

**LUZON BROKERAGE CO., INC., PLAINTIFF AND APPELLEE, VS.
MARITIME BUILDING CO., INC., AND MYERS BUILDING CO., INC.,
DEFENDANTS, MARITIME BUILDING CO., INC., DEFENDANT AND
APPELLANT.**

G.R. No. L-25885. August 18, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appellant Maritime Building Co., Inc. moves to reconsider this Court's decision of 31 January 1972,[a] on several grounds that will be taken up seriatim.

I

Maritime contends that it was error for this Court to hold that its action in "suspending payments to Myers corporation of the installments for March to May, 1961, was a breach of contract tainted with fraud or malice (dolo) as distinguished from mere negligence (culpa) * * * and therefore incompatible with good faith."

(a) It is argued that Maritime's bad faith was not alleged nor put in issue in the pleadings.

This pretense is incorrect: movant Maritime, in its answer to the cross-claim of Myers Building Co., Inc., specifically pleaded good faith as an affirmative defense in paragraphs 4, 11, 13 and 14 of its answer to the cross-claim of Myers (Record on Appeal, pages 118, 120, 121, 122), and hence, placed its good or bad faith in issue. Anyway, whether a party acted in good faith or bad faith, in admittedly non-performing its part of a bargain, is a conclusion of law drawn by the Court from the circumstances proved in the case.

(b) The facts as narrated in the decision and revealed by the proof clearly show that as early as 24 March 1961, Maritime had requested a "suspension" or "moratorium" in its monthly payments until the close of 1961, allegedly because "we are encountering some unusual expenses with the warehouses" (Exhibit "A-Myers"), but this request was turned down on 29 March 1961 by the Myers Corporation advising George Schedler, the son of Edmund Schedler, main stockholder of Maritime, that his request "can not be granted as I have specific instructions from the Board (of Myers Co.) not to agree to any suspension of payments under any condition" (Exhibit "5-Myers"). This refusal is referred to in Edmund Schedler's letter of 7 April 1961 (Exhibit "11-Maritime"). Notwithstanding Myers Corporation's categorical refusal to agree to a suspension or moratorium, and after Myers had called its attention to the violation of the contract (Exhibit "11-A"), Schedler, on behalf of Maritime, insisted on suspending its payments, alleging for the first time that the late F.H. Myers had "agreed to indemnify and hold me harmless from the Luzon Labor Union claims which are in litigation" and giving notice that "my wife and I intend to withhold any further payments to the Myers Building Co. or Estate * * * ." This intention was reiterated in the letter Exhibit 12-Maritime, wherein it was added that "if the Myers people will deposit in trust with Mr. C. Parsons 25,000 pesos to cover my costs to date, I will then deposit with Mr. Parsons in trust 15,000 pesos for March, April and May * * * ."

c) We can not see how it can now be claimed that Maritime's obligation had been substantially performed in good faith. Maritime was obligated to make monthly payments to Myers Building Co. under its contract, until the price of the building was paid in full and yet it repeatedly refused to do so, on the pretext that the late F. H. Myers had obligated himself to indemnify Edmund Schedler from the labor claims against the Luzon Stevedoring Co., that Myers had sold to Schedler in a totally separate contract. As noted in the main decision, F.H. Myers was not the vendor Myers Building corporation; moreover, he had already died and his estate had been closed without Schedler or Maritime having filed any contingent claim before closure of the estate proceedings, as required by Revised Rule 88. The claims of Schedler or Maritime were, therefore, already barred, even assuming that there was any truth to the alleged promise of the late Myers, which is not supported by any reliable evidence. And even then, the claim was at the most payable by the heirs of F.H. Myers, but not by the Myers corporation, which had no duty to assume the guarantee. Plainly, the non-payment for March, April and May, 1961, due to the corporation, was intentional and deliberate non-performance, designed to extrajudicially force Myers corporation to grant the moratorium originally solicited and rejected, thus constituting, as held in the main decision, *dolo* (in the performance, in solvendo) and not mere *culpa* or negligence.[x]

Castan, Der. Civil, Vol. 3, 7th Ed., page 129, quotes with approval Pairo's Teoria de Obligaciones on this point:

"Aunque nuestro Codigo civil no de la nocion del dolo como causa de incumplimiento de la obligacion, se ajusta en realidad a ese criterio doctrinal, que puede encontrar un apoyo en el texto del art. 1.107. Como observa Diaz Pairo, 'en dicho precepto se contrapone el deudor de buena fe y el deudor por dolo, resultando asi que este ultimo es el deudor de mala fe, y par la existencia de esta no hace falta la intencion de perjudicar o de dañar, bastando infringir de modo voluntario el deber juridico que pesa sobre el deudor a sabiendas, es decir, conscientemente. Esa voluntariedad y conciencia tornan doloso el incumplimiento, aunque, como es posible, el deudor no haya tenido intencion de perjudicar o de danar al acreedor, contando, lo que no es raro, con que sobrevengan hechos que le permitan satisfacer mas tarde su obligacion.' (Teoria, t. 1, pag. 116)." (Italics supplied)

d) Nor is it admissible, as movant contends, that there had been substantial performance by it or that the offer to deposit in trust the missing amounts were equivalent to payment. When Maritime suspended its payments for March – May, 1961, there was a balance of P319,300.65 on the principal of its obligation, plus interest, i.e., nearly 1/3 of the original indebtedness. And as to the offer to deposit the payments due in trust or in escrow, it can not be considered payment since it was a conditional tender, and would have left the creditor (Myers corporation) unable to make use of the money rightfully due to it. This Court, in *Philippine National Bank vs. Relativo et al.*, 92 Phil. 203, has ruled that a tender to be valid must be unconditional; and even then, a tender alone is not a mode of extinguishing obligations, unless followed by consignment.

