

LAUREANO SIA, PETITIONER, VS. COURT OF APPEALS AND NUMERIANO VALENCIA, RESPONDENTS.

G.R. No. L-3742. December 23, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a decision of the Court of Appeals. As found by said court, the facts are as follows: On May 22, 1940, the petitioner, Laureano Sia, executed in favor of the respondent, Numeriano Valencia, the following promissory note:

"Pagare a la orden del Sr. Laureano Sia en Masbate, Masbate, al plazo de cinco años contados desde esta fecha, la suma de setecientos cincuenta y tres con sesenta y tres centimos (P753.63) en moneda filipina, valor recibido del mismo en virtud de una hipoteca de terreno cocal de que es parte integrante este pagare."

On September 4, 1944, Atty. Ernesto Valencia, son of respondent Numeriano Valencia, offered to pay to the petitioner the mortgage debt of P753.63 in Japanese military notes, which the petitioner refused to receive, alleging that the currency had no value and that he wanted to be paid in Philippine currency. In view whereof, Attorney Valencia, on behalf of his father, informed the petitioner that he would consign the amount in the Court of First Instance of Masbate. Accordingly, on September 5, 1944, Attorney Valencia deposited with the Clerk of the Court of First Instance of Masbate the sum of P753.63 in Japanese military notes, and filed a sworn pleading for consignment, in which it was made to appear that the debt was being paid to the petitioner who refused to accept the payments, and that the latter was notified of the consignment. The clerk of the Court of First Instance of Masbate receipted for the amount thus deposited by Attorney Valencia who thereupon prepared a notice to the petitioner of the deposit of the sum of P753.63 in Japanese military notes with the clerk of the Court of First Instance of Masbate, which notice Attorney Valencia personally delivered in the office of the petitioner. The clerk of the Court of First Instance of Masbate in turn sent a notice of consignment by registered mail to the petitioner. The latter, however, never withdrew the money thus consigned.

As a result of the bombing by American planes between September and December, 1944, the records of Attorney Valencia relating to the consignment, as well as the records of the Court of First Instance of Masbate, including the amount of P753.63 deposited by respondent Valencia, were lost or destroyed.

After the promissory note herein above quoted had matured on May 2, 1945, the petitioner demanded from the respondent, Numeriano Valencia, the payment of the mortgage debt in the sum of P753.63. The respondent refused to accede to the demand, alleging that the debt had already been paid. Whereupon, on August 5, 1946, the petitioner filed in the Court of First Instance of Masbate a complaint for the recovery of the debt, with foreclosure of mortgage. After trial, the court rendered a decision, holding that the debt in question had already been paid in virtue of the consignment above mentioned, and dismissing the complaint without pronouncement as to costs. Upon appeal by the petitioner, the Court of Appeals affirmed the decision, without pronouncement as to costs.

The petitioner contends (1) that he was justified in refusing to accept the tendered payment on September 4, 1944,

because the Japanese military notes were almost valueless and the debt was not then due and payable; (2) that there was no valid consignment; (3) that the loss of the amount deposited or consigned should not be suffered by the petitioner; and (4) that, at any rate, the Japanese military notes deposited in September, 1944, should not be valued at par with the Philippine peso.

The promissory note executed on May 22, 1940, recited that the sum of P753.63 was payable "al plazo de cinco años contados desde esta fecha." The Court of Appeals held, and correctly, that the expression "Al plazo de cinco años contados desde esta fecha" may mean as well that payment could be made at the end of five years from May 22, 1940, or May 22, 1945, as that the debt could be settled at any time within five years from May 22, 1940; in such case, the respondent Valencia was justified in offering to pay on September 4, 1944, and the petitioner, Laureano Sia, had no reason to reject said payment. The conclusion of the Court of Appeals is well founded, specially because the refusal of the petitioner to accept the tendered payment was premised on the allegation that the Japanese military notes were valueless, and not upon the allegation that the debt had not yet matured.

The contention that the notes tendered by respondent Valencia were valueless is of course untenable, since it is already settled that the Japanese war notes were legal tender during the enemy occupation. The result is that the petitioner was not justified in refusing to accept payment in said notes on September 4, 1944.

