

**PEDRO C. CAMUS, PETITIONER, VS. THE HON. COURT OF APPEALS,
HON. EDUARDO D. ENRIQUEZ, JUDGE OF THE COURT OF FIRST
INSTANCE OF NEGROS OCCIDENTAL, AND LEON G. MOYA,
RESPONDENTS.**

G.R. No. 13125. February 13, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On July 13, 1956, herein respondent Leon G. Moya sued petitioner Pedro C. Camus and the Luzon Surety Co., Inc. in the Court of First Instance of Negros Occidental for the payment of a promissory note in the sum of P2,500, signed by Camus, and guaranteed by a surety bond of the Luzon Surety Co., Inc. At the trial, petitioner Camus failed to appear; whereupon, the court heard plaintiff's evidence and thereafter rendered judgment condemning the defendants to pay, jointly and severally, the amount claimed by plaintiff. Camus sought reconsideration of the judgment and a new trial, alleging, inter alia, that he had a good defense to the complaint, namely, usury; and when the court denied both, he filed his notice of appeal, record on appeal and appeal bond. Said appeal was, however, disallowed by the court because Camus' motion for reconsideration and new trial was found to be pro forma. Camus applied to the Court of Appeals for a writ of mandamus to have his appeal allowed, but the latter court sustained the disallowance thereof by the trial court. From this last judgment, Camus appealed to this Court by certiorari.

After the filing of appellant's brief, appellee Moya moved to dismiss the present appeal for the reason that appellant's co-defendant, the Luzon Surety Co., Inc., had already paid the judgment of the court below in his favor, so that the issues in this case had become academic; and waived the filing of an appellee's brief. Consideration of the motion for dismissal was deferred by us until the case is set for deliberation on the merits.

We find no necessity to go into the merits of the appeal, for, upon a careful consideration of the reasons adduced in appellee's motion to dismiss, we agree that the appeal should be dismissed.

Appellant does not deny that his co-defendant and solidary co-debtor, the Luzon Surety Co., Inc., had already paid the judgment of the lower court during the pendency of his petition for mandamus in the Court of Appeals. Article 1217, New Civil Code, provides that payment "made by one of the solidary debtors extinguishes the obligation". The payment by the Luzon Surety Co., Inc. to appellee, therefore, extinguished the obligation of the two solidary co-debtors to appellee Moya, and the juridical tie between the creditor on the one hand, and the solidary debtors, on the other, was dissolved thereby. For this reason, there is no more need to maintain appellant Camus' appeal from the decision of the lower court ordering him and his co-debtor to pay their obligation to appellee Moya. Whatever controversy remains from here on is solely between the two co-debtors.

Appellant argues, however, that the payment made by his co-debtor was premature and, therefore, did not extinguish the principal obligation. We can not see how said payment can be premature when the obligation of appellant Camus and the surety company to appellee was based on a promissory note that was long overdue when

the complaint was filed. Even assuming that appellant's only alleged defense of usury to the complaint is true, the same does not in any way affect the maturity and demandability of the debt but if sustained would only reduce the creditor's recovery. There is no question, of course, that the payment by appellant's co-debtor to, appellee did not extinguish his defense of usury, which he may still set up against his co-debtor when he is sued by the latter; but until the surety company files such action against appellant, it is purely an academic matter whether appellant is entitled to such defense or not.

Appellant also urges that the Luzon Surety Co., Inc. should be substituted as plaintiff in this action to avoid multiplicity of suits. We have no power to order such substitution, since the surety company has not even intervened or shown any interest in these proceedings relative to appellant's right to appeal from the lower court's judgment. Neither we nor appellant can dictate the step which the surety company may choose to take against appellant for the protection of its interests.

Finally, appellant claims that the dismissal of this case would necessitate the filing of another action by him against the appellee for the recovery of whatever usurious interest the latter had exacted from him. The claim is completely untenable. Appellant can file such action against appellee only if he had already paid his indebtedness to the latter plus the alleged usurious interest. But it was precisely his failure to pay that compelled the appellee to sue him for payment of the debt, and appellant's defense of usury, even if true, would, as already stated, only reduce his liability to his creditor, but would not entitle him to recover any amounts from the latter. And even if appellant's solidary co-debtor, the surety company, had paid appellee more than it should (granting *arguendo* that the promissory note sued upon represented capital plus usurious interest, as appellant claims), such overpayment gives appellant no cause of action to collect from appellee what his solidary co-debtor had overpaid the latter, but his defense of usury, would only serve to reduce his liability when he is sued by the surety company.

All in all, we agree with appellee that it would serve no useful purpose to still decide the present appeal, since no actual relief or practical result can follow therefrom. As we held in *Velasco vs. Rosenberg*, 29 Phil., 212, "if pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief", and "similarly, where a litigation has ceased to be between parties having an adverse interest, the appeal will be dismissed".

As to the merits of the case, suffice it to point out that appellant Camus has not appended to his petition for review any copy of his motion for new trial in the Court of First Instance, and without it, this Court is in no position to say that the Court of Appeals committed error in declaring it insufficient and merely *pro forma*.

Wherefore, the present appeal is dismissed. Costs against appellant Pedro Camus.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barerra, and Gutierrez David, JJ., concur.

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