Furthermore, for Myers to accept the proposed deposit of the monthly payments in trust or escrow, would be equivalent to an admission on its part of the validity or truthfulness of Maritime's claim and of Myers Corporation's liability for an obligation of an individual stockholder. Nor is there any justification on record to warrant the disregard of the corporate personality of Myers Building Corporation in the present case.

II

Movant Maritime's insistence upon the application to the present case of Art. 1191 of the Civil Code of the Philippines (tacit resolutory condition in reciprocal obligations) studiously ignores the fact that Myers' obligation to convey the property was expressly made subject to a suspensive (precedent) condition of the punctual and full payment of the balance of the purchase price.[1] This is apparent from clauses (d) and (i) of the contract of sale (Record on Appeal, pages 64, 67):

"(d) It is hereby agreed, covenanted and stipulated by and between the parties hereto that the Vendor will execute and deliver to the Vendee a definite or absolute deed of sale upon the full payment by the Vendee of the unpaid balance of the purchase price hereinabove stipulated; that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any other party.

* * * * *

"(i) Title to the properties subject of this contract remains with the Vendor and shall pass to, and be transferred in the name of the Vendee only upon complete payment of the full price above agreed upon." (*Italics supplied*).

It is well to emphasize here the express stipulations (paragraph d) that -

"* * * the Vendor (Myers) will execute and deliver to the Vendee a definite and absolute deed of sale upon full payment by the Vendee of the unpaid balance of the purchase price * * *,"

as well as that (paragraph i of the deed of sale) -

"Title to the properties subject to this contract remains with the Vendor and shall pass to and be transferred in the name of the Vendee only upon the complete payment of the full price above agreed upon."

make it crystal clear that the full payment of the price (through the punctual performance of the monthly payments) was a condition precedent to the execution of the final sale and to the transfer of the property from Myers to Maritime; so that there was to be no actual sale until and unless full payment was made.[2] It is uncontroverted that none was here made. The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms. In its suit Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, express or implied (article 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What it sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract, possession being a mere incident to its right of ownership. It is elementary that, as stated by Castan.

"b) Si la condicion suspensiva Ilega a faltar, la obligacion se tiene por no existente, y el acreedor pierde todo derecho, incluso el de utilizar las medidas conservativas." (3 Castan, Derecho Civil, 7a Ed., p. 107). (Also Puig Pena, Der. Civ., T. IV (1), p. 113)

Movant Maritime's failure to take into account the fact that Myers' promise to sell was subject to a suspensive condition (not to a suspensive period) renders all its discussion about bilateral or reciprocal contracts and the application of Articles 1198 and 1592 of the Civil Code of the Philippines (both of which deal with rescission or resolution of contractual obligation), with consequent mutual restitution, a pure academic exercise without applicability to the case at bar.

Similarly, there is no point in discussing whether or not Maritime's breach of contract was casual or serious, since the issue here is whether the suspensive condition (of paying P5,000.00 monthly until full price is paid) was or was not fulfilled, and it is not open to dispute that the stipulated suspensive condition was left unaccomplished through the deliberate actions of movant Maritime. The stubborn fact is that there can be no rescission or resolution of an obligation as yet non-existent, because the suspensive condition did not happen.

Resolving identical arguments, as those of Maritime, this Court ruled in *Manuel vs. Rodriguez*, 109 Phil. 9-10, as follows:

"* * * Plaintiff-appellant, however, argues (Errors I-IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N.C.C.). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor or realty wants to rescind, does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price (*Caridad Estates vs. Santero*, 71 Phil. 114, 121; *Albea vs. Inquimboy*, 36 Phil. 476; 47 Off. Gaz. Supp. 12, p. 131; *Jocson vs. Capitol Subdivision Inc. et al.*, L-6573, February 28, 1955; *Miranda vs. Caridad Estates*, L-2077 and *Aspuria vs. Caridad Estates*, L-2121, October 3, 1950).

"The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a 'casual breach' is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive condition, which is not the case."

The foregoing quotation is the best refutation of Maritime's contention that the ruling is obiter, when in fact it passed on issues tendered on appeal.

The stipulations of the contract being the law between the parties, Courts have no alternative but to enforce them as they were agreed and written, there being no law or public policy against the stipulated forfeiture of payments already made (*Manila Racing Club vs. Manila Jockey Club*, 69 Phil. 57).

III

Maritime also pleads that as the stipulated forfeiture of the monthly payments already made is in fact a penalty, and the same should be equitably reduced. We find no justification for such reduction for the following reasons:

- a) Maritime intentionally risked the penalty by deliberately refusing to make the monthly payments for March to May 1961, and trying to inject into its contract with Myers corporation the totally unconnected personal promise of F.H. Myers to indemnify it for eventual liability to the Luzon Labor Union, allegedly made on the occasion of the sale of the Luzon Brokerage to E. Schedler by F.H. Myers, and trying to extrajudicially force Myers corporation to assume responsibility for such liability;
- b) Under Article 1234 of the present Civil Code, an obligation must be substantially performed in good faith, for such performance to stand in lieu of payment; Maritime, on the contrary, acted with dolo or bad faith, and is not in a position to invoke the benefits of the article.
- c) Maritime's loss of the forfeited payments was more than balanced by the rentals it received from the Luzon Brokerage as lessee of the building for the corresponding periods, at a rate double the monthly payments required of Maritime under its contract with Myers.

IV

Even granting that the contract is a plain sale of real property with deferred payment of the price, as contended by movant Maritime, its position will not be imposed. By Article 1592 of the Civil Code of the Philippines,

"though it may have been stipulated that upon the failure to pay the price at the time agreed upon, the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period,

as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the Court may not grant him a new term."

