

TOMASA SALVANTE ET AL., PLAINTIFFS AND APPELLEES VS. BERNARDINA UBI CRUZ, DEFENDANT AND APPELLANT.

G. R. No. L-2531. February 28, 1951

Ponente: FERIA, J.

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FERIA, J.:

Andres Calaycay on September 30, 1936, obtained, in civil case No. 4049 of the Court of First Instance of Ilocos Norte, a judgment ordering that, upon payment of P725 by the plaintiffs to the defendant Bernardina Ubi Cruz, the latter deliver the land in question to the plaintiff and execute a deed of cancellation of Exhibit A.

The judgment was not executed during the period of five years after the entry thereof, within which it could be executed by motion or writ of execution. And on April 20, 1944, the plaintiffs herein, heirs of the plaintiff in the above cited case No. 4049, filed an action against the defendant based on the said judgment, and deposited with the clerk of court the sum of P725 in Japanese war notes. After trial the lower court rendered judgment declaring reestablished the judgment in civil case No. 4049, and ordering that the defendant deliver the land in question to the plaintiffs without the latter paying anything therefor, because the Japanese war notes deposited by the plaintiff were legal tender and lost for the defendant. The defendant appealed.

The conclusion or decision we have arrived at in this case is, not only in accordance with law, but also with equity and justice. The money which the plaintiff had, under the judgment of September 30, 1936, to pay the defendant in order to repurchase the property, was genuine Philippine peso, but the plaintiff let five years elapse since the entry of said judgment without moving for the execution thereof, and only in the year 1944 when the Japanese war notes had so depreciated as to become almost worthless, did the plaintiff file an action to enforce the judgment of September 30, 1936, and deposit with the court the sum of 725 pesos in Micky mouse money.

The question involved in this appeal is whether the tender of payment and the consignment of Japanese war notes made by the plaintiff relieved him from liability; and the resolution of this question depends upon whether or not the defendant had refused without reason to accept the payment tendered by the plaintiff after the lapse of five years from the entry of the judgment of September 30, 1936, and before the institution on May 1, 1944, of the action based on the judgment to enforce it. If the defendant had reason in refusing to accept the tender of payment, the consignment or deposit of the money in the court by the plaintiffs did not relieve them from liability.

Article 1176 of the old Civil Code provides the following:

"Art. 1176. If the creditor to whom a tender of payment is made refuses to accept it, without reason, the debtor shall be released from liability by the consignment of the thing due."

After a due consideration of this case, we are of the well considered opinion, and therefore hold, that the plaintiff had no right to compel the defendant to accept the tender of payment made by the plaintiffs, and therefore the defendant was right in refusing to accept it. At the time the tender was made the defendant was not bound to accept it, either by his contract of purchase and sale with pacto de retro with the predecessor in interest of the

plaintiffs, or by the judgment of September 30, 1936. Defendant was not bound by the contract, basis of the plaintiffs' action against the defendant in civil case No. 4049, because it had already been merged into the judgment of September 30, 1936; and not by this judgment because it was no longer executory after the lapse of five years after its entry.

That the plaintiffs could not legally compel the defendant to accept the tender of payment on the strength of the contract of sale a retro, which had already been merged in the final judgment rendered in civil case No. 4049, is obvious. After said judgment had been rendered and become final, the rights to be exercised and obligations to be performed by the parties were those arising from the judgment, however different from or even contradictory they may be with those emanating from the contract. After the rendition of the judgment the contract on which it is based must be regarded as *functus officio*, for all its power to sustain rights and enforce liabilities has terminated in the judgment.

That the defendant had a good legal reason to refuse to accept the tender of payment based on the judgment of September 30, 1936, is also clear. After the lapse of five years from its entry the plaintiffs could not rely on it to compel the defendant to accept the tender of payment, for the judgment was no longer executory or enforceable by motion or writ of execution. After the lapse of five years said judgment became dormant and could not be enforced until it has been revived by an action on the judgment instituted in regular form, by complaint, as other actions are instituted. (Sec. 447, Act No. 190; sec. 5, Rule 39, Rules of Court.)

"A judgment not satisfied or barred by lapse of time but temporarily inoperative as far as the right to issue execution is concerned, is usually called a dormant judgment. Such a judgment has validity as a still subsisting debt of the judgment debtor." (49 C. J. S., p. 985.) And "When a judgment has been dormant it can not be enforced, until it has been duly revived" (49 C. J. S., p. 989).

