41 Phil. 670

[G. R. No. 8988. March 30, 1916]

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, PLAINTIFF AND APPELLEE, VS. MAURO PRIETO, BENITO LEGARDA; JR., AND BENITO VALDES AS ADMINISTRATOR OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARAULLO, J.:

Negotiations having been had, prior to December 4, 1911, between W. Borck and Benito Valdes, relative to the purchase, at first, of a part of the Nagtajan Hacienda, situated in the district of Sampaloc of this city of Manila and belonging to Benito Legarda, and later on, of the entire *hacienda*, said Benito Valdes, on the date above-mentioned, addressed to said Borck the following letter (Exhibit E):

"MANILA, *December 4, 1911*.

"Mr. W. BORCK,

"*Real Estate Agent*,

"*Manila, P. I.*

"SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan Hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 sq. meters of land, for the price of its assessed government valuation.

"B. VALDES."

Subsequent to the said date, Borck addressed to Benito Valdes several letters relative to the purchase and sale of the *hacienda*, and as he did not obtain what he expected or believed he

was entitled to obtain from Valdes, he filed the complaint that originated these proceedings, which was amended on the 10th of the following month, April), by bringing his action, not only against Benito Valdes but also against Benito Legarda, referred to in the letter above quoted.

In said amended complaint it is alleged that the defendant Benito Legarda was the owner in fee simple of the Nagtahan Hacienda, and that Benito Valdes was his attorney in fact and had acted as such on the occasions referred to a the complaint by virtue of a power of attorney duly executed under notarial seal and presented in the office of the register of deeds, a copy of which, marked as Exhibit A, was attached to the complaint; that on or about December 4 1911, the defendant Benito Valdes gave to the plaintiff the document written and signed by him, Valdes, quoted at the beginning of this decision, to wit, the letter aforementioned, which document is inserted in the amendment to the complaint; that on January 19, 1912, while the offer or option mentioned in said document still stood, the plaintiff in writing accepted the terms of said offer and requested of Valdes to be allowed to inspect the property titles and other documents pertaining to the property' and offered to pay to the defendant, immediately and in cash as soon as a reasonable examination could be made of said property titles and other documents, the price stipulated in the contract for said *hacienda* which is also described in the complaint, as well as its value and the revenue annually obtainable therefrom; that, in spite of the frequent demands made by the plaintiff, the defendants had persistently refused to deliver to him the property titles and other documents relative to said property and to execute any instrument of conveyance thereof in his favor; that the plaintiff, on account of said refusal on the part of the defendant Valdes, based on instructions from the defendant Legarda, had suffered damages in the amount of P760,000, and, by the tardiness, failure and refusal of the defendant to comply with his obligation, the plaintiff had incurred great expense and suffered great losses, whereby he was prejudiced in the amount of P80,000; that the plaintiff was, and had been, on all occasions, willing to comply with the obligation imposed upon him to pay to the defendants the full stipulated price. The plaintiff concluded by praying: (1) That the defendant Valdes be ordered to execute the necessary formal document as proof of the contract or obligation before referred to, and to incorporate the same in a public instrument, and that the defendant Legarda be ordered to convey in absolute sale to the plaintiff, either directly or through the defendant Valdes, by a proper deed, the said Nagtahan Hacienda, described in the complaint; (2) that both defendants and each of them be ordered and required to render an account to the plaintiff of such rents and profits as they may have collected from the said property from the 19th of January, 1912, until the date of the execution of the

judgment that may be rendered in these proceedings, together with legal interest on the amounts thereof; (3) that, in case it be shown that specific performance of the contract is impossible, that the defendant be ordered to pay the plaintiff damages in the sum of P760,000; and, finally, that the plaintiff have recovered the interests and the costs in these proceedings.

While this complaint was not yet amended, the defendarnt Valdes filed a demurrer, on the grounds that there was a misjoinder of parties on account of the erroneous inclusion therein of the defendant Valdes, that the complaint did not set forth facts that constituted a cause of action against said defendant, and that it was ambiguous, unintelligible and vague. This demurrer was overruled on April 11, 1912.

The defendant Benito Legarda also interposed a demurrer to the amended complaint on the grounds that the facts therein set forth did not constitute a right of action against him. This demurrer was likewise overruled on June 26, 1912.

On the 22d of the same month of June, the court, ruling on a petition made in voluntary insolvency proceedings brought on May 10, 1912, by the plaintiff W. Borck, and in view of the agreement entered into in said proceedings by all of the latter's creditors, ordered that the plaintiff Borck be substituted in the instant proceedings by Hartford Beaumont, as the trustee appointed therein and representative of the said plaintiff's creditors, the assignees of his rights, in said proceedings.

The defendant Benito Valdes, answering the complaint as amended, denied each and all of the allegations thereof from paragraph 4, except those which he admitted in the special defense, in which he alleged: (1) That the option given by him to the plaintiff was an option without consideration and subject to the approval of the defendant Legarda; (2) that, as the defendant Legarda had not approved said option, it had no value whatever, according to the understanding and agreement between himself and the plaintiff; (3) that the option offered by him to the plaintiff had not been accepted by the latter within a reasonable period of time nor during the time it was in force, in accordance with the conditions agreed upon between the parties; (4) that he signed the letter of December 4, in which he tendered to the plaintiff the option which had given rise to this suit, through deceit employed by the plaintiff with respect to its contents, for the plaintiff had stated to him that it was written in accordance with what had been agreed upon by both parties, without which statement he would not have signed it; (5) that the plaintiff, on and prior to January 19, 1912, was insolvent, and had neither proven his solvency nor offered to pay the price in cash, as he had agreed to do;

and (6) that he, Valdes, was merely a general attorney in fact of the defendant Benito Legarda and had no interest whatever in the subject-matter of the suit, nor in the litigation, and in all his acts had carried out the instructions of the said Legarda. He finally prayed that the complaint be dismissed with costs against the plaintiff.

The defendant Benito Legarda, answering the complaint, denied each and all of the allegations thereof, from paragraph 3, except such as he expressly admitted and were contained in the special defense inserted in said answer, in which he alleged: (1) That his codefendant Benito Valdes, though his attorney-in-fact, had instructions not to give any option on the *hacienda* in question without Legarda's provious knowledge and consent; (2) that on and before December 4, 1911, the plaintiff had knowledge of the scope and limitations of the powers conferred upon the defendant Valdes; (3) that the latter gave the option, alleged by the plaintiff, without his (Legarda's) knowledge or consent, thus violating the instructions he had given to the said Valdes; (4) that he had disapproved and rejected the option in question as soon as he had learned of it; (5) that he had been informed, and therefore alleged as true, that the option said to have been executed in behalf of the plaintiff had been obtained by the latter by a false and malicious interpretation of the letter of December 4, 1911, and that the plaintiff, availing himself of such interpretation, induced the defendant Valdes to sign the said option; (6) that the option said to have been tendered to the plaintiff had not been legally accepted; and (7) that on and subsequently to January 19, 1912, the date on which, according to the plaintiff, a tender of payment of the price of the Nagtajan Hacienda, in accordance with its assessed value, was made to his codefendant Valdes, as well as to the date of the answer, the plaintiff was insolvent.

