

E. G. TURNER, PLAINTIFF AND APPELLEE, VS. CIRILO CASABAR ET AL., DEFENDANTS AND APPELLANTS.

G.R. Nos. 43522, 43523, 43751-43753. May 18, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

We shall take up in this decision the five above-entitled cases, inasmuch as two of them, those bearing G. R. Nos. 43522 and 43523, correspond to cases Nos. 6634 and 6637 of the Court of First Instance of Pangasinan and were jointly tried and decided in said court, and the other three, or those bearing G. R. Nos. 43751, 43752 and 43753, correspond to cases Nos. 6807, 6819 and 6821, respectively, of the aforementioned court, and were, like the first two, jointly tried and decided, taking into account principally the same evidence adduced in the former. Moreover, the interested parties so desire.

The judgment in the first of these cases was adverse to the defendants Cirilo-Casabar and Valentina S. Cruz, while the judgments in the other four cases were likewise adverse to Cirilo Casabar, who was the sole defendant therein.

Six causes of action were alleged in the complaint in case No. 6634 (G. R. No. 43522), based respectively on six promissory notes marked during trial as Exhibits A, B, C, D, E, and F. Said promissory notes are dated and are for the amounts as follows:

Exhibit A—Promissory note of December 15, 1926 for P1,165 plus P200;

Exhibit B—Promissory note of April 16, 1930 for P500 plus P200;

Exhibit C—Promissory note of August 1, 1929 for P2,000 plus P400;

Exhibit D—Promissory note of August 1, 1929 for P2,000 plus P400;

Exhibit E—Promissory note of August 1, 1929 for P2,000 plus P400; and

Exhibit F—Promissory note of August 1, 1929 for P2,000 plus P400.

As may be seen, they make a total of P9,665 plus P2,000.

The additional sums of P200 and P400 appearing on the said promissory notes and amounting to P2,000 constitute the penalty which defendants had agreed to pay plaintiff in case of litigation. With the exception of the promissory note Exhibit B in which the interest stipulated by the parties was at the rate of 14 per cent per annum, the other five contain clauses to the effect that defendants would pay plaintiff interest at the rate of only 12 per cent per annum. However, in all but the promissory note Exhibit A, the agreement was that if the interest was not paid in due time the amounts of the promissory notes would become immediately demandable and the accrued interest would earn interest at the same rate stipulated in each of them.

Defendants, in their answer, denied generally and specifically the claim of plaintiff and alleged the following three special defenses:

First. That the promissory note Exhibit A represents merely the illegal, erroneous, oppressive, and usurious computations made by plaintiff of an obligation they had long before contracted with him for the payment of professional services he had rendered them as attorney, in the amount of P150; but which they had more than paid.

Second. That the amount of the promissory note Exhibit B had also been paid by them; and

Third. That the promissory notes Exhibits C, D, E, and F were without consideration; that the amounts to which they refer are merely alleged balances which have not yet been paid the plaintiff; that the same consist in the illegal, erroneous, oppressive, and usurious computations made by the plaintiff without the least intervention on their part, of supposed attorney's fees which they allegedly owed to him, and of certain current accounts which they had with him in connection with four parcels of land which he had previously sold to them; and that in making said computations, plaintiff took advantage of the fact that he was a lawyer and that defendant Casabar was then his client and employee at the same time.

In addition they alleged as counterclaim:

- That plaintiff is bound to refund to them the sum of P22,283.95 which they paid him for two parcels of land he had sold to them in 1917, without being the owner thereof, plus the interest which the aforesaid sum should earn.
- That plaintiff was also bound to refund to them, with interest, the sum of P11,400.32 being in addition to usurious interest, what they had paid in excess for four parcels of land which he had sold to them.
- That plaintiff collected and received from them on different occasions various sums amounting to P6,438.68, including interest, but did not credit them with said sums in the current accounts which they had with him.
- That titles of the lands which plaintiff had sold to them being defective, they had to incur expenses for lawsuits in defense and protection of the validity of said titles; that the expenses which they incurred therefor amount to P17,000, including various sums which they had been paying to third persons on plaintiff's advice for purposes of settlement with said persons; and that, consequently, plaintiff is bound to refund them the aforementioned sum; and
- That having been deprived of their possession of around 38 hectares of a parcel of land which they had purchased from the plaintiff, they were unable to enjoy the fruits and products thereof from the year 1922; and that by reason thereof they suffered damages estimated at P17,000.

In his reply to the counterclaims of the defendants', plaintiff denied each and every one of them, and likewise denied under oath the usurious acts which they imputed to him, and alleged that, under the law, whatever right they may have had to file said counterclaims has already prescribed.

In the complaint filed in case No. 6637 (G. R. No. 43523) plaintiff alleged thirteen causes of action against defendant Cirilo Casabar, based respectively upon the promissory notes appearing in the record as Exhibits A-1, B-1, C-1, D-1, E-1, F-1, G-1, H-1, I-1, J-1 K-1, L-1, and M-1. Said promissory notes, in turn, are dated and are for the amounts as follows:

Exhibit A-1—promissory note of October 24, 1929 for P40 plus P30;

Exhibit B-1—Promissory note of March 1, 1930 for P50 plus P50;

Exhibit C-1—Promissory note of August 1, 1930 for P598.33 plus P150;

Exhibit D-1—Promissory note of August 29, 1930 for P400 plus P100;

Exhibit E-1—Promissory note of February 11, 1931 for P4 plus P30;
Exhibit F-1—Promissory note of April 17, 1931 for P150 plus P50;
Exhibit G-1—Promissory note of April 8, 1931 for P200 plus P50;
Exhibit H-1—Promissory note of April 25, 1931 for P120 plus P50;
Exhibit I-1—Promissory note of June 1, 1931 for P636.50 plus P100;
Exhibit J-1—Promissory note of June 19, 1931 for P25 plus P50;
Exhibit K-1—Promissory note of December 16, 1931 for P50 plus P50;
Exhibit L-1—Promissory note of April 28, 1932 for P635 plus P200; and
Exhibit M-1—Promissory note of September 30, 1932 for P300 plus P100.

