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Pacito Abrea, petitioner-appellant, vs. Isabelo A. Lloren, respondent-appellee, G. R. No. L-2078, October 26, 1948, OZAETA, *J.*

1. ELECTIONS; STATUTES; CONSTRUCTION AND INTERPRETATION; EFFECT OF NONINCORPORATION OF A PROVISION OF PREVIOUS ELECTION LAW IN THE REVISED ELECTION CODE. —The nonincorporation in the Revised Election Code of the provision of a previous election law (Act No. 4203, section 16), which said: "* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy," is indicative of the intention of the Congress to abandon it.

2. ID.; BALLOTS; NICKNAMES; CANDIDATE SUFFICIENTLY IDENTIFIED BY NICKNAMES.— Appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with same nickname.

3. ID.; ID.; CANDIDATE SUFFICIENTLY IDENTIFIED BY HIS CHRISTIAN NAME OR SURNAME ONLY; RULES LAID DOWN IN CAILIES VS. GOMES AND BARBAJA, 42 PHIL. 496 AND CECILIO VS. TOMACRUZ, 62 PHIL. 689, CHANGED OR ABANDONED.— Rule No. 1 contained in section 149 of Republic Act No. 180 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office.

4. ID.; ID.; NICKNAMES; BALLOT BEARING NICKNAME OF CANDIDATE ONLY, VALID. — When the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office.

5. ID.; ID.; APPRECIATION OF BALLOTS.—A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded. (Mandac vs. Samonte, 49 Phil. 284)

6. ID.; ID.; NICKNAMES; EVIDENCE; PROOF OF CANDIDATE'S IDENTITY BY NICKNAME. — The protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

7. ID.; ID.; INQUIRY TO VOTES CAST LIMITED.—The trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not.

PERFECTO, *J.*, concurring:

8. NICKNAMES.—As a general rule, votes cast in nicknames written in isolated ballots, should not be given effect in accordance with paragraph 9, Sec. 149, in connection with Sec. 34 of the Election Code.

9. CLEAR INTENTION OF THE ELECTORATE.—When the evidence on record shows that the nickname written in the ballots express the intention of the electorate to vote for a candidate, that intention must be given effect.

10. CONCLUSIVE EVIDENCE.—The fact that 602 ballots were cast with the names of Beloy, Biloy and Belog, nicknames of the Christian name Isabelo of a candidate, is conclusive evidence that the electorate voted in fact for said candidate.

11. LEGAL TECHNICALITIES.—Legal technicalities should be brushed aside for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

12. BASIC PRINCIPLE OF POPULAR SOVEREIGNTY. — Statutory provisions and judicial doctrines on elections are enacted and laid down to insure the determination of the true will of the people in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them."

13. THE SUPREME LAW.—All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat but to give effect to the basic principles of the Constitution. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

Attys. Dominador M. Tan, Braulio G. Alfaro & Conrado G. Abiera and *Dominador M. H. de Joya* for the petitioner-appellant.

Attys. Domingo Veloso and *Castrence Veloso* for the respondent-appellee.

DECISION

OZAETA, *J.*:

In the general elections of November 11, 1947, appellant Pacito Abrea and appellee Isabelo A. Lloren were the candidates for the office of municipal mayor of Inopacan, Leyte. In his certificate of candidacy appellee Isabelo Lloren stated that he was also known by the following names: Isabelo A. Lloren, Isabelo Lloren Abrea, Beloy Lloren, I. Lloren Abrea, Loy Lloren, and Loy Abrea.

The municipal board of canvassers proclaimed Isabelo Lloren municipal-mayor-elect with 1,010 votes, which gave him a majority of 198 votes over Pacito Abrea, who obtained only 812 votes.

Pacito Abrea protested the election of his opponent on four grounds, only the first of which is relied upon by him in this appeal, to wit: "(a) That a total of 417 votes cast in all the precints in said municipality in favor of one Beloy as clearly written in the ballots were credited and read in favor of the above respondent."

In the course of the trial the ballot boxes were opened, and it resulted that 517 votes were cast for the office of municipal mayor in the name of Beloy, 77 votes in the name of Biloy, and 8 votes in the name of Belog.

