

MARIA PALMA AND ABUNDIO LOS BAÑES, PLAINTIFFS AND APPELLANTS, VS. FENANDO CELDA, DEFENDANT AND APPELLEE.

G.R. No. L-2187. August 20, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellants' complaint was filed on June 8, 1946, to collect sums of money based on commitments made by defendant in a document executed on July 21, 1934 that is, 11 years, 10 months and 17 days before the filing of the complaint.

Invoking Sections 43 and 44 of the Code of Civil Procedure and Section 1 (e) of Rule 8 of the Rules of Court, defendant moved to dismiss the complaint on the ground that plaintiffs cause of action is barred by the statute of limitations.

On August 30, 1946, the lower court held that plaintiffs' cause of action had prescribed and dismissed the complaint, with costs against plaintiffs, who appealed.

Appellants seek our support in favor of the theory that war suspends the running of the statute of limitations. If the theory is upheld, by deducting the more than three years' duration of the war, there would be less than ten years from the time of the execution of the document to the filing of the complaint, hence, the complaint should not have been dismissed.

No showing has been made why we should reverse the doctrine that the statute of limitations is suspended by war, rebellion, or Insurrection, "when the regular course of justice is interrupted to such an extent that courts cannot be kept open." (*España vs. Lucido, & Phil.* 419.) The reason of the doctrine is obvious. When there are no competent courts to take cognizance of an action, failure to file it cannot be held against a plaintiff. Nemo tenetur ad impossibile Plaintiff having been precluded without his fault from filing his complaint, it is evident that there is no sense of justice in not suspending the statute in his case.

In the present case the lower court took judicial notice of the fact, not disputed by appellants, that in the uninvaded parts of Iloilo, where the majority of the municipalities are situated, the Commonwealth courts continued functioning regularly for the duration of the war, while in the occupied areas there were courts established by the Philippine Executive Commission and the occupation Republic of the Philippines. There was no material obstacle to plaintiffs' filing their complaint before the expiration of the period prescribed by the statute of limitations.

The appealed order is affirmed, with costs against appellants.

Paras, Acting C. J., Feria, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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