

**JOSE DE LA PEÑA Y DE RAMON, PLAINTIFF AND APPELLANT, VS.
FEDERICO HIDALGO, DEFENDANT AND APPELLANT.***G.R. No. 5486. August 17, 1910*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5486/>**TORRES, J.:**

On May 23, 1906, Jose de la Pena y de Ramon, and Vicenta de Ramon, in her own behalf and as the legal guardian of her son Roberto de la Pena, filed in the Court of First Instance of Manila a written complaint against Federico Hidalgo, Antonio Hidalgo, and Francisco Hidalgo, and, after the said complaint, already amended, had been answered by the defendants Antonio and Francisco Hidalgo, and the other defendant, Federico Hidalgo, had moved for the dismissal of this complaint, the plaintiff, Jose de la Pena y de Ramon, as the judicial administrator of the estate of the deceased Jose de la Pena y Gomiz, with the consent of the court filed a second amended complaint prosecuting his action solely against Federico Hidalgo, who answered the same in writing on the 21st of May and at the same time filed a counterclaim, which was also answered by the defendant.

On October 22, 1907, the case was brought up for hearing and oral testimony was adduced by both parties, the exhibits introduced being attached to the record. In view of such testimony and of documentary evidence, the court, on March 24, 1908, rendered judgment in favor of the plaintiff-administrator for the sum of P13,606.19 and legal interest from the date of the filing of the complaint on May 24, 1906, and the costs of the trial.

Both the plaintiff and the defendant filed notice of appeal from this judgment and also asked for the annulment of the same and for a new trial, on the ground that the evidence did not justify the said judgment and that the latter was contrary to law. The defendant, on April 1, 1908, presented a written motion for a new hearing, alleging the discovery of new evidence favorable to him and which would necessarily influence the decision of this litigation, and that he was unable to discover such evidence or to introduce it at the trial of the case, notwithstanding the fact that he had used all due diligence. His petition was accompanied by affidavits from Attorney Eduardo Gutierrez Repide and Federico Hidalgo, and was granted by order of the court of the 4th of April.

At this stage of the proceedings and on August 10, 1908, the plaintiff Pena y De Ramon filed a third amended complaint, with the permission of the court, alleging, among other things, as a first cause of action, that during the period of time from November 12, 1887, to January 7, 1904, when Federico Hidalgo had possession of and administered the following properties, to wit; one house and lot at No. 48 Calle San Luis; another house and lot at No. 6 Calle Cortada; another house and lot at No. 56 Calle San Luis, and a fenced lot on the same street, all of the district of Ermita, and another house and lot at No. 81 Calle Looban de Paco, belonging to his principal, Jose de la Pena y Gomiz, according to the power of attorney executed in his favor and exhibited with the complaint under letter A, the defendant, as such agent, collected the rents and income from the said properties, amounting to P50,244, which sum, collected in partial amounts and on different dates, he should have deposited, in accordance with the verbal agreement between the deceased and himself, the defendant, in the general treasury of the Spanish Government at an interest of 5 per cent per annum, which interest on accrual was likewise to be deposited in order that it also might bear interest; that the defendant did not remit or pay to Jose de la Pena y Gomiz, during the

latter's lifetime, nor to any representative of the said De la Pena y Gomiz, the sum aforestated nor any part thereof, with the sole exception of P1,289.03, nor has he deposited the unpaid balance of the said sum in the treasury, according to agreement, wherefore he has become liable to his principal and to the defendant-administrator for the said sum, together with its interest, which amounts to P72,548.24 and that, whereas the defendant has not paid over all nor any part of the last-mentioned sum, he is liable for the same, as well as for the interest thereon at 6 per cent per annum from the time of the filing of the complaint, and for the costs of the suit.

In the said amended complaint, the plaintiff alleged as a second cause of action: that on December 9, 1887, Gonzalo Tuason deposited in the general treasury of the Spanish Government, to the credit of Peña y Gomiz, the sum of 6,360 pesos, at 5 per cent interest per annum, and on December 20, 1888, the defendant, as the agent of Peña y Gomiz, withdrew the said amount with its interest, that is, 6,751.60 pesos, and disposed of the same for his own use and benefit, without having paid all or any part of the said sum to Peña y Gomiz, or to the plaintiff after the latter's death, notwithstanding the demands made upon him: wherefore the defendant now owes the said sum of 6,751.60 pesos, with interest at the rate of 5 per cent per annum, compounded annually, from the 20th of December, 1888, to the time of the filing of this complaint, and from the latter date at 6 per cent, in accordance with law.

The complaint recites as a third cause of action: that, on or about November 25, 1887, defendant's principal, Pena y Gomiz, on his voyage to Spain, remitted from Singapore, one of the ports of call, to Father Ramon Caviedas, a Franciscan friar residing in this city, the sum of 6,000 pesos with the request to deliver the same, which he did, to defendant, who, on receiving this money, appropriated it to himself and converted, it to his own use and benefit, since he only remitted to Pena y Gomiz in Spain, by draft, 737.24 pesos, on December 20, 1888; and, later, on December 21, 1889, he likewise remitted by another draft 860 pesos, without having returned or paid the balance of the said sum, notwithstanding the demands made upon him so to do: wherefore the defendant owes to the plaintiff, for the third cause of action, the sum of P4,402.76, with interest at the rate of 5 per cent per annum, compounded yearly, to the time of the filing of the complaint and with interest at 6 per cent from that date, as provided by law.

As a fourth cause of action the plaintiff alleges that, on or about January 28, 1904, on his arrival from Spain and without having any knowledge or information of the true condition of affairs relative to the property of the deceased Pena y Gomiz and its administration, he delivered and paid to the defendant at his request the sum of P2,000, derived from the property of the deceased, which sum the defendant has not returned notwithstanding the demands made upon him so to do.

Wherefore the plaintiff petitions the court to render judgment sentencing the defendant to pay, as the first cause of action, the sum of P72,548.24, with interest thereon at the rate of 6 per cent per annum from May 24, 1906, the date of the filing of the complaint, and the costs; as a second cause of action, the sum of P15,774.19, with interest at the rate of 6 per cent per annum from the said date of the filing of the complaint, and costs; as a third cause of action, P9,811.13, with interest from the aforesaid date, and costs; and, finally, as a fourth cause of action, he prays that the defendant be sentenced to refund the sum of P2,000, with interest thereon at the rate of 6 per cent per annum from the 23d of January, 1904, and to pay the costs of trial.

