

**ANTONIO DEL ROSARIO ET AL., PLAINTIFFS AND APPELLEES, VS.  
CARLOS SANDICO ET AL., DEFENDANTS. CARLOS SANDICO,  
DEFENDANT-APPELLANT.**

*G.R. No. L-867. December 29, 1949*

Ponente: FERIA, J.

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**FERIA, J.:**

On July 8, 1944, the Court of Appeals promulgated a decision in this case on appeal from the judgment of Court of First Instance rendered before the war, the dispositive part of which reads as follows:

"But for the purpose of avoiding multiplicity of litigations, the decision should be amplified by requiring plaintiffs to pay the amount of P3,944.20 to appellee Sandico within a period of ninety days from the date this decision becomes final; and upon such payment, the latter shall surrender to them the possession of the land. Should they fail to do so, the land will be auctioned off to satisfy such credit." (Record on Appeal, p. 11.)

In view of the refusal of the defendant Sandico to accept the payment of the judgment offered to his attorney in the case, the plaintiffs, on October 19, 1944, that is within the period of ninety days after the decision had become final, deposited or paid into the court the sum of P3,944.20 which they were sentenced to pay to recover the possession and enjoyment of the property delivered to the defendants in antichresis, and filed a motion praying the court to order the defendant Carlos Sandico to deliver the possession of said property to the plaintiffs, because the defendant Carlos Sandico presented an opposition to the motion on the ground that the money deposited did not belong to all the plaintiffs but to one Ponciano Ong, who purchased the right and interests of Antonio and Victoriano del Rosario, two of the six plaintiffs, and prayed that the motion be denied and the property be ordered sold to satisfy the judgment.

On October 11, 1945, the defendant Sandico was notified of the resolution of the court dated October 5, 1945, accepting the payment deposited and ordering the said defendant to surrender to the plaintiffs the possession of the land in dispute.

The defendant Carlos Sandico appealed from the court's resolution or order and the principal questions raised in the present appeal are: (1) that the sum of P3,944.20 deposited being in Japanese war notes is not acceptable to satisfy the judgment of the lower court as affirmed by the Court of Appeals on July 8, 1944, during the Japanese occupation; and (2) that the deposit or consignment of said amount in payment of the judgment by Ponciano Ong in behalf of the plaintiffs was not valid, because it was not made in conformity with the requirements of the provisions of articles 1176 and 1177 of the Civil Code.

I. As to the first assignment of error, since the final judgment of the Court of Appeals was rendered during the Japanese occupation in which the Japanese war notes were legal tender, and the judgment does not specify that the plaintiff should pay a different specie of money,( the delivery or deposit of P3,944.20 in Japanese war notes was a valid payment of the judgment in accordance with the ruling of this Court in the case of Soriano vs. Abalos, G. R. No. L-1525.[1]

The invectives hurled by the dissenter against the decision of the majority should have properly no place even in a dissenting opinion, so much so because they do not contain any argument in support of the contention of its writer that the dissenting opinion is correct and the decision of the majority is wrong.

The contention of the dissenter is (a) that "the Court of Appeals did not hold that the antichretic right or equitable mortgage that Carlos Sandico had in the parcel of land in litigation could be discharged or cancelled by paying it off with paper money that was then circulated in the country by the, Japanese army of occupation. \* \* \* It merely declared that the plaintiffs are the owners of the parcel of land involved in the litigation, subject to an antichretic right of Carlos Sandico, and that upon payment of the sum of P3,944.20 by the former to the latter within 90 days from the judgment the possession of the parcel of land was to be delivered to the plaintiffs." And (b) as the parties entered into the contract of antichresis before the Japanese occupation, "the currency contemplated or agreed upon "by them and between the parties could not have been the Japanese military or war notes, \* \* \* it was the currency of the Government of the Philippines which was used or in circulation at the time the contract was entered into," citing in support of this conclusion article 1170 of the Civil Code. And the Court of Appeals did not and could not have ordered "the payment of the antichretic debt or equitable mortgage in or by means of Japanese military notes, \* \* \* because the contract stipulated that payment of the debt was to be in Philippine money, the currency at the time the contract was entered into; because the Japanese army of occupation was not authorized to change or alter the contractual rights and obligations, but on the contrary it was enjoined to respect private property as well as contractual rights and obligations."

