

**DEMETRIA OBIEN DE ALMARIO, PETITIONER, VS. FIDEL IBÁÑEZ
JUDGE OF THE FIRST INSTANCE OF LAGUNA, MANUEL
PAKALINAWAN, MARIA PAGKALINAWAN, AND JOVITO
PAKALINAWAN, RESPONDENTS.**

G.R. No. L-2457. October 14, 1948

Ponente: OZAETA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/85189a6deb12/>

OZAETA, J.:

Certiorari and mandamus to annul an order of the respondent judge denying the admission of the testimony of new witnesses and to order him to admit said testimony and render a new decision in civil case No. 7637 of the Court of First Instance of Laguna.

In the early part of 1943 said civil case was commenced by Luis D. Almario against Manuel Pagkalinawan and others to annul a certain deed of sale of a parcel of land executed by the former in favor of the latter and to recover damages. After due trial, and on January 28, 1944, Judge Felix Bautista Angelo rendered judgment dismissing the complaint with costs against the plaintiff. The plaintiff appealed the case to the then Court of Appeals for Southern Luzon, and pending the filing of the briefs the battle for the liberation of the Philippines supervened. After the liberation, and before the re-creation of the Court of Appeals, the case reached this court, which on July 15, 1946, ordered that a new trial in the lower court be held in view of the loss of the stenographic notes and the statement of counsel for both parties that they would raise factual issues in their briefs.

In the meantime the plaintiff Luis D. Almario having disappeared during the latter part of the war, he was declared an absentee and trusteeship proceedings of his estate were instituted. His wife, the herein petitioner Demetria Obien de Almario, was appointed trustee and substituted as party plaintiff in said. case.

When the case was called for new trial as ordered by this court, the plaintiff offered as part of her evidence the testimony of new witnesses who did not testify during the original trial but whom the plaintiff sought to present in lieu of the original plaintiff, Luis D. Almario, who had disappeared. Upon the objection of counsel for the defendants, the respondent judge refused to admit the testimony of the said witnesses on the ground that the new trial ordered by this court "is only for the purpose of enabling 'the parties, thru their counsel, to discuss in their briefs the facts proven in the former trial and [that] the original decision of this court from which appeal has been taken has not been vacated.'" In other words, the respondent judge took the view that his task was only to retake the testimony of the witnesses who testified during the original trial and forward it to the appellate court without rendering a new decision.

Was that view of the respondent judge correct? The question involves an interpretation of the pertinent provisions of Act No. 3110, which provides an adequate procedure for the reconstruction of the records of pending judicial proceedings destroyed by fire or other public calamities. Sections 6, 7, 30, and 64 of said Act provide as follows:

"SEC. 6. Testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy

thereof or a new transcript of the stenographic notes. If no authentic copy can be obtained and the stenographic notes have also been destroyed, the cases shall be tried de novo as if called for trial for the first time.

"SEC. 7. If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the Court shall make a new decision, as if the case had never been decided."

"SEC. 30. When it shall not be possible to reconstitute a destroyed judicial record by means of the procedure established in this Act or for any reason not herein provided for, the interested parties may file their actions anew, upon payment of the proper fees, and such actions shall be registered as new actions and shall be treated as such."

"SEC. 64. If an authentic copy of the transcript of the stenographic notes of the testimony taken cannot be filed, the Supreme Court shall direct the proper stenographer to make another transcription. And if the stenographic notes taken by the stenographer has also been destroyed, the Supreme Court shall direct the proper Court of First Instance to proceed to hear the case anew, which shall then be considered as ready for a hearing in said Court of First Instance."

In the case of *Madalang vs. Court of First Instance of Romblon* (1926), 49 Phil. 487, the entire record was destroyed by fire after the case had been decided by the Court of First Instance and while a motion for new trial was pending therein. The record was reconstructed in accordance with the provisions of Act No. 3110 by means of authentic copies of the pleadings, of the documentary evidence, and of the decision of the trial court, "minus the transcript of the stenographic notes of the testimony of the witnesses for both parties, the flame having been destroyed by fire, together with the original stenographic notes. In view of the impossibility of reproducing said oral evidence, the court ordered a new trial for the presentation and reception of the testimony of the witnesses." During the new trial the defendant Madalang, after having introduced the same witnesses who had testified in the original trial, attempted to present additional witnesses. The adverse party objected to the admission of the testimony of the additional witnesses and the trial court sustained the objection.

