed by law, whether they are holding regular sessions or not."

⁵⁰ *Orencia v. Araneta Diaz*, 47 Phil. 830. Or as aptly stated in McCrary on American Law of Election, 4th ed., p. 320: "If, therefore, an amendment of a petition would necessarily result in a continuance, or in a considerable delay, it ought not to be permitted, because it is better that he whose fault it is that the original petition is insufficient should suffer, than that an innocent party should be deprived of his right to a speedy trial. In such case, the furtherance of justice requires that leave to amend should be refused." See also note 29.

⁵¹ G. R. No. L-5899, February 28, 1953.

⁵² G. R. No. L-6813, November 5, 1953.

"In election contests proceedings, the registry lists, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election."

is a mandatory injunction. The Supreme Court pointed out that the matter of disqualification from the list of voters should be brought up during the period provided for by law for the exclusion of voters in accordance with the procedure prescribed in the Revised Election Code.⁵³

The question presented in these cases had been resolved as early as 1929 in *Icay v. Diapo*⁵⁴ where it was held that evidence to show that certain electors who were registered in the voters' list and voted in the election were not qualified, is not admissible. In 1932, in the case of *Fernandez v. Mendoza*,⁵⁵ it was declared that where voters were not challenged during the legal period "any evidence tending to show that these voters were registered and that they voted although not possessing the necessary qualifications is immaterial."

American jurisprudence⁵⁶ maintains the same ruling on the point.

V. SUFFICIENCY OF EVIDENCE IN ELECTION PROTEST

*Madrid v. Mañalac*⁵⁷ is a petition for certiorari seeking to set aside the decision rendered by respondent judge dismissing the protest on the ground that protestants have failed to present the ballots as evidence to substantiate said protest, and after said decision has been set aside to order him to decide the protest on the basis of the evidence presented by protestants.

Petitioners, who were candidates for the office of councilor of Donsol, Sorsogon in the November 13, 1951 elections, filed in the Court of First Instance of Sorsogon a protest against the election of respondents who were proclaimed as duly elected councilors. Pe-

⁵³ Sec. 115 of the Revised Election Code provides: "Challenge of right to register.— Any registered voter or any person applying for registration may be challenged before the board of inspectors on any registration day by any inspector, elector, candidate, or watcher. The board shall then examine the challenged person and shall receive such other evidence as it may deem pertinent, after which it shall decide whether the elector shall be included in or excluded from the list as may be proper. All challenges shall be heard and decided without delay, and in no case beyond three days from the date the challenge was made.

"After the question has been decided, the board shall give to each party a brief certified statement setting forth the challenge and the decision thereon."

⁵⁴ G. R. No. 30671.

⁵⁵ 57 Phil. 687.

⁵⁶ C.J.S. 49; *Martelo v. Nuddletim*, 59 So. 863, 131 La. 432.

⁵⁷ G. R. No. L-5770, April 17, 1953.

tioners presented in evidence election statements submitted by the inspectors in the contested election precincts. Respondent judge dismissed the protest, holding that the Court lacked jurisdiction to entertain the protest in view of the failure of protestants to submit the ballots cast as part of their evidence.

The question to be determined, therefore, hinges on whether an election protest involving a municipal position wherein it is claimed that the Board of Canvassers did not make a correct tally of the votes as they appear in the election statements, can be entertained by the Court on the strength merely of said election statements without the necessity of submitting the ballots as evidence.

The Supreme Court ruled that:

"There is nothing in the law, nor in the rules of evidence, in so far as they may be applicable, which would require as an absolute rule the presentation of the ballots as evidence in the determination of an electoral contest. Cases there are where their production may be necessary as when fraud is claimed to have been committed in casting of said ballots, or when they were allegedly forged or falsified. * * *"

Since the principal basis of the protest in the case is that the protestants only had reason to believe that the canvass made by the Board did not tally with the true account as appears in the election statements submitted by the inspectors in the precincts involved in the protest and the protest did not allege any other irregularity, the Supreme Court believes that there is no need for the presentation of the ballots to determine the correction of the canvass made by the Board.

