43 Phil. 444

[G. R. No. 18103. June 08, 1922]

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. MANILA OIL REFINING & BY-PRODUCTS COMPANY, INC., DEFENDANT AND APPELLANT.

D E C I S I O N

MALCOLM, J.:

The question of first impression raised in this case concerns the validity in this jurisdiction of a provision in a promissory note whereby in case the same is not paid at maturity, the maker authorizes any attorney to appear and confess judgment thereon for the principal amount, with interest, costs, and attorney's fees, and waives all errors, rights to inquisition, and appeal, and all property exemptions.

On May 8, 1920, the manager and the treasurer of the Manila Oil Refining & By-Products Company, Inc., executed and delivered to the Philippine National Bank, a written instrument reading as follows:

> "RENEWAL.
> "P61,000.00
>
> "Manila, P. I., *May 8,1920*.
>
> "On demand after date we promise to pay to the order of the Philippine National Bank sixty-one thousand only pesos at Philippine National Bank, Manila, P. I.
>
> "Without defalcation, value received; and do hereby authorize any attorney in the Philippine Islands, in case this note be not paid at maturity, to appear in my name and confess judgment for the above sum with interest, cost of suit and attorney's fees of ten (10) per cent for collection, a release of all errors and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting property, real or personal, from levy or sale. Value received. No.

_____ Due _____

"Manila Oil Refining & By-Products Co., Inc.,
(Sgd.) "Vicente Sotelo, "
Manager.

"Manila Oil Refining & By-Products Co., Inc.,
(Sgd.) "Rafael Lopez, "
Treasurer."

The Manila Oil Refining & By-Products Company, Inc. failed to pay the promissory note on demand. The Philippine National Bank brought action in the Court of First Instance of Manila, to recover P61,000, the amount of the note, together with interest and costs. Mr. Elias N. Recto, an attorney associated with the Philippine National Bank, entered his appearance in representation of the defendant, and filed a motion confessing judgment. The defendant, however, in a sworn declaration, objected strongly to the unsolicited representation of attorney Recto. Later, attorney Antonio Gonzalez appeared for the defendant and filed a demurrer, and when this was overruled, presented an answer. The trial judge rendered judgment on the motion of attorney Recto in the terms of the complaint.

The foregoing facts, and appellant's three assignments of error, raise squarely the question which was suggested in the beginning of this opinion. In view of the importance of the subject to the business community, the advice of prominent attorneys-at-law with banking connections, was solicited. These members of the bar responded promptly to the request of the court, and their memoranda have proved highly useful in the solution of the question. It is to the credit of the bar that although the sanction of judgment notes in the Philippines might prove of immediate value to clients, every one of the attorneys has looked upon the matter in a big way, with the result that out of their independent investigations has come a practically unanimous protest against the recognition in this jurisdiction of judgment notes.[1]

Neither the Code of Civil Procedure nor any other remedial statute expressly or tacitly recognizes a confession of judgment commonly called a judgment note. On the contrary, the provisions of the Code of Civil Procedure, in relation to constitutional safeguards relating to the right to take a man's property only after a day in court and after due process of law, contemplate that all defendants shall have an opportunity to be heard. Further, the provisions of the Code of Civil Procedure pertaining to counterclaims argue against

judgment notes, especially as the Code provides that in case the defendant or his assignee omits to set up a counterclaim, he cannot afterwards maintain an action against the plaintiff therefor. (Sees. 95, 96, 97.) At least one provision of the substantive law, namely, that the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties (Civil Code, art. 1256), constitutes another indication of fundamental legal purpose.

The attorney for the appellee contends that the Negotiable Instruments Law (Act No. 2031) expressly recognizes judgment notes, and that they are enforcible under the regular procedure. The Negotiable Instruments Law, in section 5, provides that "The negotiable character of an instrument otherwise negotiable is not affected by a provision which "* * * (b) Authorizes a confession of judgment if the instrument be not paid at maturity." We do not believe, however, that this provision of law can be taken to sanction judgments by confession, because it is a portion of a uniform law which merely provides that, in jurisdictions where judgment notes are recognized, such clauses shall not affect the negotiable character of the instrument. Moreover, the same section of the Negotiable Instruments

Law concludes with these words: "But nothing in this section shall validate any provision or stipulation otherwise illegal."

The court is thus put in the position of having to determine the validity in the absence of statute of a provision in a note authorizing an attorney to appear and confess judgment against the maker. This situation, in reality, has its advantages for it permits us to reach that solution which is best grounded in the solid principles of the law, and which will best advance the public interest.

The practice of entering judgments in debt on warrants of attorney is of ancient origin. In the course of time a warrant of attorney to confess judgment became a familiar common law security. At common law, there were two kinds of judgments by confession; the one a judgment by *cognovit actionem*, and the other by confession *relicta verificatione*. A number of jurisdictions in the United States have accepted the common law view of judgments by confession, while still other jurisdictions have refused to sanction them. In some States, statutes have been passed which have either expressly authorized confession of judgment on warrant of attorney, without antecedent process, or have forbidden judgments of this character. In the absence of statute, there is a conflict of authority as to the validity of a warrant of attorney for the confession of judgment. The weight of opinion is that, unless authorized by statute, warrants of attorney to confess judgment are void, as against public

policy.

