

MIGUEL PICCIO ARANETA, PLAINTIFF AND APPELLEE, VS. JOSE GARRIDO, DEFENDANT AND APPELLANT.

G.R. No. 1700. October 12, 1905

Ponente: WILLARD, J.

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WILLARD, J.:

This is a personal action for the recovery of money. The cause of action accrued on the 1st day of January, 1884. The action was commenced on the 22d day of April, 1903. The case was decided in the court below, and has been argued here by both parties upon the theory that it is governed by the provisions of the Civil Code relating to prescription of actions. We think, however, that the law applicable to the case is that existing prior to the promulgation of the Civil Code, inasmuch as the prescription commenced to run prior to that date. Section 38 of the Code of Civil Procedure now in force is as follows:

"To what this chapter does not apply.—This chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action, or right of action accrued, shall be applicable to such cases according to the subject of the action and without regard to the form; nor shall this chapter apply in the case of a continuing and subsisting trust, nor to an action by the vendee of real property in possession thereof to obtain the conveyance of it: Provided, nevertheless, That all rights of action which have already accrued, except those named in the last preceding paragraph, must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this act comes into effect."

This act took effect on the 1st day of September, 1901, and the ten years mentioned in the proviso to said section 38 had not elapsed when this action was commenced. Article 1939 of the Civil Code is as follows:

"Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

The prescription of personal actions, according to that code, is fifteen years. The code took effect on the 8th day of December, 1889. The fifteen years impliedly referred to in the last part of this article had not elapsed when this action was commenced.

According to the legislation in force prior to the promulgation of the Civil Code personal actions did not prescribe until the lapse of twenty years. (Law 63 of Toro, law 5, title 8, book 11, of the Novisima Recopilacion.) The twenty years mentioned in these laws had not elapsed at the time this action was commenced. If the case at bar is included in the fourth of the transitory provisions of the Civil Code and is to be governed by the provisions of that code, the provision applicable is found in said article 1939.

What has been said disposes of the assignment of error relating to the time for which interest was allowed by the judgment of the court below.

The judgment is affirmed, with the costs of this instance against the appellant, and at the expiration of twenty days

judgment should be entered in accordance herewith, and the cause remanded to the court below for execution of said judgment. So ordered.

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

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