

ROSARIO GONZALEZ CASTRO, PLAINTIFF AND APPELLANT, VS. FEDERICO G. AZAOLA, DEFENDANT AND APPELLEE.

G. R. No. 42645. December 29, 1936

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The complaint in this case has been dismissed upon motion of the defendant after the evidence for the plaintiff-appellant had been presented. It was prayed in the amended complaint (1) That the court declare the defendant indebted to the plaintiff in the sum of P2,372.34 as a loan with interest at 10 per cent per annum, from September 30, 1933, and (2) that the defendant be ordered to execute a document acknowledging the debt in question, together with all the stipulated conditions. The opinion of the court dismissing the complaint was based on the following consideration:

"After examining the evidence in this case, the court really finds that there is no written obligation signed by the defendant in favor of the plaintiff, neither is there any other document that justifies the claim of the plaintiff in this case. * * * Such being the case, the court is of the opinion that the contention of the defendant is well founded in accordance with the provisions of article 1280 of the Civil Code and section 335 of the Code of Civil Procedure."

Upon appeal from the court's decision, the only real question of law to be decided by this court is the demurrer filed by the defendant to the evidence for the plaintiff-appellant.

The record shows that immediately after the attorney for the defendant had presented his oral motion to dismiss, he signified his intention to call his client as a witness in the event that his motion to dismiss should be denied. The court, in such a situation, should not have rendered its decision, but in order to avoid any possible delay of the case and enable it to render its decision with all the disputed questions in view, it should have required the defendant to present his evidence. In the case of *Moody, Aronson & Co. vs. Hotel Bilbao* (50 Phil., 198, 200), this court said:

"* * * The defendant who, after the plaintiff has submitted his evidence, makes a motion to dismiss which the trial court in a decision grants, and who, on appeal of the plaintiff, has the judgment reversed, cannot then be permitted to produce evidence in defense. The defendant in offering a motion to dismiss in effect elects to stand on the insufficiency of the plaintiff's case. Otherwise, the result will be to invite unnecessary litigation. * * *

"The efforts of the courts should be concentrated on providing rules which will avoid lengthy and expensive litigation and which will assist in the speedy disposition of cases."

Now, after examining the evidence for the plaintiff-appellant, this court is of the opinion that it is sufficient to warrant the granting of the two remedies sought in the complaint, or another more appropriate one, for which reason, by applying the ruling of this court in the decision above-cited, the appealed judgment should not only be reversed but there should also adjudicate to the plaintiff what is due her under the law, were it not for the fact that

the defendant, in formulating his motion to dismiss the complaint after the presentation of the evidence for the plaintiff, reserved for himself the right to present his evidence. This is the reason why this court is of the opinion that in cases like this the defendant should be required to. present his evidence instead of acting upon his motion to dismiss, so that should the court find the decision to be erroneous, it would not have to remand the case to the court of origin for further proceedings, by virtue of the defendant's reservation, which he should not have been permitted to make, upon presenting his motion to dismiss.

The appealed judgment is reversed and the court is ordered to take the evidence for the defendant and render judgment after fully trying the case. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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