The above promissory notes are for the total sum of P3,208.83 plus P1,010. The latter sum represents the amount of the penalties for attorney's fees which the plaintiff and defendant had agreed upon in case of litigation. By the promissory notes Exhibits A-1, B-1, D-1, F-1, G-1, H-1, I-1, J-1, L-1, and K-1, defendant Cirilo Casabar bound himself, as the said documents on their face show, to pay plaintiff interest at the rate of 14 per cent per annum from the date of their execution; by the promissory note Exhibits C-1 and K-1, he bound himself to pay plaintiff interest at the rate of only 12 per cent per annum; and it does not appear in the promissory note Exhibit E-1 that he bound himself to pay any interest. Defendant accepted the further condition that, in case of default, the payment of each and every one of the foregoing promissory notes, together with their respective interest and the interest on the latter, at the same rate stipulated in each of them, would become immediately demandable.

Plaintiff, however, in his complaint, mentioned the fact that after the maturity of the promissory notes Exhibits C-1, H-1, L-1, and M-1, defendant paid him for the account of the principal and interests thereof the following sums: P486.70; P70; P172.22, and P80.

Defendant's answer consisted in a general and specific denial of all the allegations of the complaint in each and every one of the causes of action set out therein. He also specially denied under oath his alleged execution of the promissory note referred to in the third cause of action, and put up the following special defenses:

First. That the sums the payment of which is sought by plaintiff in his first, second, fourth, fifth, sixth, seventh, eighth, tenth, eleventh, and thirteenth causes of action have been already fully paid.

Second. That the promissory note on which plaintiff's third cause of action is founded was without any consideration because defendant did not receive any part of the sum to which said note refers and that it merely represents usurious interest computed by plaintiff without the least intervention on defendant's part and made to consist in supposed professional fees which plaintiff claims to have a right to collect from him; and

Third. That the promissory notes referred to in the ninth and twelfth causes of action represent the premiums on an insurance policy on the life of defendant, which plaintiff had been paying in his capacity as sole and exclusive beneficiary of the former.

Plaintiff, in his reply to defendant's special defenses, in turn, denied generally and specifically the facts on which the same are based, particularly those to the effect that some of the promissory notes in question were without consideration and that the others represent merely illegal and usurious interest. In another and subsequent reply he denied under oath the usurious acts ascribed to him and at the same time alleged that if defendant ever had any right to maintain his aforementioned special defenses, said right has prescribed under the law.

In the complaint filed in case No. 6807 (G. R. No. 43751). plaintiff alleged three causes of action based on the promissory notes marked Exhibits C, B and A, respectively. The first promissory note (Exhibit C) was executed on August 1, 1929 and is for the following sums: P2,000 and P400; the latter being the stipulated penalty which defendant bound himself to pay in case of suit. The second promissory note (Exhibit B) was also executed on the same day, August 1, 1929, and is for the sum of P602.80 plus P400 as penalty by way of attorney's fees in case of suit; and the third promissory note (Exhibit A) was likewise executed on August 1, 1929 and is for the sum of P397.20 plus P400 as penalty by way of attorney's fees in case of suit. The total of the three promissory notes amounted to P3,000 and the penalties to P1,200. It appears in the said three promissory notes that upon the first and third thereof the defendant would further pay the plaintiff interest at 12 per cent per annum, plus interest on the latter computed at the same rate; that said interest would be demandable by action together with the principal in case the former is not seasonably paid; and that on the second, defendant would also pay the plaintiff interest at the rate of 14 per cent per annum plus interest on the same computed at the same rate, should the former be not paid in due time, making the payment of said interest, as in the case of the other two promissory notes, demandable by action together with the principal at the option of the plaintiff.

The defendant denied in his answer the claim of the plaintiff and alleged the following special defenses:

First. That he has already paid all the amounts claimed in the complaint; and

Second. That said sums are included in those sought to be recovered from him in cases Nos. 6634 (G. R. No. 43522) and 6637 (G. R. No. 43523).

In the complaint filed in case No. 6819 (G. R. No. 43752), plaintiff alleged ten causes of action, the first seven and the last of which are based on the documents presented in said case as Exhibits A, B, C, D, E, F, G, and H, respectively. Said documents are dated and are for the amounts as follows:

Exhibit A—Chit signed by defendant on January 14, 1930, for the sum of P19, the cost of an automobile tire;

Exhibit B—Receipt dated April 17, 1929 in which it appears that defendant, on behalf of plaintiff, collected and received from Modesto Laza, the sum of P12 as plaintiff's attorney's fees;

Exhibit C—An undated note signed by defendant, acknowledging indebtedness to plaintiff in the amount of P80, which was later reduce to P65, as attorney's fees;

Exhibit D—Certified copy of an order of the Court of First Instance of Pangasinan of October 28, 1933, in which it appears that Atty. C. W. Rheberg, plaintiff's partner, appeared on behalf of the applicants in land registration case No. 15131 in connection with a motion asking for the issuance of a writ of possession, filed in land registration case No. 2290;

Exhibit E—A contract executed on August 20, 1931 by and between plaintiff and defendant, whereby the latter bound himself to pay to the former as hire for the use of three carabaos and a cow the sum of P60 on or before August 19, 1932;

Exhibit F—A note of the defendant, dated March 29, 1928 and addressed to plaintiff, in which he asked that the amount of P3.50, the value of thirty-five bamboos, be debited to his account;

Exhibit G—A contract dated April 16, 1932 whereby defendant bound himself to pay to plaintiff on or before April 16, 1933 the sum of P15 as hire for the use of one carabao;

Exhibit H—A statement of account, without date or signatures, indicating the items and dates thereof, imputed by plaintiff to defendant and amounting to P55.10.

