

1 Phil. 585

[ G.R. No. 850. December 23, 1902 ]

**LOS HIJOS DE I. DE LA RAMA, PLAINTIFFS AND APPELLANTS, VS. ERIBERTO MIJARES, DEFENDANT AND APPELLEE.**

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

**COOPER, J.:**

This is an appeal from a judgment of the Court of First Instance of Occidental Negros in a suit brought by Los Hijos de I. de la Rama against the defendant, Eriberto Mijares, on certain promissory notes aggregating the sum of \$4,500, executed by the defendant payable to D. Esteban de la Rama. The suit was commenced on the 4th day of January, 1900, by an executive action, and after the termination of the executive action, by reason of objections made, a complaint in an ordinary declarative action was filed on the 21st of October, 1901.

Paragraph 4 of section 795 plainly states that where the trial has not been already commenced all future procedure in such actions and special proceedings pending in a court at the date of the adoption of the new Code shall be in accordance with the provisions of the Code of 1901, so far as this act may be conveniently applicable to the conduct of such actions or proceedings.

The proceedings in the case, from the filing of the complaint up to the time of the trial, were apparently had in accordance with the provisions of the Code of Civil Procedure, 1901, but at this stage, after the rendition of judgment, the judge adopted the provisions of the old Code of Civil Procedure and granted an appeal in accordance therewith.

Instead of the case being brought here by bill of exceptions, as it should have been done, an appeal has been taken in which even the provisions of the former law have not been observed, the evidence not having been sent up with the original papers in the case.

We have held in *Bustillos vs. Garbanzos*, decided on the 4th day of December, 1902,

appealed from this same court, similar in character, in order that the ends of justice may not be defeated, that the error resulting from the act of the judge in requiring the case to be brought up under the old procedure, should not be charged to the appellant.

The law permits the procedure under the old law when the new law may not be conveniently applicable, and we must presume that the judge acted under the discretion allowed him under this provision.

The record of this case is in such a confused state that it has been impossible for us to determine the case upon its merits, and we find it necessary in this as we did in the former cases, to reverse and remand the case to the Court of First Instance for a new trial.

The cost of this appeal will be adjudged against the appellant. The judgment is reversed and the cause remanded for a new trial.

*Arellano, C. J., Torres, Smith, Willard, Mapa, and Ladd, JJ., concur.*

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