

**FRANCISCA SERRANO DE AGBAYANI, PLAINTIFF-APPELLEE, VS.  
PHILIPPINE NATIONAL BANK AND THE PROVINCIAL SHERIFF OF  
PANGASINAN, DEFENDANTS, PHILIPPINE NATIONAL BANK,  
DEFENDANT-APPELLANT.**

*G.R. No. L-23127. April 29, 1971*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

A correct appreciation of the controlling doctrine as to the effect, if any, to be attached to a statute subsequently adjudged invalid, is decisive of this appeal from a lower court decision. Plaintiff Francisca Serrano de Agbayani, now appellee, was able to obtain a favorable judgment in her suit against defendant, now appellant Philippine National Bank, permanently enjoining the other defendant, the Provincial Sheriff of Pangasinan, from proceeding with an extra-judicial foreclosure sale of land belonging to plaintiff mortgaged to appellant Bank to secure a loan declared no longer enforceable, the prescriptive period having lapsed. There was thus a failure to sustain the defense raised by appellant that if the moratorium under an Executive Order and later an Act subsequently found unconstitutional were to be counted in the computation, then the right to foreclose the mortgage was still subsisting. In arriving at such a conclusion, the lower court manifested a tenacious adherence to the inflexible view that an unconstitutional act is not a law, creating no rights and imposing no duties, and thus as inoperative as if it had never been. It was oblivious to the force of the principle adopted by this Court that while a statute's repugnancy to the fundamental law deprives it of its character as a juridical norm, its having been operative prior to its being nullified is a fact that is not devoid of legal consequences. As will hereafter be explained, such a failing of the lower court resulted in an erroneous decision. We find for appellant Philippine National Bank, and we reverse.

There is no dispute as to the facts. Plaintiff obtained the loan in the amount of P450.00 from defendant Bank dated July 19, 1939, maturing on July 19, 1944, secured by real estate mortgage duly registered covering property described in T. C.T. No. 11275 of the province of Pangasinan. As of November 27, 1959, the balance due on said loan was in the amount of P1,294.00. As early as July 13 of the same year, defendant instituted extra-judicial foreclosure proceedings in the office of defendant Provincial Sheriff of Pangasinan for the recovery of the balance of the loan remaining unpaid. Plaintiff countered with this suit against both defendants on August 10, 1959, her main allegation being that the mortgage sought to be foreclosed had long prescribed, fifteen years having elapsed from the date of maturity, July 19, 1944. She sought and was able to obtain a writ of preliminary injunction against defendant Provincial Sheriff, which was made permanent in the decision now on appeal. Defendant Bank in its answer prayed for the dismissal of the suit as even on plaintiff's own theory the defense of prescription would not be available if the period from March 10, 1945, when Executive Order No. 32[1] was issued, to July 26, 1948, when the subsequent legislative act[2] extending the period of moratorium was declared invalid, were to be deducted from the computation of the time during which the bank took no legal steps for the recovery of the loan. As noted, the lower court did not find such contention persuasive and decided the suit in favor of plaintiff.

Hence this appeal, which, as made clear at the outset, possesses merit, there being a failure on the part of the lower court to adhere to the applicable constitutional doctrine as to the effect to be given to a statute subsequently declared invalid.

1. The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."<sup>[3]</sup> It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official."<sup>[4]</sup> This language has been quoted with approval in a resolution in *Araneta v. Hill*<sup>[5]</sup> and the decision in *Manila Motor Co., Inc. v. Flores*.<sup>[6]</sup> An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*<sup>[7]</sup>

2. Such an approach all the more commends itself whenever police power legislation intended to promote public welfare but adversely affecting property rights is involved. While subject to be assailed on due process, equal protection and non-impairment grounds, all that is required to avoid the corrosion of invalidity is that the rational basis or reasonableness test is satisfied. The legislature on the whole is not likely to allow an enactment suffering, to paraphrase Cardozo, from the infirmity of outrunning the bounds of reason and resulting in sheer oppression. It may be of course that if challenged, an adverse judgment could be the result, as its running counter to the Constitution could still be shown. In the meanwhile though, in the normal course of things, it has been acted upon by the public and accepted as valid. To ignore such a fact would indeed be the fruitful parent of injustice. Moreover, as its constitutionality is conditioned on its being fair or reasonable, which in turn is dependent on the actual situation, never static but subject to change, a measure valid when enacted may subsequently, due to altered circumstances, be stricken down.