The total amount which plaintiff sought to recover under the tenth and first seven causes of action is P244.60, excluding legal interest which he would also have paid to him from the date of the filing of his complaint. He subsequently waived his claims under the eighth and ninth causes of action.

Defendant, in his answer, denied being indebted to plaintiff for the sums to which the eight causes of action refer: and as special defense, alleged that the aforesaid sums are included in those sought to be recovered from him in cases Nos. 6634 (G. R. No. 43522) and 6637 (G. R. No. 43523).

In the complaint filed in case No. 6821 (G. R. No. 43753), plaintiff sought to recover from defendant the following sums: P636.50 plus P200, the latter as attorney's fees; and P100 plus P50, the latter also as attorney's fees. In said complaint plaintiff alleged two causes of action, the first based on Exhibit A, and the second on Exhibit B. Exhibit A is a promissory note dated April 22, 1933, executed by defendant in favor of plaintiff whereby he bound himself to pay the latter on or before April 22, 1934 the sum of P636.50 plus interest at the rate of 12 per cent per annum, and the interest on the accrued interest at the same rate if the latter should not be paid in due time, the payment of the aforesaid three sums then to become demandable by action at the option of plaintiff. It further provides that in case of suit, defendant would pay a penalty by way of attorney's fees in the sum of P200. Exhibit B is another promissory note executed by defendant in favor of plaintiff on June 1, 1933 whereby the former bound himself to pay to the latter the sum of P100 with interest at the rate of 14 per cent per annum plus the interest at the same rate on the accrued interest in case the former is not paid in due time, the payment of the aforesaid three sums then to become demandable by action at plaintiff's option. It further provides that the defendant would also pay in case of suit a penalty in the amount of P50 for attorney's fees.

Plaintiff, in his complaint, however, states that of the aforementioned sum of P100 and interest thereon (Exhibit B), defendant paid him after June 1, 1933, or on August 7, 1934, the sum of P82 so that defendant's obligation was reduced to P22.48, excluding interest from said date, August 7, 1934, and the stipulated penalty for attorney's fees.

Defendant's answer consisted again in a general denial and special defense to the effect that all the aforesaid sums are included in those which plaintiff seeks to recover from him in cases Nos. 6634 (G. R. No. 43522) and 6637 (G. R. No. 43523).

Not satisfied with the judgments rendered against them by the lower court in the five cases here in question, defendants appealed and alleged that said court committed the following errors:

"I. The trial court erred in refusing to admit Exhibits 238, 239-A, 240, 240-A to 240-F and 244 of the defendants.

"II. The trial court erred in not excluding from the plaintiff's accounts all the illegal charges objected to by the defendants, and it specially erred in declaring as legal all the attorney's fees charged by the plaintiff to said defendants.

"III. The trial court also erred in holding that all the pagares, Exhibits A-F and A-1 to M-1, were duly executed and delivered, by either Cirilo Casabar or by him and Valentina S. Cruz, for valuable considerations.

"IV. The trial court erred likewise in holding that the defendants have agreed to the liquidations made by the plaintiff in 1921, 1926 and 1929, and in sustaining said liquidations.

"V. The trial court further erred in holding that the plaintiff has not committed illegal, erroneous, oppressive and usurious computations' in his accounts.

"VI. The trial court still further erred in absolving the plaintiff from paying the amount of P27,152.71 (first counterclaim), P1,854.26 (second counterclaim), P293.13 (third counterclaim), and P34,000 (fourth and fifth

counterclaim) to the defendants.

"VII. The trial court again erred in sustaining all the claims of the plaintiff against the defendant, Casabar, in civil cases Nos. 6807, 6819 and 6821.

"VIII. Finally, the trial court erred in deciding these five cases in favor of the plaintiff and in ordering the defendant to pay all the amounts claimed by the said plaintiff, including numerous attorney's fees, with costs, thus completely ignoring the defendants' evidence and their counterclaims, as well as the report of the accountant, Dominador Ramos."

From the evidence adduced during trial, particularly Cirilo Casabar's own testimony, it appears that he carried on various accounts with the plaintiff which, in the course of their dealings, were described as land account and general account. The first was opened on October 1, 1917 when Casabar bought four parcels of land on installments from plaintiff and was closed on November 3, 1923 when the last installment was paid (Exhibits 171, 165, I-a to I-c). The general account began in 1916 and consisted of some loans which Casabar had been taking from plaintiff, attorney's fees debited by plaintiff from time to time against defendant with the latter's knowledge and consent, and certain payments made by defendant on more than one occasion for his own benefit. With respect to these miscellaneous account or general account as the parties have called them, three liquidations between them took place: That of May 31, 1921, that of December 21, 1926, and that of August 1, 1929.

The first liquidation resulted in a balance against the defendants of P3,836 to which they fully assented. (Exhibits III-f, EE, 17; Casabar's testimony, pages 74, 75 and 255, t. s. n.; Truner's testimony, pages 482-486, 548-549.) Immediately thereafter, defendants came to an agreement with plaintiff to start a new account. To that effect they executed the seven promissory notes known as Exhibits 18 to 24 of the record, which notes bear the same date: May 31, 1921. The first of said notes was for the sum of P236 and the remaining six were for P600 each. As defendants failed to pay in full any of the promissory notes upon demand made about the end of December, 1926, another liquidation had to be made for the purpose of fixing the amounts still owing to plaintiff by defendants. This second liquidation was made on December 21, 1926 resulting in a balance of P7,500 against defendants at the time, excluding the amount of the promissory note bearing date of December 15 of the same year, of P1,165 (Exhibit A of case No. 6634, G. R. No. 43522), and that of October 29, 1919, of P100 (Exhibit 35, folio 4, back page thereof).

In view of the fact that defendants were not able to pay plaintiff the aforesaid balance or any part thereof, they again came to an agreement with the latter for the purpose of opening a new account with him. To this end they executed in favor of plaintiff the promissory notes Exhibits 48 to 51, all dated January 1, 1927, the day following the liquidation, which were upon their face, for the total sum of P7,500, which is exactly the amount of the aforementioned balance.

