

RAMON SORIANO, PLAINTIFF AND APPELLEE, VS. FRANCISCO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 7708. March 29, 1913*

Ponente: MORELAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-7708/>**MORELAND, J.:**

The appeal herein is by the defendants from the judgment of the Court of First Instance of the city of Manila, Honorable Simplicio del Rosario presiding. The action was commenced to recover a balance of interest alleged to be due upon a mortgage indebtedness. The judgment awards to plaintiff a portion of the interest claimed, holding that the remainder has become barred by the statute of limitations. From this judgment only the defendants have appealed.

On August 16, 1861, Antonio Enriquez executed a mortgage for P5,000 in favor of Obras Pias upon certain real estate in the city of Manila. Said mortgage, by express stipulation, bore interest at the rate of 6 per cent per annum. It is admitted that the interest thereon was paid by the mortgagor to and including May 30, 1881. On March 27, 1881, Antonio Enriquez sold said real estate to defendant, Carmen de la Cavada, for P8,000, of which P3,000 was paid in cash and, as to the remainder, the purchaser expressly assumed the mortgage debt and agreed to pay the same. In 1905 Obras Pias commenced an action to foreclose this mortgage. Neither the mortgagor nor Carmen de la Cavada was made a party. The action was against the persons then owning the mortgaged premises or having some interest therein. By a decision rendered September 16, 1910 (17 Phil. Rep., 45[1]) the foreclosure of the mortgage was decreed against the property to satisfy the principal amount and interest thereon for two years at 6 per cent, but without personal liability on the part of the defendant to pay any deficiency judgment. On the 24th of December, 1910, and before the sale under the foreclosure, Obras Pias sold and transferred to the plaintiff all of its right, title, and interest in and to said mortgage and in and to the judgment of foreclosure already referred to. On January 31, 1911, and in due course, the property was sold, pursuant to such judgment of foreclosure, and brought a sum sufficient to pay the mortgage debt and the two years' interest, after deducting all costs and expenses. On May 30, 1911, the plaintiff, standing in the shoes of Obras Pias, commenced this action against Carmen de la Cavada and her husband to collect the deficiency between the amount due upon the mortgage and the amount realized by the foreclosure sale.

So far as appears from the record the amount received from the property on foreclosure sale, less costs and expenses of foreclosure, was the same sum which was found due to the plaintiff in the foreclosure action, namely, P5,600, P5,000 being of principal and P600 being of interest. It was found upon the action of foreclosure when the case was appealed to this court that the defendants, being third persons within the mortgage law, were not responsible for interest upon the principal except for the two years immediately prior to the time the action was commenced. This, then, is an action to recover interest only, being the interest on the mortgage debt from 1881 down to the beginning of the two years for which interest was allowed in the foreclosure action. Plaintiff himself states the nature of the action as follows:

"In seeking for the true rule of prescription in the present case, no confusion ought to arise from the fact that

the principal of this mortgage debt has been otherwise collected and that this is, therefore, an action to collect the interest alone."

We have, then, in this action the unusual spectacle of an attempt to collect interest upon a sum, which sum with a part of the interest due thereon has already been collected in another action.

In the case of *Sunico vs. Ramirez* (14 Phil. Rep., 500) the court had before it the question whether or not an action to foreclose a mortgage was maintainable after the action to recover the mortgage debt had prescribed. It was held that the action to recover the mortgage debt prescribed fifteen years from the time when it accrued, the court saying (p. 503):

"But whatever may have been the true origin of the indebtedness, we do not deem it necessary to discuss this particular contention at length, because it is clear from an examination of the facts as above set out that a strictly personal action to recover the amount of the acknowledged indebtedness would have prescribed prior to the date of the filing of the complaint, not only by the lapse of the comparatively short period of prescription established in the Mercantile Code, granting that the transaction out of which the debt or obligation arose was a mercantile transaction and governed by the provisions of the Mercantile Code, but also from the lapse of the fifteen-year period of prescription established in the Civil Code, assuming that it was a simple loan (*prestamo mutuo*) governed by the provisions of that code. (Arts. 1964 and 1939, Civil Code.) So that, for the purposes of this decision, it is not important whether the original indebtedness arose as a result of a transaction governed by the Mercantile or the Civil Code, the real question being, first, whether recourse could be had to the '*accion hipotecaria*' (real action to foreclose a lien or mortgage) notwithstanding the fact that the personal action to recover the indebtedness had prescribed at the time when the '*accion hipotecaria*' was instituted; and, second, whether that action itself (the '*accion hipotecaria*') had also prescribed at that time."