And after the action to enforce a dormant judgment has been filed and during the pendency thereof, the plaintiffs could not invoke said judgment to compel the defendant to accept their tender of payment, because such judgment is not revived by the mere filing of a complaint to enforce it, but by the rendition therein of a final judgment reviving it. Section 5 of Rule 39, which is substantially copied from section 447 of Code of Civil Procedure, Act No. 190, and provides that "after the lapse of five years a judgment may be enforced by action," does not mean to say that, by the institution of an action based on said judgment, this or the first judgment becomes *ipso facto* enforceable or may be executed. No, but the judgment to be rendered therein reviving totally or partially the first judgment will be the one to be enforceable or executed, as construed by this court in the case of *Compania General de Tabacos vs. Martinez and Nolan* (29 Phil., 520), quoted herein after.

And the plaintiffs could not, at the time of making the tender of payment and deposit or consignment of the thing due with the court, rely on the new judgment to be rendered in that action, for the simple reason that it was not yet then in existence.

According to one of the dissenters, "This reasoning of the majority seems to imply that a judgment after five years loses its effectivity until another judgment revives it. This theory can not bear analysis. The question hinges on what the status of a judgment is after the lapse of five years. A judgment rendered by a court in the exercise of its jurisdiction is valid and effective and, therefore, enforceable during the period of ten years, that is, while it is not barred by the statute of limitations. The law provides for two methods of enforcing such judgment. Within five years of its entry it may be enforced by motion in the same case and in the same court where it was rendered. Upon the expiration of five years after its entry, it may i>e enforced by action in ordinary form." Then he quotes a portion of the decision of this court ir> the case of *Compania General de Tabacos vs. Martinez and Nolan*, (29 Phil., 520, 522), in support, when the ruling therein is precisely against, his contention. And later he continues: "It is clear then that after the expiration of five years, the judgment continue to be valid and effective so much so that

is allowed by law to be enforced by action if it is not yet paid. If it were not valid or effective, no action thereon could prosper and no judgment could be rendered to enforce it."

The theory of the dissenter is predicated on the wrong assumption that, after the lapse of five years, validity or effectivity of a judgment as a right of action and en-forceability thereof at any time after the filing of the action to enforce the dormant judgment are one and the same thing; and that the purpose of the action to enforce a dormant judgment after the lapse of five years is to collect that judgment by order of the court as if it were a promissory note. This is not correct, because the object of the action to ^enforce a dormant judgment is, first, to reivive it and, then, execute the second judgment reviving it if it grants the plaintiff any relief: that is, the new judgment rendered in the action to enforce a dormant judgment, and not the old one, is to be executed in the terms in which the second revives the first judgment. "But the rights of the judgment debtor depends upon the second judgment. If that judgment denies him any relief granted by the first, his only remedy is by appeal, and if the appellate court denies him such relief he must take what is offered him by the second judgment or nothing." This is the ruling of the Supreme Court in *Compania General de Tabacos vs. Martinez and Nolan*, (29 Phil, 515, 521), quoted partially by the same dissenter as if it were in support of his opinion.

In the said case of *Compania General de Tabacos vs. Martinez and Nolan*, which was an ordinary action to enforce a judgment after the lapse of five years, and the same question was raised, we have held the following:

"In the case at bar the creditor, having failed to enforce the judgment of 1889 by execution issued upon his motion in the old case, instituted an ordinary action for the same purpose. The difference between these two methods of procedure is apparent by an examination of sections 443 and 447 of the Code of Civil Procedure. These sections read:

* * * * *

"At any time within five years execution may issue upon a judgment at the mere request of the judgment creditor. An entire chapter of the code is devoted to an elaborate outline of what this calls for. It may be summed up in the statement that the execution shall be responsive to the decree of the court in every respect.

"After the lapse of five years, however, the judgment creditor can no longer enforce the judgment by process issuing at his request from the court which rendered it. It is then beyond the power of that court to issue execution upon its judgment. The judgment is, after that period of time, reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all other ordinary actions, by the institution of a complaint in the regular form. * * *. But whatever value that former judgment may have been and whatever relief he is entitled to by virtue thereof after the lapse of five years depends upon the judgment handed down in the action seeking its enforcement. True it is that in the second action no inquiry can be made as to the merits of the first or the justness of the judgment relied upon (sec. 306, Code of Civil Procedure), other than by evidence of a want of jurisdiction of collusion between the parties, or of fraud in the party offering the record in respect to the proceedings. (Sec. 312, Code of Civil Procedure.) But the rights of the judgment creditor depend upon the second judgment. If that judgment denies him any relief granted by the first, his only remedy is by appeal, and if the appellate court denies him such relief, he must take what is offered him by the second judgment or nothing. * * *"