The trial court found—and its finding is not questioned in this appeal—that it had been clearly proved that the protestee Isabelo A. Lloren was popularly and commonly known in the whole municipality of Inopacan by his nickname Beloy or Biloy; and that the protestant himself proved that before and on the day of the election the protestee distributed sample ballots on which was written the name Beloy on the line corresponding to the office of municipal mayor. The trial court also found that in the said elections in Inopacan there was no other candidate for mayor or any other office who was known by the name Beloy.

Declaring that the votes for municipal mayor in the names of Beloy, Biloy, and Belog had been correctly counted in favor of the protestee, the trial court confirmed the proclamation made by the municipal board of canvassers and declared the protestee municipal-mayor-elect of Inopacan, ordering the protestant to pay the costs. From that judgment the protestant has appealed to this court upon the questions of law which we shall now discuss.

1. Appellant's main contention is that the 602 ballots in which only the nickname Beloy, Biloy, or Belog was voted for municipal mayor should have been rejected, thereby adjudicating only 408 votes to the appellee against the appellant's 812 votes. In other words he contends that all ballots in which only the nickname of the appellee was written were invalid for said candidate. In support of his contention he cites paragraph 9 of section 149 of the Revised Election Code (Republic Act No. 180), approved June 21, 1947, which reads as follows:

"9. The use of the nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters."

The foregoing is one of twenty-three rules for the appreciation of ballots contained in section 149 of the Revised Election Code, the first two rules being the following:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.

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

Rule No. 9, which is relied upon by appellant, provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said:

"* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy."

The nonincorporation of that provision or rule in the Revised Election Code is indicative of the intention of the Congress to abandon it.

It is not contended by the appellant that the 602 votes in question should be annulled as marked ballots. His contention is that they should not be counted in favor of the appellee because the latter was not sufficiently identified by his nickname Beloy, Biloy or Belog.

We agree, however, with the trial court that the appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction, of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with the same nickname. We do not deem it necessary to decide whether the eight votes for "Belog" are valid or not, because they are immaterial to the result.

Previous to the enactment in 1938 of the Election Code (Commonwealth Act No. 357) the rules were: (1) that ballots bearing the Christian name only or the Christian name and the initial of the surname of one candidate should be rejected as insufficient to identify the person voted for (Cailles vs. Gomez and Barbaza [1921], 42 Phil. 496, 533); and (2) that, for the same reason, votes cast with only the nickname or the familiar name should not be counted in favor of any candidate (Cecilio vs. Tomacruz [1935], 62 Phil. 689). But such rules were changed or abandoned by the legislature when it enacted section 144 of Commonwealth Act No. 357 and, subsequently, section 149 of Republic Act No. 180, which provided rules for the appreciation of ballots. Said section is a compilation in statutory form of most of the doctrines theretofore laid down by the Supreme Court regarding the appreciation of ballots. Rule No. 1 contained in section 149 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office. Hence, conformably to such purpose we hold that when the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by

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ated from office where he apparently is acting in good faith, under a misconception of the law. *In re Impeachment of Flordeliza,* 44 Phil. 608.

12. SUSPENSION.

Statutes sometimes authorize the temporary suspension of a judge during the pendency of proceedings for his removal. Such a statute is not in conflict with a constitutional provision fixing the terms of office of judges and providing for their removal for specified causes after a hearing. Notice and a hearing are not essential to due process of law, and are not required where the statute does not provide for them. *30 Am. Jur. 737.*

(TO BE CONTINUED)

that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. This ruling is in consonance with the wellknown principle of election law which this court reiterated in Mandac vs. Samonte, 49 Phil. 284, 301-302, as follows:

"A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded."

2. Appellant further contends that "the lower court erred in admitting evidence aliunde to determine the intention of the voter." Counsel in his brief does not specify what evidence he is referring to, nor does he show that it was admitted over his objection and exception. He merely says: "The fact that in its decision the lower court makes a conclusion that the protestee is popularly known in his place by the nicknames already mentioned, presupposes consideration of testimonial evidence to influence its mind in making said conclusion." He evidently refers to the proof upon which the trial court based its finding that the protestee was popularly and commonly known in the whole municipality of Inopacan by the nickname Beloy or Biloy. We do not feel bound to consider the admissibility or inadmissibility of such proof in the absence of any showing that the adverse party duly interposed an objection to its admission. But we think the protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

3. Lastly, appellant contends that the lower court erred in not ordering the recounting of all the votes of the contending candidates.

