

VIDAL CRISOSTOMO, PLAINTIFF AND APPELLANT, VS. FRANCISCO VIRI AND NAZARIO TRILLANA, DEFENDANTS AND APPELLEES.

G.R. No. 30826. September 02, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from the judgment rendered in these proceedings by the Court of First Instance of Manila on August 18 [17], 1929, the dispositive part of which follows:

"Wherefore, the court dismisses the complaint and sentences the plaintiff to pay the defendants the amount of P452.66, paid by them on account of the first two quarters, two-thirds of P2,418.01, or P1,612, which is the money unduly taken by the plaintiff from the partnership funds; one-third of P4,315.68, which defendants paid in satisfaction of the judgment in favor of the municipality of Bauan, Batangas, rendered against plaintiff and said defendants, or, P1,438.56, plus P1,000 damages. With costs against the plaintiff." (Pp. 44 and 45, bill of exceptions.)

The appellant assigns six errors as committed by the trial court, to wit:

"1. In ordering without just cause on July 31 and August 7, 1928, the transfer of this case from Branch I, presided over by Judge Simplicio del Rosario, before whom the evidence was adduced, to Branch IV of the same court, presided over by Judge Carlos A. Imperial, with the sole object that the latter might render judgment in this case, without having had the opportunity to observe the conduct and demeanor of the witnesses on the witness-stand.

"2. In granting a new trial in this case though the petition for it did not allege a just cause therefor.

"3. In setting aside the judgment rendered on July 21, 1927, by Judge Francisco Zandueta.

"4. In not holding that the plaintiff is the exclusive owner of the business in question, and in holding that said business belongs to the partnership of the plaintiff with the defendants.

"5. In not compelling the defendants to render accounts of said business, with the vouchers supporting the corresponding entries.

"6. In dismissing the complaint and in sentencing the plaintiff to pay the amounts mentioned in the judgment appealed from."

Under the first assignment of error, the appellant contends that the judgment must rest upon the allegations and the proof, which is a fundamental principle that should be followed in all cases; and the doctrine cited, laid down in *Ibañez de Aldecoa vs. Hongkong and Shanghai Banking Corporation* (22 Phil., 572), enunciates exactly this principle in so far as it states that there must be a necessary relation between the judgment and the allegations made by the parties and the evidence adduced by them in support thereof during the trial. But that is not the case here, because in the first assignment of error, the appellant attacks the action taken by the court below in transferring the case to Judge Imperial, and in the latter's rendering judgment upon it without having seen or heard

the witnesses testify.

It is not necessary that the judge deciding a case should have seen and heard the witnesses testify at the trial thereof. This rule has already been the subject of a decision by this court in the case of *Ortiz vs. Aramburo* (8 Phil., 98.)

But the appellant invokes the rule that the judgment should be based not only on the number of witnesses but also on the weight of their testimony; but this can be appreciated not only by the judge who saw and heard the witnesses testify, but also by another judge who has read and studied the latter's testimony. Thus it is that the law does not declare a decision void merely because it was rendered by a judge who neither saw nor heard the witnesses testify (see case cited *Ortiz vs. Aramburo*), and that is also the reason why this court, under the provisions of law and in the exercise of its appellate jurisdiction, is not necessarily bound to adhere to the trial court's findings of facts, but may reverse or modify such findings where the evidence so justifies, notwithstanding the fact that it had not seen or heard the witnesses testify.

In the second assignment of error, the appellant contends that the lower court erred in granting the new trial, because the petition presented failed to allege any ground or reason therefor. We note that the motion filed by the defendants (pp. 15 and 14, bill of exceptions) alleges the ground that the judgment was contrary to law and to the weight of the evidence. And it is not necessary to state such grounds at length and in detail, as was held in the case of *McCullough vs. R. Aenlle & Co.* (3 Phil., 285).

The other assignments of error are discussed together by the parties.

