

MAMERTA BANAL, PLAINTIFF AND APPELLANT VS. JOSE SAFONT AND ANDRES PUIG, DEFENDANTS AND APPELLEES.

G.R. No. 5520. July 26, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Mamerta Banal had prosecuted an action against Jose Safont and Andres Puig, in the Court of First Instance, for the conventional repurchase of certain property.

The judgment rendered by that court in the aforesaid action contained, among other findings, the following:

"* * * and by sentencing Mamerta Banal to pay to Messrs. Safont and Puig the sum of P2,727.30, besides the interest due thereon at the rate of 15 per cent per annum until the debt shall have been completely paid. No express finding is made as to costs."

Mamerta Banal made no appeal whatever from the judgment, nor from any finding therein concerning her. It was the defendants, Safont and Puig, who appealed from the said judgment.

The Supreme Court affirmed the judgment appealed from, and, with respect to the preinserted finding concerning the defendant Banal, the affirmance is expressed in these terms:

"2. That Mamerta Banal, in that double character (in her own right and as the successor in interest of her deceased-daughter, Juana David) must pay, as the repurchase price, the amount for the payment of which she was sentenced. The judgment as to this part is final." (Since she had not appealed).

On August 18, 1908, the trial court issued the following order:

"Observe, comply with and carry out the orders of the Supreme Court in the preceding certified judgment, and let the proceedings follow their proper course for the purpose of due compliance therewith."

On January 2, 1909, the plaintiff deposited with the clerk of the court P2,727.30 together with the interest thereon at 15 per cent per annum from the date of the order above cited, that is, from August 18, 1908, amounting to P152.28.

The defendants protested that the interest was owing from July 1, 1903, and claimed that from that date to December 31, 1908, it amounted, at 15 per cent per annum, to P2,250.02; so that, the plaintiff having deposited but P152.28, there was still a shortage of P2,097.74.

The court, after certain incidental rulings, decided that the plaintiff must pay to Messrs. Safont and Puig P2,097.74, as the balance Of the interest, and that the proper writ of execution should issue against the said plaintiff's property, in case of failure to pay the said sum within the period fixed of fifteen days. The plaintiff appealed.

The question raised is as to how much Mamerta Banal should pay as interest at the rate of 15 per cent per annum

for the sum of P2,727.30.

It will be noticed at once, from its amount, that the interest, payment of which is ordered in the judgment, is neither in default nor is it compensatory, but rigorously lucrative, in a word, that it is not legal interest or the result of a provision of the law, but a conventional interest or the result of the express will of the parties in a contract.

From October 5, 1897, Mamerta Banal and Juana David, under a signed contract, went on paying 15 per cent interest upon the balance which they were owing on the account between them and Safont and Puig. Until the plaintiff, Mamerta Banal, filed her suit, the conventional interest of 15 per cent continued to run, and neither in the complaint nor during the trial was there any contention or doubt raised as to the obligation to pay the 15 per cent per annum on the amount which constituted a real balance of account; it was only this balance that was the subject of discussion, and suit had been brought solely in connection with such balance, in order to determine whether it existed or not, and, in an affirmative case, what was its amount.

The court determined that on July 1, 1903, there existed against the plaintiff a balance of P2,727.30, and ordered the payment of this balance, together with the annual interest thereon of 15 per cent. The only point endeavored to be ascertained was the true balance, not the interest due on the balance to be determined.

The amount of this balance was admitted and allowed by the plaintiff, and also the payment of the interest thereon at 15 per cent per annum. And, although she had not given such assent in accepting the judgment, it not having been a subject of litigation, as it was a stipulation covenanted in an undisputed instrument, valid and effective, the said interest would have continued to run from the date aforementioned of October 5, 1897, because from that date to December 31, 1908, there was no break in the continuity of the obligation to pay it, - an obligation freely contracted by the plaintiff, Mamerta Banal, in her instrument of debt.

The issue, then, concerns, this conventional interest of 15 per cent: First, from July 1, 1903, the date when the balance was judicially declared to exist and was assented to by the plaintiff, Banal; second, from the date of the judgment of the lower court in which the final balance of P2,727.30 was determined, which date was the 15th of February, 1907; third, from the 18th of August, 1908, the date of the order for the execution of the decision of the Supreme Court, until December 31 of the same year.

The question involved in the third period does not concern this court at the present time. The plaintiff, now the appellant; acquiesced in the payment of the interest of 15 per cent per annum on that balance, from August 18, 1908, and she paid it, as well as the principal of P2,727.30.

But the appellees demand the interest for the intermediate period from July 1, 1903, to August 18, 1908, and, if the force of a contract and the execution of a judgment are not to be violated, a good reason must be given to exempt the appellant from the obligation to pay it.

As for the interest which ran from February 15, 1907, to August 18, 1908, the second point in issue, the reason given by the appellant is that it was the defendants' fault in appealing from the judgment, and that all this time elapsed through such fault.

This reason is not acceptable. If the appellant, in assenting to the judgment, had duly deposited the principal of P2,727.30 and its corresponding interest, she evidently would not have run the risk of this capital not bearing interest during that intermediate period, and, obviously, this risk would have been run by the defendants through their fault in having appealed and allowed all the time of the appeal to have elapsed with the principal in their possession or duly deposited to secure the payment.

