

ELECTION PROTEST—JURISDICTION

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: (1) THAT THE PROTESTANT HAS DULY REGISTERED HIS CANDIDACY AND RECEIVED VOTES IN THE ELECTION; (2) THAT THE PROTESTEE HAD BEEN PROCLAIMED ELECTED IN SAID ELECTION; (3) THAT MOTION OF PROTEST WAS FILED WITHIN TWO WEEKS AFTER SUCH PROCLAMATION.

FACTS: Luis San Juan and Santos Calderon were both candidates for councilor of the Municipality of Taytay, Rizal in the elections of November 13, 1951. Santos Calderon was proclaimed elected by the board of canvassers defeating Luis San Juan by three votes only.

San Juan filed a protest in the C. F. I. of Rizal alleging that in one precinct about twenty ballots cast for him had been read illegally and counted in favor of Santos Calderon. Respondent judge required protestee to answer. The protestant filed a bond. On December 5, 1951, the protestee replied claiming to have been properly proclaimed. Commissioners were appointed who examined the ballots and reported their findings. At the hearing, after protestant rested his case, protestee submitted a motion to dismiss on the ground that the court had no jurisdiction to take cognizance of the matter. Respondent judge sustained the motion ruling that the protestant failed to prove (1) the election return in all the precincts of Taytay in the elections of November 13, 1951; (2) that the municipal board of canvassers had proclaimed the protestee; (3) that protest was presented during the legal period from and after the said proclamation and (4) that both protestant and pro-

testee were registered candidates in said elections for municipal councilor.

HELD: In order to confer jurisdiction on the C. F. I. over an election protest it is sufficient to file a motion to that effect, stating: (1) that the protestant has duly registered his candidacy and received votes in the election; (2) that the protestee has been proclaimed elected in said election and (3) that the motion of protest was filed within two weeks after such proclamation.<sup>1</sup>

The first three paragraphs of the protest alleged that 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 on November 19, 1951, with a majority of three votes. These three paragraphs were expressly admitted in the respondent's answer. It was therefore not necessary for the protestant to prove those allegations.<sup>2</sup> As to the filing of the protest within two weeks<sup>3</sup> after the proclamation, this is a matter of record and the court knows it,<sup>4</sup> as there was the assertion that the proclamation was made on November 19, 1951 and the protest is dated November 28, 1951 (i.e. nine days later). Therefore, the protestant was under no obligation to prove or allege the time of filing. Furthermore, the respondents here admitted that the protest was filed on December 1, 1951 (i.e. twelve days after proclamation).

Points essential to jurisdiction having been shown, the lower court erred in declaring it had no jurisdiction. The order of dismissal is revoked and respondent judge is directed to decide the aforesaid election protest on the merits. Costs against Santos Calderon. (*Luis San Juan, Petitioner, vs. Santos Calderon, et al., Respondents, G. R. No. L-5654, promulgated January 30, 1953.*)

<sup>1</sup> Pobre vs. Quevedo (52 Phil. 359).

<sup>2</sup> The rules of procedure applicable to ordinary civil cases are also applicable generally to election contests when they do not conflict with the Election Law. (*Gardiner vs. Romulo, 26 Phil. 521; Lucero vs. De Guzman, 45 Phil. 852; Morente vs. Filamor, 52 Phil. 289.*)

<sup>3</sup> Sec. 174, R. A. No. 180.

<sup>4</sup> Villanueva v. Araneta Diaz (47 Phil. 836); Nisperos v. Araneta Diaz (47 Phil. 806).