

court below for further proceeding. The way is left open to the defendant to ask for the arrest or stay of execution in the event of an adverse monetary judgment, and for the plaintiff to impugn anew, if necessary, the constitutionality of Executive Orders Nos. 25 and 32 and Republic Act No. 342 and/or their being still in force.

Id.; *Id.*; *Id.* — In *Medina vs. Santos* (L-1280, May 26, 1947, 44 Off. Gaz., No. 10, 3811), it was held that an action for the recovery of a truck with prayer for payment of its value in case the truck was not returned, could proceed notwithstanding the moratorium law. The court observed that the indemnity sought was a subsidiary liability and would not come into being unless and until decision rendered against the defendants for such payment. In *Moya vs. Barton* (L-745, Aug. 27, 1947, 45 Off. Gaz., No. 1,227-), the court said that when the cause of action was in part covered by the moratorium and in part not, it was not unjust to render judgment for the payment of the entire obligation with the understanding that execution with respect to the amounts that had fallen due before March 10, 1945, would be stayed. In the case of *Alejo v. Gomez* (L-1969, May 30, 1949), the court ruled that suit for unlawful detainer and rents in arrears was not affected by the moratorium, the recovery of the unpaid rentals, it was said, being accessory to the main action. And, lastly, in *Realty Investments, Inc. et al vs. Villanueva et al* (L-1949, Oct. 31, 1949), the court, citing the above-mentioned cases, decided that the court should go ahead with the trial of the action on the merits without prejudice to the right of the defendant to arrest the execution should one for payment of money be issued. In that case the plaintiff, which had sold to the defendant a piece of land on installment basis, was demanding payment of the installments still unpaid (installments which the defendant claimed to have fully settled with the Japanese alien property custodian), or, in default, restoration of the ownership and possession of the property. In revoking the lower court's order of dismissal, it is pointed out that *De Venecia vs. General* (L-894, 44 Off. Gaz., 4912) and *Ma-ao Sugar Central Co. V. Barrios et al* (L-1539, 45 Off. Gaz., 2444) were distinguishable from *Moya vs. Barton*, *Medina vs. Santos*, and *Alejo v. Gomez* in that the suits in the first two named cases had for their sole object the enforcement of a monetary obligation. The case at bar falls within the relaxed rule of the Supreme Court's late decisions.

Aiva J. Hill for appellant.

J. Perez Cardenas for appellee.

DECISION

TUASON, J.:

This appeal is from an order of the Court of First Instance of Ilocos Sur dismissing the above-entitled action by reason of Executive Order No. 25, as amended by Executive Order 32, on moratorium.

Ernest Berg brought the action against Valentin Teus to foreclose a real estate and chattel mortgage executed in November, 1944, to secure six promissory notes of the aggregate value of P80,000 and payable on demand two years after declaration of armistice between the United States and Japan. An amended or supplementary complaint was later admitted against the defendant's objection. The complaints recited that by stipulation of the parties, the mortgagor had undertaken, among other things, to insure and pay the taxes on the mortgaged properties; not to alienate, sell, lease, encumber or in any manner dispose thereof; and to keep and maintain the said properties in good order and repair; but that, it was alleged, he (defendant) had failed to keep taxes fully paid; had made material alterations on the premises, and had sold and conveyed them to Central Azucarera del Norte. It further alleged that the mortgagor had agreed that should he fail to perform any of his obligations as stipulated, "the mortgage shall be deemed to be automatically foreclosed this mortgage either extrajudicially, even after the death of the Mortgagor, in pursuance of the provisions of Act No. 3135, as amended;" and on the basis of this agreement it was prayed that the mortgage is declared auto-

concur

VI

Ernest Berg, Plaintiff and Appellant vs. Valentin Teus, Defendant and Appellee, G. R. No. L-2987, February 20, 1951.

1. **OBLIGATION AND CONTRACTS; MORATORIUM; RECEIVERSHIP.** — Plaintiff presented a petition to put the premises and chattel in litigation in the hands of a receiver, petition which appears of urgent character. Defendant opposed the motion for receivership and moved for dismissal of the complaint on the grounds that plaintiff's cause of action had not accrued by reason of Executive Orders Nos. 25 and 32, on moratorium. The lower court opines that Executive Order Nos. 25 and 32 were still in force unaffected by Republic Act No. 342 as to debts contracted during the Japanese occupation. Plaintiff contends that those executive orders had passed out of existence by the disappearance of the emergency contemplated thereby. HELD: Decision on this question can be deferred. For the purpose of this case, Executive Orders Nos. 25 and 32 are assumed to be still in full force and effect. This is done to pave the way for and hasten action on the petition to put the premises and chattels involved in the hands of a receiver. The constitutionality of Executive Orders Nos. 25 and 32 and Republic Act No. 342 and allied issues can wait. These issues are delicate and would require prolonged study and deliberation. Besides, there is a pending bill in Congress repealing those executive orders and law. The fact that the appointment of a receiver is an ancillary remedy is one powerful reason why the case should be dismissed. Case is remanded to the

matically foreclosed and the plaintiff entitled to immediate possession of the properties in question. In a separate motion Berg's attorney also asked for the appointment of a receiver.