After the hearing, in which the respective parties presented their evidence, the Court of First Instance of this city of Manila, on February 12, 1912, rendered judgment in which he found; (1) That the instrument Exhibit E (that is, the letter of December 4, 1911, quoted at the beginning of this decision), as supported by Exhibit A (the power of attorney, a copy of which accompanied the complaint) and as confirmed by Exhibit G (the letter of January 19, 1912, addressed by the plaintiff Borck to the defendant Valdes, presented in evidence at the trial and of which mention will be made elsewhere herein), constituted a contract by which the principal defendant undertook to convey to the plaintiff the property therein described; (2) that the plaintiff made a sufficient tender of performance, of his part, of the contract, in accordance with section 347 of the Code of Civil Procedure; (3) that the defendants had failed to execute such conveyance in accordance with said contract, and that the plaintiff was entitled to the specific performance thereof, and to the net income, if any, obtained from the land since January 19, 1912, but that he had not shown sufficient loss which entitle

him to additional damage unless it subsequently should appear that a conveyance could not be made. The court accordingly decreed: (1) That upon the payment by the plaintiff to the principal defendant, Benito Legarda, or to the clerk of the court, of the sum of P307,000, the said defendant, or his codefendant and attorney-in-fact, should execute and deliver to the plaintiff good and sufficient conveyance, free of all incumbrance, of the property described in Exhibits B and C, attached to the plaintiff's complaint, so far as the same was included within the terms of Exhibit G; (2) that upon the said defendants' failure to execute such conveyance within a reasonable time after such payment, the clerk of the court should execute one, and the same, together with the decree, should constitute a true conveyance; (3) that if for any sufficient reason such conveyance could not then be made, the plaintiff should have and recover from the defendant Legarda, as alternative damages, the sum of P73,000, with interest thereon at 6 per cent per annum from March 13, 1912; and (4) that the defendants should render an accounting, within thirty days, of the income and profits derived from said property since January 19, 1912, and pay the costs of the proceedings.

The parties having being notified of this judgment, the defendants Benito Legarda and Benito Valdes excepted thereto and at the same time prayed that it be set aside and that they be granted a new trial on the grounds that the judgment was not sufficiently supported by the evidence and was contrary to law, and that the findings of fact therein contained were manifestly and openly contrary to the weight of the evidence. Their prayer haying been denied by a ruling to which they also excepted, they have brought these proceedings on appeal to the Supreme Court by the proper bill of exceptions, and have specified in their respective briefs several errors which they allege the lower court committed. Some of these errors consist in that the trial judge overruled the demurrer filed to the complaint; others, in that he admitted certain evidence and excluded others, this being the alleged cause of the erroneous consideration of the instrument Exhibit E and of the rights and obligations derived from it, both with respect to the plaintiff and the two defendants; and still others refer to the various statements in the judgment resulting from those findings and on which the conclusions arrived at, have been founded.

The defendant Benito Legarda also alleged, among the said errors, as especially affecting his rights, that the court held that Benito Valdes was his agent, empowered to execute contracts in his (Legarda's) name in respect to real property; that the court admitted in evidence the document Exhibit A, introduced by the plaintiff, to wit, the copy of the power of attorney attached to the complaint, which never was offered as such; and that he based one of his findings thereon. The defendant Benito Valdes specified, also particularly with reference to himself, other errors consisting in the court having held that he voluntarily

executed the option in question, instead of holding that it was obtained through fraud; and likewise in holding that the document Exhibit E was a contract of option and not an offer to sell, and in not holding that said option was an offer subject to the approval of the defendant Legarda.

Inasmuch as it does not appear from the bill of exceptions that the defendants recorded the exceptions to the overruling of the demurrer respectively filed to the complaint by both defendants, the assignment of error relative to the said ruling cannot be taken into consideration by this Supreme Court.

The plaintiff's action is based on the failure of the defendant Valdes, as the agent or attorney in fact of the other defendant Benito Legarda, to perform the obligation contracted by the said Benito Valdes to sell to the plaintiff the property belonging to the said Legarda, mentioned in the letter of December 4, 1911 (Exhibit E), within the period and for the price specified therein; and the object or purpose of these proceedings is to require fulfillment of the said obligation and to secure the payment of a proper indemnity for damages to the plaintiff because of its not having been duly and timely complied with.

Inasmuch as it was set forth in the document Exhibit E that the property known as the Nagtajan Hacienda, (an option to buy which was given by the defendant Valdes to the plaintiff Borck) belonged to Benito Legarda; as negotiations had been undertaken prior to the execution of the said document, between the plaintiff Borck and the defendant Valdes with respect to the matters set forth in that document, by virtue of which Borch knew that Valdes was Legarda's agent or attorney-in-fact, although it appears in said instrument that the agent Valdes acted in his own name; and, further, as the plaintiff in the complaint made the necessary allegations to explain the relations that existed between the principal Legarda and the agent Valdes with regard to the said document Exhibit E and the failure alleged by the plaintiff, to fulfill the stipulations therein contained; therefore, the facts alleged in the complaint did constitute a right of action against either or both defendants, and the lower court did not err in so holding, for, though the person who contracts with an agent has no action against the principal, pursuant to article 1717 of the Civil Code, when the agent acts in his own name, as in such a case the agent would be directly liable to the person with whom he contracted as if it were a personal matter of the agent's, yet this does not occur when the acts performed by the agent involve the principal's own things, and in the document Exhibit E, which was inserted in the complaint when the latter was amended, it appears that the defendant Valdes, who signed the said document, stated that the property, the option to buy which he gave to the plaintiff, Borck, belonged to Legarda. And as it is

unquestionable that, pursuant to the above-cited provision of law, the action was properly brought against Benito Legarda as Valdes' principal, it is also unquestionable that Valdes was properly included in the complaint as one of the defendants, for said article 1717 in providing that in cases like the one here in question the person who contracted with the agent has an action against the principal, does not say that such person does not have, and cannot bring an action against the agent also, and the silence of the statute on this point should not be construed in that sense, when the rights and obligations, the matter brought into discussion by means of the action prosecuted, cannot be legally and juridically determined without hearing both the principal and the agent.

Section 114 of the Code of Civil Procedure in force, treating of the parties who should be included in an action as defendants, includes any person who has or claims an interest in the controversy or the subject-matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and there can be no doubt whatever, and the record itself shows, that the agent Benito Valdes was and is a necessary party in these proceedings for the complete and proper determination of the matter involved.

As one of the allegations of the complaint was that the defendant Benito Valdes was the attorney in fact of Benito Legarda, the owner of the Nagtajan Hacienda, the option to buy which was granted by the said defendant Valdes to the plaintiff Borck, in the letter of December 4, 1911, Exhibit E, there was attached to the complaint a copy of the power of attorney marked Exhibit A, by virtue of which, as therein also set forth, the defendant Benito Valdes, the attorney-in-fact of Benito Legarda, in giving to the plaintiff the option to buy the said *hacienda*, had acted according to the aforesaid document Exhibit F, which was likewise inserted in the amended complaint as a part thereof.

Inasmuch as the relation which, according to the plaintiff, existed between Benito Legarda and Benito Valdes as to the obligation contracted by means of Exhibit E, and the fulfilment thereof was established by means of the said allegations, supported, as it appeared, by the power of attorney Exhibit A, and by the letter or document Exhibit E (which were made by the plaintiff a part of the complaint), the joining of the copy of the power of attorney to the complaint cannot be considered to have been done merely for the purpose of attesting the personality of either of the defendants, but to show the legal status of each of them in the obligation referred to, in view of the terms of the document Exhibit E, the authority under which the defendant Valdes acted in executing this document, as well as the fact of his having been granted such authority by the defendant Legarda, by means of said power of

attorney. So that as said two documents, to wit, Exhibit A or the power of attorney executed by Legarda in favor of Valdes, authorizing him to perform various acts, among them, that of selling, exchanging, ceding, admitting in payment or by way of compensation.or in any other manner acquiring or conveying all kinds of real property for such prices and on such conditions as he might deem proper, and the document Exhibit E, or the letter setting forth the option given to the plaintiff by Valdes to buy the said Nagtajan Hacienda belonging to Legarda, cannot be considered separately, in view of the allegations of the complaint and the action brought thereon against the two defendants; and as said two documents, each a complement of the other, constituted the basis of the action brought in the complaint, and as their genuineness and due execution were not denied under oath by either of the two defendants, as they might have done, pursuant to section 103 of the Code of Civil Procedure, the plaintiff was not obliged to present at the trial, as proof, the aforementioned power of attorney to prove its existence and the fact of Valdes being his attorney in fact, vested with the powers specified in this instrument, notwithstanding the general denial made by the defendant Legarda in his answer of the allegations contained in the complaint from its third paragraph on, in which paragraph that averment is made, supported by the copy of the said power of attorney attached to the complaint.