To clarify their accounts, plaintiff and defendants decided to hold another and third liquidation on August 1, 1929. From this it appeared that defendants owed plaintiff the total sum of P10,397.20 with interest thereon under the old promissory notes, excluding the amount of P1,165 covered by the promissory note marked Exhibit A in case No. 6634 (G. R. No. 43822). To show his assent to this result, Cirilo Casabar wrote in his own hand at the foot of the document containing the liquidation, Exhibit X or 100, the following note: "Checked and approved as correct. This is separate and distinct which Valentina S. Cruz owes Mr. Turner," and affixed his signature thereto. Casabar and his codefendant Cruz had to make new promissory notes to open a new account as they were then unable to pay the aforementioned balance. This they did, as in former occasions, with the agreement of all three. The promissory notes which defendants thus executed were not for the balance alone, but for the amount of P11,000 because Casabar asked for an additional loan of P602.80, which plaintiff granted, so that their indebtedness would be in round numbers. The said promissory notes which, by the way, bear the same date as the liquidation, August

1, 1929, are those which are now marked as Exhibits C, D, E, and F in civil case No. 6634 (G. R. No. 43522), and A, B and C in civil case No. 6807 (G. R. No. 43751).

As may be seen from the liquidation papers (Exhibits III-f, EE, 17, 35, and X or 100), the interest stipulated by plaintiff and defendants at the rates prescribed in the latter's promissory notes which are the same as those abovementioned, have been taken into account and included; but not the penalties which defendants bound themselves to pay plaintiff in case of default or suit because the latter contingency did not occur.

After the third and last liquidation defendant Cirilo Casabar obtained other loans from plaintiff which are set forth in Exhibit B of the record in case No. 6634 (G. S. No. 43522); Exhibits A-1, B-1, C-1, D-1, E-1, F-1, G-1, H-1, 1-1, J-1, K-1, L-1, and M-1 of the records in case No. 6637 (G. R. No. 43523); Exhibits A, B, C, D, E, F, G, and H of the record in case No. 6819 (G. R. No. 43752); and Exhibits A and B of the record in case No. 6821 (G. R. No. 43753).

Defendants did not make any payments on the promissory notes and other vouchers constituting the basis or bases of plaintiff's different causes of action, and set forth in his complaints which give rise to the five cases under consideration, except those which plaintiff expressly admitted in said complaints. And it appears from plaintiff's own testimony that he did not waive the right to demand said payments, with the exception of the interest on the promissory notes Exhibits A, B and C in case No. 6807 (G. R. No. 43751) corresponding to the first year, or from August 1, 1929 to August 1, 1930.

Defendants made efforts to show that when the first liquidation was made, plaintiff did not credit them with the payments set forth in Exhibits 149, 150 and 151 which are respectively for the following amounts: P1236, P500 and P410. The evidence, however, shows the contrary. Exhibit EE shows that they were credited with said payments. The plaintiff so testified at the trial (pages 483 and following, t. s. n.) and this may also be gathered from Exhibit 35 giving the data and enumerating in detail the accounts with interest which were liquidated on December 31, 1926. In this last-exhibit defendant admitted without reservation that in the liquidation "all accounts of Cirilo Casabar and Valentina S. Cruz up to December 31, 1926, with the exception of a mortgage covering a pagare for the amount of P1,165 guaranteeing a note for said amount, dated December 15, 1926, and the account of Donato Anyaya and Cirilo Casabar for a pagare of P100 dated October 29, 1919 and expenses connected therewith," were included. On the other hand, since the dates of the aforementioned exhibits: April 1, 1918 (Exhibit 149); October 22, 1919 (Exhibit 150); and October 23, 1920 (Exhibit 151), to November, 1933 when defendants filed their answers in the first two cases, No. 6634 (G. R. No. 43522) and No. 6637 (G. R. No. 43523), three liquidations had been made. During all that period said exhibits were in their possession, and although plaintiff repeatedly required them to settle their accounts with him, they never claimed that he had not credited them with the payments in question; nor have they alleged specially such defense in their answers. The law presumes that when defendants acquiesced in and approved the liquidations made on the dates above-mentioned, they did so after a close and careful examination and consideration of all the facts. (Sec. 334, Nos. 4, 17, 18, 19, 25, and 26 of Act No. 190). To destroy such a presumption, the uncorroborated testimony of Cirilo Casabar is not enough because it appears in Exhibits III—f and 17 that he and plaintiff had settled this question between them, plaintiff crediting defendant with the three aforementioned payments and Casabar expressing his conformity with the balance set forth in the first of said exhibits and in Exhibit EE of plaintiff by means of his initials. Plaintiff, in turn, gave his assent to the balance appearing in Exhibit 17 of defendant, which remained in the latter's possession until he presented it as part of his evidence. All this, together with Cirilo Casabar's admissions on pages 73 to 75 of the transcript of the stenographic notes, shows the lack of foundation of defendant's contention. Moreover, it should be stated that without evidence of fraud, as there is none in the record, defendants cannot question the aforesaid liquidation. Neither may they question the two subsequent ones because they are precluded from doing

so by the rules of estoppel and estoppel by laches as these terms have been construed in the cases of *Asis vs. Pardo* (2 Phil., 401); *Lucia vs. Perez* (6 Phil., 219); *United States vs. Asensi* (34 Phil., 750); *Tuason vs. Marquez* (45 Phil., 381); *Corporation de PP Agustinos vs. Del Rey* (56 Phil., 512); etc.