In denying the petition for mandamus in that case, this court applied sections 6 and 7 of Act No. 3110. It will be recalled that section 6 provides that if no authentic copy of the transcript of the stenographic notes can be obtained and the stenographic notes have also been destroyed, the case shall be tried de novo as if called for trial for the first time; and section 7 provides that if the case has already been decided, the decision shall be reconstituted by means of an authentic copy, and if an authentic copy cannot be found, the court shall make a new decision as if the case had never been decided. After quoting said sections the court interpreted them in this wise:

"It appears from section 7 above quoted that a new judgment can be rendered, as if the case had never been decided, only when the original decision cannot be reconstructed by means of an authentic copy. So that if an authentic copy of the original decision exists, the latter must be reconstructed by means thereof. If this is so, the reconstruction of the oral evidence introduced at the original trial of civil cases, when no authentic copy thereof exists, or when the stenographic notes have been destroyed and it is impossible to secure another transcript of the same, the testimony of the witnesses who testified at the original trial shall be taken again; because, as the original decision is reconstructed by means of an authentic copy of the same, it is not necessary to render a new one, and the reconstruction of the oral evidence is only for the purpose of permitting the court of appeal to review it and determine whether the appealed decision is in accordance therewith.

"Consequently, Act No. 3110 in providing in its section 7 that if an authentic copy exists the decision shall be reconstructed by means thereof, it was the intention that in the reconstruction of the oral evidence, provided in section 6, only the testimony of the same witnesses who testified at the original trial must be taken again and not the testimony of additional witnesses, because neither the literal meaning of the verb "reconstitute," used in said law, nor the spirit, nor the object of the same warrants a different interpretation. (Page 490.)

Relying upon said decision the herein respondents contend that the new trial ordered by this court was limited to the reception of the testimony of the witnesses who testified in the original trial; that all that the respondent judge had to do was to forward the reconstructed oral evidence to this court in order that the original decision rendered by Judge Bautista Angelo might be reviewed on appeal; and that, therefore, the petition for certiorari and mandamus should be denied.

The facts of the Madalang case differ from those of the present in these respects: (1) In that case the witnesses who testified in the original trial were present and available and in fact did testify in the new trial; whereas in the present case one of the principal witnesses for the plaintiff, namely, the original plaintiff himself, Luis D. Almario, had disappeared and his whereabouts was unknown when the case was called for new trial. (2) In that case the stenographic notes were burned while the case was still pending on a motion for new trial in the trial court, and apparently the judge who had tried and decided the case originally was the same judge who ordered and conducted a new trial; whereas in the present case the stenographic notes were lost after the case had been elevated on appeal and the new trial ordered by this court was to take place before another judge who did not hear and decide the case originally. These variations between the respective facts of the two cases are in our opinion substantial enough to produce different results, as we shall presently explain.

It will be noted that Act No. 3110 provides separate procedures for the reconstitution of civil cases pending in the Courts of First Instance and for the reconstitution of those pending in the Supreme Court on appeal. (Cf. sections 6 and 7 and section 64.) Different sections of the Act cover different stages in which the cases were found at the time the records were destroyed. Thus, section 4 covers the stage where a civil case was pending trial in the Court of First Instance at the time the record was destroyed or lost; section 6 evidently refers to the stage where the trial had been concluded but the case had not been decided at the time the stenographic notes were destroyed or lost; section 7 covers the stage where the case had been tried and decided but was still pending in the Court of First Instance at the time the record was destroyed or lost; and 64 covers the stage where the case was pending in Supreme Court (or Court of Appeals) at the time the record was destroyed or lost.