It is true that the judgment of September 30, 1936, became due and payable or executory since the day it became final, but after the lapse of five years it ceased to be operative and was reduced to be a mere right of action until its revival by the second judgment of May 12, 1948. Therefore, there is no similarity between a dormant judgment and a matured promissory note or any other contract of indebtedness. The debtor in a matured promissory note is bound to pay his debt to the creditor at certain date or upon demand, and if he fails or refuse to do so he may be forced to pay it by the court in an action instituted for that purpose; while a judgment debtor under a dormant or inoperative judgment is not bound and can not be compelled by the court to pay said judgment until it is revived

by the second judgment rendered in the action based on or instituted to enforce the first judgment. A judgment after the lapse of five years may be likened to a matured promissory note during a moratorium, which is not due and demandable until after the moratorium has been lifted, the lifting of the moratorium being equivalent to the revival of a dormant judgment by another rendered in an action to enforce it.

Under article 1176 of the Civil Code if a creditor refuses with reason to accept a tender of payment made by the debtor and the former makes a consignment of the thing due, the debtor will not be relieved from his liability by the consignment and the loss or deterioration in value of the thing due or deposited shall be borne by the debtor. A creditor may refuse to accept the tender of payment if the tender is made before the obligation of the debtor becomes due, or the thing tendered is different in specie or amount from what is due, or the obligation is not payable at the time the tender of payment was made as in the present case. As the defendant had valid reason to refuse to accept the tender of payment made by the plaintiffs, the deposit or consignment of the sum of P725 in Japanese war notes did not relieve them from their liability.

It can not be contended that in an action instituted by the Vendor under pacto de retro to compel the vendee, who has refused his tender or offer to pay or repurchase the property within the period agreed upon or fixed by law, to accept the payment, the judgment of the court must fix a period within which the plaintiff should exercise his right to repurchase and pay the defendant the repurchase price. Because the contention is contrary to one of the elementary principles in procedure. When such an action is instituted, the point in issue is whether or not the plaintiff had the right to repurchase the property at the time he offered to pay the repurchase price to the defendant, and not whether the plaintiff is entitled to an extension of the period within which he may repurchase the property. "Adjudgment outside the issues is not a mere irregularity, but is extra judicial and invalid" for "it adjudicates matters beyond the issues and upon which the parties were not heard" (1 Freeman on Judgment, 5th ed., p. 739, 740). And if the court finds that the plaintiff had the right to repurchase the property at the time he made the offer to do so, the court should render judgment sentencing the defendant to accept the payment and to execute and deliver to the plaintiff the deed of conveyance of the property sold upon receiving the payment.

Under the sentence the plaintiff is not given the right or option to comply with the judgment at his will, at any time within five years during which the judgment may be executed by motion or writ of execution, because the execution of a final judgment may be made, not only upon motion of the judgment creditor, but also of the judgment debtor, specially in cases like the present in which reciprocal rights and obligations are imposed in the judgment. The theory that the judgment must fix a period within which the vendor under pacto de retro should exercise his right to redeem or pay the redemption price to the vendee in order to recover the property, because otherwise the vendor would be at liberty to pay the repurchase price at any time within five years from the rendition of the judgment, is based upon the wrong premise or assumption that the only party who has the right to have the judgment executed is the judgment creditor, and not the judgment debtor. Generally, it is true that it is the judgment creditor who compels the judgment debtor to satisfy the judgment; but it is not less true that the judgment debtor has also the right to compel the former to accept the satisfaction of the judgment by him, and acknowledge admission of such satisfaction in accordance with section 43, Rule 39, of the Rules of Court; and after satisfying his obligation under the judgment, the judgment debtor may compel the judgment creditor to perform his reciprocal obligation, that is, to pay the repurchase price to him in the present case.

In *Del Rosario vs. Sandico* (47 Off. Gaz., 2866) [*], in which the question raised was whether the judgment debtor may deposit with the court the payment of the judgment, if the judgment creditor refuses to accept it, this court ruled that such deposit in payment of the judgment may be made without necessity of complying with the requirements of the provisions of articles 1176 and 1177 of the Civil Code, and held the following.

"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 consignation 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.'"

In the present case, as neither the plaintiff had moved for the execution of the original judgment of September 30, 1936, nor the defendant satisfied it voluntarily, they may be considered as having impliedly agreed to extend its execution or satisfaction from day to day, because a judgment may be novated by subsequent agreement of the parties (*Fua Cam Lu vs. Yap Tanco*, 74 Phil, 287).