With respect to the validity of the consignment upheld by the Court of Appeals, the pertinent findings of said court are as follows: "No tenemos a la vista el documento por el cual se consigno en el juzgado la suma de P753.63 en billetes mili'tares japoneses y no podemos determinar si tal escrito era simplemente de consignacion o si ademas se solicitaba del tribunal que, tras los tramites de rigor, declarase saldada la obligacion y cancelada la hipoteca, mas, en lo que atane a la consignacion propiamente dicha, puede verse de los hechos expuestos que se ha cumplido con todos los requisitos prescritos por elCodigo, De las pruebas consta que se hizo el ofrecimiento de pago en forma al acreedor, que este recibio los avisos correspondientes antes y despues de hecha la consignacion judicial; que los billetes militares japoneses, que eran moneda de curso legal en Filipinas al tiempo de la consignacion, constituian la 'cosa debida' que se deposito a disposicion de la Autoridad judicial; que la consignacion se ajusto estrictamente a las disposiciones que regulan el pago de una obligacion que podia liberarse; y, en su consecuencia, que el acreedor a quien se hizo el ofrecimiento de pago se nego sin razon valida a recibirlo."

We cannot, therefore, in this instance depart from the finding of the Court of Appeals that all the steps for a valid consignment had been taken by respondent Valencia. The only important question that arises is whether the loss of the amount consigned should be borne by the petitioner or by the respondent.

In the case of *Haw Pia vs. Jose, etc.*[1] decided on May 13, 1947, 44 Off. Gaz., 2704, this court held that the loss of the thing validly consigned, without the fault of the debtor, is to be borne by the creditor. We quote the following from said decision:

"But there are certain other considerations which we deem worthy to be noted. Petitioner lays much emphasis upon the point that the aforesaid order of January 6, 1944, has become impossible of execution because she says the amount consigned by respondent Altea in September or October, 1940, with the Clerk of the Court of First Instance, which was later deposited by said official with the Provincial Treasurer, was 'frozen' by the Japanese authorities, and she adds that to this day the present government has not made provision for the payment of said amount; Be this as it may, and even supposing that the so-called freezing of said amount and the alleged failure of the government to provide for its payment have made it impossible for petitioner to collect the same, the loss, if any there would be, must be suffered by petitioner.

"Art. 1176. 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 consignation 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. (Civil Code.)

"The amount consigned was in Philippine genuine money before the war and the record shows that all the requisites of a valid consignation were complied with

"* * * *Ademas de quedar extinguida la obligacion produce la consignacion valida el efecto de quedar libre el deudor de responsabilidad por los riesgos que despues, y sin que procedan de actos suyos, sobrevengan a la cosa debida y consignaua. (8 Manresa, 4th edition, page 297; italics supplied.)*"

Upon the other hand, in the case of *China Insurance & Surety Co., Inc. vs. Berkenkotter*[1] (46 Off. Gaz., 5466), we promulgated on April 29, 1949, a resolution to the following effect: "On this point, the reconstituted documents show that while the consignation was really made and the adverse party notified thereof, the same has neither been accepted by the latter nor approved by the court, and in any event, there is no clear proof before us that the essentials of a valid consignation are here present specially the conformity of the proffered payment to terms of the obligation which is to be paid. It should be remarked in this connection that strict conformity in that regard is required, for as Manresa says '* * * el acreedor tan solo, y no el juez, puede autorizar la variacion que para los derechos de aquel suponga la que se intente en el objeto, cuantia o forma de las obligaciones.' (8 Manresa, 312.)" In the case of *Padua vs. Rizal Surety & Insurance Co.*[2] decided on July 27, 1950(47 Off. Gaz., Supp. No. 12, page 308), it was held that, under article 1180 of the Civil Code, the approval of the consignation by the court is indispensable to the extinction of the obligation. We quote the following pertinent passages of said decision:

"Los dos citados autores opinan que es necesaria la aprobacion judicial de la consignacion, no por disposicion expresa del articulo 1180 delCodigo Civil, sino por deduccion forzosa. Dicho articulo dice que 'podra el deudor pedir al Juez que mande cancelar la obligacion.' La mocion tiene que fundarse en algun hecho y no sera otro sino el de que la consignacion ha sido 'debidamente heeha.' El Juez no ordenara la cancelacion a menos que se le demuestre que en la consignacion se cumplieron todos los requisites necesarios para su validez. For ejemplo, 1. que se ofrecio el pago y fue rechazado; 2. que se ha heeho la notificacion de la consignacion; 3." que, hecha al consignacion, se notified debidamente del hecho al interesado (art. 1180, Codigo Civil); 4. que la consignacion constituye el pago completo de la obligacion (art. 1177).