On the contrary, as the said document Exhibit A constitutes *prima facie* proof of the fact that Benito Valdes is the attorney-in-fact of Benito Legarda, and that he is vested with the powers' specified therein, on account of Legarda's not having denied under oath the genuineness and due execution of the said document, it was therefore incumbent upon Legarda himself to prove that he had not executed the said power of attorney in Valdes' favor and that he had not conferred upon him, by virtue thereof, the powers therein mentioned. (Merchant vs. International Banking Corporation, 6 Phil., 314; Papa vs. Martinez, 12 Phil., 613; Chinese Chamber of Commerce vs. Pua Te Ching, 14 Phil., 222; Banco Español-Filipino vs. McKay & Zoeller, 27 Phil., 183; Knight vs. Whitmpre, 125 Cal., 198; McCormick Harvesting Machine Co. vs. Doucette, 61 Minn., 40.)

The lower court, therefore, did not err in holding that Benito Valdes was the agent of Benito Legarda, vested with powers to execute contracts for the sale of real estate in the latter's name; nor in considering as proof the power of attorney, the plaintiff's Exhibit A, and making it the basis of one of the conclusions of the judgment, notwithstanding that it was not offered as such proof by the plaintiff. Consequently, the court likewise did not err in admitting the evidence introduced by the plaintiff himself to show the existence of the contractual obligation on the part of the defendant Legarda, as principal of the other defendant, Valdes, and which was contended by the plaintiff to be one of the grounds of the

action brought in his complaint against the two defendants.

It is unquestionable that, by means of the document Exhibit E, to wit, the letter of December 4, 1911, quoted at the beginning of this decision, the defendant Valdes granted to the plaintiff Borck the right to purchase the Nagtajan Hacienda belonging to Benito Legarda, during the period of three months and for its assessed valuation, a grant which necessarily implied the offer or obligation on the part of the defendant Valdes to sell to Borck the said *hacienda* during the period and for the price mentioned, and as the grant made by Valdes to Borck in the said letter was made as a result of the requests of Borck himself, as stated in the letter, and of the negotiations previously entered into between the latter and Valdes with respect to the purchase of the *hacienda*, as shown in the letter of the 2d of the same month of December, that, is, the letter which two days before was addressed by Borck to Valdes, Exhibit C, the terms of the said document Exhibit E appear to be of the nature of an option contract between Valdes and Borck, inasmuch as, by means of said document, the former finally accepted the propositions of the latter with respect to the granting of that right to Borck. There was, therefore a meeting of minds on the part of the one and the other, with regard to the stipulations made in the said document. But it is not shown that there was any cause or consideration for that agreement, and this omission is a bar which precludes our holding that the stipulations contained in Exhibit E is a contract of option, for, pursuant to article 1261 of the Civil Code, there can be no contract without the requisite, among others, of the cause for the obligation to be established.

In his Law Dictionary, edition of 1897, Bouvier defines an option as a contract, in the following language:

> "A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties within a limited time at a specified price. (Story vs. Salamon, 71 N. Y., 420.)"

From vol. 6, page 5001, of the work "Words and Phrases," citing the case of Ide vs. Leiser (24 Pac, 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

> "An agreement in writing to give a person the 'option' to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. It is simply

> a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets *in praesenti*, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or, rather, from his point of view, he receives the right to elect to buy."

But the two definitions above cited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation, the subject of the agreement made by the parties; while in the case at bar there was no such cause or consideration.

The lower court in the judgment appealed from said:

> "There is some discussion in the briefs as to whether this instrument constitutes a mere offer to sell or an actual contract of option. In terms it purports to be the latter and in fact recites the acceptance of a 'request' or offer, by the plaintiff. But viewing the instrument as in itself no more than an offer, it was at least a continuing one, 'for three months,' and as it is not claimed to have been withdrawn during that period, nor afterward, the plaintiff could at any time enter into an actual contract, if it were not such already, by mere acceptance."

So then, the lower court did not insist that, by the said document Exhibit E, a real contract of option was executed. He stated that it was at least a continuing offer for three months—an offer which it was neither alleged nor proven to have been withdrawn during that period—and held that by the plaintiff's mere acceptance at any time during the course of said period, the terms of the said document became a contract, if such it were not already.

There is therefore no foundation for the third assignment of error made by the defendant Valdes, to wit, that the lower court erred in holding that the document Exhibit E was a contract of option and not an offer to sell. And certainly this document Exhibit E contains an

offer or promise on the part of the defendant Valdes, who signed it, to sell the *hacienda* in question to the plaintiff Borck, at its' assessed valuation, to whom was granted three months within which to make use of his right to purchase the property. In order that such an offer, or proposal, or promise, on the part of Valdes, to sell the said *hacienda* might be converted into a binding contract for him and for Borck, it was necessary that the latter should have accepted the offer, by making use of the right thereby granted him, within the period stipulated, and paying the price agreed upon in that document.

Referring particularly to the sale of real estate, there is in fact practically no difference between a contract of option to purchase land and an offer or promise to sell it. In both cases the purchaser has the right to decide whether he will buy the land, and that right becomes a contract when it is exercised, or, what amounts to the same thing, when use is made of the option, or when the offer or promise to sell the property is accepted in conformity with the terms and conditions specified in such option, offer, or promise.

> "An option for the purchase of real estate is merely a right of election to purchase, which, when exercised, beconies a contract." (Hopwood vs. McCausland, 120 Iowa, 218.)

So that in the case at bar it is immaterial whether the contents of the document be considered as an option granted by the defendant Valdes to the plaintiff to purchase the Nagtajan Hacienda, or as an offer or promise on the part of the former to sell the estate to the latter within the period and for the price specified in Exhibit E.

In the defendants' answer no concrete allegation was made that either of them had withdrawn said offer to sell, but the defendant Valdes introduced evidence to prove that the withdrawal of the offer was made before the plaintiff had accepted it, that is, before January 17, 1912, and for this purpose presented a letter from the defendant Legarda (p. 103, part 1 of the record), dated November 13, 1911, and addressed from Paris to Mauro Prieto, also one of Legarda's attorneys in fact. In this letter Legarda stated to Prieto, among other things, that, with reference to the steps taken by Borck for the purchase of the Nagtajan Hacienda, the addressee might say to Borck that the writer was not very anxious to sell the property except for a price greater than P400,000 in cash. The defendant Valdes testified that the contents of this letter were communicated by him to Borck, though he did not state positively on what date. Valdes also presented the witnesses Alejandro Roces and Jose E. Alemany. The first testified that sometime during the second half of January, on an occasion

when he was in Dr. Valdes' office, he heard the latter and Borck speaking, and that Borck said something to Dr. Valdes about P300,000, and that it would be difficult to find a purchaser for cash; and that he also heard them talk about P400,000. The second witness, Dr. Jose E. Alemany, also testified that about the 12th or 15th of January, at a time when he was in Dr. Valdes' office, he heard a conversation between Valdes and Borck in which the former said to the latter that what Borck wanted was impossible, and that the latter replied to Valdes that it was very dear, that he did not want it, that he did not have the money. On this occasion, this witness also heard them talking about P400,000.