That is precisely what happened in connection with Republic Act No. 342, the moratorium legislation, which continued Executive Order No. 32, issued by the then President Osmeña, suspending the enforcement of payment of all debts and other monetary obligations payable by war sufferers. So it was explicitly held in *Rutter v.*

Esteban[8] where such enactment was considered in 1953 "unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect." [9] At the time of the issuance of the above Executive Order in 1945 and of the passage of such Act in 1948, there was a factual justification for the moratorium. The Philippines was confronted with an emergency of impressive magnitude at the time of her liberation from the Japanese military forces in 1945. Business was at a standstill. Her economy lay prostrate. Measures, radical measures, were then devised to tide her over until some semblance of normalcy could be restored and an improvement in her economy noted. No wonder then that the suspension of enforcement of payment of the obligations then existing was declared first by executive order and then by legislation. The Supreme Court was right therefore in rejecting the contention that on its face, the Moratorium Law was unconstitutional, amounting as it did to the impairment of the obligation of contracts. Considering the circumstances confronting the legitimate government upon its return to the Philippines, some such remedial device was needed and badly so. An unyielding insistence then on the right to property on the part of the creditors was not likely to meet with judicial sympathy. Time passed however, and conditions did change.

When the legislation was before this Court in 1953, the question before it was its satisfying the rational basis test, not as of the time of its enactment but as of such date. Clearly, if then it were found unreasonable, the right to non-impairment of contractual obligations must prevail over the assertion of community power to remedy an existing evil. The Supreme Court was convinced that such indeed was the case. As stated in the opinion of Justice Bautista Angelo: "But we should not lose sight of the fact that these obligations had been pending since 1945 as a result of the issuance of Executive Orders Nos. 25 and 32 and at present their enforcement is still inhibited because of the enactment of Republic Act No. 342 and would continue to be unenforceable during the eight-year period granted to prewar debtors to afford them an opportunity to rehabilitate themselves, which in plain language means that the creditors would have to observe a vigil of at least twelve (12) years before they could affect a liquidation of their investment dating as far back as 1941. This period seems to us unreasonable, if not oppressive. While the purpose of Congress is plausible, and should be commended, the relief accorded works injustice to creditors who are practically left at the mercy of the debtors. Their hope to effect collection becomes extremely remote, more so if the credits are unsecured. And the injustice is more patent when, under the law, the debtor is not even required to pay interest during the operation of the relief, unlike similar statutes in the United States." [10] The conclusion to which the foregoing considerations inevitably led was that as of the time of adjudication, it was apparent that Republic Act No. 342 could not survive the test of validity. Executive Order No. 32 should likewise be nullified. That before the decision they were not constitutionally infirm was admitted expressly. There is all the more reason then to yield assent to the now prevailing principle that the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached.

3. Precisely though because of the judicial recognition that moratorium was a valid governmental response to the plight of the debtors who were war sufferers, this Court has made clear its view in a series of cases impressive in their number and unanimity that during the eight-year period that Executive Order No. 32 and Republic Act No. 342 were in force, prescription did not run. So it has been held from *Day v. Court of First Instance*, [11] decided in 1954, to *Republic v. Hernaez*, [12] handed down only last year. What is deplorable is that as of the time of the lower court decision on January 27, 1960, at least eight decisions had left no doubt as to the prescriptive period being tolled in the meanwhile prior to such adjudication of invalidity. [13] Speaking of the opposite view entertained by the lower court, the present Chief Justice, in *Liboro v. Finance and Mining Investments Corp.* [14] has categorized it as having been "explicitly and consistently rejected by this Court." [15]

The error of the lower court in sustaining plaintiff's suit is thus manifest. From July 19, 1944, when her loan matured, to July 13, 1959, when extra-judicial foreclosure proceedings were started by appellant Bank, the time

consumed is six days short of fifteen years. The prescriptive period was tolled, however, from March 10, 1945, the effectivity of Executive Order No. 32, to May 18, 1953, when the decision of *Rutter v. Esteban* was promulgated, covering eight years, two months and eight days. Obviously then, when resort was had extra-judicially to the foreclosure of the mortgage obligation, there was time to spare before prescription could be availed of as a defense.