The duty of the court to order examination and counting of ballots may either be ministerial or optional, depending upon whether the requisites for opening ballot boxes are present or not. As indicated by the decision, there are cases where the production and examination of ballots are necessary as when fraud is claimed to have been committed in casting the ballots, or when they were allegedly forged or falsified, in which case the duty becomes ministerial, since the production or examination of the ballots in this case will be essential to prove the grounds of protest. Under Section 175,⁵⁸ two

⁵⁸ Sec. 175 of the Revised Election Code provides: "*Judicial counting of votes in contested elections.*—Upon the petition of any interested party, or *motu proprio*, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voter's affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revise and report upon."

cases are contemplated in which "the court shall immediately order that the ballot boxes be produced before it and that the ballots be examined and votes recounted." First, "upon the petition of any interested party," and second, "or *motu proprio* if the interests of justice so requires." Under the first case, the mere petition of the interested party, if made in accordance with the pleadings is by itself enough. Under the second, the court may take the initiative if the interest of justice so demands.

This situation does not obtain in the instant case.

VI. SUFFICIENCY OF ALLEGATIONS OF JURISDICTIONAL FACTS

A Court of First Instance when deciding an election protest case is a court of special and limited jurisdiction. It cannot acquire jurisdiction over an election protest until the special facts upon which it may acquire jurisdiction are expressly shown in the motion of protest. There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. When a court is given special statutory jurisdiction, under proceedings different from the ordinary proceedings, the special jurisdictional facts must appear, both with respect to the subject matter as well as with respect to the parties. Such court cannot, by any supposed analogy to ordinary proceedings, exercise any power beyond that which the legislature has given.⁵⁹

In *San Juan v. Calderon*,⁶⁰ the trial court sustained the motion to dismiss filed by the protestee in an election contest on the ground that the court had no jurisdiction to take cognizance of the matter, because—

"In the present case the protestant failed to prove (1) the election returns in all the precincts of the municipality of Taytay of this province, in the last elections of November 17, 1951; (2) that the municipal board of canvassers has proclaimed the protestee; (3) that the protest was presented during the legal period from and after the said proclamation; and (4) that both the protestant and the protestee were registered candidates in the said elections for municipal councillor. These are the facts which confer jurisdiction upon this Court over the subject matter. For the failure of the protestant to prove these facts, the Court did not acquire jurisdiction over the subject matter, and protestee has the right to raise that question at any stage of the proceedings."

The Supreme Court held that the respondent judge had erred in declaring that he had no jurisdiction. If the respondent judge were to be sustained, then more proof than those prescribed by established

⁵⁹ *Tengco v. Joscson*, 43 Phil. 715; *Palisoc v. Tamongdong and Medina Cue*, 43 Phil. 789, 794.

⁶⁰ G. R. No. L-5654, January 30, 1953.

jurisprudence would have to be required before Courts of First Instance can acquire jurisdiction over election protests. To the Supreme Court, the requisites laid down in *Pobre v. Quevedo*⁶¹ are all that the law and jurisprudence require. The *Quevedo* case ruled that in order to confer jurisdiction on the Court of First Instance over an election protest it is sufficient to file a motion to that effect stating the following facts:

"(a) That the protestant has duly registered his candidacy and received votes in the election (*Tengco vs. Jocson*, 48 Phil. 715);

"(b) That the protestee has been proclaimed elected in said election (*Manalo vs. Sevilla*, 24 Phil. 609);

"(c) That the motion of protest was filed within two weeks after such proclamation (*Navarro vs. Veloso*, 23 Phil. 625; *Manalo vs. Sevilla*, *supra*; *Hontiveros vs. Altavas*, 39 Phil. 226)."

However, motions of protest need not follow the sacramental wordings of the above. Substantial compliance is sufficient. Thus, the fact that the first three paragraphs in the instant case alleged that the protestant had filed his certificate of candidacy in due time, that he had been voted for in the said elections, and that the protestee had been proclaimed elected by the board of canvassers, and these allegations were expressly admitted in the respondent's answer, would not make it necessary anymore for protestant to prove those allegations. As to the filing of the protest within two weeks after the proclamation, the Supreme Court noted that there is the assertion that the proclamation was made on November 19, 1951 and the protest dated November 28, 1951, or 9 days afterwards. Likewise, the Supreme Court commented that there is no obligation on the part of the protestant in an election protest to prove or allege the time of filing of the protest because it is a matter of record and the court knows it.

