

JOSE PONCE DE LEON, PLAINTIFF AND APPELLANT, VS. SANTIAGO SYJUCO, IN., DEFENDANT AND APPELLANT. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLE.

G. R. No. L-3316. October 31, 1951

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c565ef6288fd/>

BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila absolving defendant Santiago Syjuco, Inc. of the complaint and condemning the plaintiff to pay to said defendant the sum of P18,000 as principal and the further sum of P5,130 as interest thereon from August 6, 1944, to May 5, 1949, or a total of P23,130, Philippine currency, with interest thereon at the rate of 6% per annum from May 6, 1949, until said amount is paid in full, with costs against the plaintiff.

The facts of this case as reflected in the pleadings and, the evidence, stripped of unnecessary details, are well narrated in the brief submitted by counsel for the Philippine National Bank, and which for purposes of this decision are hereunder reproduced:

"The appellee, Philippine National Bank, hereinafter to be referred to as the Bank, was the owner of two (2) parcels of land known as Lots 871 and 872 of the Murcia Cadastre, Negros Occidental, more particularly described in Transfer Certificates of Title Nos. 17176 and 17175, respectively. On March 9, 1936, the Bank executed a contract to sell the said properties to the plaintiff, Jose Ponce de Leon, hereinafter to be referred to as Ponce de Leon, for the total price of P26,300, payable as follows: (a) P2,630 upon the execution of the said deed; and (b) the balance of P23,670 in ten (10) annual amortizations, the first amortization to fall due one year after the execution of the said contract (See Annex "A", Syjuco's Segunda Contestacion Enmendada).

"On May 5, 1944, Ponce de Leon obtained a loan from Santiago Syjuco, Inc., hereinafter to be referred to as Syjuco, in the amount of P200.00 in Japanese Military Notes, payable within one (1) year from May 5, 1948. It was also provided in said promissory note that the promisor (Ponce de Leon) could not pay, and the payee (Syjuco) could not demand, the payment of said note except within the aforementioned period. To secure the payment of said obligation, Ponce de Leon mortgaged in favor of Syjuco the parcels of land which he agreed to purchase from the Bank (See Annex 'A' Syjuco's Segunda Contestacion Enmendada).

"On May 6, 1944, Ponce de Leon paid the Bank the Balance of the purchase price amounting to P23,670 in Japanese Military notes and, on the same date, the Bank executed in favor of Ponce de Leon a deed of absolute sale of the aforementioned parcels of land (See Annex "F", Syjuco's Segunda Contestacion Enmendada).

"The deed of sale executed by the Bank in favor of Ponce de Leon and the deed of mortgage executed by Ponce de Leon in favor of Syjuco were registered in the Office of the Register of Deeds of Negros Occidental and, as a consequence of such registration, Transfer Certificate of Title Nos. 17175 and 17176 in the name of the Bank were cancelled and Transfer Certificates of Title No. 398 (P.R.) and No. 399 (P.R.), respectively, were issued in the name of Ponce de Leon. The mortgage in favor of Syjuco was annotated on the back of said certificates.

"On July 31, 1944, Ponce de Leon obtained an additional loan from Syjuco in the amount of P16,000 in Japanese Military notes and executed in the latter's favor a promissory note of the same tenor as the one he had previously executed (R. on Appeal, pp. 23-24).

"On several occasions in October, 1944, Ponce de Leon tendered to Syjuco the amount of P254,880 in Japanese military notes in full payment of his Indebtedness to Syjuco. The amount tendered included not only the interests up to the time of the tender, but also all the interest up to May 5, 1948. Ponce de Leon also wrote to Syjuco a letter tendering the payment of his indebtedness, including interests up to May 5, 1948. Syjuco, however, refused to accept such repeated tenders. During the trial, Ponce de Leon explained that he wanted to settle his obligations because as a member of the guerrilla forces he was being hunted by the Japanese and he was afraid of getting caught and killed (t.s.n. pp. 23-24).

