SUPREME COURT
FIRST DIVISION

SALOMON M. SHARRUF,
***Plaintiff-Appellee*,**

-versus-

G.R. No. L-12021
February 15, 1918

THE TAYABAS LAND CO. and A. M. GINAINATI,
Defendants,

THE TAYABAS LAND CO.,
Appellant.
x----------x

D E C I S I O N

CARSON, *J.*:

Whatever ground there might have been for a defense against the enforcement of the original loan contract predicated upon the legal fraud in its procurement, we are all agreed with the trial judge that the obligation to pay the promissory note dated June 17, 1914, is binding on the parties thereto, it sufficiently appearing that when this note was executed the parties well knew, or at least had every opportunity to inform themselves as to the alleged overvaluation of the security on which the original loan contract rested. Indeed, as the trial judge well says in his decision, it clearly appears.

> "That the alleged fraud which Mr. Berbari claims induced the making of the original contract of credit loan and the subsequent contracts had nothing to do with the execution and delivery of the promissory note here in question, or the consideration of the same, or even of the note of which this one was a renewal. In fact, the original contract for the loan had been rescinded in connection with the dissolution of the partnership between Sharruf and Ginainati, and a new contract was made after Mr. Berbari knew the approximate value of the ice plant as agreed between Sharruf and Ginainati and he had consented to the dissolution on those terms."

We agree with the appellant that this promissory note evidences a joint and not a joint and several obligation, but it appearing that the trial judge correctly rendered judgment holding the defendants "jointly" liable, there is no necessity for any modification of the terms of the judgment in that regard. Our decision in the case of De Leon vs. Nepomuceno and De Jesus (p. 180, ante) should make it quite clear that in this jurisdiction at least, the word "jointly" when used by itself in a judgment rendered in English is equivalent to the word mancomunadamente, and that it is necessary to use the words "joint and several" in order to convey the idea expressed in the Spanish term solidariamente (in solidum); and further, that a contract, or a judgment based thereon, which fails to set forth that a particular obligation is "joint and several" must be taken to have in contemplation a "joint" (mancomunada), and not a "joint and several" (solidary) obligation.

A similar distinction is made in the technical use of the English words "joint" and "joint and several" or "solidary" in Louisiana, doubtless under like historic influences to those which have resulted in the construction we have always given these terms.

> "A joint obligation under the law of Louisiana binds the parties thereto only for their proportion of the debt (La. Civil Code, Arts. 2080, 2086) whilst a solidary obligation, on the contrary, binds each of the obligors for the whole debt." (Groves vs. Sentell, 14 Sup. Ct., 898, 901; 153 U. S., 465; 38 L. ed., 785.)

The appellee insists that the trial judge erred in refusing to include in his judgment the additional sum of P684.13, under the express provision in the promissory note for the payment of ten per centum of the amount of the note as stipulated costs for its recovery in the event of nonpayment at maturity, but these contentions cannot be considered on this appeal, the appellee not having excepted to the judgment in the court below on that ground or taken any of the prescribed steps looking to the review by this court of the alleged erroneous ruling in the court below.

We conclude that the judgment entered in the court below should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, *C.J.*, Torres, Johnson, Araullo, Street, Malcolm, and Avanceña, *JJ.*, concur.
Fisher, *J.*, did not take part.