

*Luis Gutierrez, Petitioner, vs. Telesforo Reyes, Respondent, G. R. No. L-13137, February 28, 1959, Evidencia, J.*

1. ELECTION LAW; APPRECIATION OF BALLOTS; WRITING NAME OF CANDIDATE SEVERAL TIMES INVALIDATES BALLOT.—A ballot in which the name "Recto" is written eight times on the eight spaces for senators; the name "P. Catañag" written two times on the second and third spaces for councilors; and the name "F. Catapang" written three times on lines 4, 5 and 6 for councilors is a marked ballot.
2. ID.; ID.; WORD "ASION" HELD NOT IRRELEVANT.—The word "Asion" may refer to the nickname of a person whom the voter wanted to vote for and can not be considered an irrelevant expression which may mark the ballot.
3. ID.; ID.; CANDIDATE VOTED FOR SUFFICIENTLY IDENTIFIED.—Where the candidate is Telesforo Reyes and the names written are "Reiyes", "TiRes", "Keiris poro Reis", "Teryis", "T Reus", "T Rivies", "t. Riss", "T Reyes", "T. Reyesa", "te Reiz", "T rijies", "T. Ryss", "te Riz", "te Reyes" and "T Rez", the ballots are valid for said candidate.
4. ID.; ID.; SIGN TO INDICATE DESISTANCE FROM VOTING.—The appearance of "x" marks on the blank spaces of the ballot merely indicates the voter's desistance from voting for the positions covered by said mark.
5. ID.; ID.; WHEN INITIALS CANNOT BE CONSIDERED IDENTIFYING MARKS.—Where the initials appearing at the upper right hand corner of the ballot was placed by the Chairman of the Board of Election Inspectors to indicate that said ballot was accidentally torn when the same was detached from the stub, the initials cannot be considered identifying marks.
6. ID.; ID.; NICKNAME ALONE VALID.—Where the candidate for mayor is Telesforo Reyes and the word "Porong" which is his nickname is written without his surname, and there is no other candidate for the same office with such nickname, the ballot is valid for said candidate.
7. ID.; ID.; BALLOT IN WHICH CANDIDATES ARE VOTED BY INITIALS NOT MARKED.—A ballot wherein some candidates are voted by their initials is not marked.
8. ID.; ID.; WORD "LEMAS" HELD NOT IRRELEVANT.—The word "Lemas" written on the space for senator, special election, is not necessarily an irrelevant expression written for the purpose of identifying the ballot.
9. ID.; ID.; WORDS "TEBAN" AND "TIYAGO" HELD NOT IRRELEVANT EXPRESSIONS.—The words "Teban" and "Tiyago" written on the 5th and 6th spaces for senators are not irrelevant expressions for they may refer to candidates for senators Esteban Abada and Santiago Fonacier.
10. ID.; ID.; *IDEM SONANS*. — The names "L. Argueliz," "Gilo," "Lures," "loas", "Lolio Gotiferes," "I. Cuincoes, and "Laulis Eriisrz", are not *idem sonans* with the name of candidate Luis Gutierrez. However, the names "L. Gofierez" "L. Got" "Lare", "L. Tutierres." "L Culurriz and "L Golukiris" are *idem sonans* with Luis Gutierrez.
11. ID.; ID.; STRAY VOTE.—Ballots wherein the name "Quizon" was voted for senator are not marked ballots, since the vote for "Quizon" should be considered stray vote.
12. ID.; ID.; ID.—A ballot with the name "Dador Pastor" written on the second space for senators is not marked, since the vote for Dador Pastor is a stray vote, there being no indication in the record that said name has been written to mark the ballot.
13. ID.; ID.; BALLOT WITH CAPITAL LETTERS "A B C D" HELD NOT MARKED.—A ballot with the capital letters "A B C D" is not marked, for said letters sounds like "Abced", a candidate for senator, and the voter evidently wanted to vote for him.
14. ID.; ID.; NAME WRITTEN DOES NOT SUFFICIENTLY IDENTIFY CANDIDATES VOTED FOR.—The names "Luis Hernandez" and "Menaloz" do not sufficiently identify the candidate Luis Gutierrez. A ballot wherein the name "Teofilo Reyes" is written by a person who writes well is not valid for candidate Telesforo Reyes.
15. ID.; ID.; PARAGRAPH 23 OF SECTION 149 OF REVISED ELECTION CODE CONSTRUED.—Under paragraph 23, Section 149 of the Revised Election Code, a ballot appearing on its face to have been written by two distinct hands is null and void, thus creating a presumption that such ballot has been cast during the voting, and this presumption can only be overcome by the showing that the tampering with the ballot was made after it had been deposited in the ballot box. The common doctrine is that a ballot clearly appearing to be written by two distinct hands on its face is null and void. In the absence of proof that a ballot has been filled by two hands after it has been deposited in the ballot box, the validity of the ballot should be upheld.
16. ID.; ID.; STRAY VOTE; EVIDENCE *ALIUNDE*.—In the absence of proof *aliunde* that the names of persons who are not candidates written on the space for senators were used to identify the ballots, the ballots are valid since the votes for persons who are not candidates for the office should be considered stray votes.
17. ID.; ID.; WORDS "PANALO ITO" AND "PAHAM" HELD IRRELEVANT.—The Tagalog-expressions "panalo ito" which means "this wins", and "paham" which means "wise" are irrelevant expressions intended to identify the ballot and invalidates it as mark.
18. ID.; ID.; CANCELLATION OF NAME VOTED FOR. — Where there is no clear indication that the voter meant to cancel entirely the name of a candidate written on the proper space, the ballot should be considered valid in favor of said candidate.
19. ID.; ID.; EXCEPTION TO THE RULE THAT A NAME NOT WRITTEN ON PROPER SPACE CAN NOT BE COUNTED.—In a ballot the names written are "Recto" on the first line for senator; "T. Reyes" below the printed line for Mayor and "P. Castillo" below the printed line for Vice-Mayor. "T. Reyes" and "P. Castillo" appear written one immediately below the other. *Held*: Considering that Telesforo Reyes and P. Castillo were the only candidates for Mayor and Vice-Mayor of their political group, and that "T. Reyes" is written just below the line for Mayor and "P. Castillo" is written below the name "T. Reyes" and that the ballot was left blank except for the said three names written, the voter intended to vote for Reyes and Castillo for municipal offices. Consequently, the ballot is valid for Telesforo Reyes, a candidate for Mayor.
20. ID.; ID.; EVIDENCE TO SHOW INTENT TO MARK BALLOT MUST BE SHOWN.—In the absence of evidence that the name "Dionisio Tapero" written on the space for senator, special election, was written to mark the ballot, the ballot is valid.
21. ID.; CONCLUSIVENESS OF LIST OF VOTERS AS TO PERSONS ENTITLED TO VOTE.—107 voters appear registered in the permanent list of voters for the year 1955; their names were not the subject of exclusion proceedings in the Court of First Instance; and their right to vote was not contested during the election. *Held*: In the absence of refutation of the fact that these voters appear in the permanent list of voters for 1955, the ballots cast by the 107 voters are valid.