It has been pointed out in the main decision that the answer filed by Myers in the court below to the Luzon Brokerage's complaint for interpleader constituted in effect a judicial demand for rescission of the contract of sale, and for repossession of the real estate sold. Hence, Maritime can not demand further time to pay, and must conform to the rescission of the contract and the surrender of the premises, with all the consequences stipulated in the original contract.

Being an article specifically applicable to sales of real property, this Article 1592 controls the general principles expressed by Article 1198 on reciprocal obligations.

The lack of merit of Maritime's procedural objections have been demonstrated in the main decision and there is no point in reiterating what was there stated.

WHEREFORE, the motion for reconsideration is denied.

Concepcion, C.J., Castro, Teehankee, and Makasiar, JJ., concur.

Makalintal, J., concurs in the result.

Barredo, J., see dissenting opinion.

Fernando and Esguerra, JJ., took no part.

[a] 43 SCRA, page 93.

[x] Maritime's bad faith is further confirmed by Schedler's letter to his counsel informing the latter that the attorneys in the United States were trying to reopen the closed Myers' estate to be able to file a contingent claim therein. And yet he was already seeking to burden Myers' Corporation with that very obligation.

[1] "El repetido convenio de no quedar transferido al comprador el dominio completo de la cosa hasta el completo pago del precio envuelve sustancialmente una verdadera condicion suspensiva" (TS. Sent. 11 March 1929) (*Italics supplied*).

"El vendedor por razon de esta reserva solo transmite y disfrute de la cosa entregada mientras el precio no sea totalmente entregado (TS. sent. 6 Mar. 1906)."

[2] V. Articles 1190 and 1385, Civil Code of the Philippines.

DISSENTING OPINION

BARREDO, J.:

Having concurred in the original judgment of this Court in this case on January 31, 1972 (43 SCRA 93), I believe it is but proper for me to explain why I am for granting the motion for reconsideration. After carefully going over the well-prepared and scholarly motion for reconsideration filed by distinguished counsel for appellant, I can see that there are some points of fact and of law which I must have overlooked or had not fully comprehended when We first decided this case. It would be unfair to the parties and to myself and entirely unbecoming of me as a member of this Court, if I did not give them serious consideration. Having done this, I have come to the conclusion that Our judgment should be to reverse the decision of the trial court instead of affirming it as We have

originally done.

THE FACTS

A full restatement of the material facts should be of great help in understanding the fine issues of law that have to be resolved here. Indeed, it is only upon close examination of these facts that one would be able to fully comprehend where justice and equity lie in this case.

Both appellant and appellee are private corporations evidently of some substantial financial standing who are actively engaged in business, Maritime Building Co., Inc., (Maritime for short) the appellant, and Myers Building Co., Inc. (Myers for short) the appellee. Luzon Brokerage Co., Inc., another private corporation of no less financial standing was the original plaintiff in interpleader in the Court below, and as such is not active participant in this appeal.

On April 30, 1949, Myers, as owner and vendor, and Maritime, as vendee, entered into and executed a formal notarial contract entitled "Deed of Conditional Sale" involving real property referred to by the parties as the Cristobal Property, the pertinent provisions of which read as follows:

"WHEREAS, the Vendee has agreed to purchase the above-described properties and the Vendor has agreed to sell the same to the Vendee subject to the terms and conditions hereinbelow specified;

NOW, THEREFORE, for and in consideration of the sum of One Million Pesos (P1,000,000.00), Philippine Currency, to be paid in the manner hereinbelow specified, the Vendor hereby sells, transfers, and conveys unto and in favor of the Vendee, its successors, executors, administrators or assigns, the above-described properties together with all buildings and improvements thereon belonging to the Vendor. The aforesaid sum of One Million Pesos (P1,000,000.00) shall be paid at the Office of the Vendor in the City of Manila, Philippines, as follows:

(a) Fifty Thousand Pesos (P50,000.00), Philippine Currency upon the signing and execution of this contract;

(b) The balance of Nine Hundred Fifty Thousand Pesos (P950,000.00) Philippine Currency, shall be paid at the rate of Ten Thousand Pesos (P10,000.00) monthly, or before the 10th day of each month, with interest at five (5%) per cent per annum, this amount to be first applied on the interest, and the balance paid to the principal thereof; and the failure to pay any installment or interest when due shall ipso facto cause the whole unpaid balance of the principal and interest to be and become immediately due and payable;

(c) The BARY BUILDING COMPANY, INC., will, in a separate instrument, execute a mortgage in favor of Myers Building Company, Inc., to secure the amount of Nine Hundred Fifty Thousand Pesos (P950,000.00), the unpaid balance of the consideration of this conditional sale;

(d) It is hereby agreed, covenanted and stipulated by and between the parties hereto that the Vendor will execute and deliver to the Vendee a definite or absolute deed of sale upon the full payment by the Vendee of the unpaid balance of the purchase price hereinabove stipulated; that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated then this deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any party.

(e) It is also hereby agreed, covenanted and stipulated by and between the parties hereto that should the Vendor rescind this Deed of Conditional Sale for any of the reasons stipulated in the preceding paragraph, the Vendee by these presents obligates itself to peacefully deliver the properties subject of this contract to the Vendor, and in the event that the Vendee refuses to peacefully deliver the possession of the properties subject

of this contract to the Vendor in case of rescission, and a suit should be brought in court by the Vendor to seek judicial declaration of rescission and take possession of the properties subject of this contract, the Vendee hereby obligates itself to pay all the expenses to be incurred by reason of such suit and in addition obligates itself to pay the sum of P10,000.00, in concept of damages, penalty and attorney's fees.

