

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLEE, VS. ALBERTO DE LA CRUZ, DEFENDANT-APPELLANT.

G.R. No. L-23562. April 25, 1968

Ponente: DIZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/646bb0b28dea/>

DIZON, J.:

Appeal taken by Alberto de la Cruz from the judgment of the Court of First Instance of Nueva Vizcaya in Civil Case No. 1094 entitled "Philippine National Bank vs. Alberto de la Cruz" of the following tenor:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff, Philippine National Bank and against defendant Alberto de la Cruz, condemning the said defendant to pay to the plaintiff the sum of P5,252.45 plus interest at the rate of 6% per annum from October 23, 1959, until the said amount is fully paid, plus 10% of the amount due as attorney's fees, and to pay the costs of this suit.

"The defendant's counterclaim is hereby dis-missed."

On July 14, 1954, to secure payment of a loan of P4,000.00 evidenced by the corresponding promissory note, appellant executed a real estate mortgage in favor of appellee bank. The loan was payable within one year from the date it was granted, with interest at the rate of 6%, per annum, and an additional 10% of the amount due as attorney's fees in case collection is judicially enforced.

On April 25, 1959, due to appellant's default, appellee filed an ordinary action with the Court of First Instance of Nueva Vizcaya to recover from him the amount of P5,171.75, with the stipulated interest from April 25, 1959, plus 10% of the amount due as attorney's fees and the costs of suit.

Appellant's answer to the complaint admitted the allegations thereof but averred: that, as security for the payment of the loan, he had executed a real estate mortgage in favor of appellee expressly empowering the latter to extra-judicially foreclose the same under Act No. 3135 in case of his failure to pay the principal obligation; that, after the filing of the action, appellee foreclosed the aforesaid mortgage, and having thus chosen such remedy, it could no longer maintain the action for collection. Appellant also interposed a counterclaim for damages.

Thereafter, appellee moved to dismiss its complaint in view of the fact that it had filed another action for the same cause against appellant in the Court of First Instance of Nueva Vizcaya (Civil Case No. 1100), but this motion was denied by the court on the ground that the issues had already been joined.

On January 7, 1960, appellee filed an amended complaint to include in the original the allegation that, to satisfy the mortgage debt amounting to "P5,452.45, including stipulated interests, the mortgaged property, in an extra-judicial foreclosure sale under Act 3135, was sold to it as the only bidder, for the sum of P200.00, thereby leaving an unsatisfied balance of P5,252.45 as of October 22, 1959 which, including stipulated interest thereon, it sought to recover from appellant. The amended complaint was admitted and upon appellant's failure to file an answer thereto, appellee moved for a summary judgment, and on May 13, 1963, the court rendered the appealed

judgment.

The only questions raised by appellant in this appeal are the ones covered by the first assignment of error made in his brief of the following tenor:

"The lower court erred in having sustained the action of the plaintiff in foreclosing upon the pro-property of the defendant extra-judicially after it had filed the present suit for the collection of the amount represented by defendant's promissory note thereon, and in not having held instead that the plaintiff having elected to file on July 29, 1959 an action for a sum of money, it may not simul-taneously extra-judicially foreclose upon the mortgaged property."

The second assignment of error is a mere corollary of the first.

It must be remembered that, upon the pleadings, the question submitted to the trial court was merely this: Whether or not appellee bank, after foreclosing extra-judicially the mortgage executed in its favor by appellant, was still entitled to recover the unpaid portion of the mortgage debt which was not satisfied with the net proceeds obtained from the extra-judicial foreclosure sale of the mortgaged property. The trial court upheld the bank's right and rendered the appealed judgment. Now, instead of assailing the correctness of said decision, appellant questions the validity of the extra-judicial foreclosure proceedings commenced after the filing of the present action, and the trial court's refusal to hold that, having filed the present action on July 29, 1959 for the re-recovery of the mortgage debt, appellee bank could not simul-taneously foreclose the real estate mortgage extra-judicially.

It is obvious that the questions raised in this appeal are totally immaterial and irrelevant, and constitute no defense to appellee's action to recover the unpaid balance of its credit. If appellant desires to annul the extra-judicial foreclosure proceedings, his remedy is clearly not an appeal from the decision of the trial court sustaining appellee's right to collect the unpaid balance of the loan.

WHEREFORE, the appealed judgment is affirmed, with costs.

Reyes, J.B.L., (Acting C.J.), Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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.