VII. TIME TO FILE AMENDMENT TO MOTION OF PROTEST

*Velez v. Varela and Florido*⁶² involved the question of whether an amendment to a motion of protest in an election contest could still be allowed after the protestee had filed his answer in due time, the committee on revision of ballots appointed by the court had nearly completed the revision of the ballots, and the trial had already been set.

It appears that on November 28, 1951, Vicente Florido, one of the respondents in this case, filed a motion of protest in the Court

⁶¹ 52 Phil. 359, 360-361.

⁶² G. R. No. L-5601, May 29, 1953.

of First Instance of Cebu, contesting the election of Leon Velez as vice-mayor of Carcar, Cebu, alleging that in 13 specified precincts of said municipality, irregularities were committed in that the legal votes cast in favor of protestants were rejected, while those illegal votes cast in favor of protestee were counted. On February 26, 1952, after the above circumstances had taken place, the protestant filed a motion for leave to drop two specified precincts from his protest and include a new one in their stead. Though the motion stated no reason, the court granted it over the objection of the protestee, and reconsideration of this order having been denied, the protestee now seeks to annul it through petition of certiorari.

The problem posed in the instant case can be more appreciated by taking into consideration *what* amendments may be allowed and *when* amendments should be made to the original motion of protest.⁶³

It is well-settled that parties to an election contest are allowed to amend their respective pleadings,⁶⁴ provided that the amendments do not essentially change the grounds of the protest or set forth grounds where none were originally stated.⁶⁵ And such amendments should be made within a reasonable period before the commencement of the trial, unless there are special reasons for allowing them after said period.⁶⁶

But when the amendments are of such nature as virtually to introduce new grounds not alleged in the original complaint⁶⁷ or they are so radical as to practically initiate a contest where really no grounds at all had been alleged in the original motion of protest, said amendments should be filed within the period fixed by law for filing the original motion of protest.⁶⁸ Thus, a motion of protest which fails to allege protestant's qualifications to maintain the proceedings, cannot be amended to supply the omission after the lapse of the period fixed by law for the commencement of the proceedings.⁶⁹

On the other hand, an amendment may be allowed even three months after the contest had been begun, if it appears that no proof

⁶³ There is no specific provision of law which prescribes the time for filing an amendment to a motion of protest. Our Supreme Court has been guided by jurisprudence on the point, which stresses the urgent necessity of expediting election contests so as to enforce popular will, and considers that election contests are not subject to the strict rules of pleading. See LAUREL ON ELECTIONS, 2nd ed., 276.

⁶⁴ *Tengco v. Jocson*, 43 Phil. 715; *Orencia v. Diaz*, 47 Phil. 840; *Gallares v. Casenas*, 48 Phil. 362.

⁶⁵ *Tengco v. Jocson*, 43 Phil. 715.

⁶⁶ *Valenzuela v. Carlos*, 42 Phil. 428; *Orencia v. Araneta Diaz*, 47 Phil. 830.

⁶⁷ *Orencia v. Araneta Diaz*, *ibid.*

⁶⁸ 9 R. C. L. 157; 18 Am. Jur. 373-374.

⁶⁹ *Tengco v. Jocson*, 43 Phil. 428.

had at that time been taken by either party and that the taking of the proof thereafter extended over a period of more than a year.⁷⁰ Likewise, where it is made to appear that new facts not within the knowledge of the contestant at the time of service of the original notice have been brought to light, that they are such that the contestant would not have learned them at that time by the exercise of due diligence, and that they are also material and relevant to the main question in controversy, a new or supplementary notice may be served.⁷¹ Thus, there would seem to be no reason, in accordance with this doctrine, for rejecting proposed amendments because they were based upon facts that could only be known when the box whose contents had been destroyed was opened, and the amendments were to be submitted promptly to conform to these facts known and proven.⁷²

Under what category would the amendment in the *Velez* case fall? Should it be considered as constituting new matters or grounds? Or should it be considered merely as introducing a new specification of a fact comprehended within the general terms of the protest and belonging only to the proof, not amounting to a substantial change in the grounds of the protest?

