

LUNETA MOTOR CO., PLAINTIFF AND APPELLANT, VS. FEDERICO ABAD, DEFENDANT AND APPELLEE.*G.R. No. 45273. April 10, 1939*

Ponente: MORAN, J.

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Plaintiff sought recovery of the sum of P2,674.05 with accrued stipulated interest and attorney's fees for balance due on four promissory notes executed by the defendant on March 12, 1931. The complaint sued for a writ of attachment which was issued. Defendant, in his answer, petitioned, for reasons therein stated, that the attachment be lifted, and to that effect a counterbond was tendered by the terms of which the sureties "jointly and severally bind themselves in the sum of P2,600, under the condition that in case the plaintiff recovered judgment in the action the defendant will on demand redeliver the attached property so released to the officer of the court to be applied to the payment of the judgment or in default thereof that the defendant and sureties will on demand pay the plaintiff the full value of the property released." The lower court granted this petition and issued an order for the dissolution of the writ. Thereafter, defendant died; whereupon, his attorney moved for the dismissal of the case. The trial court acceded to this motion, and plaintiff's motion for reconsideration thereof having been denied, the instant appeal was taken.

The case was rightly dismissed in accordance with section 119 of Act No. 190, the action being for money, and pending when defendant died. It is contended by plaintiff-appellant that this provision is not applicable, for a writ of attachment has been issued on property of the defendant, and the lien was transferred to the counterbond filed for the dissolution of the writ. This contention is disposed of unfavorably to appellant by the provision of section 700 of Act No. 190 which reads as follows:

"All actions commenced against the deceased person, for the recovery of money, debt, or damages, and pending at the time the committee are appointed, shall be discontinued, and the property, if any, therein attached, shall be discharged from the attachment, and the claim embraced in such action may be presented to the committee, * * *." (Underscore ours.)

Besides, the obligation of the sureties, under the counterbond, is subject to the condition that when the plaintiff recovered judgment, they shall deliver the property so released to the officer of the court for the payment of said judgment or in default thereof, pay its full value to the plaintiff. This condition has become a legal impossibility, for no judgment can be recovered by the plaintiff in the case which should be dismissed under section 119 aforementioned. Therefore, the obligation dependent upon this condition must be deemed extinguished, according to article 1116 of our Civil Code.

Judgment is affirmed with costs against the appellant.

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

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