SUPREME COURT
EN BANC

ORIENTAL COMMERCIAL CO., INC.,
***Petitioner*,**

-versus-

G.R. No. 42391
October 10, 1934

QUIRICO ABETO and ALEJO MABANAG,
***Respondents*.**
x----------x

D E C I S I O N

IMPERIAL, *J.*:

In civil case No. 35897 of the Court of First Instance of Manila, the herein petitioner sought to recover from Gregorio Bugayong, Vicente Rosario and the herein respondent Alejo Mabanag a certain sum of money, interest, penalty and costs. After trial, judgment was rendered ordering Bugayong alone to pay the sum of P5,742.73 with legal interest thereon from August 15, 1929, plus the costs, and absolving Mabanag and Rosario from the complaint. Appeal was taken therefrom and the case was docketed in this court as case No. 37624. After the same had been submitted for decision, judgment was rendered as follows:[1]

> "On the whole case we believe that P1,000 should be awarded appellant for attorney's fees and that judgment should be entered against all the defendants and appellees in the sum of P5,742.73, with legal interest from the 15th of August, 1929, until paid, together with the sum of P1,000 as attorney's fees, and the costs in both instances.
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> "As thus modified, the judgment of the Court of First Instance of Manila is affirmed. So ordered."

Said judgment having become final, the clerk of court issued the following decree:

> "By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila dated the 18th day of February, nineteen hundred and thirty-two, and from which the above-entitled appeal was taken, be, and the same is hereby, affirmed with the modification that judgment is entered against all the defendants and appellees in the sum of P5,742.73, with legal interest from the 15th of August, 1929, until paid, together with the sum of P1,000 as attorney's fees, and the costs in both instances.
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> "It is further ordered that the plaintiff-appellant recover from the defendants-appellees the sum of P143, as costs."

After the case had been remanded to the court of origin, the petitioner applied for and obtained a writ of execution of the judgment. By virtue of said writ, real and personal properties belonging to Rosario and the respondent Mabanag were levied upon. The latter executed in favor of the petitioner a promissory note for the sum of P1,000 as partial payment of the judgment and succeeded in having the execution suspended in that state. Inasmuch as the judgment was not executed in full in spite of the time that elapsed, the petitioner obtained from the clerk of court an alias write of execution against the respondent Mabanag, and the provincial sheriff of Rizal levied upon two pieces of real property belonging to him, fixing their sale at public auction for August 10, 1934. The said respondent then filed a motion praying the court to enjoin the sheriff from proceeding with the sale, alleging that, according to the terms of the judgment, he was a mere

joint obligor with Rosario, for which reason he was not liable to satisfy in full the unpaid balance of the judgment which, according to the last writ of execution, amounted to P1,750.16. Lastly, he claimed that, being a mere surety, execution did not lie against him until after the property of the principal debtor Gregorio Bugayong is exhausted. The court sustained said motion and on August 4, 1934, it ordered the sheriff to abstain from proceeding with the advertised sale, and directed that no writ of execution be issued against the respondent Mabanag until after the property of Bugayong is exhausted or Bugayong should happen to be insolvent.

The petitioner filed this petition for a writ of *certiorari* to have said order of August 4, 1934, set aside.

The only point to be decided by this court is whether or not the trial court, in issuing the order in question, acted without or in excess of its jurisdiction or abused its sound discretion. In deciding such question, we should first determined the rights and obligations created by the final judgment rendered by this court. It is beyond question that said judgment is binding upon the parties to the case and that it superseded the action brought by the petitioner.

> "A claim or demand, being put in suit and passing to final judgment, is merged or swallowed up in the judgment, loses its vitality, and cannot thereafter be used either as a cause of action or as a set-off, unless the statues otherwise provides; and this rule applies to a final decree in a court of equity. Moreover, as a general rule all the peculiar qualities of the claim are merged in the judgment, which then stands on the same footing as all other judgments. And these rules apply to all species of demands, including contracts, bonds, and promissory notes, but not, according to the weight of authority, a judgment on which a new judgment is recovered." (34 C. J., pp. 752-754.)

It being settled that the final judgment determines and is the source of the rights and obligations of the parties to that case, let us find out what obligations are derived therefrom in favor of the petitioner and against the respondent Mabanag and his co-defendants therein. In the judgment of this court, notice of which was served by the clerk on the trial court, notice of which was served by the clerk on the trial

court and the parties, it is simply stated that judgment be entered against all the defendants and appellees in the sum of P5,742.73, with legal interest from the 15th of August, 1929, until paid, together with the sum of P1,000 as attorney's fees, and costs, but it does not specify the kind of obligation imposed upon the defendants in connection with the payment or the manner in which said payment should be made by them. In other words, the judgment failed to state whether or not the defendants should pay said sums jointly and severally.

