

ELECTION PROTEST—EVIDENCE

ON THE STRENGTH MERELY OF THE ELECTION STATEMENTS WITHOUT NECESSITY OF SUBMITTING BALLOTS AS EVIDENCE, THE COURT HAS JURISDICTION TO ENTERTAIN AN ELECTION PROTEST WHEREIN IT IS CLAIMED THAT THE BOARD OF CANVASSERS DID NOT MAKE A CORRECT TALLY OF THE VOTES AS THEY APPEAR IN SAID ELECTION STATEMENTS.

FACTS: In the elections held on November 13, 1951, petitioners were candidates for the office of councilor of Donsol, Sorsogon. After respondents were proclaimed by the Board of Canvassers as the duly elected councilors, the petitioners filed a protest claiming that the Board of Canvassers did not make a correct tally of the votes as they appeared in the election statements. During the trial, petitioners submitted their evidence consisting of 30 election statements submitted by the inspectors of the contested precincts plus other documentary evidence. Respondents filed a motion to dismiss the protest. The respondent judge sustained the motion holding in substance that the court lacked jurisdiction to entertain the protest because of the failure of petitioners to submit the ballots cast as part of their evidence. Hence this petition for certiorari.

HELD: There is nothing in the election law, nor in the rules of evidence insofar 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.

Their production may be necessary when fraud is claimed to have been committed in casting said ballots, or when they were allegedly forged or falsified. The principal basis of the protest in question is that the protestants had reason to believe that the canvass made by the Board did not tally with the true count as it appeared on the various election statements submitted by the inspectors in the 30 election precincts involved in the protest. There is indeed no need for the presentation of the ballots to determine the correctness of the canvass made by the Board.

Petition granted. (*Briccio Madrid, et al., Petitioners, vs. Hon. Anotolio C. Mañalac, et al., Respondents, G. R. No. L-5770, promulgated April 17, 1953.*)

WHERE THE EVIDENCE IN AN ELECTION PROTEST IS NOT ALLOWED ON THE GROUND THAT IT COULD NOT SERVE A USEFUL PURPOSE, THE PROPER REMEDY IS APPEAL BECAUSE IT IS A MERE ERROR OF JUDGMENT.

FACTS: Arcadio Perez filed an electoral protest in the C. F. I. of Camarines Sur against Salvador Bimeda, the elected mayor of Pamplona, Camarines Sur. In his answer, Bimeda set up a counter-protest contending that the electoral returns in Precinct No. 6 of Pamplona, Camarines Sur. In his answer, Bimeda set up a counter-Pamplona should be annulled on the ground of wholesale irregularity and gross violation of the election law, because said precinct was closed at five o'clock in the afternoon, notwithstanding the fact that 20 or more voters who were in the premises had not yet voted.

During the trial of the election case, Bimeda was not allowed by the presiding judge to present his evidence proving his counter protest, on the ground that it could not serve a useful purpose. Hence this petition for certiorari and mandamus.

HELD: As a rule the errors which the court may commit in the exercise of its jurisdiction are merely errors of judgment. In the trial of a case, it becomes necessary to distinguish errors of jurisdiction from errors of judgment. The first may be reviewed by a certiorari proceeding; the second, by appeal. Errors of jurisdiction render an order or judgment void or voidable but errors of judgment or of procedure are not necessarily a ground for reversal.

The action taken by petitioner to correct the ruling of the court is not the proper one, it being a mere error of judgment which should be corrected by appeal and not an act of lack of jurisdiction or grave abuse of discretion which is the proper subject of a petition for certiorari.

Petition denied. (*Salvador Bimeda, Petitioner, vs. Arcadio Perez, et al., Respondents, G. R. No. L-5588, promulgated August 26, 1953.*)

ELECTION PROTEST—ANNULMENT OF ELECTIONS

FRAUD AND TERRORISM TO WARRANT THE ANNULMENT OF AN ELECTION MUST BE OF SUCH NATURE AND MAGNITUDE AS TO

RENDER IT IMPOSSIBLE TO DISTINGUISH WHAT VOTES ARE LAWFUL AND WHAT ARE UNLAWFUL; IRREGULARITIES, SUFFICIENT TO WARRANT THE ANNULMENT OF AN ELECTION WHERE THE VOTE IS CLOSE, MAY BE DISREGARDED WHERE IT IS EVIDENT THAT THEY COULD HAVE HAD NO EFFECT UPON THE RESULT.

FACTS: Alfonso C. Faigal and Gil S. Dizon filed their respective certificates of candidacy for the office of municipal mayor of Guimba, Nueva Ecija, in the election held on November 13, 1951.

After the elections, Gil S. Dizon was proclaimed the elected mayor of said municipality, having received 3,386 votes against 2,875 votes cast in favor of his opponent Alfonso C. Faigal. In due time, Faigal filed an election protest on the ground of fraud and terrorism and prayed for the annulment of the results in 13 precincts.

From the evidence, it is clear (1) that two armed guards were assigned to each of the precincts involved to maintain peace and order; (2) that no acts of violence were committed in those precincts during the election; (3) that the killing of the persons mentioned were perpetuated before the election; (4) that no reports of fraud and terrorism were made to the representatives of the Commission on Elections.

HELD: Acts of terrorism and fraud to warrant the annulment of the election must be of such nature and magnitude as to render it impossible to distinguish what votes are lawful and what are unlawful.

The power to throw an entire election (and the same thing can be said with respect to the annulment of the election in several precincts of a municipality) should be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise.

Elections should never be held void unless they are clearly illegal. It is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained.

Irregularities, which may be sufficient to warrant the annulment of an election where the vote is close and when it is probable that the result of the election was affected by such irregularities, may be disregarded where it is evident that they could have had no effect upon the result. (*Alfonso C. Faigal, Protestant-Appellant, vs. Gil S. Dizon, Protestee-Appellee, (C.A.) G. R. No. 9896-R, promulgated July 15, 1953.*)

SECTION 5, REVISED ELECTION CODE

THE COMMISSION ON ELECTIONS HAS THE POWER TO ANNUL A FRAUDULENT REGISTRY LIST ALTHOUGH IT HAS BECOME PERMANENT; IT DOES NOT LOSE JURISDICTION OVER CONTROVERSIES BROUGHT BEFORE IT EVEN IF NOT DECIDED WITHIN FIFTEEN DAYS, AS SECTION 5 OF THE REVISED ELECTION CODE IS ONLY DIRECTORY.

FACTS: In November, 1951, respondent Arsenio Lugalay filed with the Commission on Elections a petition asking for the annulment of the registry list for the municipality of Concepcion, Tarlac, on the ground of fraud, intimidation, and terrorism. During the hearing of said petition, the question arose as to whether the Commission on Elections had the power to annul the registration in the municipality in question notwithstanding that the same had already become permanent in accordance with the provisions of Section 95 of the Revised Election Code, as amended. The Commission, by a majority vote, decided the same affirmatively.

The petitioner herein brought the case to the Supreme Court on certiorari, praying that the resolution of the Commission on Elections be set aside alleging that (a) said body no longer had jurisdiction to annul the registry list as the same had already become permanent and was only subject to corrections by proper petition, and (b) that section 5 of the Revised Election Code, as amended, providing that any controversy submitted to the Commission on Elections shall be tried, heard and decided by it within fifteen days, is mandatory, thus resulting in the Commission's loss of jurisdiction.

HELD: The Commission on Elections is authorized to annul