Possibly the leading case on the subject is First National Bank of Kansas City vs. White ([1909], 220 Mo., 717; 16 Ann. Cas., 889; 120 S. W., 36; 132 Am. St. Rep., 612). The record in this case discloses that on October 4, 1900, the defendant executed and delivered to the plaintiff an obligation in which the defendant authorized any attorney-at-law to appear for him in an action on the note at any time after the note became due in any court of record in the State of Missouri, or elsewhere, to waive the issuing and service of process, and to confess judgment in favor of the First National Bank of Kansas City for the amount that might then be due thereon, with interest at the rate therein mentioned and the costs of suit, together with an attorney's fee of 10 per cent and also to waive and release all errors in said proceedings and judgment, and all proceedings, appeals, or writs of error thereon. Plaintiff filed a petition in the Circuit Court to which was attached the above-mentioned instrument. An attorney named Denham appeared pursuant to the authority given by the note sued on, entered the appearance of the defendant, and consented that judgment be rendered in favor of the plaintiff as prayed in the petition. After the Circuit Court had entered a judgment, the defendant, through counsel, appeared specially and filed a motion to set it aside. The Supreme Court of Missouri, speaking through Mr. Justice Graves, in part said:

> "But going beyond the mere technical question in our preceding paragraph discussed, we come to a question urged which goes to the very root of this case, and whilst new and novel in this state, we do not feel that the cause should be disposed of without discussing and passing upon that question.
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> "And if this instrument be considered as a security for a debt, as it was by the common law, it has never so found recognition in this state. The policy of our law has been against such hidden securities for debt. Our Recorder's Act is such that instruments intended as security for debt should find a place in the public records, and if not, they have often been viewed with suspicion, and their *bona fides* often questioned.
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> "Nor do we think that the policy of our law is such as to thus place a debtor in the absolute power of his creditor. The field for fraud is too far enlarged by such an instrument. Oppression and tyranny would follow the footsteps of such a

diversion in the way of security for debt. Such Instruments procured by duress could shortly be placed in judgment in a foreign court and much distress result therefrom.

“Again, under the law the right to appeal to this court or some other appellate court is granted to all persons against whom an adverse judgment is rendered, and this statutory right is by the instrument stricken down. True it is that such right is not claimed in this case, but it is a part of the bond and we hardly know why this pound of flesh has not been demanded. Courts guard with jealous eye any contract innovations upon their jurisdiction. The instrument before us, considered in the light of a contract, actually reduces the courts to mere clerks to enter and record the judgment called for therein. By our statute (Rev. St. 1899, sec. 645) a party to a written instrument of this character has the right to show a failure of consideration, but this right is brushed to the wind by this instrument and the jurisdiction of the court to hear that controversy is by the contract divested. In 9 Cyc, 510, it is said: ‘Agreements whose object is to oust the jurisdiction of the courts are contrary to public policy and will not be enforced. Thus it is held that any stipulation between parties to a contract distinguishing between the different courts of the country is contrary to public policy. The principle has also been applied to a stipulation in a contract that a party who breaks it may not be sued, to an agreement designating a person to be sued for its breach who is nowise liable and prohibiting action against any but him, to a provision in a lease that the landlord shall have the right to take immediate judgment against the tenant in case of a default on his part, without giving the notice and demand for possession and filing the complaint required by statute, to a by-law of a benefit association that the decisions of its officers on a claim shall be final and conclusive, and to many other agreements of a similar tendency. In some courts, any agreement as to the time for suing different from the time allowed by the statute of limitations within which suit shall be brought or the right to sue be barred is held void.’

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“We shall not pursue this question further. This contract, in so far as it goes beyond the usual provisions of a note, is void as against the public policy of the state, as such public policy is found expressed in our laws and decisions. Such

> agreements are iniquitous to the uttermost and should be promptly condemned by the courts, until such time as they may receive express statutory recognition, as they have in some states.
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> "From what has been said, it follows that the Circuit Court never had jurisdiction of the defendant, and the judgment is reversed."

The case of Farquhar & Co. vs. Dehaven ([1912], 70 W. Va., 738; 40 L. R. A. [N. S.], 956; 75 S. E., 65; Ann. Cas. [1914-A], 640), is another well-considered authority. The notes referred to in the record contained waiver of presentment and protest, homestead and exemption rights real and personal, and other rights, and also the following material provision: " 'And we do hereby empower and authorize the said A. B. Farquhar Co. Limited, or agent, or any prothonotary or attorney of any Court of Record to appear for us and in our name to confess judgment against us and in favor of said A. B. Farquhar Co., Limited, for the above named sum with costs of suit and release of all errors and without stay of execution after the maturity of this note.' " The Supreme Court of West Virginia, on consideration of the validity of the judgment note above described, speaking through Mr. Justice Miller, in part said:

