

BERNARDO P. TIMBOL, PLAINTIFF AND APPELLANT, VS. MARIA KABAKAW ALIAS MARIA ABRERA, DEFENDANT AND APPELLEE.

G. R. No. L-3549. May 23, 1951

Ponente: REYES, J.

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REYES, J.:

This is an action for the collection of a debt.

The complaint alleges that during the years 1943 and 1944 the defendant Maria Kabakaw borrowed from the plaintiff Bernardo P. Timbol various sums of money aggregating P5,600, "payable after the liberation after receiving, from the United States Government, the back pay of her deceased husband, Capt. James Kabakaw, of the United States Army, in the amount of P5,600, Philippine currency," and that, though she has already collected the said back pay, she refuses to pay her debt to plaintiff.

Invoking the moratorium on money obligations, defendant moved for the dismissal of the action, and the court, after hearing, granted the motion and ordered the case dismissed without prejudice to the filing of another action as soon as the law should authorize it. From this order plaintiff has appealed to this Court.

Executive Order No. 25, as amended by Executive Order No. 32, provides for a moratorium on all debts and other monetary obligations contracted before or during the last world war. By Republic Act No. 342, approved on July 26, 1948, the moratorium was lifted as to pre-war debts subject to the exception therein specified. But the Act did not lift the moratorium on debts contracted during the war. (*Uy vs. Kalaw Katigbak*, L-1830, December 31, 1949.) Those debts are, therefore, still subject to the moratorium provided for in the executive orders. (*Mariano vs. Dannug*, L-2806, July 20, 1950.) It appears from the complaint that appellee's debt is of that category.

But being evidently of the impression that Republic Act No. 342 has also lifted the moratorium on debts incurred during the war, the lower court deemed it necessary to pass upon the validity of said Act and, declaring it unconstitutional and void as a class legislation, upheld the defense of moratorium set up by the appellee. It is obvious that, as contended by appellant, it was an error for the lower court to declare the Act unconstitutional, for its validity had not been challenged and was not Necessarily involved in the case. But the error was immaterial and cannot be made a ground for reversal. For whether the Act is void or not, the moratorium on debts contracted during the war still subsists and constitutes a bar to appellant's action. The order of dismissal is, therefore, correct in its result though founded on a wrong hypothesis.

Appellant, however, contends that the different amounts borrowed by the appellee are in the nature of advances from her inheritance, and that, as such, they are not, according to the case of *Seifert vs. McDonald Bachrach*, (45 Off. Gaz., 2505), subject to the moratorium on debts. That case holds that allowances for subsistence may not be deferred and are therefore not subject to moratorium, the obvious purpose of the rule being to enable the heirs to live pending adjudication of their shares in the hereditary estate. We cannot allow that purpose to be subverted by making the rule operate in favor of a creditor who, like appellant herein, is trying to collect money from an heir.

In view of the foregoing, and without passing on the Constitutionality of Republic Act No. 342, the order of dismissal is affirmed, with costs against the appellant.

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

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