

**TRUJILLO  
vs.  
SUAZO**

No. 4802

SUPREME COURT OF NEW MEXICO

1944-NMSC-014, 48 N.M. 57, 145 P.2d 871

February 17, 1944

Appeal from District Court, Rio Arriba County; Charles H. Fowler, Judge.

Election contest by Cruz Trujillo against J. Balentin Suazo for the office of County Clerk of Rio Arriba County. The contestant was declared elected, and the contestee appeals and contestant cross-appeals.

**COUNSEL**

George E. Remley and Joseph M. Montoya, both of Santa Fe, for appellant.

Manuel A. Sanchez, of Santa Fe, for appellee.

**JUDGES**

Mabry, Justice. Sadler, C. J., and Bickley, Brice, and Threet, JJ., concur.

**AUTHOR:** MABRY

**OPINION**

{\*57} {1} The decision in the case of Valdez v. Herrera, 48 N.M. 45, 145 P.2d 864, this day decided and to which reference is made, governs here. Trujillo, contestant-appellee, on the face of the returns accepted and canvassed by the county canvassing board received a total of 3205 votes to 3228 for Suazo, contestee-appellant, for the office of county clerk of Rio Arriba county, and Suazo received the certificate of election. Upon contest by Trujillo, the Republican candidate, he, Trujillo, was declared elected by virtue of the trial court's invalidating and refusing to consider the votes cast for either candidate in precincts 31 (Madera) and 42 (Ciuque), these being the same precincts from which election returns were not accepted in the case of Valdez v. Herrera, supra. Suazo appeals.

**{2}** In the proceeding now being considered, contestant, by cross appeal, challenges, as did Valdez in the companion case, the refusal of the trial court to accept and consider the votes cast, but not canvassed by the county canvassing board, in precincts 36 (Skarda), 47 (Canones) and 23 (Youngsville), the boxes delayed in delivery. Precinct 1A (Dixon) is not questioned here since there was a difference of only one vote as to the candidates for county clerk.

**{3}** When the votes of the above mentioned three precincts of Skarda, Canones and Youngsville, in which contestant Trujillo received 131 votes to 37 for contestee Suazo, are accepted and considered, as we held in Valdez v. Herrera, supra, must be done, contestant Trujillo will be shown to have received the majority of the votes **{\*58}** cast in the election although upon a different calculation and for a different reason than that upon which the trial court's judgment rested; and he was, therefore, elected and entitled to take and hold the office in question.

**{4}** Other questions raised and presented both here and in the companion case above mentioned are disposed of as there shown. Any different or additional questions pertaining exclusively to this appeal which are not here considered and decided need not be noticed.

**{5}** Contestant Trujillo was elected and entitled to the office in question. The judgment of the district court should be affirmed.

**{6}** And it is so ordered.