(a) It is not true, as stated in the dissenting opinion that the decision of the Court of Appeals "merely declared that the plaintiffs are the owners of the parcel of land involved in the litigation, subject to an antichretic right of Carlos Sandico, and that upon payment of the sum of P3,944.20 by the former to the latter within 90 days from the judgment the possession of the parcel of land was to be delivered to the plaintiffs." No. The Court of Appeals in the dispositive part of its decision declared, as already quoted at the beginning, that "the decision should be amplified by requiring plaintiffs to pay the amount of P3,944.20 to appellee Sandico within a period of ninety days from the date this decision becomes final; and upon such payment, the latter shall surrender to them the possession of the land. Should they fail to do so, the land will be auctioned off to satisfy such credit."

The plaintiffs or debtors did not, therefore, take "advantage of the abnormal situation when the Japanese military or war notes could be acquired for nothing or gotten for the asking because they were worthless and valueless, paid off a valid, legitimate and lawful debt," as asserted gratuitously in the dissenting opinion. The plaintiff had to pay by order of the court within the period of ninety days from the promulgation of the judgment because no appeal was taken, that is, from July 24, to October 22 of 1944, in order to prevent the sale of their property at public auction to satisfy such credit.

(b) Article 1170 of the Civil Code quoted in the dissenting opinion does not support the dissenter's contention that, although the Court of Appeals did not say that the amount of P3,944.20 must be paid in Philippine currency, the payment should be made in that currency, because it is to be presumed that it was the currency contemplated and agreed upon by the parties at the time the contract was entered into.

In the case of *Haw Pia vs. China Banking Corporation* (45 Off. Gaz. [Supp. to No. 9, p. 229]),<sup>[1]</sup> we have already held that "the fact that the money with which the debts have been paid were Japanese war notes does not affect the validity of the payments." The provision of article 1170 of our Civil Code to the effect that "payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such, specie, in silver or gold coins legally current in the Philippines," is not applicable to the present case, because the contract between the parties was to pay Philippine pesos and not some other specifically denominated specie of money. It is obvious that the phrase specie stipulated used in article 1170 of the Civil Code refers to money different from that which is the

legal tender or legally current in the Philippines, because to construe it otherwise would be to make said article read as follows: "Payment of debts of money shall be made in silver or gold coins that are legal tender in the Philippines (the specie stipulated) and, should it not be possible to deliver such specie in silver or gold coin legally current in the Philippines." Which is evidently absurd.

As there was no stipulation that the payment of the plaintiffs' debt shall be made in another specie of money and the agreement was only to pay P3,944.20, "it was not a duty to pay gold or silver, or the kind of money recognized by law when the contract was made, nor was it a duty to pay money of equal intrinsic value in the market, (we speak now of contracts to pay money generally, not contracts to pay some specifically denominated species of money). \* \* \* But the obligation of a contract to pay money is to pay that which the law shall recognize as money when the payment is to be made. If there is anything settled by decision it is this and we do not understand it to be controverted. *Davis Reps.*, 28; *Barrington vs. Potter*, Dyer 81 6. (Fol., 67); *Faw vs. Marsteller*, 2 Cranch, 29 (*Know vs. Lee* and *Parks vs. Davis* [Legal Tender cases], 12 Wall. 457, 20 Law. ed., 287, 311.)

But even if we assume *arguendo* that the Philippine genuine currency in circulation at the time the contract was entered into were the specie expressly stipulated by the parties and the provision of article 1170 were applicable, it is evident that, since it was not possible at the time the decision of the Court of Appeals became final and executory to satisfy the judgment in such currency, because we have already taken judicial notice that it was no longer in circulation as far back as the last part of 1943 (*Hilado vs. De la Costa*, 46 Off. Gaz., 5472),[2] it had to be paid in Japanese war notes that was legal tender at the time the judgment was to be satisfied by the plaintiffs.

In the case of *Rogers vs. Smith, Bell & Co.* (10 Phil., 319), this Court held the following applicable to the present case:

"It having been determined that the control between the parties created the common relation of debtor and creditor, the case is easily resolved. Section 3 of the act of Congress of March 2, 1903, entitled 'An act to establish a standard of value and to provide for a coinage system in the Philippine Islands,' is as follows:

" 'That the silver Philippine peso authorized by this act shall be legal tender in the Philippine Islands for all debts, public and private, unless otherwise specifically provided by contract: Provided, That debts contracted prior to the thirty-first day of December, nineteen hundred and three, may be paid in the legal-tender currency of said Islands existing at the time of the making of said contracts, unless otherwise expressly provided by contract.'

