

VALERIANA VALDEZCO, PLAINTIFF AND APPELLEE, VS. PAULINA FRANCISCO, DEFENDANT AND APPELLANT.*G.R. No. 28905. November 08, 1928*

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-28905/>**AVANCEÑA, C.J.:**

This is an action for the collection of a mortgage debt. It seeks the payment of such credit as remains unpaid and in default thereof to foreclose the mortgage.

On November 2, 1920, Joaquin Serna mortgaged the land described in the complaint to secure the payment of a debt of P25,000 owed to plaintiff Valeriana Valdezco (Exhibit A). In December of the same year Joaquin Serna sold the property mortgaged to plaintiff, to the defendant Paulina Francisco, executing the proper public instrument (Exhibit B) for that purpose. The register of deeds of the City of Manila issued a certificate of transfer of the mortgaged property to the defendant, recording on said deed the mortgage executed by Joaquin Serna in favor of the plaintiff. By virtue of this sale, the defendant was, with the plaintiff's consent, subrogated to all of Joaquin Serna's rights and obligations with respect to the mortgage in favor of the plaintiff. On April 12, 1923, the plaintiff extended the period for the payment of this debt and the defendant bound herself to pay 12 per cent interest per annum, instead of the 10 per cent stipulated between Serna and the plaintiff.

Subsequently the plaintiff filed an action against Joaquin Serna and the defendant Paulina Francisco for the payment of this debt. But that action was compromised by an agreement evidenced by instrument Exhibit 3, wherein it appears to have been admitted by the plaintiff that the defendant Paulina Francisco had paid the sum of P7,711.41, of which P5,000 was on account of the principal, for interest upon interest as per agreement, and the remainder as specified in said document. This instrument appears to have been subscribed by the plaintiff and delivered to the defendant, who has had it in her possession since it was executed, and who presented it in evidence at the hearing of this case. Deducting from the original debt of P25,000 the payments made according to Exhibit 3, there remains P20,000 which is the amount claimed in the complaint.

The trial court rendered judgment in favor of the plaintiff for the sums of P20,000 with 12 per cent interest per annum from September 1, 1924 until fully paid, P500 for court costs and attorney's fees, P1,005 for insurance premiums, and P707.54 as land tax on the mortgaged property, all to be paid within a period not less than three months, and, in case of failure to do so, that the mortgaged property be sold in order to effectuate this payment. The defendant appealed from this judgment.

Defendant filed a demurrer, which was overruled, and this is assigned as one of the lower court's errors. This demurrer was based on the failure of the complaint to express the parties civil status in order to determine their capacity to sue and be sued. While it is true that no such allegation is directly made in the complaint, yet, documents have been attached thereto as an integral part thereof, where from it appears that both plaintiff and defendant are widows and of age and this makes the complaint sufficient in this respect. The demurrer was also based on the fact that while the complaint alleges that Joaquin Serna's original debt was P25,000, only P20,000

are claimed without any explanation for the difference. But for this end the allegation in the complaint is enough, that out of the P25,000 which constituted the original debt, P20,000 remains unpaid.

Defendant also contends in this instance that the transaction between her and plaintiff is usurious, because interest was charged on interest due, so that if the former is added to the stipulated interest, the sum would exceed the rate fixed by law. It is sufficient to state on this point that such interest upon interest was collected on March 20, 1924, and defendant claims it only in her answer to this case filed February 12, 1927. The law fixes the period of two years within which to claim the usurious interest, and this period has already elapsed (*Arevalo vs. Dimayuga*, 49 Phil., 894). Furthermore, this court has already held (*Government of the Philippine Islands vs. Schenkel and Gonzales*, 43 Phil., 616; *Villaruel vs. Alveyda and Vicencio*, 46 Phil., 277), that interest charged upon the stipulated interest, if agreed upon, should not be counted in determining whether the interest exceeds the legal rate or not.

The appellant also contends that the sum of P1,100 has also been paid on account of the principal. She alleges that one Erwing Hart sold a house on G. Tuason Street to the plaintiff for the sum of P1,100, and that this sum was paid by the defendant for the account of the plaintiff, in order to have it deducted from her debt, in partial payment thereof. But, as a matter of fact, the plaintiff denies having bought such a house of Erwing Hart. It is said that the plaintiff signed a deed of said purchase, but such deed was not presented as evidence. It is likewise alleged that after said sale and by virtue of another contract, Erwing Hart remained in possession of the house as tenant, but the evidence shows that it was the defendant to whom Erwing Hart paid the rent. And it is also established by the evidence that the plaintiff was never in possession of the house. It is true that the plaintiff signed a receipt (Exhibit 1) for the sum of P11 as rent for this house, but according to the plaintiff, she did not receive this sum and only signed the receipt because Serna required it of her as a condition for paying her the interest on the P20,000. At any rate, there is not sufficient proof that plaintiff bought said house of Erwing Hart, and that defendant paid its price on account of plaintiff's credit against her.

The plaintiff agrees that the 12 per cent interest per annum on the P20,000 should be computed from September 20, 1924, instead of from the first day of said month.

In view of the foregoing, the judgment appealed from is modified to the extent of requiring the payment of 12 per cent interest on the P20,000 from September 20, 1924, instead of from the first day of said month, and affirmed in all other respects, without special pronouncement of costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real JJ., concur.

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.