"Si el juez no esta convencido de que la consignacion esta hecha debidamente,' no rendira la caneelacion de la obligacion. La extincion de esta no depende de la sola voluntad del deudor; debe intervenir la autoridad judicial para comprobar si ha sido debidamente hecha la consignacion. Seria injusto que dependiese sola-men'e del acto del deudor la cancelacion de la deuda. El orden publico y el sentido de justicia exigen que un tercero asi lo dictamine. 'Mientras el acreedor—dice el articulo 1180—no hubiere aceptado la consignacion o no hubiere recaido la declaracion judicial de que esta bien hecha, podra el deudor retirar la cantidad consignada.' Bajo esta circunstancia,—que la consignacion esta aun a disposicion del acreedor—su obligacion queda subsistente. No puede considerarse pagada, como pretende la apelante. En el caso presente se quemo la consignacion mientras estaba a la disposicion completa de ella; ella, pues, debe sufrir la perdida, no el acreedor.

"En conclusion declaramos: primero, que bajo el articulo 1180 del Codigo Civil la aprobacion de la consignacion por el juzgado es indispensable para que la obligacion se considere extinguida; segundo, que los P10,000 en papel moneda japonesa depositados no cubren todo el importe de la sentencia apelada que monta a P10,833.82 ein incluir las costas judiciales, y por tanto, la apelante no ha hecho una debida consignacion; y tercero, que la obligacion de la apelante en virtud de la sentencia del Tribunal de Apelacion de 3 de Julio de 1944 queda aun subsistente."

It would seem, therefore, that while under the earlier case of *Haw Pia vs. San Jose*, we held that the loss of the

thing consigned, without the fault of the debtor, is to be for the account of the creditor, under the ruling in *China Insurance & Surety Co., Inc. vs. Berkenkotter*, and *Padua vs. Rizal Surety & Insurance Co.*, in order that the debtor may be released from the obligation, there must first be approval of the consignation by the court. Although there is an apparent conflict, we may reconcile the decisions by stating that, where all the requisites for a valid consignation have been complied with, and there can be no reason for disapproving said consignation, the loss of the thing or amount consigned occurring without the fault of the debtor before the acceptance of the consignation by the creditor or its approval by the court, should be for the account of the creditor. This is obvious even from the decisions in the two later cases. Thus, in *China Insurance & Surety Co. Inc., vs. Berkenkotter*, this court had to make reference to the fact that "there is no clear proof before us that the essentials of a valid consignation are here present specially the conformity of the proffered payment to the terms of the obligation which is to be paid." And in the case of *Padua vs. Rizal Surety & Insurance Co.*, the court held as a fact that "los P10,000 en papel moneda japonesa depositados no cubren todo el importe de la sentencia apelada que monta a P10,833.82 sin incluir las costas judiciales, y por tanto, la apelante no ha hecho una debida consignacion." In the last analysis, therefore, the decisive consideration is that there be a valid consignation which may not be disapproved by the court.

In the case before us, as already noted, the Court of Appeals found that respondent Valencia had performed all the acts necessary to a valid consignation. It is not pretended that the amount consigned was less than that specified in the promissory note. If the matter of the approval of the consignation was therefore presented to the court prior to the loss of the thing consigned, there can be no doubt about its approval. Our conclusion in this case merely gives effect and essence to the purposes of consignation. It is true that, under article 1180 of the Civil Code, at any time before the creditor has accepted the consignation or the court has declared that it was properly made, the debtor may withdraw the thing or sum of money consigned, leaving the obligation in force; but it cannot be denied also that, until the thing or amount consigned shall have been withdrawn by the debtor, the creditor may accept the same, with the result that in the meantime the consignation is at the disposal both of the debtor and the creditor. The risk of loss before acceptance by the creditor or approval by the court is likewise mutual, because if it be determined that there was no valid consignation, the loss must be suffered by the debtor; otherwise, by the creditor.

The petitioner further invokes the equitable consideration that the amount consigned in Japanese military notes should not have been given a value at par with the Philippine peso, actual currency. Having come to the conclusion that the obligation was payable during the enemy occupation, and that the Japanese war notes were then legal tender at par with the Philippine peso, we are constrained to disagree with the petitioner.