(f) It is also further agreed, covenanted and stipulated by and between the parties hereto that in the event that the Vendee fails to pay any of the monthly installments, when due, or otherwise fails to comply with any of the terms and conditions stipulated in this contract, and the Vendor shall be obliged to cancel this document by reason of such failure and sell the above-described properties to other parties at a price less than the consideration herein stipulated, the Vendee hereby obligates itself to pay the Vendor the difference in price in concept of penalty or damages.

(g) It is furthermore agreed, covenanted and stipulated that the Vendee accepts and receives the above-described properties subject to whatever liens or incumbrances existing thereon, such as back, present or future taxes, assessments, imposts, cadastral costs, assurance fund, or any other liability or liabilities which the Government or any other person has or may have on the properties herein sold conditionally and that the fees for the legalization and registration of this document or any other document necessary to be executed in connection herewith, as well as the documentary stamps, shall all be borne by the Vendee.

(h) The Vendor has conveyed and delivered, and, by these presents, does hereby convey and deliver unto and in favor of the Vendee, the material and physical possession of the properties herein sold, provided that the Vendee shall respect the lease rights of any person or persons, on the property, if any, by virtue of any contract had by said third person or persons with the Vendor.

(i) Title to the properties subject of this contract remains with the Vendor and shall pass to, and be transferred in the name of, the Vendee only upon complete payment of the full price above agreed upon.

(j) That is expressly provided and agreed by and between the parties to this contract that any and all fees and expenses incident to the registration and transfer of the title to the aforementioned properties shall be defrayed and borne by the Vendor; but at its election, the Vendee may choose to advance said fees and expenses which it may forthwith collect from the Vendor upon the presentation of the corresponding receipts and vouchers.

(k) The Vendee hereby agrees and binds itself not to alienate, encumber, or in any manner modify its right or title to said premises as granted by this agreement until it has completely paid the full purchase price of the said premises, and final deed of sale executed in its favor.

(l) The Vendee hereby agrees and binds itself to respect any and all easements created against the said premises by virtue of agreements and contracts entered into with third person by the Vendor and its predecessor's prior to the date of this contract.

(m) The Vendee hereby agrees and binds itself to insure at its expense the buildings or improvements included in the object of this contract against loss by fire, water, and earthquake, in companies to be approved by the Vendor to an amount at least equal to the sum remaining unpaid hereunder, which insurance shall require all payments for loss to be applied on said unpaid indebtedness, the Vendee hereby obligating itself to deliver the said policies of insurance to the Vendor on or before May 15th, 1949.

(n) The Vendee hereby agree that, until the complete payment of the full purchase properties subject of this contract, it shall not transfer or assign, nor sublet or lease said premises, without the previous written consent of the Vendor being first obtained; and that any such assignment or transfer, without such previous written consent, shall not vest in the assignee or transferee any right, title or interest in said premises, but shall render this contract null and void, at the election of the Vendor.

(o) In case the Vendee fails to make payment or payments, or any part thereof, as herein provided, or fails to perform any of the covenants or agreements hereof, this contract shall, at the option of the Vendor, be annulled

and, in such event, all payments made by the Vendee to the Vendor by virtue of this contract shall be forfeited and retained by the Vendor in full satisfaction of the liquidated damages by said Vendor sustained; and the said Vendor shall have the right to forthwith reenter, and take possession of, the premises subject-matter of this contract.

The remedy of forfeiture stated in the next preceding paragraph shall not be exclusive of any other remedy, but the Vendor shall have every other remedy granted it by virtue of this contract, by law, and by equity.

(p) In the event that this contract is annulled for any cause whatsoever, without the fault of the Vendor, all improvements or part improvements found in the premises aforesaid shall belong to and be the properties of the vendor without any liability, obligation, reimbursement or compensation whatsoever on the part of the said Vendor for said improvements or part improvements.

(q) On payment of the full purchase price of the aforementioned properties, the Vendor will execute and deliver a deed conveying to the Vendee the title in fee simple of the said properties free from all liens and encumbrances; and should the Vendee need any other instruments to perfect its title to said properties upon complete compliance of its obligations provided in this contract, the Vendor will execute and deliver the same.

(r) The Vendee agrees to pay all taxes and assessments on said premises commencing with those assessed thereon for the current year but not payable until the next last day of payment fixed by law, regularly or by extension, together with assessments and deferred installments thereof, if any, heretofore levied against said properties, the payment of which is not yet enforceable. If default shall be incurred in any of the payments provided in this agreement, or if the Vendee shall fail to comply with any of the stipulations herein mentioned, the Vendor shall have the right to declare the entire balance of the purchase price immediately due and payable, although by the terms of the agreement the payments may not then be due.

(s) Each and all deferred payments stipulated in this contract shall bear interest at five (5) per cent per annum payable monthly until paid.

(t) It is hereby agreed and understood by and between the parties that payments or part payments on installments even when not due and payable, may be made by the Vendee, and the Vendor shall apply the same to the corresponding part payment of the principal obligation, and forthwith make the proper reduction and adjustment of interest payment."

The P10,000 monthly installments above provided was subsequently reduced to P5,000 but the interest was increased to 5-1/2%. Up to February, 1961, all the corresponding installments were paid to the satisfaction of Myers. These payments totalled P973,000, P680,699.35 as installments and P342,300.65 as interests, thus leaving a balance of only P315,300.65 unpaid of the stipulated purchase price of P1M. Not having received the payments of the installments for March, April and May, 1961, on May 16, 1961, Myers officially wrote Maritime a formal letter of demand reading as follows:

MYERS BUILDING COMPANY, INC.