"In view of Syjuco's refusal to accept the payment tendered by Ponce de Leon, the latter deposited with the Clerk of the Court of First Instance of Manila the amount of P254,880 and, on November 4, 1944, he filed a complaint consigning the amount so deposited to Syjuco. To this complaint Syjuco filed his answer. The records of this case were destroyed as a result of the war and after the liberation the same were reconstituted (R. on A. pp.1-17).

"On May 15, 1946, Ponce de Leon filed a petition in the Court of First Instance of Negros Occidental for the reconstitution of transfer Certificates of Title Nos. 17175 and 17176 in the name of the Bank and, in an order dated June 4, 1946, the Court ordered the reconstitution of said titles. In compliance with said order, the Register of Deeds of Negros Occidental issued Certificates of Title Nos. 1297-R and 1298-R in the name of the Bank. Ponce de Leon then filed with the Register of Deeds a copy of the deed of sale of the properties covered by the said certificates of title issued by the Bank in his (Ponce de Leon's) favor and the Register of Deeds cancelled the said Certificates of Title Nos. 1297-R and 1298-R and issued in favor of Ponce de Leon Transfer Certificates of Title Nos. 526-N and 527-N (R. on A. pp. 48-50).

"On August 16, 1946, Ponce de Leon obtained an overdraft account from the Bank in an amount not exceeding P135,000 and, on the same date, he executed a mortgage of the two parcels of land covered by the reconstituted Transfer Certificates of Title Nos. 526-N and 527-N in favor of the said Bank to secure the payment of any amount which he may obtain from the Bank under the aforementioned overdraft account. The overdraft account was granted by the Bank to Ponce de Leon in good faith, said Bank not being aware of the mortgage which Ponce de Leon had executed in favor of Syjuco during the Japanese occupation, and said Bank believing that the said properties had no lien or incumbrance in favor of anybody since no lien or encumbrance appeared annotated on the reconstituted Certificates of Title Nos. 526-N and 527-N in the name of Ponce de Leon (See Testimony of Atty. Endriga).

"On September 28, 1946, Syjuco filed a second amended answer to Ponce de Leon's complaint and, in its "Tercera Reconvencion", it claimed that Ponce de Leon, by reconstituting the titles in the name of the Bank, by causing the Register of Deeds to have the said titles transferred in his (Ponce de Leon's) name, and by subsequently mortgaging the said properties to the Bank as a guaranty for his overdraft account, had violated the conditions of the mortgage which Ponce de Leon has executed in its favor during the Japanese occupation. Syjuco then prayed that the mortgage in his favor be foreclosed and the mortgage executed by Ponce de Leon in favor of the Bank be declared null and void (R. on A. pp. 32-53).

"Ponce de Leon objected to the inclusion of the Bank as a cross-defendant. (R. on A. pp. 55-58). Notwithstanding said objection, however, the lower court ordered the inclusion of the Bank as a cross-defendant (R. on A. pp. 59-60).

"On June 28, 1947, the Bank filed a motion to drop on the ground that it had been misjoined and to dismiss on the ground that the venue was improperly laid and there is another action pending between the same parties for the same cause (R. on A. pp. 65-75). The said motion was denied by the lower court in its order dated October 7, 1947 (R. on A. pp. 95-100). In view of such denial, the Bank filed its answer on October 29, 1947 (R. on A.

pp. 101-106).

"On June 24, 1949, the lower court rendered a decision absolving Syjuco from Ponce de Leon's complaint and condemning Ponce de Leon to pay Syjuco the total amount of P23,130 with interest at the legal rate from May 6, 1949, until fully paid (R. on A. pp. 107-135). Both Ponce de Leon and Syjuco filed their appeal from this decision."

The principal questions to be determined in this appeal are: (1) Did the lower court err in not giving validity to the consignment made by the plaintiff of the principal and interest of his two promissory notes with the clerk of court?; (2) did the lower court err in reducing the principal and interest of said promissory notes to their just proportions using as a pattern the Ballantyne schedule in effecting the reduction?; (3) did the lower court err in disregarding the defense of moratorium set up by the plaintiff against the counterclaim of defendant Syjuco?; and (4) did the lower court err in not passing on the question of priority between the mortgage claim of defendant Syjuco and that of the Philippine National Bank on the same set of properties on the ground that they are situated in a province different from that in which this action was brought? We will discuss these issues in the order in which they are propounded.

