

**DOMINADOR NICOLAS AND OLIMPIA MATIAS, PETITIONERS, VS,
VICENTA MATIAS AND AMADO CORNEJO, JR., RESPONDENTS.***G. R. No. L-1743. May 29, 1951*

Ponente: BENGZON, J.

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This is a review by certiorari of a decision of the Court of Appeals, which found the following material facts briefly stated:

On June 29, 1944 Vicenta Matias, widow, and her son Amado Cornejo Jr. executed in favor of Dominador Nicolas and his wife Olimpia Matias a promissory note for P30,000, payable "within the sixth year" from that date with 6 per cent interest due annually in advance. On the same day a mortgage of four parcel of land in Nueva Ecija was notarized to secure repayment of the loan, which, by the way, was made in Japanese military notes. On July 15, 1944 the debtors having come by sufficient funds, offered to liquidate the indebtedness with interest for five years, but the creditors refused to receive the money. Wherefore in August 1944 said debtors deposited the amount of P39,000 in court (principal and interest) and filed this action to compel the defendants to accept the money and to discharge the mortgage.

The foremost defense was that the loan could not be repaid until the sixth year from the date of the mortgage.

The Court of Appeals believed the term had been established for the benefit of both the debtors and the creditors and held that inasmuch as the interest for the full period of five years had been offered to the creditors (P39,000) they had no right to reject the payment. It declared the consignment valid and the debt totally discharged.

In commenting article 1127 and others of the Civil Code Manresa says that if the term is for the benefit of both parties, the creditor may not demand payment and the debtor cannot make a binding tender and consignment of payment before the period stipulated (Manresa, Vol. 8, p. 163). According to American jurisprudence.

"10. Anticipating Due Date.—As a general rule, a creditor can no more be compelled to accept payments on a contract before, by the terms thereof, they are due, than can the debtor be compelled to make such payments before they are due. In other words, a debtor has no right, without the consent of the creditor, to anticipate the payment of a debt payable at a future day, and bearing interest; nor may a creditor be compelled by statute to accept such a payment. Thus, in contracts for the sale of land the vendor is not obliged to accept payment by the vendee before the time fixed for performance, the holder of a note need not accept a tender of payment before the note is due, and it is held that a tender before maturity of the amount of principal and interest which will be due at maturity on a mortgage is not sufficient to discharge the lien * * *." (40 Am. Jur., p. 718.)

The court a quo declined to apply the above principles reasoning out that the only benefit accruing to the creditors from the period was the stipulated interest; and inasmuch as interest for the whole period had been tendered they had no excuse for declining to receive the money. We can not entirely agree. The creditors evidently stipulated that repayment could not be made within five years because they wanted to derive some advantage from the

change of currency which they foresaw or awaited. The creditors wisely provided against repayment in Japanese notes that were then of little value, making the calculation that after five years the Japanese would not be here and the said notes would have ceased to be lawful currency.

Anyway supposing that interest was the only benefit the creditors could expect within the said period, acceleration of payment could not legally be made, because the Usury Law specifically prohibits payment of interest in advance for more than one year. In other words the creditors could have validly argued: "Under the mortgage We would be entitled to receive interest for five years. But if you make payment now, we cannot demand nor receive interest for more than one year without violating the Usury Law that prohibits the charging in advance of interest for more than one year.[1]Therefore we refuse to take the payment." The ruling in *Sarmiento and Villasenor vs. Javellana* 43 Phil., 880 backed them up.

In *Ilusorio vs. Busuego* (84 Phil., 630) a debt of P35,000 contracted on May 3, 1943 was made payable after three years from that date. On April and July 1944 the debtor tendered the principal plus interest for three years, and sued the creditor to compel acceptance. We decline to require the creditor to take the money, and ignored the claim that he had no right to refuse payment inasmuch as interest for the whole period had been offered. This decision is a binding precedent, because here the debt was expressly payable "within the sixth year" which means, "after five years."

Hence we must of necessity declare that the offer and consignment were not valid, except for the satisfaction of the interest for the year 1944 which was then due. The appealed decision will thus be modified. Although the defendants have asked for judgment against the plaintiffs "in the sixth year from 1944" for the amount of the note plus interest, we must decline to render such judgment now, firstly because at the time the case was instituted the mortgage was not yet payable, and secondly because there is the moratorium law. Anyway they will be at liberty to collect that mortgage plus interest when the moratorium is lifted, and in that foreclosure proceedings the amount of recovery shall be determined. Let judgment be entered accordingly. So ordered.

Feria, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] Usury Law sees. 5 and 6 as amended by Act No. 3998, *Hodges vs. Salas*, 36 Off. Gaz., 398.

DISSENTING

PARAS, C. J., with whom concurs PADILLA, J.,

I dissent for the reasons stated in my dissenting opinion in the case of *Ilusorio vs. Busuego* cited in the opinion of the majority.

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