

MARIA DEL CARMEN VIUDA DE BUSTILLOS, PLAINTIFF AND APPELLEE, VS. ROQUE GARBANZOS, DEFENDANT AND APPELLANT.

G.R. No. 1035. December 04, 1902

Ponente: WILLARD, J.

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WILLARD, J.:

This proceeding was commenced on February 12, 1900. It was carried on under the law then in force until June 15, 1900, on which date the defendant filed a formal objection to the complaint. After that date nothing was done until May 27, 1902, when the plaintiff filed a petition in which he alleged that the proceeding was being carried on under the Code of Civil Procedure, and in which he asked that a demand for payment be made upon the defendant and that if he did not pay in the act, his property be seized. The judge of the Special Court of Negros cited the parties to a trial and after receiving documentary and oral evidence, none of which appears in the record, he made a decision which recited the proceedings had in the case. States that the defendant has not proved the illegality of the claim of the plaintiff and orders judgment in favor of the latter. From this judgment said court allowed an appeal in both effects and directed the original records to be sent here.

If this case was tried before the special court in accordance with the old procedure the evidence should have been returned to this court. If tried according to the new procedure the decision should have conformed to article 133, and the judge should have required the settlement of a bill of exceptions and should not have sent the original record here. Viewed as a decision under the present Code it is entirely insufficient to support the judgment, and if the new Code is to be applied it should be reversed for that reason.

There are, however, more indications that the court was pursuing the old procedure than that he was pursuing the new.

In accordance with that procedure the evidence should have been preserved and returned to this court. It is impossible for us to pass upon the merits of the case without it.

The case of Gonzaga vs. Canete, April 1, 1902, appealed from the same court, came in here in the same condition as this case. It was only by virtue of an agreement between the parties in that case that we passed upon certain questions of law presented by the record.

The judgment is reversed and the case remanded to the Court of First Instance for Occidental Negros for a new trial.

In view of the fact that the defendant removed the case here knowing as he must have known how incomplete the record was, and of the further fact that this defect was not suggested by him until the argument of the case, the costs of the appeal are charged against him.

Arellano, C. J., Torres, Cooper, Smith, Mapa, and Ladd, JJ., concur.

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