

[ G.R. No. 3466. December 29, 1906 ]

**MEYER HERMAN, PETITIONER, VS. A. S. CROSSFIELD, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND RUBERT & GUAMIS, RESPONDENTS.**

**D E C I S I O N**

**WILLARD, J.:**

On the 8th day of March, 1906, in an action pending in the Court of First Instance of Manila in which Robert & Guam is were the plaintiffs and Meyer Herman was the defendant, a final judgment was entered in favor of the defendant. On the 14th day of March of the same year the plaintiff's made a motion for a new trial on the ground that the findings of the court were plainly and manifestly against the weight of the evidence. It does not appear that any order was made upon this motion. On the 26th day of March the. plaintiffs made another motion asking that the decision be set aside and that the case be opened for the purpose of taking the testimony of Dr. Altman, and for such other proceedings as the court might deem just and equitable. Notice was given that this motion would be heard on the 31st day of March, which was the last day of the term of court. Nothing appearing to the contrary, we assume that the motion was argued on that day. It was not decided, however, until the 14th day of April, and after the term at which the judgment had been entered had closed. The order then made was that the case be reopened for the purpose of receiving the testimony of Dr. Altman, the court saying in its order that there was no showing that this evidence was newly discovered. On the 12th day of July, 1906, the defendant in the case in the court below, Meyer Herman, commenced this original action of *certiorari* in this court, claiming that the order made in the court below on the 14th day of April was void because at that time that court had no jurisdiction to enter!ain or decide a motion for u new trial, the term at which the judgment was entered having expired. The defendants in this original action have demurred to the complaint and the case is now before the court for the resolution of the demurrer.

The contention of the plaintiff that at the expiration of the term the court was without jurisdiction to entertain or decide a motion for a new trial can not be sustained in view of the decision of this court in the case of Santos vs. Villafuerte<sup>[1]</sup> (4 Off. Gaz., 850).

In that case and other cases cited therein, it was held that the Court of First Instance had jurisdiction to entertain and decide a motion for a new trial after the term at which the decision was rendered had expired. The ruling announced in those cases disposes of this case.

Whether the order made on the 14th of April was right or wrong is not before us for decision. The court had jurisdiction to decide the motion, even if it were a motion for a new trial, a point which we do not detenu inc. If it decided it incorrectly, the plaintiff, who was the defendant in that case, had the right to except to the order and, although he could not bring the case here at once for decision because that order was not a final judgment, yet he could do so after final judgment had been entered and could then have the order in question reviewed.

The demurrer is sustained and the plaintiff is allowed ten days from the notification of this order in which to amend his complaint. If no amended complaint is presented within that time the clerk will, without further order from this court, enter final judgment in this case in favor of the defendants, with costs. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

*Johnson, J., dissents.*

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<sup>[1]</sup> 5 Phil. Rep., 739.

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