As the record does not show positively that the defendant Valdes, on the occasion above referred to, told the plaintiff Borck that he (Valdes) withdrew the offer of sale contained in the document Exhibit E, for he merely communicated to Borck the contents of the said letter from Legarda to Prieto, as the date when he did this does not appear; and as the statements made by the witnesses with regard to the conversation they heard between Valdes and Borck are vague and as it cannot be deduced therefrom that such statements referred expressly to the fact that Valdes withdrew the offer on that occasion, it must be concluded that there is no proof on this point. But, though it had been proven that the withdrawal of the offer was made in the month of December, 1911, or before January 17, 1912, as stated by Valdes' counsel in his brief, such a fact could not be a bar to, or annul the acceptance by the plaintiff Borck, of said offer on any date prior to the expiration of the three months fixed in the document Exhibit E, to wit, March 4, 1912, because the offer or promise to sell therein contained was not made without period or limitation whatever (in which case Valdes might have withdrawn it and the latter have accepted it at any time until it was withdrawn) but for three months, that is, for a specific period of time; and, as the plaintiff Borck had a right to accept the offer during that period, it was Valdes' corresponding duty not to withdraw the offer during the same period. Therefore the withdrawal of the offer claimed to have been made by this defendant was null and void.

Consequently, the lower court did not err in holding that the offer had not been withdrawn during the three months mentioned, and that it could be converted into a real contract by the plaintiff Borck's mere acceptance within the same period.

One of the allegations made by the plaintiff in the complaint, as we have seen, is that on January 19, 1912, while the said offer was still open, the plaintiff accepted it in writing, in conformity with its terms, and requested permission of the defendant Valdes to inspect the property titles and other documents pertaining to the estate, and offered to pay the defendant Valdes as soon as a reasonable examination could be made of the said property

titles and other documents, immediately and in cash the price stipulated and agreed upon in the contract for the said *hacienda*. To prove this allegation, the plaintiff presented the document Exhibit G, which reads as follows:

"MANILA, *January 19, 1912*.

"Dr. BENITO VALDES,

"*195 San Sebastian*,

"*City*.

"SIR: I hereby advise you that I am ready to purchase the Hacienda Nagtahan, situated in the districts of Sampaloc and Nagtahan, Manila, and in the Province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000) pesos Ph. c. the price quoted in the option given me by you.

"Full payment will be made on or before the third day of March 1912, provided all documents in connection with the Hacienda Nagtahan, as Torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.

"Very truly yours,

"W. BORCK."

In the preceding letter the plaintiff in fact did state that he accepted the offer made to him or the option given to him by the defendant Valdes in the document or letter of December 4, 1911, Exhibit E, for, even though it was not stated therein what option it was that was mentioned in the said letter, it is unquestionable that it could refer to no other than to the option or offer mentioned in the said Exhibit E, as no other was then pending between the plaintiff and this defendant.

But, aside from the fact that the complete payment of the P307,000 mentioned in the said letter was made to depend on the condition that all the documents relative to the Nagtajan Hacienda, such as the Torrens title, etc., be immediately placed at the plaintiff's disposal for his inspection, and be found satisfactory, the said tender of payment was offered to be made

on or before March 3, 1912.

A simple statement of the last part of the letter is enough to convince that the plaintiff did not offer to pay, immediately and in cash to the defendant Valdes as he alleged in his complaint, the price stipulated and agreed upon between themselves in the said document Exhibit E. Of course, it is undeniable that the plaintiff Borck had a right to examine the title deed and all the documents relative to the Nagtajan Hacienda, before the sale of the property should be consummated by means of the execution of the proper deed of conveyance in his favor by the defendant Valdes as the attorney-in-fact of the other defendant Legarda, and, consequently, the plaintiff Borck was also entitled to refrain from making payment as long as he should not find the documents relative to the said property complete and satisfactory, an indispensable condition in order that the said deed of conveyance might be executed in his favor. But at the very moment this instrument was executed and signed by the vendor, the payment of the stipulated price should have been made in order that it might be an immediate cash payment. Pursuant to the language of that part of the document or letter Exhibit G to which we now refer in respect to the payment, it cannot be understood that the plaintiff tendered payment to the defendant immediately and in cash, for the simple reason that if the documents had been placed by the defendant at the plaintiff's disposal for his inspection, for example, on January 20th, the day following the date of the letter Exhibit G, and the plaintiff had examined and found them satisfactory, and the defendant Valdes had executed in the plaintiff's favor the proper deed of conveyance or sale of the *hacienda* on the 25th of the same month of January, according to the exact terms of the letter of acceptance of the offer, Exhibit G, dated January 19, 1912, the plaintiff, that is, the purchaser Borck, could have made full payment to the defendant Valdes, of the P307,000, the price of the property, on the 3d of March, 1912, or on any date on which the deed of conveyance was issued, from the 25th of January up to the said 3d day of March, for nothing else can be understood by, and no other meaning and scope can attach to, the words "full payment will be made on or before the third day of March 1912." In short, by the way the part of said document Exhibit G relative to the offer of payment in the example above given is drawn, the purchaser Borck might pay the stipulated price of the property, or have the period from the 25th of January to the 3d of March within which to pay it, and meanwhile the ownership of the estate would already have been conveyed, by means of the proper deed, to the purchaser Borck, and he could not have been obliged to pay the said price until the very day of March 3, 1912, by reason of the contents of the said letter, Exhibit G.

In connection with the allegation we have just been discussing, to wit, that the plaintiff

Borck made a tender of payment to the defendant Valdes "immediately and in cash" of the price of the *hacienda* fixed in the instrument Exhibit G, the plaintiff also presented as proof, in relation to the allegation as to the presentation of the letter of January 19, 1912, Exhibit G, another letter written by himself, and also addressed to the defendant Valdes, under date of the 23d of the same month of January. This document is marked Exhibit J and is of the following tenor:

"*January 23, 1912*.

"Dr. BENITO VALDES,

"*195 Calle San Sebastian*,

"*City*.

"SIR: I have the pleasure to inform you that I can improve the conditions of payment for the Hacienda Nagtahan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000) pesos, Ph. c, ten days after the Torrens title deeds and all papers in connection with the *hacienda* have been placed at my disposal for inspection and these documents and papers have been found in good order.

"Respectfully yours,"

As may be seen by the language in which the preceding letter is couched, the plaintiff virtually recognized, just as he had done in the letter of January 19th, that is, the one written four days before, Exhibit G, that the tender of payment to the defendant Valdes, of the price of the *hacienda*, could not be understood to have been a tender of "immediate and cash" payment, as alleged in the complaint, but that payment might be made on any date prior to March 3, or on this same date, even though he may have found satisfactory all the documents that the defendant might have placed at his disposal to be examined, and consequently, although the proper deed of conveyance of the property should have been executed in his favor. Nothing else is meant by the statement made by the plaintiff Borck to the defendant Valdes in the letter of January 23, Exhibit J, that he had the pleasure to inform him that he could improve the conditions of payment for the Hacienda Nagtajan in so far as to agree to pay the whole amount of purchase price, P307,000, ten days after the Torrens title deeds and all papers in connection with the *hacienda* should have been placed

at his disposal for inspection and should have been found satisfactory, for the payment which Borck offered to make to Valdes, of the price of the property, in said letter Exhibit J, was not indeed to be effected on the third of March or prior thereto, but within the limited period of ten days after the documents relative to the property should have been delivered to the plaintiff for his inspection and been found satisfactory. And were there any doubt that the meaning or, the sense of said offer was not as just above stated, it would be removed by a mere perusal of the statement made therein by the plaintiff telling the defendant Valdes that he, the former, had the pleasure to inform the latter that he, Borck, could improve the conditions of payment for the *hacienda*, to wit, those mentioned in the letter written four days before, that is, on January 19th, Exhibit G, in the manner aforementioned by paying the whole amount of the purchase price ten days after the documents should have been delivered to the plaintiff and he should have found them satisfactory.

