CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

JULIAN GALA,
***Petitioner*,**

-versus-

G.R. No. 8892
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and RUFINO RODRIGUEZ,
***Respondents*.**
x----------x

CRISPULO VARGAS,
***Petitioner*,**

-versus-

G.R. No. 8893
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and BASILIO REYNOSO,
***Respondents*.**
x----------x

ISIDRO RODRIGUEZ,
***Petitioner*,**

-versus- **G.R. No. 8899**
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and PABLO UMALI,
***Respondents*.**
x----------x

DIONISIO DEDASE,
***Petitioner*,**

-versus- **G.R. No. 8900**
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and PANCRACIO VILLAFUERTE,
***Respondents*.**
x----------x

QUIRINO ENRIQUEZ,
***Petitioner*,**

-versus- **G.R. No. 8901**
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and EMILIANO ALBOLOTE,
***Respondents*.**
x----------x

VENANCIO RODRIGUEZ,
***Petitioner*,**

-versus-

G.R. No. 8902
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and BRAULIO DE VILLA,
***Respondents*.**

x----------x

RICARDO REMO,
***Petitioner*,**

-versus-

G.R. No. 8903
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and RAYMUNDO QUEJADA,
***Respondents*.**

x----------x

ARISTON RELIGIOSO,
***Petitioner*,**

-versus-

G.R. No. 8904
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayabas, and JUSTINIANO ZAPORTEZA,
***Respondents*.**

x----------x

CATALLINO RODRIGUEZ,
***Petitioner*,**

-versus-

G.R. No. 8905
October 10, 1913

MARIANO CUI, as judge of the Court of First Instance, Province of Tayaba, and PASTOR ESPINOSA,
***Respondents*.**
x----------x

D E C I S I O N

MORELAND, *J.*:

These are proceedings to obtain writs of certiorari directed to the Court of First Instance of Tayabas, requiring the transmission to this court of the records of that court for the purpose of determining the questions of the jurisdiction of the court and, if jurisdiction was lacking, of annulling the judgments entered in said proceedings.

The proceedings in the court below in the nine cases now before us were contests begun in regard to municipal offices, candidates to fill which were voted for at the election of the 4th of June, 1912. They involved all of the municipal offices. The applicants before this court were the candidates successful upon the face of the returns but whose election was protested. In the trial of the protests the court found that the election in a certain precinct in the municipality was void by reason of illegal practices and frauds committed during the election; and a recount of the ballots, excluding this district, resulted in ousting the petitioners from office and the introduction therein of their competitors at the election.

Petitioners for the writ allege several reasons why the judgments of the court in the election contests involved in these nine proceedings are void. As the first ground they assert that: "The Court of First Instance was without jurisdiction, because all the candidates voted for at the election for the office concerning which a protest was filed were not notified of the protest or amended protest as required by section 27 of the Election Law."

We do not stop here to determine whether or not as a matter of fact all of the candidates were notified as required by law. It is true, as counsel contends, that, if all the candidates who received votes for the office to which the protest referred were not made parties to the protests, then the proceeding is void for lack of jurisdiction at its inception. That does not necessarily mean, however, that that question can now be raised in this court. Whether or not all of the candidates were notified is a question of fact. Whether or not notification was sufficient is one of law. The matter of jurisdiction raised here by counsel requires the determination of a question of fact, at least in large part. Was the notice served upon all of the candidates who were voted for the office to which for the office to which the contest referred? This is a question of fact the determination of which may require not only the production of the records of the court but also, possibly, if no probably, the taking of oral testimony. The case of Navarro vs. Jimenez (23 Phil. Rep., 557) was one of quo warranto, based on the ground that the decision of the court in the original protest was null and void for the reason that not all of the candidates voted for that office had been notified of the protest as required by law and that, therefore, the court was without jurisdiction to enter the judgment which it did enter in favor of the defendant. In that case, the record of the court below being before the Supreme Court, the latter in deciding the case said:

> "From the record it appears that the very question of the notice to all of the candidates voted for at said election for the office of municipal president was raised before the court below and fully considered and decided by it. After the entry of the judgment in favor of the defendant, a motion was made by the plaintiff to vacate and set aside said judgment and to dismiss the whole proceeding upon the ground that not all of said candidates had been notified of the protest as required by law. The motion was

> heard. The question was litigated. The evidence was discussed and considered. The arguments of counsel were presented. The court found from the evidence that all of the candidates had been notified of the protest and that the notice was in the form and served in the manner and within the time required by the statute. That question having been raised before the court below and passed upon there, we are unable to see at this moment how an action of quo warranto can be maintained, based upon the theory that such notice was lacking. That question having been determined in the court below, and the decision never having questioned in the only manner in which such a decision can be, we must hold it conclusive in this action, quo warranto not being a method by which that decision can be reviewed. We are, therefore, of the opinion that the action must be dismissed."

On a motion for rehearing we said: "We have to say in amplification of our former opinion on this question, that the general rule is that, where the jurisdiction of the court depends upon the existence of facts, and the court judicially considers and adjudicates the question of its jurisdiction, and decides that the facts exist which are necessary to give it jurisdiction of the case, the finding is conclusive and cannot be controverted in a collateral proceeding."