Wherefore, the appealed decision is affirmed without costs. So ordered.

Bengzon, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] 78 Phil., 238.

[1] 83 Phil., 459.

[2] 87 Phil., 113.

DISSENTING

FERIA, J.:

This is an appeal by certiorari from the decision of the Court of Appeals.

According to the facts found by the Court of Appeals in its decision, the action filed by the plaintiff in the present case on August 5, 1946, in the Court of First Instance of Masbate is for recovery of a loan amounting to P753.63 due from defendant, evidenced by a promissory note issued on May 22, 1940, and foreclosure of the property mortgaged to secure the payment of said loan. The defendant in his answer alleged as a defense that he had on September 4, 1944, made an offer or tender of payment of said amount to the plaintiff, and upon refusal of the plaintiff to accept it he consigned said sum on the same date in court. But this was lost and destroyed by fire in December, 1944, together with all the records of the court, and nothing was done by the defendant-debtor until the plaintiff-creditor filed the present action in August, 1946.

The promissory note issued on May 22, 1940 by the defendant in favor of the plaintiff reads as follows:

"Pagare a la orden del Sr, Laureano Sia en Masbate, Masbate, al plazo de cinco años contados desde esta, fecha, la suma de setecientos cincuenta y tres pesos con sesente y tres centimos (P753.63) en moneda filipina, valor recibido del mismo en virtud. de una hipoteca de terreno cocal de que es parte integrants este pagare."

And in order to secure the payment of his obligation, the defendant executed a deed of mortgage on the same date of a piece of property therein described which deed reads in part as follows:

"La condicion de esta hipoteca de terreno, libre de toda carga y gravamen, es que si yo (Numeriano Valencia) pagare o hiciere pagar al mencionado Laureano Sia, a sus herederos y cansahabientes el pagare de P753,63 que he otorgado a su favor eon esta fecha y que vencera al plazo de cinco años contados desde esta fecha, esta escritura quedara caocelada, nula y de ningun valor, qucdando en caso contrario en toda su fuerza y vigor, pudiendo ejercitar su derecho de hacer cumplir lo aqui pactado." (Exhibit B.)

After trial, the Court of First Instance dismissed the plaintiff's complaint on the ground that the offer of payment and consignment of the amount due having been duly made by the defendant, the loss of the money deposited or consigned in court must be borne by the creditor and the amount claimed by the plaintiff should be considered as satisfied.

Appeal was interposed by the creditor to the Court of Appeals in which the appellant raised, among others, the question (1) whether in view of the terms of the prom-issory note and deed of mortgage the debtor had the right to pay his obligation, and the creditor refused without reason to accept it, at the time the offer of payment and consignment of the sum of P753.63 in court were made, that is, whether the offer of payment and consignment were validly made by the defendant and binding upon the plaintiff; and (2) whether the consequent loss or destruction of the money deposited should be borne by the creditor.

The Court of Appeals in deciding these questions in the affirmative held the following:

"Con respecto a la fecha del vencimiento de la obligacion, tanto el pagare como la escritura de hipoteca disponen que el de la suma de P753.63 debe hacerse en moneda filipina 'al plazo de cinco años contados desde esta fecha,' expresion algun tanto equivoca, que lo mismo puede significar que el pago tiene que hacerse exacta-mente a los cinco años contados desde el 22 de Mayo de 1940, o sea, el 22 de Mayo de 1945, como tambien puede indicar que la deuda podia amortizarse dentro del tcrmino de cinco años a partir del dia en que se establecio la obligacion. En relacion con este punto es de advertir que si la ley no prohíbe el que las partes convengan que el pago de una deuda se haga en un dia determinado y no antes, tampoco hay disposicion alguna legal vigente que impida, a falta de pacto en eontrario, que el deudor se libre de una deuda pagando su importe en cualquier tiempo antes de su vencimiento. En el caso de autos es de notar que si bfen la eantidad de P753.63 sugiere la idea de que en la misma pudieran haberse incluido intereses a devengar, ni el pagare y la

hipoteca que lo garantiza, ni las pruebas aportadas denotan que las partes hayan convenido en algo acerca de intereses. Siendo esto así la prolongación de la deuda por todo el período de cinco años no reporta ventaja, ganancia o "beneficio al acreedor, y no habría razón válida o atendible para declarar que los términos del pagaré y de la escritura de hipoteca (Exhs. A y B) antes acotados impiden que el deudor hipotecario si su situación lo permitiese, pague la deuda lo más pronto posible, y aun antes del plazo máximo de cinco años acordado para su vencimiento. Debe tenerse en cuenta, además, que al negarse el acreedor a recibir el importe del pagaré que el deudor le entregaba, su objeción se fundaba en que los billetes militares japoneses carecían de valor y no por que la obligación no hubiera vencido todavía."