"That this case falls within the terms of this section is very clear. The debt in question is a private debt, calling for the payment of 12,000 pesos. This section authorizes the payment of that debt in the Philippine pesos authorized by the act. That the act applies as well to debts created prior to its passage as to those created after, appears from the proviso. The effect of that proviso is to give the debtor and not the creditor the option as to the kind of money with which the debt shall be paid.

"The only possible way to avoid the application of this section to the case at bar is by saying that Congress had no power to pass the act and that as to debts created prior to its passage it is therefore null and void. That the act can not be declared void on this ground is well settled by the decisions of the Supreme Court of the United States. (*Legal Tender Cases*, 12 Wall., 457; *Dooley vs. Smith*, 13 Wall., 604; *Railroad Company vs. Johnson*, 15 Wall., 195; *Maryland vs. Railroad Company*, 22 Wall., 105; and *Juilliard vs. Greenman*, 110 U. S. 421.) In the first four of those cases it was 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." [3]

That is evidently the reason why the Court of Appeals, in promulgating its decision sentencing or requiring the plaintiffs to pay the amount of P3,944.20 to appellee Sandico within a period of ninety days; did not specify the kind or specie of money in which it shall be paid, nor had the defendant Sandico appealed from such judgment of

the Court of Appeals, for judgments rendered during the Japanese occupation sentencing one of the parties to pay money to another shall be satisfied in that which the law shall recognize as money when the payment is to be made, unless otherwise is provided in the judgment.

We have already shown in our decision in the *Haw Pia* case that the power of a military occupant to issue military currency is based, not only on the military occupant's general power to maintain law and order recognized in article 43 of the Hague Regulations, but also on military necessity; and said power was exercised during the last World War not only by Germany who used in most occupied areas the Reichskreditkassa mark, a paper currency printed in Germany and denominated in German monetary units, but also by the Allies in the occupied enemy territory of Sicily, Germany and Austria. The Combined Directives of the Combined Chiefs of Staff of the Supreme Allied Commander issued on June 24, 1943, April 28, 1944, and June 27, 1947, declared respectively as legal tender the yellow seal dollars currency and the British military notes (BMN) in Sicily, the Allied military mark and the yellow seal dollars in Germany, and the Allied military shillings in Austria. When the Japanese military occupant issued the Proclamation of January 3, 1942, which declared the Japanese military notes of small denominations up to ten pesos as legal tender at par with the Philippine peso, the purchasing power of said notes was then the same as that of the Philippine peso. If the Japanese war notes became depressed and valueless, it was because the war was prolonged and lost by the Japanese contrary to their expectation of winning the war in a short time, and not because they issued purposely a depressed and valueless currency as legal tender. If their expectation had been realized no question as to the validity of the Japanese military notes as legal tender would have come up.

Tribunals have invariably held that action of a belligerent occupant validly initiated does not become retroactively invalid by reason of the fact that such action subsequently takes on a confiscatory form or effect. In other words, it is a principle of international law that if the action originated in a lawful manner, even if it thereafter impaired private property rights, that circumstance would not prevent the original validity from continuing so far as third parties and courts are concerned.

Besides, the Court of Appeals could not have rendered a judgment sentencing the plaintiffs to pay this obligation to pay money or the sum of P3,944.20 to Sandico in a currency other than the Japanese war notes; because such judgment would have been contrary to the Proclamation of January 3 of 1942 and notification of February 23, 1942, issued by the Japanese Military Administration, enjoining the use of Japanese war notes on their face value in making payment of all kinds because the "Imperial Japanese Government takes full responsibility for their usage;" and "any person or individual refusing to receive or to accept the aforesaid note or notes will be severely punished." And because, although the circulation of the Commonwealth currency was not then prohibited legally because of the Proclamation of January 10, 1942, they had already disappeared from circulation at that time, as above stated; and for the Court of Appeals to have ordered in the judgment that the sum of P3,944.20 shall be paid within 90 days or before October 22, 1944, in Commonwealth legal currency, would have been tantamount to order the execution of a thing which was impossible to do and which might be impossible forever to perform in the future, inasmuch as there was then no assurance that the Commonwealth of the Philippines shall be restored, and such kind of currency recognized as legal tender by the government then established by the Japanese or to be established in the future.