The Supreme Court in answer to the question framed, ruled that the amendment relates to the introduction of new matters and therefore should have been made within the period fixed for the filing of the original motion of protest. The lower court was therefore held to have exceeded its jurisdiction in permitting said amendment. The reason for the rule follows:

"It is the policy of the law to have an election contest speedily determined for the obvious reason that the term of the contested office grows shorter in the passing of each day. To insure these objectives, the law has limited the time for deciding it. It is easy to see that the purpose of the law would be defeated if the protestant could at any time be allowed to amend his motion of protest with the introduction of new matters or new precincts. Such amendment, if not made within the term allowed for the filing of the protest would materially prolong the proceedings since it would call for a new answer from the protestee. As was said in the case of *Fernando v. Endencia*,⁷³ where a similar question is decided, prompt

⁷⁰ *Valenzuela v. Carlos*, 42 Phil. 428.

⁷¹ LAUREL ON ELECTIONS, 2nd ed., pp. 277-278.

⁷² *Salvati v. Garduno*, 52 Phil. 673; *Lucero v. de Guzman*, 45 Phil. 852.

⁷³ 66 Phil. 148. This case also involved amendment to motion of protest by inserting new precinct. Here the Supreme Court held that: "To allow an amendment to the motion of protest by inserting new precinct after the time prescribed by the statute for filing the original motion, would be productive of surprise to the contestee and of disadvantage to him, unless the trial be postponed to enable him to meet the

determination of election contests is a matter of public interest, and the purpose of election law is to insure such a result. To allow a motion of protest to be amended so as to introduce new matters after the time prescribed for the filing of the original pleading, would prolong the litigation and thus defeat the purpose of the law."

*Reinante v. Apostol*⁷⁴ further bolstered the evident purpose behind the prohibition, when it held that the period granted to the protestee to answer and file his counter-protest is mandatory and upon the expiration of the said period, the protestee cannot amend his answer and present a counter-protest or amend it by alleging new facts which have not been alleged in his answer or original counter-protest. Thus, where, as in this instant case, the judge allowed a motion for a new trial founded in ballot boxes which have not been the subject of protest nor counter-protest, he must be considered to have exceeded his jurisdiction. Even if the allegations of the motion for the new trial were considered as amendments to the original answer, the same should not have been received for the allegations were not mere amplifications of the essential allegations of the original protest.⁷⁵

VIII. RULES FOR THE APPRECIATION OF BALLOTS

Section 149 of the Revised Election Code which provides for 21 rules on the appreciation of the ballots came up for application in *Illescas v. Court of Appeals*.⁷⁶

In the elections held on November 18, 1951, Benito Cruz and Francisco F. Illescas were candidates for mayor, and Victor Cruz and Francisco Cruz were candidates for vice-mayor in Angat, Bulacan. Francisco Illescas was proclaimed elected by the municipal board of canvassers, having received 2,200 votes as against 2,181 votes of Benito Cruz. In due time the latter filed a motion of protest in the Court of First Instance of Bulacan, impugning the result in

issues thus newly raised. If the original contest, or a new one by an amended or supplemental pleading, could be commenced a month after the expiration of the time prescribed, it could be done at any later period, and the litigation in this way prolong in many instances until the term of office had expired."

⁷⁴ G. R. No. L-6942, Dec. 29, 1953.

⁷⁵ Sec. 176 (*Procedure*) provides: "(5) The protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance and in all cases before the commencement of the hearing of the protest. The answer shall deal only with the election in the precincts which are covered by the allegations of the protest..

"(c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff."

⁷⁶ G. R. No. L-6853, Dec. 29, 1953.

all the 23 precincts, except precinct No. 13-A. Francisco Illescas in turn entered his protest as to precincts Nos. 2, 4, 4-A, 6, 7, 8, 9, 15, 16 and 16-A. After necessary revision of ballots and trial, the Court of First Instance rendered a decision declaring Francisco Illescas elected municipal mayor with a plurality of four votes, the votes being 2,176 for Illescas and 2,172 for Benito Cruz. Both appealed to the Court of Appeals which, in its decision on July 26, 1958, found that Benito Cruz won with a plurality of five votes, he being credited with 2,185 votes, and Francisco Illescas, 2,180 votes. The latter (petitioner) thus appealed to the Supreme Court by way of certiorari, and limited the controversy only to the ballots specified in his six assignments of error. On the other hand, Benito Cruz (respondent), in further support of the appealed decision, imputed error to the Court of Appeals insofar as the 20 ballots mentioned in his two counter-assignments of error were concerned.