DECISION

Petitioner Luis Gutierrez and respondent Telesforo Reyes were the only candidates to the office of municipal mayor of Alitagtag, province of Batangas, in the elections of 1955. After the election and pursuant to Sec. 168 of the Revised Election Code, the municipal board of canvassers proclaimed the petitioner elected to the office with a majority of 10 votes, it having found that the two candidates obtained the following number of votes:

Luis Gutierrez ..... 1954 votes  
 Telesforo Reyes ..... 1944 votes

Whereupon respondent filed with the Court of First Instance of Batangas a protest alleging therein fraud, anomalies and violations of the election law. After hearing, the case was decided in favor of petitioner who was declared to have received 1939 as against 1926 votes cast for the respondent, thus resulting a majority of 13 votes in his favor. Not satisfied with this decision, respondent appealed to the Court of Appeals where he was adjudged to have been elected with a majority of 17 votes, on the ground that he received 1933 votes while the petitioner received 1916 votes only. Thereupon petitioner brought this case to us on certiorari, alleging that the Court of Appeals committed the following errors:

I

"The Court of Appeals erred in not passing upon each and everyone of the 43 ballots involved in the first and second counter-assignments of errors of the herein petitioner, viz., Exhibits A-5, C-1, D-8, E-6, F-5, F-7, G-7, H-2, H-6, H-7, H-9, I-56, J-49, J-50, J-55, J-61, K-6, K-10, K-14, K-16, K-33, K-37, K-38, K-39, K-49, L-12, L-13, L-14, 1-Q, 3-Q, 3-UU, 3-HHH, 4-CCC, 5-E, 5-H, 6-T, 11-A, 12-E, 12-O, 12-Q, 12-R, 12-S and 12-V

II

"The Court of Appeals likewise erred in declaring the nullity of 18 ballots wherein the herein petitioner appears voted for as municipal mayor on the mere finding that each and everyone of them was filled up by two hands, viz., Exhibits 1-O, 1-EE, 3-L, 3-X, 3-QQ, 3-HHH, 3-OOO, 1-Y, 2-L, 6-EE, 10-M, 11-T, 1-S, 4-I, 4-NN, 5, 5-J and 8-A.

III

"The Court of Appeals again erred in failing to declare the nullity of the following 125 ballots: A-12, A-13, B-1, B-2, D-1, D-9, D-11, D-12, D-14, D-15, F-2, F-3, F-4, G, G-1, G-2, G-4, G-12, G-18, G-19, G-20, G-21, G-22, G-23, G-24, G-25, G-26, G-27, G-28, G-29, G-30, G-31, G-32, G-33, G-34, G-35, G-36, H-1, H-3, H-4, H-5, H-20, H-21, H-23, H-24, H-25, I-6, I-7, I-15, I-33, I-48, I-57, I-58, I-59, I-61, I-62, I-63, I-64, I-65, I-66, I-67, I-68, I-69, I-70, I-71, I-72, I-73, I-74, J-6, J-14, J-26, J-36, J-38, J-40, J-45, J-53, J-62, J-63, J-64, J-65, J-66, J-67, J-69, J-70, J-71, J-72, J-73, J-74, J-75, K-3, K-5, K-7, K-30, K-31, K-32, K-40, K-41, K-42, K-43, K-44, K-45, K-46, K-47, K-48, K-50, K-51, K-52, L-3, L-8, L-9, L-11, L-15, L-22, L-23, L-24, L-25, L-26, L-27, L-28, L-29, L-30, L-31, L-32, L-33, and L-34.