The defendant, Federico Hidalgo, in his answer to the third amended complaint, sets forth: That he admits the second, third, and fourth allegations contained in the first, second, third, and fourth causes of action, and denies generally and specifically each one and all of the allegations contained in the complaint, with the exception of those expressly admitted in his answer; that, as a special defense against the first cause of action, he, the defendant, alleges that on November 18, 1887, by virtue of the powers conferred upon him by Peña y Gomiz, he took charge of the administration of the latter's property and administered the same until December 31, 1893,

when for reasons of health he ceased to discharge the duties of said position; that during the years 1889, 1890, 1891, and 1892, the defendant continually by letter requested Peña y Gomiz, his principal, to appoint a person to substitute him in the administration of the latter's property, inasmuch as the defendant, for reasons of health, was unable to continue in his trust; that, on March 22, 1894, the defendant Federico Hidalgo, because of serious illness, was absolutely obliged to leave these Islands and embarked on the steamer Isla de Luzon for Spain, on which date the defendant notified his principal that, for the reason aforestated, he had renounced his powers and turned over the administration of his property to Antonio Hidalgo, to whom he should transmit a power of attorney for the fulfillment, in due form, of the trust that the defendant had been discharging since January 1, 1894, or else execute a power of attorney in favor of such other person as he might deem proper;

That prior to the said date of March 22, the defendant came, rendered accounts to his principal, and on the date when he embarked for Spain rendered the accounts pertaining to the years 1892 and 1893, which were those that yet remained to be forwarded, and transmitted to him a general statement of accounts embracing the period from November 18, 1887, to December 31, 1893, with a balance of 6,774.50 pesos in favor of Peña y Gomiz, which remained in the control of the acting administrator, Antonio Hidalgo; that from the 22d of March, 1894, when the defendant left these Islands, to the date of his answer to the said complaint, he has not again intervened nor taken any part directly or indirectly in the administration of the property of Peña y Gomiz, the latter's administrator by express authorization having been Antonio Hidalgo, from January 1, 1894, to October, 1902, who, on this latter date, delegated his powers to Francisco Hidalgo, who in turn administered the said property until January 7, 1904; that the defendant, notwithstanding his having rendered, in 1894, all his accounts to Jose Peña y Gomiz, again rendered to the plaintiff in 1904 those pertaining to the period from 1887 to December 31, 1893, which accounts the plaintiff approved without any protest whatever and received to his entire satisfaction the balance due and the vouchers and documents relating to the property of the deceased Peña y Gomiz and issued to the defendant the proper acquittance therefor.

As a special defense to the second cause of action, the defendant alleged that, on December 9, 1886, Jose de la Peña y Gomiz himself deposited in the caja general de depositos (General Deposit Bank) the sum of 6,000 pesos, at 6 per cent interest for the term of one year, in two deposit receipts of 3,000 pesos each, which two deposit receipts, with the interest accrued thereon, amounted to 6,360 pesos, and were collected by Gonzalo Tuason, through indorsement by Peña y Gomiz, on December 9, 1887, and on this same date Tuason, in the name of Peña y Gomiz, again deposited the said sum of 6,360 pesos in the General Deposit Bank, at the same rate of interest, for the term of one year and in two deposit receipts of 3,180 pesos each, registered under Nos. 1336 and 1337; that, on December 20, 1888, Father Ramon Caviedas, a Franciscan friar, delivered to the defendant, Federico Hidalgo, by order of De la Peña y Gomiz, the said two deposit receipts with the request to collect the interest due thereon viz., 741.60 pesos and to remit it by draft on London, drawn in favor of De la Peña y Gomiz, to deposit again the 6,000 pesos in the said General Deposit Bank, for one year, in a single deposit, and in the latter's name, and to deliver to him, the said Father Caviedas, the corresponding deposit receipt and the draft on London for their transmittal to Peña y Gomiz: all of which was performed by the defendant who acquired the said draft in favor of De la Peña y Gomiz from the Chartered Bank of India, Australia and China, on December 20, 1888, and delivered the draft, together with the receipt from the General Deposit Bank, to Father Caviedas, and on the same date, by letter, notified Peña y Gomiz of the transactions executed; that on December 20, 1889, the said Father Ramon Caviedas delivered to the defendant, Federico Hidalgo, by order of Peña y Gomiz, the aforesaid deposit receipt from the General Deposit Bank, with the request to remit, in favor of his constituent, the interest thereon, amounting to 360 pesos, besides 500 pesos of the capital, that is 860 pesos in all, and to again deposit the rest, 5,500 pesos, in the General Deposit Bank for another year in Peña y Gomiz's own name, and to deliver to Father Caviedas the deposit receipt and the draft on London, for their transmittal to his constituent; all of which the

defendant did; he again deposited the rest of the capital, 5,500 pesos, in the General Deposit Bank, in the name of Peña y Gomiz, for one year at 5 per cent interest, under registry number 3,320, and obtained from the house of J. M. Tuason & Co. a draft on London for 860 pesos in favor of Peña y Gomiz, on December 21, 1889, and thereupon delivered the said receipt and draft to Father Caviedas, of which acts, when performed, the defendant advised Peña y Gomiz by letter of December 24, 1889; and that, on December 20, 1890, the said Father Ramon Caviedas delivered to the defendant, by order of Peña y Gomiz, the said deposit receipt for 5,500 pesos with the request that he withdraw from the General Deposit Bank the capital and accrued interest, which amounted all together to 5,775 pesos, and that he deliver this amount to Father Caviedas, which he did, in order that it might be remitted to Peña y Gomiz.

The defendant denies each of the allegations contained in the third cause of action, and avers that they are all false and calumnious.

He likewise makes a general and specific denial of all the allegations of the fourth cause of action.