In ballot (exhibit 1-4), *V. Cruz* was written in the space for mayor. According to the Supreme Court, this vote was correctly counted for the respondent inasmuch as the *erroneous* initial of the name which accompanies the correct surname of a candidate does not annul the vote in favor of the latter⁷⁷ and the fact that the voter desired to vote for the respondent as mayor was definitely shown when he wrote his correct surname in the proper space.⁷⁸ The name of Victor Cruz did not affect the vote in favor of the petitioner, since he was not a candidate for mayor.⁷⁹

In ballot (exhibit 3-4), *B. or F. Cruz* was written in the space for mayor. The Supreme Court declared that the Court of Appeals did not commit any mistake, since if B was considered, it was the initial of respondent's name, and if F was deemed as having substituted B, the wrong initial did not annul the vote for the respondent.⁸⁰

In ballot (exhibit 3-6) *V. Cruz* was written in the space for mayor. Under the Revised Election Code,⁸¹ this vote was correctly

⁷⁷ Sec. 149, par. 6: "The erroneous initial of the name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct name of a candidate, or the erroneous intermediate initial between the correct name and surname of a candidate does not annul the vote in favor of the latter."

⁷⁸ The first sentence of Sec. 135. of the Code on the manner of preparing the ballots runs thus—"The voter, on receiving his ballot, shall forthwith retire to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. * * *"

⁷⁹ Sec. 149, par. 7: "The fact that there exists a person who is not a candidate with the name or surname of a candidate does not prevent the adjudication of the vote to the latter."

⁸⁰ See note 77.

⁸¹ *Ibid.*

counted for the respondent. While B. or R. Cruz appeared in the space for member of the provincial board, yet when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate, and the vote for the office for which he is not a candidate shall be counted as stray.⁸²

The Supreme Court considered ballot (exhibit 4-7) as a valid vote for the respondent, because V. Cruz appeared in the space for mayor and V. Cruz appeared in the space for vice-mayor. The vote for the respondent as mayor was held correctly counted under section 149(6) of the Election Law.

Ballot (exhibit 5-7) was found by the Court of Appeals to contain in the space for mayor Binti or Bintu Kris or Kais, and was counted for the respondent under the principle of *idem sonans*. The Supreme Court said that, contrary to petitioner's contention, no error was committed by the court *a quo*.

In ballot (exhibit 6-4) Benito Alinsangan Cruz was voted in the space for mayor, and petitioner insisted that the word *Alinsangan* had been inserted to identify the voter. The speculative argument of the petitioner cannot prevail over the contrary finding of the Court of Appeals, the high court observed, and the vote accordingly credited in favor of the respondent in virtue of section 149(9) of the Revised Election Code which provides that the use of a nickname, if accompanied by the name or surname of the candidate, does not annul such vote, except when it was used as a means to identify the voter. It was uncontroverted that *Alinsangan* is the family nickname of the respondent.

In ballot (exhibit 6-2) the words *Fanlao ang nacio* had been written thereon. As the ballot did not contain such person, the Court of Appeals having in fact no finding on the matter, the vote was properly counted for the respondent.

Ballot (exhibit 9-18) was protested by the petitioner on the ground that A. Bento, the name of a person distinct from that of the respondent, was written in the space for mayor. *Bento* readily has the sound of *Benito* and was therefore held good under the principle of *idem sonans*.⁸³ As the erroneous initial of the surname accompanying the correct name of a candidate does not annul the vote in favor of the latter,⁸⁴ this vote was rightly considered for the respondent.

⁸² Sec. 149, par. 3, Revised Election Code.

⁸³ Sec. 149, par. 2: "A name or surname incorrectly written which, when read, has a sound equal or similar to that of the real name or surname of a candidate shall be counted in his favor."

⁸⁴ See note 80.

Should ballot (exhibit 12-1) be rejected because F. Cortes was written in the space for mayor? According to the Supreme Court, this was a valid vote for the respondent, since *Cores* may easily sound like *Cruz* and should be accepted under the principle of *idem sonans*,⁸³ in connection with section 149(6) of the same Code, which provides that the erroneous initial of the name which accompanies the correct surname of a candidate does not annul the vote in favor of the latter.

Ballots (exhibits 13-6 and 13-7) were alleged to be marked, because in the first *Sotto Lombir* (meaning lumberyard) appeared on the first line for municipal councilors, and in the second, *S. Lamber* appeared on the first line for councilors. The proof showed, however, that there was a candidate by the name of Soto known as Soto Lumber because he owns a lumberyard. Moreover, the Court declared, even assuming there was no such candidate as the Court of Appeals held, the votes can be validly counted for the respondent, in view of paragraph 18, section 149 to the effect that any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as stray vote, but shall not invalidate the whole ballot. Hence these two votes are valid for the respondent.