IV

"The Court of Appeals also erred in rejecting the votes for the herein petitioner in Exhibits I-BB, 2-A, 2-W, 4-LL, 5-C, 6-L, 6-PP and 10-T.

V

"The Court of Appeals finally erred in not rejecting the votes for the herein respondent in Exhibits A-10, D-5, D-6, J-48, K-15 and K-28."

Respondent, in turn, after refuting the above-quoted assignment of errors, made the following counter-assignment of errors:

I

"The Honorable Court of Appeals erred in counting and recording exhibits 3-N and 6-I as good and valid votes for the petitioner.

II

"The Honorable Court of Appeals erred in not counting and recording Exhibits A-1, K-22, K-23 and I-19 as good and valid votes for the respondent.

III

"The Honorable Court of Appeals erred in ruling that Exhibit C-2 wherein the name "Teofilo Reyes" is written on the space for mayor as a stray vote for the respondent, and in not counting and recording the same as a valid vote for him.

IV

"The Court of Appeals erred in ruling that Exhibits K-29 and L-10 are marked ballots and in not counting and recording them as valid votes for the respondent.

V

"The Honorable Court of Appeals erred in ruling that Exhibits H-8 and J-44 are marked ballots, and in not counting and recording them as good and valid votes for the respondent.

VI

"The Honorable Court of Appeals erred in counting and recording Exhibit K-35 for the respondent.

VII

"The Honorable Court of Appeals erred in not counting and recording Exhibit K-35 for the respondent.

VIII

"The Court of Appeals erred in not counting and recording Exhibit L-16 as a good and valid vote for the respondent.

IX

"The Court of Appeals erred in ruling that Exhibits 1-X, 6-A and 6-1 are good and valid votes for the petitioner.

X

"The Honorable Court of Appeals erred in counting and recording as a valid vote for the petitioner Exhibit 4-FF wherein the same 'Dionisio Tapero' was written on the space for senator, special elections.

XI

"The Honorable Court of Appeals erred in counting and recording as valid votes for the petitioner the following one hundred seven (107) ballots notwithstanding the fact that they were cast by persons who were never registered electors; 2-W, 2-Y, 2-Z, 2-AA, 2-BB, 2-CC, 2-DD, 2-EE, 2-FF, 2-GG, 2-HH, 2-II, 2-JJ, 2-KK, 2-LL, 2-MM, 2-NN, 2-OO, 2-PP, 2-QQ, 3-GG, 3-HH, 3-JJ, 3-KK, 3-LL, 3-MM, 3-NN, 3-OO, 3-PP, 3-QQ, 3-RR, 3-SS, 3-UU, 3-VV, 3-WW, 3-XX, 3-YY, 3-ZZ, 3-AAA, 3-BBB, 3-CCC, 3-DDD, 3-EEE, 3-FFF, 3-GGG, 3-HHH, 3-III, 3-JJJ, 3-KKK, 3-LLL, 3-MMM, 3-NNN, 3-OOO, 3-PPP, 3-QQQ, 3-RRR, 3-SSS, 3-TTT, 3-UUU, 3-VVV, 3-WW, 4-VV, 4-WW, 4-XX, 4-YY, 4-ZZ, 4-AAA, 4-BBB, 4-CCC, 4-DD, 4-EEE, 4-FFF, 4-GGG, 4-HHH, 4-III, 4-JJJ, 4-KKK, 4-LLL, 4-MMM, 4-NNN, 4-OOO, 4-PPP, 4-XXX, 4-YYY, 4-ZZZ, 4-AAAA, 4-BBBB, 4-CCCC, 4-DDDD, 4-EEEE, 4-KKKK, 4-LLLL, 4-MMMM, 4-NNNN, 4-OOOO."

For the sake of clarity, we will discuss one by one all the errors assigned by both parties.

Assignment of Error No. 1

Petitioner claims, under this error, that the Court of Appeals failed to pass upon each and everyone of the 43 ballots herein enumerated; as correctly pointed out by the respondent, said ballots were considered and passed upon by the Appellate Court, as could be seen in its decision attached to petitioner's brief. Petitioner submits however, that the Court of Appeals counted in favor of the respondent ballots which should have been rejected and rejected those that should have been counted in his (petitioner's) favor, and discussed them in his brief. We will decide these ballots individually.

*Exhibit A-5.* Counted in favor of respondent and assailed by petitioner as marked with Roman number III appearing in line 4 of the spaces for councilors. Respondents contend that the alleged mark is not really so but the initial "M" of the name of the candidate Marcelino Hernandez. We have carefully examined this ballot and we agree with respondent's theory; consequently, this ballot was rightly counted in favor of respondent.

*Exhibit C-1.* Counted in favor of respondent and assailed by petitioner as marked ballot, the mark being the word "Recto" written eight times on the eight spaces for senators; the name "P. Catañag" written two times on the second and third spaces for councilors; and the name "F. Catapang" written three times on the 4th, 5th and 6th spaces for councilors. At first impression, the repetition in the writing of the names of Recto, Catañag and Catapang in the ballot in question may constitute either a marking of the ballot or merely an enthusiasm of the voter for these three candidates. The majority opinion is that this ballot is marked and should not be counted in favor of petitioner. The writer of this opinion, however, believes that the repetitious writing of the names of Recto, Catañag and Catapang is nothing but an indication of the enthusiasm of the voter for them. The ballot is rejected.

