

[ G. R. No. 19209. November 27, 1922 ]

**CAYETANO ALBURO, PLAINTIFF AND APPELLEE, VS. ALFREDO R. MERCADO AND ROSARIO ALBURO DE MERCADO, DEFENDANTS AND APPELLANTS.**

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

STATEMENT

On August 15, 1916, the defendant, Rosario Alburo de Meroado, executed the following instrument:

“Declaro por el presente documento haber recibido del Sr. Cayetano Alburo la suma de cantidad de trescientos y treinta pesos (P330) filipino en concepto de paga de trescientos sacos de maiz puesto en el embarcadero de Toledo, Cebu, y a razon de precio a P1.70 en el cavan con sacos, haga eonstar que estos trescientos sacos de maiz seran entregado por Sr. Cayetano Alburo dentro de mes octubre de 1916. En el caso oontrario tendra la obligaci6n de pagar la cantidad de P330 mas doble que estos cantidad de trescientos y treinta pesos por los interests devengados, por verdad firmo presente en

“Cebu 15 de agosto de 1916.

(Fdo.) “Rosario Alburo de Mercado.

“En 14 de octubre de 1917. Recibi de la Srta. Carmen Alburo la suma de eiento cincuenta pesos (P150) como pago a cuenta de su hermana Rosario A. de Mercado, segun el documento que antecede.

(Fdo.) "C. Alburo"

which, translated into English, reads as follows:

"I hereby acknowledge having received from Mr. Cayetano Alburo the sum of three hundred thirty pesos (P330), Philippine currency, as payment of three hundred sacks of corn placed in the wharf of Toledo, Cebu, at P1.70 per cavan, with the sacks, it being understood that these three hundred sacks of corn shall be delivered by Mr. Cayetano Alburo within the month of October, 1916. Failure to make such delivery will render him liable for the payment of the sum of P330 plus double this amount of three hundred thirty pesos for interest due. In testimony whereof I here- unto set my hand in Cebu, this the 15th of August, 1916.

(Sgd.) "Rosario Alburo de Mercado.

"On the 14th of October, 1917, I received from Miss Carmen Alburo the sum of one hundred fifty pesos (P150) as payment on account of her sister Rosario A. de Mercado under the foregoing document.

(Sgd.) "C. Alburo."

Upon the original of which a credit was made of P150 on October 14, 1917. Concurrent with the execution of the writing, the plaintiff delivered to the defendant P330. August 25, 1916, the plaintiff delivered to the defendant Rosario Alburo de Mercado 220 empty sacks of the agreed value of P39.60. The defendant Alfredo R. Mercado is the husband of the defendant Rosario Alburo de Mercado. Nothing more than P150 having been paid, the plaintiff commenced this action against the defendants in which a Spanish copy of the writing is marked Exhibit A, attached to, and made a part of, the complaint, upon which he alleges that there is now due and owing from the defendants P510 which, including the amount of P39.60 for sacks, makes a total of P549.60, for which he prays judgment with interest from the filing of the complaint and costs. After denying all of the material allegations of the complaint, and, as a special defense, the defendants plead that the written contract, known in the record as Exhibit A, is void "for being contrary to the Usury Law," and they also plead another defense as a counterclaim, which is not material to this opinion.

The lower court rendered judgment for the plaintiff and against each of the defendants for

P549.60 with accrued interest and costs, from which the defendants appeal, claiming that the trial court erred in its construction of the written instrument, known as Exhibit A, and in holding it valid, and in the rendition of the judgment for the plaintiff.

JOHNS, J.:

It will be noted that the plaintiff pleads the written contract a copy of which is attached to, and made a part of, the complaint. He does not claim or allege in his pleadings that the contract should be reformed, or that there was any error or mistake in its preparation. Neither does he offer any evidence tending to show that there was an error or mistake in the draft. The writing is into two separate paragraphs in the first of which Rosario Alburo de Mercado acknowledges receipt from the plaintiff of the sum of P330, and the testimony is conclusive that on August 15, 1916, the plaintiff did pay Rosario Alburo de Mercado P330. The contract further recites that the money was received as payment of 300 sacks of corn placed at the wharf in Toledo, Cebu, at P1.70 per cavan, with the sacks, it being understood that these 300 sacks of corn shall be delivered by Mr. Cayetano Alburo (the plaintiff) within the month of October, 1916. That is to say, by the terms of the written contract, the plaintiff himself is to deliver the corn within the month of October, 1916. The second paragraph provides that the failure to make such delivery will render him (the plaintiff) liable for the payment of the sum of P330 plus double this amount of P330 for interest due. That is to say that, if the plaintiff failed to deliver the corn, he will become liable to himself for the payment of P330 plus P660 on account of interest. The plaintiff, having plead and relied upon the contract and made it a part of his complaint without any allegation or proof that it should be reformed, or that an error or mistake was made in its preparation, is bound by his own pleadings. It recites that the plaintiff paid to the defendant Rosario Alburo de Mercado P330, and upon that point the testimony is conclusive. The original contract also recites that P150 was paid on the contract October 14, 1917, and there is no dispute as to the purchase price of the sacks. Hence, by the terms of the contract, as alleged, the amount of plaintiff's claim against the defendants would be the original loan of P330, to which should be added P39.60 for sacks, less P150 paid October 14, 1917.

