

JOSEPH REICH, PETITIONER, VS. EDMUND SCHWESINGER AND THE COURT OF APPEALS, RESPONDENTS.

G. R. No. 16525. January 31, 1963

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari from the decision rendered by the Court of Appeals in C. A.—G.R. No. 17935-R affirming that of the Court of First Instance of Manila in Civil Case No. 26610, of the following tenor:

"Wherefore, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering Van latter to pay to the plaintiff the sum of four thousand five hundred pesos (P4,500.00) plus interest thereon at 9% per annum from February 1, 1937, and the sum of four thousand pesos (P4,000.00) with interest thereon at 9% per annum from October 1, 1937, until paid (Exhibit B). The claim for attorney's fees and damages is denied. "With costs against the defendant."

The facts found by the Court of Appeals are as follows:

"The evidence discloses that in 1937 the defendant Joseph Reich borrowed from the plaintiff Edmund Schwesinger 10,000 shares of stock of the Nielson and Company, Inc. exhs. 1 and J). Due to his failure or inability to return these shares, Reich executed on February 1, 1937 the promissory note, exh. A, in favor of Schwesinger for the sum of P4,500.

"The evidence further shows that in 1936 the defendant borrowed P4,000 from the plaintiff, in connection with which he executed in favor of the latter on October 1, 1937 the promissory note, exh. B. "The above mentioned notes do not state the dates of their respective maturity; they must therefore be deemed payable on demand.

"The evidence for the plaintiff shows conclusively that he has made repeated demands upon the defendant for payment, with interest, of the amounts covered by the promissory noted, consisting of statements of accounts (exhs. C to C-28) mailed from time to time to the defendant, but the latter has failed to pay."

As the two promissory noted in question were payable on demand, the Court of Appeals correctly held—citing *Falkner vs. Protective Insurance Company* (1934), 228 Ala. 57—that they were due immediately after delivery, and that the corresponding period of prescription started to run from the date of such delivery (*Mugas vs. Koisha*, 276 Pac. 315). As a consequence said court held that, as the promissory note Exhibit A, matured o February 1 1937 , and the second marked Exhibit B matured on October 1, 1937 , the causes of action of respondent Schwesinger were supposed to prescribe on February 1, 1947 and October 1, 1947, respectively.

Affirming the decision of the lower court, however, the Court of Appeals rules that—

"* * * the Moratorium Law which was in force from May 1945 to May 1953 interrupted the running of the prescriptive period of ten years. Moreover, the said period was also interrupted on December 8, 1941, upon the outbreak of World War II (*Adela Vda. De Montilla vs. Pacific Commercial Co.*, 98 Phil., 133), as well as by the written demands made by the appellee upon the appellant. Without the need of making a detailed

exposition of the periods of suspension, it is clear that when the present action was commenced on June 21, 1955, the ten-year period of prescription for bringing action on the two promissory notes had not yet elapsed."

In this appeal petitioner insists that the causes of action of above named respondent had already prescribed when the present action was commenced on June 21, 1955, considering that Republic Act 342 lifted the moratorium with respect to petitioner—a British subject who had no right to file a claim for war damage—and considering further that the outbreak of the war on December 8, 1941 did not suspend the running of the period of prescription as far as it concerned the causes of action of Schwesinger—a Filipino citizen—against petitioner.

We find no merit in petitioner's contentions.

In the case of *Adella Santos Vda. de Montilla vs. Pacific Commercial Company*, 98 Phil., 133 promulgated on December 20, 1955, we held:

"We should not overlook the fact that war broke out in the Pacific on December 2, 1941 between the United States and Japan, the effects of which affected adversely the Philippines. Its immediate result was the occupation of Manila by the Japanese Imperial Forces on January 1, 1942 and of the City of Iloilo on April 16, 1942 and the consequent establishment of the occupation government. This situation cannot but cause disturbance in the normal life of the people and the regular processes of our courts. In fact, these processes became paralyzed until they were restored in those places where a semblance of peace existed upon orders of the army of occupation. While it may be said that in those places where our courts of justice resumed their functions, including Manila and Iloilo City, the statutes of limitations may not be said to have been suspended by the state of war, because then any citizen or national could invoke the aid of the courts for the enforcement or vindication of his rights, as was stated by this Court in a number of cases (*Palma, et al. vs. Celda*, 81 Phil., 416, Supp. Off. Gaz. Vol. 46, p. 198; *España vs. Lucido*, 8, Phil., 419), the same situation does not obtain when the parties affected are enemy aliens who by the laws of war are generally interned or placed in concentration camps. And while it has been held that 'a resident or alien of any nationality is not necessarily debarred from maintaining an action by the circumstance of his interment as a civilian prisoner of war' (56 Am. Jur. 247), however, this only holds true in the absence of any governmental regulation to the contrary, and as a rule, for obvious reasons, an occupation government adopts a restricted measure on this matter (*Ex parte Kawato*, 317 U.S. 69). And so it has been generally held that 'A foreign or international war suspends the operation of the statute of limitations between the citizens of the countries at war as long as the war lasts, at least as regards enemy aliens resident in enemy territory' (54 C.J.S., p. 289). And in connection with enemy aliens residing in the Philippines during the war the Japanese Military Administration issued instruction No. 28 decreeing the suspension of court actions affecting enemy aliens except in cases where express authority is obtained from the military authority (Vol. 1, Off. Gaz. No. 5, p. 216).

"It would therefore appear that our statutes of limitations cannot apply to herein appellant which is an American owned company whose stockholders and officers were enemy aliens who were then interned or hiding during the occupation and who because of their precarious situation were not in a position to invoke the aid of the courts, even if they wanted to, for the protection of their interest or of their company. And it would be most unfair if we were now to apply to appellant the effects of such statute simply because of the alternative afforded to enemy aliens by the military order that they could secure the requisite authority for the enforcement of their right. As the court can take judicial notice, such a predicament was most difficult, if not fraught with danger to life and security, and so it is our considered opinion that, in the light of the situation above outlined, the cause of action of appellant to enforce the present claim cannot be deemed to have been barred by the statute of limitations."

It is clear from the above decision that our statutes of limitation do not apply to an alien who, because he was interned during the war, was not in a position to invoke the aid of the courts, and that it would be most unfair to apply to such alien the effects of said statutes simply because of the alternatives given to any enemy alien, by

Instruction No. 28 issued by the Japanese Military Administration. Otherwise stated, our statutes of limitation were suspended upon the outbreak of the Second World War in this country on December 8, 1941, as far as interned aliens were concerned.

But petitioner contends that the above ruling applied only to an interned alien creditor, and that it should not apply to the present case where the creditor is a Filipino citizen who was free to sue his debtor—an interned alien. This argument loses sight of the fact that Instruction No. 28 issued by the Japanese Military Administration mentioned above decreed the suspension of court actions affecting enemy aliens, without limiting the suspension to the case of an enemy alien who had a right to enforce through the courts. Of course the Instruction provided that a court action affecting an enemy alien could be commenced or prosecuted if this was expressly authorized by the military authorities at the time. In this connection we said in the Montilla case that we can take judicial notice of the fact that, to ask for such express authority "was most difficult, if not fraught with danger to life and security" and that because of this we said that it would be "most unfair if we were now to apply to appellant (Pacific Commercial Company) the effects of such statutes simply because of the alternatives afforded to enemy aliens by the military order that they could secure the requisite authority for the enforcement of their rights". These considerations apply with equal if not greater force to the case of a Filipino creditor—like Schwesinger—whose debtor was an interned alien, whose properties must have been confiscated by the enemy. Why should such creditor be expected to enforce his right against his debtor while the latter was money-less and helpless to defend himself? Would not that have made the interned alien's misfortune more serious and unbearable? And then, considering that the invader must have confiscated the debtor's properties, why should the creditor be expected to court "danger to life and security" by asking the Japanese Military Authorities permission to sue his debtor?

In line with what has been stated, it is clear that the period of prescription, as far as respondent Schwesinger's cause of action based on the promissory note Exhibit A was concerned, was suspended on December 8, 1941, after four (4) years and ten (10) months of the said period had been consumed; that it remained so suspended after the war by reason of the Moratorium Law, and began to run anew only in the month of May 1953 when said law was declared void. As the present action was commenced on June 21, 1955, it appears abundantly clear that it was filed very well within the prescriptive period of ten years.

What has been said heretofore applies to the cause of action in favor of respondent Schwesinger against petitioner based on the promissory note Exhibit B.

Having arrived at the above conclusions, we hold that the decision appealed from should be, as it is hereby, affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B.L., Barrera, Paredes and Regala, JJ., concur.

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