*Exhibit D-8,* assailed as marked ballot in view of the word "Asion" written on the third line for councilors. Upon careful examination of this ballot, we find that the word "Asion" may respond, as contended by respondent, to the nickname of a person whom the voter wanted to vote for, as it is common knowledge that "Asion" may be a nickname or petname of Atanasio, Anastasio, Engracio, or Panraccio, and does not necessarily mean an irrelevant expression which may mark the ballot.

*Exhibits E-6, F-5, F-7, G-7, H-7, I-56, J-49, J-55, J-61, K-6, K-33, K-37, K-49, L-12, L-13 and L-14.* Petitioner contends that in each and everyone of these ballots respondent was not the candidate voted for, or at least the person voted for is not sufficiently identified. This contention is not well taken, for upon careful examination of these ballots, the names "Reyes", "Tirris", "Keiris poro Ries", "Teryis", "T. Reues", "T. Rivies", "T. Riss", "T. Reyes", "T. Reus", "te Reiz", "T. rejies", "T. Ryss", "T. Reyesa," "te Riz" "te Rejes" and "T. Rez" appear to be voted for in the space for mayor. Undoubtedly these are good ballots for the respondent.

*Exhibit H-2,* claimed to be marked with the word "Maga-lang" written on the 8th line for senators. Respondent claims that such word is simply the misspelled surname of Enrique Magalona, candidate for senator. We agree with this theory, and therefore this ballot has been properly counted for respondent.

*Exhibit H-6,* assailed as marked because it was written in ink. Evidently this objection is not well taken, having in view paragraph 10 of Sec. 149 of the Revised Election Code which provides that "Any ballot written with crayola, lead pencil or with ink, wholly or in part, is valid."

*Exhibit H-9,* objected to as marked because of a big "x" placed and covering the blank spaces Nos. 3, 4, 5, 6, 7 and 8 for senators; another big "X" placed and covering the blank spaces Nos. 2, 3, 4, 5 and 6 for councilors; and a small "x" placed on the blank space for senator, special election, at the foot of the ballot. The objection is not well taken, for evidently, the said "X's" merely mean that the voter desisted from voting for the positions covered by those "X's" as so pointed out by respondent.

*Exhibit J-50,* claimed by the petitioner as marked because of the vote for Santiago Makabunot on the sixth line for councilors. It is contended that the name Santiago Makabunot is purely imaginary or indecent. We find no reason for this contention. This ballot is valid, for the vote for a person to the office to which he is not a candidate is considered a stray vote and does not invalidate the ballot.

*Exhibit K-10,* assailed as marked ballot because of the initials appearing at the upper right-hand corner of the ballot. The record shows, however, that said initials were identified by Hermo-

genes, Ilaagn, Chairman of the Board of Election Inspectors of Precinct 10 as his, who testified that he placed them to indicate that said ballot was accidentally torn when the same was detached from the stub. The alleged initials, therefore, cannot be considered as an identifying mark.

*Exhibit K-14,* claimed to be marked because of the word "Emong" written on the 6th line for councilors. It is claimed that there was no candidate for councilor with that nickname, and therefore, this word is an identifying mark. It is apparent that "Emong" may be a nickname of Guillermo or Geronimo; consequently the vote for "Emong" should be considered as stray vote and not a mark to identify the ballot.

*Exhibit K-16,* also contested as marked because of the words "Teninteng Anong" written on the sixth line for councilors. This ballot is in the same category as Exhibit K-14 and therefore should be counted for respondent.

*Exhibits K-38 and K-39* are objected to on the ground that the word "Porong" in the space for mayor in Exhibit K-38 and the word "Purong" in the corresponding space in Exhibit K-39 are not accompanied by respondent's surname and therefore these ballots cannot be counted for him. It is not disputed that "Porong" or "Purong" is the nickname of respondent Telesforo Reyes, and there being no other candidate for mayor with such a nickname we hold that the person voted in these two ballots is the respondent. Petitioner contends, however, that these ballots should be rejected in accordance with the ruling of the Electoral Tribunal of the House of Representatives in the case of Sosa vs. Lucero where two ballots bearing only the nickname "Maneng" were rejected on the ground that they do not sufficiently identify the candidate voted for. We are of the opinion that the Sosa case is not applicable to the present because it is not disputed here that "Porong" or "Purong" is the nickname of the respondent Telesforo Reyes, and no evidence was adduced to show that there is another candidate for mayor with that nickname.

*Exhibits L-12, L-13 and L-14* are enumerated as among those not passed upon by the Court of Appeals, but petitioner failed to specify his objections thereto, and upon examination of these ballots we find that the respondent is the one voted for mayor.

Petitioner assails the rejection by the Court of Appeals of the following ballots, and claims that all of them should be counted in his favor:

*Exhibit I-Q,* rejected by the Court of Appeals as marked ballot for the reason that the voter only wrote the initials of the names of the candidates, with the exception of the complete names of "C Recto" for senator, and "Luis Gutierrez" and A. Cassalla" for mayor and vice-mayor, respectively. There is no evidence that said initials are not those of the names and surnames of candidates whom the elector intended to vote for. We have examined these initials, written in printed form and in capitals, and we find that they may refer to the initial letters of the names and surnames of the candidates for senator, such as "F.R." for Francisco Rodrigo, "Q.P." for Quintin Paredes, "P.R." or "D.R." for Decoroso Rosales, "P.S." for Pedro Sabido, "P.W." for Pacita Warns, and D.A. for Domocao Alonto. This ballot therefore, cannot be considered as marked and should be counted in favor of here-in petitioner.