The adoption of the theory which holds that, in cases like the present, the judgment of the court has to fix a reasonable period within which the vendor under pacto de retro must pay the redemption price or redeem the property sold, would lead to the legal absurdity that such vendor may surely extend the period of redemption at his option and against the will of the vendee, by filing, a short time before the expiration of the period of redemption agreed upon by the parties or fixed by law, an action to compel the vendee to allow the vendor a retro to redeem the property sold, because in the judgment the court has, under said theory, to grant the vendor a retro reasonable time (otherwise, he will have four years according to the dissenting opinion) within which the vendor may redeem or pay the repurchase price to the vendee.

Besides, as the original judgment of September 30, 1936, of the Court of First Instance of Ilocos Norte did not, correctly, fix any period within which the plaintiff had the right to repurchase the property, in the action filed by the plaintiff based on that judgment to enforce it, the lower court did not, for it could not, amend the original judgment by fixing the period within which the plaintiff could do so. The plaintiff did not appeal from the last judgment of the lower court, and neither plaintiff-appellee nor the defendant-appellant assigned in their brief or argued as erroneous the omission to fix such period in the judgment. Therefore, even assuming for argument's sake that the judgment of lower court is erroneous or not in conformity with law, such error can not be considered by us in this appeal (sec. 5, Rule 50 in connection with sec. 1, Rule 58).

Wherefore, the judgment of the lower court should be and is hereby reversed, and the plaintiffs are sentenced to pay the defendant the sum of P725 upon the transfer and delivery to the plaintiff of the property in question and the execution of the deed of cancellation Exhibit A by the defendant, with costs against the plaintiffs. So ordered.

Bengzon, Tuason, Reyes and Bautista Angelo, JJ., concur.

[*]85 Phil., 170.

CONCURRING

PADILLA, J.,

I concur in the result. Granting that the deposit of the sum of P725 in Japanese military or war notes with the clerk of court of Ilocos Norte by the plaintiffs on 20 April 1944, upon the bringing by them of the action for revivor of the judgment rendered on 30 September 1936 in civil case No. 4049 of the Court of First Instance of Ilocos Norte,

was a consignment, still such sum deposited in valueless and worthless Japanese military or war notes did not release the plaintiffs from their obligation to pay the defendant for the repurchase price of the parcel of land involved in the litigation, for the same reasons set forth in my opinions rendered in *Del Rosario vs. Sandico*, (47 Off. Gaz. 2866) and *La Orden de Padres Benedictinos de Filipinas vs. The Philippine Trust Co.*, (47 Off. Gaz. 2894)[*], the decisions of which were promulgated on 29 December 1949.

[*] 85 Phil., 217.

DISSENTING

MORAN, C. J.,

In civil case No. 4049 of the Court of First Instance of Ilocos Norte a judgment was rendered ordering defendant Bernardina Ubi Cruz to deliver the land in question to plaintiffs Andres Calaycay et al., upon payment by the latter to the former of the sum of P725. Within five years after the entry of the judgment, no motion for execution thereof was filed, but subsequently an action to enforce it was commenced depositing at the same time with the clerk of court the sum of P725 in Japanese military notes. After trial the lower court rendered decision enforcing the judgment above mentioned, and accordingly ordered the defendant to deliver the land in question to plaintiffs without costs. As to the sum of P725 deposited with the court and lost during the war of liberation, the consignment was found to be valid and thus plaintiffs were relieved from their liability and defendant was made to bear the loss. And the question in this appeal is the validity of the consignment and its effects. Article 1176 of the old Civil Code is as follows:

"If a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignment of the thing due.

"The same effect shall be produced by consignment alone when made in the absence of the creditor, or if the latter should be incapacitated to accept the payment when it is due, or when several persons claim to be entitled to receive it, or when the muniments of the obligation have been lost or mislaid."

It is maintained that, according to this provision, the plaintiffs would have been relieved from their liability had the defendant, without reason, refused to accept payment, and that in the instant case the defendant's refusal to accept payment was justified, because the judgment sought to be enforced "was no longer executory after the lapse of five years after its entry". It is said that "after the lapse of five years after its entry (of the judgment) the plaintiffs could not rely on it to compel the defendant to accept the tender of payment, for the judgment was no longer executory or enforceable by motion or writ of execution. Said judgment became dormant and could only be revived or enforced by an action or complaint based on the judgment as other actions are instituted. And after action on the judgment has been instituted and during the pendency thereof, the plaintiffs could not invoke the judgment to compel the defendant to accept their tender of payment, because said judgment is not revived or does not become enforceable by the mere filing of an action to enforce it."