If no authentic copy of the transcript of the stenographic notes can be obtained and the stenographic notes have also been destroyed, the case "shall be tried de novo as if called for trial for the first time." (Section 6.) It is to be assumed that section 6 refers to the stage where the court had not yet rendered its decision at the time the stenographic notes were destroyed, because another provision (section 7) is made when a decision had been rendered at the time the stenographic notes were destroyed. In the situation covered by section 6 the case is tried de novo as if called for trial for the first time, and naturally there is no restriction of the witnesses whose testimony may be taken. In the situation covered by section 7 where a decision had been rendered, the case may or may not be tried de novo, depending upon the circumstances. If the decision can be reconstituted by means of an authentic copy and the stenographic notes have not been destroyed, there is no need for reopening the trial. If the decision cannot be reconstituted by means of an authentic copy but either the stenographic notes or the transcript thereof is intact, neither is there any need for reopening the trial; the court will simply make a new decision as if the case had never been decided. If the decision can be reconstituted by means of an authentic copy but neither the stenographic notes nor an authentic copy of the transcript thereof can be found, as in the Madalang case (*supra*), a new trial is required.

What then is the scope of such new trial? Is the case to be "tried de novo as if called for trial for the first time," as provided in section 6? Or may it be limited to the same witnesses who testified in the original trial? And will the original decision which has been reconstituted stand, or will the court have to render a new decision after the new trial?

Section 7 is not specific on these points. But since the law is procedural or adjective and is only a means to an

end—an aid to substantive law—it should be interpreted and applied to accomplish that end. Thus, as in the Madalang case, if the decision of the trial court is intact but because of the lack of the stenographic notes or of the transcript thereof the testimony of the witnesses have to be retaken, and if all of said witnesses are available and the judge who heard them before is the same judge who is to retake their testimony, there is no reason of law or justice to hear new or additional witnesses, because the loss of the record of the testimony of the original witnesses does not and cannot give rise to any necessity or justification for calling new or additional witnesses whose testimony would necessarily render the reconstituted decision inapplicable and, therefore, its reconstitution of no avail. Hence, as was decided in the Madalang case, the trial court may properly limit the parties to the same witnesses who testified in the original trial; and if said witnesses should testify in the new trial to substantially the same facts as those testified to by them in the original trial, as they are supposed to do, and as the same judge who heard them before will require them to do, there is no need to render a new decision. But if the said witnesses or some of them should testify differently from the facts they testified to in the original trial, the court would have to make new findings of fact and render a new decision. As thus qualified and explained, the decision of this court in the Madalang case is correct and need not be disturbed.

But that case is not applicable to the instant case, which, as already noted above, presents substantially different facts. In the instant case one of the principal witnesses for the plaintiff, namely, the original plaintiff himself, Luis D. Almario, cannot testify in the new trial, he having disappeared, and it would be unjust to deny to his successor in interest as party plaintiff the right to substitute his testimony with that of another witness or witnesses who may have knowledge of the same facts to which he testified in the original trial. Another difference is that the judge who heard the original witnesses and decided the case is not the same judge before whom the new trial is held and is therefore totally ignorant of what the original witnesses had testified to. He would not be in a position to instruct the witnesses who testified in the original trial to limit their testimony to the points to which they had testified before. These two circumstances, which did not obtain in the Madalang case, render untenable the theory of the respondent judge that his task is only to retake the testimony of the witnesses who testified during the original trial and forward it to the appellate court without rendering a new decision.

In the present case it is imperative that the trial should render a new decision in conformity with the facts established in the new trial. That is contemplated and authorized by section 64 of Act No. 3110, which is the provision applicable to the reconstitution in the Supreme Court (or Court of Appeals) of civil cases under appeal. While the Supreme Court may limit the scope of the new trial as the circumstances warrant, the order of new trial issued in this case was couched in general or unrestricted terms, and the facts and circumstances now disclosed before us do not warrant any limitation or restriction.

During our deliberation a suggestion was made that if the petitioner desires to call new or additional witnesses she should bring a new action under section 30 of Act No. 3110. The court, however, is of the opinion that said section is not applicable because it refers to a situation where the entire record of the case including the pleadings is destroyed and it is not possible to reconstitute it by means of the procedure established in said Act or for any reason not provided for therein. It is not necessary for the plaintiff herein to file a new action and pay the proper fees, since the pleadings have been reconstituted and only the oral evidence is missing.

The writ prayed for is granted without any finding as to costs.

SO ORDERED.

Moran, C. J., Paras, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.
Feria, Montemayor, and Reyes, JJ., did not take part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.