

LEOPOLDO FERRER, PLAINTIFF AND APPELLEE, VS. RAMON NERI ABEJUELA, DEFENDANT AND APPELLANT.

G.R. No. 3847. December 07, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

According to the last amended complaint, this action was brought by Leopoldo Ferrer, as the legal representative of his minor children, Vicenta, Amparo, and Enrique Ferrer y Moreno.

On the 16th day of November, 1895, the defendant borrowed of Leopoldo Ferrer, the legal representative of his minor children, Vicenta, Amparo, and Enrique Ferrer y Moreno, 2,100 pesos. The purpose of the action was to recover the amount due upon the written agreement evidencing that loan.

The defendant claims that at the trial in the court below it appeared from the testimony of Leopoldo Ferrer that the money thus borrowed by the defendant from these minor children in fact belonged to the conjugal partnership formerly existing between Leopoldo Ferrer and his wife.

It is seen that this action is brought by the very persons who are named in the document of 1895 as the persons from whom the defendant borrowed the money. The court below held that the testimony above referred to, given by Leopoldo Ferrer, was of no importance, saying:

"He [the defendant] must return the money to the person with whom he contracted."

This holding is in conformity with the rule of this court in the case of Dougherty vs. Evangelista (7 Phil. Rep., 37). It was there said, at page 39:

"We consider that it is not open to the defendant, when the day of payment has come, to challenge the right which he did not question at the time of borrowing. From the Roman Catholic bishop of Nueva Segovia he took the money, and to the Roman Catholic bishop of Nueva Segovia he must repay it, whatever may have been the title under which the latter held the funds of the cofradia."

The defendant in the court below moved for a new trial on the ground that the evidence did not justify the decision. He now claims that this court has no right to review all the evidence, but only such part thereof as he saw fit to mention in his bill of exceptions. His claim is that we must decide the case upon the oral testimony given by Leopoldo Ferrer, and that we can not consider the document. which was received in evidence.

The appellant says that the only evidence which he mentioned in the bill of exceptions was this testimony of Leopoldo Ferrer, and that it was the duty of the appellee, if he wished the other evidence to be brought before this court, to procure an amendment of the bill of exceptions.

It is apparent that no such claim can be sustained. It is the duty of the appellant, and not of the appellee, to prepare a bill of exceptions. If the appellant wishes this court to review the evidence introduced at the trial below, it is his business to see that all of that evidence is brought here. He can not bring a part of it here and claim a reversal on

the ground that the evidence so presented to this court does not support the judgment.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

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