> "As both sides agree the question presented is one of first impression in this State. We have no statute, as has Pennsylvania and many other states, regulating the subject. In the decision we are called upon to render, we must have recourse to the rules and principles of the common law, in force here, and to our statute law, applicable, and to such judicial decisions and practices in Virginia, in force at the time of the separation, as are properly binding on us. It is pertinent to remark in this connection, that after nearly fifty years of judicial history in this State no case has been brought here involving this question, strong evidence, we think, that such notes, if at all, have never been in very general use in this commonwealth, And in most states where they are current the use of them has grown up under statutes authorizing them, and regulating the practice of employing them in commercial transactions.
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> "It is contended, however, that the old legal maxim, *qui facit per alium, facit per se*, is as applicable here as in other cases. We do not think so. Strong reasons exist, as we have shown, for denying its application, when holders of contracts of

> this character seek the aid of the courts and of their execution process to enforce them, defendant having had no day in court or opportunity to be heard. We need not say in this case that a debtor may not, by proper power of attorney duly executed, authorize another to appear in court, and by proper endorsement upon the writ waive service of process, and confess judgment. But we do not wish to be understood as approving or intending to countenance the practice of employing in this state commercial paper of the character here involved. Such paper has heretofore had little if any currency here. If the practice is adopted into this state it ought to be, we think, by act of the Legislature, with all proper safeguards thrown around it, to prevent fraud and imposition. The policy of our law is, that no man shall suffer judgment at the hands of our courts without proper process and a day to be heard. To give currency to such paper by judicial pronouncement would be to open the door to fraud and imposition, and to subject the people to wrongs and injuries not heretofore contemplated. This we are unwilling to do."

A case typical of those authorities which lend support to judgment notes is First National Bank of Las Cruces vs. Baker ([1919], 180 Pac, 291). The Supreme Court of New Mexico, in a *per curiam* decision, in part, said:

> "In some of the states the judgments upon warrants of attorney are condemned as being against public policy. (Farquhar & Co. vs. Dehaven, 70 W. Va., 738; 75 S. E., 65; 40 L. R. A. [N. S.], 956; Ann. Cas. [1914 A], 640, and First National Bank of Kansas City vs. White, 220 Mo., 717; 120 S. W., 36; 132 Am. St. Rep., 612; 16 Ann. Cas., 889, are examples of such holding.) By just what course of reasoning it can be said by the courts that such judgments are against public policy we are unable to understand. It was a practice from time immemorial at common law, and the common law comes down to us sanctioned as justified by the reason and experience of English-speaking peoples. If conditions have arisen in this country which make the application of the common law undesirable, it is for the Legislature to so announce, and to prohibit the taking of judgments of this kind. Until the Legislature has spoken along that line, we know of no theory upon which such judgments can be declared as against the public policy of the state. We are aware that the argument against them is that they enable the unconscionable creditor to take advantage of the necessities of the poor debtor and cut him off from his ordinary day in court. On the other hand, it may be said

> "in their favor that it frequently enables a debtor to obtain money which he could by no possibility otherwise obtain. It strengthens his credit, and may be most highly beneficial to him at times. In some of the states these judgments have been condemned" by statute and of course in that case are not allowed.
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> "Our conclusion in this case is that a warrant of attorney given as security to a creditor accompanying a promissory note confers a valid power, and authorizes a confession of judgment in any court of competent jurisdiction in an action to be brought upon said note; that our cognovit statute does not cover the same field as that occupied by the common law practice of taking judgments upon warrant of attorney, and does not impliedly or otherwise abrogate such practice; and that the practice of taking judgments upon warrants of attorney as it was pursued in this case is not against any public policy of the state, as declared by its laws."

With reference to the collusiveness of the decisions here mentioned, it may be said that they are based on the practice of the English-American common law, and that the doctrines of the common law are binding upon Philippine courts only in so far as they are founded on sound principles applicable to local conditions.

Judgments by confession as appeared at common law were considered an amicable, easy, and cheap way to settle and secure debts. They are a quick remedy and serve to save the court's time. They also save the time and money of the litigants and the government the expenses that a long litigation entails. In one sense, instruments of this character may be considered as special agreements, with power to enter up judgments on them, binding the parties to the result as they themselves viewed it.

On the other hand, are disadvantages to the commercial world which outweigh the considerations just mentioned. Such warrants of attorney are void as against public policy, because they enlarge the field for fraud, because under these instruments the promissor bargains away his right to a day in court, and because the effect of the instrument is to strike down the right of appeal accorded by statute. The recognition of such a form of obligation would bring about a complete reorganization of commercial customs and practices, with reference to short-term obligations. It can readily be seen that judgment notes, instead of resulting to the advantage of commercial life in the Philippines might be the source of abuse and oppression, and make the courts involuntary parties thereto. If the bank has a meritorious case, the judgment is ultimately certain in the courts.