The petitioner contended that ballot (exhibit G-5) had been erroneously rejected by the Court of Appeals which held the same as marked, because of the mere fact that the word *nardo* was written above the letter "F" of F. Illescas voted for mayor. The Court of Appeals made its deduction from a penmanship comparison of some letters in *nardo* with corresponding letters in *Briones* and *Delgado* appearing in the same ballot. On the other hand, it was insisted for the petitioner that the word had not been written by the voter. In the absence of positive evidence on the point, other than the ballot itself, the Supreme Court was inclined to hold that the basis for the conclusion of the court *a quo* was rather inconclusive, and it therefore ruled that this vote should have been counted in favor of the petitioner.

The Court of Appeals rejected ballot (exhibit H-5) as a valid vote for the petitioner, on the ground that the only word "Kiko" was written in the space for mayor. Reversing this, the Supreme Court held: "We have, however, already ruled that 'when the nickname of a candidate is a derivative or contraction of his Christian name or his surname and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such

⁸³ See note 83.

candidate if there is no other candidate with the same nickname for the same office. (Abrea vs. Loren, 46 O.G. 439.)' " It could not be alleged that there was no evidence that the petitioner was popularly known with the name "Kiko", because the Court of Appeals pointed out that "the protestee tried to show through the testimony of Tomas Pablo that his nicknames were "Kikoy", "Kiko", "Dong", or "Dodong", and even admitted that "in this country, the diminutive of Francisco" are usually "Paquing", "Paquito", "Paco", "Kiko", "Kikoy", or "Koko". As there was no other candidate for mayor with the same derivative nickname "Kiko", the court credited the vote in question for the petitioner.

Ballot (exhibit H-6) was rejected by the Court of Appeals because Dodong Illescas was written in the space for mayor, and there was no evidence that "Dodong" was petitioner's nickname. This the Supreme Court held erroneous, inasmuch as the Court of Appeals had admitted that "the protestee tried to show through the testimony of Tomas Pablo that his nicknames were "Kikoy", "Dong", or "Dodong", and no pretense was made that said testimony had ever been contradicted. Hence this particular vote was considered valid for the petitioner.

With respect to ballot (exhibit J-2), claimed by the petitioner to be valid vote for him, the Court of Appeals made the following finding:

"Rejected on the ground that it is marked because there is a big cross or 'X' on the space for Senator as well as a small cross or 'x' and an arrow on the fourth line for Councilors. The ballot supports the ruling of the lower court for we can see in the ballot the following: there has been written the name B. Cruz in big letters covering the lines 2, 3, 4, 5 and 6 for Senators which was cancelled by a big cross and thereafter the voter wrote another cross of 'X' immediately in the upper part of the letter 'x' of 'Cruz' and which small cross was later on crossed by a long line, which crosses are, in the Court's opinion, unnecessary. Again, the elector wrote the name 'B Cruz' on the fourth line for Councilors and immediately after the name the elector wrote an 'x' and then an arrow toward said letter 'x.' Evidently, these crosses and arrow are distinguishing marks which make this ballot void. Hence, it was properly rejected by the lower court."

This conclusion of the Court of Appeals was affirmed by the high court.

The rejection by the Court of Appeals of ballot (exhibit J-11) was based upon the following finding:

"Contested on the ground that it was prepared by two persons of different culture * * * we find the objection completely well taken. The

names of 'Elyasascas' voted for mayor and the initial 'p' superimposed by the initial 'V' followed by the surname 'Coros' on the line for Vice Mayor were written by a person not well schooled while the rest of the names appearing on the positions were written by a person skilled in writing. Therefore, this ballot should be rejected and discarded from those admitted by the lower court in favor of the protestee, it having been prepared by two hands."

The Supreme Court again sustained this view.

Ballot (exhibit K-3) was claimed as a valid vote for the petitioner. Like exhibit J-11, this ballot was found by the Court of Appeals to have been prepared by two hands because of some obvious variance of handwriting contained therein. The Supreme Court declared that it was not in a position to alter the finding of the Court *a quo*.