According to the provision of article 1127 of the old Civil Code and the uniform ruling of this court a debtor cannot make a binding tender and consignment of payment before the time stipulated for making the payment without the consent of the creditor, even though the obligation does not bear interest or the interest for the whole stipulated period be offered or paid to the creditor (*Illusorio vs. Busuego*, [1] No. L-822; *Osorio vs. Salutillo*, [2] 48 Off. Gaz., 103; *Nicolas vs. Matias*, [3] No. L-1745, pp. 1 and 2; and *Ponce de Leon vs. Syjuco*, [4] No. L-3316). All the justices concurred in the ruling in said decisions, except Justice Sabino Padilla, and Chief Justice Paras who penned the majority's opinion in the present case.

It is therefore obvious that, as the tender of payment and consignment of the amount due in the present case were made before the obligation of the debtor to pay became due, the creditor had the right to refuse to accept it, the debt was not yet then due because according to the promissory note the amount due "será pagado al plazo de cinco años" and according to the deed of mortgage "the promissory note vencerá al plazo de cinco años;" that is, that the loan or the promissory note shall be paid at the end and not before five years. And plazo is defined in the *Encyclopedia Jundica*, as the "termino o tiempo concedido para dar hacer o no hacer alguna cosa o prestar algun servicio;" and according to the *Diccionario de la Real Academia Española* says that "Plazo es (1) el termino o tiempo senalado para una cosa (2) vencimiento del termino." Therefore a debt payable al plazo de cinco años, or a promissory note which will become due al plazo de cinco años, is not payable before the end of five years. Before the expiration of that period neither the creditor can compel or sue the debtor to pay it, nor can the latter compel the former to accept its payment either directly or by consignment of the thing due in court.

It is evidently wrong to hold, as Court of Appeals does, that "es de advertir que si la ley no prohíbe el que las partes convengan que el pago de una deuda se haga en un día determinado y no antes, tampoco hay disposición alguna legal vigente que impida, a falta de pacto en contrario, que el deudor se libera de una deuda pagando su importe en cualquier tiempo antes de su vencimiento." Because, as above stated, according to law if the parties agree that "el pago de una deuda se haga en un día determinado," it is understood that it is not payable before that date, and the debtor can not be compelled to pay and the creditor to accept the payment before the date stipulated. But if the debtor pays and the creditor voluntarily accepts the payment of the debt before it becomes due, the debtor is relieved of his obligation to pay the debt, not because the debtor has the right to pay his obligation at any time before it becomes due and payable, but because of the subsequent agreement or novation of the term stipulated in the former contract.

Chief Justice Paras, in his opinion affirming the decision of the Court of Appeals appealed from, held the following:

"The promissory note executed on May 22, 1940, recited that the sum of P753.63 was payable 'al plazo de cinco años contados desde esta fecha.' The Court of Appeals held, and correctly, that the expression 'al plazo de cinco años contados desde esta fecha' may mean as well that payment could be made at the end of five years from May 22, 1940, or May 22, 1945, as that the debt could be settled at any time within five years from May 22, 1940; in such case, the respondent Valencia was justified in offering to pay on September 4, 1944, and the petitioner, Laureano Sia, had no reason to reject said payment. The conclusion of the Court of Appeals is well

founded, specially because the refusal of the petitioner to accept the tendered payment was premised on the allegation that the Japanese military notes were valueless, and not upon the allegation that the debt had not yet matured.

"The contention that the notes tendered by respondent Valencia were valueless is of course untenable, since it is already settled that the Japanese war notes were legal tender during the enemy occupation. The result is that the petitioner was not justified in refusing to accept payment in said notes on September 4, 1944,"

This opinion is based on almost the same grounds on which the decision of the Court of Appeals relies, and therefore it is also erroneous.