Port Area, Manila
P.O. Box 886
16 May 1961

Maritime Building Company
c/o Mr. George D. Schedler
Century Geophysical, Inc.
Schurdut Building
Intramuros, Manila

Dear Sirs:

This has reference to your installments for the months of March, April and May, 1961, in the total sum of Fifteen Thousand Pesos (P15,000.00) and which until now is still unpaid. In this connection, we wish to call your attention to the provisions of paragraph (d) of our Deed of Conditional Sale, which in part reads as follows:

"* * * that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any other party."

In view of the foregoing, you are hereby requested to remit to us within ten (10) days from your receipt of this letter, the sum of Fifteen Thousand Pesos (P15,000.00), otherwise, we shall consider the Deed of Conditional Sale as null and void and take possession of the property or sell the same, in accordance with the provisions quoted hereinabove.

Very truly yours,

MYERS BUILDING COMPANY, INC.
C. R. TIONGSON

Secretary

CRT/lc

Reg. w/return card

For reasons evidently considered irrelevant by Myers, since none is suggested either in its pleadings or in its evidence on record, admittedly, this letter of demand did not reach Maritime. On June 5, 1961, Myers addressed another letter to Maritime worded thus:

MYERS BUILDING COMPANY, INCORPORATED

P.O. Box 886, Manila
REGISTERED AIR MAIL 5 June 1961

Maritime Building Co.
c/o Mr. E. W. Schedler
Suit 310 Thompson Bldg.
Tulsa, Oklahoma, U.S.A.

Gentlemen:

This is to advise that from March to May, 1961; inclusive, you have failed to pay your installment of P5,000.00 a month, or the total amount of P15,000.00, exclusive of interest, in violation of the terms and conditions of the "Deed of Conditional Sale," executed on April 30, 1949, particularly paragraph (d) hereof, the pertinent portion of which reads as follows:

"* * * that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by

reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any other party."

Furthermore, you have violated the prohibition against leasing the premises, subject of the conditional sale, to a third party without our previous written consent.

In view of the foregoing, and pursuant to the terms and conditions of the Deed of Conditional Sale, we hereby declare the aforesaid conditional sale cancelled effective March, 1961. We demand that you return to us the possession of the properties subject of the Deed of Conditional Sale, within a period of fifteen days from receipt hereof.

We hold you liable for the use and occupation of the premises at the rate of P10,000.00, per month, beginning March 1, 1961, until you completely vacate the properties subject of the conditional sale and turn them over to us.

Very truly yours,

MYERS BUILDING CO., INC.
C. R. TIONGSON

Secretary

BLR/ve

cc: Luzon Brokerage Co.
Mary Bachrach Bldg.
Port Area, Manila

And on June 8, 1961, Myers advised Luzon Brokerage, who had been leasing the property subject of the above deed from Maritime,[3] of the cancellation referred to in this letter, and without loss of time, on June 18, 1961, Luzon filed the instant interpleader case, depositing in court at the same time the P10,000 rental for June, 1961. Since then all subsequent monthly rentals of P10,000 each were likewise deposited in court, and as of April 1, 1969,[4] there were already P1,129,932.67 deposited, P1,016,343.09 as rentals plus P114,350.62 as interests. The total sum is in fixed deposit in a bank earning interest at 7% per annum, but nothing else appears in the record as to whether or not Luzon is still leasing the premises.

According to the evidence on record, Maritime's failure to pay the installments beginning March, 1961 was due to the following circumstances:

1. On March 24, 1971, George Schedler, the admitted owner of Maritime wrote Mr. C. Parsons as follows:

March 24, 1961

Mr. C. Parsons
308 Phoenix Bldg.
Manila

Dear Mr. Parsons:

We are encountering some unusual expenses with the warehouses, and it would help us greatly if we could suspend our monthly payments to the Myers Estate, temporarily.

Therefore, I am requesting a moratorium on our monthly payments until the close of 1961.

We are considerably aided in the past, in time of stress, by such a courtesy, and a moratorium of payments does not waive the interest, or change the sales contract in any particular.

Very truly yours,

(Sdg.) GEORGE D. SCHEDLER

(t.) GEORGE D. SCHEDLER

Vice President

GDS/cc

2. On March 29, 1961, Parsons answered Schedler thus:

March 29, 1961

Mr. George D. Schedler

Vice President

Maritime Building Co., Inc.

Manila

Dear Mr. Schedler

This has reference to your letter of March 24, 1961, requesting a moratorium in the monthly payments to the Myers Estate.

In reply, please be advised that monthly payments due to the Myers Building Co., Inc. and not to the Myers Estate as stated in your letter under reply, cannot be granted as I have specific instructions from the Board not to agree to any suspension of payments under any condition.

Very truly yours,

C. PARSONS

CP/ac

3. On April 7, 1961, Schedler addressed the following letter to Parsons:

PERSONAL

Suite 310 - Thompson Building

Tulsa, Oklahoma

April 7, 1961

Mr. C. Parsons

Luzon Stevedoring Company

Manila, P. I.

Dear Mr. Parsons:

This will acknowledge your letter of March 29, 1961 sent to my son, George D. Schedler, in which you advise that Mrs. Edith Myers has instructed you not to permit any moratorium or suspension of payments from our company, Maritime Building Company, Inc., to the Myers Building Company.

As you and the Myers heirs know, my wife and I own the Maritime Building Company and there is due approximately 325,000 pesos to the Myers Building Company or Estate, pertaining to real estate we bought from Mr. F. H. Myers separate from my purchase of the Luzon Brokerage Company from him in about 1947.

You likewise know that Mr. Myers, at the time I purchased Luzon and subsequently, agreed to indemnify and hold me harmless from the Luzon Labor Union claims which are in litigation in the Philippines and which expose Luzon Brokerage to a liability of upwards of one-half million pesos, if not more.

You likewise know that the Luzon Labor Union claims against Luzon Brokerage were defended by Mr. Myers and when they came out in the open by way of litigation he at all times defended them with him monies (either himself or his representatives), up to the present time, and they are still being defended by the Myers Estate or representatives, in Manila.

