45 Phil. 256

[G.R. Nos. 19684 and 19685. October 17, 1923]

J. J. GO CHIOCO, PLAINTIFF AND APPELLANT, VS. E. MARTINEZ ET AL., DEFENDANTS AND APPELLEES, AND ORTIGA HERMANOS, PLAINTIFFS AND APPELLANTS, VS. J. J. GO CHIOCO, DEFENDANT AND APPELLANT AND APPELLEE.

D E C I S I O N

VILLAMOR, J.:

It appears from the record that on June 2, 1919, J. J. Go Chioco made a loan of P40,000 to Ortiga Hermanos, and to that effect a promissory note, Exhibit 2, was executed, wherein Ortiga Hermanos, Chan Lin Cun, and E. Martinez promised to pay, jointly and severally, said sum within three months from the above mentioned date. On the same day, Ortiga Hermanos, together with Chan Lin Cun and E. Martinez, signed another promissory note for the amount of P1,800 payable within three months from said date, and on the same date Ortiga Hermanos, through their manager, E. Martinez, delivered to J. J. Go Chioco check, Exhibit 1, drawn against the Bank of the Philippine Islands for the amount of P1,800, which was cashed by said J. J. Go Chioco.

When the note became due and the makers could not pay it, the same was cancelled and another note, Exhibit 3, was executed in the sum of P40,000 for the period of three months, which was signed, as the former, by the defendants, Ortiga Hermanos, Chan Lin Cun, and E. Martinez. On the same date another note was delivered by the same debtors in favor of J. J. Go Chioco for the sum of P1,800 as well as a check, payable to order, Exhibit 2-B, drawn against the Bank of the Philippine Islands and signed by Ortiga Hermanos. Said check for the sum of P1,800 was cashed by the plaintiff, J. J. Go Chioco.

When the second note became due the makers failed to pay it, and, for that reason, the note was cancelled and Exhibit 4 executed and signed by the same

parties. On the same date, that is, on December 2, 1919, Ortiga Hermanos delivered to J. J. Go Chioco the note, Exhibit 4-A, for the sum of P1,800 as well as the check, Exhibit 3-B, drawn against the Bank of the Philippine Islands for the same amount which was cashed by J. J. Go Chioco.

On March 2, 1920, when the last mentioned note became due, the defendants also failed to pay the same and for that reason the note was again cancelled and another note executed and signed by the same parties, making it appear that it should be paid within one month and, for that reason, the other note, signed by the debtors, was for P600 only, as well as the amount of the check given by Ortiga Hermanos, on March 1, 1920, drawn against the Philippine National Bank, which was cashed by J. J. Go Chioco.

On April 2, 1920, the date upon which the last mentioned note should have been paid, the defendants also failed to satisfy it and for this reason the note was again novated, stipulating that the period would be for three months. On the same date the three debtors delivered their note, Exhibit 6-A, for the amount of P1,800.

The debtors also failed to satisfy this debt within the period stipulated and, consequently, the note was novated and on July the 2d, Exhibit 7 was signed by Ortiga Hermanos, Chan Lin Cun and E. Martinez, which is another note for a period of three months. On the same date the same parties delivered another note for the amount of P1,800 to J. J. Go Chioco, payable within three months and on the following day, July 3, 1920, Ortiga Hermanos delivered to J. J. Go Chioco Exhibit 6-A against the Bank of the Philippine Islands for the same amount of P1,800.

Again, the note was not paid at maturity and for that reason the same was novated on October 2, 1920, and signed by Ortiga Hermanos, Chan Lin Cun and E. Martinez, and on the same date Ortiga Hermanos delivered to J. J. Go Chioco another promissory note for P1,800 and a check against the China Banking Corporation for the same amount. When the last mentioned promissory note became due and the debtors being unable to meet it, a promissory note Exhibit A was again executed and signed by Ortiga Hermanos, Chan Lin Cun and E. Martinez in the sum of P40,000, in favor of J. J. Go Chioco payable within three months from date.

The promissory note, Exhibit A, as inserted in the complaint, is as follows:

> "By these presents, three months from date we promise to pay to the order of Mr. J. J. Go Chioco the sum of forty thousand pesos (P40,000), Philippine currency, value received in cash from said Go Chioco for commercial transactions.
>
> "Manila, January 2, 1921.
>
> (Sgd.) "ORTIGA HERMANOS
> "CHAN LIN CUN
> "E. MARTINEZ
>
> "Due April 2, 1921."

This promissory note was not novated at its maturity as the former ones; but it appears that on April 4, 1921, Ortiga Hermanos paid P5,000 and on May 20, 1921, P20,000, that is, a total sum of P25,000. The refusal of Ortiga Hermanos to pay said promissory note in full gave rise to the complaint of J. J. Go Chioco, filed on October 4, 1921, asking the court to render judgment against the defendants for the amount of P15,000 with legal interest and costs.

The defendants E. Martinez and Chan Lin Cun filed a separate answer praying for the dismissal of the complaint, with costs, the return of the sum of P5,857, which represents the interest paid on said promissory note of P40,000 at the rate of 18 per cent per annum, and the payment of P1,500 as attorney's fees.

The defendant Ortiga Hermanos answered the complaint praying that the promissory note for the amount of P40,000 be declared null and void, for the reason that they had paid a usurious rate of interest, namely, 18 per cent per annum; that they be absolved from the complaint and that judgment in their favor be rendered for the amount of P1,500 as attorney's fees, with costs, and that the plaintiff be ordered to return the sum of P25,000 paid on account of the principal.

Thereafter, the defendant Ortiga Hermanos, on November 9, 1921, filed another and separate complaint against J. J. Go Chioco praying that a judgment be rendered in their favor for P11,850 which represents interest paid at the rate of 18 per cent per annum, plus P1,500 as attorney's fees, with costs.

By agreement of parties, both cases were heard together, it having been stipulated between them that the evidence adduced in either case will be considered in the other.