We have already shown that a debtor has no right to pay a promissory note which is payable or shall become due "al plazo de cinco años contados desde Mayo 22, 1940," at any time within or before the end of said five years, and therefore the plaintiff had reason to refuse to accept the defendant's offer or tender of payment of the money consigned in court on September 4, 1944. The finding 'that the petitioner had refused to accept the tender of payment made on September 4, 1944, on the ground that the Japanese military notes were valueless and not because the debt had not yet matured, is contrary to facts as they appear in the record on appeal which is before us. No evidence was presented at the time of the consignment of the money claimed to be due and no record of that proceeding was or could be reconstituted. The only evidence on the matter in the record is the answer of the defendant-appellant Numeriano Valencia to plaintiff's complaint in which it is averred "that plaintiff refused without reason to accept said sum and to release and discharge the aforesaid sum;" without stating the reason given by the creditor at the time he had refused to accept the payment (see Record on Appeal, page 9). It is true that the decision of the Court of First Instance states that the plaintiff creditor in the action he instituted several years afterward "contiene que estuvo justificado al rechazar la oferta de pago que le hiciere el demandado porque el dinero en que se le pagaba entonces era dinero japonés y no era moneda filipina como se ha convenido en los Exhibitos A y B" (page 14 of the same record); but from the fact that the plaintiff made such contention at the hearing of this case in 1947 and 1948 it does not follow, that he gave the same reason at the time he had refused to accept the debtor's offer of payment in September, 1944. The plaintiff was correct in submitting such contention to the court, because when the plaintiff held his action on August 6, 1946, and after the promissory note became due and payable on May 22, 1945 at the end of five years. The promissory note was according to the terms there payable in Philippine money and not in Japanese war notes. Besides, it is for the court to decide and not for the parties to state whether the creditor had reason under the law in refusing to accept the offer or tender of payment made by the debtor. Although the reason given by the creditor in refusing to accept the offer or tender of payment and consignment is not correctly stated, if the creditor had another valid reason in not accepting the payment, the obligation cannot be considered as paid by such offer and consignment. The real reason given in refusing to accept the tender of payment not having been put in issue in the present case, creditor may at any stage of the case prove or show the valid reason he had in refusing to accept the offer or tender of payment made by the debtor.

To concur as several Justices do in the decision of Chief Justice Paras would be tantamount to setting aside the ruling laid down by the majority of the Justices in the above cited cases of *Ilusorio vs. Busuego*[1] No. L-822; *Osorio vs. Salutillo*, 48 Off. Gaz., 103; *Nicolas vs. Matias*[2] (No. L-1743, pp. 1 and 2); and *Ponce de Leon vs. Syjuco*[3] (No. L-3316) and to adopt the ruling in the dissenting opinion of said Chief Justice in those cases to the effect that a debtor has the right to pay a promissory note or obligation payable on a certain date either before or after said date, contrary to the provision of article 1127 of the Civil Code and the long line of decisions of this Supreme Court above cited and many others not necessary now to mention.

In view of all the foregoing, we are of the opinion that the decision of the Court of Appeals should be reversed and the defendant ordered to pay the plaintiff the sum of P753.63 with legal interest from the filing of the

complaint until paid, and that, upon the failure of the defendant to pay, the property herein mortgaged should be sold at public auction as by law provided and the amount due paid out of the proceeds of the sale, with costs against the defendant.

[1] 84 Phil., 630.

[2] 87 Phil., 356.

[3] 89 Phil., 126.

[4] 90 Phil., 311.

(1) 84 Phil., 630.

(2) 89 Phil., 126.

(3) 90 Phil., 311.

DISIDENTE

PABLO, M.:

El Tribunal de Apelacion declaro probados los siguientea hechos: Que en 22 de mayo de 1940, Numeriano Valencia otorgo un pagax'e a favor de Laureano Sia del tenor siguiente:

"Pagare a la orden del Sr. Laureano Sia en Masbate, Masbate, al plazo de cinco años contados desde esta fecha, la suma de sietecientos cincuenta y tres con sesenta y tres centimos (P753.63) en moneda filipina, valor recibido del misrao en virtud de una hipoteea de terreno cocal de que es parte integrante este pagare."