Defendants, Cirilo Casabar in particular, attempted to prove that the latter had signed the promissory notes in question when they made the three aforementioned liquidations because of the fear of displeasing the plaintiff of whom he was a client and an employee at the same time. To be sure, the evidence does not show this. On the contrary, from Casabar's own answers to the questions put to him at the trial, it may be deduced that there was no such fear on his part. If he had had such fear, his testimony to the effect that he asked plaintiff on May 31, 1921 to give him the cards which contained the statement of his accounts must be rejected because such an act is incompatible with the idea of fear (t. s. n., pages 55 and 56). One who is afraid of another cannot require the latter to do this or that nor to impose conditions upon him. Undoubtedly, Casabar willingly signed the promissory notes above-mentioned because he knew that they expressed the true state of his accounts being the one who, as employee of plaintiff, handled the papers, accounts and other data relating to the transactions which plaintiff had with his clients and with defendant himself. On top of all this, it must be added that the fear of displeasing a person to whom obedience and respect are due shall not annul a contract (art 1267, Civil Code).

Defendants' allegation that the obligations which plaintiff lays upon them have been the result of the illegal, erroneous, oppressive, and usurious computations made by him, is not supported by the evidence. It has been clearly shown that except for an isolated instance, said computations were made with the acquiescence and conformity of the defendants, having before them the supporting papers and other documents evidencing and showing the obligations pending fulfillment or payment.

The exception above referred to is that found in Exhibit 12 showing that Casabar's original obligation of P58.50 amounted to P66.98 at the end of one year, disclosing thereby that the difference between these two sums represented the interest which plaintiff charged defendants for the year ending December 31, 1916. Plaintiff admitted that the said difference represented the 4 per cent monthly interest on the original obligation of P58.50, and on this basis, according to the expert testimony of one of the defendants' own witnesses, the amount collected in violation of the Usury Law was not more than ten centavos. However, the action brought by defendants to recover or to be credited with the Amount allegedly collected from them by the plaintiff in violation of the Usury Law, granting that said counterclaim is included in general terms in their second and third counterclaims, is too late, having been brought much more than two years after the cause of action accrued. According to the law aforementioned, actions of this nature must be brought within two years (sec. 6, Act No. 2655). In the instant case, this period commenced to run with respect to the defendants on January 1, 1917, but they did not file their counterclaim until the year 1933.

The Usury Law certainly does not forbid the charging of interest at the rate of 14 per cent per annum when, as in the case of the defendants, the promissory notes which charged them interest at that rate, were not secured by real property (sec 3, Act No. 2655). Up to that rate (14 per cent per annum) and no more, did plaintiff charge them interest in some of the promissory notes they executed in his favor, but not in all. In others, the rate was lower.

Having reached this conclusion, it is clear that errors II, III, IV, and V, allegedly committed by the lower court are without merit.

As to the first alleged error committed by the lower court, it should be stated that it is of no importance because the documents mentioned in connection therewith do not resolve any question raised by the parties. They would in any case work in favor of plaintiff because the alleged payments of P475 and P500 made by defendants, were duly credited to them, as may be seen from the above-mentioned Exhibits EE and III-f, from plaintiff's testimony

(t. s. n., page 481 and following), and from the testimony of defendant Casabar (t. s. n., page 75 and following). On the other hand, the presentation of the said documents in evidence was for no other purpose than, in the very words of the attorney for the defendants, "to test the credibility of the witnesses" (t. s. n., page 563). If defendant Valentina S. Cruz did not receive from plaintiff the sums imputed to her, and for which she and her codefendant had subscribed the promissory note Exhibit A, for the amount of P1.160, on December 15, 1926 (first cause of action in case No. 6634, G. R. No. 43522), she could have so testified. She, however, preferred to remain silent. Neither was she presented to testify in the case as witness in her own behalf or in that of her codefendant. Furthermore, the two defendants having executed said Exhibit A and it not appearing that fraud intervened in its execution, they may not now inquire why payment thereof is being demanded of them, much less question its validity or efficacy.

As to the sixth alleged error, it should be said that the lower court properly rejected defendants' counterclaims. The reasons given therefor are convincing and supported by the evidence of record. We should not lose sight of the fact that all the transactions and accounts which defendants had with plaintiff relative to lands, were definitely closed and terminated, as defendants themselves admit, on November 3, 1923 (Brief for the appellants, page 6), and that their counterclaims based on said transactions and accounts had taken place much earlier than the aforesaid date. As in the case of the three liquidations hereinbefore mentioned, defendants may not now reopen accounts which, they themselves say, have been closed with their consent, defendants not having proved that plaintiff acted fraudulently in closing said accounts. On the other hand, the other sums which defendants seek to recover in their counterclaims were included and taken into account in the liquidations made on the occasions above-mentioned.

The fact should be borne in mind that plaintiff reduced the penalty agreed upon between him and defendants as attorney's fees under the terms and conditions of the promissory notes Exhibits A and B of case No. 6807 (G. R. No. 43751) to P50 and P100, respectively. And so likewise is the fact that several of the penalties which defendants and appellants have been ordered to pay because they had bound themselves to do so in the promissory notes subscribed by them which they afterwards failed to redeem or satisfy, are excessive and exorbitant, because some of the penalties amount to 75, 100 or even 700 per cent of the principal obligation. This should not be allowed, specially when plaintiff himself, who is a lawyer, or the firm of which he is a managing partner, took charge of the prosecution of his complaints to the final termination of the cases which they commenced. There is no reason why we should not apply to this phase of the controversy the same considerations that had been taken into account in the cases of *Bachrach vs. Golingco* (39 Phil., 138); *Bachrach Garage & Taxicab Co. vs. Golingco* (39 Phil., 912); *Manila Trading & Supply Co. vs. Tamaraw Plantation Co.* (47 Phil., 513); *Philippine Engineering Co. vs. Green* (48 Phil., 466); *F.M. Yap Tico & Co. vs. Alejano* (53 Phil., 986); and *Tan Tua Sia vs. Yu Biao Sontua* (56 Phil., 707). We, therefore, hold that the reasonable penalty should not be more than 10 per cent of the obligations in which there was such a stipulation, on the basis, of course, of the defendants' actual indebtedness.