Honorable Judge Carlos Imperial, who heard the case, in a decision dated June 24, 1922, held:

(*a*) That the interest of 18 per cent per annum stipulated by the contending parties in these two cases is null and usurious;

(*b*) That in accordance with the provisions of section 7 of Act No. 2655, the promissory note, Exhibit A, executed by Ortiga Hermanos, Chan Lin Cun and E. Martinez, in the sum of P40,000 payable within three months, and on which a usurious rate of interest of 18 per cent per annum had been paid, is null and void, and that, as a result, the plaintiff J. J. Go Chioco has no right to recover the balance of said promissory note which amounts to P15,000 from either Ortiga Hermanos or their sureties, Chan Lin Cun and E. Martinez; and

(*c*) That J. J. Go Chioco should refund to Ortiga Hermanos, their manager, or their duly authorized representative, the total amount of P11,850 which represents the usurious interest collected from December 2, 1919, to the date of the filing of the complaint, together with legal interest from November 9, 1921, when Ortiga Hermanos filed their complaint, and said Go Chioco should likewise pay Ortiga Hermanos, Chan Lin Cun and E. Martinez the sum of P3,000 as attorneys' fees of Messrs. A. D. Gibbs and Thos. D. Aitken, at the rate of P1,500 each, together with costs of both instances.

From this decision both parties appealed, and the motion for new trial based on the ground that the decision is contrary to the law and not justified by the evidence having been denied, both parties brought said case to the Supreme Court by bill of exceptions.

The appellant J. J. Go Chioco assigned as errors of the trial court the

following: (1) In finding that the usurious interest upon the said promissory note of P40,000 has been paid from December 2, 1920, at the rate of 18 per cent per annum, that is, the amount of P11,850 and in sentencing him to pay Ortiga Hermanos said sum with legal interest thereon from the filing of the complaint of Ortiga Hermanos; (2) in sentencing J. J. Go Chioco to pay the sum of P3,000 as attorney's fees of Messrs. A. D. Gibbs and Thos. D. Aitken at P1,500 each; (3) in not sentencing Ortiga Hermanos to pay the amount of P15,000, with legal interest thereon from the filing of his complaint (Go Chioco's); and (4) in sentencing J. J. Go Chioco to the payment of costs.

On the other hand, the appellant, Ortiga Hermanos, alleges that the trial court committed an error in overruling their counterclaim for the amount of P25,000 paid on account of the principal of a usurious promissory note, and in not sentencing J. J. Go Chioco to pay said sum of P25,000.

The facts, as found by the trial court, necessary for a clear understanding of this case, briefly stated, are as follows: (1) That the plaintiff made a loan to the defendant, Ortiga Hermanos, of the sum of P40,000, and that interest at the rate of 18 per cent per annum has been paid; (2) that the defendant paid the plaintiff, as interest on said amount, including the payments in April and July, 1921, to wit, P2,253.50 (P3.50 for stamps), from December 2, 1919, the total sum of P11,850, which, together with the P1,500 as attorney's fees, constitutes the prayer of the defendant's complaint; (3) that the defendant Ortiga Hermanos paid the plaintiff, on two different occasions, on account of said loan of P40,000, the amount of P25,000 which was set out in his counterclaim; and (4) that according to the complaint filed by J. J. Go Chioco of the sum of P40,000 loaned there still remains a balance of P15,000 to be paid.

In view of the facts just stated and from the errors assigned by both parties, the questions to be decided are: (1) Whether or not the defendant has paid the plaintiff a usurious rate of interest, namely, 18 per cent per annum upon the promissory note for the amount of P40,000; (2) whether or not the debtor who has paid a usurious rate of interest can recover the amount paid on account of the principal as well as the usurious interest paid, together with attorney's fees and costs; and (3) whether or not the usurious creditor has a right to recover his capital loaned to and not paid by the debtor.

I. That J. J. Go Chioco has collected interest at the rate of 18 per cent per annum upon the amount of P40,000 which he loaned to Ortiga Hermanos, may be inferred from the evidence and was so found by the trial court.

J. J. Go Chioco himself admits having collected the amount mentioned in the promissory notes and checks signed by Ortiga Hermanos in the amount of P1,800 each, but alleges that of that amount, P400 was paid as penalty for failure to pay the promissory notes at their maturity. That is to say, of the amount of P1,800 wfhich represents the interest at 18 per cent per annum on the capital of P40,000, he collected 4 per cent as penalty and 14 per cent as interest.

The trial court, in analyzing the testimony of the witness J. J. Go Chioco, states:

> "The explanation given by J. J. Go Chioco of said operations is undoubtedly ingenious, but in the opinion of this court, is far from being satisfactory and acceptable. There is nothing in the record to indicate, apart from his own testimony, that the parties have stipulated any penalty for failure to pay at maturity any of the promissory notes executed, and the fact that all interest was collected by the creditor in advance and before the promissory notes became due, shows conclusively that no penalty was agreed upon by the parties. Indeed it would seem that no such penal clause was necessary, since it was clearly stipulated that the sum loaned would earn a stipulated interest; furthermore, if such an agreement had existed, there is no reason why same should not have appeared in writing, either in the promissory note itself or in any other document disclosing such contractual obligation. What appears clear and can be inferred from all the documentary evidence adduced and of record is that, J. J. Go Chioco required and collected as interest upon the amount of P40,000 he had loaned, profits amounting to 18 per cent which is in violation of section 3 of Act No. 2655 of the Philippine Legislature, which enjoins and prohibits any person from charging a rate of interest in excess of 14 per cent per annum upon any loan not guaranteed in the manner provided for in section 2 of the said Act."

After examining the evidence before us, we are unable to find anything which will warrant the reversal or modification of the above conclusion arrived at by

the trial court.

