

JACINTO NOTOR, PETITIONER, VS. RAMON MARTINEZ, AS GUARDIAN OF THE INCOMPETENT, PEDRO MARTINEZ, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-1892. August 16, 1949

Ponente: PARAS, J.

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PARAS, J.:

On February 28, 1943, Pio Martinez, as guardian of Pedro Martinez, executed a promissory note for P2,000 in favor of Jacinto Notor, with interest at 10 per cent annually, and payable within two years from said date. In a mortgage executed on March 28, 1943, covering said note, it was further provided that the contract was "renewable at the discretion of the mortgage," and that the mortgagor promised to pay the sum specified in the note "according to the terms thereof". Due to additional sums subsequently obtained from Jacinto Notor, plus interest, the total indebtedness amounted as of January 29, 1945, to P10,111.

Some time prior to this date, the guardian of Pedro Martinez offered to pay the debt, but the creditor Jacinto Notor refused to accept the payment, as a result of which the present action was instituted by the guardian of Pedro Martinez in the Court of First Instance of Batangas, wherein, the necessary amount was deposited. In the complaint (filed before the liberation of the Philippines), it was prayed that the debtor be declared as having fully paid his indebtedness to Jacinto Notor. After trial, the lower court, on August 18, 1945, (already after liberation) rendered judgment declaring that the plaintiff, Ramon Martinez, as guardian of Pedro Martinez, had paid in full his indebtedness to the defendant, Jacinto Notor, from the time he consigned the amount thereof by depositing it with the clerk of court of First Instance of Batangas. From this judgment, Jacinto Notor appealed to the Court of Appeals which, on November 25, 1947, rendered a decision affirming the judgment of the court of origin. From the later decision, Jacinto Notor (the petitioner) has come to this court in an appeal by way of certiorari. He alleges that the Court of Appeals erred in holding (1) that there was a valid consignment; (2) that the respondent debtor can pay off the mortgage within two years although the parties agreed "that this contract is renewable at the discretion of the mortgagee"; and (3) that the courts of the Commonwealth and their successors, the courts of the Philippine Republic, have jurisdiction over the case.

It appearing from the stipulation of the parties that the defendant Jacinto Notor "admits the allegations contained in the complaint in sub-paragraphs 1, 3, 4, 5, and 6 and that "the only question to be raised in the complaint is whether, according to the contract Exhibit A, the defendant-mortgagee has the right to renew or not the mortgage contract at his discretion, as embodied in paragraph 2 of Exhibit A," the herein petitioner cannot now allege that there was no valid consignment. It is true that there is no allegation in paragraph 5 and 6 of the complaint to the effect that there was notice of consignment, as required by article 1177 of the Civil Code, but the absence of such allegation is cured by the positive stipulation that the only question to be raised is whether the creditor has the right to renew the mortgage contract at his discretion. The first assignment of error is therefore without merit.

It is the view of the herein petitioner that he has the absolute right to renew the term of the promissory note and

accordingly refuse to accept payment from the debtor. It is noteworthy that the note is payable within two years from February 28, 1943, and that the clause providing that the contract is renewable at the discretion of the creditor, contains the condition that the debtor promises to pay according to the terms of the promissory note. Since at the time (prior to January 29, 1945) the promissory note in question was undeniably in force, the debtor had the right thereunder to pay within two years from February 28, 1943. The pact allowing payment within two years will be meaningless, if the theory of the herein petitioner were correct. At any rate, it is futile to speak of any renewal before the note had even matured and unless the debtor was unable to pay within the original term of two years. The second assignment of error is also untenable.

There can be no doubt as to the jurisdiction of the courts of the Commonwealth and of the Republic. In the case of *Co Kim Cham vs. Valdez Tan Keh*, 75 Phil., 113, 371; 41 Off. Gaz., 779, we have held that the judicial acts and proceedings of the courts of justice during the Japanese military occupation which are not of a political complexion, were good and valid and, by virtue of the principle of postliminy in international law, remained good and valid after the liberation of the Philippines. The litigation between the parties herein is certainly not of a political complexion, since it involves merely their civil rights, and it is immaterial whether the currency in dispute was Japanese military notes. At any rate, the tender of payment was made during the Japanese military occupation when said military notes were legal tender. Under the rules of Public International Law, the right of the military occupant, in the exercise of his governmental power, to issue military currency as legal tender has never been seriously questioned. (*Haw Pia vs. China Banking Corporation*, 80 Phil., 604; 45 Off. Gaz. (Supp. to No. 9), 229; *Philippine Trust Company vs. Araneta*, G.R. No. L-2734, March 17, 1949[1]). In the case of *Haw Pia vs. China Banking Corporation*, supra, we have already recognized the validity of a payment of a mortgage indebtedness in Japanese military notes. This has to be so, because "the law made by the occupant within his admitted power, whether morally justifiable or not will bind any member of the occupied population as against any other member of it, * * * as far as it produces an effect during the occupation." (*Hilado vs. De la Costa and Philippine National Bank*, G.R. No. L-150, April 30, 1949[2]). In the case at bar we are not authorizing the circulation of Japanese military notes, as legal tender at present, but we are merely giving effect to a payment that was valid and binding at the time it was made. The third assignment of error is likewise without merit.

Wherefore, the appealed decision of the Court of Appeals is affirmed with costs against the herein petitioner. So ordered.

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

[1] 83 Phil., 132.

[2] 83 Phil., 471.

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