

1 Phil. 686

[G.R. No. 858. February 05, 1903]

**FRANCISCO MARTINEZ, PLAINTIFF AND APPELLEE, VS. PEDRO MARTINEZ,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In this case the decision ordered that the judgment in favor of the plaintiff be reversed and the case remanded for a new trial with costs against the appellee.

The appellee has presented a motion asking that the order in regard to costs be revised, claiming that when a judgment is¹ reversed it is improper to compel the appellee to pay costs and citing provisions of law in force prior to the enactment of the present Code of Civil Procedure.

Such provisions are inapplicable for they have been repealed by that Code whose articles 487-495 now govern the matter of costs.

When a case is brought here by a bill of exceptions and the judgment is reversed and a new trial granted the order of this court in regard to costs refers only to the costs of this court - that is, those arising by reason of the appeal. It decides nothing as to the costs already accrued in the lower court or which may accrue therein after the case is remanded. These costs will remain as they are without any order in respect thereto until the final determination of the suit.

The order in this case may be ambiguous in this respect. It is therefore ordered that the decision filed in this case on January 23, 1903, be amended by adding thereto after the words "the costs" in the last line thereof the words "of this second instance."

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

Arellano C. J., did not sit in this case.

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