From the record it appears that the first promissory note should have become due within three months, that is, on September 2, 1919. On the same date, June 2, 1919, Ortiga Hermanos signed a promissory note for P1,800 which should likewise have become due on September 2, 1919, and at the same time issued a check for the amount of P1,800 which was collected by J. J. Go Chioco. This operation was repeated several times every three months, with the exception of the promissory note of March 2, 1920, for which a period of one month only was fixed. So it is clear that whenever the note for P40,000 was novated, Ortiga Hermanos signed a promissory note for P1,800, together with the corresponding check, which was collected by the creditor J. J. Go Chioco. It is therefore evident that Ortiga Hermanos paid J. J. Go Chioco in advance the interest at 18 per cent per annum upon the loan of P40,000.

We hold that the contention of J. J. Go Chioco that he has only charged 14 per cent upon the loan of P40,000 as interest and 4 per cent as penalty for failure to pay the notes, is untenable. The checks issued by Ortiga Hermanos and cashed by J. J. Go Chioco are negotiable instruments and they represent an unconditional obligation to pay the amount therein stated of P1,800 which, if we take into consideration the value of the loan, represents the interest at the rate of 18 per cent per annum.

In accordance with section 285 of the Code of Civil Procedure, the agreement to pay interest, reduced to writing in the promissory notes for P1,800, is considered as containing all those terms stipulated by the parties, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(1) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

(2) Where the validity of the agreement is the fact in dispute.

As far as the record goes, said promissory notes of P1,800 were not put in issue during the trial nor is there any discussion as to their validity. Said

notes recite a specific obligation and its language is not subject to ambiguity. J. J. Go Chioco cannot, therefore, change, by his mere testimony, the terms of said notes in the sense that part of the amount therein stated was collected as penalty.

Moreover, the fact that the interest in question was collected quarterly and in advance, with the exception of one case wherein the interest was collected for one month, shows, in our opinion, that the transaction was for the collection of interest, since you cannot charge or collect anything in advance as penalty for failure to fulfill an obligation which was not yet enforceable.

That the parties to a contract of loan may validly agree upon a penalty in case the obligation is not fulfilled, beside the interest not prohibited by the Usury Law, is a proposition generally admitted, but in the case at bar, the alleged penalty, collected in advance before the maturity of the obligation, far from fulfilling its objects to compel the debtor to duly pay his obligation, is a scheme to avert his compliance with the Usury Law.

Supposing that the agreement, if there was any, to pay a penalty in case the promissory note, at its maturity, is not paid, is in substance similar to the agreement to pay attorney's fees, as the attorney for J. J. Go Chioco alleges, such an agreement is, however, subject to the limitation indicated in the case of Bachrach Garage and Taxicab Company *vs*. Golingco (39 Phil., 912), quoted by counsel for J. J. Go Chioco. In that case the court said:

> "The stipulation that in case of noncompliance the debtor shall pay a fixed amount for the fees of the attorney who may be employed by the creditor for the purpose of enforcing compliance with the obligation is not deemed to be an interest within the purview of Act No. 2655, and neither is the computation fixed by said Act applicable thereto. It is not an indemnity for gain which cannot be realized, but an amount which the creditor spends and which constitutes a loss really suffered by reason of the noncompliance with the obligation.
>
> "When the amount stipulated for the attorney's fees is so exorbitant that it exceeds that which should justly be paid for that purpose, the excess shall be

> considered as indirect or simulated interest, according to the spirit of the law, and should therefore be subject to the computation. In the case at bar, the 12½ per cent to which the trial court reduced the 25 per cent stipulated represents, in our opinion, the amount which the plaintiff was justly obliged to pay for his attorney's fees, and should not be considered as interest in the computation of the latter."

But, in the case at bar, there is an unsurmountable difficulty which prevents us from considering as penalty 4 per cent of the total 18 per cent paid by Ortiga Hermanos as interest, and that difficulty lies in the lack of evidence upon such alleged agreement as to the penalty. In the case of Bachrach Garage and Taxicab Company *vs*. Golingco, *supra*, it appears from the promissory note itself, signed by the defendant and his sureties, that in case the services of an attorney will be necessary for the collection of said note, the defendant promised to pay to the holder of the same 25 per cent of the principal and interest upon said note as attorney's fees; while in the case at bar there is no such clause in the promissory note signed by Ortiga Hermanos. In that case, the plaintiff was compelled to sue in order to collect his note, engaging the services of an attorney; while in the case at bar, the plaintiff J. J. Go Chioco was compelled only to file a complaint on November, 1921, to recover from Ortiga Hermanos the sum of P15,000, the balance of the original capital of P40,000, having collected, as it was already said, interest in advance at the rate of 18 per cent from December 2, 1919, to November 2, 1921. From the foregoing, we are of the opinion and so hold that Ortiga Hermanos paid J. J. Go Chioco upon the loan of P40,000, interest at the rate of 18 per cent per annum which is in violation of section 3 of Act No. 2655, that is, the Usury Law.

With this conclusion at which we arrive, it is evident that Ortiga Hermanos, having paid to J. J. Go Chioco the amount of P11,850 as usurious interest from December 2, 1919, up to the filing of his complaint, have, under section 6 of Act No. 2655, the right to recover said sum of P11,850 together with P1,500 which the trial court granted them as attorney's fees of Mr. A. D. Gibbs and costs.

As to the attorney's fees, counsel for J. J. Go Chioco assigned as error of

the trial court in granting P1,500 to attorney Thos. D. Aitken, who represented the other defendants Chan Lin Cun and E. Martinez. Counsel alleges that all of the amount representing interest was paid by Ortiga Hermanos, and the sureties Chan Lin Cun and E. Martinez could not therefore successfully maintain an action to recover any interest nor attorney's fees. We agree with this contention and it is our opinion that J. J. Go Chioco is not bound to pay the attorney's fees of the sureties Chan Lin Cun and E. Martinez. Therefore, the judgment appealed from should be modified in this respect, by deducting P1,500 from the sum of P3,000 allowed by the trial court.

