

**COMMUNITY INVESTMENT AND FINANCE CORPORATION,
PLAINTIFF AND APPELLANT, VS. HERMENEGILDO B. REYES,
DEFENDANT AND APPELLEE.**

G.R. No. L-5534. December 21, 1953

Ponente: REYES, J.

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REYES, J.:

This is an action to compel defendant to accept certain mining shares bought for him by plaintiff in 1937 and to pay for the price of the same after deduction of the sum advanced by him on account of the said price. Defendant denied his liability and, when the case was called for trial, asked for the dismissal of the case on the ground of moratorium. The motion was granted but, upon appeal to this Court, the order of dismissal was set aside and the case remanded to the court of origin so that defendant could produce proof that he had presented a war damage claim since the debts sued upon came within the purview of sections 2 and 3 of Republic Act No. 342, without prejudice to plaintiff's raising the question of the constitutionality of said Act in the court below. This the plaintiff did in a pleading subsequently filed in the trial court. But that court, after trial, found that defendant had filed his war damage claim, and being of the opinion that the Act in question was constitutional, rendered a decision dismissing the action. From this decision plaintiff appealed to this Court, and the only issue is the constitutionality of the Act. As this Court has already declared the said Act unconstitutional in the case of *Rutter vs. Esteban*, G. R. No. L-3708, promulgated May 18, 1953 (49 Off. Gaz., 1807), the defense of moratorium set up by defendant can no longer be upheld.

Wherefore, the decision appealed from is ordered set aside and the case remanded to the court below for further proceedings. Without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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