

[G.R. No. 2080. July 18, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MIGUEL A. SOLER AND FELIX MELLIZA (ALIAS PINGA), DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

In the Court of First Instance of the Province of Sorsogon, in the Eighth Judicial District, on the 3d day of June, 1903, a complaint was presented against the defendants charging them with the crime of *estafa*. They pleaded not guilty and the trial was commenced on the 4th day of June, 1903. The evidence was closed on the 13th day of June, and the case was argued on the 15th day of June, 1903, and the court, at the close of the argument, stated that it would reserve its decision. On the 30th day of April, 1904, in the city of Manila, the judge who tried the case signed a judgment convicting the defendants. On the same day and at the same place he signed an order admitting the appeal of the defendants. The judgment and order thus signed were sent to the clerk of the Court of First Instance of Sorsogon, and on the 19th day of May, 1904, notice of the judgment was given to the defendant Soler personally, and to the lawyer for the defendant, Melliza. They both then stated that they appealed.

It appears that the delay in rendering judgment was due to the failure of the private prosecutor to deliver to the judge certain documentary evidence presented at the trial and afterwards retained by him.

The seventh assignment of error in the brief of the appellant Mellissa is to the effect that the judgment is void because the judge who tried the case had ceased to be the judge of the Court of First Instance of Sorsogon at the time he signed the judgment, and at that time was the judge of the Court of First Instance for the Eleventh Judicial District, the Province of Sorsogon being included in the Eighth Judicial District. It is admitted in the brief of the Solicitor-General that on the 30th day of April, 1904, when the judgment was signed, the

judge who signed it was not the judge of the district court in which the action was pending.

We think that this assignment of error must be sustained. Section 51 of Act No. 136 provides that the Supreme Court may direct any judge of the Court of First Instance to hold a term or part of a term of court in any Court of First Instance not in his district. Section 52 provides that a judge of any Court of First Instance may hold court in any province at the request of the judge thereof, or upon the direction of the Chief Executive. It is not claimed that any order was ever made in accordance with either of these sections. At the time the judgment was signed the judge who signed it was therefore not the judge of the Court of First Instance of Sorsogon, and was not authorized to act in any cases pending in that court by direction of any competent authority.

The Solicitor-General relies upon Act No. 575, carried forward and now appearing as sections 13 and 14 of Act No. 867. Those sections authorize a judge of the Court of First Instance, in any case which he has tried, to sign the judgment outside of his province or district. There is nothing in the law, nor in the case of *United States vs. Domingo Baluyut*^[1] (3 Off. Gaz., 676), which construed the law, which in any way indicates that a judgment would be valid which was signed outside of the district or province by a person who is not the judge of the court in which the action is pending, or has not been authorized to hold a court therein in accordance with said sections 51 and 52.

The judgment of the court below is set aside, and the case is remanded for a new trial. Upon the new trial it will not be necessary to retake the evidence already taken and appearing in the record, but the parties will be at liberty to present such other evidence~as they see fit, with the costs of this instance *de officio*. After the expiration of ten days from the date of final judgment let the case be remanded to the lower court for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Carson, J., disqualified.

^[1] 5 Phil. Rep., 129.
