

of his automobile, and introduced in evidence against him. The court, after first finding the search to have been reasonable under *Cooper v. California*, 386 U.S. 58, 87 S.Ct. 788, said: "Moreover even if the search here were an unlawful one, the facts would make this case an almost classical one for the rule stated in *Chapman vs. California* (supra) . . ." and concluded that evidence taken from the automobile could not have contributed to the verdict.

Here, with uncontradicted evidence of contraband in plain view there was ample grounds for the Magistrate to detain the vessel and crew, as he did. Discovery of further contraband below decks added nothing to proof of the offense.

Additionally, I am by no means convinced that the search was unlawful, in view of the evidence, discovered without search, of a violation of law making the vessel subject to seizure and forfeiture under 19 T.T.C. 107. See *Cooper v. California*, supra, and *Lockett v. United States*, supra, both upholding a warrantless search of a vehicle seized under statute providing for forfeiture.

The application is denied.

LUIS A. BENAVENTE, Plaintiff

v.

FRANCISCO C. ADA, Election Commissioner, Defendant

Civil Action No. 1045

Trial Division of the High Court

Mariana Islands District

August 16, 1972

Action to have municipal election set aside. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that where it was clear from the record that the votes of those persons who were eligible to vote, but were allegedly prevented from doing so due to inability to arrange transportation

for election officials, could not have affected the results of the election, election would not be set aside.

1. Elections—Governing Law

Registration of voters for, and conduct of, municipal election was properly carried out under the provisions of the municipal charter and ordinances, rather than under code title relating to election of Congress of Micronesia. (T.T.C., Title 43)

2. Statutes—Election Laws

Title of Trust Territory Code relating to elections was clearly designed to provide for the election of the Congress of Micronesia, and does not apply to municipal elections. (T.T.C., Title 43)

3. Elections—Irregularities

Although generally, an election should not be voided in absence of a factual showing that the results might be changed if all who were entitled to vote, but could not for some reason, were permitted to do so, the rule is not absolute, and there are certain discriminatory practices which, apart from demonstrated injury or inability to do so, so affect the processes of the law as to be stricken down as invalid.

4. Elections—Election Officials—Powers and Duties

Election officials have a positive duty to insure that all qualified electors have an opportunity to vote.

5. Elections—Due Process

Failure of election officials to perform positive duty to insure that all qualified electors have an opportunity to vote would constitute a denial of due process.

6. Elections—Irregularities

Where it was clear from the record that the votes of those persons who were eligible to vote, but were allegedly prevented from doing so due to inability to arrange transportation for election officials, could not have affected the results of the election, election would not be set aside.

Counsel for Plaintiff:
Counsel for Defendant:

ROGER L. ST. PIERRE, ESQ.
CARLOS H. SALII, ESQ.

BURNETT, Chief Justice

Plaintiff brought this action on behalf of himself and all others similarly situated, seeking to have the Saipan municipal election set aside. In support thereof, he alleged that he and other legally qualified electors were prevented

from voting in numbers sufficient to have changed the results of the election.

Plaintiff grounds his claim upon the assertion that Title 43, Trust Territory Code, and particularly Section 257 thereof, is controlling with respect to registration of voters and the conduct of the election. The answer of the Election Commissioner denies application of Title 43, contending that the election was properly conducted under the provisions of the Saipan municipal charter and applicable municipal ordinances governing local elections.

At the time set for trial, plaintiff elected to present no evidence respecting the alleged irregularities but, instead, chose to rely upon his claim that the election was improperly conducted under municipal law rather than the provisions of Title 43.

[1] I conclude that the registration provisions of Title 43 have no application to a municipal election, that the registration of voters and the conduct of the election are required to be carried out under the provisions of the municipal charter and municipal ordinance, and that plaintiff has consequently made no showing that he or others were denied due process, if they were, in fact, denied the right to vote in said election.

[2] Title 43 had its origin in Public Law 2-16, September 2, 1966, which was clearly designed to provide for the election of members of the Congress of Micronesia. Prior to that time the Trust Territory Code contained no provision for elections.

