

**SALVACION F. VDA. DE EDUQUE, ETC. PLAINTIFF-APPELLEE, VS.
JOSE M. OCAMPO, DEFENDANT-APPELLANT.***G.R. No. L-222. April 26, 1950*

Ponente: MORAN, C.J.

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This is an action to compel acceptance of payment of a mortgage debt.

On February 16, 1935, Dr. Jose Eduque secured two loans from Mariano Ocampo de Leon, Doña Escolastica de los Reyes and Don Jose M. Ocampo, the first in the amount of P40,000, and the second in the sum of P15,000, both payable within the period of twenty (20) years, with interest at -the rate of 5 per annum. Payment of these two loans was 'guaranteed by mortgage on real property. In the mortgage contract it is. stipulated that any of the mortgage creditors may receive payment and execute deeds of cancellation of the mortgage debts.

On December 6, 1943, plaintiff and appellee, as administratrix of the estate of the deceased Dr. Jose Eduque, tendered payment, by means of a cashier's check, of the total amount of the two loans, P55,000, to defendant-appellant Jose M. Ocampo, one of the creditors, who refused to accept payment. By reason of such refusal, an action was brought and a cashier's check for the total amount of P55,000 was deposited in court. After trial, judgment was rendered against defendant compelling him to accept the P55,000 deposited in court, to issue deeds of cancellation of the mortgage debts, and to pay the expenses of consignment and costs.

Defendant accepted the judgment with respect to the second loan of P15,000 upon the ground that, according to him, in the deed of mortgage corresponding to that loan it clearly appeared that the loan was payable "durante el termino de 20 años", and that the only question remaining between the parties is the interpretation of the first deed of mortgage regarding the first loan of P40,000. And he asked the court to order "que de la cantidad de P55,000 consignada en este Juzgado, se entregue al demandado la suma de P15,000, despues de descontar proporcionalmente cualesquiera cantidades por deposito y otros conceptos segun los terminos de la decision promulgada." The order was issued accordingly and the sum of P15,000.00 out of the P55,000.00 deposited in court was delivered to the defendant.

The present appeal concerns the decision of the lower court regarding the first loan of P40,000, and the principal error assigned by the appellant is that tender of payment by means of a cashier's check representing Japanese war notes is not valid.

We have already held that Japanese military notes were legal tender during the Japanese occupation. But appellant argues, further, that the consignment oS a cashier's check, which is not legal tender, is not binding upon him. This question, however, has never been raised in the lower court. Upon the contrary, defendant accepted impliedly the consignment of the cashier's check when he himself asked the court that out of the money thus consigned he be paid the amount of the second loan of P15,000.00. It is a rule that "a cashier's check may constitute a sufficient tender where no objection is made on this ground." (62 C.J., p. 670; see also 40 Amer. Jut., p. 764.)

For all foregoing, judgment is affirmed with costs against appellant.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J., dissenting:

I am constrained to dissent from the majority decision on the ground on which I rested my dissent in various cases involving the validity of payments in Japanese military notes.

I maintain that Japanese war notes were not legal tender and could not be made so by military orders. Accordingly, payment in that currency of pre-war obligation over the protest of the creditor did not operate to discharge the debt except to the extent he was or could have been benefited by the payment.

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