*Exhibits 3-QQ and 3-HHH,* rejected by the Court of Appeals on the ground that they were written by two hands, but claimed by petitioner as written by one hand. These two ballots were the subject matter of expert testimony who testified that they were written by two hands. No reason having been advanced for disregarding the expert testimony, we find no ground for disturbing the opinion of the Court of Appeals.

*Exhibit 3-UU,* rejected as marked because of the word "Lemas" written on the space for senator, special election. This is in the same category as Exhibit D-8 which we declared valid in favor of respondent; consequently, this Exhibit 3-UUU should be counted in favor of petitioner, for the word "Lemas" is not ne-

cessarily an irrelevant expression written for the purpose of identifying the ballot and it may refer to the surname "Lim," candidate for senator Roseller Lim as claimed by petitioner.

*Exhibit 4-CCC*, rejected as marked because there were voted "Teban" and "Tiyago" on the 5th and 6th spaces for senators, respectively. Petitioner contends that said names cannot be considered as distinguishing marks because they may be intended for Esteban Abada and Santiago Fonacier, respectively, who were candidates for senator. There is merit in this contention; hence, this ballot should be counted in favor of petitioner, having in view the constant doctrine of our courts of justice that no ballot should be declared null and void as marked unless there are clear and sufficient reasons to justify such conclusion. Besides the words "Teban" and "Tiyago" are not irrelevant expressions that may render the ballots invalid as marked.

*Exhibits 5-E and 5-H*, rejected as marked because in each of them the name "Quizon" was voted for senator. The rejection should be reconsidered, as the vote for Quizon should be considered as stray vote (paragraph 13, Sec. 149, Revised Election Code).

*Exhibit 6-T*, rejected by the Court of Appeals on the ground that the one voted therein for mayor is not the petitioner, but claimed by him maintaining that under the doctrine of *idem sonans*, this ballot should be counted in his favor. The name voted for in this ballot is "L. Argolliz" who is clearly not the petitioner; hence this was properly rejected.

*Exhibit 11-A*, rejected by the Court of Appeals and claimed by petitioner as valid vote for him. The person voted for mayor in this ballot is "Glo" which has no semblance whatsoever with Luis Gutierrez; hence, the rejection of this ballot is correct.

*Exhibit 12-E*, rejected by the Court of Appeals for being marked with the name "Dador Pastor" written on the second space for senators. This ballot, like Exhibits 5-E and 5-H should be counted in favor of petitioner, for the vote for Dador Pastor is clearly a stray vote, there being no indication in the record that "Dador Pastor" has been written to mark the ballot.

*Exhibit 12-O*, rejected by the Court of Appeals as the one voted for mayor is "Lures" or "Lueres" and not the petitioner. Upon the face of the ballot, the rejection was justified.

*Exhibit 12-Q*, rejected by the Court of Appeals as marked with the capital letters "A B C D," claimed by petitioner as good ballot on the ground that the "A B C D" responds to the surname "Abcede" of the candidate for senator Alfredo Abcede. The contention is well taken, for "A B C D" sounds "Abcede". This ballot was prepared by a voter who is not well versed in handwriting and evidently he wanted to vote for the candidate Alfredo Abcede.

*Exhibits 12-R, 12-S and 12-V* are mentioned under this assignment of error, but not discussed in petitioner's brief. Upon examination of these ballots, we find that in Exhibit 12-R the person voted for mayor is Luis Hernandez, clearly written; in Exhibit 12-S the word written on the space for mayor is "Menaloz;" and in Exhibit 12-V the space for mayor is left in blank. Evidently, these ballots cannot be validly claimed by the petitioner as the names "Luis Hernandez" and "Menaloz" cannot certainly refer to him.

#### ASSIGNMENT OF ERROR II

The 18 ballots enumerated under this second assignment of error quoted hereinbefore have been rejected by the Court of Appeals on the ground that they were written by two hands. They are now claimed by the petitioner as good ballots for him. We have examined carefully each and every one of these ballots and we find that, with the exception of Exhibits 3-L, 11-T, 1-S and 8-A which in our opinion are written by one hand, all the rest were really prepared by two hands and therefore illegal and void. Petitioner, however, contends that there being no additional evidence to the effect that the filling up of

these ballots by two hands has been made during the voting and before they were deposited in the ballot boxes, said ballots should not be declared null and void for the mere fact that they appear to have been prepared by two hands. Really paragraph 23 of Sec. 149 of the Revised Election Code provides as follows:

"Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void."

It is clear under this provision that a ballot appearing on its face to have been written by two distinct hands is null and void, thus creating a presumption that such ballot has been cast, as is, during the voting, and this presumption can only be overcome by the showing that the tampering with the ballot was made after it had been deposited in the ballot box. Moreover, in this jurisdiction as well as in the Electoral Tribunals of the Senate and House of Representatives, the common doctrine is to the effect that ballots clearly appearing to be written by two distinct hands on its face are null and void. In this particular case, there is absolutely no proof that the ballots in question have been filled by two hands AFTER they had been deposited in the ballot box; hence, the ruling of the Court of Appeals declaring these ballots as null and void for having been prepared by two distinct hands should be maintained. As to ballots Exhibits 3-L, 11-T, 1-S, and 8-A which we find to have been written by only one person, they should be adjudicated to the petitioner.

