

[G. R. No. 4011. August 01, 1907]

**MAMERTA BANAL, PLAINTIFF AND APPELLEE, VS. JOSE SAFONT ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

After the plaintiff and appellee had been furnished with the printed bill of exceptions filed by the appellants, the latter, prior to the filing of their brief, made a written motion requesting that the judgment appealed from be reversed and a new trial granted on the ground that important evidence had been secured, some portion of which could not be obtained in time for the hearing due to unforeseen and inevitable causes, and the rest because of its discovery when the trial had ended; all of which evidence, it was alleged, would have tended to modify the finding of the court to an important extent in favor of the appellants. The appellee, upon being informed of the aforesaid motion, objected to its admission by the court.

The trial of this case commenced in July, 1903, in the Court of First Instance of Pampanga, and was brought to a close by the judgment dated February 15, 1907, which is the one from which this appeal is taken. During the course of the proceedings, documents were exhibited and evidence of a varying nature was taken by both parties. No mention was made of the impossibility of producing the books referred to in the affidavits which accompany the motion notwithstanding the fact that one of the appellants, since June 2, 1906, has had notice to produce them in court; nor was any of the remedies allowed by law applied for prior to the date when judgment was rendered, and by means of which any injury might have been avoided.

Section 497 of the Code of Procedure in Civil Actions provides, among other things, that if, before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which by the exercise

of due diligence could not be produced at the trial in the court below, the Supreme Court may receive and consider such new evidence together with that adduced on the trial, and may grant or refuse a new trial, or render such judgment as should, in view of the whole case, be rendered, upon such terms as it may deem just.

When the precaution was taken to remove and carefully keep the books and receipts referred to in the affidavits, from Pampanga to Spain, it was because the holders thereof and those concerned were well aware of the value and importance of said documents, and they could not therefore disavow the existence of the same; nor could they allege that they were ignorant of the necessity of producing them in court since the 9th of July, 1903, at which time they were summoned and served with a copy of the complaint. In the course of these proceedings, which have continued for more than three years, other matters of business and accounting have also been discussed by the defendants' principals and themselves on the one hand and the plaintiff and certain persons on the other.

In view of the foregoing, it can not be held that the said books and receipts constitute new and material evidence, which by the exercise of due diligence could not have been discovered before the trial was held in the Court of First Instance of Pampanga, because they were not ignorant of the existence of the documents. These papers were in their possession, and if they were not produced in court during the pendency of this long and well-contested case, which turned upon matters of accounting arising out of business established since the year 1896, it is because they were unwilling to do so for reasons which are best known to themselves.

The granting of a new trial for the purpose of receiving evidence which could not be produced during the proceedings in an action already decided by the judge, is not dependent on the consent of the litigants, nor does it lie in the discretion of the judge. It is indispensable that certain conditions, which are expressly stated in the law, be complied with before a new trial can be lawfully permitted, otherwise the granting of such a motion would be improper and injurious to the adverse party.

Furthermore if, to the considerations above set forth, it be added that the conditions and circumstances affecting the books and documents referred to in the annexed affidavits are not stated therein, the impropriety of the motion filed by the appellants is clearly shown.

The motion is therefore dismissed with costs. Let the appeal proceed upon bill of exceptions.

Arellano, C. J. Johnson, Willard, and Tracey, JJ., concur.

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