It resulted that, out of the 25 ballots questioned by the petitioner, only three were to be added to the total number of votes received by and credited to him by the Court of Appeals, thus still making the respondent the winner with a plurality of two votes. Although already superfluous, the Supreme Court observed that, as contended by the respondent, the Court of Appeals erred in not counting the 14 votes represented by colored ballots (exhibits C-1 to C-14). The reason for the rejection was that they were sample ballots, and, under section 128,⁸⁶ no name of any actual candidate shall be written on sample ballots, nor shall they be used for voting, nor shall they be counted. In this case there was no question that the election inspectors as well as the voters to whom the sample ballots had been distributed acted in good faith. The injunction contained in section 128 is addressed mainly to the election officials, and the latter's innocent mistake should not, in the mind of the Supreme Court, be used as a means to deprive likewise innocent voters of their right to vote. In a situation like this, the Supreme Court was constrained to hold the provision to be merely directory. It appeared that, out of 14 votes, nine were for the respondent and five were for the petitioner. If these were added to their respective totals, the respondent would have had a final plurality of six votes.

IX. COSTS IN ELECTION CONTESTS

*Fojas v. Garcia*⁸⁷ explained what "costs" in section 180⁸⁸ includes and who may collect the costs awarded thereunder.

⁸⁶ Sec. 128, Revised Election Code, provides: "Sample ballots.—Boards of election inspectors shall be furnished with at least thirty sample ballots, in all respects like official ballots but printed on colored paper, to be shown to the public and used in demonstrating how to fill out and fold the official ballots properly. No name of any

In an election protest filed in the Court of First Instance of Manila by protestant-appellant Fojas, the court rendered decision in favor of protestees Garcia and Santiago and against protestant Fojas. On appeal to the Court of Appeals, the decision of the trial court was modified, and appellant Fojas was declared elected in lieu of appellee Garcia, with "costs against the appellee." Accordingly, appellant filed in the trial court a bill of costs which was approved, except the items for fees paid to the revisors in the sum of ₱4,672, for Clerk of Court who acted as chairman in the amount of ₱200, and for transportation, handling and custody of ballot boxes, ₱200. The court gave as reason for denial of the above items that "if the party who wins in the protest or appeal is the protestant or appellant as in the instant case, he is only entitled to the ordinary costs of the suit as provided in * * * the Rules of Court,⁸⁹ but not to the expenses and costs mentioned in section 180 of the Revised Election Code, which are recoverable only by the contestee or appellee in case he wins."

The Supreme Court in reversing the findings of the trial court, pointed out:

"That the herein appellant is entitled to collect his expenses from the losing party, the herein appellee, Gregorio N. Garcia, is obvious from the provision that 'In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party.' The trial court erred in holding that it is only the protestee or appellee who may collect his election expenses from the protestant or appellant who loses, because the law mentions 'the party' who wins, and not the protestee or appellee.

actual candidate shall be written on sample ballots, nor shall they be used for voting, nor shall they be counted."

⁸⁷ G. R. No. L-4790, April 29, 1953.

⁸⁸ Sec. 180 of the Revised Election Code provides: "*Bond or cash deposit.*—Before the courts shall take cognizance of a protest or a counter-protest or admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said motion or appeal, or shall deposit with the court cash in lieu of the bond or both as the court may order. The court in which the contest is pending shall for good reason order from time to time that the amount of the bond or cash deposit be increased or decreased, or order the disposition of such deposit as the course of the contest may require. In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party."

⁸⁹ Sec. 1, Rule 131, Rules of Court: "*Costs ordinarily follow results of suit.*—Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law."

"It is contended for the appellee that the decision of the Court of Appeals awarded in favor of the appellant only 'costs,' without mentioning 'expenses.' This is untenable, because Section 180 of the Revised Election Code provides that the 'expenses and costs' shall be assessed by the Court as 'costs' against the losing party, with the result that the decision of the Court of Appeals awarding costs, must be deemed to include also expenses."

Are commissioner's fees, transcript of stenographic notes and expenses of protestee's brief recoverable?

*Torres v. Ribo*⁹⁰ answered that commissioner's fees are proper expenses incident to the necessities of recanvassing the ballots and therefore payable under Section 180. Commissioner's fees may be deemed to be embraced within the terms "expenses and costs" used in said section and collectible against the losing party.

With reference to the items for stenographic transcript and the brief in the counter-protest, the Supreme Court ruled that they are not in order.

