

ANANIAS VICENCIO, PLAINTIFF AND APPELLANT, VS. JOSE DE BORJA, DEFENDANT AND APPELLEE.

G.R. No. 26275. March 23, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

It was prayed in the complaint that gave rise to this cause that the court order the defendant to pay the plaintiff certain sums of money and to deliver certain cattle which were alleged to belong to him as his share in their partnership which had been dissolved.

The defendant filed a counterclaim also claiming a certain sum of money which belonged to him as his share in said partnership and praying for a liquidation of the affairs of the same.

The trial court rendered judgment ordering, among other things, that the plaintiff make a liquidation of the said partnership.

In the case of *Natividad vs. Villarica* (31 Phil, 172), this court laid down the following doctrine:

"APPEAL; PREMATURE APPEAL.—When the rendition of accounts ordered by the Court of First Instance in dissolving a partnership is still pending, the case cannot be considered terminated in that court until said accounts have been rendered and approved, and consequently the allowance of the appeal filed by one of the parties from the judgment declaring the partnership dissolved is premature."

The liquidation which the plaintiff has to make in obedience to said order of the court, does not settle the litigation, but said liquidation must be submitted to the court for decision, from which the parties may take an appeal, if the same is not agreeable to them.

Following, then, the doctrine laid down in the case above cited, the appeal herein interposed is held premature, and it is ordered that the record be returned to the court of origin for further proceedings, without any special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Villamor, and Ostrand, JJ., concur.

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