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[G.R.No. 862. September 27, 1905]

JOSE VAZQUEZ, PLAINTIFF AND APPELLEE, VS. BENITO SANCHEZ, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

This case was tried in the Court of First Instance of Bacolod, Occidental Negros, under the provisions of the old Code of Civil Procedure relating to actions involving more than 500 and less than 2,500 pesetas (*juicios de menor cuantia*).

The complaint was filed in the month of May, 1901, and when the present Code of Civil Procedure went into effect on the 1st of October of the same year the trial was still in progress for the reason that the parties had theretofore failed to agree upon the disputed facts of the case. Both parties had offered to present their evidence and the only thing remaining to be done was the taking of same. The case being in such a condition, the court below had authority, under paragraph 3 of section 795 of the present Code of Civil Procedure, to apply to it the provisions of this code; it does not appear, however, that he did so. It appears that he proceeded with the case in accordance with the provisions of the old Code of Civil Procedure, as shown by the fact that the court cited the parties for judgment, and further allowed the appeal taken by the defendant, without requiring the presentation of a bill of exceptions, having sent the original record of the case to this court for the purposes of that appeal.

This method of procedure was in strict accord with the provisions of the old and not with the new Code of Civil Procedure now in force.

Under the old Code of Civil Procedure the evidence should have been reduced to writing, attached to the record, and sent to this court in case an appeal had been taken. There is no doubt that evidence was taken in this case. The court refers to it in its judgment, saying *that the testimony given during four sessions held in the case was heard*.

It seems that this testimony was given orally, and that it was not reduced to writing. The fact is that there is no record of such testimony in the case, and it is impossible for us to determine this action upon its merits. Furthermore, this constitutes an error which vitiates the whole proceedings. This court can not decide in a case tried under the old Code of Civil Procedure without having before it the original evidence received at the trial. (Maria del Carmen, widow of Bustillos, vs. Roque Garbanzos^[1] decided December 4, 1902.)

On the other hand the judgment appealed from contains no finding of fact. This also constitutes a serious defect, all the more so in this case where there is no evidence in the record. There is absolutely no basis on which to determine with certainty whether the conclusions of law and the judgment of the court below are correct. The judgment of the trial court is hereby set aside and the case is remanded to the Court of First Instance of Occidental Negros, for a new trial, without special condemnation as to the costs of this instance.

After the expiration of ten days let judgment be entered in accordance herewith. So ordered.

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

^[1] 1 Phil. Rep., 532.