#### ASSIGNMENT OF ERROR III

The 125 ballots disputed under this assignment of error have been already enumerated hereinabove. Petitioner claims that these ballots are null and void for having been filled by two different hands and should not have been counted in favor of the respondent. We have painstakingly scrutinized each and every one of them and find petitioner's contention to be not well taken. Although we observe that in some ballots the voter used printed capitals mixed with ordinary handwriting and in others the voter wrote in capitals only, said ballots do not appear to have been prepared by two distinct hands.

The respondent, in refuting this error, made mention of 121 ballots counted in favor of petitioner despite the fact that they were written by two different hands, and asked this Tribunal to reject said ballots should we find that the respondent's 125 ballots assailed under this assignment are invalid. In other words, respondent claims that we should apply the same yardstick in the appreciation of ballots under this category. We have also examined the 121 ballots assailed by respondent as written by two distinct hands but counted in favor of petitioner, and we are satisfied that they were written by only one hand. We therefore declare both sets of ballots as valid votes, and should be accordingly and respectively counted in favor of the claimant.

#### ASSIGNMENT OF ERROR IV

The eight ballots under this assignment of error were rejected by the Court of Appeals on the ground that the person voted therein for mayor is not the petitioner. It is claimed, however, that under the theory of *idem sonans* they should be counted in his favor. We have carefully examined these eight ballots and we find that, with the exception of Exhibit 6-PP, no reason exists for disturbing the finding of the Court of Appeals in rejecting them, for the name written on the space for mayor is either undecipherable or totally foreign to the sound in Luis Gutierrez, such as the "loas", in Exhibit 1-BB, "Lolio Gotiferes" in Exhibit 2-A, "L. Cuncoes" in Exhibit 2-W, "Laulis Erisrz" in Exhibit 4-LL, "Zeus" in Exhibit 5-C, "Lors Coliers" in Exhibit 6-L and "L. (illegible)" in Exhibit 10-T. In Exhibit 6-PP, however, "L. Golierrez" or "L. Gulierrez" is written on the space for mayor, and this may be considered as vote for Luis Gutierrez, it appearing that this ballot was prepared by an untrained hand and the voter simply forgot to cross the "i" to make it "t" and to put a dot over the "i".

## ASSIGNMENT OF ERROR V

The six ballots involved in this error were admitted by the Courts of Appeals and adjudicated in favor of the respondent. Petitioner assails them as marked ballots which should have been deducted from respondent's votes. It is claimed that Exhibit A-10 is marked by the figure "7" written on the fourth space for councilors, leaving spaces 5 and 6 in blank; that Exhibit D-5 is marked by the name "Oliva Bolar" written on the eight space for senators but leaving spaces 4, 5, 6 and 7 in blank although spaces 1, 2 and 3 have been filled; the same is true with Exhibit D-6, only that the "O Bunggo" is written on the eighth space for senators; that Exhibit J-48 is marked by the name "Santiago Macabonot" written on the eighth space for senators leaving 6 and 7 in blank; Exhibit K-15 is marked because "Pio Ilagan," was voted for senator who was not a candidate for that office; and that Exhibit K-28 is likewise marked because "Maurisio Jaso" was voted for senator without being a candidate. On the face of the ballots, we find nothing to disturb the finding of the Court of Appeals, as these are not marked ballots as contemplated by law.

### COUNTER-ASSIGNMENT OF ERROR I

Under this counter-assignment of error, respondent claims that Exhibits 3-N and 8-1 which were counted and recorded as good votes for petitioner, should have been rejected on the ground that "L. Gat" written on the space for mayor in Exhibit 3-N and the "L Gat" or "L Got" written in Exhibit 8-1 do not sufficiently identify the petitioner as the person voted for mayor. Under the well-respected doctrine of *idem sonans* we find no error committed by the Court of Appeals, for the "L" stands for Luis and "Got" or "Gat" represents the incomplete surname of Gutierrez. Besides, there was no other candidate for mayor whose initials are L. G. other than petitioner Luis Gutierrez.

### COUNTER-ASSIGNMENT OF ERROR II

Under this counter-assignment, respondent claims that Exhibits A-1, K-22, K-23, I-19 L-19 should not have been rejected by the Court of Appeals on the ground that said respondent was the one voted for mayor therein, for although these ballots were filled in an inverted position, the respondent appears voted therein. We have examined these ballots and find no reason how the contention of respondent could be sustained. Not even under the adjustment theory could these ballots be declared for respondent. These ballots, therefore, were properly rejected.

### COUNTER-ASSIGNMENT OF ERROR III

Exhibit C-2. This ballot was rejected on the ground that it is "Teofilo Reyes" and not Telesforo Reyes who appears voted therein for mayor. On its face, this ballot appears to have been prepared by one who writes well, and it is to be presumed that he could not have mistaken Teofilo Reyes for Telesforo Reyes; therefore, this ballot cannot be counted as good vote for respondent.