In passing upon the allegation that parties must pay their respective costs, the Supreme Court held that under Section 180 of the Revised Election Code, in relation to Section 1 of Rule 131, the costs are generally assessed against the losing party, although for special reasons they may be divided equally. In the latter case, the Court is vested with discretion. In the instant case, the Supreme Court did not find it necessary to exercise the discretion conferred upon it.

X. ELECTION OFFENSES

Under Section 188⁹¹ of the Revised Election Code, the violation of Section 56 of the same Code which provides that, "No foreigner shall aid any candidate, directly or indirectly, or take part in or to influence in any manner any election," is considered a serious election offense and under Section 185⁹² is penalized with imprisonment of

⁹⁰ G. R. No. L-5394, April 29, 1953.

⁹¹ The pertinent part of Sec. 183 in so far as Sec. 56 is concerned reads: "Violation of any of the provisions of sections * * * fifty-six * * * shall be serious election offense(s) * * *."

⁹² Sec. 185: "Penalties.—Any one found guilty of a serious election offense shall be punished with imprisonment of not less than one year and one day but not more than five years; and any one guilty of a less serious election offense, with imprisonment of not less than six months but not more than one year. In both cases, the guilty party shall be further sentenced to suffer disqualification to hold a public office and deprivation of the right to suffrage for not less than one year but not more than nine years, and to pay the cost; and if he were a foreigner, he shall, in addition, be sentenced to deportation for not less than five years but not more than ten years, which shall be enforced after the prison term has been served. An entity found guilty shall be sentenced to pay a fine of not less than five thousand pesos but not more than one hundred

not less than one year and one day but not more than five years and in case of foreigner, shall in addition be sentenced to deportation for not less than five years but more than ten years, to be enforced after the prison term has been served.

Leancio Ho Benluy v. Republic of the Philippines,⁹³ discussed the manner in which the violation may be committed. Leancio Benluy, a Chinese citizen, filed an application for naturalization in 1951. At the hearing of his application, he presented as one of his witnesses, Atty. Marcial M. Anastacio, who in his enthusiasm to prove that the applicant had identified himself with the Filipinos, and was a strong believer in our Constitution, stated that the applicant even took part in two electoral campaigns in Bulacan, not only persuading some voters connected with his business but also made contributions to the campaign funds of the Liberal Party.

The Supreme Court held that the action of the applicant Benluy fell clearly under the prohibitive provisions of section 56 of the Revised Election Code. Said the Supreme Court:

"These provisions of the Revised Election Code may not be taken lightly, much less ignored. They were intended to discourage foreigners from taking active part in or otherwise interfering with our elections, under penalty not only of imprisonment but also deportation. It might well be that as already stated, the evidence about this violation of the election law was given by his own witness who in all likelihood gave it in good faith and in all friendship to the applicant to bolster the latter's application for naturalization, without realizing that by said declaration he was forever closing the door to Benluy's ever becoming a Filipino citizen. It is merely a piece of bad luck for him. From the standpoint of the Government however, it was fortunate that said evidence was brought up, thereby preventing the granting of Philippine citizenship to a foreigner who tho even in his ignorance of the law and at the instance of his Filipino friends, violated one of the important provisions of our election law."

Laurel in his book on Election Law gave the reason behind the prohibition:

"The general principle is supposed to be clear that a foreigner who of his own accord settles in a country accepts the conditions and liabilities, in peace and in war, of a native of that country. Every person who voluntarily brings himself within the jurisdiction of the country, whether per-

thousand pesos, which shall be imposed upon such entity after criminal action has been instituted against the same in which its legal representative shall be summoned by notice or by publication.

⁹³ G. R. No. L-5522, December 21, 1953.

manently or temporarily, is subject to the operation of its laws, whether he be a citizen or a mere resident, so long as, in the case of the alien resident, no treaty stipulation or principle of international law is contravened. In the matter of the exercise of political rights, foreigners may not only be denied them but prohibited to exercise them. Our Election Code prohibits and penalizes any foreigner who aids any candidate or takes part or exerts influence in any manner in any election. Foreigners have no political attachment to our body politic and their intervention in matters of state is deemed pernicious or inimical to the state. Even Americans are now considered foreigners for the purposes of the election law." ²⁴

²⁴ LAUREL ON ELECTIONS, 2nd ed., 117-118.