- It appears that plaintiff obtained from defendant Syjuco two loans in 1944; One is for P200,000 obtained on May 5, 1944, and another for «6,000 obtained on July 31, 1944. These two loans appear in two promissory notes signed by the plaintiff which were couched in practically the same terms and conditions and were secured by two deeds of mortgage covering the same parcels of land. In said promissory notes it was expressly agreed upon that plaintiff shall pay the loans "within one year from May 5, 19⁴⁸, * * * peso for peso in the coin or currency of the Government of the Philippines that, at the time of payment above fixed, it is the legal tender for public and private debts, with Interest at the rate of 6% per annum, payable in advance for the first year, and semi-annually in advance during the succeeding years", and that, the period above set forth having been established for the mutual benefit of the debtor and creditor, the former binds himself to pay, and the latter not to demand the payment of, the loans except within the period above mentioned. And as a corollary to the above stipulations, It was likewise agreed upon in the two deeds of mortgage that nif either party should attempt to annul or alter any of the stipulations of this deed or of the note which it secures, or do anything which has for its purpose or effect an alteration or annulment of any of said stipulations, he binds himself to indemnify the other for the losses and damages, which the parties hereby liquidate and fix at the amount of P200,000".

The facts show that, on November 15, 1944, or thereabouts, contrary to the stipulation above mentioned, plaintiff offered to pay to the defendant not only the principal sum due on the two promissory notes but also all the interests which said principal sum may earn up to the dates of maturity of the two notes, and as the defendant refused to accept the payment so tendered, plaintiff deposited the money with the clerk of court and brought this action to compel the defendant to accept it to relieve himself of further liability.

The question now to be determined is, is the consignment made by the plaintiff valid in the light of the law and the stipulations agreed upon in the two promissory notes signed by the plaintiff? Our answer is in the negative.

In order that consignment may be effective, the debtor must first comply with certain requirements prescribed by law. The debtor must show (1) that there was a debt due; (2) that the consignment of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or Incapacitated, or because several persons claimed to be entitled to receive the amount due (Art. 1176, Civil Code); (3) that previous notice of the consignment had been given to the person interested in the performance of the obligation (Art. 1177, Civil Code); (4) that the amount due was placed at the disposal of the court (Art. 1178, Civil Code); and (5) that after the consignment had been made the person interested was notified thereof (Art. 1178, Civil Code). In the instant case, while it is admitted that a debt existed, that the consignment was made

because of the refusal of the creditor to accept it, and the filing of the complaint to compel its acceptance on the part of the creditor can be considered sufficient notice to the consignation to the creditor, nevertheless, it appears that at least two of the above requirements have not been complied with. Thus, it appears that plaintiff, before making the consignation with the clerk of court, failed to give previous notice thereof to the person interested in the performance of the obligation. It also appears that the obligation was not yet due and demandable when the money was consigned, because, as already stated, by the very express provisions of the document evidencing the same, the obligation was to be paid within one year after May 5, 1948, and the consignation was made before this period matured. The failure of these two requirements is enough ground to render the consignation ineffective. And it cannot be contended that plaintiff is justified in accelerating the payment of the obligation because he was willing to pay the interests due up to the date of its maturity, because, under the law, in a monetary obligation contracted with a period, the presumption is that the same is deemed constituted in favor of both the creditor and the debtor unless from its tenor or from other circumstances it appears that the period has been established for the benefit of either one of them (Art. 1127, Civil Code). Here no such exception or circumstance exists.

It may be argued that the creditor has nothing to lose but everything to gain by the acceleration of payment of the obligation because the debtor has offered to pay all the Interests up to the date it would become due, but this argument loses force if we consider that the payment of Interests is not the only reason why a creditor cannot be forced to accept payment contrary to the stipulation. There are other reasons why this cannot be done. One of them is that the creditor may want to keep his money invested safely instead of having it in his hands (*Moore vs. Cord* 14 Wis. 231). Another reason is that the creditor by fixing a period protects himself against sudden decline in the purchasing power of the currency loaned specially at a time when there are many factors that influence the fluctuation of the currency (*Kemmerer on Money*, pp. 9-10). And all available authorities on the matter are agreed that, unless the creditor consents, the debtor has no right to accelerate the time of payment even if the premature tender "included an offer to pay principal and interest in full" (17 A.L.R. 866-867; 23 L.R.A. (N.S.) 43; see ruling of this Court in the recent case of *Ilusorio vs. Busuego*, G.R. No. L-882, September 30, 1949).