It is not amiss to state, as the lower court has well done in its decision, that the burden of the arguments of defendants and appellants is made to rest on the testimony and the result of the verification of the questioned accounts made by the accountant Dominador Ramos, who testified in their favor. On this point, the lower court, with much reason said:

"The alleged overpayment on the land account, for example, is due to the fact that Ramos deducted the amount of P4,100 from P7,570, which the defendant Casabar agreed to pay for the four parcels of land he bought from the plaintiff. The defendants contend that the plaintiff was not the owner of the first two parcels—(a) and (b)—described in the deed, Exhibit 165, and therefore should return the amount of P3,600 paid for these two parcels, together with its interest. The plaintiff should also return (according to them), the amount of P500 that they paid to him in addition to P7,070, which appears, in the said deed as the consideration of the sale. The

court believes these two contentions are untenable. The defendants have their title for parcels (a) and (b) and have been enjoying continuous and peaceful possession of said parcels ever since they bought them from the plaintiff in 1917. It is true that the defendants paid P550 to one Pacifico Aquino to settle his claim over these two parcels of land, but the said amount was without doubt, paid by the defendants voluntarily. The court is of the opinion that, in order that the defendants can recover on breach of warranty under articles 1461 and 1474 of the Civil Code, three indispensable requisites must be present, namely: (1) final judgment; (2) that the vendees be deprived of the whole or part of the thing sold; and (3) that there is a right prior to the sale. In the instant case, there is neither final judgment based upon a right prior to the sale, nor a deprivation of the whole or part of the thing sold, it is therefore obvious that they can not recover on that count. And with regard to the P500 which the plaintiff received from the defendants in addition to the amount of P7,070 appearing in the deed as the consideration for the sale, the court also believes that there is no reason for refunding the same. Casabar himself admitted that this additional amount of P500 was agreed upon by the parties upon the execution of the deed, Exhibit 165, but it did not appear in the said deed because the same had already been prepared when the parties finally agreed as to the purchase price. In any event, Casabar agreed to pay this sum and executed a *pagare* for it on the same day.

"Neither are the alleged overpayments on the general account substantiated by the evidence. The result obtained by Ramos is due, among other things, to the fact that he, acting on the instructions of Casabar, eliminated all attorney's fees, with the exception of the single item in the amount of P800, and in taking for granted that certain payments made by the defendant were not duly credited to them. The court, however, is of the opinion that all the attorney's fees objected to should be allowed; and that all payments made by the defendants to the plaintiff were duly credited. Nor does the court find any basis in fact for the alleged overpayment on the account of Valentina S. Cruz.

"In their fourth counterclaim, the defendants claim the amount of P17,000 as alleged expenses incurred by them in various litigations wherein they had been parties; and under the fifth counterclaim, another P17,000 as alleged value of products which they claim they failed to get from portions of parcel (d) during a period of more than four years. They contend that they were forced to enter these litigations for the purpose of 'clearing, defending and protecting their title and possession' to the four parcels of land that they bought from the plaintiff. They contend further that they lost and were evicted from two portions of parcel (d) which were questioned by Andres Friala and Eusebio David, and that therefore the plaintiff should pay for the value of the crops which they failed to get from said portions.

"These claims are based on an alleged breach by the plaintiff of the 'warranty and eviction' clause in the deed of sale, Exhibit 165. It is an indispensable requisite in an action to enforce warranty that a final judgment has been rendered by which the vendee is deprived of thing sold, or part thereof. The defendants have failed to establish the fact that they have ever been evicted from any portion of the lands they bought from the plaintiff. They have been in continuous and peaceful possession of all said parcels ever since the day they bought them. It is true there were some who disputed Casabar's title, specially to portions of parcel (d); but a vendor is not responsible for the acts of mere trespassers. Casabar won in all of his cases, with the exception of those against Friala and David. It is the contention of Casabar that the lands claimed by Friala and David were portions of the fourth parcel bought from the plaintiff. This, however, does not appear from the evidence. Parcel (d) had not yet been surveyed when the defendants bought them. The limits were not fixed and undisputed. And while the land was described in the deed as containing only 10 hectares for which the defendants paid only P470, the said defendants succeeded in obtaining a title for 240 hectares. The court is, therefore, constrained to rule that the portions claimed by Friala and David were not included in the land sold by the plaintiff to them. Furthermore, the expenses for transportation and subsistence for witnesses, attorney's fees, and all the other alleged expenses listed by the defendant in their Exhibits 222-A to 222-L and 223 to 225 are not recoverable under the provisions of article 1478 of the Civil Code, unless the sale was made in bad faith, a circumstance which has not been proved in the instant case. Neither are fruits recoverable unless the vendee has been required by the judgment to deliver them to the successful party."

The remaining assigned errors being a sequel of the others, we find no occasion to consider or discuss them.

In view of all the foregoing the court resolves the appeal of defendants and appellants as follows:

- With respect to case G. R. No. 43522 (civil case No. 6634 of the lower court):

(a) The judgment appealed from is affirmed insofar as it orders defendants to pay plaintiff, jointly and severally, the amounts the latter seeks to recover under his third, fourth, fifth, and sixth causes of action, founded on Exhibits C, D, E, and F, or the total sum of P8,000 plus the stipulated interest at 12 per cent per annum, and the interest on the accrued interest from the time defendants failed to pay the principal sum, or from August 1, 1929, until complete payment;

(b) Said judgment is also affirmed insofar as it orders defendants to pay plaintiff, jointly and severally, the sum the latter seeks to recover under his first cause of action founded on Exhibit A, or the sum of P1,165 plus the stipulated interest of 12 per cent per annum from December 15, 1926 until complete payment, after deducting the amount of P100 which, on account of said interest, defendants paid plaintiff on December 15, 1928;

(c) Said judgment is likewise affirmed insofar as it orders defendants to pay plaintiff, jointly and severally, the sum he seeks to recover under his second cause of action, founded on Exhibit B or the sum of P500 plus interest at the rate of 14 per cent per annum, and the interest on the accrued interest at the same rate from the time defendants failed to pay the aforesaid sum, or from April 16, 1930 until complete payment;

(d) Said judgment is modified by ordering defendants to pay plaintiff, jointly and severally, a sum equivalent to 10 per cent of P9,665 representing their total principal obligations still unpaid, only as penalty in the form of attorney's fees;

(e) The defendants are sentenced to pay, also jointly and severally, the costs of this suit in both instances.