As a counterclaim the defendant alleges that Jose Peña y Gomiz owed and had not paid the defendant, up to the date of his death, the sum of 4,000 pesos, with interest at 6 per cent per annum, and 3,600 pesos, without interest, the said capital and interest amounting all together, on January 15, 1904, to 11,000 pesos, and on the plaintiff's being presented with the receipt subscribed by his father, Peña y Gomiz, on the said date of January 15th, and evidencing his debt, plaintiff freely and voluntarily offered to exchange for the said receipt another document executed by him, and transcribed in the complaint. Defendant further alleges that, up to the date of his counterclaim, the plaintiff has not paid him the said sum, with the exception of 2,000 pesos. Wherefore the defendant prays the court to render judgment absolving him from the complaint with the costs against the plaintiff, and to adjudge that the latter shall pay to the defendant the sum of 9,000 pesos, which he still owes to defendant, with legal interest thereon from the date of the counterclaim, to wit, May 21, 1907, and to grant such other and further relief as may be just and equitable.

On the 25th of September, 1908, and subsequent dates, the new trial was held; oral testimony was adduced by both parties, and the documentary evidence was attached to the record of the proceedings, which show that the defendant objected and took exception to the introduction of certain oral and documentary evidence produced by the plaintiff. On February 26, 1909, the court in deciding the case found that the defendant, Federico Hidalgo, as administrator of the estate of the deceased Peña y Gomiz, actually owed the plaintiff, on the date of the filing of the complaint, the sum of P37,084.93; that the plaintiff was not entitled to recover any sum whatever from the defendant for the alleged second, third, and fourth causes of action; that the plaintiff actually owed the defendant, on the filing of the complaint, the sum of P10,155, which the defendant was entitled to deduct from the sum owing by him to the plaintiff. Judgment was therefore entered against the defendant, Federico Hidalgo, for the payment of P26,629.93, with interest thereon at the rate of 6 per cent per annum from May 23, 1906, and the costs of the trial.

Both parties filed written exceptions to this judgment and asked, separately, for its annulment and that a new trial be ordered, on the grounds that the findings of fact contained in the judgment were not supported nor justified by the evidence produced, and because the said judgment was contrary to law, the defendant stating in writing that his exception and motion for a new trial referred exclusively to that part of the judgment that was condemnatory to him. By order of the 10th of April, 1909, the motions made by both parties were denied, to which they excepted and announced their intention to file their respective bills of exceptions.

By a written motion of the 24th of March, 1909, the plaintiff prayed for the execution of the said judgment, and the defendant being informed thereof solicited a suspension of the issuance of the corresponding writ of execution

until his motion for a new trial should be decided or his bill of exceptions for the appeal be approved, binding himself to give such bond as the court might fix. The court, therefore, by order of the 25th of the same month, granted the suspension asked for, conditioned upon the defendants giving a bond, fixed at P34,000 by another order of the same date, to guarantee compliance with the judgment rendered should it be affirmed, or with any other decision that might be rendered in the case by the Supreme Court. This bond was furnished by the defendant on the 26th of the same month.

On April 16 and May 4, 1909, the defendant and the plaintiff filed their respective bills of exceptions, which were certified to and approved by order of May 8th and forwarded to the clerk of this court.

Before proceeding to examine the disputed facts and to make such legal findings as follow from a consideration of the same and of the questions of law to which such facts give rise, and for the purpose of avoiding confusion and obtaining the greatest clearness and an easy comprehension of this decision, it is indispensable to premise: First, that, as before related, the original and first complaint filed by the plaintiff was drawn against Federico Hidalgo, Antonio Hidalgo, and Francisco Hidalgo, the three persons who had successively administered the property of Jose de la Peña y Gomiz, now deceased; but afterwards the action was directed solely against Federico Hidalgo, to the exclusion of the other defendants, Antonio and Francisco Hidalgo, in the second and third amended complaints, the latter of the date of August 10, 1908, after the issuance by the court of the order of April 4th of the same year, granting the new trial solicited by the defendant on his being notified of the ruling of the 24th of the previous month of March; second, that the administration of the property mentioned, from the time its owner left these Islands and returned to Spain, lasted from November 18, 1887, to January 7, 1904; and third, that, the administration of the said Federico, Antonio, and Francisco Hidalgo, having lasted so long, it is necessary to divide it into three periods in order to fix the time during which they respectively administered De la Peña's property: During the first period, from November 18, 1887, to December 31, 1893, the property of the absent Jose de la Peña y Gomiz was administered by his agent, Federico Hidalgo, under power of attorney; during the second period, from January 1, 1894, to September, 1902, Antonio Hidalgo administered the said property, and during the third period, from October, 1902, to January 7, 1904, Francisco Hidalgo was its administrator.

Before Jose de la Peña y Gomiz embarked for Spain, on November 12, 1887, he executed before a notary a power of attorney in favor of Federico Hidalgo, Antonio L. Rocha, Francisco Roxas and Isidro Llado, so that, as his agents, they might represent him and administer, in the order in which they were appointed, various properties he owned and possessed in Manila. The first agent, Federico Hidalgo, took charge of the administration of the said property on the 18th of November, 1887.

After Federico Hidalgo had occupied the position of agent and administrator of De la Peña's property for several years, the former wrote to the latter requesting him to designate a person who might substitute him in his said position in the event of his being obliged to absent himself from these Islands, as one of those appointed in the said power of attorney had died and the others did not wish to take charge of the administration of their principal's property. The defendant, Hidalgo, stated that his constituent, Peña y Gomiz, did not even answer his letters, to approve or object to the former's accounts, and did not appoint or designate another person who might substitute the defendant in his administration of his constituent's property. These statements were neither denied nor proven to be untrue by the plaintiff, Peña y de Ramon, nor does the record show any evidence tending to disapprove them, while it does show, attached to the record and exhibited by the defendant himself, several letters written by Hidalgo and addressed to Peña y Gomiz, which prove the said statements, and also a letter from the priest Pedro Gomiz, a relative of the deceased Jose de la Peña y Gomiz, addressed to Federico Hidalgo, telling the latter that the writer had seen among the papers of the deceased several letters from the agent, Federico Hidalgo, in which the latter requested the designation of a substitute, because he had to leave this country for Spain, and also asked

for the approval or disapproval of the accounts of his administration which had been transmitted to his constituent, Peña y Gomiz.