II and III. The other questions raised in this appeal refer to whether a debtor, who has paid usurious interest, can recover the amount paid by him on account of the principal and whether the usurious creditor has a right to recover the principal loaned, and not paid by the debtor. The resolution on these two questions depends upon the interpretation of section 7 of Act No. 2655 which provides:

> "All conveyances, mortgages, bonds, bills, notes, and other contracts or evidences of debt, and all deposits of goods or other things, 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: *Provided, however,* That no merely clerical error in the computation of interest, made without intent to evade any of the provisions of this Act, shall render a contract void: *And provided further,* That nothing herein contained shall be construed to prevent the purchase by an innocent purchaser of
> negotiable mercantile paper, usurious or otherwise, for valuable consideration before maturity, when there has been no intent on the part of said purchaser to evade the provisions of this Act and said purchase was not a part of the original usurious transaction. In any case, however, the maker of said note shall have the right to recover from said original holder the whole interest paid by him thereon and, in case of litigation, also the costs and such attorney's fees as may be allowed by the court."

As may be seen, notwithstanding the provision as to the nullity of the usurious note, in case the same is endorsed to an innocent third person, the innocent purchaser is entitled to collect the amount, with interest, from the maker and the maker is entitled to recover from the original holder thereof only the interest paid by him, and, in case of litigation, the costs and attorney's fees as may be allowed by the court. Therefore, the only effect of the nullity of the note is the recovery of the interest paid by the debtor, not the value of the note.

If, on account of the nullity of a usurious note, the original holder thereof, or the payee, has no right to recover any amount upon said note, there is no reason why, in case the same is transferred to a third person who acquires it in good faith and for a consideration, the payee should be benefited by the amount collected by him from the transferee as payment of the note endorsed and not repay the maker the value of the same. Likewise, if by virtue of such a nullity, nothing can be collected by the holder of the note, there is no reason why the reimbursement of the interest should be limited to the amount collected during the two years immediately preceding the date on which the action for the recovery thereof was instituted, and should not include all the interest collected prior to said period. And it is because the law limits the effect of the nullity to the reimbursement of the interest paid during the period of two years preceding the filing of the complaint, which provision being of a penal nature must be strictly construed so that it should not include the reimbursement of the principal paid and the unpaid principal which is not provided in the law.

That the legislator did not have in mind that the usurious creditor should lose the capital loaned by him is further made apparent by the provisions of section 8 of Act No. 2655 as amended by Act No. 2992. Said section reads thus:

> "All loans under which payment is to be made in agricultural products or seed or in any other kind of commodities shall also be null and void unless they provide that such products or seed or other commodities shall be appraised at the time when the obligation falls due at the current local market price: *Provided,* That unless otherwise stated in a document written in a

> language or dialect intelligible to the debtor and subscribed in the presence of not less than two witnesses, any contract advancing money to be repaid later in agricultural products or seed or any other kind of commodities shall be understood to be a loan, and any person or corporation having paid otherwise shall be entitled in case action is brought within two years after such payment or delivery to recover all the products or seed delivered as interest, or the value thereof, together with the costs and attorney's fees in such sum as may be allowed by the court. Nothing contained in this section shall be construed to prevent the lender from taking interest for the money lent, provided such interest be not in excess of the rates herein fixed."

Under this legal provision, in case of a usurious contract, by virtue of which payments are to be made on agricultural products, seeds or other fruits, the debtor may recover from the usurious creditor only what he might deliver as interest, which shows, in our opinion, that what he might have paid as principal is not recoverable. Now, if it is held that in another kind of a usurious contract, the debtor may recover not only the interest paid but also the principal, how can it be explained that by the mere fact of the debt being payable in fruits, the debtor is not entitled to recover the principal which he might have paid? The conclusion is inevitable that the nullity of a usurious loan provided in the law means only that the lender cannot demand payment of the stipulated usurious interest.

Moreover, section 10 of Act No. 2655 as amended by Act No. 2992 provides:

> "Without prejudice to the proper civil action, violations of this Act shall be subject to criminal prosecution and the guilty person shall, upon conviction, be sentenced to a fine of not less than fifty pesos nor more than two hundred pesos, or to imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court, and to return the entire sum received as interest from the party aggrieved, and in case of nonpayment, to suffer subsidiary imprisonment at the rate of one day for every two pesos: *Provided,* That in case of corporations, associations, societies or companies the manager, administrator or *gerente* or the person who has charge of the management or administration of the business shall be criminally

> responsible for any violation of this Act."

As may be seen, this legal provision requires the restitution only of what might have been received by the convicted usurer as interest. If the intention of the legislator was to confiscate the principal loaned, he would not have limited himself to the statement that the interest collected must be refunded.

In interpreting Act No. 2655, the fact must not be lost sight of that in August, 1911, the Philippine Commission enacted Act No. 2073, which fixes and defines the legal rate of interest, declares the effect of usury on contracts, and provides for other purposes in the Moro Province, Mountain Province, and in the provinces of Agusan and Nueva Vizcaya. Section 3 of this Act provides:

> "Sec. 3. All bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or anything whatever, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action, than is above prescribed, shall be void, except as to *bona fide* purchasers of negotiable paper, as hereinafter provided, in good faith, for a valuable consideration, before maturity: *Provided,* That no merely clerical error in the computation of interest, made with no intent to avoid the provisions of this Act, shall render the contract usurious: *And provided further,* That the payment of interest in advance for one year at a rate not to exceed fifteen per centum per annum shall not be construed to constitute usury: *And provided further,* That nothing herein shall be construed to prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, free from all equities, at any price, before the maturity of the same, when there has been no intent to evade the provisions of this Act, or where said purchase has not been a part of the original usurious transaction. In any case, however, where the original holder of a usurious note sells the same to an innocent purchaser, the maker of said note or his representative shall have the right to recover back from the said original holder the amount of principal and interest paid by him on said note."