Tested by the law and authorities we have cited above, the conclusion is Inescapable that the consignation made by the plaintiff is invalid and, therefore, did not have the effect of relieving him of his obligation.

- The next question to be determined is whether the lower court erred in reducing the amount of the loans by applying the Ballintyne schedule.

This is not the first time that this question has been raised. On two previous occasions this Court had been called upon to rule on a similar question and has decided that when the creditor and the debtor have agreed on a term within which the payment of the obligation should be paid and on the currency in which payment should be made, that stipulation should be given force and effect unless it appears to be contrary to law, moral or public order. Thus, in one case this Court said: "One who borrowed P4,000 in Japanese military notes on October 5, 1944, to be paid one year after, in currency then prevailing, was ordered by the Supreme Court to pay said sum after October 5, 1945, that is, after liberation, in Philippine currency (*Roño vs. Gomez et al.*, G.R. No. L-19⁷, May 31, 1949). In Another case, wherein the parties executed a deed of sale with pacto de retro of a parcel of land for the sum of P5,000 in Japanese military notes agreeing that within 30 days after the expiration of one year from June 24, 1944, the aforementioned land may be redeemed sa ganito ding halaga (at the same price), the Court held that the phrase "sa ganito ding halaga" meant the same price of P5,000 in the currency prevailing at the time of redemption and not the equivalent in Philippine currency of P5,000 in Japanese war notes". The Court further said, "The parties herein gambled and speculated on the date of the termination of the war and the liberation of the Philippines by America. This can be gleaned from the stipulation about redemption, particularly that portion to the effect that redemption could be effected not before the expiration of one year from June 24, 1944. This kind of

agreement is permitted by law. We find nothing immoral or unlawful in it"(Gomez vs. Tabia, G.R. No. L-1826, Aug. 5, 1949).

In this particular case, the terms agreed upon are clearer and more conclusive than the ones cited because the plaintiff agreed not only not to pay the obligation within one year from May 5, 1948, but also to pay peso; for peso in the coin or currency of the Government that at the time of payment it is the legal tender for public and private debts. This stipulation is permitted by law because there is nothing immoral or improper in it. And it is not oppressive because it appears that plaintiff used a great portion of that money to pay his obligations during the Japanese occupation as shown by the fact that he settled his account with the Philippine National Bank and other accounts to the tune of P100,000. It would seem therefore clear that plaintiff has no other alternative than to pay the defendant his obligation peso; for peso in the present currency as expressly agreed upon in the two promissory notes in question. The decision of the lower court on this point should, therefore, be modified.

As regards the penal clause contained in the two deeds of mortgage herein involved, we agree to the following finding of the court a quo: "The attempt made by the plaintiff to pay the obligation before the arrival of the term fixed for the purpose may be wrong; but it may be attributed to an honest belief that the term was not binding and not to a desire to modify the contract". This penal clause should be strictly construed.

- As regards the third question, we find that the lower court erred in disregarding the defense of moratorium set up by the plaintiff against the counterclaim of the defendant on the sole ground that this defense was not raised by the plaintiff in his pleadings. An examination of the record shows that the plaintiff raised this question in his pleadings. This must have been overlooked by the court.