But, the letter of January 23, Exhibit J, is drawn up in such a way that it also does not contain any tender of "immediate and cash" payment by the plaintiff Borck to the defendant Valdes.

Indeed, as said letter makes the total payment of the price of the property depend on the delivery by the defendant Valdes to the plaintiff Borck of all the documents relative to the *hacienda*, and of the further condition that the latter should find such documents in good order and satisfactory, and as a period of ten days was fixed for the said payment, counting from the date of the delivery of the documents, and on the condition that Borck should find them satisfactory, the date of payment cannot be understood to have been fixed for any certain day after those ten days, or for the eleventh day, for the simple reason that, for example, if the documents were delivered to Borck on February 1 for his inspection, and after the lapse of ten days thereafter he had not finished examining them and had kept them in his possession for this purpose for ten days longer, that is, until February 20, and then had found then satisfactory, the result would be that the payment would have had to be made, not ten days, but twenty days, after the delivery of the said documents, and this would have been authorized by the ambiguous terms in which the tender of payment are couched. But supposing that as appears to be the case, it had been the purpose of the plaintiff Borck, in fixing those ten days in the letter Exhibit J, for the payment, that there should be an interval of said ten days between the delivery and inspection of the said titles and the determination of whether they were satisfactory or not, it might also have happened that on the third day after the delivery of the titles, these might have been found by the purchaser to be satisfactory, and that the vendor might immediately have executed the proper deed of conveyance of the property in the purchaser's favor. In that event, according

to the terms of said letter Exhibit J, the purchaser Borck would not be obliged to make payment to the vendor Valdes until seven days after the execution of the deed of conveyance and the transfer of the property to the former, that is, not until the expiration of the period of ten days counting from the date of the delivery of the documents to the purchaser; and it is evident that such a payment would not be in cash, pursuant to the provisions of article 1462, in connection with article 1500, of the Civil Code.

Furthermore: The plaintiff Borck also presented another letter in connection with his aforementioned allegation made in the complaint, and related to the other two previous letters, Exhibits G and J, to prove what he had intended to accomplish by means of the latter, to wit, that the tender of payment made by him to the defendant was made in accordance with the said allegation, "immediately and in cash."

This letter (Exhibit K) bears the date of February 28, 1912, and reads as follows:

"MANILA, P. I., *February 28, 1912*.

"Dr. BENITO VALDES,

"*Attorney-in-fact for Benito Legarda*,

"*Manila*.

"DEAR SIR: To prevent any misunderstanding, I wish to advise you that the purchase price of the Hacienda Nagtahan is ready to be paid over to you, and I request you to notify me whenever it is convenient for you to place at my disposal for inspection the title deed and papers in connection with said estate.

"Very respectfully,

"W. BORCK."

As may also be seen by the very terms employed by the plaintiff in this letter, he virtually admits, clearly acknowledges, that in the two previous letters, Exhibits G and J, he had made the tender of payment of the price for the Nagtajan Hacienda in such a manner that it could not be understood to have been in accordance with the agreement entered into between himself and Valdes, that is, that the payment should be in cash.

The letter Exhibit K in fact begins with these words: “To prevent any misunderstanding,” and then says: “I wish to advise you that the purchase price for the Hacienda Nagtahan is ready to be paid over to you, and request you to notify me whenever it is convenient for you to place at my disposal for inspection the title deed and papers in connection with said estate.”

The first words of the letter of course indicate that the plaintiff Borck himself, in writing them, feared, at least he was not sure, that, in accepting, in the letter of January 19th, Exhibit G, the offer of the sale of the *hacienda* to him by Valdes, and in making therein the tender of payment and in renewing this tender in the letter, Exhibit J, of the 23 of the same month, he, the plaintiff, had not conformed to the terms of the offer of sale or of the option to buy, given to him by Valdes by means of the document Exhibit E, for in the said last letter, Exhibit K, he takes it for granted that there was or might be some misunderstanding between himself and the defendant Valdes with respect to the tender made by him of the price of the estate. According to the admission of the. plaintiff Borck in his complaint, this price was to be paid “at once and in cash.” In the said letter Exhibit K, to avoid that misunderstanding, the plaintiff Borck stated to the defendant Valdes that the purchase price for the *hacienda* was ready to be paid over to him, and requested to be notified by Valdes when it would be convenient for him to place at the plaintiff’s disposal for inspection the title deed and papers in connection with said estate.

The notification contained in this letter written by Borck to Valdes, that the purchase price of the estate was ready to be paid over to the latter, and the mention made in this same letter, immediately after the notification, of the inspection which the plaintiff wished to make of the titles which he desired should be delivered to him for this purpose, show that this last letter, Exhibit K, relates to the one that preceded it, dated January 23, Exhibit J, or, what amounts to the same thing, is a result of it, for it is virtually said therein that the price of P307,000 (which according to his previous letter, he had agreed to pay for the *hacienda*, ten days after the delivery to him of the documents relative to the estate and their having been found by him to be satisfactory) was already held in readiness by the plaintiff for delivery to the defendant, but this delivery of the price was subordinated to the delivery requested by the plaintiff of those titles and other documents, and to the plaintiff’s finding such documents satisfactory, and the delivery of the price was also subordinate to the period of the ten days, mentioned in the said letter Exhibit J. The letter Exhibit K can have no meaning whatever in that part thereof where reference is made to the offer of payment of the price of the *hacienda*, or to the payment itself, except in connection with the previous Exhibit J, inasmuch as the letter Exhibit K does not state when Borck was to deliver to

Valdes the price which, according to this same letter, the plaintiff already had in readiness for that purpose. So that neither in the letter Exhibit K is any specific offer of payment made by the plaintiff Borck to the defendant Valdes, of the price stipulated in the document Exhibit E to be paid "at once and in cash," notwithstanding its being said therein that the plaintiff had the money ready to be turned over to the defendant.

Upon the plaintiff Borck's testifying at the trial as a witness, said documents Exhibits E, G, J, and K, and also others marked from A to M, including the four just referred to, were presented in evidence. Among these documents is found Exhibit F, which reads as follows:

"MANILA, *January 17, 1912*.

"Dr. BENITO VALUES,

"*195 San Sebastian*,

"*City*.

"SIR: In reference to our negotiations regarding the Hacienda Nagtahan at Manila, property of Mr. Benito Legarda, consisting of about 1,993,000 sq. meters of land, I offer to purchase said property for the sum of three hundred and seven thousand (307,000) pesos P. c. cash, net to you, payable the first day of May 1912 or before and with delivery of a Torrens title free of all encumbrances as taxes and other debts.

