

J. W. SHANNON AND MRS. J. W. SHANNON, PLAINTIFFS AND APPELLEES, VS. THE PHILIPPINE LUMBER & TRANSPORTATION CO., INC., AND E. E. ELSE, DEFENDANTS. E. E. ELSE, APPELLANT.

G.R. No. 41795. August 30, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On March 1, 1926, the Philippine Lumber & Transportation Co., Inc., obtained a loan of P12,000 from Mrs. J. W. Shannon and executed a note promising to pay the said sum to the creditor or to her husband, J. W. Shannon, on or before March 1, 1927, with interest at 10 per cent per annum, payable monthly and in advance on the first day of each month. The obligation with its terms was secured, jointly and severally, by Walter E. Jones and E. E. Elser who signed the note. This note was ratified before the notary public, Juan L. Diaz, in the City of Manila, on March 22, 1926. The principal was not paid on its due date or thereafter, but the stipulated interest up to October, 1929, inclusive, was paid. Walter E. Jones died on November 24, 1929, and the plaintiffs filed a claim and recovered from his estate P1,062 in part payment of accrued interest due.

On August 1, 1927, while the principal obligation was pending payment, J. W. Shannon obtained a loan of £1,000 from Walter E. Jones; on April 9, 1928, he obtained another loan of P2,000, and on April 28, 1928, he made Jones pay on his account a certain bill of exchange drawn upon him in the sum of ₱1,656, making Shannon's total loan from Jones P4,656. Both agreed that this amount should be paid at the rate of P125 a month, with 10 per cent interest per annum, failing which, Jones was authorized to retain and apply to the monthly payments whatever amounts he might have belonging to Shannon or to his wife. Jones did not receive monthly payments from Shannon under this agreement, but instead he deducted them from the monthly interest which, on the other hand, the Philippine Lumber & Transportation Co., Inc., of which he was the president, was bound to pay. These operations were entered in the books of said corporation.

As the Philippine Lumber & Transportation Co., Inc., and its sureties had not paid the principal and the stipulated interest from November 1, 1929, the Shannons brought suit against the debtor corporation and the surety, E. E. Elser, for the recovery of said amounts. The Philippine Lumber & Transportation Co., Inc., neither appeared nor answered the complaint, and it was declared in default. Neither did it intervene nor defend itself at the trial. E. E. Elser appealed from the judgment ordering the Philippine Lumber & Transportation Co., Inc., to pay to the plaintiffs the sum of ₱12,000 with interest at 10 per cent per annum from November 1, 1929, minus the sum of P1,062 which had been recovered from the estate of the deceased Walter E. Jones, plus another 10 per cent as attorney's fees, and the costs, and likewise requiring the said E. E. Elser to pay to the plaintiffs one-half of all the aforesaid sums of money, except attorney's fees, which the Philippine Lumber & Transportation Co., Inc., should fail to pay.

The appellant argues that the judgment is erroneous: in not holding that after the note became due, the plaintiffs had received from the Philippine Lumber & Transportation Co., Inc., payments in advance of the stipulated

interest for a relatively long period of time, and that, consequently, said plaintiffs, as creditors, extended the period fixed for the payment of the principal without his consent; in not permitting him to adduce evidence on his defense of laches whereby he attempted to show that in 1927 and 1928 the principal debtor had property and money with which to pay its entire obligation; in not holding that the plaintiffs were guilty of unreasonable delay in bringing their action, thereby causing him damages, and in not absolving him from the complaint.

The first assigned error relates to the loans made by Jones to Shannon up to the amount of P4,656. The appellant contends that these loans were in truth payments in advance of the stipulated interest which the principal debtor had to pay monthly and which had the effect of extending the stated period for the payment of the indebtedness, thereby relieving him of his obligation as surety under article 1851 of the Civil Code, because his consent was not first obtained; and in support of his contention cites the decision of this court in *Banco Espanol Filipino vs. Donaldson Sim & Co.* (5 Phil., 418). The facts, as we find them, do not support the contention. It indisputably appears that those amounts of money were obtained by Shannon not as payments in advance of the interest which the principal debtor was bound to pay, but as independent loans which Jones granted to him. The only connection of these loans with the interest of the indebtedness of the Philippine Lumber & Transportation Co., Inc., consisted in the agreement between Jones and Shannon to the effect that in case the latter should fail to pay the monthly interest, the former was authorized to deduct it from any amount which he might have at his disposal belonging to Shannon or to his wife. As, on the other hand, Jones was the president of the principal debtor, and the latter had to pay monthly interest on its indebtedness, Jones deducted monthly from this last interest that which Shannon failed to pay. It is therefore, evident that neither the provisions of article 1851 of the Civil Code nor the doctrine on the matter enunciated in the *Banco Espanol Filipino* case is squarely in point.

