RECENT DOCUMENTS

OPINION NO. 46, s. 1958

2ND INDORSEMENT
April 28, 1958

Respectfully returned to the Secretary of Labor, thru the Secretary of Foreign Affairs, Manila.

Comment is requested on the provisions of Article I of the attached "Convention Concerning The Abolition Of Forced Labor," adopted in Geneva by the International Labour Conference, on June 25, 1957, which reads:

> "Ariticle I
>
> "Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
>
> "(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
>
> "(b) as a method of mobilizing and using labour for purposes of economic developments;
>
> "(c) as a means of labor discipline;
>
> "(d) as a punishment for having participated in strikes;
>
> "(e) as a means of racial, social, national or religious discrimination."

Article III, Section 1, Clause 13 of the Constitution provides that,

> "No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted."

and Section 1727 of the Revised Administrative Code, states:

> "Liability of prisoners to labor.—All convicted able-bodied, male prisoners not over sixty years of age, may be compelled to work in and about prisons, jails, public buildings, grounds, roads, and other public works of the National Government, the provinces, or the municipalities, under general regulations to be prescribed by the Director of Prisons, with the approval of the Department Head. Persons detained on civil process or confined for contempt of court and persons detained pending a determination of their appeals may be compelled to police their cells and to perform such other labor as may be deemed necessary for hygienic or sanitary reasons."

In connection with subdivision (a) of the quoted article, it may be mentioned that, under Republic Act No. 1700, one who knowingly, wilfully and by overt acts *affiliates* himself with, becomes, or remains a member of the Communist Party of the Philippines and/or its successor or of any subversive association or one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means for the purpose of placing such Government or political subdivision under the control and domination of any alien power may be held criminally liable therefor and sentenced to serve a term of imprisonment. As a prisoner, he may, under the quoted provision of the Revised Administrative Code, be required to perform manual labor.

With respect to subdivisions (c) and (d), Section 19 of Commonwealth Act No. 103, as amended, reads as follows:

> *"Implied condition in every contract of employment.*—In every contract of employment, whether verbal or written, it is an implied condition that when any dispute between the employer and the employee or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration pursuant to the provisions of this Act or when the President of the Philippines has ordered an investigation in accordance with section five of this Act with a view to determining the necessity and fairness of fixing and adopting a minimum wage of laborers, and pending award or decision by the Court of such dispute or during the pendency of the investigation above referred to, the employee or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when public interest so requires, and if he has already done so, that he shall forthwith return to it, upon order of the Court, which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled; and if the employees or laborers fail to return to work, the Court may authorize the employer to accept other employees or laborers. x x x A violation by the employer or by the employee or laborer of such an order or the implied contractual condition set forth in this section shall constitute contempt of the Court of Industrial Relations and shall be punished by the Court itself in the same manner with the same penalties as in the case of contempt of a Court of First Instance. x x x."

The validity of the provision just quoted was upheld by the Supreme Court of the Philippines in the case of Kaisahan ng mga Manggagawa sa Kahoy v. Gotamco Sawmill, 45 O.G., Supp. to No. 9, 147. The Court, in part, said:

> "We agree with the Court of Industrial Relations that Section 19 of Commonwealth Act No. 103 is constitutional. *It does not offend against the constitutional inhibition prescribing involuntary servitude.* An employee entering into a contract of employment after said law went into effect, voluntarily accepts among other conditions those prescribed in section 19, x x x. The voluntariness of the employee's entering into such a contract of employment—he has a free choice between entering into such a contract of employment—with such an implied condition, negatives the possibility of involuntary servitude ensuing. x x x." (Italics supplied.)

Regarding subdivisions (b) and (c), the only comment this Office offers is that they do not seem to be in conflict with any existing Philippine law or statute on the subject.

(Sgd.) JESUS G. BARRERA
Secretary of Justice

OPINION NO. 50, s. 1958

2ND INDORSEMENT
May 2, 1958

Respectfully returned to the Executive Secretary, Office of the President, Malacañang, Manila.

Comment is requested on the proposed amicable settlement between the Board of Liquidators and Mr. Horacio Guanzon regarding the latter's mortgage lien on 22 parcels of land situated in Sta. Ana, Manila, now under the administration of the Board pursuant to Executive Order No. 372.