The phraseology of section 7 of Act No. 2655 is so similar to the language of section 3 of Act No. 2073 that it may well be said that Act No. 2655 was drafted after Act No. 2073 for the whole Philippines, which Act (No. 2655) fixes the rate of interest on loans, declares the effect of receiving or collecting usurious interest and provides for other purposes. A comparison of the terms of the laws above quoted shows only one essential difference, and that is, that while section 3 of the former Act No. 2073 gives the debtor the right to recover not only the usurious interest but also the principal, section 7 of the later Act, that is, Act No. 2655, authorizes the debtor to recover only what he might have paid. In view of this fact, there is no room for doubt that the Philippine Legislature, in enacting Act No. 2655, deemed the provision of section 3 of Act No. 2073 to be unjust as to the confiscation of the principal and so it provided in Act No. 2655 that the debtor may recover only the interest paid, attorney's fees and costs.

In the case of Delgado *vs*. Alonso Duque Valgona (44 Phil., 739), decided March 31, 1923, the decision in the case of Moncrief *vs*. Palmer (114 Atl., 181; 17 A. L. R., 119, 120), is quoted with approval wherein it was held that "he who seeks equity must do equity" by repaying the creditor the capital which he might have received by virtue of the usurious contract. In discussing the law applicable to the case, the court, among other things, said:

> " 'The provisions of the Rhode Island statute with reference to usury are drastic. Chapter 434, Public Laws 1909, amended by chapter 838, Public Laws 1912. The violation of the act is punishable as a misdemeanor, every contract made in violation of it is void, and the borrower may recover in an action at law, not only the interest, but any portion of the principal paid by him upon such usurious contract. The complainant's solicitor has presented to us a very comprehensive and able argument in support of his contention that equity should recognize the view of public policy emphatically expressed in the legislative act, and should cancel the usurious and void contract. This argument would have more persuasive force if the question were a new one. The settled and nearly universal practice of courts of equity is opposed to the complainant's contention. The statutes of different states have various provisions directed towards the prevention of the extortion and oppression of usury. Whatever may

> be
> the method adopted by the legislature, however, although the legislative provision may go to the limit of our statute and declare the contract void and unenforceable, nevertheless courts of equity, in the absence of statute specifically constraining them to act differently, have insisted upon the equitable principle that he "who seeks equity must do equity," and have required the borrower, before he can be given the relief of cancellation of the contract, to perform the moral obligation resting upon him, and pay or offer to pay the principal of the loan with legal interest.' "

Commenting upon the former decision rendered in the case of Delgado *vs*. Alonso Duque Valgona, *supra*, Mr. Justice Street who wrote the opinion of the court said:

> "The doctrine of that case we consider applicable here; and without expressing any opinion upon the broader question whether capital lent upon a usurious contract can be recovered in an aggressive action by the creditor, we are content to hold that when the debtor in a usurious contract sees fit, or finds it necessary to apply to the court for equitable relief, he will, as a condition to the granting of such relief, be required to restore what he received from the other party. In the present case both parties are before the court in the attitude of suppliants, each asking for relief from the contract in question; and in order to avoid the possibility of further litigation, as well as to secure complete justice, an order will be entered requiring the plaintiff, as a condition of the satisfaction of the judgment in his favor, to reconvey to the defendant the same twelve parcels acquired by the plaintiff from the defendant."

The essential facts in that case are: On the first of February, 1918, Alonso Duque Valgona, the defendant, sold certain lands to Luciano Delgado, the plaintiff, and to secure the payment of the purchase price, Delgado executed, at the same time, a deed of mortgage in favor of the defendant on the same lands and also on two other large parcels, of which the plaintiff was already the owner, situated in the municipality of Tinambac, Province of Camarines Sur. The conditions of this mortgage, so far as essentially pertaining to this case, are

contained in clauses A to E, inclusive, of paragraph 2, and which in substance are as follows: (*a*) The mortgagor (Delgado) promised to pay to the mortgagee (Alonso Duque Valgona) the sum of P15,000 in one installment; (*b*) to secure the payment of this amount the debtor executed a mortgage in favor of the creditor on fourteen parcels of land described in paragraph one of said deed; (*c*) as long as the debt subsists, the debtor binds himself to pay interest in the sum of P2,250 in two semi-annual installments of P1,175 each, which, as may be observed, exceeds the other amount by P100; (*d*) the creditor gives the debtor the period of twelve years from the date of the deed within which to pay the P15,000 above mentioned. Lastly, in clause E, it is stipulated that if the debtor fails to pay within the twelve years, the creditor may, at the expiration of this period, take possession of the lands mortgaged.

The mortgage in question having been held usurious, because it was found that the stipulated interest exceeded 15 per cent per annum, the court rendered judgment in favor of the plaintiff, the mortgagor, for the recovery of the usurious interest paid by him, that is, P2,625, with interest thereon, plus P1,000 attorney's fees; and reversed the judgment appealed from in so far as the defendant was adjudged entitled to recover the sum of P15,000, which was the amount of the mortgage deed, and ordered the plaintiff, the usurious debtor, to return to the defendant creditor the twelve parcels of land which were the subject-matter of the sale, the price of which was secured by the mortgage, thus the result being that if the creditor did not succeed in recovering the P15,000 which he had paid to the debtor, in lieu thereof he recovered the twelve parcels of land which were the consideration of the mortgage.

In the case before us, we have J. J. Go Chioco claiming from Ortiga Hermanos the payment of P15,000, the unpaid balance of the capital loaned and Ortiga Hermanos in turn demanding from J. J. Go Chioco the repayment of the usurious interest paid by him, plus attorney's fees and costs, besides the P25,000 paid on. account of the loan of P40,000.

In view of the fact that we are called upon to pass upon the claim of the creditor J. J. Go Chioco, we are now compelled to render our opinion on the question whether or not a creditor has direct action against the debtor for the recovery of the capital loaned upon a stipulation of usurious interest. As is

well known, usury is an act prohibited by law and to determine the rights and action of the parties in interest, it is necessary to take into account the legal previsions applicable in each jurisdiction.

