

PROVINCIAL GOVERNMENT OF SORSOGON, PLAINTIFF AND APPELLEE, VS. CONSTANTINO STAMATELAKY, JUAN ALCAZAR AND JOSE FAJARDO, DEFENDANTS AND APPELLANTS. MAYON SAWMILL & LUMBER CO., INC...

G. R. No. 43003. December 23, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Constantino Stamatelaky, Juan Alcazar and Jose Fajardo from the judgment of the Court of First Instance of Sorsogon, the dispositive part of which is as follows:

"Wherefore, judgment is entered sentencing the defendants to pay jointly and severally to the plaintiff the sum of P5,538.52, and to the Mayon Sawmill & Lumber Co., Inc., the sum of P3,140.61, it being understood, however, that this last payment is subject to the right of the provincial government of Sorsogon to be paid first. The plaintiff is absolved from the cross-complaint and counterclaim.

"The defendants shall pay the costs of suit. So ordered."

In support of their appeal the appellants have assigned eight errors which are alleged to have been committed by the trial court in its judgment and with which we shall deal in the course of this decision.

The following facts were established at the trial without controversy:

Notice having been published in the Official Gazette of September 11, 1928 for the submission of bids to construct the building of the Provincial Hospital of Sorsogon, there were received in the office of the district engineer of said province three proposals (Exhibit J), one of which was that of the contractor Constantino Stamatelaky, a defendant herein, who bound himself to build the said hospital at the price of P66,000, materials and labor being supplied by him, and to complete its construction within two hundred working days, which proposal was duly accepted by the district engineer on October 10, 1928 (Exhibit C). The corresponding contract (Exhibits A to L) was executed on November 8, 1928 between the defendant Constantino Stamatelaky and the district engineer Sergio Bayan, the latter on behalf of the Province of Sorsogon, and was approved by the provincial board of said province in the resolution of November 14 of the same year (Exhibit F). The other defendants Juan Alcazar and Jose Fajardo were the bondsmen of the defendant Stamatelaky with whom they bound themselves jointly and severally to respond for the sum of P26,400 (Exhibit G), by way of security for the total and faithful compliance with the obligations assumed by the said contractor under the aforesaid contract. The defendant Stamatelaky commenced the construction work during the first days of January, 1929, intent on terminating the same within two hundred days, or on July 18, 1929. As he was not able to complete the work on this date, July 18, 1929, the provincial board of Sorsogon, upon request of the defendant Stamatelaky and recommendation of the district engineer (Exhibit N), approved by means of resolution (Exhibit O) the extension of the aforesaid period for another fifty days from July 19, 1929, said extension to expire on September 15, 1929. This extension had the written conformity of the bondsmen Juan Alcazap and Jose Fajardo (Exhibits P and Q).

The 50-day extension having elapsed with the construction of the building still unfinished, the defendant Stamatelaky asked for another extension which was denied by the district engineer. Notwithstanding the fact that the extension granted him expired on September 15, 1929, the defendant Stamatelaky continued the work from October 15 to November 15, 1929 when he abandoned or delivered the same to the district engineer (Exhibit M). In view thereof, the district engineer, with notice to the bondsmen defendants (Exhibit M) and without making an inventory of the materials found in the work, and with the approval of the provincial board (Exhibit N), annulled the aforesaid contract in conformity with paragraph 51 of the general conditions thereof, and from November 16, 1929 took charge of the continuation of the construction work in accordance with the stipulation contained in the aforesaid contract. The building was completely finished on March 6, 1930.

From the time the defendant Stamatelaky began the construction of the building until October 15, 1929, the provincial government of Sorsogon was able to pay him the sum of P53,460, which is 81 per cent of the total price of the work (P66,000) and is the value of 90 per cent of the work done until the said date of October 15, 1929, including the materials found in the place (Exhibit 2).

In continuing and finishing the construction of the building in question, the provincial government of Sorsogon spent the sum of P18,078.52 (Exhibits R to Z, AA to ZZ and A-1 to A-67) which, added to P53,460 which had been paid to Stamatelaky, gives a total of P71,538.52, or P5,538.52 more than the stipulated price of P66,000. Out of the aforesaid P18,078.52 there was expended for salaries and wages the sum of P7,464.14 which represented approximately 40 per cent of the total value of the materials. After the completion of the building some of the unused materials remained in the possession of the plaintiff and some were employed by it in other works. The parts which remained to be finished when the government took over the work on November 16, 1929 were the ceiling¹ and the door of the kitchen, the wall thereof which cost P1,000, the upper door of the ceiling, and the cesspool which cost P1,000.