WHEREFORE, the decision of January 27, 1960 is reversed and the suit of plaintiff filed August 10, 1959 dismissed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] Under Executive Order No. 32 providing for a debt moratorium, it was specifically stated: "Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamation that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government." Executive Order No. 32 was issued on March 10, 1945. Executive Order No. 32 amended Executive Order No. 25 (1944).

[2] According to the declaration of policy in Republic Act No. 342 (1948), Executive Order No. 32 remains in full force and effect for the war sufferers as for them the emergency created by the last war was still existent. Then came this specific provision: "All debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter into after the approval of this Act for the settlement of said obligations." Sec. 2.

[3] Art. 7. In the classic language of Justice Field: "An unconstitutional Act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been." *Norton v. Shelly County*, 118 US 425 (1886).

[4] *Chicot County Drainage Dist. v. Baxter States Bank*, 308 US 371, 374 (1940).

[5] 93 Phil. 1002 (1953).

[6] 99 Phil. 738 (1956).

[7] L-21114, Nov. 28, 1967, 21 SCRA 1095.

[8] 93 Phil. 68 (1953). *Rutter v. Esteban* was subsequently cited in the following cases: *Araneta v. Hill*, 93 Phil. 1002 (1953); *Londres v. National Life Insurance Co.*, 94 Phil. 627 (1954); *Dizon v. Ocampo*, 94 Phil. 803 (1954); *De Leon v. Ibañez*, 95 Phil. 119 (1954); *Picornell and Co. v. Cordova*, 95 Phil. 632 (1954); *Berg v. Teus*, 96 Phil. 102 (1954); *Herrera v. Arellano*, 97 Phil. 776 (1955); *Chua Lamko v. Dioso*, 97 Phil. 821 (1955); *Rio y Cia v. Sandoval*, 100 Phil. 407 (1956); *Gonzaga v. Rehabilitation Finance Corp.*, 100 Phil. 892 (1957); *Pacific Commercial Co. v. Aquino*, 100 Phil. 961 (1957); *Bachrach Motor Co., Inc. v. Chua Tua Hian*, 101 Phil. 184 (1957); *Liboro v. Finance and Mining Investment Corp.*, 102 Phil. 489 (1957); *Rio y Compania v. Jolkipli*, 105 Phil. 447 (1959); *People v. Jolliffe*, 105 Phil. 677 (1959); *Uy Hoo and Co., Inc. v. Tan*, 105 Phil. 717 (1959);

Compania Maritima v. Court of Appeals and Libby, McNeill and Libby (Phil.) Inc., 108 Phil. 469 (1960).

[9] Ibid, p. 82. The same conclusion obtains in the opinion of the Court as regards Executive Order No. 32.

[10] Ibid, p. 77.

[11] 94 Phil. 816.

[12] L-24137, January 30, 1970, 31 SCRA 219 citing Republic v. Grijaldo, L-20240, December 31, 1965, 15 SCRA 681; Republic v. Rodriguez, L-18967, January 31, 1966, 16 SCRA 53; Nielson and Co., Inc. v. Lepanto Consolidated Mining Co., L-21601, December 28, 1968, 26 SCRA 540.

[13] Day v. Court of First Instance of Tarlac, 94 Phil. 816 (1954); Montilla v. Pacific Commercial Company, 98 Phil. 133 (1955); Pacific Commercial Co. v. Aquino, 100 Phil. 961 (1957); Bachrach Motor Co., Inc. v. Chua Tua Hian, 101 Phil. 184 (1957); Liboro v. Finance and Mining Investment Corp., 102 Phil. 489 (1957); Rio y Compania v. Jolkipli, 105 Phil. 447 (1959); People v. Jolliffe, 105 Phil. 677 (1959); Uy Hoo & Co., Inc. v. Tan, 105 Phil. 716 (1959).

[14] 102 Phil. 489 (1957).

[15] Ibid, p. 493.

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