And, if we turn our attention on the Acts above cited, Nos. 2073 and 2655, it will be seen that section 6 of the former Act provides:

> "Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of debt has been taken or received in violation of the provisions of this Act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be cancelled and given up."

This provision shows that under that law, it was expressly prohibited to maintain any action on usurious contracts. Then there is no doubt that the creditor cannot institute any action for the recovery of the capital or part of the capital loaned. Undoubtedly, the legislator, in enacting Act No. 2073, deemed it reasonable that the creditor should lose the capital, because, aside from the fact that in that Act no penalty was provided for against usury other than the loss of all the interest paid by the debtor in case the usurious instrument was negotiated (section 3), and of the interest paid in the two years preceding the filing of the complaint in all other cases (section 2); in said Act only one rate of interest quite liberal was fixed; namely, 15 per cent per annum according to section 1 and building and loan associations as well as pawn shops were exempted from every limitation according to section 7.

But the Act now in force, No. 2655, as amended by Act No. 2992, contains no such prohibitive provision as that of the former Act No. 2073 and the silence of Act No. 2655 in this respect, in contra-distinction with the express prohibition of Act No. 2073, shows that said prohibition was intentionally omitted from the law now in force, and that the Legislature, in omitting such rule from the new law, did not intend to bar the creditor from coming into court for the recovery of his capital. And the reason for such an omission is clear if it is taken into account that Act No. 2655 made the situation of the creditor quite difficult in these respects: (*a*) No creditor is exempt from the law (section 2); (*b*) the maximum rates were fixed, which were to be applicable to building

and loan associations and pawn shops (section 4); (*c*) the general rate of interest was reduced to 12 per cent on loans with securities of real properties and 14 per cent if there are no such securities (sections 2 and 3); (*d*) in case of litigation, the judge shall sentence the creditor to pay attorney's fees to the debtor (sections 6 and 8); (*e*) usury was made a crime and is punishable by a fine equal to the interest stipulated, or subsidiary imprisonment in case of insolvency (section 10). We believe that these new penalties and restrictions were inserted by the Legislature in lieu of the loss of the capital provided by Act No. 2073.

And the foregoing conclusion is fully sustained not only by the history of the Usury Law, but also by the preamble of the law itself. By the history, because the bill of the Commission No. 217 prepared by Commissioner Martin in 1914 in its section 1 contained a provision to the effect that "any contract which directly or indirectly provides for the payment of any interest in excess of 12 per cent per annum shall be null and void not only as to the interest but as to the principal invested," which provision was eliminated from the Usury Law as it was finally passed by the Legislature. By the preamble, because speaking of the necessity of the intervention of the prosecuting attorney in actions resulting from the violation of the Usury Law, as well as of the penal sanction, said preamble gives the following reasoning: "We believe it to be a sound proposition that the fiscal should intervene in the actions arising from the violation of the proposed provisions set out in the original bill, because, among other reasons, those poor persons unable to employ an attorney will be represented and thus the law would not be a dead letter. But without the penal clause, it seems that such intervention is not proper. But, why not insert such clause? We would not be the first and only nation which would do such a thing. We are of the opinion that a fine equivalent to four times the amount in excess of the interest charged or subsidiary imprisonment in case of insolvency, would be sufficient and better than the forfeiture of the principal." Therefore, there can be no room for doubt that it was not the intention of the Philippine Legislature to forfeit the principal in condemning usury by means of a law.

Page on Contracts, vol. 1, pages 757 *et seq.,* in dealing with the effect of usurious executory contracts, says:

> "A contract usurious in its nature will not be enforced by the courts. Whether such contract is illegal or merely void is a difficult question to answer, as the exact effect of such contract depends on the wording and construction of the statute by which such excessive rate of interest is forbidden. Such statutes in terms, varying in different jurisdictions, provide with considerable exactness the effect of such transactions; and the courts rarely feel authorized to apply thereto the common law principles of illegal or void contracts, in addition to the express requirements of the statute. This rests upon the familiar principal that where a statute creates a new right or offense and provides a specific remedy or punishment, that remedy alone can apply. In some jurisdictions, apart from the question of the right to recover the principal, which is hereafter discussed, it is held that other provisions of an inseverable usurious contract, such as a valid provision for attorney's fees, are themselves enforceable if no other objection than that of usury exists thereto. Where this view obtains such contracts are not illegal. Further, in some jurisdictions, collateral securities are enforced up to the amount lawfully due. Where this view obtain such contracts cannot be classed as illegal, in the sense in which the term is used at common law. Under usury statutes the principal loaned may be recovered. The effect of the usury statutes is for the most part confined to the interest paid or agreed to be paid. Under many statutes an agreement for usury causes a forfeiture of the entire interest, leaving only the principal to be recovered."

Discussing, in another passage, the discharge of collateral securities, the same author adds:

> "* * * The provisions of certain statutes, however, make securities in contracts given on a usurious consideration absolutely void, and require their cancellation without conditions. Under such statutes an offer to repay the amount borrowed is not necessary in order to enable the debtor to have such contracts or conveyances cancelled. In a suit by the debtor for cancellation, he may have the amount paid in by him as usurious interest applied in payment of the principal, even if he could not maintain a separate action in equity to recover it. If the creditor is seeking to enforce a usurious contract, equity may in a proper case restrain him from enforcing it, without requiring the

> previous payment of the amount due. Thus in an action by the creditor to enforce the usurious contract, the debtor may interpose usury as a defense without paying or tendering the amount of the debt. If the statute prevents recovery of interest on a usurious contract, the creditor can recover only the amount actually loaned by him." (Carpenter *vs*. Lewis, 60 S. C., 23; 38 S. E., 244.)