While this case is not strictly in point in the resolution of the question presented by counsel for the petitioners, nevertheless, it touches a theory which has, in our judgment, a strong bearing on the decision of that question. The question whether all of the candidates were served with notice being one of fact, it should have been presented to the trial court for its consideration and determination. That court was in a better position to determine that question than is this court. The resolution of that question might require the determination of a question of fact. If the question had been determined by the trial court, its determination, under the case above cited, would have been final, at least in the sense that it would not be subjected to collateral attack. It is our opinion that that question cannot be raised for the first time in this court, and we must decline, therefore, to consider it.

Where the jurisdiction of a trial court depends upon a question of law alone, as it usually does, the same rule would not apply. We have held

on several occasions that the question of the jurisdiction of the court over the subject matter can be raised at any time in any court where the lack of jurisdiction appears on the fact of the record, as is almost invariably the case, but, as is clear, the jurisdiction of a court over the subject matter is in such case a question of law and involves in its determination no question of fact. Where, however, as here, the jurisdiction of the court depends upon a question of fact, it must be first raised in that court and therein determined.

The first objection raised by counsel to the jurisdiction of the court is therefore overruled.

The second objection presented by the petitioners is that:

> "Even assuming the court did have jurisdiction, the judgment rendered is void because the court confined its investigation to what occurred in the first precinct and examined and counted the ballots of that precinct only, notwithstanding contestee offered to prove that the inspectors of election of the second precinct committed the same irregularities that protestant claimed were committed by the election inspectors of the first precinct; and , that if all the conceded legal ballots of both precincts are examined and counted, the result will establish the election of the contestee and not the protestant. The court excluded the same and refused to examine and count the ballots of the second precinct on the ground that contestee made no objection to protestant's verbal motion to withdraw his (protestant's) allegations as to what occurred in the second precinct."

The statement of this objection shows upon its face that the question of the jurisdiction of the court is not involved. The court has a right to determine what precincts are sufficiently involved in the charges of misconduct to warrant the opening of the ballot boxes used therein. An error incurred in the determination of that question will not deprive the court of jurisdiction or render its action void. It certainly will not be contended that, if the protestants really did withdraw his allegations with respect to the second precinct, the court erred in refusing to hear evidence in relation to it. The protestant is bound by his allegations, and if he and if he withdraws those which attack the

validity of the election in a given precinct and the parties proceed to trial upon the complaint as amended, it will not be seriously contended that the court errs when it refuses to permit the protestant to introduce evidence concerning the precinct expressly excluded from the petition. Petitioner's contention that, as a matter of fact, the allegations in relation to the second precinct were not withdrawn, is of no importance so far as the jurisdiction of the court is concerned. If that question was raised before the court and the court, upon the record and proceedings before it, found that the allegations were actually withdrawn, such finding is within the jurisdiction of the court, and , if erroneous, can be corrected only by appeal. We have held in the recent case of Herrera vs. Barreto and Joaquin, (ante, p. 245), as follows:

"It has been repeatedly held by this court that a writ of certiorari will not be issued unless it clearly appears that the court to which it is to be directed acted without or in excess of jurisdiction. It will not be issued to cure errors in the proceedings or to correct erroneous conclusions of law or of fact. If the court has jurisdiction of the subject matter and of the person, decisions upon all questions pertaining to the cause are decisions within its jurisdiction and, however irregular or erroneous they may be, cannot be corrected by certiorari" (p. 249).

> "Jurisdiction is the authority to hear and determine a cause — the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction of the person and subject matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction" (p. 251).
>
> "A full and thorough examination of all the decided cases in this court touching the question of certiorari and prohibition fully supports the proposition already stated that, where a Court of First Instance has jurisdiction of the subject matter and of the

person, its decision of any question pertaining to the cause, however erroneous, cannot be reviewed by certiorari, but must be corrected by appeal" (p. 271).

What has been said in relation to petitioner's second objection is applicable also to his third, in which it is urged that "the court, in declaring the election in precinct 1 void, acted outside of and in excess of his jurisdiction." There is no doubt about the right of the court to declare an election in a given precinct void if the facts proved warrant such a conclusion. The power, then, to declare an election void in a given precinct is undoubted. Whatever a court may do it has the power to do, and, although it act irregularly and arrive at a wrong conclusion, such irregularity and such error do not affect its jurisdiction. They are matters than can be cured only by appeal, and, where there is no appeal, they are errors that must be endured.

From these observations it is clear that the only question of jurisdiction presented to the court in these proceedings, namely, the failure to notify all of the candidates, is one of which this court will not take cognizance in the first instance. The other questions presented in no way affect the jurisdiction of the court to act in the premises, but deal at the most only with errors incurred by the course in the exercise of a jurisdiction already conceded. Such being the case, the writ of certiorari will no lie. (Herrera vs. Barretto and Joaquin, supra, and cases therein cited.)

The petitions for writs of certiorari in the nine cases above named are each and all denied, with costs.

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

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