

NICOMEDES SULLER, PROTESTANT AND APPELLEE, VS. PRIMITIVO S. PEREZ, PROTESTEE AND APPELLANT.

G.R. No. L-4630. October 30, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from an order of the Court of First Instance of Pangasinan, dated October 25, 1944, the dispositive part of which reads as follows: "En su virtud el Juzgado ordena que se ponga a disposicion del protestado la cantidad de mil pesos ya mencionada en pago de las costas a que han sido condenados el protestante y sus fiadores, y al Registrador de Titulos de Pangasinan a que restituya los Certificados de Titulo de las parcelas de terrenos constituidas en fianza hipotecaria, la cual queda por la presente cancelada."

The case was originally elevated to the Court of Appeals which, in view of the fact that no evidence was introduced at the hearing in the lower court, and only questions of law are raised by the appellant, certified the same to this Court in a resolution dated October 28, 1950, which recites the facts necessary to the present appeal. Said facts are as follows:

"In the general elections of 1937, Primitivo Perez was proclaimed elected Mayor of the municipality of San Manuel, Pangasinan. Nicomedes Suller filed a motion of protest, and after it was given due course in the lower court and in the Court of Appeals, the protest was finally lost in the Supreme Court.

"Upon return of the records to the court of origin, the latter, by order of November 27, 1941, approved the bill of costs filed by the protestee amounting to P1,967. The protestant and his bonds-men asked for a reconsideration of that order, but by reason of the war that broke out in the Pacific, the motion was not heard until September 27, 1944, when the bondsmen, Francisco Asuncion and Bonifacio Sicam, filed a petition praying that the protestee or his lawyers be ordered to receive from the Clerk of Court the sum of P1,000 they had deposited in payment of the costs which the protestant had been sentenced to pay to the protestee, and to order the Register of Deeds of Pangasinan to deliver to the movants the Torrens Titles of their respective parcels of land given as mortgage security in favor of the protestant. As this petition was granted, protestee's counsel appealed from that order and filed the corresponding record on appeal on November 17, 1944, on which no action was taken by the court due to the uncertainties prevailing at that period on account of the war.

"After liberation, or on August 14, 1950, the matter of the approval of the record on appeal dated November 17, 1944, was set for hearing, and there being no objection raised, the same was approved by the lower court by order of August 30, 1950."

It may be added that the appellant had refused to accept the deposit of P1,000 made by the bondsmen with the clerk of the Court of First Instance of Pangasinan, on the ground that the lower court had no jurisdiction over the proceedings because the Election Law under which the lower court approved appellant's bill of costs in the sum of P1,967 on November 27, 1941, was not in force during the Japanese regime, when said deposit was made. Although the appellant is not pressing this obligation, in his brief, it may not be amiss to point out that while political laws were suspended during the Japanese military occupation, the order of November 27, 1941, awarding

to the appellant costs in the amount of P1,967, merely became the source of a civil obligation against the appellee and his bondsmen; and the lower court obviously had jurisdiction to entertain the petition of the bondsmen to direct the appellant to accept the amount of P1,000 deposited by the bondsmen on September 27, 1944, in satisfaction of the civil liability of said bondsmen.

The contention now insisted upon by the appellant is that as the judgment for costs was for P1,967, the amount of P1,000 deposited by the bondsmen was not a full payment of the obligation, with the result that the appellant (creditor) could not be compelled to receive such partial payment, in accordance with article 1169 of the old Civil Code which provides that "unless the contract expressly authorizes it the creditor cannot be compelled to accept partial performances of the undertaking of which the obligation consists." This contention is without merit, as it fails to take into account the fact that the liability of the bondsmen under their bond was limited to P1,000, the very amount deposited by them in court. Hence, as to the bondsmen, the amount of P1,000 represented the full payment of their obligation, without prejudice of course to the right of appellant to recover the unpaid balance from the appellee, the principal judgment debtor.

The fact that the amount deposited was in Japanese military notes is of no moment, since said notes were legal tender at the time. Although as intimated by counsel for appellant, the order of November 27, 1941, did not direct the appellee and his bondsmen to deposit the amount of costs within a certain period, it is nonetheless evident that said amount could be paid at any time thereafter, without waiting for the coercive process of execution which is resorted to only in ease the judgment debtor fails or refuses to pay.

Wherefore, the appealed order is affirmed with costs against the appellant. So ordered.

Bengzon, Padilla, Montemayor, Jugo, Bautista, Angelo, and Labrador, JJ., concur.

DISIDENTE

PABLO, M.:

La obligacion de pagar la cantidad de P1,967 en concepto de costas quedo exigible desde el 27 de noviembre de 1941 y debia pagarse en moneda filipina segun los terminos precisos de la fianza; pero los fiadores consignaron en 27 de septiembre de 1944, P1,000 en papel moneda japonesa y no en moneda filipina. Por tal motivo, el protestado no estaba obligado a recibir la consignation, pues el articulo 1170 del Codigo Civil expresamente dispone que "el pago de las deudas de dinero debera hacerse en la especie pactada" y el articulo 1177 del mismo codigo dispone que "la consignation sera ineficaz si no se ajusta estrictamente a las disposiciones que regulan el pago."

Tengase en cuenta que, al tiempo de la consignation, no habia ninguna orden legal que prohibiese el uso de la moneda filipina. La proclama de 10 de enero de 1942 del General en jefe de las fuerzas japonesas es del tenor siguiente:

"The currencies which shall be sanctioned by the authorities of the Japanese Army to circulate in the Philippine Islands shall be the Paco Military Notes which are issued by the Imperial Japanese Government, and the Philippine peso currency, which is already in circulation.

"The circulation of the Yen Paper money (paper money issued by the Japanese Imperial Government, Yen notes issued by the Bank of Japan, Yen notes issued by the Bank of Chosen, Yen notes issued by the Bank of Taiwan, and the military notes other than Peso Military Notes), piastre currency (notes issued by the Bank of Indo-China), and all other currencies of foreign countries shall be prohibited.

"However, as for the U. S. dollar currency, the circulation shall be approved at the rate of two pesos (P2), per one dollar (\$1), for the time being.

"Not only the payer of the above-mentioned currencies, which are prohibited to circulate as the means of payment of all transactions, but also the receiver of such currencies shall be punished in accordance with the provisions of the martial law.

"As to the treatment of the possession in the market of the above-mentioned currencies and the U. S. dollar currency which are prohibited to circulate shall be regulated later on.

COMMANDER-IN-CHIEF OF THE IMPERIAL JAPANESE FORCES."

No solamente no se prohibio la circulation legal de la moneda filipina sino que se sanciono su uso. El primer parrafo de la proclama no da lugar a duda alguna. El protestado tenia perfectisimo derecho de obligar a los fiadores a que le paguen con moneda filipina legitima, o que la consignacion sea de la misma moneda.

En mi opinion, debe revocarse la orden apelada y los fiadores deben pagar hoy los mil pesos en moneda filipina.

Order affirmed.

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