

**FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS,
PLAINTIFF AND APPELLEE, VS. ISABELO G. SANCHEZ, CATALINO
MIRANDA, AND BONIFACIO TIMBOL, DEFENDANTS AND
APPELLANTS.**

G.R. No. 45253. April 14, 1939

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45253/>

DIAZ, J.:

On November 23, 1929, the defendant Isabelo G. Sanchez became the traveling agent of the Radio Corporation of the Philippines, a domestic corporation domiciled in the City of Manila, to sell radios, radio accessories, phonographs and phonograph records in said city. They executed Exhibit A whereby they agreed that the latter would deliver to the former, from time to time, to be sold for a commission, radios, radio accessories, phonographs and phonograph records for an amount not exceeding P2,000; that they would make the liquidations within thirty days from the receipt by Sanchez of the goods or merchandise, and that Sanchez would be paid a commission of 15 per cent, with the privilege of buying the same merchandise delivered to him at a discount of 35 per cent. To guarantee compliance with his obligations, Sanchez executed jointly with the plaintiff Fidelity and Surety Company of the Philippine Islands a bond for P2,000 (Exhibit B), in favor of the Radio Corporation of the Philippines; and to guarantee that he would reimburse the plaintiff any amount which it may pay by reason of his non-compliance with his obligations to the Radio Corporation of the Philippines, he executed jointly with his codefendants Catalino Miranda and Bonifacio Timbol the bond Exhibit C. As Sanchez failed to comply with his obligation to report and pay the price of the goods or merchandise which he had been receiving for the Radio Corporation of the Philippines, in his capacity as selling agent thereof, which price amounted to P784.17 plus legal interest thereon, the plaintiff, upon demand of the said corporation, had to pay the latter the aforesaid sum, duly notifying Sanchez that it would make the said payment under its bond, if the necessary arrangements were not made. Thereafter, it required Sanchez and his two codefendants, pursuant to the bond posted by them in its favor (Exhibit C), to reimburse the amount paid by it to the Radio Corporation of the Philippines. On their refusal, the plaintiff brought this suit in the Court of First Instance of Manila, against the three defendants, resulting in a judgment sentencing them to pay, jointly and severally the said plaintiff the amount of P784.17, plus interest thereon at 10 per cent per annum from March 1, 1933, the sum of P250 by way of penalty for attorney's fees, and the costs of the suit. From this judgment, the defendants appealed not only because they were ordered to pay the aforesaid amounts but also because their counterclaim against the plaintiff was overruled. They alleged that the lower court committed the following six errors set out in their brief:

"I. In not ordering the inclusion of the Radio Corporation of the Philippines as a party in this case.

"II. In not holding that the failure of the Radio Corporation of the Philippines to set up a counterclaim or cross complaint in the action filed by Isabelo G. Sanchez with the Court of First Instance of Pampanga (Exhibit 4), for the amount of P784.17, or for any other amount, whereas the claim of said Radio Corporation of the Philippines arose from the contract Exhibit A, and the cause of action of Isabelo G. Sanchez as plaintiff in said

case also arose from said contract, constitutes a waiver and the said corporation is forever estopped from making such claim.

"III. In not holding that the payment made by the plaintiff to the Radio Corporation of the Philippines in the amount of P784.17, without waiting for the result of the complaint filed before the Court of First Instance of Pampanga (Exhibit 4), to which payment Isabelo G. Sanchez has protested, has been for the account and at the risk of said plaintiff, and the defendants should not answer for said payment.

"IV. In not holding that the payment made by the plaintiff was not proper, and the claim should be directed against the Radio Corporation of the Philippines.

"V. In not holding that the proper remedy of the plaintiff to protect its interests was to deposit the amount with the clerk of court in accordance with the provisions of sections 120 and 121 of the Code of Civil Procedure; and

"VI. In sentencing the defendants to pay, jointly and severally, the sum of P784.17 with interest thereon at 10 per cent per annum, plus the sum of P250 as attorney's fees, and the costs."

- We find no merit in the reasons advanced by the appellants to show the first alleged error of the lower court. It was unnecessary to join the Radio Corporation of the Philippines as a party in this case, because it had no claim either against the defendants or against the plaintiff, and the latter, either jointly or separately, have none against it.

The circumstance that it was a necessary party in the first bond Exhibit B, having been executed in its favor by the defendant and appellant Isabelo G. Sanchez and by the plaintiff and appellee Fidelity and Surety Company of the Philippine Islands, did not and does not make it indispensable or necessary that it be included as a party in this case, because in requiring the plaintiff to pay the said amount of P784.17, it did so by virtue of the conditions of the aforesaid bond. There is no doubt that it was within its right in so doing, because Sanchez violated the conditions of his contract with it, and of course those of his own bond, by failing as he failed to pay the amount of the merchandise received by him as selling agent, or to return the same if they had not been sold. This is admitted by Sanchez, for the Stipulation of Facts submitted by him and the other parties to the lower court shows the following:

"That during the life of said bond, Exhibit B, the defendant Isabelo G. Sanchez failed to pay to the Radio Corporation of the Philippines the sum of P784.17, being the net unpaid value of the merchandise delivered said defendant Isabelo G. Sanchez, by the Radio Corporation of the Philippines pursuant to the terms and conditions of the agency contract, Exhibit A." (Paragraph V of the Stipulation of Facts.)

