

FRANCISCO M. ALONSO, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G.R. No. L-4132. May 23, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

In his complaint filed on January 16, 1947, in the Court of First Instance of Cebu, the plaintiff, Francisco M. Alonso alleges that he has held since before the liberation of the Philippines circulating notes of the Philippine National Bank, in the amount of P7,000, which he presented to the defendant, Philippine National Bank, for redemption in actual legal currency, but that the defendant has refused to redeem the same; that, because of such refusal, the plaintiff suffered damages in the sum of P5,000, resulting from his failure to invest the money in lucrative business and from the interest he paid on other commercial obligations which he could not settle with the circulating notes. The plaintiff prays that the defendant be sentenced to redeem the notes and to pay the damages.

In its answer, the defendant sets up the special defense that on November 18, 1944, the President of the Philippines issued Executive Order No. 25, paragraph 6 of which provided that the Philippine National Bank notes (except duly authorized emergency issues) were not legal tender and that transactions in said currencies were prohibited; that, at any rate, the defendant Bank had already redeemed all the circulating notes legally issued by it.

After hearing, the Court of First Instance of Cebu rendered on August 11, 1948, a decision dismissing the complaint, without prejudice to the right of the plaintiff to present such bills in his possession to the City Treasury of Cebu as may be redeemable in accordance with the provisions of Republic Act No. 211. From this decision the plaintiff has appealed.

It is to be noted that, although the plaintiff alleged to be the holder of Philippine National Bank circulating notes in the amount of P7,000, he actually presented at the trial notes amounting only to P2,630. The appealed decision is predicated on Republic Act No. 211, enacted by the Congress of the Philippines on July 1, 1948, or after the trial of the case but before the appealed decision was rendered. This Act provides for the retirement and redemption of the circulating notes lawfully issued by the Philippine National Bank and the registration and deposit of such notes illegally issued, and it enumerates the serial numbers of the notes which cannot be redeemed. The effect of the appealed decision, therefore, is that the plaintiff may present, for redemption, the circulating notes in his possession that are authorized to be redeemed under Republic Act No. 211.

We agree with the trial court that Republic Act No. 211 is decisive. The appellant in this instance, however, assails the constitutionality of said Act. This the appellant cannot do, since a question of constitutionality cannot be raised for the first time on appeal. (*Laperal vs. City of Manila*, 62 Phil., 352; *Macondray & Co. vs. Benito and Ocampo*, 62 Phil., 137; *De Leon vs. Santiago Syjuco, Inc.*, 90 Phil., 311.) It is true that at the time the complaint was filed, and during the trial, Republic Act No. 211 was not yet in existence, but the appellant could have attacked its constitutionality in a motion for reconsideration or new trial in the lower court, especially because the

appealed decision was solely based thereon.

It is clear that the appellant is not entitled to the damages claimed in his complaint. If he was not able to utilize the circulating notes in question, it was undoubtedly because Executive Order No. 25, issued on November 18, 1944, by the President of the Philippines, prohibited transactions in such currency which was expressly outlawed as a legal tender.

Wherefore, the appealed decision is affirmed, and it is so ordered with costs against the appellant.

Feria, Pablo, Bengzon, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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