But if the principal acknowledged to be owing is not returned or reimbursed, and draws interest either by reason

of a contract or as a result of the judgment acquiesced in, the right to collect this interest is not interrupted during the time of the appeal. There is no law or doctrine which authorizes such an interruption, and in fact no case has ever been recorded where the indebtedness of interest was interrupted from the time of the filing of the appeal from the judgment in first instance to that of the execution of the decision rendered in second instance.

With regard to the first point, that is, the interest from July 1, 1903, to February 15, 1907, the reason alleged by the appellant is that she should, not pay interest for the sum of P2,727.30, on account of its not being a loan, but the price fixed in the judgment for a repurchase.

Neither is this reason acceptable. If it were, as she Alleges, the now appellant ought to have appealed from the previous judgment whereby she was sentenced to pay not only that principal but also the interest due thereon at the rate of 15 per cent per annum, and then she would have had an opportunity to explain whether the said sum was merely the price fixed for a repurchase. The appellant, moreover, can not turn against her own acts, such as having: assented to the judgment with respect to the payment of the said interest, and the payment already made by her of the interest which ran from August 18 to the end of December, 1908.

The reasons governing the payment of the interest for the period from August 18 to December 31, 1908, are precisely the same as those that induced her to pay it for the periods embraced within February 15, 1907, to August 18, 1908, and July 1, 1903, to February 15, 1907. The force of this obligation has in no wise changed since October, 1897.

If the defendants had not appealed and the plaintiff, now the appellant, after assenting to the judgment, had endeavored forthwith to comply with the same, she well would have understood what the interest was at 15 per cent which she was sentenced to pay, together with the payment of the sum of P12,727.30. It could not have been that which ran subsequently, from August 18 to December 31, 1908, nor that from February 15, 1907, to August 18, 1908, because neither the one nor the other would then have existed. It could have been no other than that which was due according to the findings of fact in the judgment assented to.

And the findings of fact in the judgment assented to by the appellant, are (1) that, for the consideration expressed, she was owing, as principal and interest, for the period from July 1, 1902, to June 30, 1903, the sum of 6,477.76 pesos (B. of E., pp. 8 and 9); (2) that from this amount a deduction should be made in the plaintiff's favor, also as principal and interest, of 2,929.27 pesos (B. of E., p. 10); and (3) that on July 1, 1903, the plaintiff was found to be owing 3,545 pesos and 49 centavos, or, in Philippine currency, P2,727.30 (B. of E., p. 10).

If the conclusion of fact of the trial court, with respect to the liquidation comprehensive of one year's interest, from July 1, 1902, to June 30, 1903, is a thing assented to by the plaintiff, and determines the sentence contained in the judgment for a principal of P2,727.30, the conclusion of law of the same court that the said principal of P2,727.30 must be paid "in addition to the interest due on the said sum at the rate of 15 per cent per annum until complete payment of the said debt shall have been made," implies the same conclusion of fact as set forth in the judgment; and, therefore, the sentence to pay the interest due, as expressed in the judgment, implies a liquidation, month by month, the same as that for the periods from July 1, 1902, to June 30, 1903, from July 1, 1903, to June 30, 1904, from July 1, 1904, to June 30, 1905, and so on, successively, up to December 31, 1908, the interest for the last four months of which, in addition to that for thirteen days of the month of August of the same year, the appellant has already paid.

If, according to section 133 of the Code of Civil Procedure, the findings of fact are essential in judgments on questions of fact and those requisite to a clear understanding of the same must be set forth for the clear understanding of the interest due on the principal of P2,727.30, mentioned in the dispositive part of the sentence, in consonance with the finding of law in the judgment, expressive of the opinion of the trial judge on the

questions of the liquidation of accounts, decided at the trial, from which this second appeal is derived, then the determination of the interest due, in conformity with the findings of fact of the judgment which precede the sentence, can not but be pertinent to the said dispositive part of the judgment, as an explanation embodied therein ; and the judgment is not changed, modified or altered, as the appellant claims, by the explanation made by the judge, for the proper fulfillment of the judgment, in the writ of execution he issues, saying: "that is, the sum of P2,097.74 as an unpaid part of the interest due on P2,727.80," which is the judicial order impugned in the present appeal; it is an order, explanation or determination that is strictly within his jurisdiction in the suit as implicitly contained in the dispositive part of the judgment, oh account of its being explicitly embodied in the findings of fact in the judgment, and it is an axiom of law that what is implicit is not vitiated by what is explicit. therefore, the judgment appealed from is affirmed with the costs of this instance against the appellant. So ordered.

Torres, Mapa, and Johnson, JJ., concur.

DISSENTING

MORELAND, J.,

The question presented to us for decision on this appeal was before the court below when the case was there on trial. It was there litigated, argued, and decided. The same question was presented to this court on the appeal direct from the judgment of the trial court, and that judgment was affirmed after full consideration of all the questions presented. The judgment of affirmance became final August 18, 1908, and proceedings were begun in the lower court immediately to collect it. The same question is again presented to this court on this appeal, which is one from an order entered in the proceedings to collect the judgment, as was litigated, argued, and decided in the original action. This court now by this decision relitigates the same question and, in effect, reverses the decision of the trial court, and of this court, years after the judgment in which said question was settled became final. Under this and other decisions of this court a judgment in the Philippine Islands has lost its most valuable quality, that of putting an end to litigation - of being final.

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