Inasmuch as the provincial board had resolved to remit the payment of liquidated damages, the plaintiff seeks in this action to recover only the aforesaid excess of P5,538.52.

The Mayon Sawmill & Lumber Co., Inc., with prior leave of the court, filed a complaint in intervention wherein recovery was sought of the sum of P3,140.61 as the value of materials alleged to have been furnished the defendant Stamatelaky for the construction of the building in question.

The defendants-appellants, by way of defense, allege that what was done by the defendant Stamatelaky from October 15 to November 15, 1929 was equivalent to 5 per cent of the entire work, but, notwithstanding his demands, the plaintiff did not make a valuation thereof or of the materials left by him when he abandoned the aforesaid work; that, inventorying the materials unused when the plaintiff continued the construction of the building under consideration, there were only lacking materials valued at P1,500 for the completion of the work; that these materials consisted of 80 or 90 zinc sheets for the watershed, materials for left and back sides of the building, some P300 worth of paint, a little amount of cement, and two lavatories; that the labor necessary to finish the work might require an expense of some P2,000; that the materials used by the said contractor are listed in the stub book (Exhibit 5) ; that after the work was abandoned, there were left in the possession of the district engineer the tools of the said contractor and a house used as an office and built of strong materials (Exhibit 9) ; that upon request made to the district engineer (Exhibit 10), the latter, on November 15, 1930, sent to the said contractor two lists of the unused materials (Exhibits 6 and 11) ; that according to Exhibit 6, after the construction of the building, there was an excess of materials having a value of P4,834.38, some of which were used in other works of the plaintiff (Exhibit 7) ; that Stamatelaky does not know whether the said Exhibit 6 is the list furnished him by the district engineer of Sorsogon.

The first question to decide is raised in the first assignment of error, and it is whether or not the P18,078.52 spent by the herein plaintiff, the provincial government of Sorsogon, for the construction of its provincial hospital from the time it took over the work on November 16, 1929 until its completion on March 6, 1930, are excessive, unreasonable and inequitable.

The defendants-appellants contend that inasmuch as when the work was abandoned, 90 per cent thereof had already been finished, aside from the additional 5 per cent done from October 15 to November 15, 1929, at a cost of P53,460 which represents 80 per cent of the total agreed price of P66,000, the expenses incurred by the plaintiff in terminating the remaining 5 per cent of the work and which amounted to P18,078.52, or 20 per cent of the aforesaid stipulated price of P66,000, must be excessive and unreasonable. Thus the defendants-appellants are relying on a mere conjecture. As against their contention there exist in the record Exhibits R to Z, AA to ZZ and A-1 to A-67, which are receipts and vouchers proving the different expenses made by the Province of Sorsogon for the purchase of materials and for the construction of the said provincial hospital from the time it took charge thereof, which documents were duly admitted in evidence in this case and were not impugned by the defendants as being false or fraudulent, with the exception of Exhibits U, Y, EE, JJ, NN, 00, A-45 and A-48 which are claimed to be confusing because they include items having no relation to the construction work of the said hospital. The voucher Exhibit U, while evidencing purchases of materials used in other works, shows that out of the one hundred barrels of cement bought, seventy were employed in the construction of the said hospital; the voucher Exhibit Y shows that all the items therein contained refer to materials purchased for the construction of the said hospital; Exhibit EE shows that that materials bought under one of the vouchers were utilized in the same construction; Exhibit NN consists of several order sheets for different works, but in some of them it is expressly stated that the materials were for use in the construction of the provincial hospital of Sorsogon; it appears from Exhibit 00 that the sum of P8.65 was paid for the truck transportation, from the storeroom to the provincial hospital, of certain materials used in the construction of the said provincial hospital and the Castilla waterworks construction; as regards Exhibits A-45 and A-48, although the order sheets merely show the items referring to materials, it is inferable that these materials or a part thereof were used in the construction of the provincial hospital because the corresponding provincial voucher bears the approval of the chief or director of the provincial hospital, in Exhibit A-45, of the whole amount spent and, in Exhibit A-48, of only a part of P377.52 of the total P2,990.98. Exhibit JJ, which is a voucher for the purchase of 170 barrels of "Apo" cement, is the only exhibit which does not give the amount employed in the construction of the provincial hospital, but the assistant district engineer, Jose R. Morelos, testified that the said cement was used in the said construction. In view of the specific nature of the evidence adduced by the plaintiff, which, by means of uncontroverted documents showing the different items, proved the expenses incurred in the purchase of materials, the bare allegation that said materials were bought at exorbitant prices is not sufficient to destroy the probative value of the aforesaid documents.