"Respectfully,

"YOURS,"

On said documents being presented in evidence at the trial, the defendants objected to their admission; the court reserved his decision thereon and in the judgment appealed from made no mention as to the contents of said document Exhibit F, and in ruling on the defendants' motion for a new trial, in which motion they assigned as one of the errors of the said judgment the fact that no notice whatever had been taken therein of the said Exhibit F, which defendants claimed to be one of their most important proofs, the court stated as a reason for the omission that this Exhibit F was unsigned, unidentified and was not attested by anyone, besides the fact that no conclusion, either in favor of or against the plaintiff,

could be based on it, because although the said letter, that is, Exhibit F, might have been actually delivered, no right whatever could be predicated thereon, nor any liability, and it was, therefore, inadmissible.

The record shows that when Exhibit F and Exhibits G, J, K, L, and M, were shown to the defendant Valdes by the plaintiff's counsel Beaumont, for their identification and in order that Valdes might state to the court whether he had received the originals and, if so, where they were, defendant merely said in reply that he had received three originals from Borck and two originals from Beaumont (p. 14 of the transcription of the stenographic notes), and exhibited the originals of Exhibits C, M, L, K, and G, but not that of Exhibit F. The plaintiff Borck having been presented as a witness, after he had been asked the first four questions by Attorney Hartford Beaumont, the latter made the following statement: "I would like to interrupt the witness at this moment in order to present all the Exhibits A to M, which were identified by the previous witness." Counsel for the defendant Legarda objected to the admission of the said documents on the ground that they were incompetent, immaterial and irrelevant. The same objection was also made by counsel for the defendant Valdes in behalf of his client, and the court said that he would reserve his decision (pp. 24 and 25 of the record).

During the examination of plaintiff Borck, in which Attorney Beaumont plied him with questions in regard to the aforementioned documents, beginning with Exhibit A and showed him the documents themselves, on coming to Exhibit F, after having given attention to other exhibits, among which was Exhibit O, which we shall mention later on, the plaintiff answered the questions put to him with respect to Exhibit F in the following manner as found in the transcription of the stenographic notes in English (p. 61 on the record):

> "Q. Now I will show you Exhibit F, and call your attention to the fact that it has the same date, January 17, as Exhibit O, and ask you to state the circumstances under which Exhibit O was signed—A. This is my acceptance of the option of Dr. Valdes.
>
> "Q. How does it happen that it has the same date as Exhibit O?—A. Because I don't believe in hanging back with my business. I conclude it as soon as possible. As soon as I got the offer, I made my acceptance to Dr. Valdes."

The document Exhibit F, as has been seen, is unsigned; but the document Exhibit J, to wit,

the aforementioned letter of January 23, 1912, is in the same condition. It is true that although the document Exhibit J is unsigned because it is a copy of the letter addressed on that same date to Valdes by Borck, Valdes kept the original in his possession and he did not present the original of Exhibit F but only the other letters before mentioned, although he stated with reference to the letters he had received from Borck, that as he was not a business man arid was not acquainted with that kind of business, he sometimes read the letters and, after taking notes of their contents, transmitted their substance to Mr. Legarda, and at other times sent to him the letters themselves, from which testimony of Valdes it is concluded that he was not in the habit of keeping the originals he received from Borck. However, as has already been seen, notwithstanding that Exhibit F was not identified by Valdes, the plaintiff Borck, referring to the said document on its being shown to him by his attorney, who called his attention to the fact that it had the same date, January 17, as Exhibit O, and asked him to state the circumstances under which Exhibit O was signed, said that Exhibit F was his acceptance of Dr. Valdes' option; and in answering the next question, explained the reason why Exhibit F bore the same date as Exhibit O, saying that "he did not believe in hanging back with his business;" that he "concluded it as soon as possible;" and that "as soon as he got the offer, he made his acceptance to Dr. Valdes."

Exhibit O is as follows:

"MANILA, *January 17, 1912*.

"W. BORCK, Esq.,

"*Manila*.

"DEAR SIR: Referring to our recent conversations regarding the proposed purchase by clients of ours of the property known as the Hacienda Nagtajan, I beg to advise you that our clients, after investigation of the physical conditions of the property, are prepared to make an offer for the purchase of the same at the price named by you, to wit, P380,000, cash, provided that there is good title to the property, that it contains substantially the area represented, namely, 1,993,000 square meters, and that the existing leases upon certain portions of the said property are found to be in proper form. It is the desire of our clients to have an opportunity to investigate the legality of the title and leases at the earliest practicable moment, and they have authorized us to say that if the conditions are satisfactory with regard to these matters, they are prepared to

> make you a firm offer of the amount above named, and to make a deposit of a reasonable amount as an evidence of good faith.
>
> "Very truly yours,
>
> "BRUCE, LAWRENCE, ROSS, AND BLOCK, "JAMES ROSS."

Connecting the contents of this document Exhibit O with those of the previous Exhibit F, and taking into account the testimony given by Borck, as above quoted, in answering the questions put to him by his own attorney, relative to the said exhibits, it is clearly understood that on Borck's receiving the letter of January 17, 1912, from the law firm of Bruce, Lawrence, Ross and Block, and signed by James Ross, Exhibit O, in which these gentlemen stated that they were prepared to make an offer for the purchase of the Hacienda Nagtajan at the price of P380,000 cash, he wrote on the same date, January 17, to Dr. Valdes the letter, a copy of which is Exhibit F, in which, referring to the negotiations between them regarding the said Nagtajan Hacienda, he offered to purchase this property for P307,000, cash and net, payable on or before the first day of May, 1912, delivery to be made to him of a Torrens title free of all encumbrance, such as taxes and other debts. For this reason the plaintiff Borck stated in his testimony that the said letter Exhibit F was his acceptance of Dr. Valdes' option, for, not believing in hanging back with his business and desiring to conclude it as soon as possible, as soon as he received the offer, contained in the letter Exhibit O, from the said law firm, he transmitted or made known his acceptance to Dr. Valdes.

We do not think there could be a better identification of the letter Exhibit F than that made by its own writer, the plaintiff Borck, for he admitted in his testimony that he wrote this letter, and although the defendant Valdes did not present the original of the said letter Exhibit F, perhaps because it was one of those which he did not keep in his possesion, there can be no doubt whatever that the original of the said Exhibit F was transmitted to Valdes by the plaintiff Borck, for the latter explicitly said so in stating that that letter was his acceptance of Dr. Valdes' option, the plaintiff explaining why he had written said letter, on referring to the relation between said Exhibit F and the Exhibit C, on account of the same date both letters bore, on making further explanations in the matter, and saying: "As soon as I got the offer, I made my acceptance to Dr. Valdes." Furthermore, if there were still any doubt whatever about this, it would disappear after a consideration of the following quotation taken from the plaintiff's written brief filed before the lower court rendered

judgment, in which mention is made of the said brief and of the questions discussed therein said brief is found on pages 190 to 206 of the record and is signed, by the plaintiff's attorneys, Aitken and Beaumont.

On page 195 thereof, appears the following:

> "3. THE ACCEPTANCE.
>
> "On the 17th of January, 1912, Mr. Borck received a written offer (Exhibit O) for the property from Mr. James Ross of this city for the price of P380,000 and thereupon on the same day wrote Dr. Valdes the letter which appears as Exhibit T (pp. 56, 169 of the record). No question arises as to the validity of this acceptance for reasons which will presently appear * * * "

As may be seen, in the paragraph of that brief signed by the plaintiff's attorney there is a restatement of what the plaintiff had said in his testimony, to wit, that as soon as he received, on January 17, 1912, a written offer Exhibit O, from Mr. James Ross of this city for the property in question and for the price of P380,000, he wrote on the same day the letter to Dr. Valdes that appears as Exhibit T (pp. 56, 169, of the record). In this same brief the statement was also made that no question had arisen as to the validity of this acceptance, for the reasons which would presently appear.