At all times when the F. H. Myers Estate was open in the Philippine Islands and open in San Francisco, the Myers Estate or heirs assumed the defense of the Labor Union claims and led us to believe that they would indemnify us therefrom.

Recently, however, for the first time, and after both the Philippine and San Francisco F. H. Myers were closed, we have been notified that the F. H. Myers indemnity on the Labor Union cases will not be honored, and in fact Mrs. Schedler and I have been sued in the Philippines by my successor in interest, Mr. Wentholt, and have been put to considerable expense.

You are advised that my wife and I, as the owners of the Maritime Building Company, intend to withhold any further payments to the Myers Building Company or Estate, in order that we can preserve those funds and assets to set off against the potential liability to which I am now exposed by the failure of the Myers heirs to honor the indemnity agreement pertaining to the Labor claims.

If actions are brought in the Philippines to foreclose the mortgage, I will instruct my attorney there, Senator Padilla, to countersue for all of the damages which I have sustained up to this point and will sustain in the future, and further I have already instructed my attorneys in San Francisco to proceed against the Estate of Myers and to reopen that estate and to reduce to judicial determination not only the damages I have sustained but to confirm the indemnity.

Neither one of the Myers Estates were in a position to be closed because of the pendency of the Luzon Labor claims, and those estates should not have been closed, and we intend to cause them to be reopened.

It is regrettable that the F. H. Myers indemnity agreement to me has not been performed and fulfilled by the Myers heirs, but I must now take all appropriate legal steps in the United States and in the Philippines to protect my interest as indicated above.

Very truly yours,

E. W. SCHEDLER

4. The record does not show any answer to this letter. What appears in the record is another letter of Schedler to Parsons reading:

San Francisco, California
June 21, 1961

Mr. Charles Parsons
Luzon Stevedoring Company
Port Area
Manila, Philippine Islands

Re: Maritime Building Company

Installment due Myers Building Co.

Dear Chick:

I am sure you are abreast of the various steps being taken by the Myers Estate relative to the above matter, so I will not review them.

I have sent to Senator Ambrosio Padilla an order on the Bank of America for P5,000 pesos covering the June installment due Myers Building from Maritime, with the suggestion that it, and all future payments of this nature, be held by you personally in an escrow account in a Philippine bank of your choosing, until the responsibility, if any, of the various parties be determined.

Senator Padilla will be getting in touch with you, I am sure.

It is indeed a shame that this matter has been allowed to progress to this extent due to the non-cooperation of the Myers attorneys who, it seems, are not interested in complying with the actual facts.

Very truly yours,

E. W. SCHEDLER

5. Simultaneously, or on even date, Schedler wrote his counsel, Senator Ambrosio Padilla, instructing him thus:

E. W. Schedler
c/o Barnett & Robertson
2810 Russ Building
San Francisco 4, California

June 21, 1961

Senator Ambrosio Padilla
610 San Luis, Ermita
Manila, Philippine Islands

My dear Ambrosio:

This letter will serve as further response to your letter of April 20th and my reply of May 16th.

To supplement the information previously given, I have just completed a conference with my San Francisco attorneys. They have a motion pending in the San Francisco courts to reopen the San Francisco Probate proceedings, so that I can file a Contingent Creditor's Claim and thereafter file suit to force the Myers heirs to indemnify and hold me harmless against damages which may flow from the labor case. Hearing was to be had May 29th but this was continued due to a serious illness of the Probate Judge assigned to my case. Hearings are now scheduled for August 3, 1961. I will continue to keep you informed, and do not hesitate to write Messrs. Barnett and Robertson (2810 Russ Building, San Francisco) if you desire more specific information as to their progress.

I have received a letter dated June 5, 1961 from the Myers Building Co., a copy of which is enclosed, and is self-explanatory. This letter was the first response I have had since I wrote Mr. Parsons on April 7th. I sent you a copy of my April 7th letter, but I am forwarding another out of an abundance of precaution so that I will be certain you will have one.

I feel that the following alternative steps should be taken and the order in which I state them is the order of my preference:

1. I will agree to deposit P5,000 pesos per month with Mr. C. Parsons to be held in trust or escrow on account of the installments due to Myers Building Co. effective June 1, 1961 and monthly thereafter until our dispute with the Myers heirs is finally resolved. I do not wish to deposit same in court, except as an absolute last resort. Since Mr. Parsons is a representative of the Myers Estate I do not believe that there could be any conscientious opposition to this plan. I do not wish to deposit pesos representing the months of March, April and May, since the Myers refusal to honor the indemnity concerning the labor claims has caused me to disburse roughly \$10,000.00 to date in fees, costs and travel expenses. However, if the Myers people will deposit in trust with

Mr. C. Parsons 25,000 pesos to cover my costs to date, I will then deposit with Mr. Parsons, in trust, 15,000 pesos for March, April and May and will also post a monthly deposit of 5,000 pesos until the dispute is settled. The dispute won't be settled in my mind, unless and until:

- a) The Myers people indemnify me fully on the labor cases;
- b) The labor cases are terminated favorably to Luzon Brokerage and no liability exists;
- c) The Myers people pay any judgment entered on the labor cases thereby releasing me; or
- d) It is finally determined either in San Francisco or in the Philippines by a court that the Myers heirs must honor the indemnity which Mr. F. H. Myers promised when I purchased Luzon Brokerage Company.

I enclose a draft for 5,000 pesos, covering the deposit for June, 1961 which you may post with Mr. Parsons in trust on account of the installment payments, if you can negotiate the arrangement hereinabove suggested.