We think the trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not. If there were at least 417 of such votes and they were not valid, the protestant should win because the protestee's majority was only 198 votes. The inquiry brought out the fact that there were more than 417 of such votes; but as a matter of law the court found that they were valid. We confirm that finding.

The judgment appealed from is affirmed, with costs.

SO ORDERED.

Moran, C. J., Paras, Pablo, Bengzon, Briones, and *Tuason, JJ.*, concur.

Feria, Montemayor and *Reyes, JJ.*, did not take part.

PERFECTO, *J.*, concurring:

Two candidates ran for mayor of Inopacan, Leyte, in the elections of November 11, 1947: Isabelo A. Lloren, Liberal, and Pacita Abrea, Nacionalista. The Liberal candidate was proclaimed elected with 1,010 votes, with majority of 198 against the Nationalista who was credited with 812 votes.

The Nacionalista protested, seeking the annulment of 417 ballots in which Beloy was voted for mayor and were credited as votes for the Liberal candidate.

When the ballot boxes were opened, it was found that the names of Beloy, Biloy and Belog appeared written in the following numbers of ballots: Beloy 517, Biloy 77 and Beloy 8. All these 602 ballots were counted among the 1,010 votes credited to the Liberal candidate.

The Nacionalista candidate contended in the lower court and in this appeal that the 602 ballots with the three nicknames should not be counted as votes for the Liberal candidate, invoking the numerous decisions of the Supreme Court holding that nicknames alone are not sufficient identification of a candidate. "(Molina v. Nuesa, G. R. No. 30548, June 5, 1929, not reported; Alegre v. Perey, G. R. No. 3107, March 26, 1929, not reported; Valenzuela v. Carlos, etc., 42 Phil., 428; Bayona v. Siatong, 56 Phil., 831; Marquez v. Santiago, 57 Phil., 969; Fausto v. Ramos, 61 Phil., 1035; Sarenas v. Generoso, 61 Phil., 459; Cecilio v. Tomacruz, 62 Phil., 693; Coscolluela v. Gaston, 63 Phil., 41; etc.)."

Paragraph 9, Sec. 149, of the Election Code, taken jointly with the provision of Sec. 34 thereof, that provides that "certificates of candidacy shall not contain nicknames of the candidates" and the fact that the nicknames alone in question are not mentioned by the Liberal candidate among the many names he has mentioned in his certificate of candidacy with which he alleged he is known, aside from the long line of decisions of the Supreme Court, appear to support the contention of the Nacionalista candidate. We are of opinion, however, that all these legal reasons must give way to the unmistakable expression of the popular will.

The record of the case offers conclusive evidence that those voters who cast their ballots for the three nicknames in question intended in fact to vote for the Liberal candidate who is known by the electorate, friends and opponents, by the nicknames in question, derivatives of his Christian name and are among the nicknames with which the people call for short those who carry the same Christian name.

It is inconceivable to nullify the votes of so many voters, more than one-half of those who voted for the Liberal candidate, when there is no possible mistake that they have voted for said candidate. While we would not give effect to isolated ballots simply in nicknames, that may refer to persons other than a candidate, in abidance with the legal authorities above mentioned, in this specific case we feel no hesitancy in brushing them aside as ineffective legal technicalities for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

Election statutory provisions and judicial doctrines are enacted and laid down to insure the determination of the true will of the people and to give it full effect, in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them." (Sec. 1, Art. II.) All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat that basic principle but to give it full effect. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

We concur in the affirmance of the appealed decision.

II

Froilan Lopez, plaintiff-appellee, vs. Silvestre de Jesus, defendant-appellant, G. R. No. L-334, September 30, 1946, PARAS, *J.*

LEASE; DURATION WHEN NOT STIPULATED; TERMINATION; COMMONWEALTH ACT NO. 689, APPLICABILITY OF; CASE AT BAR. — As the lease did not have a fixed term, it should be considered