This reasoning seems to imply that a judgment after five years from the date of its entry loses its effectivity until another judgment revives it. This theory cannot bear analysis. The question hinges on what the status of a judgment is according to law after the lapse of five years. A judgment rendered by a court in the exercise of its jurisdiction is valid and effective and, therefore, enforceable during the period of ten years, that is, while it is not barred by the statute of limitations. (*Gutierrez Hermanos vs. De la Riva*, 46 Phil., 827; arts. 1144 and 1152, New Civil Code.) The law provides for two methods of enforcing such judgment: Within five years after its entry it

may be enforced by motion in the same case and in the same court where it was rendered. Upon the expiration of five years after its entry, it may be enforced by action in the ordinary form. The reason for this different procedure is that "during the period of five years or more, many events or transactions may have transpired to change the relations of the parties or the right of the judgment creditor to demand the enforcement of his judgment. It is the duty of the court before which the second action is tried to examine any such defences presented by the defendants and allow them their just effect." (*Compania General de Tabacos vs. Martinez and Nolan* (29 Phil., 516, 521-522.)) Or as Mr. Justice Moreland said in his concurring opinion in the same case: "this provision requiring the filing of an action to enforce the judgment after five years have lapsed is for the protection of the judgment debtor; for the law presumes that, if the judgment creditor has permitted five years to elapse without attempting to obtain an execution, the judgment debtor has paid the judgment; and it is for this reason that it will not be permitted that an execution issue after that time, unless the judgment creditor first shows to the satisfaction of the court that the judgment has not been paid. When that has been done and the presumption of payment is removed, the court issues an order for the execution of the judgment in an amount named therein." (p. 525.)

It is clear then that after the expiration of five years, the judgment continues to be valid and effective, so much so that it is allowed by law to be enforced by action if it is not yet paid. If it were not valid or effective, no action thereon could prosper and no judgment could be rendered to enforce it. But the law expressly authorizes the filing of an action to enforce the judgment, which is an implied and clear recognition that the judgment is still a living thing, containing living rights and obligations. In other words, the life of the substantive rights and obligations contained in the judgment remains unaffected by the lapse of five years, although the mode of procedure for their enforcement is made more elaborate so as not to disregard defenses that may have accrued in the meantime. In the same case of *Compañia General de Tabacos vs. Martinez and Nolan*, we held: "The judgment is, after that period of time, reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all other ordinary actions, by the institution of a complaint in the regular form. Being a final judgment of a court, it is, of course, conclusive as to the controversy between the parties up to the time of its rendition. By the mere pleading of the judgment and its introduction in evidence, the plaintiff effectually blocks all investigation into the merits of the original controversy. But, being a mere right of action, it is subject to defenses and counterclaims which may have arisen subsequent to the date it became effective, as, for instance, prescription, which bars an action upon a judgment after ten years (sec. 43, par. 1, Code of Civil Procedure) or payment; or counterclaims arising out of transactions not connected with the former controversy. In other words, the judgment creditor finds himself in the position of any other litigant and is under an equal necessity of proving his case, although his trouble in doing so may be less due to the conclusiveness of the evidence which he has to offer, that is, his judgment." (29 Phil., 520, 522.)

All this goes to show that a judgment if not paid or barred by the statute of limitations is a good right of action even after the lapse of five years. It may become dormant after that period of time, but by the filing of an action to enforce it, it ceases to be dormant for it is moved into action. Generally the only defenses which may be interposed by the defendant against such action are payment or prescription of action. Counterclaims of a permissive character may of course be also interposed. In the instant case, no valid defenses or counterclaims have been pleaded by the defendant, and therefore she had no valid reason to oppose the execution of the judgment and to reject the tender of payment made at the commencement of the action. And under article 1176 of the Civil Code, above quoted, plaintiffs were released from their liability by the valid consignment they had made of the amount due.

It is argued that "a creditor has the right to refuse to accept the tender of payment if the tender is made before the obligation of the debtor becomes due, the thing tendered is different from what is due, or the obligation is not payable at the time the tender of payment was made as in the present case." This argument is not well taken for

the judgment sought to be enforced in the instant case became due before the time payment was tendered. That judgment became payable since the day it became final and was entered, and it continued being payable during all the time that it was not paid and was not barred by the statute of limitations. A judgment after five years is, for instance, like a matured promissory note which also must be enforced by action if not paid, and if the debtor, because of the creditor's refusal to accept payment, files an action and deposits with the court the amount due, such deposit shall release the debtor from liability if at the trial the creditor is shown to have no good reason for refusing to accept payment, because he has no good defense or defenses against the promissory note.