2. My second preferred step is to a suit against the Myers Building Co. and the Estate of Myers for declaratory relief based upon the "Deed of Conditional Sale" entered into April 30, 1949, seeking determination by the Court of First Instance in the Philippines that I am entitled to withhold further payments on that installment contract or I am entitled to deposit them in trust to be conserved pending determination by the court of the liability of the Myers Estate to indemnify and hold me harmless from any of the labor claims and that said fund shall be retained in trust until the labor claims are totally resolved and either a determination is made that L.B.C. owes nothing (which will of course dispose of my potential obligation) or the amount of the labor claims shall be determined and paid by the Myers Estate, thereby releasing me from any potential liability. I would think that it would be better for us to proceed against the Myers Building Co. and Estate on this conditional sales contract as the plaintiff, rather than waiting for them to sue. I would suppose that if you were to institute such a suit you could, by preliminary motion, request leave to deposit the funds with Mr. C. Parsons as a trustee of those funds pending the outcome of the suit. I would assume that in that suit you could also join the issue of the Myers indemnity to me under the labor claims.

3. My third and least desired alternative (which I must leave to your legal judgment, knowing the Philippine situation intimately), would be to deposit the installment payments of March, April, May and June in court simultaneously with the filing of a suit by you against Myers Building Co. and Estate and providing thereafter for monthly installment payments to be deposited in court and conserved pending the outcome of that suit. However, I would want you to insist that the Myers Building Co. or Estate be required also to deposit in court 25,000 pesos to offset the costs which I have incurred in attorney fees, court costs, travel expenses and similar items caused by their refusal to honor the F. H. Myers indemnity.

In conclusion, we do not desire to be totally in default by withholding all payments and we are willing to pay the monthly installment into a depository such as Mr. Parsons, but we do not wish to deposit it in court except as a complete and last resort. We would prefer not to have to deposit the March, April and May installments because we would like that as a setoff against the costs I have already expended because of the breach of the Myers indemnity, but if the Myers people would put up 25,000 with such a depository, I would then be most happy to deposit in trust the installments of March, April and May. As a last resort, and if you believe it is the only method to insure success in the law suit which I have mentioned that I feel you ought to commence, I would deposit the installments in court to bring me current and make continuous deposits thereafter.

As stated above, the draft enclosed is to be used by you in the event you can negotiate an arrangement for the alternative listed in Paragraph 1 above, and if you can not make such an arrangement, notify me and I will forward the balance of the installments you feel are going to be required as a deposit.

I suggest you communicate with me directly through my attorneys in San Francisco, Philip Barnett and Rodney Robertson, 2810 Russ Building, 235 Montgomery Street, San Francisco 4, California, since I will be on a motor trip for the next thirty days and will communicate with their office from time to time.

My kindest personal regards.

Sincerely,

E. W. Schedler

Enc.

6. Accompanying said letter, was a draft against the Bank of America for P5,000 pesos worded as follows:

E. W. SCHEDLER

United States Address:

Suite 310
Thompson Building
Tulsa - Oklahoma

June 19, 1961

Bank of America
Juan Luna
Manila, Philippine Islands
Attention: Mr. Everett

Dir Sirs:

On presentation of this Order, kindly pay to the order of Mr. Charles Parsons, the sum of 5,000 pesos, debiting the same to the account of the Maritime Building Company.

Very truly yours,

E. W. SCHEDLER, President,
Maritime Building Company

7. On June 29, 1961, Senator Padilla wrote Parsons the following letter:

REGISTERED MAIL June 29, 1961

Mr. Charles Parsons
Luzon Stevedoring Co.
Port Area, Manila

Dear Mr. Parsons:

We received from Mr. E. W. Schedler, President of the Maritime Building Co., an "order" addressed to the Bank of America, Manila, to pay to you the sum of P5,000.00 as installment payment for June, 1961, "to be held in trust or escrow on account of the installments due to Myers Building Co." The installment payments from March to May, 1961, were withheld temporarily by Mr. Schedler, which can also be released to you in trust, provided that the Myers people honor the indemnity agreement concerning the labor claims involved in the LBC labor case now pending in the Supreme Court. We believe that on June 21, 1961, Mr. Schedler sent you a letter proposing this arrangement whereby installments due from the Maritime Building Co. to the Myers Building Co. will be deposited in trust or escrow with you.

Mr. Schedler apparently thought of making this arrangement with you without knowledge of the filing of an interpleader case by the LBC in the Court of First Instance of Manila, where rentals due from the LBC to the Maritime Building Co. are now to be deposited because of the said case. This would show the good faith of Mr. Schedler, and the circumstance that he did not intend to withhold installment payments in violation of the terms of the "Deed of Conditional Sale". Mr. Schedler merely intends to have these installments held in trust or escrow.

Considering the fairness of the proposal of Mr. Schedler, which can be the basis for the settlement of the problem between Maritime and Myers, we would highly appreciate it if you can communicate to us your reaction thereto as soon as possible.

Very truly yours,

AMBROSIO PADILLA
FCT: quilang

8. On the same day, June 29, 1961, Parsons answered Schedler's above letter of June 21, 1961, stating:

June 29, 1961

Mr. E. W. Schedler
c/o Barnett & Robertson
2810 Russ Building
San Francisco, California

Re: Maritime Building Company

Installment due Myers Building
Company.

Dear Shagg:

This has reference to your letter of the 21st instant, concerning the above subject.

In reply, please be advised that I am not in a position to accept the payment of P5,000.00, in an escrow account and in a Philippine bank of my choosing, in view of the complaint in interpleader which was filed by the Luzon Brokerage Company against the Maritime Building Company and the Myers Building Company in the Court of First Instance of Manila on June 17, 1961.