II. With respect to the second assignment of error, it is obvious that tender of payment of judgment into court is not the same as tender of payment of a contractual debt and consignment of the money due from a debtor to a creditor, and therefore the requirements of articles 1176 and 1177 of the Civil Code are not applicable. "In case of a refusal of a tender of the amount due on a judgment, the court may direct the money to be paid into court, and when this is done, order satisfaction of the judgment to be entered" (31 American Jurisprudence, p. 362). The fact

that the money deposited belonged to Ponciano Ong, who succeeded by purchase into the rights and obligations of two of the six judgment debtors, did not make the payment unacceptable or insufficient to satisfy the judgment, for "a voluntary payment into court of money due under a judgment by one of several obligors is a bar to an action against the others for the same debt or obligation." (Ditto, ditto.)

In view of all the foregoing, the appealed order is affirmed with costs against the appellees.

Moran, C.J., Ozaeta, Paras, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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[1] 47 Off. Gaz. (1) 168.

[1] 80 Phil., 602.

[2] 83 Phil., 406.

[3] In *Thorington vs. Smith* (8 Wall., 1), it was held by the U. S. Supreme Court that the Confederate currency notes must be considered in courts of law in the same light as if it has been issued by a foreign government temporarily occupying a part of the territory of the United States.

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## DISSENTING

### **PADILLA, J.:**

On 30 June 1941, a judgment was rendered by the Court of First Instance of Pampanga holding that the plaintiffs are the owners of a parcel of land described in the complaint, subject to an antichretic right in favor of the defendant Carlos Sandico who was in possession of the parcel of land since 1925. That right derived from his predecessors in interest was in existence since 8 April 1918. The complaint as to the other defendants, the spouses Lazatin and Singian, was dismissed. From that judgment the plaintiffs appealed. On 8 July 1944, the Court of Appeals of Central Luzon affirmed the judgment of the lower court and further directed the appellee Carlos Sandico to return the possession of the parcel of land to the appellants upon payment of the sum of P3,944 by the latter to the former within 90 days after judgment shall have become final. On 19 October 1944, a motion entitled, "Motion de Posesion y Desglose" was filed by the plaintiffs and two days before the filing thereof, Ponciano Ong Lacson deposited the sum of P3,944 in the office of the clerk of the Court of First Instance of Pampanga and authorized the latter to pay it to defendant Carlos Sandico or his attorney. The motion was never heard or acted upon by the Court; so on 13 September 1945 a notice setting the motion for hearing was served upon the attorney for the defendant Carlos Sandico. On 5 October 1945, the court granted the motion holding that the sum deposited was a compliance with the judgment of the Court of Appeals and ordering the defendant Carlos Sandico to deliver the possession of the parcel of land to the plaintiffs. A motion for reconsideration was denied. From these two orders this appeal has been taken.

The majority holds that the sum deposited on 17 October 1944 by Ponciano Ong Lacson in behalf of the plaintiffs with the clerk of the Court of First Instance of Pampanga was not a consignment but a compliance with the judgment of the Court of Appeals and, therefore, the orders appealed from are in accordance with law. But the Court of Appeals did not hold that the antichretic right or equitable mortgage that Carlos Sandico had in the parcel of land in litigation, by virtue of which he held possession thereof since 1925, could be discharged or cancelled by paying it off with paper money that was then circulated in the country by the Japanese Army of occupation. It affirmed a judgment of the Court of First Instance rendered in 1941, when there was not the slightest thought that as a result of the outbreaks of war the Philippines would be invaded and occupied by the Japanese Army. It

merely declared that the plaintiffs are the owners of the parcel of land involved in the litigation, subject to an antichretic right of Carlos Sandico, and that upon payment of the sum of P3,944 by the former to the latter within 90 days from the judgment the possession of the parcel of land was to be delivered to the plaintiffs. The antichretic right by virtue of which Carlos Sandico held possession of the parcel of land was a pre-war contractual obligation. In the absence, therefore, of specific law on the matter, or of a clear or express judgment by a court of competent jurisdiction, that the antichretic debt or equitable mortgage could be paid off with Japanese military or war notes, the law on the matter was the contract between the parties. What was the contract between the parties? It was to pay P3,944 to the creditor Carlos Sandico by the debtors, the predecessors in interest of the plaintiffs. What was the money or currency then contemplated or agreed upon by and between the parties? It could not have been the Japanese military or war notes; it was the currency of the Government of the Philippines which was used or in circulation at the time the contract was entered into. "Payment of debts of money shall be made in the specie stipulated, and should it not be possible to deliver such specie, in silver or gold coin legally current in Spain (Philippines)." (Article 1170, Civil Code.)[1]