The lower court, therefore, should have passed upon this defense in the light of Executive Order No. 25, as amended by Executive Order No. 32, which suspended payment of all obligations contracted before March 10, 1945. We note, however, that said moratorium orders have already been modified by Republic Act No. 342 in the sense of limiting the ban on obligations contracted before the outbreak of war to creditors who have filed claims for reparations with the Philippine War Damage Commission, leaving them open to obligations contracted during the Japanese occupation (Uy vs. Kalaw Katigbak, G.R.No. L-1830, Dec. 1, 1949). As the obligation in question has been contracted during enemy occupation the same is still covered by the moratorium orders. The claim of counsel for the defendant that the moratorium orders cannot be invoked because they are unconstitutional cannot now be determined it appearing that it has been raised for the first time in this instance. This defense of moratorium was raised by plaintiff in his reply to the amended answer of the defendant dated August 1, 1946, and in his motion to dismiss the counterclaim dated October 29, 1946, but the defendant did not traverse that allegation nor raise the constitutionality of the moratorium orders in any of its pleadings filed in the lower court. It is a well known rule that this Court can only consider a question of constitutionality when it has been raised by any of the parties in the lower court (Laperal vs. City of Manila, 62 Phil. 352; Macondray & Co. vs. Benito and Ocampo, 62 Phil. 137).

- The facts relative to the execution of the deed of mortgage in favor of the Philippine National Bank on the two lots in question are as follows: On March 9, 1936, the Philippine National Bank was the owner of lots Nob. 872 and 871 of the Murcia Cadastre, Negros Occidental, covered by Certificates of Titles Nos. 17175 and 17176 respectively. On the same date, the Bank sold the two lots to the plaintiff and as a result Transfer Certificates of Titles Nos. 398 and 399 were issued in the name of the plaintiff. On May 5, 1944, plaintiff mortgaged these lots to defendant Syjuco to guarantee the payment of two loans, one for 7200,000 and another for 716,000. The mortgage was registered in accordance with law. Then liberation came. Plaintiff taking advantage of the destruction of the records of the office of the Register of Deeds of Negros Occidental, obtained from the Court of First Instance of said province the reconstitution of Transfer Certificates of Titles Nos. 17175 and 17176 and, by virtue thereof, the

register of deeds issued transfer certificates of titles Nos.1297-R and 1298-R. In the name of the Philippine National Bank. Then he secured the cancellation of the titles last named and the issuance of Transfer Certificates of Titles Nos. 526-N and 527-N in his name without informing the court of the encumbrance existing in favor of defendant Syjuco. After securing the new titles In his name, plaintiff obtained a loan from the Philippine National Bank for the sum of P135,000 on the security of the property covered by said reconstituted titles. On said titles no encumbrance appears annotated, but it was noted thereon that they would be subject to whatever claim may be filed by virtue of documents or Instruments previously registered but which, for some reason, do not appear annotated thereon, as required by a circular of the Department of Justice.

From the foregoing facts, it clearly appears that the mortgage executed in favor of defendant Syjuco is prior in point of time and in point of registration to that executed in favor of the Philippine National Bank, let alone the fact that when the later mortgage was executed, the Bank must have known, as it was its duty to find out, that there was a warning appearing In the reconstituted titles that the same were subject to whatever encumbrance may exist which for one reason or another does not appear in said titles. With such warning, the Bank should have taken the necessary precaution to Inquire into the existence of any hidden transaction or encumbrance that might affect the property that was being offered in security such as the one existing in favor of the defendant, and when the Bank accepted as security the titles offered by the plaintiff without any further Inquiry, it assumed the risk and the consequences resulting therefrom. Moreover, it also appears that this same question of priority has already been threshed out and determined by the Court of First Instance of Negros Occidental in the cadastral proceedings covering the two lots In question wherein the court ordered the cancellation of the reconstituted titles Issued In the name of the plaintiff and the reconstitution of the former titles copies of which were In the possession of defendant Syjuco, subject only to the requirement that the mortgage in favor of the Philippine National Bank be annotated on said new titles. In other words, the court declared valid the titles originally issued in the name of the plaintiff wherein the encumbrance In favor of the defendant Syjuco appears and declared Invalid the reconstituted titles secured by plaintiff through fraud and misrepresentation. This order is now final because no appeal has been taken therefrom by any Interested party.

We have, therefore, no other alternative than to declare that the mortgage claim of the defendant Syjuco Is entitled to priority over that of the Philippine National Bank. This question can be threshed out here regardless of venue because the counterclaim Is but ancillary to the main case (1 Moran, Comments on the Rules of Court, 2nd ed., 201).

