

ALEJANDRO SAMSON, PLAINTIFF AND APPELLEE, VS. AGAPITO B. ANDAL, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. L-3439. July 31, 1951

Ponente: JUGO, J.

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JUGO, J.:

The appeal in the above-entitled case was taken directly from the Court of First Instance of Manila to the Supreme Court. However, it is to be noticed that the second assignment of error raises a question of fact. It reads as follows:

"The lower court erred:

"II. In finding that on October 25, 1945, when the obligatio became due, plaintiff offered to pay the loan in Philippine Currency based on the value of the Philippine peso on the date the loan was obtained."

Two pages of the appellants' brief are devoted to the discussion of said alleged error of fact.

The appellee also discusses said assignment of error, and in substance, tries to show that same is immaterial in view of the fact that he prays for declaratory relief. Said assignment deals with the alleged rejected offer to comply with the contract; or, in other words, raises the question whether there has been a violation thereof. If there has been a violation, declaratory relief cannot be granted, for the reason that section 2, Rule 66, relative to said remedy, provides that "A contract or statute may be construed before there has been a breach thereof." After breach, the regular remedy obtains.

The court below must have on valid grounds considered said question material to the case when it made in its decision the statement which is traversed by the appellant and defended by the appellee. Non-compliance with the contract in this case would give rise to attorney's fees amounting to twenty-five per cent (25%) of the principal of the loan plus the interest that meanwhile accrued. There being a question of fact, this case is hereby ordered remanded to the Court of Appeals for its decision.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montetnaylor, Reyes and Bautista Angelo, JJ., concur.

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