It is to be noted that Exhibit T, mentioned in the preceding paragraph transcribed from the brief, is the same Exhibit F, which was erroneously marked with the letter T in the said paragraph, as shown by the fact that in this paragraph Exhibit T is referred to as being found on page 56 of the record, which page contains Exhibit F, and on page 169 of the record, which contains a copy of the same Exhibit F, the date of this latter exhibit, January 17, being also that of the Exhibit O, mentioned in the said brief.

The trial court therefore erred in not admitting in evidence said document Exhibit F and, consequently, in not taking it into consideration in the judgment appealed from. This rejection cannot be warranted by the fact that the defendants themselves opposed its admission, for the latter also opposed the admission of all the documents presented by the plaintiff, on the understanding that, as they were not bound by the documents Exhibits A and E, the one as principal and the other as agent, such documents were immaterial,

incompetent and irrelevant, nevertheless the trial court admitted some of those documents and considered them for the purpose of drawing his conclusions in the judgment rendered.

It is hardly necessary now to show that said letter of January 17, 1912 (Exhibit F) was Borck's acceptance of the option or offer of sale made to him by the defendant Valdes in his letter of December 4, 1911 (Exhibit E), for the plaintiff Borck himself admitted in his testimony at the trial that the letter Exhibit F was his acceptance of said option.

In fact, the plaintiff Borck, referring in the letter, Exhibit F, to the negotiations between himself and Valdes regarding the Nagtajan Hacienda belonging to Benito Legarda, offers to purchase said property for the sum of P307,000, cash and net, payable the first day of May, 1912, or before, the plaintiff to be furnished with a Torrens title free of all encumbrances, such as taxes and other debts. The offer of sale or option of purchase contained in the document Exhibit E, was for the period of three months, from December 4, 1911, for the assessed valuation of the property, understood to be P307,000, though subsequently at the trial it was fixed by agreement of the parties at P306,954 and payment was to be made in cash, for, even though this was not stated in the document, that failure itself so to state created the understanding that the price was to be paid in cash when delivery of the property was made, in accordance with the provisions of article 1462, in connection with article 1500, of the Civil Code. The plaintiff Borck recognized this in his complaint, in making the allegation we considered at the beginning of this decision, to wit, that he accepted in writing the said offer in conformity with its terms and offered to pay to the said Valdes, "immediately and in cash" the price stipulated; and he also so testified at the trial, saying, in reference to the conditions of the payment of the purchase price, that "the conditions were not discussed, because the payment was to be made in cash on exhibition of the documents." Now then, in the document Exhibit F, that is, the letter of January 17, 1912, it is stated that payment of the net amount would be made in cash on the first day of May, 1912, or before. So that it may be said with all the more reason that in relation to the other offers of payment contained in the documents G, J, and K, that in the letter, Exhibit F, the plaintiff Borck, in accepting the offer of sale, did not make an offer to pay the price "immediately and in cash," as stated in his allegation set forth in the complaint, for, by virtue of the said document, he reserved to himself the right to make the payment on the first day of May, 1912, or on any date prior thereto, as might suit him, that is, two months after the termination of the option or of the offer, which would be, on or before March 4, 1912, although the deed of conveyance of the property in his favor should have been executed by the defendant Valdes on any date within the period of the option, that is, within the three months which" ended on the said 4th day of March, 1912, whereby the plaintiff

virtually gave himself five months from the date of the offer of sale or option of purchase, to effect the said payment. This is evidently not an offer to pay "immediately and in cash," nor is it a payment in cash, as the law provides, nor such a payment as the plaintiff Borck himself understood it to be, when he stated in his testimony that the payment was to be made in cash upon exhibition of the documents.

Duly considering the documents Exhibits F, G, J, and K, that is, the statements made by the plaintiff Borck in the letters of January 17, 19 and 23, 1912, and February 28th of the same year, addressed by him to the defendant Valdes, in accepting the option that the latter had granted him for the purchase of the Nagtajan Hacienda, or the offer of sale of the said *hacienda* defendant made to the plaintiff, with respect to the payment of the price thereof, it is seen that in the said documents the plaintiff Borck offered to pay to the defendant Valdes the said price, first within the period of five months from December 4, 1911, afterwards within the term of three months from the same date of December 4, and, finally, within a period which could as well be ten days as twenty or thirty or more days from the time Valdes should put at the plaintiff's disposal to be inspected, the titles and other documents relative to the said *hacienda*, and the plaintiff should find them satisfactory and the proper deed of conveyance should, in consequence thereof, be executed in his favor by Valdes; and this evidently is an offer of payment in installments, and not an "immediate and cash" payment.

The lower court in the judgment appealed from says that as the document Exhibit E, dated December 4, 1911, gave the plaintiff a three months' option for the purchase of the property, a period which expired, therefore, on March 4, 1912, this necessarily allowed the plaintiff time for the payment until this last date, and as in the letter Exhibit G, of the date of January 19, 1912, the plaintiff said that he would pay before the expiration of the said period, in no manner could this have modified the option, rather, on the contrary, it coincided with it, the court adding, moreover, that a payment made on or before the 4th of March would have been a payment in cash, if this was required by Exhibit E.

It is true that the period granted by the defendant Valdes to the plaintiff for purchasing the property, was three months from December 4, 1911, but not because this period expired on March 4, 1912, that is, the last day of the said three months, may it be understood that the defendant granted to the plaintiff the period for payment until the very last day, March 4, 1912, for the simple reason that, the period for the purchase being three months, that is, the time during which the plaintiff Borck could make use of the power or the right granted to him by Valdes to arrange for the purchase of, and to purchase in fact, the said property, if

Borck purchased it on any date prior to March 4, 1912 (on January 19, 1912, for example) the result would be that the proper deed of sale being consequently executed in his favor on the said date of January 19, and the time that payment would be made not having been fixed in the said document Exhibit E, such payment would have to be made at the time of the delivery of the thing sold, pursuant to article 1500 of the Civil Code; but as, in accordance with article 1462 of the same code, the execution of the deed of sale is equivalent to the delivery of the thing which is the object of the contract, the payment would not be in cash if it were not made on the same 19th day of January, 1912, and were postponed until some other later day, or until March 4, 1912. In short, it is impossible to confound the period of the option granted to the plaintiff Borck for the purchase of the Nagtajan Hacienda, with the period for the payment of its price, had he purchased it. The plaintiff Borck had three months, from December 4, 1911, within which to make the purchase; to make the payment he did not have a single day after the date on which the proper deed of sale would have been executed in his favor; he was to pay the price at the very moment the said deed was executed, because, by this means, the property would have been delivered to him, although there still might have been lacking one or two months of the three months' period of the said option. This is the payment in cash to which the law refers in the sale of real estate in cases where the time for making payment has not been fixed, and the plaintiff himself, Borck, so understood when he stated in his testimony, as we have before said, that, as the conditions for the payment had not been discussed, payment was to be made in cash on exhibition of the documents, or, what amounts to the same thing, on the execution of the proper deed of sale of the property in his favor. It is therefore evident that in view of the fact that the time of the payment was not fixed therein, the document Exhibit E, dated December 4, 1911, required the payment to be made in cash, and the lower court erred in holding that the plaintiff Borck's letter, Exhibit G, of the date of January 19, 1912, in stating that the payment would be made on or before March 4, 1912, in no manner modified the option or offer of sale contained in the document Exhibit E, but that on the contrary it coincided therewith; also in holding that a payment made on or before March 4, 1912, would have been a cash payment.