The disbursements for salaries and wages made by the plaintiff from the time it continued the construction of the hospital are specified, together with the materials purchased, in the list Exhibit R which, as we have already stated, has not been impugned as being false or illegal.

Furthermore, the estimate that 95 per cent of the work was accomplished by the defendant Stamatelaky at an outlay of P53,460 cannot be the basis for the deduction that the sum of P18,078.52 spent by the plaintiff for finishing the remaining 5 per cent of the building is excessive, for the reason that, according to the uncontradicted testimony of the assistant district engineer of Sorsogon, Jose R. Morelos, such estimate included the materials found in the place and the maximum amount was given in order that the said contractor could collect more money from the government of Sorsogon with which to pay the creditors who furnished him materials, otherwise they would cease giving him additional materials which he would need to continue his work.

The question propounded by the second assignment of error is whether or not the defendants should be credited with the value of the materials left after the completion by the government of the said provincial hospital of Sorsogon, some of which were used in other works of said province.

The value of these materials, according to the list Exhibit 11 which was certified correct by the property clerk of the Province of Sorsogon and introduced in evidence by the defendants, is P2,708.04. This valuation is assailed by the defendants on the ground that, as it was made without their knowledge, it is arbitrary.. It is not enough in this instance to allege that the valuation in question is arbitrary in order to justify a declaration of its nullity, especially when it is borne in mind that the same is evidenced by a document duly certified as correct by the government official authorized to do so. The defendants did not question the correctness of said document during the trial of this case, nor did they submit their own appraisal of the value of the unused materials with a view to demonstrating to and convincing the court that the aforesaid Exhibit 11 is arbitrary and inaccurate.

The value of the materials remaining upon the termination of the said hospital by the plaintiff, or P2,708.04, ought to be credited in favor of the defendants, inasmuch as it is not just or righteous that the same should be charged to them after the Government had kept and utilized said materials. Moreover this should have been the intention of the provincial government of Sorsogon, as appears from the letter Exhibit 7 written by the provincial auditor B. Fernandez to the defendant Stamatelaky on September 11, 1930 in which the sum of P2,708.03, as the value of the unused materials, was deducted from the amount sought to be collected from said defendant and his bondsmen by way of damages and for materials not paid upon the completion of the work.

In support of its contention that the defendants are not entitled to be credited with the aforesaid sum, the plaintiff in its brief cites the second paragraph of article 51 of the general conditions of the contract which provides as follows:

"It is agreed and understood that, upon such annulment of the contract, the Director will ascertain and fix the value of the work completed by the contractor and not paid for by the Government and usable materials on the line of the work taken over by the Government at the time of said annulment and in the event that the total expenditures of the Government on completion of the work, including all charges against the project prior to annulment of the contract are not in excess of the contract, price, due allowance being first made for all claims of the Government in connection with the contract, then the difference between the said total expenditures of the Government and the contract price may be applied to settle claims filed under paragraph (37), and the balance, if any, may be paid to the contractor, but no amount in excess of the combined value of the unpaid completed work, retained percentage and usable materials taken over by the government at the time of annulment of the contract shall be so paid, nor shall any claim for prospective profits or profit on the work done after cancellation of the contract be considered or allowed."

It is evident that the above-quoted paragraph has reference, in the first place, to the action to be taken of the amount in excess of the contract price in the event that, after the completion of the work by the government which might take it over upon abandonment by the contractor, the total expenses would be less than the whole contract price, and, in the second place, to the excess of expenses if the expenditure of the government in completing the work, plus the amount already paid by the contractor, would be more than the agreed price of the work.