As thus analyzed, the only thing which the defendants did under the contract was to acknowledge the receipt of P330 from the plaintiff as payment for 300 sacks of corn placed on the wharf at Toledo. They did not agree to return the corn "within the month of October, 1916," or at any other time. Neither did they become liable for the payment of any amount whatever for a failure to deliver the corn. All of such liabilities devolved upon the plaintiff himself.

Assuming, without deciding, that in the absence of any allegation or proof of error or mistake in its execution, that this court has the power and should reform on its own motion the written instrument to carry out the apparent intention of the parties, four members of this court are of the opinion that, under sections 7 and 8 of Act No. 2655 of the Legislature, known as the Usury Law, the contract is usurious and void *ab initio*, and that plaintiff would only be entitled to recover for the purchase price of the sacks. In the opinion of the writer, if it was the intention of the parties that the defendants should pay P660 in addition to the amount of the original loan, for the failure to deliver the corn in the month of October, it would be unconscionable and ought not to be enforced in a court of justice, even though the parties did intend that the additional P660 should be treated as liquidated damages.

The contract was dated August 15, 1916, and the corn was to be delivered in the month of October, 1916, not more than two months and a half after the contract was signed. Under such a construction the defendant would be required to pay P660 for the use of P330 for two months and a half, and the amount of the original loan, or P990, for the use of P330 for two months and a half.

No court of justice should ever enforce that kind of a contract even though it should be construed as one for liquidated damages.

Under plaintiff's contention, the spirit of Shylock exists, moves and has its being in the Philippine Islands, but that spirit has never been recognized and should not be enforced by the courts.

Treating that clause of the contract as a penalty and not as liquidated damages, then plaintiff would be confined to the amount of actual damages which he sustained by reason of defendants' failure to deliver the corn within the month of October. Upon that theory there is no evidence in the record which would sustain a judgment as to the amount of plaintiff's damages.

In the final analysis of the contract, the defendants obtained P330 from the plaintiff, of which only P150 have been paid, and the defendants never paid for the sacks.

The defendants should pay the amount which they justly owe the plaintiff.

Although it may be that the parties intended to make an usurious contract, it appears that the rough draft of the original was prepared by the defendants and was later copied in the handwriting of the plaintiff, who has but little knowledge of Spanish, and it is perhaps true

that the plaintiff was misled by the defendants and did not personally know the actual provisions of the contract, or how it would be construed. Under such a state of facts, justice requires that the defendants should return to plaintiff his money.

The judgment of the lower court will be reversed, and one will be entered here in favor of the plaintiff for P219.60 with interest thereon from this date at the rate of 6 per cent per annum, and the defendants will have a judgment against the plaintiff for costs on this appeal. So ordered.

*Araullo, C. J., Johnson, Ostrand, and Romualdez, JJ., concur.*

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*DISSENTING*

**MALCOLM, J.**, with whom concur STREET and VILLAMOR, JJ.,

Accepting the issue in this case as set out in plaintiff's complaint, plaintiff's Exhibits A and B, defendants' answer, the evidence of record, the decision of the trial court, and the briefs on file, the fact remains—we are now following the language of the plaintiff-appellee—"that on August 15, 1916, Rosario Albuero entered into a written agreement, Exhibit A, with the plaintiff, whereby she sold him 300 sacks of corn at P1.70 per sack, to be delivered in October, 1916, and acknowledged the receipt of P330 in part payment. It was provided in Exhibit A that upon the failure of Rosario Albuero to deliver the corn as agreed, she would have to repay the sum received and a like amount as 'accrued interest' (*por los intereses devengados*)." In other words, on plaintiff's own statement, a document was formulated, and pleaded, which called for interest at the rate of 800 per cent per annum. The law applicable to such a state of facts is section 7 of Act No. 2655, the Usury Law, wherein it is provided that "all \* \* \* contracts or evidences of debt, \* \* \* whereupon or whereby there shall be reserved, secured, taken, or received, directly or indirectly, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits than is hereinbefore allowed, shall be void."

As the document sued upon, Exhibit A, is usurious and, therefore, void, judgment should be

reversed, and the complaint dismissed.

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*DISSENTING*

**AVANCEÑA, J.,**

I concur in this dissenting opinion. I wish only to add that, even supposing that a penal clause is involved, the same would, at all events, be an indirect interest; for, according to article' 1152 of the Civil Code, it takes the place of the indemnity for damages and payment of interest.

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