

7 Phil. 140

[ G.R. No. 2921. December 06, 1906 ]

**LUCAS GONZALEZ, PLAINTIFF AND APPELLEE, VS. ROSENDO DEL ROSARIO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

Prior to the 15th day of July, 1902, Clemente del Rosario was the executor of the wills of Nicolas del Rosario and 1 fonorata Valdez. One Ramon del Rosario, having commenced an action against him as such executor, he employed the plaintiff, a lawyer, as his counsel in that case. The case was tried in the Court of First Instance and judgment entered in favor of the plaintiff therein and against the defendant, Clemente del Rosario, as executor aforesaid. The latter gave notice of his intention to appeal and a bill of exceptions was prepared and presented for that purpose. On the 15th of July, 1902, however, Clemente del Rosario died and the defendant in this case, Rosendo del Rosario, was appointed as the executor of both of these estates. He at once notified the Court of First Instance that he did not desire to continue the appeal and, in fact, abandoned it. The plaintiff made an application to the Court of First Instance for permission to continue the appeal in the name of the widow and minor son of Clemente del Rosario, who were interested as heirs and legatees in the estates of the said Nicolas del Rosario and Honorata Valdez. The court allowed the appeal to be carried on by the plaintiff in behalf of the persons above mentioned, the case was removed to this court, was tried herein, and a judgment was entered reversing the judgment of the court below. (See Ramon del Rosario vs. Clemente del Rosario, 2 Phil Rep., 321.)

The plaintiff has now brought this action against Rosendo del Rosario as executor of the two estates to recover compensation for his services as a lawyer in connection with the said litigation. He states in his complaint two causes of action, one for services rendered in the Court of First Instance and the other for services rendered upon the appeal.

As to the first cause of action, the case is completely covered by the case of Escueta rtt. Sy-

Juilliong<sup>[1]</sup> (4 Off. Gaz., 56). The two cases are almost identical in their facts. We held in that case that where a lawyer was employed by one administrator in connection with the affairs of the estate of which he was administrator, and where that administrator afterwards died, no action could be maintained by the lawyer to recover for his services against the second administrator appointed for the same estate.

As to the second cause Of action, it is very clear that the defendant, neither in his personal nor representative capacity, can be made responsible for the value of the services rendered by the plaintiff upon the appeal, lie not only did not employ the plaintiff to carry on the appeal, but expressly refused to do so, and did all he could to prevent the appeal from being taken. Our opinion in the case of Rosendo del Rosario vs. Clemente del Rosario and the evidence in this case shows that the appeal was prosecuted, not by the defendant, but by other persons.

The judgment of the court below is reversed, and the defendant is acquitted of the complaint with the costs of the first instance, without prejudice to the right of the plaintiff to present his claim for services against the persons who are responsible to him therefor. No costs will be allowed to either party in this court.

After the expiration of twenty days let judgment be entered accordingly, and ten days thereafter the case be returned to the lower court for execution. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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<sup>[1]</sup> 5 Phil. Rep., 405.

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