In view of the foregoing, the decision appealed from should be modified In the sense of ordering the plaintiff to pay to defendant Syjuco the sum of P216,000, Philippine currency, value of two promissory notes, with Interest thereon at the rate of 6% per annum from May 6, 1949, until said amount is paid in full. It is further ordered that should said amount, together with the corresponding interests, be not paid within 90 days from the date this Judgment becomes final, the properties mortgaged should be sold at public auction, and the proceeds applied to the payment of this judgment in accordance with law, with costs against the plaintiff.

However, this Judgment shall be held In abeyance, or no order for the execution thereof shall be issued, until after the moratorium orders shall have been lifted.

Feria, Bengzon, Tuason, Reyes, and Jugo JJ., concur.

DISSENTING

PARAS, C. J.,

The plaintiff obtained from, defendant Syjuco on May 5, 1944, a loan of P200,000 and on July 31, 1944, another loan of P16,000, payable "within one year from May 5, 1948." On November 15, 1944, the plaintiff offered to pay the entire indebtedness plus all the interest up to the date of maturity. Upon Syjuco's refusal to accept the tendered payment, the plaintiff deposited the amount with the clerk of the Court of First Instance of Manila and instituted the present action .to compel Syjuco to accept payment. The records of the case were destroyed during the war, but they were duly reconstituted after the liberation. The trial court sentenced the plaintiff to pay to Syjuco the total sum of P23,130, representing the whole indebtedness plus interest from August 6, 1944, to May 5, 1949, computed according to the Ballantyne scale of values. From this judgment Syjuco has appealed, claiming the right to be paid the sum of P216,000, actual Philippine currency, plus P200,000 as penalty agreed upon in the contract. The majority of this Court sustains Syjuco's claim for P216,000.

As the same questions have been resolved in *Ilusorio vs. Busuego*, G. R. No. L-822, September 30, 1949,[1] *Roño vs. Gomez*, May 31, 1949,[2] 46 O. G., Supp. to No. 11, p. 339, and *Gomez vs. Tabia*, August 5, 1949,[3] 47 O. G. 644, in which I dissented, I have to disagree with the majority in the case at bar.

On the question whether a debtor can pay an indebtedness before the date of maturity provided corresponding interest is paid, I said the following in *Ilusorio vs. Busuego* .

"In other words, I hold that the mortgagor has the right to pay the indebtedness at any time within three years provided that, as in this case, he pays the interest for the whole term of the mortgage. In the ordinary course of things, a loan is granted in consideration of interest, and if by the early payment of the obligation, the creditor would not lose any part of the stipulated interest, both paragraphs 3 and 4 would practically be enforced. It cannot be alleged that the creditor herein, in addition to interest, wanted to have his money in the safekeeping of the debtor, because the contract is one of loan and not of deposit. It is to be remembered, moreover, that the debt was being paid in the same currency loaned (Japanese money). The effect of inflation is one of the risks naturally incident to the money-lending business, and the lender should protect himself against it by plain covenants."

On the matter of requiring a loan obtained in Japanese war notes to be paid after the liberation in equivalent Philippine currency, I am hereinbelow reproducing at length what I stated in *Bofio vs. Gomez* which should have greater application and force, because while in the *Bono* case the amount of the loan is only 54,000, in the case at bar, the debtor is being ordered to pay the large sum of P216,000:

"The principal defense set up by *Bono* is that the note is contrary to law, morals or public order. This defense was flatly overruled in the court of origin, seconded by the Court of Appeals. The judgment of the latter court is now before us upon appeal by certiorari of *Cristobal Bono*.

"The situation is one in which a borrower of P4,000.00 in Japanese war notes is made to pay the same amount in currency of the present Philippine Republic. In other words, the borrower of P4,000 during the latter part of the Japanese military occupation which in ordinary practical terms, could hardly purchase a cavan of rice, is now compelled to pay P4,000.00 in actual Philippine currency which, in the same ordinary practical terms, may be held equivalent to at least 100 cavanes of rice. Said borrower is compelled to do so, merely because in his promissory note he agreed to pay after one year in pesos of the Philippine currency, and expressly waived any postwar arrangement devaluating the amount borrowed in October, 1944.

