

43 Phil. 616

[G. R. No. 18002. July 10, 1922]

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,
VS. ERNEST ARNOLD SCHENKEL AND CRISTINA M. GONZALES, DEFENDANTS
AND APPELLANTS.**

D E C I S I O N

AVANCEÑA, C.J.:

This is an action for the recovery of the amount of a mortgage credit.

A demurrer to the complaint was filed in the Court of First Instance and it was overruled.

After hearing the case on its merits, the court sentenced the defendants, along with the other necessary pronouncements, to pay the plaintiff the net amount of P50,840.23, From this decision an appeal has been taken. One of the errors here assigned as committed by the trial court is the overruling of the demurrer to the complaint. We are of the opinion that there was no error in so doing. The demurrer was founded upon the fact that the complaint did not describe the property mortgaged. However, it appears that the mortgage deed was made a part of the complaint and in this deed the lands mortgaged are properly described; so that this description must be considered as having been made in the complaint itself.

Another error assigned is the fact that the court did not hold void, as being contrary to section 14 of Act No. 1865, the document of indebtedness of the defendants. Neither was this an error. This document is as follows:

“P30,000.00.

“ALCALA, PANGASINAN, P. L,
” *August 31,*
1914.

On or before the 31st day of August, 1919, for value received, I promise to pay to the Agricultural Bank of the Philippine Government at its office in Manila, Philippine Islands, the sum of thirty thousand pesos (P30,000), with interest thereon, payable semi-annually, at the rate of eight per cent (8%) per annum, from date until paid, and with interest at the like rate on all installments of interest overdue and unpaid.

(Sgd.) "ERNEST ARNOLD
SCHENKEL.

"With my knowledge and consent.

(Sgd.) "CRISTINA
GONZALES.

"No. 685.
L. 683.
M. 692.
A. 1676."

Section 14 of Act No. 1865 provides:

"The bank shall not exact more than ten per centum per annum on any loan made by it."

It is contended that in accordance with the terms of this instrument of indebtedness the defendants, on the maturity of the note on August 31, 1919, would actually be paying more than 10 per cent interest per annum on the principal of P30,000 including the stipulated interest and the interest upon the interest due and unpaid. But computation of the interest should not be made in this manner. The interest due, from the time that it is payable, is, by agreement of the parties, a new debt and the interest accruing must not be considered as pertaining to the original debt of P30,000. However it may be, this agreement is lawful. If, when this interest falls due, payment thereof is claimed by the creditor and made by the debtor, and, upon doing so, they agree that the debtor shall consider that amount as a new debt, then it would be beyond question that the interest upon the new loan could be collected. There is no reason why the parties might not agree beforehand what they might agree upon later and this is what the agreement in question amounts to. Furthermore this

kind of agreement is impliedly permitted by the Civil Code (article 1109) and expressly authorized by Act No. 2665 (section 5).

The judgment appealed from is affirmed with costs against the appellants. So ordered.

Araullo, C. J., Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

Date created: June 05, 2014