For reasons of health and by order of his physician, Federico Hidalgo was obliged, on March 22, 1894, to embark for Spain, and, on preparing for his departure, he rendered the accounts of his administration corresponding to the last quarters, up to December 31, 1893, not as yet transmitted, and forwarded them to his constituent with a general statement of all the partial balances, which amounted to the sum total of 6,774.50 pesos, by letter of the date of March 22, 1894, addressed to his principal, Peña y Gomiz. In this letter the defendant informed the latter of the writer's intended departure from this country and of his having provisionally turned over the administration of the said property to his cousin, Antonio Hidalgo, upon whom the writer had conferred a general power of attorney, but asking, in case that this was not sufficient, that Peña send to Antonio Hidalgo a new power of attorney.

This notification is of the greatest importance in the decision of this case. The plaintiff avers that he found no such letter among his father's papers after the latter's death, for which reason he did not have it in his possession, but on the introduction of a copy thereof by the defendant at the trial, it was admitted without objection by the plaintiff (p. 81 of the record); wherefore, in spite of the denial of the plaintiff and of his averment of his not having found the said original among his father's papers, justice demands that it be concluded that this letter of the 22d of March, 1894, was sent to, and was received by Jose de la Peña y Gomiz, during his lifetime, for its transmittal, with inclosure of the last partial accounts of Federico Hidalgo's administration and of the general resume of balances, being affirmed by the defendant, the fact of the plaintiff's having found among his deceased father's papers the said resume which he exhibited at the trial, shows conclusively that it was received by the deceased, as well as the letter of transmittal of the 22d of March, 1894, one of the several letters written by Hidalgo, which the said priest, Father Gomiz, affirms that he saw among the papers of the deceased Peña, the dates of which ran from 1890 to 1894; and it is also shown by the record that the defendant Hidalgo positively asserted that the said letter of March was the only one that he wrote to Peña during the year 1894: From all of which it is deduced that the constituent, Peña y Gomiz, was informed of the departure of his agent from these Islands for reasons of health and because of the physician's advice, of the latter's having turned over the administration of the property to Antonio Hidalgo, and of his agent's, the defendant's, petition that he send a new power of attorney to the substitute.

The existence, among the papers of the deceased, of the aforementioned statement of all accounts rendered, which comprise the whole period of the administration of the property of the constituent by the defendant, Federico Hidalgo, from November 18, 1887, to December 31, 1893 a statement transmitted with the last partial accounts which were a continuation of those already previously received - and the said letter of March 22, 1894, fully prove that Jose de la Peña y Gomiz also received the said letter, informed himself of its contents, and had full knowledge that Antonio Hidalgo commenced to administer his property from January of that year. They likewise prove that he did not see fit to execute a new power of attorney in the latter's favor, nor to appoint or designate a new agent to take charge of the administration of his property that had been abandoned by the defendant, Federico Hidalgo.

From the procedure followed by the agent, Federico Hidalgo, it is logically inferred that he had definitely renounced his agency and that the agency was duly terminated, according to the provisions of article 1732 of the Civil Code, because, although in the said letter of March 22, 1894, the word "renounce" was not employed in connection with the agency or power of attorney executed in his favor, yet when the agent informs his principal that for reasons of health and by medical advice he is about to depart from the place where he is exercising his trust and where the property subject to his administration is situated, abandons the property, turns it over to a third party, without stating when he may return to take charge of the administration, renders accounts of its revenues up

to a certain date, December 31, 1893, and transmits to his principal a general statement which summarizes and embraces all the balances of his accounts since he began to exercise his agency to the date when he ceased to hold his trust, and asks that a power of attorney in due form be executed and transmitted to another person who substituted him and took charge of the administration of the principal's property, it is then reasonable and just to conclude that the said agent expressly and definitely renounced his agency, and it may not be alleged that the designation of Antonio Hidalgo to take charge of the said administration was that of a mere provisional substitution during said agent's absence, which indeed lasted for more than fifteen years, for such an allegation would be in conflict with the nature of the agency.

This renouncement was confirmed by the subsequent procedure, as well of the agent as of the principal, until the latter died, on August 2, 1902, since the principal Peña did not disapprove the designation of Antonio Hidalgo, nor did he appoint another, nor send a new power of attorney to the same, as he was requested to do by the previous administrator who abandoned his charge; and the trial record certainly contains no proof that the defendant, since he left these Islands in March, 1894, until January, 1904, when he returned to this city, took any part whatever, directly or even indirectly, in the said administration of the principal's property, while Antonio Hidalgo was the only person who was in charge of the aforementioned administration of De la Peña y Gomiz's property and the one who was to represent the latter in his business affairs, with his tacit consent. From all of which it is perfectly concluded, (unless there be proof to the contrary, and none appears in the record), that Antonio Hidalgo acted in the matter of the administration of the property of Jose de la Peña y Gomiz by virtue of an implied agency derived from the latter, in accordance with the provisions of article 1710 of the Civil Code.

The proof of the tacit consent of the principal, Jose de la Peña y Gomiz, the owner of the property administered - a consent embracing the essential element of a legitimate agency, article 1710 before cited consists in that Peña, knowing that on account of the departure of Federico Hidalgo from the Philippines for reasons of health, Antonio Hidalgo took charge of the administration of his property, for which Federico, his agent, who was giving up his trust, requested him to send a new power of attorney in favor of the said Antonio Hidalgo, nevertheless he, Jose de la Peña y Gomiz, saw fit not to execute nor transmit any power of attorney whatever to the new administrator of his property and remained silent for nearly nine years; and, in that the said principal, being able to prohibit the party designated, Antonio Hidalgo, from continuing in the exercise of his position as administrator, and being able to appoint another agent, did neither the one nor the other. Wherefore, in permitting Antonio Hidalgo to administer his property in this city during such a number of years, it is inferred, from the procedure and silence of the owner thereof, that he consented to have Antonio Hidalgo administer his property, and in fact created in his favor an implied agency, as the true and legitimate administrator.

Antonio Hidalgo administered the aforementioned property of De la Peña y Gomiz, not in the character of business manager, but as agent by virtue of an implied agency vested in him by its owner who was not unaware of the fact, who knew perfectly well that the said Antonio Hidalgo took charge of the administration of that property on account of the obligatory absence of his previous agent for whom it was an impossibility to continue in the discharge of his duties.