Briefly, the facts are as follows:

1. In 1937, the above-mentioned parcels of land then owned by Giichi Yasugami, a Japanese, were mortgaged to Mr. Horacio Guanzon as security for a

loan of ₱4,500.00 payable within one year and a half with interest at the rate of 12% per annum. On July 8, 1939, a new contract was executed between the parties, whereby the loan was increased to ₱11,000.00, payable within a year, at the same rate of interest.

2. Said parcels of land were among the enemy-owned properties vested by the U.S. Government upon the termination of the last war.

3. Alleging that the Japanese debtor had failed to settle the above-mentioned obligation, Mr. Guanzon in 1949 filed with the Philippine Alien Property Administration a claim for payment of the debt. At a hearing conducted by the Vested Property Claims Committee on October 25, 1949, upon manifestation of Mr. Guanzon's counsel that he was withdrawing the claim "without prejudice to filing a claim for the recognition of [the] mortgagee's right with the Office of the General Counsel", an order considering the claim withdrawn was issued by the Committee.

4. On June 19, 1952, claimant filed with the PAPA a petition for rehearing requesting that its 1949 order be revoked and that the claim be recognized and paid. The petition was denied on June 1, 1953, on the ground that no purpose would be served by revoking the order of withdrawal "since the mortgage in favor of the claimant, if it is valid, would constitute an encumbrance upon the vested property and as such, would afford claimant adequate remedy for the enforcement of his rights".

5. Said lands having been transferred to the Philippine Government, pursuant to the Philippine Property Act of 1946 and Republic Act No. 8, subject to "recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries", Mr. Guanzon sought payment of the loan by the Board of Liquidators and, after protracted negotiations, offered the compromise settlement now under consideration.

By resolution No. 7346 dated December 22, 1955, as amended by Resolution No. 7382, the Board of Liquidators resolved to enter into the proposed compromise settlement by the terms of which the mortgage creditor shall receive ₱27,670.00 only in full satisfaction of the mortgage indebtedness of Giichi Yasugami, then amounting to ₱32,670.00 including accrued interests. According to its letter of transmittal, the Board has "exerted every effort to secure evidence of payment" of the said indebtedness and has even requested the aid of the Department of Foreign Affairs and the Bureau of Internal Revenue in gathering evidence of payment by the Japanese debtor during the war. No such evidence, however, could be found.

In the within memorandum for the President, Judge Esguerra recommends approval of the proposed amicable settlement because "payment of the mortgage loan x x x is a fact which cannot be presumed but [has] to be established by clear and indubitable proof," and inasmuch as Mr. Guanzon's cause of action had not yet prescribed when he filed a claim with the PAPA in 1949.

We concur in this recommendation.

When the existence of a debt is fully established by the evidence, the burden of proving that it has been paid devolves upon the debtor (Piñon v. de Osorio, 30 Phil. 365, Lopez v. Tan Tioco, 8 Phil. 693, De Jesus v. Go Quiolay, 38 O.G. 1890) who should furnish convincing and conclusive proof of payment (Ortiz and Rotaoche v. Melliza, 22 Phil. 132, Toribio v. Fox, 34 Phil. 913).

Regarding prescription, it has been pointed out that Guanzon's right of action to demand payment of his lien "accrued on July 8, 1940, and would have

prescribed on July 8, 1950 x x x" and that "before the lapse of the 10-year prescriptive period Guanzon filed a claim for the payment of his lien on the land with the PAPA." (See page 3 of the memorandum.) This is correct if we are to disregard totally the period of the last Pacific war in counting the prescriptive period. While it is true that there are already decisions of the Supreme Court (Claridad v. Benares, G.R. No. L-6438, June 30, 1955; Osorio v. McGrath, G.R. No. L-4436, January 28, 1955; and Phil. Trust Co. v. Alcantara, 46 O.G. 4254, among others) to the effect that the statute of limitations is deemed suspended by war only to such an extent that the courts are closed and cannot be reached by the people, it is important to bear in mind that in those cases where it was held that the Pacific war did not suspend the running of the statute of limitations because the courts were open and functioning during the Japanese occupation, the judicial actions were between Filipino citizens. There is, however, reason to doubt the applicability of the rule to the present case where the creditor's cause of action accrued and had to be prosecuted against a Japanese national during the period of occupation. Since the courts which functioned during the period of occupation in occupied areas derived authority from the belligerent occupant, Japan, the mere opening of the courts during said period cannot of itself be taken to mean that nationals of the belligerent occupant could be sued in said courts by the enemy nationals residing in the occupied territory. It has been generally held that "a foreign or international war suspends the operation of the statute of limitations between the citizens of the countries at war as long as the war lasts, at least as regards enemy aliens resident in enemy territory" (54 CJS 289).