### COUNTER-ASSIGNMENT OF ERROR IV

*Exhibits K-29 and L-10.* These were rejected by the Court of Appeals as marked ballots, it appearing that in Exhibit K-29 "Vidal Araño" and Nemecio Araño, Jr." appear voted for senators, and in Exhibit L-10 "Satur Abra", "Maurie Mac," "A. Calingasan," "A. Marasigan," and L. Macalinsag" appear voted for senators. Respondent claims them as valid votes in his favor on the ground that there is no proof aliunde that the aforementioned vote for senators was a means of identification of said ballots. This contention is well taken, since the votes for persons who are not candidates for the office should be considered as stray votes. These two ballots should be counted in favor of respondent.

### COUNTER-ASSIGNMENT OF ERROR V

*Exhibits H-8 and J-44,* rejected by the Court of Appeals as marked ballots and now claimed by respondent as valid votes in his favor. In Exhibit H-8, the phrase "panalo ito" appears written immediately after "T. Reyes" and in Exhibit J-44 the

word "paham" appears written on the space for senator, special election. We find that "panalo ito" and "paham" are irrelevant Tagalog expressions intended to identify the ballot. "Panalo ito" means "this wins" and "paham" means "wise", and both expressions do not respond to the name of any person. These two ballots have therefore been properly rejected.

### COUNTER-ASSIGNMENT OF ERROR VI

Only one ballot, Exhibit 1-54, is involved in this counter-assignment of error, which was rejected by the Court of Appeals because the "Reyes" voted for mayor appears to have been cancelled or erased. We have examined this ballot carefully and we find that there is really a line crossing the upper part of "ey" but did not cross "R—es," and there is no clear indication that the voter meant to cancel entirely the vote for Reyes. Having in view our consistent ruling that the courts should be slow in annulling a ballot and that the same should be read liberally to give way to the will of the voter, it is our considered opinion that this ballot should be appreciated in favor of the respondent.

### COUNTER-ASSIGNMENT OF ERROR VII

Exhibit K-35 is the only ballot involved in this counter-assignment wherein the word "T Beres" or "T Berer" appears written on the space for mayor, the rest being left in blank. Respondent claims this ballot as vote for him, but we find that this word written on the ballot appears meaningless and entirely foreign to the name Telesforo Reyes. We find no reason for disturbing the finding of the Court of Appeals.

### COUNTER-ASSIGNMENT OF ERROR VIII

Exhibit L-16 is the only ballot involved in this counter-assignment, which the Court of Appeals rejected on the ground that the "T. Reyes" voted for is written on the space for vice-mayor. Respondent claims this ballot to be valid in his favor because, upon proper adjustment, the "T. Reyes" will fall on the space for mayor. Examining the ballot, we see that the only names written on it are "Recto" on the first line for senators, "T. Reyes" below the printed line for mayor and "P. Castillo" below the printed line for vice-mayor. "T. Reyes" and "P. Castillo" appear written one immediately below the other.

Pursuant to the provisions of Sec. 135 of the Revised Election Code, the name of a candidate should be written on the proper space. In this particular case, really, the names of "T. Reyes" and "P. Castillo" are not written on the proper spaces for mayor and vice-mayor; but, considering that Telesforo Reyes and P. Castillo were the only candidates for mayor and vice-mayor of their political group, and that "T. Reyes" is written just below the line for mayor and "P. Castillo" is written below the name "T. Reyes," and that the ballot was left in blank except for the three written names of Recto, Reyes and Castillo, it is our considered opinion that the voter intended to vote for Reyes and Castillo for municipal offices and in fact wrote their names one immediately below the other in such a way that, if these two names were to be slid an inch farther up, they will not only coincide with but will fit snugly in the spaces allotted for mayor and vice-mayor, respectively. This vote should therefore be counted in favor of respondent.

### COUNTER-ASSIGNMENT OF ERROR IX

*Exhibits 1-X, 6-A and 6-I* were admitted by the Court of Appeals as valid votes for petitioner, but respondent assails them on the ground that the petitioner is not the one voted for therein. Upon examination of these ballots, we find that "L. Tutirres" appears written on the space for mayor in Exhibit 1-X; "L Culurres" appears written in Exhibit 6-A; and "L. Galukiris" appears written in Exhibit 6-I. These names really sound "Gutierrez" and the Court of Appeals correctly admitted them under the theory of *idem sonans*.

### COUNTER-ASSIGNMENT OF ERROR X

Under this error, ballot *Exhibit 4-F* and not *4-FF* is disputed. It was counted as good ballot for petitioner by the Court of

Appeals but assailed as marked because of the name "Dionisio Tapero" written on the space for senator, special election. This ballot is valid for lack of showing that the name "Dionisio Tapero" was written to mark the ballot; evidently this is a stray vote.

#### COUNTER-ASSIGNMENT OF ERROR XI

Under this counter-assignment, respondent claims that the 107 ballots counted by the Court of Appeals as valid votes for petitioner should be disregarded as the same were cast by unregistered voters. This error was raised before the Court of Appeals and decided against respondent on the ground that said voters admittedly appear in the voters' list of the precincts concerned, and that as long as they are not stricken off, the list stands as conclusive proof that they were duly registered voters. In his brief, petitioner admits that the names of these voters are really registered in the permanent list of voters for the year 1955 in the municipality of Alitagtag; that their names were not the subject of exclusion proceedings in the Court of First Instance, and that their right to vote was not contested during the election. In the absence of refutation of the fact that these voters appear in the permanent list of voters for 1955, we find no reason for disturbing the finding of the Court of Appeals that these 107 votes were validly cast.