We are of the opinion that warrants of attorney to confess judgment are not authorized nor contemplated by our law. We are further of the opinion that provisions in notes authorizing attorneys to appear and confess judgments against makers should not be recognized in this jurisdiction by implication and should only be considered as valid when given express legislative sanction.

The judgment appealed from is set aside, and the case is remanded to the lower court for further proceedings in accordance with this decision. Without special finding as to costs in this instance, it is so ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.*, concur.

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MEMORANDA OF "AMICI CURIAE"

Attorney Thos. L. Hartigan, of Hartigan & Welch, states:

> "Though we are attorneys for two of the large banks here and keenly interested in the introduction of any improvements that would make for simplification of procedure and rapidity of practice, we cannot favor the introduction of confessions of judgment in the Philippine Islands. In our opinion, it would open the doors to fraud to an extent that would more than counterbalance any advantages of its use.
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> "With our lack of system in recording judgments and with, the practice of keeping merchants' books in various foreign languages, there would be ample opportunity for a debtor to make preferences by confessions of judgment which could not be discovered by the creditors until too late and which would be nearly impossible to set aside even when discovered in time.
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> "Although, as representatives of the banks, we are representing the creditor class, we believe the introduction of confessions of judgment would ultimately cause much more loss than benefit to that class."

Attorney Clyde A. DeWitt, of Fisher & DeWitt, states:

"There is no statutory sanction in this jurisdiction for such provisions in negotiable instruments. Section 5 (b) of the Negotiable Instruments Law does not constitute such sanction because (1) it merely provides that such clauses will not affect the negotiable character of the instrument, and (2) it concludes with language showing that the Legislature did not intend thereby to validate any provision otherwise unlawful. The language is: 'But nothing in this section shall validate any provision or stipulation otherwise illegal.'

"The question then is whether or not, in the absence of express legislative sanction, such warrants of attorney are valid. There are not many American cases in which this precise question has been considered, and in those cases in which the question has been raised, the reasoning of the courts has been colored by the fact that the commercial use of these warrants of attorney as security for debt was sanctioned at common law, and the procedural statutes are held to be merely cumulative and not in derogation of the common law remedies. We, of course, have no such situation here.

"The cases are collected in a note to First National Bank vs. White (220 Mo., 717), found in 16 Ann. Cas., 893, and it is there shown that in Missouri and Kansas such provisions are held to be void as against the public policy of the State as expressed in its laws and the decisions of its courts, while in Colorado and Illinois their validity was upheld as a familiar common-law security not affected by the procedural statutes. Yet it is there pointed out that in Kahn vs. Lesser (97 Wis., 217, 72 N. W., 739), the court, in referring to a judgment by confession under warrant of attorney in a promissory note, said:

" 'The judgment in this case must stand, if at all, by the authority of the statute. The proceeding by which it was entered was outside and in derogation of the common-law practice of courts; and the statute, as well as the proceedings under it, must be strictly construed.'

"In Iowa, in an early case, McCliah vs. Manning (3 Green, 223), the validity of these warrants of attorney was upheld, referring to a statute authorizing any person to confess a judgment, by himself or his attorney. In a later decision, Hamilton vs. Schoenberger (47 Iowa, 385), it was expressly held that such a provision in a note could not be enforced in the courts, of that State, and was not authorized or contemplated by its laws. And in Tolman vs. Jansen (106 Iowa,

455), it was held that such a provision, being void, would not affect the negotiability of a note, even though its effect would be to make uncertain the time of payment.

"The reasoning in First National Bank vs. White, supra, is persuasive. The court there held that these warrants of attorney are void as against the public policy of the state on the ground, first, that their effect is. to enlarge the field for fraud; second, that under such an instrument the promissor bargains away his right to his day in court; third, that the effect of the instrument is to strike down the right to appeal accorded by statute, and, fourth, that there was no provision for the public recording of such an instrument if regarded as a security for a debt.

"It seems to me that on the precise grounds stated in the White case, these warrants of attorney should be held void as against public policy in this jurisdiction. If given effect, they bargain away the jurisdiction of the courts to try and determine the liability of the maker of the note on its merits. To uphold them would be to facilitate the operations of usurers, the collection of gambling debts, and would make difficult, if not impossible under our procedure, the setting aside of judgments entered in virtue thereof where the execution of the instrument was obtained by fraud, duress, or where there had been an entire failure of consideration. I can think of no advantage which would result to the commercial world from upholding these warrants of attorney which would outweigh the foregoing considerations."

Attorney E. Arthur Perkins, of Perkins & Kincaid, states:

"Leaving aside entirely the legal considerations involved, I feel that there is only one answer to your inquiry, and that is, that the best interests of the commercial life of the Philippines require the non-recognition of such a form of judgment note. Feeling that you would want to know the reasons which impell me to adopt such a conclusion, I will say briefly that if the Supreme Court should, by a decision, recognize such a judgment note and thereby place the stamp of approval upon transactions of such a nature, the entire business population of the Philippine Islands would be justified in their future transactions with debtors in requiring, in all instances, the execution of notes of a similar tenor, with the consequence that the debtor would thereby be deprived, to all intents and

purposes, of his day in court. It will pave the way for the practice of fraud upon ignorant debtors. It will prove a serious drawback to the campaign being now waged against usury.