It is improper to compare the case where the owner of the property is ignorant of the officious management of the third party, with the case where he had perfect knowledge of the management and administration of the same, which administration and management, far from being opposed by him was indeed consented to by him for nearly nine years, as was done by Peña y Gomiz. The administration and management, by virtue of an implied agency, is essentially distinguished from the management of another's business, in this respect, that while the former originates from a contract, the latter is derived only from a quasi-contract. The implied agency is founded on the lack of contradiction or opposition, which constitutes simultaneous agreement on the part of the presumed

principal to the execution of the contract, while in the management of another's business there is no simultaneous consent, either express or implied, but a fiction or presumption of consent because of the benefit received.

The distinction between an agency and a business management has been established by the jurisprudence of the supreme court (of Spain) in its noteworthy decision of the 7th of July, 1881, setting up the following doctrine:

"That laws 28 and 32, title 12, Partida 3, refer to the expenses incurred in things not one's own and without power of attorney from those to whom they belong, and therefore the said laws are not applicable to this suit where the petition of the plaintiff is founded on the verbal request made to him by the defendant or the latter's employees to do some hauling, and where, consequently, questions that arise from a contract that produces reciprocal rights and duties can not be governed by the said laws."

It being absolutely necessary for Federico Hidalgo to leave this city and abandon the administration of the property of his principal, Peña y Gomiz, for reasons of health, he made delivery of the property and of his administration to Antonio Hidalgo and gave notice of what he had done to his constituent, Pena, in order that the latter might send a new power of attorney to Antonio Hidalgo, the person charged with the administration of the property. Peña y Gomiz did not send the power of attorney requested, did not oppose or prohibit Antonio Hidalgo's continuing to administer his property, and consented to his doing so for nearly nine years. Consequently the second administrator must be considered as a legitimate agent of the said principal, as a result of the tacit agreement on the latter's part, and the previous agent, who necessarily abandoned and ceased to hold his position, as completely free and clear from the consequences and results of the second administration, continued by a third party and accepted by his principal; for it is a fact, undenied nor even doubted, that the said first administrator had to abandon the country and the administration of Pena's property for reasons of health, which made it impossible for him to continue in the discharge of his duties without serious detriment to himself, his conduct being in accordance with the provisions of article 1736 of the Civil Code.

In the power of attorney executed by Peña y Gomiz in this city on November 12, 1887, in favor of, among others, Federico Hidalgo, no authority was conferred upon the latter by his principal to substitute the power or agency in favor of another person; wherefore the agent could not, by virtue of the said power of attorney, appoint any person to substitute or relieve him in the administration of the principal's property, for the lack of a clause of substitution in the said instrument authorizing him so to do.

The designation of Antonio Hidalgo was not made as a result of a substitution of the power of attorney executed by Pena in favor of the defendant, but in order that the principal's property should not be abandoned, inasmuch as, for the purposes of the discharge of the duties of administrator of the same, the agent, who was about to absent himself from this city, requested his principal to send to the party, provisionally designated by the former, a new power of attorney, for the reason that the general power of attorney which Federico Hidalgo had left, executed in favor of his cousin Antonio Hidalgo, was so executed in his own name and for his own affairs, and not in the name of Pena y Gomiz, as the latter had not authorized him to take such action.

If the owner of the property provisionally administered at the time by Antonio Hidalgo, saw fit to keep silent, even after having received the aforesaid letter of March 22, 1894, and during the lapse of nearly ten years, without countermanding or disapproving the designation of the person who took charge of the administration of his property, knowing perfectly well that his previous agent was obliged, by sickness and medical advice to leave this city where such property was situated, he is not entitled afterwards to hold amenable the agent who had to abandon this country for good and valid reasons, inasmuch as the latter immediately reported to his principal the action taken by himself and informed him of the person who had taken charge of the administration of his property, which otherwise would have been left abandoned. From the time of that notification the agent who, for legitimate cause, ceased to exercise his trust, was free and clear from the results and consequences of the

management of the person who substituted him with the consent, even only a tacit one, of the principal, inasmuch as the said owner of the property could have objected to, could have prohibited the continuance in the administration thereof, of the party designated by his agent, and could have opportunely appointed another agent or mandatory of his own confidence to look after his property, and if he did not do so, he is obliged to abide by the consequences of his negligence and abandonment and has no right to claim damages against his previous agent, who complied with his duty and did all that he could and ought to have done, in accordance with the law.

The defendant Federico Hidalgo, having ceased in his administration of the property belonging to Peña y Gomiz, on account of physical impossibility, which cessation he duly reported to his principal and also informed him of the person who relieved him as such administrator, and for whom he had requested a new power of attorney, is only liable for the results and consequences of his administration during the period when the said property was in his charge, and therefore his liability can not extend beyond the period of his management, as his agency terminated by the tacit or implied approval of his principal, judging from the latter's silence in neither objecting to nor in anywise prohibiting Antonio Hidalgo's continuing to administer his property, notwithstanding the lapse of the many years since he learned by letter of the action taken by his previous agent, Federico Hidalgo.

Moreover, this latter, in announcing the termination of his agency, transmitted the last partial accounts that he had not rendered, up to December 31, 1893, together with a general statement of all the resulting balances covering the period of his administration, and Jose de la Peña y Gomiz remained silent and offered no objection whatever to the said accounts and did not manifest his disapproval of the same nor of the general statement, which he must have received in April or May, 1894, up to the time he died, in August, 1902; and when his son, the plaintiff, came to this city in company with the defendant, Federico Hidalgo, they traveled together from Spain and arrived in Manila during one of the early days of January, 1904, the former, for the purpose of taking charge of the estate left by his father, and after the plaintiff had examined the accounts kept by Federico Hidalgo, his deceased father's first agent, he approved them and therefore issued in favor of the defendant the document, Exhibit 5, found on page 936 of the second record of trial, dated January 15, 1904, in which Jose de la Pena y de Ramon acknowledged having received from his deceased father's old agent the accounts, balances, and vouchers to his entire satisfaction, and gave an acquittance in full settlement of the administration that had been commended to the defendant Hidalgo.