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With respect to case G. K. No. 43523 (civil case No. 6637 of the lower court):

(a) The judgment appealed from is affirmed insofar as it orders defendant Cirilo Casabar to pay plaintiff under the latter's first, second, fourth, sixth, seventh, ninth, and tenth causes of action based on Exhibits A-1, B-1, D-1, F-1, G-1, I-1, and J-1, the sums of P40, P50, P400, P150, P200, P636.50, and P25, respectively, plus the stipulated interest at 14 per cent per annum and the interest on the accrued interest at the same rate from the time defendant failed to pay the aforesaid sums, or from the dates of the aforementioned documents, until complete payment;

(b) The judgment appealed from is modified by clarifying the same and ordering defendant to pay plaintiff the sum of P111.63 to which his claim under his third cause of action, founded on Exhibit C-1, has been reduced, plus interest at the rate of 12 per cent per annum, and the interest on the accrued interest at the same rate from the time defendant failed to pay the aforesaid sum, or from August 1, 1930, until complete payment;

(c) The judgment appealed from is modified by clarifying the same and ordering defendant to pay plaintiff the sum of P4 under the latter's fifth cause of action founded on Exhibit E-1, with legal interest from the date of the filing of the complaint in this case, until complete payment;

(d) The judgment appealed from is likewise modified by clarifying the same and ordering defendant to pay plaintiff the sum of P60 to which the latter's claim, under his eighth cause of action, founded on Exhibit M-1, has been reduced, plus the agreed interest at 14 per cent per annum and the interest on the accrued interest at the same rate from the time defendant failed to pay the aforesaid sum, or from April 25, 1931 until complete payment;

(e) The judgment appealed from is also modified by clarifying the same and ordering defendant to pay plaintiff

the sum of P50 under his eleventh cause of action, founded on Exhibit K-1, at the rate of 12 per cent per annum and the interest on the latter at the same rate from the time defendant failed to pay the aforesaid sum, or from December 16, 1931, until complete payment;

(f) The judgment appealed from is modified by clarifying the same and ordering defendant to pay plaintiff the sum of P462.78 to which the amount sought to be recovered by plaintiff under his twelfth cause of action founded on Exhibit L-1, was reduced, plus interest thereon at the rate of 14 per cent per annum, and the interest on the accrued interest from the time defendant failed to pay the aforesaid sum or from April 28, 1932, until complete payment;

(g) The judgment appealed from is modified by clarifying the same and ordering defendant to pay plaintiff the sum of P220 to which the amount sought to be recovered by him under his thirteenth cause of action, founded on Exhibit M-1, was reduced plus the stipulated interest at 14 per cent per annum and the interest on the latter from the time defendant failed to pay the aforesaid sum, or from September 30, 1932, until complete payment;

(h) The judgment appealed from is finally modified by clarifying the same and ordering defendant to pay plaintiff solely as penalty by way of attorney's fees a sum equivalent to 10 per cent of P2,399.91 representing the entire principal obligations still unpaid;

(i) The defendant is sentenced to pay the costs of this suit in both instances.

- With respect to case G. R. No. 43761 (civil case No. 6807 of the lower court);

(a) The judgment appealed from is affirmed insofar as it orders defendant Cirilo Casabar to pay plaintiff the sums which plaintiff seeks to recover under his first and third causes of action, founded on Exhibits C and A, in the total sum of P2,397.80 plus the stipulated interest at the rate of 12 per cent per annum, and the interest on the accrued interest to be computed at the same rate from the time defendant failed to pay the aforesaid sum, or from August 1, 1930 until fully paid;

(b) The judgment appealed from is likewise affirmed insofar as it orders plaintiff to pay the sum of P602.80 which the latter seeks to recover under his second cause of action, founded on Exhibit B, plus the stipulated interest at the rate of 14 per cent per annum and the interest on the latter at the same rate from the time defendant failed to pay the aforesaid sum, or from August 1, 1930 until fully paid;

(c) The judgment appealed from is modified by ordering defendant to pay plaintiff as penalty in the form of attorney's fees an amount equivalent to 10 per cent of P3,000 representing his entire principal obligations which are still unpaid;

(d) The defendant is sentenced to pay the costs of the suit in both instances.

- With respect to case G. R. No. 43752 (civil case No. 6819 of the lower court):

(a) The judgment appealed from is affirmed insofar as it orders defendant Cirilo Casabar to pay plaintiff the amounts which the latter seeks to recover under his causes of action Nos. 1, 2, 3, 4, 5, 6, 7, and 10, founded on Exhibits A, B, C, D, E, F, G, and H, or the total sum of P224.60 with legal interest from the date of the filing of the complaint in civil case No. 1929 of the justice of the peace court of Lingayen, Pangasinan, until fully paid; and

(b) The defendant is sentenced to pay the costs of this suit in both instances.

- With respect to case G. R. No. 43753 (civil case No. 6821 of the lower court):

(a) The judgment appealed from is affirmed insofar as it orders defendant Cirilo Casabar to pay plaintiff the

sum of P636.50 which the latter seeks to recover under his first cause of action, founded on Exhibit A, plus the stipulated interest at the rate of 12 per cent per annum and the interest on the accrued interest to be computed from the time defendant failed to pay the aforesaid sum, or from April 22, 1933, until fully paid;

(b) The judgment appealed from is affirmed insofar as it orders defendant to pay plaintiff the sum of P22.48 to which the amount the latter seeks to recover under his second cause of action founded on Exhibit B, has been reduced plus the stipulated interest at the rate of 14 per cent per annum, and the interest on the accrued interest at the same rate computed from the time defendant failed to pay the aforesaid sum, or from August 7, 1934, until fully paid;

(c) The judgment appealed from is modified by ordering defendant to pay solely as penalty by way of attorney's fees a sum equivalent to 10 per cent of P658.95 representing his total unpaid obligations; and

(d) The defendant is sentenced to pay the costs of this suit in both instances. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

RESOLUTION UPON MOTION FOR RECONSIDERATION

July 21, 1938

DIAZ, J.:

By their motion for reconsideration defendants ask for the reexamination of the accounts which were the subject of the three liquidations made by the parties and which led to the execution of the promissory notes referred to in the decision. They allege that said liquidations were arbitrarily made by plaintiff.