"There is the further fear that the banks and money lenders having accounts now outstanding will immediately require every debtor to execute that form of note and to refuse further extensions of credit unless it is done, which the debtor under the stress of circumstances will be compelled to accept, amounting in effect to duress.

"The recognition of such a form of obligation would be so revolutionary in character as to bring about a complete reorganization of commercial customs and practices with reference to short-term obligations.

"Having in mind that the Philippine National Bank is practically the only institution which can assist the farmers and agriculturists, the practice of requiring a judgment note would place the latter wholly at the mercy of the bank, and this is stated without any reflection on the bank, but merely to point out one of the consequent evils which will necessarily follow if the practice should receive the high judicial sanction which a judgment of the Supreme Court would necessarily give to it.

"Another feature which occurs to me is that where any new enterprise is being launched, it is universally the custom for. such company to arrange with some banking institution for credit facilities, over and above the capital with which it brings business. Should it become the custom here to require the execution of so-called judgment notes, organizers of corporations, partnerships and the like, who have in mind to secure additional working capital or credit facilities from banks, will be very reluctant to put their funds into1 any enterprises which could be destroyed without warning by the creditor exercising the rights which that form of transaction would give him. This would act therefore as a deterrent to new enterprises and the development of industry through individual initiative and with private funds.

"Let us take a very simple illustration of this. Suppose that you and I should form a partnership, with a capital of P50,000 to buy hemp and, in connection with out business, we went to some banking institution for the purpose of securing credit

facilities, as is customary, in the conduct of our business. Let us then suppose that the bank, taking into consideration the capital which we ourselves had furnished and our standing in the community, was willing to allow us a credit in the further sum of P50,000 upon our signing a so-called judgment note. Would not you and I consider a long time before we would so far obligate ourselves as to place it in the power of the bank to send their attorney over to court, upon the least provocation or at the first unfavorable rumor, and to confess judgment in our names, which would permit the sheriff to close us out without even an opportunity to be heard?

"The sum and substance of the whole proposition is that such a practice is contrary to good morals."

Attorney David C. Johnson, of Gibbs, McDonough & Johnson, states:

"It seems that under the common law a confession of judgment was only allowable by the defendant himself, either before or after appearance and answer. The confession of judgment by warrant of attorney is a statutory development (15 R. C. L., 656, 657; 17 Am. and Eng. Encyc. of Law [2d ed.], 765; 11 Enc. PL and Pr., 973-975; Mason vs. Ward, 80 Vt., 290; 130 A. S. R., 987, 988).

"The procedure contemplated in the note quoted in your letter is contrary to that contemplated in our code of procedure, which gives to all defendants an opportunity at least to be heard. An action on the note in question could be so presented that the defendant would never be summoned or notified, since an appearance and confession of judgment might be filed simultaneously. We believe that this procedure should not be recognized in this jurisdiction by implication, but should have legislative sanction with the rights of the defendant amply safeguarded. We believe that section 5 of Act No. 2031 does not of itself sanction any of the acts mentioned in that section, but is only a statement regarding the negotiable character of the instrument. Subsection A of section 5 states that the authority to sell collateral security does not affect negotiability. As we understand the decision of the Supreme Court in the case of Mahoney vs. Tuason (39 Phil., 952), the creditor in this jurisdiction is authorized by law to sell collateral security except in the manner provided in section 14 of Act No. 1508.

This would seem to reinforce our opinion.

"There are some favorable features of a judgment note or warrant for confession of judgment, but we believe that there are many objections which outweigh any of the advantages. Forgery and usury are more prevalent in these Islands than in the United States. The sanctioning of this procedure would add an additional weapon to the money lender who desires to overreach his debtor.

"We have delayed answering your letter in order that we might consult our Mr. Gibbs, who returned from Baguio yesterday.

"The foregoing is the consensus of opinion of the members of this firm."

Attorney Julian Wolf son states:

"It is assumed that the only question propounded is:

" 'Admitting that there may be some doubt, as to a correct solution, which solution, the recognition of a confession of judgment, or a non-recognition of a confession of judgment, *would be for the best interests of the commercial life of the Philippines*?' and that no opinion is required upon the incidental questions previously asked, as same have already been determined by an examination of such authorities as: 23 Cyc, pp. 699, 701-2-3-5-6-7, 723-5; 6 C. J., pp. 645-6 (Notes 35 & 42) ; 8 C. J., p. 128 (Notes 43-47); 12 C. J., p. 418 (Note 37); and such leading textbooks as 'Brannan's Negotiable Instruments Law' and 'Selover on Negotiable Instruments.'

"Everyone is entitled to 'his day in court.' This right may be waited *after* an opportunity has been given to exercise the right, but must *not* and *cannot* be taken away *before* an opportunity has been given to exercise the right.