Counsel for the defendant having moved for the dismissal of the complaint on the grounds that plaintiff's cause of action had not accrued by reason of the executive order hereinbefore cited, and having opposed the motion for receivership, Judge Zoilo Hilario entered an order holding that as to the collection of the six notes the suit had been prematurely brought, but setting the cause for trial on the merits because, according to His Honor, the reasons alleged in the motion to dismiss were not "indubitable" with reference to the appointment of a receiver sought by the plaintiff. As we understand this order, its result was that the moratorium ought not to interfere with the plaintiff's motion for appointment of receiver.

However that may be, the plaintiff subsequently filed a "complete complaint" in which the original complaint and the amended or supplementary complaint were consolidated. This "complete complaint", which was admitted without objection, apparently was supposed to have restored the case to its original status. Consequently the attorney for the defendant filed a new motion to dismiss; and Judge Luis Ortega, who had replaced Judge Hilario, ignoring the latter's order entered the order now on appeal by which the entire action was quashed on the theory advanced in the motion to dismiss. The new order was silent on both the application for receivership and the prayer that the plaintiff be adjudged authorized by the terms of the mortgage to foreclose it extrajudicially and seize the properties.

Judge Ortega opined that Executive Orders Nos. 25 and 32 were still in force unaffected by Republic Act No. 342 as to debts contracted during the Japanese occupation. Plaintiff contended that those executive orders had passed out of existence by the disappearance of the emergency contemplated thereby, and the contention is reiterated in this instance. But from the view we take of the case, decision on this question can be deferred. For the purpose of the present decision, we will assume that Executive Orders Nos. 25 and 32 are still in full force and effect. This we do to pave the way for and hasten action on the petition to put the premises and chattels involved in the hands of a receiver, petition which appears of urgent character. The constitutionality of Executive Orders Nos. 25 and 32 and Republic Act No. 342 and allied issues can wait. These issues are delicate and would require prolonged study and deliberation. Besides, there is a pending bill in Congress repealing those executive orders and law.

In Ricardo Medina v. Ambrosio Santos, G. R. No. L-1280, May 26, 1947, 44, No. 10 Off. Gaz., 3811, it was held that an action for the recovery of a truck with prayer for payment of its value in case the truck was not returned could proceed notwithstanding the moratorium law. The Court observed that the indemnity sought was a subsidiary liability and would not come into being unless and until decision was rendered against the defendants for such payment.

In Moya v. Barton, G. R. No. L-745, August 27, 1947, 45, No. 1, Off. Gaz., 237, the Court said that when the cause of action was in part covered by the moratorium and in part not, it was not unjust to render judgment for the payment of the entire obligation with the understanding that execution with respect to the amounts that had fallen due before March 10, 1945, would be stayed.

In the case of Alejo v. Gomez, G. R. No. L-1969, May 30, 1949, the Court ruled that suit for unlawful detainer and rents in arrears was not affected by the moratorium, the recovery of the unpaid rentals, it was said, being accessory to the main action.

And, lastly, in Realty Investments, Inc. et al. v. Mariano Villanueva et al., G. R. No. L-1949, October 31, 1949, the Court citing the above-mentioned cases decided that the court should go ahead with the trial of the action on the merits without prejudice to the right of the defendant to arrest the execution should one for payment of money be issued. In that case the plaintiff, which had sold to the defendant a piece of land on installments basis, was demanding payment of the installments still unpaid, (installment which the defendant claimed to have fully settled with the Japanese alien property custodian) or, in default, restoration of the ownership and possession of the property. In revoking the

lower court's order of dismissal, we pointed out that De Venecia v. General, G. R. No. L-894, 44 Off. Gaz., 4912, and Mao Sugar Central Co. v. Conrado Barrios et al., G. R. No. L-01539, 45 Off. Gaz., 2444, were distinguishable from Moya v. Barton, Medina v. Santos, and Alejo v. Gomez, in that the suits in the first two named cases had for their sole object the enforcement of a monetary obligation.

The case at bar falls within the relaxed rule of this Court's later decisions. The alleged violation of the conditions of the mortgage contract, if true, make it necessary if not imperative, for the protection of the interest of the plaintiff, that the mortgaged properties be placed in the custody of the court. The fact that the appointment of a receiver, as the defendant emphasizes, is an ancillary remedy is precisely one powerful reason why the case should not be dismissed. Because receivership is an auxiliary remedy dismissal of the main action would eliminate the only basis for the appointment of receiver and thus completely bar the door to any relief from mischief.

Under the circumstances of the case, the least that should have been done, if that were feasible as a matter of procedure, was to adopt the steps which Judge Hilario had proposed to do. Judge Hilario evidently saw the grave injustice to the plaintiff and the irreparable injury to which his rights would be exposed if an indefinite suspension of the entire proceeding were decreed.

In suspending the right of creditor to enforce his right the President and Congress had no idea of depriving him of all means of preventing the destruction or alienation of the security for the debts, destruction which would virtually write off, in some cases, the whole credit. If that were the intention, it is doubtful if the orders and the law invoked could stand the test of constitutionality.

The order appealed from will therefore be reversed and the case remanded to the court below for further proceeding according to the tenor of this decision. We leave the way open to the defendant to ask for the arrest or stay of execution in the event of an adverse monetary judgment, and for the plaintiff to impugn anew, if necessary, the constitutionality of Executive Orders Nos. 25 and 32 and Republic Act No. 342 and/or their being still in force. Costs of this appeal will be charged against the appellee.

Moran, Paras, Feria, Pablo, Bengzon; Padilla; Montemayor; Reyes, Jugo, and Batista Angelo — J.J. concur.