"The Court of Appeals held that the commitment of *Cristobal Roño* to settle his indebtedness in the legal tender at the time of payment is not against the law, morals or public order. We readily acquiesce in the

proposition that the contract is not contrary to law or public order, for we are aware of no statute or public policy which prohibits a person from bringing about or causing his own financial reverses. But we are of the opinion that, if enforced to the letter, it is against morals. If the contract was entered into in times of peace, its obligations should have the force of law between the parties and must be performed in accordance with their stipulations (Art. 1091, Civil Code). But when as in the case at bar, the borrower had to obtain a loan during war time, when living conditions were abnormal and oppressive, everything was uncertain, and everybody was fighting for his survival, our conscience and common sense demand that his acts be judged by compatible standards.

"The Court of Appeals found that everybody was aware of the developments of the war outside of official propaganda and that, in so far as knowledge of war events is concerned, Roño was more or less on an equal footing with Gomez. This means that all knew the bombings by the American air forces of various parts of the Islands in September, 1944, and of the decisive defeats of the Axis powers in Europe, and that the mighty forces of the Allies would soon, as in fact they did, concentrate on and crush Japan, with the result that the Japanese war notes would accordingly become worthless. It may of course be supposed that Roño knowingly bound himself to his pact. But this is true merely in theory. Although, as found also by the Court of Appeals, Roño was not entirely an ignorant man because he is a mechanic and knows English, the fact nevertheless remains that the lender, Jose L. Gomez, was a lawyer, and the exaggerated way the promissory note is worded plainly shows that the latter must have thoroughly studied the transaction with Roño and imposed the conditions evidenced therein to his one-sided advantage. It is needless to say that borrowers are always at the mercy of unscrupulous money lenders. 'Necessitous men are not, truly speaking, free men; but, to answer a present emergency, will submit to any terms that the crafty may impose upon them.' (Marquez et al. vs. Valencia, 44 O. G. p. 895, 897[*]), quoting Villa vs. Santiago, 38 Phil. 157, 164). We cannot believe, as intimated in the testimony of Sinforosa A. de Gomez (wife of Jose L. Gomez), that Roño informed them that he would use the money to purchase a jitney, for the simple reason that, in view of the inflated value of the Japanese war notes in October, 1944, the amount of P4,000 could not possibly purchase a jitney. At any rate, even accepting the conjecture that said amount was invested by Roño in his business, the circumstance still makes him a necessitous man that had to submit to the terms of his lender. That a contract like the one in question is shocking to the conscience and therefore immoral becomes patent. When we resort to the example of a borrower of P2,000.00 just before the liberation, when a kilo of sugar already cost P2,000.00, being compelled! to pay the same in Philippine currency now when a kilo of sugar hardly costs P0.50. Where is the conscience of anyone who will collect P2,000.00 for a loan of virtually fifty centavos?

"The Court of Appeals argued that the parties took equal risks, since it was impossible to predict the exact time at which the Philippines would be liberated and that, supposing that the liberation had been delayed for more than one year, Gomez might have been the loser and Roño the winner, for the Japanese currency might have further diminished in value. To this we would answer that Gomez would then be paid in the same currency that was borrowed and during the same war time when the loan was extended. This would not be unusual, as the parties are still under the very environment's that surrounded the execution of the contract."

I may add the following observations contained in my dissenting opinion in Gomez vs. Tabia:

"The majority also hold that the contract here in question is aleatory. This is open to doubt. Aleatory contracts, or those depending on chance, are covered by Title HI, Book IV, of the Civil Code. It is to be noted that, under article 1790, an aleatory contract involves the occurrence of an event which is uncertain or will happen at an indeterminate time. Moreover, the contracts contemplated by the Code as being aleatory, are grouped under insurance, contracts, gambling and betting, and life annuities. It follows that the contract now under consideration, which is one of loan, does not fall under any of those groups of aleatory contracts. At any rate, the contract of loan herein involved is clearly not dependent upon any uncertain event. The loan was granted on a definite date and has to be paid on a definite date. Both dates are certain. The payment of the loan has to be effected regardless of the result of the war.