"The ordinary ship's bill of lading and the ordinary fire and marine insurance policy are generally printed on forms prepared by the carrier and the insurer respectively, and generally contain a clause making it a condition precedent to the institution of an action to first submit the matter to a board of arbitration. The Supreme Court has never recognized this clause. The reasons are stated in the opinions. Once submitted to arbitration, then another question is raised.

"Special defenses to written instruments are common. Need we do more than cite the following cases: Maulini vs. Serrano (28 Phil., 640); Henry W. Peabody & Co. vs. Bromfield and Ross (38 Phil., 841); Cuyugan vs. Santos (34 Phil., 100; 39 Phil., 970).

"If the 'judgment note' (this term is used throughout for brevity and as it is the recognized term) is to be recognized, what chance has defendant of defending as did the defendants in the above cited cases? None!

"Often a promissory note is a mere formality taken by a bank as evidence of indebtedness, while the real indebtedness may be for a superior or inferior amount incurred by way of overdraft, letters of credit outstanding, acceptances to mature, or a thousand other forms of banking credit. Such 'judgment notes' are generally made payable on demand. *In the case at bar, the note is made payable on demand*. The real indebtedness may be partially paid, or the liquidation may be going along too slow to suit the bank and then use is made of the judgment note. The defendant might have a perfect defense except for the judgment note. Would not article 1269 of the Civil Code here apply?

"The 'judgment note' is not once in a thousand times signed at the time of receiving money from the bank. The indebtedness represented thereby is incurred in prior transactions, the obligation became past due and the bank, as a forcible measure, produces one of these 'judgment notes' when the debtor is absolutely helpless, and says 'Sign on the dotted line' and the debtor has no option, he signs. The minds of the parties never met. The debtor owes the money, knows that the bank must have evidence of the indebtedness to pass the auditors and the debtor further realizes he must accept the bank's dictation, because if he declines, he is liable to immediate ruin, or if not that, he will never get further accommodation from the bank. He does not realize, even if he knows, what is meant by a 'judgment note.' Again, would not article 1269 of the Civil Code here apply?

"Just a few months ago there was a suit instituted by a local bank for a large sum of money, based on a written instrument which, on its face, seemed absolute. Special defenses were pleaded, setting up that the instrument did not express the real understanding of the parties and the real understanding was set up. The special defenses were fully proved and the lower court dismissed the bank's suit.

The bank did not even attempt to appeal to the Supreme Court (See Cause No. 18239 of the Docket of the Court of First Instance of Manila). Suppose the instrument sued on had contained a clause of confession of judgment, what chance would defendant have had to prove his defense? None!

"Let us go a step further and see where this leads us. A is a dealer in hardware and sells B a bill of goods. A prints a form, which he has B to sign, in which B acknowledges receipt of the goods and in consideration thereof promises to pay A and 'a confession of judgment' clause is inserted. The goods turn out entirely different from those ordered and invoiced. B refuses to pay. A sues on his 'judgment note.' What chance has B? None!

"Very often a promissory note is only one of a series of documents given as security for the debt. What about considering the other documents which bear on the transaction?

"A bank may have made certain advances and may have undertaken to make more, but fails to do so, to the damage and prejudice of debtor. Let us assume that the bank agreed to advance several hundred thousand pesos in instalments of P60,000 each, and had advanced only the first instalment, taking a 'judgment note' for said first instalment, and had failed to advance further, to the damage of the debtor. What would become of section 97 of the Code of Civil Procedure? How would debtor be able to exercise his right of counterclaim? Was it ever contemplated at the time of signing the judgment note that the debtor would not only waive defense, but absolutely shut himself out of court, as he would, according to section 97 above cited, on his counterclaim? Yet again, would not article 1269 of the Civil Code here apply?

"We dare not attempt to elaborate on what would happen in the provinces of the Philippines should a 'judgment note' be held valid. "What about the Usury Law? How could a defense be offered there? The usurious rate might not appear on the face of the 'judgment note,' but it may be there all the same.

"Examples could be multiplied until the very absurdity of the proposition would be clearly seen, even by a blind man.

"Of what possible benefit would the recognition of a 'judgment note' serve the best interests of the commercial life of the Philippines? None! An honest creditor

> is willing to let his debtor have his day in court and is willing to prove to the court his case. It might take slightly longer to go through with a trial, but that cannot be considered a set-back. But, on the other hand, a dishonest creditor would take unfair advantage of a 'judgment note' and would use it to the utmost to harass and take advantage of the poor and helpless debtor. The real consequences likely, in fact sure, to arise from such recognition are horrible beyond words to contemplate.
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> "There can be but one answer to the proposition and that is: The non-recognition of a confession of judgment *would be for the best interests of the commercial life of the Philippines*."