There seems to be an inconsistency in the majority's theory. In their decision, they enforce the judgment alleged in the complaint when, according to them, said judgment was not enforceable at the time the action was commenced, but only after the judgment in this case was rendered. It is a well settled doctrine that a judgment may be rendered, as a general rule, according to the cause of action existing at the time of the filing of the complaint. If at that time plaintiffs have no cause of action, no judgment can be rendered in their favor even if their cause of action accrues later. (*Limpangco vs. Mercado*, 10 Phil., 508.) "It is essential to the validity and regularity of a judgment that the demand whereon it is rendered shall have existed as a matured cause of action at the time the action was commenced, it being a general rule that a party must recover according to his legal rights at the commencement of the action." (49 C. J. S., p. 51.) Again, it has been held that, "as a general rule the rights of the parties to an action at law are determined as of the time an action is commenced." * * * "Plaintiff must therefore recover, if at all, according to the status of his rights at the time of the commencement of the action, and not at some earlier time nor by some change in the law following accrual of the right of action." (1 C. J. S., p. 1389.) The following statement is on the point:

"* * * .—A plaintiff's right to avail himself of a legal remedy is not impaired merely by inaction or delay in seeking that remedy, provided he does not delay so long as to be affected by the doctrine of laches or the statute of limitations. On the other hand, an action cannot be maintained if it is commenced before the accrual of the cause of action which is sought to be enforced. Such an action should be dismissed without prejudice to the plaintiff's right to begin a new action on the accrual of the cause of action, upon proper and timely objection being made the nonexistence of a cause of action when the suit was started is a fatal defect which cannot be cured by the accrual of a cause pending suit." (Par. 63, 1 Am. Jur., 454.)

In other words, as a general rule, a judgment may be rendered for the plaintiffs if at the time they file their complaint, their cause of action has already accrued. If the complaint is filed before the accrual of the cause of action, it must be dismissed without prejudice to the commencement of a new action by plaintiffs. In the instant case, the judgment of revivor rendered by the majority is a recognition that the judgment sought to be enforced was an enforceable demand at the time the complaint was filed. If this is so, the defendant had no reason for refusing to accept tender of payment, because at the time the complaint was filed, the obligation was due and unpaid. The consignment, therefore, was valid and relieved plaintiffs from their liability.

It is unnecessary to say that although the consignment was made in military notes, the consignment is valid because the military notes were legal tender at the time of the commencement of the action. (*Haw Pia vs. China Banking Corp.*,[*] 45 Official Gazette [Supp. 9], 229.)

The judgment must, therefore, be affirmed.

After this opinion was written, the majority decision was amended in an effort to answer the reasons herein stated. It is maintained now that validity of a judgment is one thing, and its effectivity or enforceability, another. It is argued that after five years, a judgment is valid but not enforceable and is inoperative until another judgment reviving it is rendered.

There is absolutely no law declaring that the judgment under such circumstance is inoperative or unenforceable. Upon the contrary, according to law as above stated, after the lapse of five years and before the expiration of the period of limitations, an action may be commenced to enforce the judgment, which means that the judgment is enforceable when the action is brought as provided by law, that is, within ten years. The enforceability therefore of the judgment depends upon the filing of the action. The judgment of revivor is but a consequence of the action. It is a recognition that the right of action exists and should be enforced.

The theory that the enforceability of the judgment exists only after the judgment of revivor is rendered, is altogether absurd. The judgment of revivor must retroact to the time the action was commenced, for as above stated, a judgment must relate to "a matured cause of action at the time the action was commenced." (49 C. J. S., 51). In other words, the enforceability of the judgment must exist at the time the action is brought, otherwise no judgment of revivor can be rendered and the action should be dismissed on motion upon the ground of lack of cause of action. An action cannot be brought to enforce a judgment which is enforceable in the future. In exactly the same manner that no complaint can be filed upon a cause of action that has not accrued, but will accrue in the future. If the judgment after five years may be likened to a promissory note suspended by moratorium, then no action can be brought upon that judgment nor upon the promissory note, because during the moratorium there is no cause of action. But all the members of the Court agree that in the instant case the action is proper to enforce the judgment, and, therefore, all must agree that the judgment was enforceable at the time the action was brought.

I am afraid the majority is confusing the enforceability of a judgment as a right and its enforceability as a fact. An action to enforce a judgment may be good, but if contested the judgment cannot be actually enforced until a judgment of revivor is rendered. And this is the case in all kinds of contested actions. For instance, the plaintiff's right to collect a debt may be good, but if contested he cannot actually collect until a judgment in his favor is pronounced. But the actual enforceability of a right after judgment does not argue against the existence of the right prior to the pronouncement of such judgment. Upon the contrary, a judgment rendered in favor of the plaintiff is an express recognition of the existence of his right at the time he brought the action.

In the instant case, what is important is the existence of the plaintiff's right to enforce a judgment at the time they brought their action. Since that right existed, the defendant had no reason for refusing to accept tender of payment, and therefore the consignment of the amount due relieved the plaintiffs from their liability.