When the law provides that the penalty for usury is the confiscation of all the interest which was stipulated, the lender may, in an action based upon the contract, recover the amount actually lent or paid without interest. (39 Cyc., 1007.)

In support of this proposition, the following doctrines are cited:

> "If the rate of interest, stipulated in writing, was higher than ten per cent, only the principal could be recovered." (Alston *vs*. Brashears, 4 Ark., 422.)
>
> "Where it appears from the decree itself that a portion of the amount reported to be due by the master is 'tainted with usury,' the same being admitted by complainants, it was error to allow any sum whatever for interest, Chapter 4022 laws of Florida, acts of 1891, providing that 'only the actual principal sum of such usurious contracts can be enforced either at law or in equity.' " (Lyle and Lyle *vs*. Winn and Winn, 45 Fla., 419.)
>
> "Under the statute providing that in case of usury the defendant shall be entitled to costs, the plaintiff, upon being allowed recovery for principal, less penalties, is not entitled to attorney's fees or costs. (Libert *vs*. Unfried, 47 Wash. [Rem.], 186.)
>
> "By the laws of Mississippi (Stat. 25 June, 1822), where an usurious rate of interest has been stipulated, the lender can recover only the principal." (Coxe *vs*. Rowley, 12 Robinson's Rep., 273.)
>
> "Under the Usury Act of 1875, the penalty for taking more than legal interest was a forfeiture of the interest and the excess of interest. If it had already been paid it could be recovered by suit, or by way of set-off against a suit for

> the principal, within the time allowed by that act, but in either event—whether payment had been made or not—only interest (both legal and usurious) was forfeited, and the lender had a right to recover the principal actually loaned." (Lanier *vs*. Cox, 65 Ga., 265.)

We believe that the doctrines laid down in the cases above cited are applicable in this jurisdiction as, in fact, the Usury Law provides for the loss in favor of the debtor of the stipulated usurious interest which might have been paid during the two years preceding the claim of the debtor.

But counsel for Ortiga Hermanos argues in support of his contention that they are entitled to recover the P25,000 paid on account of the principal, that the consideration of the note is the payment of interest at 18 per cent, and the contract being void on account of the illegality of the consideration, application should be made in this case of articles 1305 and 1306 of the Civil Code.

The contention of counsel for Ortiga Hermanos in this respect is untenable. "Every statute is understood to contain, by implication, if not by its express terms, all such provisions as may be necessary to effectuate its object and purpose, or to make effective the rights, powers, privileges, or jurisdiction which it grants, and also all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms." (Black on Interpretation of Laws, page 62.) In our opinion, the Usury Act, No. 2655, as amended by Act No. 2992, contains all that is necessary for the application of its provisions. Section 1 of the Act fixes the interest of loans in default of agreement between the parties; sections 2, 3, and 4 fix the interest on certain loans and prohibit the collection of interest in excess of the limitation fixed; section 5 regulates the collection of interest upon interest; sections 6, 7 and 8 determine the effects of the collection of a usurious interest and of loans wherein said interest was stipulated or paid; section 9 requires the making of an oath in answers to a complaint for the recovery of usurious interests; section 10 contains the repealing clause and section 12 fixes the date on which the Act was to take effect. The law, in declaring usurious loans to be void, determines its effects and makes them to consist in the reimbursement of the interest paid during the two years preceding the making of the claim, the

payment of attorney's fees and provides further for the institution of criminal action for the imposition of the penalty fixed by the law. And with regards to the capital lent, we have said in another part of this decision that the law did not intend to close the courts to the creditor for relief in the recovery of his principal. In view thereof, we are of the opinion and so hold, that articles 1305 and 1306 of the Civil Code are not applicable to the case at bar.

Furthermore, "it has been said that the law of usury is penal in its nature and therefore should be strictly construed. Thus, while courts, under a statute, avoiding the entire contract for usury, will uphold the defense according to the letter of the statute, they will grant affirmative relief, not expressly given by such statute, only on payment of the money actually loaned and legal interest. And this is because, while it is the duty of courts to give effect to the letter of a statute against oppression of the borrower, they will not extend the letter of the statute to relief oppressive of the lender." (R. C. L., vol. 27, page 207.) And in fact to uphold the contention of Ortiga Hermanos would be to permit a debtor to enrich himself with the money lent, to the prejudice of the creditor; it would be to extend the effects of usurious loans to other matters not mentioned in the Law; it would be to increase the restrictions provided by the Legislature which is beyond the jurisdiction of the courts.

Having thus resolved the question which we have considered in this appeal, the errors assigned by both appellants are consequently disposed of.

Therefore, the judgment appealed from is affirmed in so far as J. J. Go Chioco is sentenced to return to Ortiga Hermanos the usurious interest paid during the two years preceding the claim; namely, P11,850, the legal interest thereon, from November 9, 1921, the date of the filing of the complaint, plus P1,500 as attorney's fees and the costs. And the same is reversed in so far as the defendants Ortiga Hermanos and their sureties, Chan Lin Cun and E. Martinez, are absolved from the payment of the balance of the capital lent, which is P15,000, and in so far as J. J. Go Chioco is sentenced to pay P1,500 as fees of the attorney for the defendants' sureties. And it is adjudged that Ortiga Hermanos and their sureties should pay jointly to J. J. Go Chioco the sum of P15,000, the unpaid balance of the capital lent, with legal interest thereon from October 4, 1921, when the complaint was filed. (Aguilar *vs*. Rubiato and Gonzalez Vila, 40 Phil., 570.)

Without special pronouncement as to the costs in this instance. So ordered.