As to obligations, the Civil Code provides as follows:

> "ART. 1137. The concurrence of two or more creditors, or of two or more debtors, in a single obligation, does not imply that each one of the former has a right to ask, nor that each one of the latter is bound to comply in full with the things which are the objects of the same. This shall only take place when the obligation determines it expressly, being constituted as a joint and several obligation.
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> "ART. 1138. If from the context of the obligation referred to in the preceding article, any other thing does not appear, the credit or the debt shall be presumed as divided in as many equal parts as there are creditors or debtors, and shall be considered as credits or debts, each one different from the other."

In the case of De Leon vs. Nepomuceno and De Jesus (37 Phil., 180), this court, in determining the manner in which the costs should be paid in conformity with the language of the judgment rendered in an election case, said:

> "Examining the language of the judgment for costs, which is set out in the foregoing statement of facts, it is manifest that it is merely a joint judgment against the protestado y tercerista, and does not permit of construction or interpretation as a 'joint and several' judgment. No argument is necessary. It is sufficient to cite here articles 1137 and 1138 of the Civil Code as to the rule in this jurisdiction.
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> > "'ART. 1137. The concurrence of two or more creditors, or of two or more debtors, in a single obligation, does not

> imply that each one of the former has a right to ask, nor that each one of the latter is bound to comply in full with the things which are the objects of the same. This shall only take place when the obligation determines it expressly, being constituted as a joint and several obligation.
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> "'ART. 1138. If from the context of the obligation referred to in the preceding article, any other thing does not appear, the credit or the debt shall be presumed as divided in as many equal parts as there are creditors or debtors, and shall be considered as credits or debts, each one different from the other.'
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> "'A joint obligation under the Law of Louisiani binds the parties thereto only for their proportion of the debt, whilst a solidary obligation, on the contrary, binds each of the obligors for the whole debt.' (Groves vs. Sentell; 14 Sup. Ct., 898, 901; 153 U. S., 465; 38 L. ed., 785.)"

And in the case of Sharruf vs. Tayabas Land Co. and Ginainati (37 Phil., 655), wherein the case of De Leon was again favorably cited, the same rule was reiterated in the following terms:

> "We agree with the appellant that this promissory note evidences a joint and not a joint and several obligation, but it appearing that the trial judge correctly rendered judgment holding the defendants 'jointly' liable, there is no necessity for any modification of the terms of the judgment in that regard. Our decision in the case of De Leon vs. Nepomuceno and De Jesus (p. 180, ante) should make it quite clear that in this jurisdiction at least, the word 'jointly' when used by itself in a judgment rendered in English is equivalent to the word mancomunadamente, and that it is necessary to use the words 'joint and several' in order to convey the idea expressed in the Spanish term solidariamente (in solidum); and further, that a contract, or a judgment based thereon, which fails to set forth that a particular obligation is 'joint and several' must be taken to have in contemplation a 'joint' (mancomunada), and not a 'joint and several' (solidary) obligation."

Therefore, it is already a well established doctrine in this jurisdiction that, when it is not provided in a judgment that the defendants are liable to pay jointly and severally a certain sum of money, none of them may be compelled to satisfy in full said judgment. And applying said doctrine to the case under consideration, it follows that the respondent Mabanag is not in fact liable to satisfy in full the amount of the judgment rendered against him and the other two co-defendants.

It is of no consequence that, under the written contract of suretyship executed by the parties, the obligation contracted by the sureties was joint and several in character. The final judgment, which superseded the action brought for the enforcement of said contract, declared the obligation to be merely joint, and the same cannot be executed otherwise.

In the court's order it is decreed that no writ of execution be issued against the respondent Mabanag until after the property of the co-defendant Bugayong is exhausted. This court is of the opinion that there was excess of jurisdiction upon this point. In the final judgment nothing can be inferred giving any of the defendants therein the benefit of order. The final judgment rendered against them does not consider any of them as surety.

WHEREFORE, it being understood that the respondent Mabanag is not entitled to the benefit of exhaustion, the petition is denied, without special pronouncement as to costs. So ordered.

Malcolm, Villa-Real, Butte and Goddard, *JJ.*, concur.

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[1] 58 Phil., 958.