"That on March 1, 1933, plaintiff paid to the Radio Corporation of the Philippines the said sum of P784.17, in accordance with the bond Exhibit B, hereto attached, executed by the plaintiff in favor of the Radio Corporation of the Philippines." (Paragraph XI of the Stipulation of Facts); and Exhibit A referred to in the stipulation and which is the same contract of agency, and the bond filed by the defendant and appellant Isabelo G. Sanchez, contain respectively the following clauses:

"2. That the first party agrees to bill out, on consignment, to the second party such radio and radiophonograph sets, phonographs and phonograph records and accessories as may from time to time be ordered by the second party, the total value of which shall not, however, at any one time exceed the sum of two thousand pesos (P2,000), Philippine currency; but all goods so received shall be liquidated within thirty (30) days after receipt thereof by the second party, who shall within said period be under obligation to return all articles unsold and in good condition, and to remit to said first party any and all amounts collected and received by him for and on account of the purchase price of all such merchandise as he may have already sold at the time. The above period shall be extendable to another thirty (30) days if the second party shall, within one week prior to its

expiration, so request the first party, giving a detailed statement of all goods sold by him with remittance to cover the purchase price thereof, in which case the second party may retain all unsold goods in his possession for another thirty (30) days. The party of the second part shall furnish a bond in the sum of two thousand pesos (P2,000), or more, according to the value of the articles consigned to the second party, such bond or bonds to be signed by a surety company or by sureties who are owners of real estate with registered Torrens Title." (Exhibit A.)

"Now, therefore, in consideration of the orders which may hereafter be extended to the principal, he as such, and the FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, hereinafter referred to as the SURETY, as surety, do hereby jointly and severally guarantee to hold the VENDOR harmless from and against any loss not in excess of two thousand pesos (P2,000), Philippine currency, which it may sustain thru the failure of the said principal to pay for merchandise hereinafter obtained by the principal under consignment and/or commission from the VENDOR." (Exhibit B.)

In the clause quoted from Exhibit A, that referred to as the party of the first part is the Radio Corporation of the Philippines, and the party of the second part is Sanchez; and in the clause quoted from Exhibit B, that referred to as the principal is said Sanchez and the vendor is the Radio Corporation of the Philippines.

After the plaintiff and appellee paid for the goods and merchandise taken by Sanchez, it seems clear that the Radio Corporation of the Philippines ceased to have any interest, and in fact has no more interest, in the question between the appellants and the appellee. The law only requires that there be included in the same action, to avoid multiplicity of suits, those who may have an interest in the result of that which had been or to be initiated (sec. 114 of Act No. 190). From which it follows that the inclusion of the Radio Corporation of the Philippines in the case before us was and is improper.

- The appellants contend that the failure of the Radio Corporation of the Philippines to file a counterclaim against Sanchez when the latter brought suit against it in case No. 5077 of the Court of First Instance of Pampanga, for the recovery of his commission, constitutes a waiver on its part to collect what it alleged to be due from Sanchez for goods taken by him. In support of their contention they cite section 97 of Act No. 190 which speaks of the effects of the failure to set up a counterclaim in due time.

The parties admit that the appellee paid the P784.17 to the Radio Corporation of the Philippines on March 1, 1933, and that the latter did not answer the complaint of Sanchez in the aforesaid case No. 5077 until more than four months afterwards. In view of this, it would have been clearly absurd for the said corporation to set up a counter-claim after it had ceased to have any claim against Sanchez because the latter's indebtedness was paid by his surety, the herein appellee.

On the other hand, inasmuch as the appellee was not a party in the said case No. 5077, it should not and cannot in justice be chargeable with the omission or error committed by the parties therein, namely, Sanchez and the Radio Corporation of the Philippines.

- The other errors assigned by the appellants are no less imaginary than those just considered. They proceed on the assumption that Sanchez did not owe the Radio Corporation of the Philippines the aforesaid sum of P784.17, and such an assumption is belied by the unequivocal admission of the said Sanchez inferable from the quoted clause V of the Stipulation of Facts authorized by him. He owed the said amount, and the appellee paid it for him in due time, under the terms of the bond Exhibit B.

Article 1841 of the Civil Code provides that "If the debt was not immediately demandable and the guarantor paid it before it was due, he cannot require the debtor to reimburse him until the period has expired." What the appellee

did is in full compliance with this legal provision. It paid Sanchez' obligation long after its maturity, and it is only just that it be reimbursed for the amount thus paid. To this it is entitled under the provisions of article 1838 of the Civil Code.

In view of all the foregoing, we affirm the appealed judgment, with the costs to the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Moran, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.