Conformably to the second part of the above-quoted paragraph, there shall not be paid to the contractor any sum in excess of the combined value of the unpaid completed work and the usable materials that might be taken over by the government at the time of the cancellation of the contract. In the instant case the usable materials taken over by the government upon continuing the work had already been paid. The cost of the unfinished and unpaid portion of the work taken charge of by the government amounted to P18,078.52, including the remaining usable materials valued at P2,708.03 which were employed by the government in its other works. The value of the

finished portion, plus that of the usable materials remaining when the government continued the work, was P53,460, leaving P12,540 of P66,000, the price of the contract. Inasmuch as the government spent P18,078.52 to complete the work, including the value of the remaining usable materials, the combined value of the unfinished and unpaid portion of the work and the remaining usable materials, and the combined value of the finished and paid portion and the usable materials taken over by the government, exceeded by P5,538.52 the stipulated price of P66,000. According to the second part of paragraph 2 of section 51, above-quoted, said excess should not be paid to the contractor, otherwise the contract price would be increased; it is he who should pay the same to the Government, after deducting the value of the unused materials employed by the government in other works. The theory adopted by the plaintiff and the lower court, the first, in contending and, the latter, in holding that the defendants ought to pay to the government the value of said materials, is therefore erroneous.

It results that the lower court erred in not giving the defendants credit for the sum of P2,708.08, the value of materials left upon the completion of the construction of the provincial hospital of Sorsogon.

Referring now to the intervention filed by the Mayon Sawmill & Lumber Co., Inc., the first question to decide is whether or not said entity has the right to intervene in this case to claim the value of the materials supplied to the defendant Constantino Stamatelaky for the construction of the hospital in question.

It is not tenable to contend, as do the defendants, that the intervention of the Mayon Sawmill & Lumber Co., Inc., should not be admitted on the ground that it was filed when the case was already about to terminate. The law and the decisions lay down the rule that an intervention may be filed "at any period of a trial", that is, during the trial (sec. 121, Act No. 190; *Pelismino vs. Gloria*, 47 Phil., 967; *Otto Gmur, Inc. vs. Revilla*, 55 Phil., 627). In this case the intervention of the Mayon Sawmill & Lumber Co., Inc. was filed when the plaintiff Provincial Government of Sorsogon was presenting its rebuttal evidence, a period forming part of the trial of the case.

With respect to the argument that the said intervenor has no direct interest in the matter in litigation, section 1923, in relation to section 1921, of the Revised Administrative Code—in force at the time of the execution of the building contract involved herein and at the time of the filing of the bond by the defendants bondsmen—provides that if by the terms of the bond the obligors are bound to satisfy claims for material and labor, the bond shall not be surrendered until the expiration of two months from the acceptance of the work. From this it is inferable that those who supply materials and labor are entitled to claim the value of the materials and labor supplied to the contractor. This right may be availed of by them either by intervening in the action to be brought by the owner of the work against the contractor for violation of the terms of the building contract, the faithful performance of which has been guaranteed by the bondsmen, or by instituting an independent suit. The entity Mayon Sawmill & Lumber Co., Inc. consequently has direct interest in the matter in litigation and a right to intervene in the present case.

In their fourth assignment of error the defendants also argue that the trial court erred in declaring them in default as regards the complaint in intervention, the corresponding summons not having been served on them.

It appears that on December 13, 1932, the Mayon Sawmill & Lumber Co., Inc., through its attorney, filed with the court a motion asking leave to intervene as against the defendants in the present case, a complaint in intervention being attached thereto; that on the 22nd of the same month and year the defendants filed an objection to said motion and complaint in intervention in which it was prayed that the same be denied; that on February 11, 1933, the lower court issued an order authorizing the Mayon Sawmill & Lumber Co., Inc., to intervene and admitting its complaint in intervention; and that on March 15, 1933, the defendants, through their attorney, filed an exception to said order.

Section 397 of the Code of Civil Procedure provides that an acknowledgment on the back of the summons by the

defendant or his voluntary appearance in the action shall be equivalent to service. The circumstances that the defendants filed an objection to the motion and the complaint in intervention, with prayer for their denial, and that they afterwards excepted to the order of the lower court authorizing the Mayon Sawmill & Lumber Co., Inc., to intervene and admitting its complaint in intervention, amount to a voluntary appearance of said defendants, a submission to the jurisdiction of the competent court in respect to the aforesaid complaint in intervention, and a waiver of service of summons (*Flores vs. Zurbito*, 37 Phil., 746).

