

LUIS SAENZ DE VIZMANOS ONG-QUICO, PLAINTIFF AND APPELLANT, VS. YAP CHUAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5470. March 22, 1910

Ponente: ARELLANO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5470/>

ARELLANO, C.J.:

Engracio Palanca, while judicial administrator of the estate of Margarita Jose, gave bond, by order of the court before which the proceedings thereon were had, to guarantee his administration, which bond was executed by Engracio Palanca himself, Luis S. de Vizmanos Ong-Quico, Alejandra Palanca, and Juan Fernandez Lim Quin Chuang, jointly and severally, in favor of the Government of the United States in the Philippine Islands, for the sum of P60,000, Philippine currency.

On the same date the said Engracio Palanca and five others executed in favor of Luis S. de Vizmanos the following bond: Yap Chuangco, for P20,000; Yap Chutco, for P5,000; Palanca Yap Poco, for P5,000; Palanca Tanguinlay, for P5,000; and Lim Pongco, for P5,000. All of them signed the bond except the first named, Yap Chuangco, who did not personally execute the bond; this was done for him by his attorney, Yap Chengtua.

In the said instrument the following appears:

"* * * and, it being possible that the case occur that Mr. Vizmanos shall have to pay the said bond or a part thereof, as such surety, whose responsibility or solvency in such capacity has been accepted by the court up to the amount of forty thousand pesos, Philippine currency, for the purpose of guaranteeing to the same the reimbursement of the sum or sums which by reason of the said bond he might have to pay, the executors of this instrument have agreed that Messrs. Yap Chuangco, Yap Chutco, Carlos Palanca Tanguinlay, Serafin Palanca Yap Poco and Lim Biampong, known as Lim Pongco, shall be the sureties of Don Engracio Palanca in favor of Mr. Luis S. Vizmanos Ong-Quico, binding themselves jointly as such to reimburse or to pay to the said Mr. Vizmanos, his heirs and successors in interest, whatever sums the said Vizmanos may have to pay or shall have paid by reason of the judicial bond herein mentioned, subscribed by him in favor of Mr. Palanca, up to the amount of forty thousand pesos, Philippine currency, in the proportion of not exceeding P20,000 by Yap Chuangco and P5,000 by each one of the other four herein above mentioned."

On March 9, 1908, the court which tried the case concerning the estate ordered Luis Saenz de Vizmanos Ong-Quico, as surety in solidum of the ex-administrator Engracio Palanca, to pay to the estate the sum of P41,690.15, Philippine currency, also the interest on the said sum at the rate of 8. per cent per annum, counting from December 27, 1905, with other sums set out in the sentence. This judgment became final.

On March 31, 1908, Vizmanos Ong-Quico paid to the administrator of the estate eight thousand pesos (P8,000), Philippine currency, by the conveyance of property belonging to him, he still owing P40,975.92, with interest on the said amount at 8 per cent per annum from the 9th day of March, 1908, the date of the judgment.

On April 2, 1908, he instituted suit against the five sureties above named who, with Engracio Palanca, executed

the bond before mentioned in his favor, praying the Court of First Instance of the city of Manila to sentence them to pay him: Yap Chuangco, P20,000, and the other four sureties, Yap Chutco, Carlos Palanca Tanguinlay, Serafin Palanca Yap Poco, and Lim Pongco, each P5,000, that is, these four together P20,000 more, and jointly the costs of the action.

The court, in its judgment, acquitted Yap Chuangco from the claim of the P20,000, assessing against the plaintiff the part of the costs pertaining to this defendant, and ordered each one of the four remaining defendants, Yap Chutco, Carlos Palanca Tanguinlay, Serafin Palanca Yap Poco, and Lim Biang Pon (alias Lim Pongco), to pay to the plaintiff, Luis Saenz de Vizmanos, the sum of P2,000, with legal interest at 6 per cent per annum on the said respective sums from March 31, 1908, the date on which the plaintiff paid to the present administrator of the estate the said sum of P8,000, until its complete payment. The said four defendants had also to pay jointly, that is, in equal shares, the costs pertaining to them.

