

years from its promulgation, it can only refer to the decision of the Supreme Court if the case has been appealed. Of course, when the case is decided in favor of the applicant and the Government does not appeal, that decision should be reckoned within the computation of the period of two years contemplated by law. And this is so because when a case is appealed, the decision may be changed, modified or reversed in its entirety, which means that during the pendency of the appeal the original decision has no legal force and effect."

The decision of the Supreme Court, in case of appeal, is the law of the case and such decision has no retroactive effect whenever it is confirmatory of the decision of the lower court. Writ granted. (*REPUBLIC OF THE PHILIPPINES vs. HON. QUERUBE MAKALINTAL, Judge of the CFI of Iloilo and UY CHIONG, as an interested party, G.R. No. L-5424, Oct. 24, 1952.*)

CASES NOTED

TENDER OF PAYMENT MADE IN CHECK, AND CONDITIONALLY,
AND NOT FOLLOWED BY CONSIGNATION DOES NOT DISCHARGE THE
DEBTOR.

FACTS: Defendant-appellant owed the plaintiff Bank the sum of P600 for which he executed a promissory note, jointly and severally, with two other persons.

In this suit by the Bank for collection, he asserted that the obligation has already been paid because, on June 23, 1949 "he presented himself at the Naga Agency of the plaintiff and tendered payment of the loan out of a check for P5,000.00 issued by the U. S. Treasury in favor B. Vda. de Rullas, who then accompanied said defendant, demanding that her check be cashed". Defendant identified her as the payee, but plaintiff's Asst. Agent Mr. M. Saludo of the Naga Agency, dishonored the check on the ground that the identification and guaranty offered by the defendant were not sound and not free from suspicion. The same check was, however, honored and cashed at a later date by the Legaspi Branch of the plaintiff.

ISSUE: Whether the tender of payment in the manner above-described resulted in the discharge of defendant-appellant's monetary undertaking.

HELD: It did not, for the following reasons.

First. The promissory note executed by appellant undertook to pay in the Philippine currency; and according to the trial judge,

as "the tender of payment was made in check, and not his own at that, the plaintiff acted rightly in refusing it."

Second. A tender of payment, to be valid, must be unconditional. The tender of payment by the defendant was conditional. In offering the check, the defendant debtor, practically told the Bank, "Here is ₱600 but you must pay the remainder of the check, (₱4,400) to B. Vda. de Rullas". That condition the Bank's agency was unwilling to accept. And without in any manner implying that the creditor's refusal to accept the condition should be justified, we may state that the Bank in this case had some reasons to reject the condition.

The appellant labors under the impression that *it was the duty* of the Bank to honor and cash the check when and if the payee Vda. de Rullas presented it. Assuming that the check was in fact genuine, that it was negotiable, that it was drawn upon the Philippine National Bank, that the person presenting the check was in reality the payee B. Vda. de Rullas, and that the drawer had enough funds in the hands of the plaintiff bank, B. Vda. de Rullas could not compel nor sue the Bank to obtain payment of the check, because it does not appear that it had been accepted. (Sec. 189, Neg. Inst. Las.). The rule is that "the payee of a check unaccepted cannot maintain an action on it against the bank on which it is drawn". (Gen. Am. Life Ins. v. Stadium, N.C. 1943, 25 S.E. 2d 202) The reason being that "there is no privity between the holder and the bank until by certification of the check or the acceptance thereof, express or implied, or by any other act or conduct, it has made itself directly liable to the holder". (Standard Trust Co. v. Com. Nat. Bank, 1914, 81 S.E. 1074, 166 N.C. 112)

If the Bank was not the drawee, appellant's case would be less meritorious.

Third. Tender of payment, even if valid, does not by itself produce legal payment, unless it is completed by consignment.

Judgment affirmed. (Philippine National Bank v. Pedro C. Relativo, et al., G.R. No. L-5298, Promulgated Oct. 29, 1952)

FOREIGN INSURER MAY NOT WITHDRAW ITS CERTIFICATE OF AUTHORITY PENDING DETERMINATION OF A CLAIM AGAINST IT.

FACTS: This is a Resolution of the Supreme Court on the Motion for Reconsideration filed by the herein petitioners. Briefly,

the facts of the case as far as this motion for reconsideration concerned are:

The petitioners are foreign insurance companies allowed to do business in the Philippines. It appears that said companies issued fire insurance policies in favor of the respondent Yu Hun & Co. and that while the policies were in full force and effect, the properties insured were destroyed by fire. Yu Hun & Co. demanded payment of the policies but the insurers denied liability. Hence, Yu Hun & Co. sued to recover on the fire insurance policies issued in its favor. Pending the court's decision, the insurers applied for permission to withdraw their certificates of authority under the terms of Sections 202-A to 202-E of the Insurance Act as amended by Republic Act No. 447. The basis of their application to withdraw is that while they admit that Yu Hun & Co. has pending claims against them, their "liabilities" to said Yu Hun & Co. have been "reinsured" and therefore their withdrawal may properly be granted, which is in accord with the Insurance Commissioner's opinion.

ISSUE: The issue hinges on the interpretation of Section 202-C of the Insurance Act as amended by Republic Act No. 447 which provides as follows:

SEC. 202-C. Every foreign Insurance Company which withdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policyholders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities."

The Insurance Commissioner argues that, inasmuch as the "liabilities" of petitioners to Yu Hun & Co. have been "reinsured", the withdrawal may be permitted.

HELD: A careful analysis of Section 202-C of the Insurance Act as amended by Republic Act No. 447 reveals that the section consist of three parts. The first speaks of liabilities of the foreign insurer to policyholders and creditors. The second and third