There is, however, no need to resolve now the effect of war on the statute of limitations in the present case. Even assuming that the running of the prescriptive period was not suspended during the period of Japanese occupation, there is every reason to believe that it was suspended as a result of the debt moratorium declared by Executive Order No. 32 dated March 10, 1945. This is quite evident from the decision of the Supreme Court in the case of Montilla v. Pacific Commercial Company (G.R. No. L-8223, December 20, 1955), which in part reads:

> "Another circumstance that may be invoked in favor of appellant is the adoption of Executive Orders Nos. 25 and 32, known as Debt Moratorium, promulgated on November 18, 1944 and March 10, 1945, respectively, and Republic Act 342 passed on July 26, 1948, limiting the moratorium to war sufferers, which have the effect of tolling further the limitation of the period for the institution of a court action, for the general rule is that *'moratorium acts ordinarily operate to suspend the running of the limitations as to suits barred by the provisions of the act, irrespective of whether or not the debtor has sought relief thereunder.'* (54 C.J.S. p. 288.) And this seems to be also the rule in this jurisdiction when this Court has repeatedly held in a number of cases that during the time the moratorium was in force no action could be taken to collect any outstanding monetary obligations within the purview of the moratorium orders (Cruz v. Avila, 42 O.G. No. 9, p. 2114; De la Fuente v. Borromeo, 42 O.G. p. 3172; Ma-ao Sugar Central Co. v. Barrios, 45 O.G. 2444)."

This principle was reiterated in the case of Ampil v. Bartolome (G.R. L-8436, Aug. 28, 1956) wherein the Supreme Court held that the Moratorium Law, despite its having been declared unconstitutional by said court in Rutter v. Esteban (49 O.G. 1807), suspended the running of the statute of limitations from "March 10, 1945, the date of effectivity of Executive Order No. 32" up to "July 26, 1948, when the Moratorium Law was lifted, except as to war sufferers mentioned in Republic Act 342."

So that, in line with the decision of the Supreme Court in the Ampil case, the 10-year prescriptive period in the present case—which commenced on July 8, 1940, when the cause of action accrued—should be deemed suspended from March 10, 1945, up to July 26, 1948, or for a period of 3 years, 4 months, and 16 days. Taking this into account, the prescriptive period was to expire on *November 24, 1953*, and not on July 8, 1950. It appearing that Mr. Guanzon filed his claim with the PAPA in 1949, and that his petition for rehearing which sought the reconsideration of the order regarding the withdrawal of the claim and also the recognition and payment of his mortgage lien was filed on June 19, 1952, *both* long before the expiration of the prescriptive period, we find it unnecessary to pass upon the question of whether the "withdrawal" of the title claim filed in 1949, which allegedly was intended merely to convert it to a general claim, had rendered it ineffectual as a written extrajudicial demand.

Apart from the foregoing, equitable and practical considerations present in this case do warrant, in our opinion, the approval of the proposed amicable settlement of the mortgage indebtedness of Giichi Yasugami for a sum at least ₱5,000.00 less than what is admittedly due under the terms of the contract of mortgage. After all, the transfer of the vested properties of enemy aliens to the Republic of the Philippines was made "subject to the *recorded liens*, encumbrances, and other rights of record *held by or for persons who are not nationals of designated enemy countries*", and it is not disputed that Mr. Guanzon's claim stems from such a lien.

(Sgd.) JESUS G. BARRERA
Secretary of Justice