

[ G.R. No. 3019. February 09, 1907 ]

**LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE,  
VS. VICENTE ARAZA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

The plaintiff brought this action in the court below to foreclose a mortgage for 8,000 pesos upon certain land in the Province of Leyte. A demurrer to the complaint was overruled, but to the order overruling it the defendant did not except. The defendant answered, alleging that the document, the basis of the plaintiff's claim, was executed through error on his part and through fraud on the part of the plaintiff. A trial was had and judgment was entered for the plaintiff as prayed for in its complaint. The defendant moved for a new trial on the ground that the decision was not justified by the evidence, this motion was denied, to its denial the defendant excepted, and he has brought the case here for review.

Upon the questions of fact raised by the answer, the findings of the court below are sustained by the evidence, and in no event can they be said to be plainly and manifestly against the weight of the evidence. Those findings include a finding that there was no fraud on the part of the plaintiff, no mistake on the part of the defendant, and that there was a sufficient consideration for the contract. As has been said, there was evidence in the case to support all of these conclusions.

Upon one point, however, we think that the judgment was erroneous. The contract sued upon was executed on the 11th day of June, 1901. By the terms thereof the defendant promised to pay the plaintiff 8,000 pesos as follows: 500 pesos on the 30th of June, 1901, and the remainder at the rate of 100 pesos a month, payable on the 30th day of each month, until the entire 8,000 pesos was paid. The defendant paid 400 pesos and no more.

This suit was commenced on the 12th day of June, 1903. There was no provision in the contract by which, upon failure to pay one installment of the debt, the whole debt should

thereupon become at once payable. We are of the opinion that the obligation can be enforced in this action only for the amount due and payable on the 12th day of June, 1903.

The court below gave no credit for the payment of 400 pesos admitted by the complaint to have been received by the plaintiff. It also allowed interest upon the entire debt from the 1st day of July, 1901. The contract does not provide for the payment of any interest. There is no provision in it declaring expressly that the failure to pay when due should put the debtor in default. There was therefore no default which would make him liable for interest until a demand was made. (Civil Code, art. 1100; Manresa, Com. on Civil Code, vol 8, p. 56.) The transaction did not constitute a mercantile loan and article 316 of the Code of Commerce is not applicable. There was no evidence of any demand prior to the presentation of the complaint. The plaintiff is therefore entitled to interest only from the commencement of the action.

The judgment is set aside and the case is remanded to the court below with directions to determine the amount due in accordance with the views hereinbefore expressed and to enter judgment for such amount. No costs will be allowed to either party in this court. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.*

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