"As the contract in question contemplated that the payment is to be made in the same currency that was loaned, and the parties are presumed never to have intended that said payment would be made in what has become valueless money, justice demands that the indebtedness be paid in actual Philippine currency at an equivalent amount determined in the Ballantyne schedule, in the absence of evidence as to such value. The exceptions mentioned in the Ballantyne schedule refer to contracts in which the obligation is payable by something other than legal tender. Indeed, the majority in *Hilado vs. De la Costa et al.*,[*] G. R. No. L-150, decided on April 30, 1949, held that 'what the debtor should pay is the value of the Japanese war notes in relation to the peso of Philippine currency obtaining on the date when and at the place where the obligation was incurred, unless the parties had agreed otherwise.' This underscored clause undoubtedly contemplates an agreement to pay in a consideration other than legal tender of the Philippine, such as gold doilars, pounds sterling, Spanish pesetas, or the like. It cannot be otherwise, since if the intention is merely to pay in legal tender, no express stipulation is necessary, because under section 1612 of the Revised Administrative Code, the Philippine currency is the legal tender for all debts.

"In reiteration of my stand in the case of *Roño vs. Gomez*, supra, I wish to emphazise that to require the herein respondent to pay the sum of P5,000.00, actual Philippine currency, in return for an indebtedness obtained in Japanese military notes equivalent in actual Philippine currency according to the Ballantyne schedule, to only P790.26 as found by the Court of Appeals, is unconscionable."

In my considered opinion, the appealed judgment should at most be affirmed.

Pablo, J., concurs

[1] 84 Phil., 630.

[2] 83 Phil., 890.

[3] 84 Phil., 269. .

[*] 77 Phil., 782.

[*] 83 Phil., 471.

DISSENTING

PADILLA, J.,

I.dissent. A loan of a sum of money is usually made for the purpose of earning interest. The creditor should not be allowed to exact and impose unfair terms and conditions, such as that of barring the debtor from paying the principal of the loan before the time agreed upon. By the payment of the principal of the loan together with the stipulated interests accrued and to accrue up to thru time agreed upon for payment of the principal, the purpose or aim of the loan is attained—all to the advantage and benefit of the creditor. The stipulated sum to be paid by the debtor as penalty or liquidated damages equal to the principal of the loan if payment thereof be made before the agreed upon, even if the debtor pays at the same time the stipulated interests accrued and to accrue up to the time agreed upon for payment of the principal, is contra bonos mores, against public policy, and should be disregarded and deemed as not written in the contract.

A loan of P200,000 in Japanese war notes was made on 5 May 1944, payable within one year from 5 May 1944. An additional loan of P16,000 in Japanese war notes was made on 31 July 1944, payable within the same period of time as the previous one. On different occasions in October 1944, the debtor tendered the sum of P254,330 in

full payment of the principal of the loan and the stipulated interests up to 5 May 1948, a tender refused by the creditor. In view of this refusal, the debtor deposited the sum and filed a complaint in the competent court to compel the creditor to accept the sum thus tendered and deposited.

To compel the debtor after the moratorium shall have been removed to pay in the present currency the principal of the loan made in Japanese war notes, which at the time of the loan had very little value or purchasing power, and the stipulated interests up to the date of payment thereof, is so shocking to the conscience of a fair-minded person that it will constitute a blot on the administration of justice in this Republic. To that I cannot give my assent.

The requirement that previous notice of consignment be made to the creditor was practically complied with by the deposit in court of the sum of money tendered and the filing of the complaint by the debtor against the creditor to compel the latter to accept the payment of the sum of money thus tendered and deposited. The notice of consignment is superfluous where a complaint is filed and the sum of money tendered for payment of the principal of the loan and stipulated interests is deposited in court, because to avoid litigation the creditor or any party interested in the fulfillment of the obligation may-still accept the payment of the sum of money deposited after he receives the summons. It does not appear in this case that any party other than the creditor was interested in the fulfillment of the obligation at the time the consignment was made.

The cross-claim of the creditor should have been dismissed. The consignment made by the debtor should have been upheld, or if the provisions as to consignment not adhered to or complied with, then the creditor should be entitled at most to the sum awarded by the trial court.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.