As already stated, the Court of Appeals did not order the payment of the antichretic debt or equitable mortgage of Carlos Sandico in or by means of Japanese military or war notes. It could not have done so, because the contract stipulated that payment of the debt was to be in Philippine money, the currency at the time the contract was entered into; because the Japanese army of occupation was not authorized to change or alter contractual rights and obligations but on the contrary it was enjoined to respect private property as well as contractual rights and obligations;<sup>[2]</sup> and because there was no prohibition by the Japanese Army of occupation of the use of the Philippine currency.<sup>[3]</sup> Only that as bad money drives away the good one, Philippine money because of its value was hoarded and for that reason withdrawn from circulation.

As to the insinuation that the creditor or mortgagee, Carlos Sandico, should have appealed from the judgment of the Court of Appeals rendered on 8 July 1944 if he was not satisfied with it, I say that as there was in the judgment no specific direction that the debt could be paid off in Japanese military or war notes, the creditor or mortgagee, Carlos Sandico, had the right to rely on the terms of the contract with his debtors, to wit: that it was to be paid in the lawful money agreed upon by them. Hence there was no need to appeal from the judgment rendered by the Court of Appeals. Moreover, the conditions of the country at the time said judgment was rendered prevented the creditor from taking an appeal.

The decision of the majority cannot be good law because the net result would be that, contrary to what the parties had agreed, the debtors would be released from their obligation and would recover possession of the parcel of land, whereas the creditor would get nothing and would be deprived of his right in the property in exchange for nothing. At the time of the deposit (17 October 1944) by Ponciano Ong Lacson of the sum of P3,944 in Japanese military or war notes, these were already worthless and valueless, bombings and strafings in the province of Pampanga by the United States Armed Forces having begun on the 21st day of September 1944. It is a clear case of deprivation of a person's property' or right in violation of the contract and the law. It is difficult to conceive a worse iniquity and travesty of justice than the one sanctioned by the majority of the Court. And the irony of it is that it is an injustice committed in the name of Justice. I cannot give my assent to a judgment that deprives a creditor of his credit or right for the benefit of debtors who, taking advantage of the abnormal situation when Japanese military or war notes could be acquired for nothing or gotten for the asking because they were worthless and valueless, paid off a valid, legitimate and lawful debt, the payment of which it was agreed would be by means of or in the currency used or in circulation at the time the contract was entered into. The decision of the majority sanctions the payment made with valueless and worthless Japanese military or war notes—an unlawful paper money from the standpoint of the Commonwealth Government and of the Republic of the Philippines. This Court should not in any manner, even in an indirect way, sanction or give validity and legal effect to the acts of an

invader that has shown contempt to and trampled upon the rules and principles of International Law. This Highest Court of the Republic is indirectly sanctioning the immoral and unlawful act of a ruthless enemy that flooded the country with military or war notes by giving validity and legal effect to a payment made with such notes without the consent of the creditor. And the worst part of it is that it does an injustice to one of its citizens by giving validity and legal effect to a payment made with Japanese military or war notes which at the time of payment were worthless and valueless. If Japan had finally triumphed and conquered the Philippines, that payment would certainly have been validated by the courts created and organized under its authority; but a court of the Commonwealth or of the Republic should be the last to sanction such payment. By requiring the debtors to pay now in lawful money no injustice would be done to them, because they parted, with nothing of value when they paid the debt with worthless and valueless Japanese military or war notes. Law, equity and justice demand that they should be required to pay now in lawful money.

For these reasons I dissent.

The orders appealed from should be reversed and the lower court directed to order the plaintiffs to pay to the defendant Carlos Sandico the sum of P3,944, without interest.

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[1] Castan, Derecho Civil Español Comun y Foral, Vol. 2, p. 518

[2] Article 46, Hague Convention IV of 1907; Oppenheim's International Law, Vol. 2, pp. 313, 341-342; Wheaton's International Law (7th Ed.), Vol. 2, pp. 247-248; Digest of International Law by Hackworth, Vol. VI, p. 401.

[3] Proclamation of the Commander in Chief of the Imperial Japanese Forces dated 10 January 1942, 1 Off. Gaz. (1942), No. 1, pp. 9-10.

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