The lower court, therefore, committed no error in declaring the defendants in default as regards the complaint in intervention.

Under the fifth assignment of error the defendants maintain that the lower court erred in denying their motion for reconsideration in which it was prayed that the order of default be set aside.

This court has uniformly held that the vacation of an order of default rests entirely upon the sound discretion of the court issuing it, and, as a general rule, the same should not be set aside unless the defendant shows that he has a good and meritorious defense (*Camus vs. Paulino*, 59 Phil., 411; *Bafiares vs. Flordeliza and Gavito*, 51 Phil., 786; *Felismino vs. Gloria*, 47 Phil., 967; *Mapua vs. Mendoza*, 45 Phil., 424; *Larrobis vs. Wislizenus and Smith, Bell & Co.*, 42 Phil., 401; *Daipan vs. Sigabu*, 25 Phil., 184; *Coombs vs. Santos*, 24 Phil., 446).

Section 113 of the Code of Civil Procedure authorizes the filing of a motion praying that a party be relieved from the effects of a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect.

Accordingly, the point to be decided in connection with the nun assignment of error is whether or not the defendants were negligent in their failure to file in time an answer to the complaint in intervention, and, in the affirmative case, whether their negligence is excusable and whether they have a meritorious defense.

Manuel M. Calleja, attorney for the defendants, excepted on March 15, 1933 to the Court of the Court of First instance of Sorsogon authorizing the Mayon Sawmill & Lumber Co., Inc., to intervene and admitting the complaint in intervention attached to its motion, on December 22, 1932, when the defendants, through their attorneys (Calleja and Gloria, objected to the motion of the Mayon Sawmill & Lumber Co., Inc., asking leave to intervene, to which its complaint in intervention was attached, the said defendants were already aware of the existence of said complaint; and on March 15, 1933, they already knew that the complaint was admitted by the court. Since the latter date the defendants had done nothing towards filing the proper answer to the aforesaid complaint in intervention. On May 22, 1933, the lower court, acceding to the motion of the intervenor of May 4, 1933, issued an order declaring said defendants in default and authorizing the intervenor to introduce its evidence. On June 7, 1933, said defendants filed a motion praying that the order of default be set aside and that the answer attached to said motion be admitted. On June 20, 1933, the lower court denied said motion for reconsideration for lack of merit.

It appears, therefore, that the defendants were negligent—and their negligence is without excuse—in permitting the lapse of the period from March 15, 1933 to May 22 of the same year, or 2 months and 5 days, before they were declared in default, without filing their answer to the complaint in intervention.

Referring to the question whether the defense set up in their answer is meritorious or not, there is no basis for their first special defense that the lower court is without jurisdiction to take cognizance of and decide the claim contained in the complaint in intervention, on the ground that, as the lower court had jurisdiction to entertain and dispose of the principal case, it also had jurisdiction to take cognizance of and decide the complaint in intervention, not only as regards its venue but as regards the amount in litigation.

Neither is there merit in the second special defense that the complaint in intervention in this case has been improperly admitted, because, as we have already stated, the Mayon Sawmill & Lumber Co., Inc., has by law and by contract direct interest in the matter in litigation as against the defendants.

There is also no merit in the third special defense set up by the defendants whereby they deny having signed any bond answerable for any obligation that might exist between their codefendant Constantino Stamatelaky and any other private person, for the reason that section 1923 of the Revised Administrative Code and the bond signed by the defendants make them answerable for any obligation which Constantino Stamatelaky, as contractor, might contract with those who would furnish him material and labor.

From what has been said it is evident that the defendants have been negligent in not filing their answer in due time. Moreover, even if their answer be admitted, the order of default set aside, and a new trial had, the evidence that they could present in support of their special defenses would not change the result of the case.

The lower court did not therefore err in denying the motion for reconsideration.

With reference to the sixth assignment of error, we are of the opinion that the allegations of the complaint in intervention were sufficiently proved by the deposition of J. O. Betts, assistant general manager of the intervenor Mayon Sawmill & Lumber Co., Inc., who testified with respect to the claim of said intervenor in the sum of P3,140.61 for materials supplied to defendant Stamatelaky, which claim was made through the district engineer of Sorsogon in the letter addressed to the latter by the said assistant manager (Exhibit Y-Deposition).