It is also said in the majority decision that in an action to enforce a judgment, it is not the judgment sought to be enforced but the judgment reviving it that should be enforced. I am afraid there is a confusion of ideas in such theory. It is clear that since the action is to enforce a judgment, the judgment to be rendered in such action should also be to enforce said judgment. As a general rule, a judgment can enforce no other right of action than that pleaded in the complaint. Since, however, the first judgment is a mere right of action subject to defenses, the execution thereof to be decreed in the second judgment should be conditioned to such limitations or additions that have been pleaded and proved by the judgment debtor.

In view of the foregoing, the judgment must be affirmed.

[*]80 Phil., 604.

DISSENTING

PARAS, J.,

Under article 1176 of the old Civil Code, "if the creditor to whom a tender of payment is made refuses to accept it, without reason, the debtor shall be released from liability by the consignation of the thing due."

In this case, the majority have held that the defendant-appellant (creditor) had reason to refuse to accept the sum of P725 tendered by the plaintiffs-appellees (debtors) in 1944 simply because five years had elapsed since the entry of the judgment in civil case No. 4049 allowing said payment. In other words, payment was offered when the judgment was no longer executory by motion or writ of execution.

In my opinion, appellant's refusal was not justified. Though the judgment was not enforceable by execution when the payment was tendered by the appellees, it was a subsisting judgment, because it had not then prescribed. Like an original contract, said judgment constituted a valid right of action enforceable by suit. That the appellant had no reason to refuse is evident from the fact that both the trial court and this Court in effect have ordered the appellees to pay, and the appellant to accept, the sum of P725, which is the same amount tendered by the appellees in 1944. The good reason for the creditor's refusal contemplated in article 1176 may be that the amount tendered is not yet due, or that it is insufficient, or that it is different from the thing stipulated, or the like, in which cases, however, the court is called upon to make the proper finding. In the case at bar, how can we allege that the appellant had a legal reason for her refusal, when the Court now compels her to accept what she had heretofore declined to receive. It cannot be said that payment became due only after the judgment was rendered in this case, because this judgment merely enforces, by judicial fiat, the right of action (to pay P725 at any time) evidenced by the prior judgment. The obligation was certainly payable; only it could not be enforced by execution.

There is no point in the suggestion that, as the judgment did not fix the time within which redemption could be made, it is presumed that said period should not exceed four years. In the first place, this would reduce the period within which a judgment may be enforced by execution to four years, instead of five years, and would reduce the prescriptive period of an action based upon a judgment also to four years, instead of ten years. In the second place, the appellant in this case does not assail the right of the appellee to redeem, provided the price is paid in the actual currency. Of course, the trial court should have fixed the time within which payment by the appellee should be made. But its failure in this respect should reciprocally affect both parties.

Wherefore, my vote is to affirm the appealed judgment. PABLO, M., con quien Montemayor/M. concurre, disidente:

Disiento. En mi opinion, debe revocarse la sentencia apelada y ser absuelta la demandada.

La sentencia que dio lugar al presente litigio se dicto en 30 de septiembre de 1936 por el Juzgado de Primera Instancia de Ilocos Norte, condenando a la demandada a entregar el terreno a los demandantes previo pago por estos de la cantidad de P725 sin determinar el plazo de retracto, cuando debio de haberse fijado un plazo razonable que este en consonancia con la ley pertinente al caso.

Los demandantes no intentaron recomprar el terreno sino despues de transcurridos 7 anos, 6 meses y 20 dias, presentando su demanda en 20 de abril de 1944 para revivir la sentencia que, por el transcurso de cinco anos, ha perdido su eficacia. Desde el 30 de septiembre de 1936 hasta la fecha en que escribo esta disidencia, 18 de octubre de 1950, han transcurrido ya catorce anos y 18 dias. Si a los demandantes se les permite otra vez—confirmando la orden de recompra dispuesta por la sentencia apelada—ejercitar su derecho de retracto sin plazo y al tiempo que mas les conviene, entonces podran dejar pasar varios anos despues de promulgada la sentencia en esta causa,

recomprando el terreno en el penultimo dia de los cinco anos en que se hace ejecutoria la sentencia, o presentar una tercera demanda para revivir la anterior, si optaren por dejar transcurrir otros cinco anos. El derecho de recomprar no estaria limitado a ningun plazo; dependeria del capricho de los demandantes. La compradora a retro no debe estar sujeta a incerti-dumbre perpetua.

De lo expuesto se vera que los demandantes burlarian la disposition taxativa delCodigo Civil que dispone que el derecho de retracto a falta de pacto expreso dura cuatro anos, contados desde la fecha del contrato, y en caso de estipulacion, el plazo no podra exceder de diez aios. (Art. 1508, Cod. Civ.).