In determining the question in the case at bar whether the action to recover the mortgage debt had prescribed the trial court says:

"The fifteen years since December, 1889, when the Civil Code went into effect, having expired on the 23d of December, 1905, the date on which the *Obras Pias* began its action against *Eugenio Lichauco* and *Felisarda de Vera Ignacio* for the recovery of the mortgage debt, all of the time required by article 1964 has transpired for the prescription of the personal action, namely, fifteen years. The court has computed the time from the 1st day of December, 1889, the date on which the code went into effect in these Islands, until the 23rd day of December, 1905, the date on which complaint was presented by the *Obras Pias*, because in its judgment the manifestation made by *Carmen de la Cavada* in the deed of sale to *Ramon de Baldes y Salvador* of the 11th of March, 1902, which manifestation referred to the mortgage upon the land in favor of *Obras Pias* and indicated that said mortgage had disappeared and been destroyed or extinguished by prescription, cannot be considered as a recognition of the debt sufficient to interrupt the time for the prescription of an action."

Continuing the court said:

"The conclusions having been reached that article 1964 of the Civil Code is applicable to the present case and that the period of prescription had not been interrupted except upon the date on which the *Obras Pias* presented its complaint, it is undeniable that the action in the present case has prescribed, particularly the annual interest corresponding to the years from the 30th of May, 1881, to the 23d of December, 1890, these years being prior to the fifteen-year period which began on the 23d of December, 1890, and continued until the 23d of December, 1905, on which date the complaint was presented. The defendants, *Carmen de la Cavada* and *Francisco Enriquez*, are therefore obliged to pay to the plaintiffs in this action the interest on said sum from the 23d day of December, 1890, until the 30th day of January, 1909, inasmuch as the land was sold by the sheriff on the 31st day of January, 1911, and only so much of the interest was paid as was included in the last two years prior to such sale, or from the 31st day of January, 1909, to the 31st day of January, 1911."

The finding of the trial court with reference to the prescription of the action to recover the mortgage debt is correct. That that action expired fifteen years after the month of December, 1889, when the Civil Code went into effect in these Islands, is beyond question at this time. (*Sunico vs. Ramirez*, above.) The trial court, however, does not carry its finding in this regard to its logical conclusion; for, although he concludes that the action to recover the mortgage debt had prescribed some time prior to the beginning of the action thereon, he still finds, nevertheless, that the action for the recovery of interest had not prescribed but that it could be maintained to recover the interest from 1890 down to the present.

It must be remembered that there is no provision in the original mortgage as to when the interest shall be paid and there is no proof in the record that the interest was actually paid at, stated times or that the interest paid by Antonio Enriquez up to the year 1881 was paid annually or at any other stated period. Moreover, it should be noticed that, from the year 1881, when Carmen de la Cavada became the owner of the premises and at the same time responsible for the mortgage debt, no demand has been made upon her for the payment of the interest and no stated period has ever been agreed upon or understood to have existed for the payment of the interest on said debt. We are unable to see, therefore, how it is possible, legally, to separate the interest, or any portion thereof, from the principal itself; and we are unable to see, furthermore, why, if the action to recover the mortgage debt itself is prescribed, the action to recover the interest, under the facts and circumstances of this case, is not also prescribed.

In the case of *Stewart vs. Barnes* (153 U. S., 456, 462) the court said:

"It is apparent, therefore, that the principal, as such, has been received by the plaintiff, and hence, to treat the action as having any object at all, we must regard it as an action for interest alone. Whether in the circumstances of the case, an action for interest can be maintained is the only question to be determined. In deciding this we shall not find it necessary to consider in what respect these suits against collectors may differ from other actions, but shall assume, for the purposes of this opinion, that they are governed by the same rules.

* * * * *

"In a case where a demand of damages constitutes the very ground of the action it would seem that the rule would be different. If, for instance, in covenant on the part of a lessee to repair a building, the lessee should prove performance, the plaintiff might still be entitled to have the jury pass upon the question of his damages, however small they might be, because in such a case the right to damages constitutes the right of action. It might then be said that, since the present case is an action of assumpsit, of which damages constitute, in theory, at least, the basis, the rule we have stated would not be applicable. But, without considering how far, in an inquiry like this, we would be prevented by the form of an action from ascertaining its purpose, and without adverting to the fact that one of the cases just cited was an action of assumpsit, it is to be noticed that in Pennsylvania, where the suit was brought, the form of the action of assumpsit is employed not only in cases where, at the common law, it would have been appropriate, but also in cases in which the action would formerly have been in debt or covenant

"Treating the action of assumpsit as of such extensive scope, the object sought would not only be permitted, but required to be considered if it were desired to ascertain the real nature of a case. In this case the bill of particulars shows that the object sought is a liquidated sum of money, with interest. The evidence introduced with the acquiescence of the plaintiff, and his own admission, furnished proof that the liquidated sum has been paid. It thus appears that the action is not one sounding in damages, but that the damages, or interest, is demanded simply in respect of the detention of the principal.

"Perhaps it might not unreasonably be argued that the payment by the government, and the acceptance of the money by the plaintiff, without a demand of interest, constituted a complete settlement of his claim irrespective of the operation of the principle which we have been examining. But however this may be, it is evident from what has been said that the plaintiff has parted with his right of action by accepting the money which was

withheld from him, and has at the same time given up his right to sue for the incidental damages. Therefore the court below was right in directing a verdict for the defendant, and the judgment of that court is affirmed."

