

MAGDALEN A LEDESMA, PLAINTIFF AND APPELLEE, VS. ILDEFONSO DORONILA, DEFENDANT AND APPELLANT.

G.R. No. 3560. October 26, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

This action is brought to foreclose a mortgage given by the defendant, Ildefonso Doronila, with his wife, Vicenta Jalbuena, as his surety, to secure his obligation as tutor of the Ledesma children, which has already been the subject of litigation in this court. It was sustained, as to the principal debtor in the case of Doronila vs. Lopez (3 Phil. Rep., 360) j but was set aside as to the surety in the case of Jaibuena vs. Ledesma.[1] The judge of the Court of First Instance of Iloilo directed judgment in favor of the plaintiff and against the defendant, Doronila, for P19,928 and for the foreclosure of the mortgage upon the lands of the wife. Notwithstanding this direction, the clerk entered judgment against both the defendants not only for foreclosure but also for recovery of the amount due.

As a consequence of the former decision, the defendant, Doronila, is concluded as to his liability on the obligation, but he claimed credit thereon for various sums collected by his successor in interest as tutor, asserting that they formed part of the amount guaranteed thereby. After a careful reading of the proofs we are satisfied that he has failed in any instance to make good his claim, and as to him the judgment must be affirmed.

It is maintained that it does not appear from the record that the surety, Vicenta Jalbuena, was made a formal party to the action either by service of summons or by appearance by attorney. (Act No. 190, sees. 396 and 397.) However this may be, we are not called upon to decide the point in this action for the reason that she has not appealed from the judgment entered against her and its validity must consequently be left to be determined in other proceedings. The judgment of the court below is affirmed as to the appellant, Ildefonso Doronila, with costs, of this instance. So ordered.

Arellano, C. J., Torres, Johnson, and Willard, JJ., concur.

[1] 8 Phil. Rep., 601.

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