

## **VICTORIANA SANTA ANA ET AL., PLAINTIFFS AND APPELLEES, VS. BERNABE SANTA ANA ET AL., DEFENDANTS AND APPELLANTS.**

*G.R. No. 9764. September 23, 1914*

Ponente: MORELAND, J.

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### **MORELAND, J.:**

This is a motion for a new trial based upon the ground of newly discovered evidence.

The action is one to set aside a conveyance made by the defendant and for a declaration that the real estate described in the conveyance is the property of the plaintiffs.

The evidence alleged to. have been newly discovered consists of a document dated about the year 1870, which purports to be a partition of real estate made by ancestors of the plaintiffs among their children.

The record before us upon which the motion for a new trial is based demonstrates that a motion to the same effect and for the same purpose was made in the Court of First Instance after the termination of the trial and the entry of judgment and was denied by that court upon the ground that the evidence discovered was not shown to have been newly discovered within the meaning of the law, and that, even though admitted in evidence, it would not have had material effect on the judgment of the court.

To this denial of the motion the defendants took exception and appealed from the judgment of the court upon the merits and from its order denying a new trial. Therefore, whether or not the defendants are entitled to a new trial is before us on appeal to be resolved along with the other questions presented thereon. This being so, it is clear that we ought not to entertain a motion made directly to us which would anticipate the resolution of the same question on appeal.

While the motion for a new trial upon the ground of newly discovered evidence, as upon any other ground, is not the subject of a separate appeal, if excepted to, it comes up with the appeal from the judgment upon the merits under section 143 of the Code of Civil Procedure, which provides that "upon the rendition of final judgment disposing of the action either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment."

The motion is, therefore, denied.

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

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