This document, written in the handwriting of the plaintiff, Peña y de Ramon, appears to be executed in a form considered to be sufficient by its author, and, notwithstanding the allegations of the said plaintiff, the record contains no proof of any kind of Federico Hidalgo's having obtained it by coercion, intimidation, deceit, or fraud; neither is it shown to have been duly impugned as false, criminally or civilly, for the statements therein made by the plaintiff are too explicit and definite to allow, without proof of some vice or defect leading to nullification, of its being considered as void and without value or legal effect.

With respect to the responsibility contracted by the defendant, as regards the payment of the balance shown by the accounts rendered by him, it is not enough that the agent should have satisfactorily rendered the accounts pertaining to his trust, but it is also indispensable that it be proved that he paid to his principal, or to the owner of the property administered, the balance resulting from his accounts, This balance, which was allowed in the judgment appealed from, notwithstanding the allegations of the plaintiff, which were not deemed as established, amounts to P6,774.50, according to the proofs adduced at the trial. It was the imperative duty of the administrator, Federico Hidalgo, to transmit this sum to his principal, Jose de la Peña y Gomiz, as the final balance of the accounts of his administration, struck on December 31, 1893, and by his failure so to do and his delivery of the said sum to his successor, Antonio Hidalgo, he acted improperly, and must pay the same to the plaintiff.

Antonio Hidalgo took charge of the administration of Peña y Gomiz's property from January, 1894, to September,

1902, that is, during the second period of administration of the several properties that belonged to the deceased Pena.

Although the plaintiff, in his original complaint, had included the said Antonio Hidalgo as one of the responsible defendants, yet he afterwards excluded him, as well from the second as from the third amended complaint, and consequently the liability that might attach to Antonio Hidalgo was not discussed, nor was it considered in the judgment of the lower court; neither can it be in this decision, for the reason that the said Antonio Hidalgo is not a party to this suit. However, the said liability of Antonio Hidalgo is imputed to Federico Hidalgo, and so it is that, in the complaint, the claim is made solely against Federico Hidalgo, in order that the latter might be adjudged to pay the amounts which constitute the balance owing from him who might be responsible, Antonio Hidalgo, during the period of this latter's administration.

Federico Hidalgo, in our opinion, could not and can not be responsible for the administration of the property that belonged to the deceased Peña y Gomiz, which was administered by Antonio Hidalgo during eight years and some months, that is, during the second period, because of the sole fact of his having turned over to the latter the administration of the said property on his departure from this city for Spain. Neither law nor reason obliged Federico Hidalgo to remain in this country at the cost of his health and perhaps of his life, even though he were the administrator of certain property belonged to Peña y Gomiz, since the care of the property and interests of another does not require sacrifice on the part of the agent of his own life and interests. Federico Hidalgo was obliged to deliver the said property belonging to Peña y Gomiz to Antonio Hidalgo, for good and valid reasons, and in proceeding in the manner aforesaid he complied with the duty required of him by law and justice and acted as a diligent agent. If the principal, Jose de la Peña y Gomiz, the owner of the property mentioned, although informed opportunely of what had occurred saw fit to keep silent, not to object to the arrangements made, not to send the power of attorney requested by Federico Hidalgo in favor of Antonio Hidalgo, and took no action nor made any inquiry whatever to ascertain how his property was being administered by the second agent, although to the time of his death more than eight years had elapsed, the previous agent, who ceased in the discharge of his duties, can in nowise be held liable for the consequences of such abandonment, nor for the results of the administration of property by Antonio Hidalgo, for the reason that, since his departure from this country, he has not had the least intervention nor even indirect participation in the aforementioned administration of the said Antonio Hidalgo who, under the law, was the agent or administrator by virtue of an implied agency, which is equivalent in its results to an express agency, executed by the owner of the property. Consequently, Federico Hidalgo is not required to render accounts of the administration corresponding to the second period mentioned, nor to pay the balance that such accounts may show to be owing.

At the first trial of this cause, Federico Hidalgo, it appears, testified under oath that his principal, Jose Peña y Gomiz, did not agree to the appointment of Antonio Hidalgo, chosen by the witness, nor to such appointee's taking charge' of the administration of his property. Aside from the fact that the trial record does not show how nor on what date Pena expressed such disagreement, it is certain that, in view of the theory of defense maintained by the defendant in this suit and his own denial of his having given such a negative answer, we fail to understand how the defendant Hidalgo could have said, by means of a no, that his principal did not agree to the appointment of the said Antonio Hidalgo, and the intercalation of the word no in the statement quoted is the more inexplicable in that the attorney for the adverse party moved that the said answer be stricken from the record, as he objected to its appearing therein.

Were it true that the principal, Jose de la Peña y Gomiz, had neither agreed to the designation of Antonio Hidalgo, nor to the latter's administering his property, he would immediately have appointed another agent and administrator, since he knew that Federico Hidalgo had left the place where his property was situated and that it

would be abandoned, had he not wished that Antonio Hidalgo should continue to administer it. If the latter continued in the administration of the property for so long a time, nearly nine years, it was because the said Pena agreed and gave his consent to the acts performed by his outgoing agent, and for this reason the answer given by Federico Hidalgo, mistakenly, or not, that his principal, Pena, did not agree to the appointment of Antonio Hidalgo, is immaterial and does not affect the terms of this decision.

If the defendant is not responsible for the results of the administration of the said property administered by Antonio Hidalgo during the second period before referred to, neither is he responsible for that performed during the third period by Francisco Hidalgo, inasmuch as the latter was not even chosen by the defendant who, on October 1, 1902, when Francisco Hidalgo took charge of Peña's property that had been turned over to him by Antonio Hidalgo, was in Spain and had no knowledge of nor intervention in such delivery: wherefore the defendant can in no manner be obliged to pay to the plaintiff any sum that may be found owing by Francisco Hidalgo.