In the Fourth Regular Session of the Congress of Micronesia in 1968, Public Law 4-12 (House Bill No. 107) enacted various amendments of the election law, now Title 43. As originally introduced, House Bill No. 107 would have extended application of the election law to election of district and municipal officials as well as the Congress. Special Committee Report No. 7, contained in the

Senate Journal at pages 614 and 615, recommended that portions of the bill relating to district and municipal elections be deleted in view of technical problems which would make it difficult to apply it effectively to local elections. The Committee Report was approved, and House Bill No. 107 passed without the provisions for extending it to local elections, such as the one here contested.

Section 5 of Title 43, which was added to the election law by Public Law 4-12, further clarifies the intent of Congress that district and municipal elections are to be conducted in accordance with "all provisions of the applicable district law, charter provisions or municipal ordinance governing the election which are not inconsistent with the provisions of this section." That section provides, in addition, that notwithstanding any contrary provision of local law, the Election Commissioner shall have overall authority and responsibility for such matters as the conduct of elections, registration of voters, and the like, all in accordance with the local law.

There is no question that the election was conducted in accordance with the Saipan municipal charter and ordinances. While the answer of the Election Commissioner concedes some irregularities, they do not appear to be of such a character or extent as to warrant the drastic relief requested by plaintiff.

[3-5] One further point should be considered, in connection with the contention of the plaintiff that a full factual showing should not be required where there appears to have been violation of due process and a disenfranchisement of substantial number of voters. Generally speaking, it is true, as urged by the Election Commissioner, that an election should not be voided in the absence of a factual showing that the results might be changed if all who are entitled to vote are permitted to do so. 26 Am. Jur. 2d,

Elections, 277, 278. Such a rule is not, however, an absolute one.

“ . . . We do not think the Court could justify denial of effective present relief because of any assumed inability to demonstrate that the outcome would have been different. . . . The fact is that there are certain discriminatory practices which, apart from demonstrated injury or the inability to do so, so infect the processes of the law as to be stricken down as invalid.” *Bell v. Southwell*, 376 F.2d 659 (5 C.A. 1967).

Bell had to do with the setting aside of an election in which there had been a clear denial of due process through deprivation of fundamental civil rights. I do not suggest that there was, or that there could be shown, such a denial in the present case. Nor do I suggest that every election in which a substantial number of citizens are denied the right to vote must necessarily be set aside. *Hamer v. Campbell*, 385 F.2d 215 (5 C.A. 1966); *Bell v. Southwell*, supra. It is clear, however, that election officials have a positive duty to insure that all qualified electors have an opportunity to vote if they choose. Failure to do so would constitute a denial of due process.

The only aspect of this election which would appear to hold the possibility of such a denial is raised by the defendant's answer, in which he notes that the residents of the inhabited northern Mariana Islands were not given an opportunity to vote by reason of inability to arrange transportation for municipal election officials.

[6] It is clear from the record that the votes of those persons eligible to vote on said islands could not affect the results of this election, and I will not now set it aside on those grounds. I think it equally clear, however, that it is incumbent upon responsible officials to take whatever steps may be necessary, in advance of any subsequent election, to insure that they are given the opportunity to do so, without regard for the weight which their collective votes might bear.

One final comment, of no value for purposes of this decision but one which I feel compelled to make, concerning the state of election law. The law now requires, in this municipality, that citizens who wish to vote meet the registration requirements of three separate and distinct laws, municipal, district and congressional. Only confusion can result, with the inevitable disenfranchisement, however unintentional, of many otherwise qualified electors.

The complaint is dismissed, and the restraining order dissolved.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Libelant

v.

LEN CHE SENG NO. 3, Libelee

Civil Action No. 571

Trial Division of the High Court

Palau District

August 17, 1972

Libel for condemnation and forfeiture of vessel. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, granted the libel where owner of vessel failed to appear and prove he had no knowledge or wilful negligence regarding the violation made the grounds of the libel.

Actions—Failure to Appear

Where owner of vessel involved in proceeding for condemnation and forfeiture failed to appear and meet his statutory burden of proving that violation made grounds of proceeding was without his knowledge or wilful negligence, court would order vessel condemned and forfeited. (19 T.T.C. § 156)

Counsel for Libelant:

PHILLIP JOHNSON, ESQUIRE

CARLOS H. SALII, ESQUIRE

Counsel for Libelee:

J. LEO McSHANE, ESQUIRE

BURNETT, *Chief Justice*

Libel was filed herein on April 27, 1972 seeking condem-