

**PLACIDA CLEMENTE DE BELARMINO AND MAURO BELARMINO,
PLAINTIFFS AND APPELLANTS, VS. PEDRO DE MESA, DEFENDANT
AND APPELLEE.**

G. R. No. L-1986. January 28, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal upon a question of law taken from a decision of the Court of First Instance of Laguna wherein the action brought by plaintiffs-appellants against defendant-appellee was dismissed.

In the mortgage contract executed by appellants in favor of appellee on November 18, 1940 it was agreed, among others that:

"The condition of this mortgage is such that if the mortgagor shall well and truly pay or cause to be paid to the mortgagee, his heirs or assigns, within five (5) years from the execution of this instrument, the said seven thousand five hundred (7,500) pesos, Philippine currency, in accordance with the terms hereof, then this mortgage shall remain in full force and effect and be enforceable according to law."

Under this agreement the mortgage loan was payable within five years from November 18, 1940 which is the date of its execution. Payment was tendered by appellants some time in January 1944 but the appellee refused to accept it and the whole amount of P7,500 in Japanese military notes was deposited with the clerk of court with notice to appellee. And at the same time appellants filed a complaint to compel the appellee to accept the money thus deposited and cancel the mortgage. After trial, the lower court dismissed the action upon the ground that the appellee was not bound to accept payment in Japanese military notes not only because the money lent to appellants was genuine Philippine money and therefore should be paid in the same currency, but also because in the mortgage agreement there is a stipulation to the effect that payment should be made in Philippine currency.

The phrase "Philippine currency" appearing in the mortgage contract was intended to describe the amount of money given as a loan and not to designate a particular currency as medium of payment. And, there being no stipulation to the contrary, though the money lent to the debtors was in Philippine Commonwealth currency, it could be paid in any currency that is lawful money and legal tender in the Philippines at the time payment is to be made. (40 Am. Jur., 751, sec. 56; see also Act 1170 and Civil Code.) Thus a debt of P12,000 created in 1876 in gold coin, may now be paid by P12,000 of the Philippine silver pesos. (Rogers vs. Smith Bell & Co., 10 Phil., 319.) And it has been held "that debts created when the only legal-tender money was gold and silver could be paid in paper money issued by the Government and which had no intrinsic value." (Rogers vs. Smith Bell & Co., supra; Legal-Tender Cases, 12 Wall., 457; Dooley vs. Smith, 13 Wall., 604; Railroad Co. vs. Johnson, 15 Wall., 195; Maryland vs. Railroad Co., 22 Wall., 105.) And in the Philippines it is a settled rule that Japanese military notes issued during the Japanese occupation were legal tender and could be used validly during such occupation for payment of mature debts. (Haw Pia vs. China Banking Corporation, 80 Phil., 602.)

It is therefore adjudged that the deposit in court of the sum of P7,500 in military notes made by

plaintiffs-appellants is valid and defendant-appellee was bound to accept it in payment of the mortgage loan and consequently defendant-appellee is hereby ordered to execute a release of the mortgage in favor of plaintiffs-appellants. Judgment appealed from is reversed without costs.

Ozaeta, Paras, Bengzon, Montemayor, Reyes, and Torres, JJ., concur.

TUASON, J., concurring in part:

I don't think it is right or in accordance with law to legalize the payments of pre-war debts with Japanese notes forced upon the creditors against their will. At the most, a payment under these circumstances should be held to

discharge the contract to the extent of the value of the notes, under the Ballantyne scale, at the time the payment was made, just as debts incurred during the Japanese occupation are payable after liberation, as this Court has ruled, with genuine Philippine currency according to Mickey mouse's purchasing power in the absence of an express agreement.

The decision in *Haw Pia vs. China Banking Corporation* (45 Off. Gaz. [Supp. to No. 9], 229),^[1] to the contrary notwithstanding, the Japanese war notes were not legal tender. But granting that the *Haw Pia* decision is the law, it should not be enforced at the almost total expense of justice and righteousness. Certainly, there ought to be no quarrel in reconciling the law's majesty with its ministry when the law derives its force from a judge-made decision as differing from a positive, clear legislative enactment, and is of doubtful soundness.

Validation of the payment or consignment in this case inevitably implies validation of payments with Japanese war notes of pre-war debts against the creditors' will, effected in December, 1944 or January, 1945, when those notes were hardly worth the paper they were printed on, thus virtually writing off such obligations. That, it is submitted, is not justice, it is not right, and it is not humane under any concept or precept.

[1]80 Phil., 602.

DISIDENTE

PABLO, M.,

Por las razones expuestas en mi disidencia en el asunto de Alejandro Andres y otro contra El Tribunal de Apelacion y otros, R. G. No. L-1773,^[2] la consignation hecha por el deudor de 7,500 en billetes de moneda japonesa no es valida de acuerdo con las disposiciones delCodigo Civil. Por tanto, la deuda no esta pagada. Debe confirmarse la sentencia apelada.

[2] 85 Phil., 400.

DISSENTING**PADILLA, J.,**

I dissent for the reasons set forth in my opinion in the cases of Antonio del Rosario: et al. vs. Carlos Sandico^[3] et al G R. No. L-867; and La Orden de Padres Benedictinos de Filipinas vs. The Philippine Trust Company^[1] G. R. No. L-2020, which were promulgated on 29 December 1949.

Judgement reversed.

[3] 85 Phil., 170.

[1] 85 Phil., 217.

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