The trial judge taking into consideration that, by the evidence adduced at the hearing, it was proved that Francisco Hidalgo rendered accounts to the plaintiff of the administration of the property in question during the said third period, that is, for one year, three months, and some days, and that he delivered to the plaintiff the balance of 1,280.03 pesos, for which the latter issued to the said third administrator the document Exhibit 2, written in his own handwriting under date of January 7, 1904, and the signature which, affixed by himself, he admitted in his testimony was authentic, on its being exhibited to him found that the plaintiff, Peña y de Ramon, was not entitled to recover any sum whatever for the rents pertaining to the administration of his property by the said Francisco Hidalgo.

All the reasons hereinbefore given relate to the first cause of action, whereby claim is made against Federico Hidalgo for the payment of the sum of P72,548.24 and interest at the rate of 6 per cent per annum, and they have decided some of the errors assigned by the appellants in their briefs to the judgment appealed from.

Two amounts are claimed which have one and the same origin, yet are based on two causes of action, the second and the third alleged by the plaintiff; and although the latter, afterwards convinced by the truth and of the impropriety of his claim, had to waive the said third cause of action during the second hearing of this cause (pp. 57 and 42 of the record of the evidence), the trial judge, on the grounds that the said second and third causes of action refer to the same certificates of deposit of the treasury of the Spanish Government, found, in the judgment appealed from, that the plaintiff was not entitled to recover anything for the aforesaid second and third causes of action - a finding that is proper and just, although qualified as erroneous by the plaintiff in his brief.

It appears, from the evidence taken in this cause, that Jose de la Peña y Gomiz, according to the certificate issued by the chief of the division of archives (p. 982 of the record), did not again during his lifetime, after having in 1882 withdrawn from the General Deposit Bank of the Spanish Government a deposit of 17,000 pesos and its interest, deposit any sum therein until December 9, 1886, when he deposited two amounts of 3,000 pesos each, that is, 6,000 pesos in all, the two deposit receipts for the same being afterwards endorsed in favor of Gonzalo Tuason. The latter, on December 9, 1887, withdrew the deposit and took out the said two amounts, together with the interest due thereon, and on the same date redeposited them in the sum of 6,360 pesos at 5 per cent per annum in the name of Jose de la Peña y Gomiz. On the 20th of December of the following year, 1888, the defendant Hidalgo received from his principal, Peña y Gomiz, through Father Ramon Caviedas, the two said letters of credit, in order that he might withdraw from the General Deposit Bank the two amounts deposited, together with the interest due thereon, amounting to 741 pesos, and with this interest purchase a draft on London in favor of its owner and then redeposit the original capital of 6,000 pesos. This, the defendant Hidalgo did and then delivered the draft and the deposit receipt to Father Caviedas, of all of which transactions he informed his principal by letter

of the same date, transcribed on page 947 of the second trial record.

In the following year, 1889, Father Ramon Caviedas again delivered to the defendant Hidalgo the aforementioned deposit receipt with the request to withdraw from the General Deposit Bank the sum deposited and to purchase a draft of 860 pesos on London in favor of their owner, Jose de la Peña y Gomiz, and, after deducting the cost of the said draft from the capital and interest withdrawn from deposit, amounting to 6,360 pesos, to redeposit the remainder, 5,500 pesos, in the bank mentioned, in accordance with the instructions from Peña y Gomiz: All of which was done by the defendant Hidalgo, who delivered to Father Caviedas the receipt for the new deposit of 5,500 pesos as accredited by the reply-letter, transcribed on page 169 of the record, and by the letter addressed by Hidalgo to Peña, of the date of December 20 of that year and shown as an original exhibit by the plaintiff himself on page 29 of the record of the evidence.

Lastly, in December, 1890, Father Caviedas, aforementioned, delivered to the defendant Hidalgo the said deposit receipt for 5,500 pesos in order that he might withdraw this amount from deposit and deliver it with the interest thereon to the former for the purpose of remitting it by draft to Jose de la Peña; this Hidalgo did, according to a reply-letter from Father Caviedas, the original of which appears on page 979 of the file of exhibits and is copied on page 171 of the trial record, and is apparently confirmed by the latter in his sworn testimony.

So that the two amounts of 3,000 pesos each, expressed in two deposit receipts received from De la Peña y Gomiz by Father Ramon Caviedas and afterwards delivered to Francisco Hidalgo for the successive operations of remittance and redeposit in the bank before mentioned, are the same and only ones that were on deposit in the said bank in the name of their owner, Peña y Gomiz. The defendant Hidalgo made two remittances by drafts on London, one in 1888 for 741.60 pesos, through a draft purchased from the Chartered Bank, and another in 1889 for 860 pesos, through a draft purchased from the house of Tuason & Co., and both in favor of Peña y Gomiz, who received through Father Ramon Caviedas the remainder, 5,500 pesos, of the sums deposited. For these reasons, the trial judge was of the opinion that the certificates of deposit sent by Peña y Gomiz to Father Ramon Caviedas and those received from the latter by the defendant Hidalgo were identical, as were likewise the total amounts expressed by the said receipts or certificates of deposit, from the sum of which were deducted the amounts remitted to Peña y Gomiz and the remainder deposited after each annual operation until, finally, the sum of 5,500 pesos was remitted to its owner, Peña y Gomiz, according to his instructions, through the said Father Caviedas. The lower court, in concluding its judgment, found that the plaintiff was not entitled to recover any sum whatever for the said second and third causes of action, notwithstanding that, as hereinbefore stated, the said plaintiff withdrew the third cause of action. This finding of the court, with respect to the collection of the amounts of the aforementioned deposit receipts, is perfectly legal and in accordance with justice, inasmuch as it is sustained by abundant and conclusive documentary evidence, which proves in an incontrovertible manner the unrighteousness of the claim made by the plaintiff in twice seeking payment, by means of the said second and third causes of action, of the same sum which, after various operations of deposit and remittance during three years, was finally returned with its interest to the possession of its owner, Peña y Gomiz.

From the trial had in this case, it also appears conclusively proved that Jose de la Peña y Gomiz owed, during his lifetime, to Federico Hidalgo, 7,600 pesos, 4,000 pesos of which were to bear interest at the rate of 6 per cent per annum, and the remainder without any interest, and that, notwithstanding the lapse of the period of three years, from November, 1887, within which he bound himself to repay the amount borrowed, and in spite of his creditor's demand of payment, made by registered letter, the original copy of which is on page 38 of the file of exhibits and a transcription thereof on page 930 of the first and second record of the evidence, the debt was not paid up to the time of the debtor's death. For such reasons, the trial court, in the judgment appealed from, found that there was a preponderance of evidence to prove that this loan had been made and that the plaintiff actually owed the

defendant the sum loaned, as well as the interest thereon, after deducting therefrom the 2,000 pesos which the defendant received from the plaintiff on account of the credit, and that the former was entitled to recover.