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

CONCURRING AND DISSENTING

STREET, J.:

While I am in full accord with most that is said in the opinion of the court in this case, I am nevertheless constrained to dissent from the proposition that the plaintiff is entitled to recover the unpaid residue of the capital advanced by him to the firm of Ortiga Hermanos upon the usurious notes which are the subject of the principal action. Section 7 of Act No. 2655 declares that all contracts whereby there shall be reserved a higher rate of interest than is allowed by law shall be void. This provision is taken from section 2214 of the Statutes of the State of Minnesota (edition 1894), and it is similar to section 373 of the General Business Law of the State of New York. Both of these provisions in turn have their source in Chapter 16 of the Statutes of 12 Anne, relating to usury, which was in force in England for more than a hundred years before it was there finally abrogated and which served as a prototype for the early legislation on usury in many American States. In the course of the last fifty years we note a general tendency towards a relaxation of the laws relating to usury in the United States, but the statute of 12 Anne in some form or other still remains substantially in force in five or six states, including New York and Minnesota. It is suggestive that our Legislature in enacting a law relative to usury should have found its model precisely in the laws of those states where the provisions on the subject are most rigorous.

Now, in the period of nearly two hundred years during which the statute of 12 Anne has been in force in various countries, the courts have uniformly held to the doctrine that no action can be maintained by the creditor, suing on such contract, to recover either principal or lawful interest. An apparent exception

is admitted in the situation where the debtor applies to a court of equity to have the instrument surrendered up or cancelled. In this case the court requires the debtor to do equity by restoring the capital as a condition precedent to obtaining equitable relief. This rule was applied by us in Delgado *vs*. Alonso Duque Valgona (44 Phil., 739). But the doctrine underlying that line of cases has never been extended so as to permit the plaintiff to recover his capital in an aggressive action instituted by himself; and a careful examination of the American and English decisions will reveal the fact that in those jurisdictions where usurious contracts are void, the courts have uniformly refused to entertain the action (Bank of the United States *vs*. Owens, 2 [Pet.] U. S., 527; 7 L. ed., 508; Missouri, Kansas & Texas Trust Co. *vs*. Krumseig and Krumseig, 172 U. S., 351; 43 L. ed., 474).

It is
hardly necessary to suggest that on account of the multitudinous variety of laws relating to usury in the various States of the American Union, decisions from American courts are of little practical value on this subject unless it is made to appear that the law of the State from which a particular decision comes is similar to the law now in force in these Islands.

DISSENTING

MALCOLM, J.:

While entertaining the highest respect for the members of the Court who have here taken a mild stand with reference to our Usury Law, I have to say frankly that, in my opinion, a mistake has thereby been made and the purpose of the law nullified.

The Usury Law (Act No. 2655) was put on the statute books by the Philippine Legislature to eradicate a virulent social cancer. Three separate and distinct consequences were to flow from the provisions of the law. The first two consequences were civil in nature. One provided *for affirmative relief* by which the borrower was permitted to recover the whole interest paid or

delivered, together with costs and attorney's fees if he should have paid or delivered a higher rate or sum than that provided by the law (sec. 6). The other civil relief was *negative in nature* and provided in effect that all conveyances, contracts, etc., whereupon or whereby there shall be received, directly or indirectly, a higher rate or greater sum or value for a loan than is legally allowed "*shall be void*." (Sec. 7.) The law was finally given a criminal aspect and violations of it made persons subject to criminal prosecution and to the payment of fines equivalent to the total interest stipulated. (Sec. 10.)

A comparative study of the usury statutes in the United States discloses that they are of three general classes. Two classes make usurious contracts unlawful either as to the interest or as to so much of the interest as exceeds the legal rate. The third class, for instance Minnesota and New York, makes the contract void and enjoins any proceeding thereon, and orders the same to be cancelled.

The placing of the Minnesota and New York statutes on the subject of usury and the Philippine statute on the same subject side by side, discloses that section 7 of the Philippine Usury Law is practically identical with the Minnesota and New York laws. (Webb on Usury, Appendix; 3 Birdseye Cumming & Gilbert's Consolidated Laws of New York, Ann., sec. 373.) Both the Minnesota and New York statutes on the one hand and the Philippine statute on the other, make usurious contracts void. The same construction should, therefore, be given to the Philippine statute as to the Minnesota and New York statutes which apparently inspired the local law.

In Minnesota, the statute has been construed by the Supreme Court of that State to mean that a contract for a usurious loan of money is void, and there is no valid indebtedness for the money loaned. (Ormund *vs*. Hobart [1886], 36 Minn., 306.) In New York, a usurious contract is not void *per se* but merely voidable at the option either of the borrower or those in privity with him. The statute, however, renders all securities infected with usury absolutely void. (Williams *vs*. Tilt [1867], 36 N. Y., 319; Union Credit & Investment Co. *vs*. Union Stockyard & Market Co. [1905], 92 N. Y. Supp., 269; Claflin *vs*. Boorum [1890], 122 N. Y., 385; Schlesinger *vs*. Gilhooly [1907], 189 N. Y., 1; Missouri, Kansas & Texas Trust Co.

vs. Krumseig and Krumseig [1899], 172 U. S., 351.)

The Philippine law on the subject of usury says without equivocation that all contracts or evidences of debts which recognize usurious interest, "*shall be void*." I repeat, "*void,*" that is, of no effect whatever; absolutely and entirely null; of no legal force and which for that reason cannot be enforced. (8 Words and Phrases, pp. 7332 *et seq*.)

But let it be assumed that it is rarely that things are wholly void and without force and effect, and that in this instance, void has the meaning of voidable. Yet it remains true that voidable signifies that which may be ratified or disaffirmed and which is binding until disaffirmed. In this instance, the defendant has seen fit to disaffirm the contract.

There is consequently in my judgment not much room for discussion. The contract is void or voidable. The court should not enforce the illegal contract at the suit of the guilty party. (Civil Code, arts. 1305, 1306.)

I am accordingly of the opinion that, taking into consideration the plain language of section 7 of Act No. 2655 and giving to it its true meaning, the rule should be, that the usurious contract is avoided and that the lender cannot be permitted to maintain an action in the courts to enforce his usurious contract. Such natural construction of the law will be for the best interests of the entire Philippines.

The decision of Judge of First Instance Imperial is right and should be affirmed.

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