

RAMON R. DIZON, PLAINTIFF-APPELLANT, VS. LORENZO J. VALDES, VALLESON, INC., AND AUGUSTO J. VALDES, DEFENDANTS-APPELLEES.

G.R. No. L-23920. April 25, 1968

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0378662f4d82/>

SANCHEZ, J.:

The case before us is an incident in a suit for a sum of money (Civil Case Q-2618, Court of First Instance of Rizal, Quezon City Branch), entitled "Ramon R. Dizon, Plaintiff, vs. Lorenzo J. Valdes, Valleson, Inc., and Augusto J. Valdes, Defendant." Judgment was, on December 2, 1960, there rendered directing defendants Valleson, Inc. and Augusto J. Valdes (Lorenzo J. Valdes excluded) "to pay jointly and severally to the plaintiff the amount of P6,260.00 with interest at the rate of 12% per annum from September 1, 1954 until fully paid and to pay attorney's fees in the amount of P600. 00 with costs." The counterclaim of defendants Lorenzo J. Valdes and Valleson, Inc. was dismissed.

On January 11, 1961, Valleson, Inc. filed its notice of appeal. Its appeal was perfected on February 11, 1961.

Meanwhile, on January 10, 1961, one day before Valleson's notice of appeal, plaintiff petitioned for and the trial court directed the issuance of a writ of preliminary attachment against the properties, real and personal, of defendants Augusto J. Valdes and Valleson, Inc. upon an P11,730-bond. On January 11, said bond having been filed, the corresponding writ was issued. Pursuant thereto, garnishment notices were served by the Manila Sheriff on one Restituto Sibal and the Philippine Guaranty Co.

On February 9, 1961, the judgment debtors moved to dissolve the writ of attachment, upon P11,730-counter-bond subscribed by the Capital Insurance & Surety Co., Inc. The following day, February 10, 1961, the trial court dissolved the writ.

On February 24, 1961, plaintiff registered a motion to admit its "Claim for Damages" attached thereto. Plaintiff's claim was that the dissolution of the attachment "put out of the reach of the plaintiff the properties and assets which may be held to answer for the adjudged claim"; and that, by reason thereof, "plaintiff suffered and will suffer damages in the amount of P11,730.00 plus the corresponding 12% interest thereon and attorney's fees and costs." He then prayed that "defendants and the Capital Insurance & Surety Co., Inc. be ordered to pay the plaintiff, jointly and severally, the amount of P11,730.00 plus interests, expenses, and attorney's fees."

On March 1, 1961, the surety, Capital Insurance & Surety Co., Inc., opposed. Assertion was made that pursuant to the Rules of Court (then, Section 17, Rule 59; now Section 17, Rule 57), the surety on any counter-bond shall only become charged and bound to pay plaintiff upon demand, the amount due under the judgment; and that such amount may be recovered from the surety after notice and summary hearing in the same action - only if execution be returned unsatisfied in whole or in part.

On April 25, 1961, at the hearing fixed by the court, plaintiff presented evidence on the merits of its claim for

damages, in the absence of defendants and surety, who made no appearance thereat.

The trial court, in its order of May 16, 1961, ruled that plaintiff's claim for damages was premature, since the main case was then still pending appeal.

Plaintiff's motion for reconsideration, filed on July 10, 1961, was thwarted by the court below on September 16, 1961.

Under the environmental facts, can plaintiff's claim for damages on defendants' counter-bond prosper? The answer must be in the negative.

1. By the terms of the counter-bond itself,[1] liability thereunder attaches only "in case the plaintiff recover judgment in the action." Indeed, by Section 12 of Rule 59 of the old Rules,[2] the law in force at the time the counter-bond was executed, the statutory counter-bond was made "to secure the payment to the plaintiff of any judgment he may recover in the action." Complementary to this legal precept is Section 17 of the same Rule 59 of the old Rules[3] - which should be deemed as read into the bond - viz:

"SEC. 17. When execution returned unsatisfied, recovery had upon bond. - If the execution be returned unsatisfied in whole or in part, the surety or sureties on any bond given pursuant to the provisions of this rule to secure the payment of the judgment shall become finally charged on such bond, and bound to pay to the plaintiff upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action."

Since at the time the claim for damages was registered, the case was still pending appeal, it is quite obvious that the motion for the claim for damages was premature. And the lower court thus correctly ruled out plaintiff's motion. For, Section 17 contemplates of proceedings on execution after judgment. And, it is only thereafter that liability upon the surety's bond may be determined. The key term in Section 17 is the phrase "[i]f the execution be returned unsatisfied in whole or in part." Until such proceeding shall have taken place and unless unsatisfied liability under the judgment still exists, no action upon the counter-bond may be taken against the surety.[4]

2. We do not follow plaintiff when he says that what controls here is Section 20 of Rule 57 (then Rule 59). By its very terms,[5] this obviously refers to the recovery of damages by a party against whom attachment was issued. This is a remedy available to the defendants here, not the plaintiff.

It is therefore not to be doubted that, upon the applicable rules, the counter-bond does not answer for damages on account of the lifting of the attachment, but for the payment of the amount due under the judgment that may be recovered by an attaching creditor.[6]

3. Nor is importance to be attached to plaintiff's argument that the dissolution of the attachment put out of his reach the properties and assets answerable for his claim. The counter-bond, it should be emphasized, precisely stands "in place of the properties so released." [7] Thus, the release of such property cannot really "prejudice the rights of the attaching party." [8]

We accordingly affirm the lower court's order of May 16, 1961 under review.

Costs against plaintiff-appellant.

SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Makalintal, and Bengzon, J.P., JJ., concur.

[1] Record on Appeal, pp. 43-47; underscoring supplied.

[2] Now Section 12, Rule 57.

[3] Substantially the same as Section 17, Rule 57 of the present Rules.

[4] See: *Bautista vs. Joaquin*, 46 Phil. 885, 890.

[5] Section 20, Rule 59, reads:

"SEC. 20. Claim for damages on plaintiff's bond on account of illegal attachment. - If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court.

[6] *Anzures vs. Alto Surety & Insurance Co., Inc.*, 92 Phil. 742, 743; *Cajefe vs. Fernandez*, L-15709, October 19, 1960.

[7] Section 12, Rule 59 (now Rule 57); *Anzures vs. Alto Surety & Insurance Co., Inc.*, *supra*, at p. 743.

[8] *Manila Mercantile Co. vs. Flores*, 50 Phil. 759, 763.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.