Attorney J. G. Lawrence, of Ross & Lawrence, states:

> "We are aware of no expression of our Legislature or courts which would indicate that confessions of judgment under powers given in a promissory note are contrary to public policy. This action was regularly brought in accordance with the provisions of the Code of Civil Procedure and the defendant served with process. The answer, confessing judgment, was filed in strict accordance with the powers contained in the note—a power coupled with an interest which defendant would be estopped of denying. We think that no express legal sanction is necessary to legalize such a proceeding.
>
> "On the question of what *ought to be* the public policy of the Philippines, we hold quite a different opinion. While the use of judgment notes might in some cases expedite the collection of just debts, we believe that under conditions as exist here, their use should be discouraged. They lend themselves easily to fraud in the hands of friends of a dishonest debtor, and to extortion in the hands of usurers who are already too well equipped with the pacto de retro.
>
> "While we believe that the position of the bank is sound legally, we should be very glad to be proven mistaken."

Attorney Francis B. Mahoney, of the Philippine Trust Company, states:

"I have not gone into the law and cases, except to take a glance at the subject of judgments in Volume 15 of Ruling Case Law. However, the reasons indicated on page 651 thereof are significant.

"Unquestionably, if our Legislature provided in unmistakable terms for confession of judgment as herein indicated, the validity and constitutionality of the enactment might be questioned as failing to provide those constitutional safeguards of taking a man's property *only* after a day in court and after due process of law.

"This conclusion is stronger—*a fortiori*—where the enacting provision—if such section 5 of Act No. 2031 may be called—is of a left handed nature, apparently relating only to negotiability—incidentally thus answering here your first inquiry. Whatever legal principles there might be in favor of recognizing a confession of judgment—for example, the matter of expediency—stronger and more vital principles oppose such recognition.

"By refusing to recognize confession of judgment under existing statutes or under general legal principles, at the worst phase from the point of view of the plaintiff bank, there would result only possible delay, costs and attorney's fees, which, after all, are only passed on to the clients of the bank in the shape of interests, charges. etc. If the bank has a meritorious case, the judgment is ultimately certain as courts.

"If the defendant debtor has any defense of merit, he is given an opportunity to present it, as, for example, in the matter of usury so common, so difficult to uncover and such an unscrupulous rival of legitimate banking, the courts may keep their doors open to the equities of each individual case. Whereas, if defendant, who theoretically may allege fraud and who practically has great difficulty in proving it, must rely upon a defense of fraud, he has little chance and the doors of the court are closed to any other defense.

"In the final analysis, the matter simmers down to: 1. Possible delay in judgment with costs, etc. 2. Certain justice in the end. 3. The eyes and doors of courts open to the equities of each individual case. 4. Equality before the law, or (a) Expediting judgment, (b) Defendant debtor practically kept out of court by additional expense and difficulty in securing a hearing, (c) Putting a strong

weapon in the hands of unscrupulous persons and taking the strength necessary to wield this weapon from the courts.

"At first glance, if a debtor signs a document throwing away his right to be heard, the average man has a feeling such debtor deserves to suffer the consequences. If that were the entire story, probably he should. But what man, needing money badly enough—facing strenuous necessity—will not in the circumstances be inclined to look on the cheerful side—to sign and get the money, letting the future take care of itself? Such is the frailty of human nature. Then, as the usual thing, the rich and powerful can take care of themselves, and it is usually others who have need of courts, just laws and liberal interpretation of them.

"No doubt, banks would favor expediting judgments against their debtors, other things being equal. And no doubt, additional delay in courts and the incidental costs thereof will be borne by the clients of the bank. But sound banking is not established and enhanced by harsh laws which put strong weapons in powerful hands. Contented peoples, safe laws and sound banking usually go hand in hand."

Professor Jose A. Espiritu, of the University of the Philippines, states:

"Permit me to cite first of all the authorities that I have gathered concerning the principal question at issue in the case mentioned in your letter, namely, 'The Effect and Validity of Confession of Judgment in the Philippines.'

"1. Confession of judgment has been defined as 'a voluntary submission to the jurisdiction of the court, giving by consent and without the service of process, what could otherwise be obtained by summons and complaint, and other formal proceedings, an acknowledgment of indebtedness, upon which it is contemplated that a judgment may and will be rendered.' (8 Cyc, pp. 563, 564.)

"2. As to the general effects of confession of judgment, the following statements may be mentioned: 'A warrant to confess judgment does not destroy the negotiability of the note. Such a note is commonly called a "judgment note." Decisions to the contrary in the States where the Negotiable Instruments Law is

now in force are abrogated thereby, since it expressly provides that the negotiable character of an instrument otherwise negotiable is not affected by a provision which authorizes a confession of judgment, if the instrument is not paid at maturity. However, this statutory provision does not apply to stipulations for the confession of judgment "prior" to maturity.' (8 C. J., p. 128, sec. 222.)

"3. Nature and Requisites. A judgment may be rendered upon the confession of defendant, either in an action regularly commenced against him by the issuance and service of process, in which case the confession may be made by his attorney of record, or, without the institution of a suit, upon a confession by defendant in person or by his attorney in fact. It implies something more than a mere admission of a debt to plaintiff; in addition, it is defendant's consent that a judgment shall be entered against him. * * *.' (23 Cyc, 699.)