Both parties appealed from this sentence, each one forwarding to this court his respective bill of exceptions, together with all the evidence taken at the trial, besides the stenographic notes which were also forwarded by special order of the trial court.

The appeal having been heard before this court, it appears that:

The defendants appealed on account of their having been ordered to pay, each of them, P2,000, instead of only P1,000, which according to the terms of the contract, each one of them was bound to pay to the plaintiff. (Only error alleged.)

The plaintiff appealed because the court refused to render judgment against the defendants for the maximum sum for which each one had bound himself in the contract, which he calls a counterbond or subbond, that is, each one of the four to pay P5,000. (Only error alleged.)

The share of P20,000 which the plaintiff claimed from Yap Chuangco is not included in the former's appeal, from the payment of which amount the latter is relieved in the judgment, for he expressly states in his brief that he conforms to this part of the judgment and that "his appeal solely relates to the other defendants." (Brief, 4.)

With respect to the other four defendants, the plaintiff and appellant claims that, notwithstanding his having paid only P8,000 of his bond, the defendants ought to reimburse him at the rate of P5,000 each, that is, all together to the amount of P20,000. As above stated, the lower court only sentenced them to reimburse their proportional share of the P8,000 paid, to wit, P2,000 each, P8,000 all together. Thus they would be paying even the proportional share corresponding to Yap Chuangco, which is P4,000, whereas the plaintiff appellant agrees that the share of the bond concerning Yap Chuangco should be void by reason of its having been executed by an attorney in fact of the latter who did not possess sufficient power for this purpose.

Hence the only error alleged by the defendants in their brief, inasmuch as, having deducted the P4,000 which Yap Chuangco would have to pay, the other four defendants must pay only P4,000, that is, P1,000 each.

"We can not but agree with this claim of the attorneys for the defendants - say those of the plaintiff - if this court, disregarding the reasons contained in our brief, should declare that the plaintiff is only entitled to recover the money that he really and actually has expended, to wit, P8,000, then it appears unquestionable that the defendants and appellants are only compelled to pay P1,000 each, as their attorneys state in their brief." (Brief, 2.)

With regard to the sole error alleged by the attorneys for the plaintiff, it must first be considered that the bond which the four defendants in turn executed in favor of the plaintiff bondsman is not a subbond; it is not of the same nature as that given by the latter in favor of Engracio Palanca in the probate proceedings in connection with

the will of Margarita Jose. Although one bond is subordinate to another, not for this reason are they of the same nature. That of Vizmanos for Engracio Palanca in favor of the estate is judicial and was approved by the probate judge; that of the defendants for Engracio Palanca in favor of Vizmanos was extra judicial and the probate judge had nothing to do with it. The new administrator of the estate had a right of action, and he exercised it against Vizmanos to enforce the payment of the bond given by the latter, but he has none nor can he exercise any whatsoever against the four who gave bond for Engracio Palanca in favor of Vizmanos. The only relation that exists between the one bond and the other is merely that of antecedent and consequent, in so far as that of Vizmanos in favor of the estate was the cause of debt of that of the defendants in favor of Vizmanos. The first one was strictly judicial, the second merely contractual between the parties,

When a surety pays for the party under bond, he has a right of action against such party for the recovery of the amount paid by him.

"A surety who pays for a debtor shall be indemnified by the latter." (Art. 1838, Civil Code.)

The surety Vizmanos who fcaid for the debtor Palanca must be indemnified by Palanca. And as it was evident, when Vizmanos became surety for Palanca, that the latter could not pay him, Palanca obligated himself by the four defendants, or, better said, the four defendants assumed the obligation that rested upon Palanca to indemnify Vizmanos for what the latter might pay for Palanca. This is in fact the obligation that is now exercised. The action of the surety against the party under bond or the debtor to require the obligation of indemnity, has no other name nor other nature in law than that of a subrogation; it is an unquestionable doctrine. The action of subrogation is regulated in article 1839 of the Civil Code;

"By virtue of such payment the surety is subrogated in all the rights which the creditor had against the debtor."