The appellant attempted to prove at the trial that the plaintiffs had been guilty of laches and had brought their action against him tardily, because in 1927 and 1928 the principal debtor had sufficient property and money with which it could have fully paid its obligation, and in so acting the plaintiffs caused him damages. This kind of evidence was timely objected to, and the objection was sustained by the court. This ruling is the subject of the second and third assigned errors. We hold that the judgment is not erroneous on these grounds. True, the plaintiffs let pass some years from the maturity of the note before bringing the action for the recovery of its amount. But we hold that the delay does not constitute laches in the sense that it had the effect of releasing both the principal debtor and its sureties from their obligations, nor did it occasion loss of rights and privileges of such moment as to give rise to the discharge of the obligation contracted by the appellant. In the aforecited *Banco Espanol Filipino* case, in ruling upon a similar question, we said: "The decision en casacion of the Supreme Court of Spain is jurisprudence properly interpreting the Spanish Civil Code. The following doctrine is laid down in the judgment of March 22, 1901: 'The court which pronounced sentence in this case has not violated article 1851 of the Civil Code, because the mere circumstance that the creditor does not demand the compliance with the obligation immediately upon the same becoming due, and that he more or less delays his action, does not mean or reveal an intention to grant an extension to the debtor, as according to article 1847 the obligation of the surety extinguishes at the same time as that of the debtor, and for the same causes as the other obligations. * * * Deferring the filing of the action does not imply a change in the efficacy of the contract or liability of any kind on the part of the debtor. It is merely, without demonstration or proof to the contrary, respite, waiting, courtesy, leniency, passivity, inaction. It does not constitute novation, because this must be express. It does not engender liability, because on the part of the creditor such can not arise except from delay, and for this class of delay interpellation on the part of the party who considers himself injured thereby is necessary. In order that this waiting or inaction, of itself beneficial to the parties obligated, can be interpreted as injurious to any of them, it is altogether necessary that this be represented by means of a protest or interpellation against the delay. Without action of this kind it continues to be what it is, merely a failure of the creditor to act, which in itself does not create liability. It can not do so, as we

see in the aforesaid sentencia de casacion. '* * * In accordance with the provisions of number 4 of article 1843, the surety, even before payment, may proceed against the principal debtor when the debt has become demandable because the term in which it should have been paid has expired.' In view of this action, which is a protection against the risk of possible insolvency on the part of the principal debtor, it is very clearly seen that the law does not even grant the surety the right to sue the creditor for delay, as protection against the risks of possible insolvency on the part of the debtor; but in view of the efficacy of the action of the contract against the surety, beginning with the date when the obligation becomes due, his vigilance must be exercised rather against the principal debtor." (5 Phil., 422, 423.)

In *Clark vs. Sellner* (42 Phil., 384), this court had occasion to reiterate the same doctrine as follows: "The trial judge took into account the fact that at the time of the maturity of the note, the collateral security given to guarantee the payment was worth more than what was due on the note, but is depreciated to such an extent that, at the time of the institution of this action, it was entirely valueless. And taking this circumstance, together with the fact that this case was not commenced until after the lapse of four years from the date on which the payment fell due, and with the further fact that the defendant had not received any part of the amount mentioned in the note, he was of the opinion, and so decided, that the defendant could not be held liable. The theory of the judge a quo was that the plaintiff's failure to enforce the guaranty for the payment of the debt, and his delay in instituting this action constitute laches, which had the effect of extinguishing his right of action. We see no sufficient ground for applying such a theory to the case before us. As stated, the defendant's position being, as it is, that of a joint surety, he may, at any time after the maturity of the note, make payment, thus subrogating himself in the place of the creditor with the right to enforce the guaranty against the other signers of the note for the reimbursement of what he is entitled to recover from them. The mere delay of the creditor in enforcing the guaranty has not by any means impaired his action against the defendant. It should not be lost sight of that the defendant's signature on the note is an assurance to the creditor that the collateral guaranty will remain good, and that otherwise, he, the defendant, will be personally responsible for the payment. True, that if the creditor had done any act whereby the guaranty was impaired in its value, or discharged, such an act would have wholly or partially released the surety; but it must be borne in mind that it is a recognized doctrine in the matter of suretyship that with respect to the surety, the creditor is under no obligation to display any diligence in the enforcement of his rights as a creditor. His mere inaction, indulgence, passiveness, or delay in proceeding against the principal debtor, or the fact that he did not enforce the guaranty or apply on the payment of such funds as were available, constitute no defense at all for the surety, unless the contract expressly requires diligence and promptness on the part of the creditor, which is not the case in the present action. There is in some decisions a tendency toward holding that the creditor's laches may discharge the surety, meaning by laches a negligent forbearance. This theory, however, is not generally accepted and the courts almost universally consider it essentially inconsistent with the relation of the parties to the note. (21 R. C. L., 1032-1034.)"

And in *Ibañez de Aldecoa vs. Hongkong & Shanghai Banking Corporation* (42 Phil., 1000; 246 U. S., 627; 62 Law. ed., 907), the Supreme Court of the United States in affirming a decision of this court on the same legal question, said: 'The appellant Isabel Palet assigns as error that the Supreme Court failed to hold (1) that her liability as surety of Aldecoa and Company had been extinguished in accordance with the provisions of article 1851 of the Civil Code, which provides that 'the extension granted to a debtor by the creditor, without the consent of the surety, extinguishes the security.' (2) Refused to order for her benefit that the property of the company should be exhausted before resort be had to her property for satisfaction of the bank's claim. It will be observed at once that the defense have some dependence upon questions of fact upon which the two courts below concurred. From article 1851 of the Civil Code, abstractly considered, nothing can be deduced. Both the trial and supreme courts held that 'the mere failure to bring an action upon a credit, as soon as the same or any part of it matures,

does not constitute an extension of the term of the obligation/ And it was further held that the extension, to produce the extinction of the liability, 'must be based on some new agreement by which the creditor deprives himself of the right to immediately enforce the claim.' This interpretation of the local courts of the local law we defer to. The construction, moreover, expresses the rule that obtains in other jurisdictions."

The last ground of the remedy requires no extended consideration. Under the conclusions we have arrived at, it is evident that the judgment is not erroneous in not absolving the appellant.

The plaintiffs suggest in their brief that we amend the appealed judgment by .ordering the appellant to pay onehalf of the attorney's fees which the principal debtor should fail to pay. We are of the opinion that the contention is untenable because the plaintiffs did not appeal from the judgment but accepted and abided by it.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the appellant. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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