

**CLARA TAMBUNTING DE LEGARDA AND VICENTE L. LEGARDA,
PLAINTIFFS AND APPELLEES, VS. ANTONIO CARRASCOSO, JR.
(SUBSTITUTING WILLIAM J. B. BURKE), DEFENDANT AND
APPELLANT.**

G. R. No. L-331. August 31, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

Before the Japanese occupation, Clara Tambunting de Legarda hereafter called the plaintiff, because her husband, the other plaintiff, is a nominal party, owed the original defendant William J. B. Burke about seventy thousand pesos P70,000.00. In May, 1944, she offered money to pay that debt plus interest. Upon refusal of William J. B. Burke to accept payment, she sued him immediately, and made a deposit of P75,920.83 in the court of first instance of Manila, where both resided. In June, 1944, he answered in substance that he and plaintiff had agreed that the credit would earn no interest during the existence of the war between Japan and the United States, and that such credit would be paid after the termination of such war.

In December, 1944, the court rendered judgment requiring said defendant to take the sum of 175,920.83 consigned by plaintiff with the clerk of court as full payment of the indebtedness. He moved for new trial. Then liberation came to Manila, and the records of the case were destroyed. When proceedings for the reconstitution thereof were instituted, the defendant lost no time in submitting what he entitled "Supplemental Answer" wherein he averred that plaintiff's tender of payment was made with Japanese Military Notes and was null and void, and that he (defendant) could not plead this defense in his original answer because had he done so, he and his attorney would have been tortured and probably killed by the Japanese military police. The "supplemental answer" included a counterclaim wherein defendant asked for payment of his original credit of seventy thousand pesos plus interest. It was accompanied by a motion for its admission, which plaintiff vigorously opposed. The court refused to admit the supplemental answer. It also denied the motion for new trial interposed by defendant. Hence this appeal, in the course of which appellant Burke died and was substituted by Atty. Antonio Carrascoso, Jr., his executor.

Several errors are assigned. The most important and decisive is the appellant's contention that it was prejudicial mistake for the court to reject the supplemental (answer and in preventing defendant from presenting proofs in support thereof.

It will be observed that the proposed supplemental answer directly challenged the right of the plaintiff Tambunting-Legarda to pay her debt in Japanese Military paper notes. Obviously this issue could not be raised in June, 1944 during the Japanese regime. Had he done so, defendant Burke would have been in grave bodily peril. Let this seem to be a valid plea, if as defense alleges - and the documents substantiate this allegation (Annexes G (and H) - that plaintiff's contract was to repay her obligation, at defendant's option either in Philippine currency, or in British currency. Supposing that in 1944, Japanese Military notes were Philippine currency for the purpose

of discharging pre-war debts payable in that medium of exchange, and that ordinary creditors could be legally compelled to accept them in payment (a point on which this writer and other members have not yet made up their minds) — still it is a serious question whether the defendant Burke who was a special creditor having the right to insist upon his option to receive payment in British urrency or the equivalent of British currency at that time, could be enjoined to receive Japanese money especially at par. And although he did not say so in plain words, his refusal to take the Japanese notes could have no other significance than his election to be paid in British currency, or, at least, Philippine currency at the right valuation - considering the well-known depreciated of the Japanese notes at that time. We are all of opinion that defendant should have been permitted to Establish such defenses. And although it is true that the option of defendant was a fact known to him and existing fat the time he submitted his answer, still it is clear that he could not then invoke it; and the subsequent liberation of Manila being the fact that enabled him to hold forth and assert his right, we believe that, under a liberal interpretation of the rule concerning supplemental pleadings (Sec. 5, Rule 17, Rules of Court) the herein Supplemental answer should be allowed. Consequently a new trial is in order. For that purpose, the record will be remanded to the court below for further proceedings not inconsistent with this opinion. So ordered.

Paras, Actg., C.J., Feria, Pablo, Perfecto, Briones, Padilla, and Tuason, JJ., concur.

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