

7 Phil. 126

[G.R. No. 3534. December 04, 1906]

**TO GUIOC-CO, PLAINTIFF AND APPELLEE, VS. LORENZO DEL ROSARIO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

This action was brought by the plaintiff as administrator of the estate of To-Tico to recover the sum of 30,000 pesos for the death of the said To-Tico, which death, it, was alleged, was caused by the negligence of the defendant. The defendant appeared in the court below and answered the complaint, and on the 16th day of July, 1906, judgment was entered against him for the sum of 3,000 pesos. He moved for a new trial in the court below, which was denied on the 4th of August, 1906, a bill of exceptions was signed therein on the 18th day of August, 1906, and was filed in this court on the 27th of the same month. On the 15th of that month the defendant died. On the 14th of September, 1906, the plaintiff made a motion in this court that the special administratrix appointed in the matter of the estate of the deceased, Lorenzo del Rosario, be substituted as defendant in this appeal. This motion was denied by an order made on the 15th day of October. The plaintiff has now moved that the appeal be suspended in order that he may present his claim before the commissioners who have been appointed in the proceeding for the administration and settlement of the estate of the deceased.

We denied the motion for the substitution of the special administratrix on the ground, as will be seen from the order denying it, that a special administratrix could not be made a defendant. We did not hold in that order that a general administrator could not be substituted in the action, and in the case of *Azarraga vs. Cortes*,^[1] No. 2834, decided November 21, 1906, we have just held that where the defendant in a case dies after a final judgment rendered in the Court of First Instance against him the proviso in section 119 of the Code of Civil Procedure does not apply, and that the action in case of an appeal can be

carried on against the general administrator appointed in the matter of the estate of the deceased defendant.

In the case at bar the plaintiff can ask substitution of such general administrator. This motion is accordingly denied. So ordered.

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

^[1] Not reported.