The principle that the interest cannot be separated from the principal sum in order to withdraw the interest from the operation of the statute of limitation, when the principal is concededly within the statute, is well illustrated by an early case (*Moore vs. Fuller*, 2 Jones Law (N. C), 205) decided by the supreme court of North Carolina. That was an action of debt upon a bond. The principal of the debt had been paid and at the time of payment the parties had agreed to refer the question of interest, the payment of which was refused, to arbitration. Upon an award made in favor of the plaintiff, defendant still refused to pay the interest and it was sought to be recovered in an action not upon the award but upon the bond. The supreme court said (p. 206):

"The general principle is that where the principal subject of a claim is extinguished by the act of the plaintiff, or of the parties, all its incidents go with it. Thus, in an action of ejectment, if the plaintiff, pending the suit, takes possession of the premises, upon the plea of the defendant or upon its being shown, the plaintiff will be nonsuited. (*Johnson vs. Swain*, 44 N. C, 335.) So in an action of detinue, if the plaintiff takes possession of the property claimed he can recover no damages, for they are consequential upon the recovery of the thing sued for. (*Morgan vs. Cone*, 18 N. C, 234.) This is an action of debt on a bond to recover the interest, the principal having been paid by the defendant before the bringing of the action; by that payment the bond was discharged, and by analogy to the cases referred to the plaintiff cannot recover the interest,,which is but an incident to the principal—the bond."

To the same effect is the case of *Tillotson vs. Preston* (3 Johns, 229). This was an action of assumpsit for money had and received. In addition to the general issue, there¹ was a plea of payment of the sums mentioned in the declaration. To this plea of payment the plaintiff demurred especially, alleging for one ground of demurrer that the plea did not allege that the defendant had paid to the plaintiff the interest. The court said:

"The demurrer is not well taken. If the plaintiff has; accepted the principal, he cannot afterwards bring an action for the interest."

The fifteen-year period expired before the action of foreclosure was begun. As a necessary legal consequence, under the decision of *Sunico vs. Ramirez*, the right to begin an independent action to recover the mortgage debt ceased to exist. With that right disappeared the separate right to recover the interest, for, following the principles laid down in the above cases, it is apparent that, under the facts of this case, the interest was but an incident of the principal and lived and died with it. When the principal ceased to exist, the interest ceased to exist with it. They have, under the facts disclosed in this case, no separate existence. If this were not so, no interest-bearing debt would ever be outlawed, for, the interest on the same could always be collected for the full period of limitation, less one day. In this very case, while the principal is outlawed, the fifteen year period having expired, the plaintiff notwithstanding is, in principle and almost in fact, recovering interest on said debt for fourteen years eleven months and twenty-nine days.

It should be noted that the defendants in this case, those who, it is claimed, are liable to pay the mortgage debt, were not made parties to the action of foreclosure. While in response to the notice served by the purchaser from *Carmen de la Cavada*, given in pursuance of the provisions of the Civil Code requiring the vendor to come in and protect the interests of the vendee, the defendants in this case did appear and file an answer therein; still nothing more was done, and it appears that no notice was taken or attention paid by the court or parties to such appearance and answer and no judgment was rendered for or against them. We are of the opinion that, in an action to foreclose a mortgage under the Code of Civil Procedure, all of the persons who are liable to pay the mortgage debt, and therefore to pay any deficiency, are necessary parties to the action. They have an interest in the result thereof and in all of the proceedings relating thereto. They are entitled to know when the sale takes place and to be

present thereat. The full protection of their interests requires it. Moreover, section 256 of the Code of Civil Procedure requires a judgment to be rendered for a specified amount and an order made that the amount for which judgment is rendered be paid into court within a given time. Section 260 requires the rendition and entry of a judgment for the deficiency against the defendant, who shall be personally liable to the plaintiff, and execution may issue on said judgment at once. It was the evident intention to require the plaintiff to include as defendants all persons who are obligated to pay the mortgage debt. Such practice will prevent the necessity of two actions between the same parties, one an action to recover the principal by foreclosure and sale of the premises, the other a subsequent action to recover the deficiency. These provisions justify us in holding, if they do not require us to hold, that the plaintiff must make parties defendant all those who are obligated to pay the mortgage debt as well as those who own, occupy, or are in possession or control of the mortgaged premises or any part thereof. Multiplicity of actions is offensive to justice, and the courts always require to be joined in a single action all persons who are liable to pay the debt the recovery of which is one of the main reasons for bringing the action.

The court having found that the plaintiff is not entitled to recover upon the general ground above stated, it is unnecessary to go into the question of whether or not Francisco Enriquez should be field responsible jointly and severally with his wife.

The judgment of the Court of First Instance is hereby reversed and the defendant absolved from any liability by reason of the facts alleged in the complaint, and the complaint is dismissed upon the merits, without special finding as to costs.

Arellano, C. J., and Trent, J., concur.

Torres, J., concurs in the result.

[1] Obras Pias vs. Devera Ignacio.

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.