The appellees, however, suggest, in the first place, that the evidence presented by the plaintiff should not be taken into account because it was all adduced at the original trial of the case, and the plaintiff presented no evidence at the new trial. There is no legal ground for this theory. Section 147 of the Code of Civil Procedure clearly provides that where a new trial is granted, "the recorded evidence taken upon the former trial, so far as the same is admissible and competent to establish the issues, shall be used upon the new trial without retaking the same." And this rule was applied in the case of *Castillo vs. Sebullina and De Torres* (31 Phil., 518).

After examining the evidence, we find that the following findings of fact copied from the judgment appealed from (pp. 39 to 43, bill of exceptions), are justified:

"It has been fully established, in this court's opinion, by a great preponderance of evidence, that in September, 1925, the plaintiff and the defendants verbally organized a partnership for the purpose of engaging in the sale of 'bangus seed' in Bauan, Batangas; that to this end said partnership, composed of the plaintiff and the defendants, obtained at public auction a fishery concession belonging to said municipality; that in order that the partnership might be able to do business, each of them obligated himself to contribute to the partnership a sum equivalent to one-third of the price they would pay for the fishery concession, agreeing also to distribute the profits from the business equally among themselves; that the aforementioned fishery concession for 1928 was knocked down to the plaintiff and the defendants for the sum of P7,048 payable quarterly in advance; that the defendants performed their part of the agreement, paying into the partnership funds the total amount of P2,349.32 (P1,174.66 each), in payment of the amounts due for the first two quarters, but the plaintiff only delivered to the defendants for the same purpose, P722, thus defaulting in the payment of the remainder, P455.66, that in view of such default on the part of the plaintiff, the defendants had to pay said sum of P525.66 out of their own pockets, which sum plaintiff has not to date paid to defendants; that during the existence of the partnership, the plaintiff, without any right thereto, appropriated for his own use the amount of P2,418.01 belonging to the partnership, and notwithstanding the demands of the defendants that he return said sum, the plaintiff has not yet done so.

"The evidence also shows that the filing of the complaint at the beginning of these proceedings, and in

particular the allegation that the plaintiff was the sole owner of the fishery concession in question, and that the defendants were only employees of his, was without any justification, considering the plaintiff's own testimony, and there can be no doubt that this suit has caused the defendants to suffer the damages alleged in their amended answer.

"At the trial held on June 22, 1928, Felipe Tanchangco, municipal treasurer of Hagonoy, Bulacan, was recalled as witness, and he testified that he knew the defendants, who are wealthy residents of the municipality of Hagonoy, and that in addition to the properties they have at present, they have other business enterprises in their name, which net profits. He also testified that he knew the plaintiff, who also resides in Hagonoy, Bulacan, but as far as he knew, said plaintiff has no property and no business in his name.

"Defendant Francisco Viri was also recalled as a witness, and he testified that he personally kept the books of the partnership made of record as a part of the evidence for the defendants, and that he made the entries appearing therein as soon as he received the data. He also testified that one Lucas Agbay helped him in the bookkeeping, but that said Agbay could not be present in court on June 22d, 1928 due to illness, producing a medical certificate issued by Dr. Buendia, of Bauan, Batangas, in proof thereof. By the testimony of these witnesses it was also proved that Gabigao and La Torre, employees of the partnership were engaged not by the defendants but by the herein plaintiff himself. The evidence of record also shows, in the opinion of this court, that due to the plaintiff's refusal to contribute to the partnership funds the whole amount he had undertaken to contribute, the amount due for the last two quarters to the municipality of Bauan, Batangas, could not be paid, and hence the said municipality sued the plaintiff and the defendants for the collection thereof; and that the defendants had to pay, as in fact they did pay, to the municipality of Bauan, Batangas, the amount of the judgment rendered against them as sureties and against the plaintiff as principal obligor, with costs, amounting in all to P4,315.58, no property belonging to the plaintiff having been found because he had made fraudulent transfers of his property shortly before the writ of execution was issued in said case."

We find no merit in the assignments of error. Therefore, the judgment appealed from is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

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