It appears from the pleadings and evidence at the trial that in January, 1904, on the arrival in this city of Federico Hidalgo and the plaintiff, Jose de la Pena y de Ramon, and on the occasion of the latter's proceeding to examine the accounts previously rendered, up to December 31, 1893, by the defendant Hidalgo to the plaintiff's father, then deceased, Hidalgo made demand upon the plaintiff, Peña y de Ramon, for the payment of the said debt of his father, although the creditor Hidalgo acceded to the requests of the plaintiff to grant the latter an extension of time until he should be able to sell one of the properties of the estate. It was at that time, according to the defendant, that the plaintiff Pena took up the instrument of indebtedness, executed by his deceased father during his lifetime, and delivered to the defendant in exchange therefor the document of the date of January 15, 1904, found on page 924 of the second record of evidence, whereby the plaintiff, Jose de la Pena, bound himself to pay his father's debt of 11,000 pesos, owing to the defendant Hidalgo, out of the proceeds of the sale of some one of the properties specified in the said document, which was written and signed by the plaintiff in his own handwriting.

The plaintiff not only executed the said document acknowledging his father's debt and binding himself to settle it, but also, several days after the sale of a lot belonging to the estate, paid to the creditor on account the sum of 2,000 pesos, according to the receipt issued by the latter and exhibited on page 108 of the first record of evidence. The said document, expressive of the obligation contracted by the plaintiff, Peña y de Ramon, that he would pay to the defendant the debt of plaintiff's deceased father, amounting to 11,000 pesos, out of the proceeds from some of the properties of the estate, has not been denied nor impugned as false; and notwithstanding the averment made by the plaintiff that when he signed he lacked information and knowledge of the true condition of the affairs concerning Hidalgo's connection with the property that belonged, to De la Peña's father, it can not be denied that absolutely no proof whatever is shown in the trial record of the creditor's having obtained the said document through deceit or fraud circumstances in a certain manner incompatible with the explicit statements contained therein. For these reasons, the trial court, weighing the whole of the evidence furnished by the record, found that the loan of the said 7,600 pesos was truly and positively made, and that the plaintiff must pay the same to the defendant, with the interest thereon, and that he was not entitled to recover the 2,000 pesos, as an undue payment made by him to the defendant creditor. For the foregoing reason the other errors assigned by the plaintiff to the judgment appealed from are dismissed.

With respect to the obligation to pay the interest due on the amounts concerned in this decision, it must be borne in mind that, as provided by article 1755 of the Civil Code, interest shall only be owed when it has been expressly stipulated, and that should the debtor, who is obliged to pay a certain sum of money, be in default and fail to fulfill the agreement made with his creditor, he must pay, as indemnity for losses and damages, should there not be a stipulation to the contrary, the interest agreed upon, and should there be no express stipulation, the legal interest (art. 1108 of the Civil Code); but, in order that the debtor may be considered to be in default and obliged to pay the indemnity, it is required, as a general rule, that his creditor shall demand of such debtor the fulfillment of his obligation, judicially or extrajudicially, except in such cases as are limitedly specified in article 1100 of the Civil Code.

It was not expressly stipulated that either the balance of the last account rendered by the defendant Federico Hidalgo in 1893, or the sum which the plaintiff bound himself to pay to the defendant, in the instrument of the 15th of January, 1904, should bear interest; nor is there proof that a judicial or extrajudicial demand was made, on the part of the respective creditors concerned, until the date of the complaint, on the part of the plaintiff, and that of the counterclaim, on the part of the defendant. Therefore no legal interest is owing for the time prior to the

respective dates of the complaint and counterclaim.

By virtue, then, of the reasons hereinbefore set forth, it is proper, in our opinion, to adjudge, as we do hereby adjudge, that the defendant, Federico Hidalgo, shall pay to the plaintiff, Jose de la Pena y de Ramon, as administrator of the estate of the deceased Jose de la Peña y Gomiz, the sum of P6,774.50, and the legal interest thereon at the rate of 6 per cent per annum from the 23d of May, 1906, the date of the filing of the original complaint in this case; that we should and hereby do declare that the said defendant, Federico Hidalgo, is not bound to give nor render accounts of the administration of the property of the said deceased Jose de la Peña y Gomiz, administered, respectively, by Antonio Hidalgo, from January, 1894, to September 80, 1902, and by Francisco Hidalgo, from October 1, 1902, to January 7, 1904, and therefore the defendant, Federico Hidalgo, not being responsible for the results of the administration of the said property administered by the said Antonio and Francisco Hidalgo, we do absolve the said defendant from the complaint filed by the plaintiff, in so far as it concerns the accounts pertaining to the aforesaid two periods of administration and relates to the payment of the balances resulting from such accounts; and that we should and hereby do absolve the defendant Hidalgo from the complaint with respect to the demand for the payment of the sums of P15,774.19 and P2,000, with their respective interests, on account of the second and the fourth cause of action, respectively, and, because the plaintiff renounced and withdrew his complaint, with respect to the third cause of action; and that we should and do likewise adjudge, that the plaintiff, Jose de la Pena y de Ramon, shall pay to Federico Hidalgo, by reason of the counterclaim, the sum of P9,000 with legal interest thereon at the rate of 6 per cent per annum from the 21st of May, 1907, the date of the counterclaim.

The judgment appealed from, together with that part thereof relative to the statement it contains concerning the equivalence between the Philippine peso and the Mexican peso, is affirmed in so far as it is in agreement with the findings of this decision, and the said judgment is reversed in so far as it is not in accordance herewith. No special finding is made as to costs assessed in either instance, and to the plaintiff is reserved any right that he may be entitled to enforce against Antonio Hidalgo.

Arellano, C J., Johnson, Moreland, and Trent, JJ., concur.

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.