"4. Statutory Provisions. 'Statutes regulating the confession of judgments without action, or otherwise than according to the course of the common law, are strictly construed, and a strict compliance with their provisions must be shown in order to sustain the validity of the judgment.' (Chapin vs. Thompson, 20 Cal., 681.) 'And this applies also to statutory restrictions upon the right to confess judgment, as that authority to confess judgment shall not be given in the same instrument which contains the promise or obligation to pay the debt, or that such confession shall not be authorized by any instrument executed prior to suit brought.' (23 Cyc, 699, 700.)

"5. Warrant or Power of Attorney—Validity and Necessity. 'A judgment by confession may be entered upon a written authority, called a warrant or letter of attorney, by which the debtor empowers an attorney to enter an appearance for him, waive process, and confess judgment against him for a designated sum, except where this method of proceeding is prohibited by statute. The warrant as the basis of the judgment is generally required to be placed on file in the clerk's office, and no judgment can be so entered until it is so filed.' (23 Cyc, 703.)

"6. Requisites and Sufficiency. 'A warrant or power of attorney to confess judgment should be in writing and should conform to the requirements of the statute in force at the time of its execution, although in the absence of specific statutory directions it is sufficient, without much regard to its form, if it contains the essentials of a good power and clearly states its purpose. It must be signed by

the person against whom the judgment is to be entered * * *.' (23 Cyc, 704.)

"The above quoted authorities are among the various authorities I found bearing on the question at issue. As it can be readily seen none of them decides squarely and definitely the questions propounded in your letter. One thing, however, seems to be clear, from the very provision of section 5 (b) of the Negotiable Instruments Law and from the quotation No. 2 of this letter, that a provision in a note or bill of exchange authorizing a confession of judgment in default of payment at its maturity has particular reference, in so far as Act No. 2031 is concerned, only to the negotiable character of an instrument. I do not believe that the Legislature had the intention in passing the said Act No. 2031 to introduce in the Philippines a new practice in our Remedial Law, namely, that of confession of judgment, which is purely procedural in nature.

"Now as to the second question, to wit: 'Does the silence of the Code of Civil Procedure on the subject mean that a confession of judgment cannot be recognized in this jurisdiction, or can a judgment by confession be imported into the Philippines under general legal principles?' Before answering this question attention is respectfully called to the quotation No. 4 of this letter, which expressly provides that statutes regulating confession of judgments must be strictly construed and their provisions strictly complied with to sustain the validity of judgments rendered under such statutes. Now it being admitted that there is no express provision in our Code of Civil Procedure authorizing or sanctioning this mode of practice in this jurisdiction, and consequently there are no regulations provided to be followed in this particular remedy, I am therefore of the opinion that confession of judgment should not be deemed as imported in the Philippines under the general legal principles. The remedy itself is a most summary one, and when the defendant-debtor, instead of admitting or allowing a judgment be taken against him, presents his appearance and answers the complaint filed against him, it seems that the trial court should not render a judgment without first hearing the evidence that the parties may wish to submit before him, for it may happen that the defendant-debtor may have some valid or good defences against the plaintiff-creditor. This is especially true in the case of a counterclaim that the defendant may have against the plaintiff as provided in sections 95 and 96 of the Code of Civil Procedure. The same Code provides that in case of an omission to set up his counterclaim, the defendant or his assignee loses all his right to bring further suit on such claim. (Sec. 97, Act No. 190.)

"In answer to the last question, namely: 'Admitting that there may be some doubt, as to the correct solution, which solution, the recognition of a confession of judgment, or the non-recognition of a confession of judgment, would be for the best interests of the commercial life of the Philippines?', I wish first of all to state what I believe to be the advantages and disadvantages of this particular remedy. As to advantages, it can, of course, be readily seen that a confession of judgment is a quick remedy. It saves time and money as far as the parties to the suit are concerned if the same is properly and legally brought. It saves the court's time and the government the expense that a long litigation entails. As to its disadvantages we may say among other things the following: 1. It may be abused in the same way as the usurious rates of interest on loans are now in the Philippines, because a borrower who is in great need of money might be induced, if not actually compelled, to sign such a burdensome obligation; 2. It deprives the defendant of his day in court, and as a consequence it will prevent him to set up and prove before the court his just claims and other lawful defences against the plaintiff; 3. It will create multiplicity of actions in this jurisdiction, for if the confession of judgment has been wrongfully or unjustly entered, the judgment debtor may start another litigation on the same subject-matter that might have been brought before the court in case a proper trial was formally held before the rendition of such a judgment; and 4. It does not really hold the plaintiff who has a good cause of action against the defendant as his proofs will surely establish his claims and consequently a judgment must necessarily be rendered in his favor.

"Prom the above statements, I am of the opinion that unless proper regulations are first duly introduced and incorporated in our remedial law, confession of judgments, instead of resulting advantageous to our commercial life in the Philippines, might be the sources of abuse and oppression. The very fact that confession of judgment is a most summary and in fact a violent remedy. It should first of all be properly regulated by statute, and those regulations must be strictly complied with, before the court should concede to such a remedy."

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