Aplicando estos plazos establecidos por el Codigo Civil en las decisiones que se dictaren en asuntos de retracto convencional, se evitaria que el retrayente alargase el retracto por tiempo indefinido.

Antes de la vigencia del Codigo Civil no tenia limite el derecho de retracto. Bajo la Ley de Partidas y el Derecho Romano el derecho de retracto era ilimitado, perpetuo.

Porque dependia de la voluntad del vendedor la condition resolutoria de la compra por tiempo indefinido, el comprador con pacto de retro no podia realizar las mejoras que querfa introducir en la finca. Se vio la necesidad de determinar definitivamente el plazo de retracto para que el comprador pudiese hacer su composition de lugar: mejorar la finca despues de vencido el plazo, o hacer sus calculos para la debida inversion del capital que ha de recibir en la reventa, y no depender de un futuro incierto e indeterminado. El Codigo Civil y otros codigos de otros paises, considerando contrario al orden publico el permitir que la situation de los terrenos vendidos con pacto de retro continue incierta con plazo indefinido, fijaron el plazo de retracto. El Codigo Civil en su articulo 1508 dice:

"El derecho de que trata el artfculo anterior durara, a falta de pacto expreso, cuatro anos contados desde la fecha del contrato.

"En caso de estipulacion, el plazo no podra exceder de diez anos."

Estos plazos deben adoptarse en la ejecucion de una sentencia dictada en cuestiones de compraventa con pacto de retro, cuando no se fija en ella, por inadvertencia del Juez, el plazo dentro del cual el vendedor debe recomprar la finca. Por esta mdeterminacion del plazo en la sentencia, han surgido dos escuelas: la primera sostiene la teoria de que el retracto se puede ejercitar dentro de 5 anos, plazo en que la sentencia se puede ejecutar a simple mocion, de acuerdo con el articulo 6, Regla 39; y la segunda sostiene que el retracto debe hacerse dentro de cuatro anos de acuerdo con el espiritu que da vida a las disposiciones del Codigo Civil. En caso de con-flicto sobre compraventa con pacto de retro entre una ley sustantiva y otra de procedimiento, la ultima debe ceder.

La ley procesal se instituye para hacer eficaz el cum-plimiento de las leyes sustantivas, y por eso, la ley procesal se llama tambien reglamento. Reglamento es un con-junto de reglas que se establecen para el facil, ordenado y adecuado cumplimiento total de una ley. El reglamento no puede enmendar la ley sustantiva: su funcion es sola-mente complementar o hacer efectivas las disposiciones de esta. Como una ley no puede enmendar la constitu-cion, un reglamento tampoco puede enmendar una ley sustantiva. Y como el Codigo Civil tiene fijado el plazo de cuatro anos para el caso de que no haya habido acuerdo en la duracion del retracto convencional, ese mismo plazo debe regir en una sentencia cuando no se ha fijado en ella el plazo de retracto. La sentencia debe dictarse en consonancia con la ley sustantiva. Como la base de la demanda es la ley referente a compraventa con pacto de retro, la sentencia tiene que dictarse de acuerdo con el espiritu de dicha ley. Si dispusiera que la recompra se hard en doce anos, esa disposition seria nula, como tendria que ser nula tambien la sentencia si ordenase que el retracto puede hacerse dentro de seis anos cuando no ha existido convenio expreso.

Permitir que el retracto de un terreno pueda ejercitarse dentro de cinco anos porque la sentencia es eficaz y puede

ser ejecutada dentro del mismo plazo, es enmendar la disposicion taxativa delCodigo Civil. El resultado sera que la ley sustantiva quedaria enmendada por la ley procesal, no debe ser asi. La eficacia de una sentencia durante cinco anos es valida en los casos en que no contraviene una disposition expresa de una ley sustantiva.

La parte dispositiva de la decision de la mayoria sub-vierte los principios que informan las disposiciones delCodigo Civil. Se condena a los demandantes a pagar a la demandada la cantidad de P725 al tiempo de la entrega del terreno por la demandada. Los demandantes no estan obligados a recomprar la finca; por tanto, no deben ser condenados. El retracto es un derecho, no es una obligation (Ordonez contra Villaroman, 44 Official Gazette, 2226) [*]por eso los demandantes pueden recomprar la finca si desean, pueden renunciarlo, si optasen por ello; pero no pueden ser obligados ni condenados a entregar el importe del retracto. La sentencia debe ordenar o con-denar a la demandada a entregar el terreno si los demandantes pagan el importe del retracto de P725.

[*] 78 Phil., 116.

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