

[G.R. No. 1003. December 23, 1902]

**PIO LABAYEN, PLAINTIFF AND APPELLANT, VS. ROSENDO HERNAEZ,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

From the record of this case it appears: (1) That the complaint was filed in accordance with the former law of Civil Procedure, and that by it a declarative action of greater import was brought, and that the answer setting up a counterclaim was also filed in accordance with the said law. (2) From this stage on the trial was conducted in accordance with the provisions of the new Code of Civil Procedure, and was set for hearing on the 16th of April, 1902. (3) On the same date, the parties having suggested the appointment of experts for the examination of the accounts, the judge made an order for their appointment. The parties, however, subsequently agreed to substitute one of the experts by another, who was accepted by the court by an order of the 7th of June following. (4) On the 14th of the same month the parties presented a petition in which they proposed another person in substitution of the expert last named, who had resigned, and in this petition they expressed the duties of these two persons in the following terms: "The said referees should report *solely* upon the facts appearing from the record, in accordance with the provisions of article 134 of the Code Civil Procedure, and the documents presented to the court." The court immediately thereafter entered the following order: "Upon the filing of the preceding stipulation of the parties, and in accordance therewith, the court will issue a commission in favor of the gentlemen selected as referees in this case." (5) The clerk entered the following note: "On this date, and in compliance with the preceding order, I have issued, under the seal of this court, the proper commission to the referees in favor of Messrs. William F. Nicholls and Felix Atienza, in accordance with the provisions of article 136 of the Code of Civil Procedure." (6) On the same date, the 14th of June, the record shows that the papers were delivered to the referees appointed, and on the 30th of June the papers were returned

by the latter, together with a document called an account-current, prepared by the referees, and based, according to their statement, solely upon the documents and accounts-current, appearing in the record. With this they presented their report. (7) The recoFd discloses that the next step taken was to inform the judge of the filing of this statement and report, and that the judge took time to examine the account and report of the referees. Without further proceedings than those above related the court below ordered judgment against the plaintiff and in favor of the defendant in the sum of 13,498 pesos and 80 cents, concurring entirely in the report of the referees.

The termination of this trial has been in a high degree irregular. The judge had no authority, either by the consent of the parties or the provisions of the law, to enter judgment as he did. The will of the parties was that the experts called referees were to report *solely* upon the facts appearing from the record and papers presented to the judge, and in accordance with *the provisions of article 134 of the Code of Civil Procedure*. Nevertheless, in their report they passed upon three questions of law, upon which they expressed their opinion, the fact being that the parties, in accordance with the provisions of article 134 of the Code, sought nothing more than an agreement as to the facts, and if these referees understood that they were to act as such in accordance with the indication of the acting clerk in his note with respect to article 136 of the Code of Civil Procedure, in this case they should have complied with the provisions of the said article and those of the following articles, Nos. 138, 139, and 140. None of this, with the exception of the issuance of the commissions and the collections of fees, has been done. The result was a trial by referees, in violation of the provisions of law, this being a substantial defect which vitiates the judgment itself.

We therefore declare the judgment entered below to be null and void, without special condemnation as to costs. It is directed that the record be returned to the court below. So ordered.

Torres, Cooper, Smith, Willard, Ladd, and Mapa, JJ., concur.