En 4 de septiembre de 1944, el abogado Ernesto Valencia, hijo de Numeriano Valencia, ofrecio pagar la deuda hipotecaria de P753.63 en papel moneda japonesa; pero al acreedor lo rehuso, alegando que queria que se le pagase la deuda en moneda filipina. Por tal motivo, el abogado Ernesto Valencia, en nombre de su padre, manifesto que el consignaria, como en efecto consigno, en el Juzgado de Primera Instancia de Masbate, el 5 de septiembre de 1944, dicha cantidad en papel moneda japonesa.

Con motivo del bombardeo, los archivos del Juzgado de Primera Instancia de Masbate se han destruido, entre ellos la cantidad consignada de P753.63.

Despues de vencido el plazo en 22 de mayo de 1945, Laureano Sia requirio a Numeriano Valencia el pago de la deuda hipotecaria de P753.63 y el deudor se nego a hacerlo, alegando que la deuda es'taba pagada por la consignacion hecha en 5 de septiembre de 1944.

Dos razones existen para declarar que la deuda no esta aim pagada: la No se necesita hacer esfuerzo alguno para concluir que la consignment hecha habria sido prematura. El pago no era exigible aiin. No estaba, por tanto, obligado el aereedor a recibirlo. El documento acreditativo de deuda dispone que Numeriano Valencia pagara a la orden del Sr. Laureano Sia en Masbate, Masbate, al plazo de cinco años contados desde esta fecha (22 de mayo de 1940). El plazo es de cinco años; el pago debe hacerse despues de vencido el plazo de cinco años, y no dentro del plazo de cinco años; el plazo de cinco años termina en 22 de mayo de 1945, y no antes.

Pagar al plazo de cinco años no significa pagar dentro del plazo de cinco años. Pagar al plazo de cinco años significa pagar al cabo del plazo de cinco años.

Plazo, segun el Diccionario de la Real Academia Española, es: (1) termino o tiempo senalado para una cosa; (2) "vencimiento del termino." Y, segun Escriche, "El termino o espacio de tiempo que se concede a las partes." (4) Diccionario Razonado de Legislacion y Jurisprudence, 604.

Pagar al plazo de cinco años es equivalente a pagar al vencimiento del termino de cinco años.

Pagar al cabo del año es pagar al terminar el año. Pagar al plazo de un año es pagar al terminar el plazo de un año.

Pagar al año es pagar despues del año y no dentro del año.

Pagar dentro del año no es pagar al año O despues del año, sino antes de expirar el año.

Pagadero al mes es pagadero despues del mes y no dentro del mes.

Si la intencion de las partes hubiese sido la de que podia pagarse la deuda dentro del plazo de cinco años, hubieran empleado la palabra "dentro" o las palabras "en o antes del 22 de mayo de 1945" o "en el plazo de cinco años."

La consignacion, por prematura, no obliga al acreedor a recibirla; por tanto, la perdida de la cantidad consignada debe correr a cuenta del deudor.

Y aun suponiendo que la deuda fuese pagadera dentro del plazo de cinco años, el acreedor no estaba obligado a recibir el pago de P753.63, en papel moneda japonesa porque, segun convenio, que es ley entre las partes, (art. 1090, Codigo Civil), el pago debia hacerse en moneda filipina. Estaban en circulation en 4 de septiembre de 1944 la moneda filipina y el papel moneda expedida por el ejercito japones.No debe confundirse una con otra.

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 Peso 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"

Como estaban en circulacion legal durante la ocupacion japonesa la moneda filipina y la moneda japonesa expedida por el ejereito de ocupacion, el acreedor tenia perfectisimo derecho de cbligar al deudor a pagar su deuda en moneda filipina, segun convenio.

El articulo 1170 del Codigo Civil claramente dispone que "el pago de las deudas de dinero debiera hacerse en la especie pactada, y, no siendo posible entregar la especie, en la moneda de plata u oro que tenga curso legal."

No debe olvidarse que la deuda se contrajo en 22 de mayo de 1940, y ninguna de las partes tenia la menor idea de que alguna vez habfa de circular en Filipinas la moneda japonesa. Es de lo mas injusto eonsiderar pagada la deuda en moneda filipina legitima por medio de la moneda japonesa, consignada en 5 de septiembre de 1944, que apenas valla en la proportion de P30 por un peso filipino legitimo. Esta es la segunda razon por que no debe declararse pagada la deuda.

Debe revocarse la decision apelada.

Decision affirmed.

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