

[G.R. No. 2494. April 16, 1906]

**CATALINA ARGUELLES PLAINTIFF AND APPELLANT, VS. THOMAS D. AITKEN,
DEFENDANT ARID APPELLEE.**

D E C I S I O N

WILLARD, J.:

Lino Cuejilo was born on the 25th of September, 1835. A woman called by the plaintiff and appellant, Anacleta de los Reyes, and by the defendant and appellee, Anacleta Cuejilo, could not have been born before 1849, according to the brief of the appellant. At the time of her birth, therefore, Lino Cuejilo must have been 14 years of age. From the time of her birth Anacleta lived in the family of the parents of Lino, and until her death on the 31st of December, 1903, and until sometime afterwards in 1904, Lino Cuejilo always considered and treated Anacleta as his sister and believed her to be such. Another sister of Lino, Maria Cuejilo, died on the 13th of September, 1903, leaving property of the value of 50,000 pesos. On the 12th of December, 1903, Lino Cuejilo and Anacleta considering themselves as the real heirs at law of Maria Cuejilo, who died intestate, by an agreement in writing divided the property left by Maria in equal parts between themselves. Anacleta died on the 31st of December, 1903, testate. By the terms of her will she left all Of her property to persons other than Lino Cuejilo. He opposed the probate of her will, but afterwards withdrew that opposition, and he having died, his administratrix, the plaintiff, brought this action against the executor of Anacleta, alleging that Anacleta was not his sister^ that she was therefore not an heir of Maria Cuejilo, and had no right to one-half of the property of the latter, which she had obtained by virtue of the agreement of partition made by Lino Cuejilo and Anacleta. Judgment was asked ordering the rescission of the contract of partition between Lino and Anacleta, and that the defendant be directed to return to the plaintiff the property received by Anacleta by virtue of that contract. Judgment was entered in the court below in favor of the defendant. The plaintiff moved for a new trial, which was denied, and she has brought the case here by bill of exceptions.

The only evidence introduced to show that Anacleta Cuejilo was not the sister of Lino Cuejilo was (1) proof that in the registry of the parish church of Binondo, in the city of Manila, within which parish the parties in question lived, there was no entry of the birth of any person named Anacleta Cuejilo, and (2) a certificate of baptism of one Anacleta de los Reyes, said to have been born on the 26th day of April, 1851, and to be a legitimate daughter of Doroteo de los Reyes and Florentina Asencion. The evidence shows that if this Anacleta de los Reyes was the daughter of the persons named in her certificate of baptism, she was a cousin of Lino Cuejilo. The evidence also shows that Lino and Maria were natural children of Domingo Cuejilo and Claudia de los Reyes, who were legitimized by the marriage of their parents in 1855 when Domingo Cuejilo was at the point of death.

The evidence in the case is, in our opinion, insufficient to prove that any error or mistake was made in the contract of the 12th of December, 1903, sought to be set aside, and insufficient to show that Anacleta was not the sister of Lino Cuejilo. It is impossible to believe that Lino Cuejilo, who was at least 14 years of age when Anacleta was born, should not have known at the time she came into the family, which was at her birth, whether she was his sister or his cousin. From the time of her birth until he learned that she had disposed of her property to persons other than himself he never doubted that she was his sister. The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered accordingly and ten days thereafter the record be remanded to the court below for further proceedings in accordance herewith. So ordered.

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