The letter of December 4, 1911, Exhibit E, contained, as aforesaid, an offer of sale or a proposal of sale on the part of the defendant Valdes to the plaintiff Borck, of the Nagtajan Hacienda, for the assessed valuation of the same, effective during the period of three months counting from the said date. Such proposal or offer was an expression of the will only of the defendant Valdes, manifested to the plaintiff Borck. In order that such a proposal might have the force of a contract, it was necessary that the plaintiff Borck's will should

have been expressed in harmony with all the terms of the said proposal.

> "Consent is shown by the concurrence of the offer and the acceptance of the thing and the cause which are to constitute the contract." (Art. 1262, Civil Code.)
>
> "There is no contract unless, among other requisites, there is consent of the contracting parties." (Art. 1261, par. 1, of the same code.)
>
> "Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences which, according to their character, are in accordance with good faith, use, and law." (Art. 1258, Civil Code.)
>
> "Promises are binding in just so far as they are accepted in the explicit terms in which they are made; it not being lawful to alter, against the will of the promisor, the conditions imposed by him (Decision of the supreme court of Spain, of November 25, 1858); for only thus may the indispensable consent of the parties exist for the perfection of the contract." (Decision of the same court, of September 26, 1871.)
>
> "An option is an unaccepted offer. It states the terms and conditions on which the owner is willing to sell or lease his land, if the holder elects to accept them within the time limited. If the holder does so elect, he must give notice to the other party, and the accepted offer thereupon becomes a valid and binding contract. If an acceptance is not made within the time fixed, the owner is no longer bound by his offer, and the option is at an end." (Words and Phrases, vol. 6, p. 5000, citing McMillan vs. Philadelphia Co., 28 Atl., 220; 159 Pa., 142.)
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> "An offer of a bargain by one person to another, imposes no obligation upon the former, unless it be accepted by the latter, according to the terms in which the offer was made. Any qualification or, or departure from, those terms, invalidates the offer, unless the same be agreed to by the person who made it." (Eliason et al. vs. Henshaw, 4 Wheaton, 225.)
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> "In order that an acceptance of a proposition may be operative it must be unequivocal, unconditional, and without variance of any sort between it and the proposal, * * *. An absolute acceptance of a proposal, coupled with any

> qualification or condition, will not be regarded as a complete contract, because there at no time exists the requisite mutual assent to the same thing in the same senses." (Bruner et al. vs. Wheaton, 46 Mo., 363.)

As already seen while we were considering the documents Exhibits F, G, J, and K, the plaintiff Borck accepted the offer of sale made to him or the option of purchase given him in document Exhibit E by the defendant Valdes, of the Nagtajan Hacienda, for the assessed valuation of the same, but his acceptance was not in accordance with the condition with regard to the payment of the price of the property, under which the offer or the option was made for, while this payment was to be paid in cash, as the plaintiff Borck himself admitted and the defendant Valdes positively stated in his testimony, and also as provided by law, for the reason that the time was not fixed in said offer or option when the payment should be made, in the aforesaid four documents Exhibits F, G, J, and K, the plaintiff Borck made the offer to pay the said price, in the first of them, within the period of five months from December 14, 1911; in the second, within the period of three months from the same date, and, finally, in the other two documents, within an indefinite period which could as well be ten days as twenty or thirty or more, counting from the date when the muniments of title relative to the said *hacienda* should have been placed at his disposal to be inspected and he should have found them satisfactory and, in consequence thereof, the deed of conveyance should have been executed in his favor by the defendant Valdes.

So that there was no concurrence of the offer and the acceptance as to one of the conditions related to the cause of the contract, to wit, the form in which the payment should be made. The expression of Borck's will was not in accordance with all the terms of Valdes' proposal, or, what amounts to the same thing, the latter's promise was not accepted by the former in the specific terms in which it was made, and finally, the acceptance of the said proposal on Borck's part was not unequivocal and without variance of any sort between it and the proposal, because, in view of the terms.in which the payment was offered by Borck in his said letters of January 17, 19 and 23, Exhibits F, G, J, and K, there was variance from the moment in which according to said terms, in the first two letters, the payment of the price should be made on or before the 1st of May and on or before the 3d of March, 1912, respectively, that is, within a period limited in those letters, and the offer of payment was equivocal inasmuch as, by the last two letters, it was made to depend on certain acts as a basis for fixing the period in which the said payment should have to be made; finally, there was no mutual conformity between the person who made the proposal or offer, Valdes, and the person who accepted it, Borck, in the same sense with respect to the form of payment,

and Borck deviated from the terms of the proposition with regard to the form of payment and the record does not show that Valdes assented to such variance.

It is, therefore, evident that, in accordance with the provision of law and the principles laid down in the decisions above cited, the proposal or offer of sale made by the defendant Valdes to the plaintiff Borck, or the option of purchase granted by the former to the latter, with respect to the Nagtajan Hacienda, in the document Exhibit E, was not converted into a perfect and binding contract for them, and that as Valdes did not assent to the modification introduced by Borck in the offer of sale made by this defendant in regard to one of its terms, to wit, the form of payment, the said offer became null and void, and, consequently, Borck has no right to demand of the defendant Valdes and of the latter's principal, the other defendant, Legarda, or of the administrators of the estate left by Legarda at his death which occurred during the course of these proceedings, and whose names appear at the beginning of this decision, the fulfilment of that offer, nor, therefore, any indemnity whatever for such nonfulfilment.

The lower court erred, then, in finding otherwise in the three conclusions of law contained in the judgment appealed from which were mentioned at the beginning of this decision and on which, in short, the pronouncement made in that judgment was founded.

As the power of attorney conferred by Benito Legarda upon Benito Valdes was explicit and positive, according to the document Exhibit A, a copy of which was attached to the complaint, to sell and convey all kinds of real estate at such prices and on such conditions as Valdes might deem proper, and also as the terms of the option granted by Valdes to Borck, or of the offer of sale made by the former to the latter in the document Exhibit E, of the Nagtajan Hacienda belonging to Benito Legarda, are clear; and, furthermore, as the plaintiff made the said documents an integral part of the complaint as the grounds thereof, the testimony introduced by the defendant Valdes to prove that said offer of sale made by him to Borck was subject to the approval of his, Valdes', principal was improper (sections 103 and 285, Code Civ. Proc.) and the lower court did not err in not taking that testimony into consideration in his judgment. Likewise the evidence presented by the defendant Valdes in an endeavor to prove that said offer of sale was obtained from him by the plaintiff Borck by means of fraud and deceit, was improper. Consequently the trial court did not err by making no finding in the judgment on those two points.

In conclusion, as the offer of sale of the Nagtajan Hacienda, made by Valdes to Borck, or the option of purchase thereof granted by the former to the latter by the letter of December 4,

1911, Exhibit E, did not constitute a perfect contract and, consequently, was not binding upon the defendants Valdes and Legarda or the plaintiff Borck, by reason of the lack of the mutual assent of the parties concerned therein, which is wholly in accordance with the terms of the said offer, there can be no obligation demandable in law by virtue of the stipulations contained in said document, and the action prosecuted by the plaintiff for that purpose in these proceedings is improper.

For the foregoing reasons the judgment appealed from is reversed and we absolve the defendants from the complaint. The costs of the first instance shall be imposd upon the plaintiff. No special finding is made with respect to those of this second instance. So ordered.

Arellano, C. J., Torres, and *Johnson, JJ.*, concur.
Moreland and *Trent, JJ.*, concur in the result.

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