

RICARDO Y. SUNGA, PLAINTIFF AND APPELLEE, VS. VICTORIANO ALVIAR, DEFENDANT AND APPELLANT.*G.R. No. L-8475. July 31, 1956*

Ponente: PARAS, C.J.

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For and in consideration of the sum of P800, the defendant-appellant executed in favor of the plaintiff-appellee a mortgage over a parcel of land situated in the municipality of San Fernando, Province of La Union, and for an indefinite period after May 14, 1941. On April 8, 1944, the appellant paid to the appellee in Japanese war notes the amount of the mortgage; but in the deed of release both the appellant and the appellee signed a note stating that "this is subject to the provision of section 8, Article XI of the Philippine Constitution." The controversy that arose between the parties, and submitted to the Court of First Instance of La Union in this case commenced by the appellee against the appellant, was whether or not under the note appended to the deed releasing the mortgage, had the effect of subjecting the payment made in Japanese war notes on April 8, 1944 to any adjustment or settlement contemplated in section 8 of Article XI of the Constitution in force during the Japanese occupation which provided as follows: "All property rights "and privileges acquired by any person, entity, or corporation, since the outbreak of the Great East Asia war shall be subject to adjustment and settlement upon the termination of the said war." In its decision dated September 27, 1954, the court ruled that the reservation made in the footnote of the deed of release above referred to, could not have been inserted by the parties without any purpose; and proceeded to conclude that, in view of the fact that the redemption of the mortgage was made by the appellant on April 8, 1944, when the Japanese war notes were almost valueless, the parties must have intended to adjust and settle appellant's mortgage obligation after the war. And since this court, although considering payments made during the Japanese occupation as valid, applied the Ballantyne Scale to obligations which could have been paid during the Japanese occupation, the Court of First Instance of La Union sentenced the appellant to pay to the appellee the sum of P711.11 (representing the difference between the amount of the mortgage obligation, P800, and the value of the payment made by the appellant in Japanese war notes, P88.89), plus legal interest from the date of the filing of the complaint, and the costs of suit. The defendant has appealed.

We agree with the appealed decision. If the payment made by the appellant on April 8, 1944 was meant to be absolute, the footnote in question would not have been inserted in the deed releasing the mortgage; and considering the very low value of the Japanese war notes at the time of said payment, it was undoubtedly intended as an indirect way on the part of the appellee to refuse the payment, in which the appellant readily acquiesced. The situation may be likened to an obligation payable only after the war, which is perfectly valid, with the only difference that the payment made on April 8, 1944 is, by express agreement of the parties, to be adjusted after the war.

The appellant argues that the insertion of the footnote was a surplusage and unnecessary, inasmuch, as the provision of section 8 of Article XI of the Constitution in force during the Japanese occupation was impliedly a part of every contract executed during said period; and since said Constitution lost its effectiveness in view of the

result of the war, it cannot here be considered and the payment made on April 8, 1944, was the same as any payment made during the Japanese occupation which had been held valid by this Court. This contention is of no moment, as the reference to section 8 of Article XI of the Constitution may be deemed as merely descriptive of a condition therein expressed.

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

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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