In conclusion, we hold that the 12 ballots Exhibits 1-Q, 3-UU, 4-CCC, 5-E, 5-H, 12-E, 12-Q, 3-L, 11-T, 1-S, 8-A and 6-PP individually discussed above should be added to the 1916 votes adjudicated by the Court of Appeals to the petitioner, thus increasing the number of votes cast in his favor to 1928. On the other hand, from the 1933 votes adjudicated to the respondent, one vote (Exhibit C-1) should be deducted therefrom, leaving a total of 1932 votes. To this, however, four votes (Exhibits K-29, L-10, I-54 and L-16) should be added, thus making a total of 1936 votes cast in his favor.

WHEREFORE, with the modification of the decision appealed from along the lines above indicated, the same is hereby affirmed, and respondent Telesforo Reyes declared elected to the office of municipal mayor of Alitagtag, province of Batangas, with a majority of eight votes. With costs against petitioner.

*Paras, C.J., Bengzon, Padilla, Montemayor, Reyes A, Bautista Angelo, Labrador and Concepcion, JJ., concurred.*

#### III

*Cayetano Dangué, Petitioner, vs. Franklin Baker Company of the Philippines and Workmen's Compensation Commission, Respondents, G.R. No. L-15838, April 9, 1960, Barrera, J.*

1. WORKMEN'S COMPENSATION LAW; INJURY RECEIVED BY EMPLOYEE OUTSIDE OF HIS EMPLOYMENT BUT AGGRAVATED IN THE COURSE OF EMPLOYMENT IS COMPENSABLE. — In the case at bar, petitioner's right eye was injured while he was engaged in the performance of work outside of his employment, but said injury became worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company and, therefore, he is entitled to compensation.
2. ID.; EFFECT OF FAILURE OF EMPLOYER TO CONTROVERT EMPLOYEE'S CLAIM FOR COMPENSATION. — The rule is that when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto.

#### D E C I S I O N

This is a petition for review on certiorari, of the decision dated March 12, 1959 of respondent Workmen's Compensation Commission, and its resolution, *en banc*, of June 23, 1959.

In the morning of July 17, 1954, while petitioner Cayetano Dangué, an employee of respondent Franklin Baker Company of

the Philippines, was cleaning his *kaingin*, his right eye was hit by the leaves of a shrub known as "payang-payang". Since his right eye was becoming reddish in color, he consulted respondent company's physician on July 19, 1954. Apparently finding nothing serious, he was allowed to work. On the following day, July 20, 1954, while petitioner was in the course of his work as sheller (shelling coconuts), his right eye was struck by flying speck of coconut shell. As a result, there developed an unbearable pain and blurring of vision. On July 21, 1954, upon the advice of respondent company's physician, petitioner was given leave of absence, which was extended from time to time, until November 10, 1954, when he resumed work. During this time, he was thrice operated on his injured eye and sustained a 16.4% loss of vision, thus causing his temporary total disability and permanent partial disability. For the entire period of his said leave of absence, from July 21, to November 10, 1954, petitioner was not paid any compensation by respondent company.

On September 6, 1954, petitioner filed with the Department of Labor a complaint against respondent company praying, *inter alia*, for payment of compensation in accordance with the Workmen's Compensation Act.<sup>1</sup>

On June 10, 1957, after due hearing, the Hearing Officer of respondent Commission at San Pablo City rendered a decision (Annex A) ordering respondent company to pay petitioner the amount of P460.77, as compensation pursuant to Sections 14 and 17 of the aforesaid Act.

On June 21, 1957, respondent company filed with respondent commission a petition for review of said decision of the Hearing Officer. On March 12, 1959, respondent Commission rendered a decision dismissing petitioner's claim for compensation and absolving respondent company from liability. From this decision, petitioner filed a motion for reconsideration, which motion, was denied by respondent Commission in its resolution *en banc* of June 23, 1959 (Annex C).<sup>2</sup> Hence this petition for review.

Petitioner claims that respondent Commission erred in dismissing his claim for compensation.

We agree with petitioner. It is not disputed that petitioner, after consulting the company physician about his eye, was allowed to report for work. This fact indicates that the first injury, if at all, received on July 17, 1954 was not serious. If it were so, respondent company would have undoubtedly, and by all means, advised or even prevented him from reporting for work, and petitioner himself would not have been able to go about his tasks, considering the extreme sensitiveness of the human eye. It appears, however, that after he met the second accident while working for the company as a sheller, petitioner was, on the following day, or on July 21, 1954, advised to go on leave, which indicates that this second accident was serious, as in fact it was, as he had to be operated on thereafter and his leave continued until November 10, 1954. True it is, that petitioner's right eye was injured while engaged in the performance of work outside of his employment, but said injury became worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company. Consequently, he is entitled to compensation.

"Recovery will not be prevented because the consequences of the injury received in the accident were aggravated by the employee's physical condition at the time the injury was received." (71 C.J. 606.)

"But even assuming that appellant's left eye was already defective when he entered appellee's employ, nevertheless it is clear that the defect was somehow aggravated or accelerated by his employment and ultimately necessitated an operation by reason of the accident in question. Appellee is not

<sup>1</sup> Act No. 3428, as amended.

<sup>2</sup> With Associate Commissioner Nieves Baens del Rosairo dissenting in a separate opinion.