

LO BUN CHAY, PLAINTIFF AND APPELLEE, VS. ALBINO PAULINO ET AL., DEFENDANTS. HILARION SORIANO, INTERVENOR AND APPELLANT.

G.R. No. 30048. December 27, 1929

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The plaintiff alleges that he is a part owner, of a lot described in his complaint, together with the defendants, and he prays for the partition thereof among them.

It appears that the land in question formerly belonged to the defendants and, Hilarion Soriano in joint ownership. Hilarion Soriano conveyed his share to the plaintiff. Thus the plaintiff became coowner with the defendants, as he alleges, in place of Hilarion Soriano.

Besides the defendants, some third-party claimants put in an appearance, among them, Hilarion Soriano.

The trial court, reserving to the defendants and the rest of the intervenors the right to their day in court, decided the case solely with respect to the contention between the plaintiff and intervenor Hilarion Soriano.

In his complaint in intervention, Hilarion Soriano alleges that if he subscribed a deed of sale of his share in the land in favor of the plaintiff, that contract was not in reality a sale, but a loan with usurious interest, and he prays that said sale be annulled, and that the plaintiff be ordered to reimburse him the usurious interest received. It is to be noted that after the sale of Soriano's share to the plaintiff, the latter obtained the proper transfer title.

The trial court rendered judgment in favor of the plaintiff and against Hilarion Soriano's third-party claim.

One of the grounds for the judgment appealed from is that although Hilarion Soriano pleaded the defense of usury in his complaint in intervention, he failed to make it under oath, and for the lack of verification, he was deemed to have admitted the facts alleged in the complaint. The trial court cites section 9 of Act No. 2655, as amended by Act No. 2992, which reads:

"The person or corporation sued shall file its' answer in. writing under oath to any complaint brought or filed against said person or corporation, before a competent court to recover the money or other personal or real property, seeds or agricultural products, charged or received in violation of the provisions of this Act. The lack of taking an oath to an answer to a complaint will mean the admission of the facts contained in the latter."

Interpreting the above legal provision, when as the instant case, action for the recovery of usurious interest is instituted, the defendant must file a sworn" answer, and the absence of this oath implies an admission of the facts alleged in the complaint. From this provision it may be inferred that the oath must be taken by the person against whom the action is filed for the recovery of usurious interest, and not by the person who brings the action, which seems to be the opinion of the trial court. The law was enacted to do away with usury. It was passed against the usurer and not in his favor. And finding, no doubt, that the evil to be eradicated was so widespread, the legislator

felt justified in presuming that it existed whenever its existence was alleged, unless denied under oath, thus demanding the guaranty of this oath, not in the allegation, but in the denial of this fact. The law cannot be construed otherwise when it provides that the person or corporation sued shall file its answer in writing under oath to the complaint claiming the recovery of usurious interest received.

It is no bar to this construction of the law that the allegation of usury is here made by an intervenor and not by the plaintiff, since in third-party claims, the intervenor may interpose his allegations against the plaintiff, as in this case, and then he is, with respect to the third-party claim, the plaintiff, and the original plaintiff is the defendant. Moreover, within the spirit of the law, it is immaterial whether the allegation of usury is made in the complaint or in a plea of intervention for the purpose of the oath, which must be taken, not by the person affirming that he paid usurious interest, but by him who denies that he received it. The point of the law is that whenever a person or a corporation is alleged to have charged usurious interest, said person or corporation must v deny such an imputation under oath or be deemed to admit the charge.

It therefore follows that in the case at bar, it was the plaintiff who, under the law, should have sworn to his answer to the third-party claim. According to the record, he has failed to do so.

In view of the circumstances of the case at bar, this conclusion renders it necessary that we declare the extent of this implied admission according to law.

It may, of course, be held in general that only th^{at} for which the law requires an oath is deemed admitted, should no oath be taken. If it is alleged in the complaint that the defendant, whether an individual or a corporation, has entered into a contract of loan with the plaintiff, there is no need for a sworn answer. But if it be added that on this loan \$he defendant has collected usurious interest, that is, interest in excess of the rate fixed by the law, then there is need of an oath. In that case, if no oath is taken to the answer, the only thing admitted is the allegation that the interest charged is usurious, not that the contract entered into is a loan, which is something that must be proved independently of the admission, especially when, as in the one in question, this allegation is disputed.

The intervenor Hilarion Soriano not only alleges that the plaintiff charged, and that he paid him, usurious interest, but also that the contract they made, under the guise of a sale subject to repurchase, according to its terms, was in reality a contract of loan wherein usurious interest was stipulated and collected. He should therefore have shown by competent evidence that that contract was really a loan. But, not only is there not a scintilla of evidence to this effect, but, on the contrary, the evidence of record, which is the contract itself, shows conclusively that it was a sale subject to repurchase. Wherefore, as the plaintiff and the intervenor did not enter into a contract of loan by virtue of which, usurious interest could be collected, and as the contract entered into between them was a sale upon which usurious interest could not be collected, the admission established by the law that sugli interest was in fact collected, does not exist. The law cannot presume an absurdity. In order that this admission of the collection of usurious interest may be invoked, it is necessary first to establish the contract by virtue of which such interest could be collected.

Upon these grounds the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Street, Malcolm, Johns, and Romualdez, JJ., concur.

Ostrand, J., concurs in the result.

Villa-Real, J., with whom concur

DISSENTING

JOHNSON and VILLAMOR, JJ.:

I am constrained to dissent from the majority opinion in so far as it holds that the plaintiff's failure to verify his answer to the complaint in intervention, wherein it is alleged that the contract entered into by and between plaintiff and intervenor is loan with usurious interest, only admits the existence of said usurious interest but not the contract of loan, so that the intervenor is relieved from proving the former, but not the latter. I am at a loss to see how the existence of usurious interest can be admitted without admitting the contract of loan whereof they are the cause or consideration. If the existence of usurious interest is admitted, then the contract whereof they are the cause or consideration must of necessity be admitted.

Furthermore, the pertinent portion of section 9, Act No. 2655, as amended by Act No. 2992, plainly provides that "the lack of taking an oath to an answer to a complaint will mean the admission of the facts contained in the latter." If this is so, then the lack of taking an oath to the answer to the complaint in intervention alleging that the contract is a loan contract with usurious interest admits both points, because both are facts contained in said complaint. In my opinion, then, the judgment appealed from should be reversed.

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