

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
FLAVIANO LOPEZ VITO AND HIS WIFE MAXIMINA DEL CASTILLO
AND THE NORTH NEGBOS SUGAR CO., INC., DEFENDANTS AND
APPELLEES.**

G.R. No. 28884. September 08, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action was brought for the recovery of a mortgage credit. On July 25, 1918, the defendant spouses mortgaged certain realty located in the Province of Occidental Negros to secure the payment of a loan of P24,000 granted to them by the plaintiff, the Philippine National Bank. The mortgage deed was recorded in the office of the registrar of deeds of the province on July 26th of the same year.

By the terms of the mortgage contract the defendant spouses bound themselves to pay plaintiff P24,000 plus interest thereon at 8 per cent per annum, in ten annual installments of P3,602.64 each, payable on or before July 18th of each year from the date of said contract. On July 18, 1920, the defendants Flaviano Lopez and Maximina del Castillo paid a sum on account of this obligation, leaving a balance of P16,248.84 against them, binding themselves to pay the debit balance, or the sum of P16,248.84 with interest at 8 per cent per annum in eight annual installments of P2,844.68 each, payable on or before July 18th of each year, dating from July 18, 1920, in pursuance of the new scale of payment attached to the complaint.

The defendant spouses failed to pay the sums corresponding to the six yearly installments and interest thereon (from July 1920 to July 1926), and on May 31, 1927 the plaintiff instituted this action demanding of the defendants the payment of the installments due and unpaid, as well as of those corresponding to the years 1927 and 1928.

The defendant spouses answered with a general denial, and failed to appear at the trial.

After the plaintiff had adduced its evidence, the trial court rendered judgment ordering the defendants Flaviano Lopez Vito and Maximina del Castillo to pay the plaintiff the sum of P13,404.18, with interest at 8 per cent per annum from July, 1920, compounded semiannually, and the costs, reserving to the plaintiff the proper action for the last and undue annual installment of P2,844.88 and the interest thereon.

In due time and form, the plaintiff excepted to that part of the judgment reserving to the Philippine National Bank the proper action on the last annual installment of P2,844.88 and the interest thereon.

It is contended that the trial court committed an error in holding that the eighth annual installment of P2,844.88 is not yet demandable. In our opinion, this assignment of error is well taken.

The mortgage contract Exhibit A contains the following stipulation in paragraph 5:

"Fifth. That if the mortgagors, their heirs, executors or administrators at any time neglect, fail, or refuse to

comply with all or any of the stipulations and conditions of this mortgage, the mortgagee shall have the right to declare such stipulations and conditions violated and to proceed to the foreclosure of the mortgage."

According to article 1255 of the Civil Code the contracting parties may establish any agreements, terms and conditions they deem proper, provided they are not contrary to law, morals, or public order; and the agreement here copied is perfectly valid, since it is not contrary to law, good morals or public order, the only restrictions that the law imposes upon the contracting parties. The contract in question being valid, it is binding on the contracting parties in accordance with article 1278 of the Civil Code, as construed by this court in a long series of decisions. It is undeniable that the effect of the period agreed upon by the parties is to suspend the demandability of the obligation, in accordance with article 1125 of the Civil Code, which provides that obligations for the performance of which a day certain has been fixed shall be demandable only when that day arrives. But the defendants' right to avail themselves of the periods was by the will of the contracting parties themselves made subject to the resolutive condition contained in paragraph 5 of the above-quoted contract Exhibit A. Said condition has resolutive effects, since its fulfillment resolves the period and leaves the creditor at liberty to demand the performance of the debtors' obligations and to proceed to the foreclosure of the mortgage. According to the contract entered into by the parties, the obligation of the mortgagors was to pay the debt in yearly installments on a fixed day of each year, until it has been fully satisfied, but in case of non-fulfillment of any of the stipulations and conditions of the mortgage, such as the failure to pay any of the annual installments, the mortgagee could declare said stipulations and conditions violated and proceed to the foreclosure of the mortgage in accordance with law. We are of the opinion that the non-fulfillment of the conditions of the contract renders the period ineffective, and makes the obligation demandable at the will of the creditor.

It is true that the condition contained in paragraph 5 of the said mortgage contract is not quite explicit with respect to the maturity of the installments following that or those due and unpaid; but we take it that when the parties agreed that should the mortgagor fail to fulfill any of the conditions of the contract, such as the one to pay any of the installments, the mortgagee may declare such stipulations and conditions violated, and proceed to the foreclosure of the mortgage in accordance with law, the intention of said parties was to authorize the creditor in such a case to declare all the conditions of the contract violated, that is, to declare all the remaining installments due. And so it must be, because the creditor is not bound to declare the unpaid installments due, for they became due by the failure to pay.

Corpus Juris 41, page 848, enunciates the following doctrine: "In case of an agreement between the parties to the effect that the entire debt shall or may, at the election of the mortgagee, become due upon a partial default in payment of the mortgage debt, or an installment thereof, foreclosure may be had for the entire amount upon such default." In the case of *Phillips vs. Taylor* (96 Alabama, 426), it was held: "Where, by the terms of a mortgage given to secure the payment of several notes falling due at different dates, the mortgagee may declare the entire debt due on default in the payment of any of the notes, on such default before the maturity of all the notes according to their terms, the mortgagee may foreclose for the entire debt, or he may proceed for a present foreclosure only for the notes then due according to their tenor; but he cannot maintain a bill filed, not for a present foreclosure at all, but for the appointment of a receiver to take charge of the mortgaged property and collect the rents pending the maturity of all the notes, and for a foreclosure only when all the notes shall have matured," In *Biedka vs. Ashkenas* (197 New York Supplement, 851), it was held: "Where a mortgage provided that, on default of payment of any installment of principal or interest for 30 days after demand, the whole of the principal sum should become due, but the accompanying bond contained no such provision, there was no inconsistency between the mortgage and the bond, and on default in payment of an installment the entire balance of the principal became due." The same legal doctrine was upheld in *McLean vs. Presley's Adm'r.* (56 Alabama, 211): "Where the condition of a mortgage, given to secure the payment of several promissory notes, falling due at

different times, authorizes a sale of the mortgaged lands on default being made in the payment of 'the said promissory notes as they fall due,' the mortgagor is in default so soon as he fails to pay any of the notes at maturity; and the mortgagee may then sell the entire premises, not being divisible without impairment of their market value; and he may retain, out of the proceeds of sale, a sufficient amount to pay the notes not then due." In *Phipps vs. Lopinsky* (97 West Virginia, 457), the rule of law enunciated in the foregoing cases was confirmed. In this case it was said: "Default having been made in the payment of one of the notes secured by the trust deed, and there being an accelerating clause in the trust whereby all the remaining notes became due, the court could enter a decree for the full amount of the mechanic's lien and of the trust lien, and order a sale of the property to satisfy the decree." And the District Court of Montana, in the case of *First Trust & Savings Bank vs. Bitter Root Valley Irr. Co.* (251 Federal Reporter, 320), held: "Where an irrigation company's trust deed to secure its bonds was an entire contract, to be performed in installments, all bonds would become due upon a default in an installment."

Wherefore, the judgment appealed from must be, as it is hereby, modified, and it is declared that, as the mortgage installments in question have matured by the failure of the mortgagor to pay, the mortgagee may collect the whole debt, with interest thereon, including the P2,844.88 and the interest upon the last annual installment, and to proceed to the foreclosure of the mortgage in accordance with law, without prejudice to the easement of way noted on the back of the title to the mortgaged lands, in favor of the North Negros Sugar Co., Inc. Without special pronouncement as to costs. So ordered.

Avanceña C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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