In view of the foregoing considerations, the judgment appealed from is modified as regards the claim of the plaintiff provincial government of Sorsogon, and the defendants are sentenced to pay jointly and severally to said plaintiff the sum of P2,830.49, with legal interest from the date of the filing of the complaint until full payment thereof, the said judgment being affirmed as regards the claim of the intervenor Mayon Sawmill & Lumber Co., Inc., with costs against said defendants. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Judgment modified.

RESOLUTION ON THE MOTION OF APPELLANTS FAJARDO AND ALCAZAR

February 16, 1938

VILLA-REAL, J.:

This is a motion filed by the defendants and appellants Jose Fajardo and Juan Alcazar praying that the judgment rendered by this court be modified so as to relieve them, as bondsmen of their codefendant and principal Constantino Stamatelaky, from the obligation of paying to the intervenor Mayon Sawmill & Lumber Co., Inc., the sum of P5,140.61 for materials furnished their said codefendant and principal.

This motion is based on the ground that the account presented by the intervenor Mayon Sawmill & Lumber Co., Inc., covers lumber deliveries to the defendant Constantino Stamatelaky from September 15 to November 15, 1929, their liability as bondsmen of said contractor-defendant having ceased on said date, September 15, 1929, when the extension of fifty days granted to the latter for the completion and delivery of the work expired.

In reply to the motion the intervenor Mayon Sawmill & Lumber Co., Inc., alleges that although its bill bears the date of November 15, 1929, it includes unpaid accounts for lumber delivered long before said date, September

15, 1929 ; that the bondsmen Juan Alcazar and Jose Fajardo bound themselves to secure jointly and severally the faithful and complete performance by the contractor Stamatelaky of the building contract and the payment of the materials that may be furnished the said contractor; and that the contractor Stamatelaky did not abandon the work and the provincial government of Sorsogon did not take charge of its continuation until November 15, 1929.

According to the bond Exhibit G signed by the bondsmen Juan Fajardo and Jose Alcazar, they jointly and severally guaranteed the faithful and complete performance of the building contract executed between the contractor Constantino Stamatelaky and the provincial government of Sorsogon, the work to be finished in 200 working days, and the payment of the materials supplied to him. As the period fixed for the performance of the contractor's obligation was 200 working days and the bondsmen guaranteed the performance of said obligation, the latter's liability cannot exceed that of the principal debtor (art. 1826, Civil Code) ; hence, the original subsidiary obligation of the bondsmen is only for 200 working days with respect both to the completion of the work and to the supply of materials. That this was the intention of the parties is to be deducted from the fact that when on July 18, 1929, the period of 200 days for the completion and delivery of the work expired without the contractor being able to finish or deliver said work, the plaintiff provincial government of Sorsogon, instead of carrying into effect the terms of the bond, granted the contractor an additional period of 50 days. In virtue of the bondsmen's conformity to the extension, the bond was not extinguished (art. 1851, Civil Code) but it continued in force until September 15, 1929, when said extension expired. Inasmuch as the obligation assumed by the bondsmen under their bond as to materials supplied was only for the term of the building contract and for any extension that the provincial government of Sorsogon might concede to the contractor, said bondsmen were liable only for materials supplied by the intervenor to the contractor and not paid by the latter until said date, September 15, 1929. The statement of accounts presented by the intervenor Mayon Sawmill & Lumber Co., Inc., includes materials furnished until November 15, 1929 when the provincial government of Sorsogon took charge of the continuation of the work, without a specification of the value of materials supplied until September 15, 1929. If, as we have stated, the obligation of the bondsmen under the contract was merely to secure the payment of materials furnished until September 15, 1929, they cannot be held answerable for materials delivered after said date, the contractor to whom said materials were supplied being solely liable therefor.

In view of the foregoing considerations, the judgment rendered by this court is modified so as to read as follows:

"Wherefore, modifying the appealed judgment, the defendants are sentenced jointly and severally to pay the plaintiff the sum of P2,830.49 and the right is reserved to the intervenor to prove the value of materials furnished the defendant Constantino Stamatelaky and not paid by the latter until September 15, 1929, said amount to be paid by the defendants jointly and severally, and the value of materials furnished the defendant contractor after said date and up to November 15, 1929 should be paid solely by the latter, with costs against the defendants in respect to the plaintiff, and without special pronouncement in respect to the intervenor. So ordered."

So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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