

INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. GEORGE A. YARED, DEFENDANT AND APPELLANT.

G.R. No. 39034. December 11, 1933

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-39034/>

VILLA-REAL, J.:

This is an appeal taken by the defendant George A. Yared from the judgment rendered by the Court of First Instance of Cebu, the dispositive part of which reads as follows:

"Let judgment be entered condemning and ordering the defendant to pay to the plaintiff the said amount of P7,653.55 with interest thereon from the date of the filing of the complaint until paid, and to pay the costs of this action. So ordered."

In support of his appeal the appellant assigns the following alleged errors as committed by the court a quo in its decision, to wit:

"1. The court erred in not giving full credit to the testimony of the appellant, who was presented as witness for the plaintiff entity, in so far as it establishes conclusively the fact that the amount claimed in the complaint had already been fully paid and liquidated by means of a compromise entered into by the parties.

"2. The court likewise erred in not holding that the absolute and complete silence of the plaintiff entity during eight or nine years from the time the appellant made the last payment to the filing of the complaint, supports the defense set up by the appellant to the effect that the obligation was totally extinguished with the said last payment and that the appellee was satisfied with having been completely and definitely paid.

"3. The court likewise erred in not holding that the appellee was in estoppel by laches in consequence of his omission and silence during the said eight or nine years without requiring the appellant even once to pay whatever balance there remained unpaid by him.

"4. Lastly, the court erred in rendering judgment against the appellant and in denying his motion for a new trial."

The following undisputed facts have been established during the trial:

On October 5, 1920, the firm Oriental American Traders, Inc., sold on credit and delivered goods and merchandise to the defendant in Manila, the total value of which amounted to P12,294.25 (Exhibits A and B). Between the aforesaid date of October 5, 1920, and April 4, 1921, the defendant had been making payments on account amounting to P2,500 and had returned goods valued at P1,140.80 to the said firm Oriental American Traders, Inc., thereby leaving an unpaid balance of P8,653.55. Later, the said firm Oriental American Traders, Inc., assigned the aforesaid credit, for cause, to the herein plaintiff International Banking Corporation (Exhibits A and B, reverse).

On June 4, 1921 the defendant-appellant George A. Yared paid on account the sum of P500 to the plaintiff-appellee and on July 8, 1921, he made another payment of P500 thereby leaving a balance of P7,653.55

in favor of the latter, which sum still remains unpaid.

The first question to decide in this appeal is that raised in the first assignment of error consisting in whether or not the testimony of the defendant, who, having been utilized by the plaintiff entity as its witness, testified that the amount claimed in the complaint had already been fully paid and liquidated by means of a compromise entered into by the parties, is conclusive as against the plaintiff.

Jones, in his *Commentaries on Evidence*, 2d ed., vol. 6, sec. 2426, states the rule on this point as follows:

"The question has often arisen whether one party may call the other as a witness and still be permitted to impeach him by proving his former contradictory statements. In some jurisdictions the general rule is held to apply and the right to impeach is denied. But under the practice which now quite generally prevails a party may be called by his adversary as an adverse party under statutes, and these generally provide that the party calling the witness shall not be bound. Many of the statutes declare that the testimony may be rebutted by other testimony as if taken in his own behalf. It is held to be the meaning of these statutes that the party thus called is not called as the witness of the other party but in order to elicit from him material facts by cross-examination as if he had already been examined on his own behalf. * * *"

We do not see any moral, juridical or social reason against the adoption of the above rules in this jurisdiction.

In the case of *Tan Chico vs. Concepcion and Asia Banking Corporation* (43 Phil., 141, 148), this court held the following:

"That the petitioner may be required to give his testimony in the court below by deposition under subsection 1 of the section quoted (355 of Act No. 190) is obvious and the question as to whether or not the deponent is available as a witness at the trial of the case appears to be immaterial in relation to depositions under that subsection. While classified in the code as the taking of a deposition, the proceeding is, in reality, analogous to a Bill of Discovery in Chancery and its purpose seems to be precisely to authorize such 'fishing expeditions' as that complained of in the petition. * * *"

If a party litigant may be required to give his testimony by deposition, there is no reason why he may not be required to testify as a witness of the adverse party to discover certain pertinent and material facts in a suit, of which he has knowledge and which may shed some light on the controversy pending decision. Unless he believes in the maxim *fiat justitia ruat coelum* (let right be done though the heavens should fall), it would be difficult, if not impossible, for him, as an adverse party, to resist the impulse of self-preservation and may fail to tell the truth regarding that which might be prejudicial to his cause. If a litigant, who finds himself compelled to resort to such recourse, were not permitted to impugn the veracity of his adversary, he would find himself helpless to enforce his rights and to obtain justice before the courts, which would be unjust. It is, therefore, in accordance with reason and the principles of social justice, that a litigant, who finds it necessary to avail himself of the testimony of his adversary in order to prove his rights, be permitted to impugn such testimony when it fails to state the truth.

The second question to decide is whether or not the plaintiff entity, by reason of alleged negligence and abandonment, is estopped from claiming payment of its credit after the lapse of more than eight years from the time the defendant-appellant made the last payment on account.

The law of equity bars a claimant from presenting his claim when, by reason of abandonment and negligence, he has failed to enforce his right for a long time, and the doctrines on this matter are summarized in *Corpus Juris*, vol. 21, p. 221, as follows:

"Mere delay.—In some cases long lapse of time has been held sufficient of itself to prevent relief. But mere delay in asserting a right does not ipso facto bar its enforcement in equity, by the great weight of authority, unless the case is barred by the statute of limitations. * * *"

The case under consideration is not one of equity but of positive law for which a period within which the claim may be presented is provided. Inasmuch as the claim is based on an instrument in writing, section 43 of the Code of Civil Procedure fixes the period of ten years within which the corresponding action for the enforcement thereof may be brought. In view of the fact that the statutory period has not yet elapsed, the action has not prescribed.

In view of the foregoing considerations, we are of the opinion and so hold: (1) that a litigant, who finds himself compelled to present an adversary as his witness in a case, is not bound by the latter's testimony against him and may impugn the veracity thereof by means of evidence to the contrary, and (2) that the law of equity known as "estoppel by laches" which bars a claimant from presenting his claim when, by reason of abandonment and negligence, he allowed a long time to elapse without presenting the same, is not applicable in this case on the ground that the period of time, within which an action based upon an instrument in writing may be brought, is fixed by law, which period has not yet elapsed.

Wherefore, there being no error in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, 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.