The reasons enumerated and the considerations set forth in the decision, particularly those appearing on pages 18, 19 and 20 thereof, more than suffice to show the untenability of the motion now before us. The liquidations in question were the result of the examination made by plaintiff and defendants of their respective accounts and bear the stamp of their conformity and approval. (Exhibits 17, III-f, 35, 100, and X). Defendants, specially Cirilo Casabar, have made admissions which cannot but frustrate their purpose to invalidate the aforesaid liquidations; inasmuch as Casabar required plaintiff, when the latter, at the former's instance, had to agree that the balance remaining against them (the Casabars) after the first liquidation was only P3,836, to put his initials as a sign of his conformity to the result aforementioned on the card marked Exhibit 17 which forms part of defendants' own evidence (t. s. n., pages 55 and 56); and, consequently, if it was to be effective against anybody, it was against Casabar and his codefendant. Defendants made the promissory notes Exhibits 18 to 24 to pay the said balance (t. s. n., pages 74 and 75), and Cirilo Casabar, in turn, placed his initials on the card Exhibit III-f as a sign of his acquiescence (p. 260, t. s. n.). Said initials were preceded by the well-known sign "O. K." which concededly signifies: "absolutely correct." (Exhibit III-f is also a part of defendants' own evidence, and it seems clear that it could prejudice them more than anyone else. Said exhibit corresponds to Exhibit 17.

There would be no way to a case if the sound principles of estoppel should be disregarded, for then a party may, at any time and at pleasure, disclaim whatever he may have said or done. On the other hand, the testimony of the accountant Dominador Ramos, who prepared Exhibit 235 and its appendices, to which defendants would attach an importance which it does not and cannot have, justifies no other conclusion than that set forth in the decision. Said accountant made such statements and committed such errors as entirely vitiate the aforesaid document Exhibit 235 and its appendices. He testified that he did not verify the computations made by plaintiff after the first

liquidation which took place on May 31, 1921, for the reason that, according to him, any effort in that direction would be useless because said computations were based on others which were wrong from the beginning (pages 349-350, t. s. n.) ; that he merely followed defendants' instructions in making his computations (pp. 353, 404-407, t. s. n.) that plaintiff had collected interest on the amounts set forth on page 4, under the caption "Miscellaneous", of the second liquidation Exhibit 35 (page 2, paragraph 3 of Exhibit 235), when in reality said plaintiff only began collecting same from the dates when defendant bound himself to pay them, executing for that purpose the promissory notes containing clauses as to said interest (t. s. n., pp. 379-381). He likewise committed a mistake in entering the item of P40 mentioned on page 1 of Exhibit 100, in Schedule 4 of Exhibit 235, which he should not have done, because with the said amount and the interest thereon the amount of a previous obligation or that set forth in promissory note "12-j-25" (Exhibit 153, t. s. n., pp. 350-352; 375-378), had been paid. He failed to make any mention of the promissory notes Exhibits 18 to 24 (pages 349, 350, t. s. n.) which show precisely the correction of the first liquidation (pages 74, 75, t. s. n.); he likewise made no mention of the promissory notes which defendant executed after the second liquidation (p. 382, t. s. n.), when he should not have done so; and he improperly included in Schedule 4 of Exhibit 235 the items of P15.15, P52.20 and P4 plus their respective interest of P21.09, P51.24 and P1.79. Defendants themselves admitted this error of their witness Ramos, for in their brief they say: "Upon verification by Ramos and Casabar later, however, it was found that the amounts of P15.15, P52.20 and P5 should not have been included in Schedule No. 4, because these had been already accounted for. These three amounts with their corresponding interests of P21.09, P51.24 and P1.79 make a total of P152.66. (Brief for the defendants, page 58.)

The accounts which the defendants are ordered to pay in the judgment are not wholly for attorney's fees; and even if they were, which is not the case, they would not in any way justify altering the decision, because all that appears in the liquidations and subsequent agreements was the result of the mutual understanding between plaintiff on the one hand and the defendants on the other. Neither may it be said that the proven interest could justify disturbing the decision because the law allows the stipulation of interest at 14 per cent per annum, the rate agreed upon between the parties, when, as in the instant case, the obligation on which the interest is collected or paid, is not secured by real estate.

With respect to the lands which plaintiff sold to defendant Cirilo Casabar, the record shows that for the parcel having an area of 10 hectares, 60 ares and 30 centares, said defendant obtained the adjudication in his name in the registration case mentioned in the decision of a parcel having a greater area or 219 hectares, 27 ares and 65 centares (Exhibits 211 and 201-A). Therefore, instead of losing, Casabar gained much from the transaction he had with plaintiff. This, however, is of no importance whatsoever inasmuch as plaintiff was never sued for eviction and warranty. It is not true that plaintiff, on the pretext that they did not pay him his attorney's fees, would have for himself the lands which he had sold defendant. The latter is the present exclusive owner of said lands inasmuch as the certificate of title corresponding thereto is in his name; but if he fails to pay the amount of the judgment entered against him and unless he has other property to answer for the payment of said judgment, what he fears now will naturally take place, even in the supposition that said lands had not originated from the plaintiff.

In view of the foregoing and of the reasons set forth in the decision, the defendants' motion for reconsideration should be, as it is hereby, denied. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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