

[G.R. No. 3143. March 21, 1907]

**ANGEL ORTIZ, PLAINTIFF AND APPELLEE, VS. JOSEFA ARAMBURO ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

I. This case was tried before one of the judges of the Court of First Instance of Manila in the latter part of 1903 and the early part of 1904. Oral and documentary evidence was presented before this judge. He resigned his office without deciding the case. It was afterwards submitted to another judge of the same court, who allowed an amended complaint to be filed and rendered final judgment. It does not appear that any new evidence was presented before him, but he decided the case upon the oral and documentary evidence presented before the first judge, which oral evidence was taken by a stenographer and was produced before the second judge.

It is claimed by the defendants and appellants that the judgment rendered against them is void because the judge who decided the case did not see the witnesses when they gave their testimony. This, in last analysis, is the basis of the appellants' objection. It is not claimed that the judge who decided the case did not have before him all the evidence that was ever presented therein.

This objection can not be sustained. The law requires cases to be tried by the Court of First Instance. There is no provision of law which prohibits a judge from deciding a case because he did not see some of the witnesses when they testified therein. In the absence of any express prohibition of this kind, we can not imply one. During the Spanish domination, it was the invariable practice for the judges of the Courts of First Instance to decide cases whether the evidence was taken before them or not. Our present Code of Civil Procedure authorizes the same practice in several instances. It authorizes the presentation of evidence by depositions, and it might well happen that all the evidence in the case would consist of

such depositions and that the judge who decided it would see none of the witnesses. Section 505 of the Code of Civil Procedure provides that when a new trial is ordered by the Supreme Court "all the evidence taken upon the former trial, which is competent and admissible, shall be used upon the new trial without retaking, but additional evidence may be presented upon the second trial by either party." Section 504 of the same code provides that when a new trial is ordered the Supreme Court may direct that it be had before a judge other than the one who tried the case before. This is an express authority for a judge of the Court of First Instance to decide a case upon oral evidence which was not taken before him.

Section 497 of the same code provides that when a motion for a new trial is made in the court below on the ground of the insufficiency of the evidence, and denied, this court may review the evidence and enter a final judgment. This expressly authorizes us to decide questions of fact upon evidence which was not taken before us.

II. Some of the appellants, defendants below, were married women. In the original answers presented by them they alleged this fact and stated that their husbands had not been joined as defendants and they now claim that the judgment against them must be reversed for this reason. As has been said, an amended complaint was allowed and filed. To this amended complaint the defendants answered. That answer was a substitute for, and took the place of the original answers, and it became the only answer in the case. It contains no allegation as to the coverture of these defendants. That objection was therefore waived.

III. At the trial of the case in the court below, Luis Palomar Baldovi was presented as a witness by the plaintiff. The defendants objected to his testifying on the ground that he was the husband of the defendant Julia Aramburo, and that she had not given her consent to his testifying. Section 383, paragraph 3, of the Code of Civil Procedure, provides in part as follows:

"A husband can not be examined for or against his wife without her consent, nor a wife for or against her husband without his consent."

The right given by this section is personal to the husband or wife. In this case the only person who could object to the testimony of this witness was his wife. Judgment was rendered against her but she has not appealed. The objection, therefore, can not now be urged by the other defendants, who are appellants.

IV. The action was brought by the plaintiff to recover the sum of 354,548.05 pesos, with interest, it being alleged in the complaint that the plaintiff had carried on business with Ceferino Aramburo in his lifetime; that the latter died in July, 1899; that the business established by him had been continued by the defendants, who were his heirs; and that they were responsible to him for the balance alleged in the complaint.

Judgment was rendered in the court below against all of the defendants for the sum of 345,193.31 pesos, with interest at 8 per cent from the 1st day of July, 1903. The liability of five of the defendants was, however, limited to the value of the property which they had received from their father's estate, they being under age. These five defendants have not appealed. Those who have appealed claim that there was no competent evidence to show the amount due to the plaintiff upon the 1st of July, 1903. The bookkeeper of the plaintiff was produced and testified as to that balance. His testimony was objected to on the ground that the books were the best evidence. He was then asked by the judge if he had the books in court, to which he replied that he had, and it clearly appears that all of the books of the plaintiff were in court at the time and were referred to by the witness. The judge admitted the evidence of this bookkeeper, stating at the time that the books were there in court and that the defendants would have an opportunity to examine them.

The point now made by the appellants is that these books were not formally offered in evidence, but we think that what took place during the testimony of this bookkeeper amounted to such an offer, and the judge below must have considered them in evidence when he received the testimony as he did.

There was, moreover, other evidence presented by the plaintiff tending to support the testimony of his bookkeeper. The bookkeepers of the defendants were produced, who testified that they received every six months from the plaintiff a statement of the account showing the balance due; that for some time these statements agreed exactly with the books kept by the defendants to a cent, and that the only difference that ever existed was one of something like 200 pesos. The defendants presented no evidence at all upon this question, and that presented by the plaintiff was clearly sufficient to support the finding of the judge below as to the amount due.

V. It is finally claimed by the appellants that they are not responsible for this debt because after the death of their father the business was carried on, not by themselves as heirs, but by Ceferino Aramburo, the eldest son, as executor. Upon this question of fact, notwithstanding the attempted denial by Ceferino Aramburo that he was carrying on the

business as one of the heirs and his claim that he was carrying it on as executor, the evidence is conclusive against that pretension. That the persons who carried on this business carried it on as, and for the heirs, and that it was not carried on by the executor, is thoroughly established by the evidence.

It remains only to consider which one of the appellants participated in the business after the death of the elder Aramburo. The appellants are Josefa, Matilde, Adelaida, Leonor, Encarnacion and Ceferino Aramburo, all children of the elder Ceferino.

As to the last named no question can be made. He carried on the business himself a part of the time. It was proved at the trial by his own admission that he had powers of attorney from all the other appellants except Leonor. It is claimed, however, by the appellants that these powers of attorney, with one exception, were given after September, 1899, when some of the parties interested had an interview with the plaintiff in which an agreement was made for the continuation of the business.

We do not consider this fact of any importance. It was admitted that the entire assets of the firm of "the heirs of C. Aramburo," the name under which the business was carried on after the death of the elder Aramburo, was the property which the latter had left to his heirs. This property was taken possession of and managed by this new firm. Any of the heirs who participated in these acts thereby accepted the inheritance without benefit of an inventory and became personally responsible for the obligations of the deceased. (Civil Code, arts. 999, 1000; judgment of supreme court of Spain, March 2, 1896.) That Ceferino Aramburo, for himself and as attorney in fact of all the heirs except Leonor, did participate in these acts is clearly proved.

As to the appellant Leonor, it appears that she is the wife of Jose Rodriguez de Hinojosa. He was the manager of the business for several years. She was here in the Islands during that time and the evidence is sufficient to show that she acquiesced in the acts of the heirs of C. Aramburo, and thereby accepted the inheritance without benefit of an inventory.

VI. After the case had been removed to and argued in this court, the defendants made a motion for a new trial thereof, in accordance with paragraph 2 of section 497 of the Code of Civil Procedure,^[1] on the ground of newly discovered evidence. A simple reading of the affidavits presented in support of this motion and of those presented in opposition thereto shows that there is no merit therein. That motion is accordingly denied.

The judgment of the court below is affirmed, with the costs of this instance against the

appellants.

After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court below for proper action. So ordered.

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

^[1] I Pub. Laws, 463.