"But be it well understood - says a commentator - that this subrogation can not be interpreted in such absolute terms as to include more than the surety has paid, for, though it is true that he puts himself in the place of the creditor and should have the same rights as the latter in consequence of the subrogation, it is no less certain that there would be an unjust enrichment to the prejudice of the debtor, if the surety who pays for him were permitted to claim more than what he paid. Moreover, the benefit of subrogation is the means of utilizing the right of reimbursement, and he could not collect as such the excess from the rights and actions of the creditor over and above the advance made by him." (12 Manresa, Civil Code, 304.)

The contract law says no more than this:

"Being that the case may occur - say those obligated - that the said Vizmanos may have to pay the said bond or a part thereof * * * for the purpose of guaranteeing the reimbursement of the sum or sums which by reason of the bond he may have to pay, the executors have agreed and stipulated that * * * they shall be the sureties of Don Engracio Palanca in favor of Sr. Luis S. Vizmanos, binding themselves as such conjointly to reimburse or to pay * * * whatever amounts the latter might have to pay or shall have paid by reason of the judicial bond aforementioned. * * *"

Being as it is an action of subrogation, it is. not exercisable except in the case of payment. The surety is subrogated by the payment, says the law, in all the rights that the creditor had against the debtor. Being as it is an action of indemnity it is not conceived how, rationally, the damage not yet caused can be anticipated. When the purse of the surety has suffered no detriment, to sue the debtor in order that he provide funds for the surety in expectancy of the action of the creditor, is not to ask an indemnity, but to demand a guaranty to recover the loss when it may occur, and this guaranty is that already obtained by the surety Vizmanos from Engracio Palanca on the latter's placing beforehand four parties in his stead in order that they may at the proper time insure him of the restitution, the reimbursement of what he shall have paid. To ask an indemnity of twenty, when the loss to be indemnified is but eight, can in no wise be authorized either by law or by reason.

The Civil Code specifies five cases as exceptions wherein the surety, even before paying, may proceed against the principal debtor, but "in all these cases the action of the surety tends to obtain his release from the security or a guaranty to defend him against any proceedings of the creditor and from the danger of insolvency of the debtor." (Art. 1843, Civil Code.) The security or bond given by the four defendants in favor of the plaintiff Vizmanos had no other purpose than, in case he should make payment to the estate of Margarita Jose, to defend himself against the proceedings of the administrator of the estate and from the danger of insolvency of the debtor Palanca.

Although, in principle, by virtue of the contract in question, the four defendants are obligated to the plaintiff in the sum of P20,000, that is, at the rate of P5,000 each, the action ad cautelam is, precisely, covered by such a contract, and the action of subrogation, the only one exercisable, is only available in the quality of a restitution or reimbursement of the payment effected. In the present case the plaintiff, by virtue of the contract ad cautelam, is entitled to an action against the four defendants for recovery from each of them up to the maximum amount of P5,000, but he can not by such action, as surety for the principal debtor, collect more than the sum which he himself was actually compelled to pay.

In virtue of the foregoing, the judgment appealed from is reversed in so far as it sentences each one of the four defendants, Yap Chutco, Carlos Palanca Tanguinlay, Serafin Palanca Yap Poco, and Lim Bian Pong (alias Lim Pongco), to pay to the plaintiff, Luis Saenz de Vizmanos, the sum of P2,000. The amount to be paid is hereby fixed at P1,000, to the payment of which, in favor of the aforesaid plaintiff, each of the four defendants mentioned were sentenced, "with legal interest at the rate of 6 per cent per annum on the said respective sums, from March 31, 1908, the date on which the plaintiff paid to the present administrator of the said estate the said sum of P8,000, until its complete payment. The said four defendants shall pay the costs in equal shares." The costs of this instance shall be assessed against the plaintiff and appellant Vizmanos. So ordered.

Torres, Mapa, Johnson, and Moreland, 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.