Very truly yours,

C. PARSONS
CP/ac

9. And on July 6, 1961, Parsons informed Senator Padilla of his answer direct to Schedler in the following manner:

C. PARSONS
Manila, Philippines

July 6, 1961

Senator Ambrosio Padilla
302-303 Gochangco Bldg.
610 San Luis, Ermita
Manila

Dear Senator Padilla:

This has reference to your letter of June 29, last, concerning the "order" of E. W. Schedler to pay the sum of P5,000.00 as installment payment for June 1961, "to be held in trust or escrow on account on the installment due to Myers Building Co."

In reply, enclosed herewith is a copy of my letter to E. W. Schedler, dated June 29, 1961, which you will find self-explanatory.

Very truly yours,

C. PARSONS

Encl. a/s

CRT/lc

To fully understand the foregoing communications, it must be considered that the record also reveals that Luzon Brokerage was formerly owned by F. H. Myers, (also former owner of Myers Building Co.) to the extent of 4,000 shares, until March 21, 1947 when he sold the same to Schedler who in turn sold them on February 23, 1952 to L. Wentholt who, on his part, sold some of them to T. K. Norton in 1955, and later, on August 31, 1958, both Wentholt and Norton sold all their shares to Columbia Rope Company. The labor claims referred to in the above letters, which were for wages and salaries of laborers and employees of Luzon Brokerage for services rendered by them when the transportation units of said company were commandeered by the United States government in the course of the defense of Bataan in 1941-1942, and which presumably must have been paid by said government to Luzon, were originally filed against Luzon Brokerage in the Court of Industrial Relations in 1959, the said court sentenced Luzon Brokerage to pay P1,362,570.64 but this was reduced by the Supreme Court to P396,250.65 on October 31, 1963. It is the thrust of the above communications that when F. H. Myers sold his shares in Luzon to Schedler, he bound himself to hold Schedler harmless from liability for these labor claims, but after Myers died, notwithstanding that his heirs had "led us (Schedler and Maritime) to believe that they would indemnify us (same) therefrom" (Exh. 11-Maritime), the proceedings for the settlement of his estates both in the Philippines and in the United States were closed, and thereafter Schedler was "notified that the F. H. Myers indemnity on the Labor Union cases will not be honored." (Id.) In consequence, when the judgment of the Supreme Court was being executed against Columbia, this company held Wentholt liable for it and in turn Wentholt sued Schedler in court for Columbia's claim. In the face of these developments, Schedler took the position that he could make arrangements, on behalf of Maritime, such that the remaining installments due Myers may be paid in a manner that would secure reimbursement to Schedler of what he might ultimately be held liable to pay Wentholt on account of the labor claims. In fact, it is this posture that caused non-payment of the installments for March, April and May, 1961 and the drawing of the draft for that of June, 1961.

In the meantime, as already stated above, while Schedler was trying to make said arrangements, Myers cancelled the deed of conditional sale and immediately notified Luzon thereof, on account of which Luzon, claiming it was uncertain in good faith whether it should continue paying Maritime its rentals or should pay them to Myers, instituted the present interpleader case. In its answer to said interpleader, Myers did not oppose the interpleader and alleged a cross-claim against Maritime praying that "judgment be rendered declaring that answering defendant Myers Building Company, Inc. validly and lawfully exercised its right under the Deed of Conditional Sale (Annex 1-Myers) to exercise, as it did exercise, its option to declare said Deed of Conditional Sale null and void (and) that it is entitled to collect the rentals deposited by the plaintiff with the Clerk of Court; and, on the cross-claim, sentencing the cross-defendant to pay the cross-claimant:

- 1) On the First Cause of Action - P10,000;

- 2) On the Second Cause of Action - P30,000 plus legal rate of interest from date of filing of cross-claim;
- 3) Costs of suit, and, of course, for general relief.

At the outset, Maritime filed a motion to dismiss questioning Luzon's right to force an interpleading, considering, according to said motion, that Luzon had not even required Maritime, prior to the filing of the interpleader, to maintain it, as lessee, in peaceful possession of the leased premises, and was merely enabling Myers to litigate with Maritime in the same action the cancellation or rescission of the conditional sale, "which is not legally proper", but after this motion was denied, Maritime answered the cross-claim alleging that it had not violated the deed in question insofar as leasing the premises covered by it without Myers' consent was concerned, because there was such consent, and further, that it had "never refused to make installment payments to cross-claimant but the former merely suspended the said installment payments because of pending negotiations between" the parties and still further, that:

"17. That cross-claimant cannot cancel the said contract of lease unilaterally and arbitrarily;

"18. That assuming without conceding that there is breach, cross-claimant cannot unilaterally, arbitrarily and extrajudicially cancel the Deed of Conditional Sale, as under Article 1191 of the New Civil Code, rescission has to be judicially invoked in the event of breach;

19. That assuming without conceding that the terms of the said Deed of Conditional Sale have been violated, cross-defendant under the circumstances would be entitled at the very least to a reasonable period within which to comply with its obligations;"

To Maritime's counter-claim to the cross-claim, Myers filed an answer alleging, *inter alia*, that:

"ANSWERING cross-claimant further states by way of SPECIAL AND AFFIRMATIVE DEFENSES

I

That like any corporation duly registered with the Securities and Exchange Commission, the cross-claimant has a personality independent and distinct from the individual personality of its incorporators and/or stockholders;

That cross-claimant had nothing to do and never did have anything to do with the alleged sale of plaintiff Luzon Brokerage Co., by F. H. Myers; and that as a matter of fact cross-claimant could not have sold Luzon Brokerage Company for the simple reason that it did not have any interest whatsoever in the said corporation;

That, for the reasons stated in the next preceding paragraph, cross-claimant could not be under any obligation to make a guaranty in favor of cross-defendant to answer for any contingent liability arising out of an adverse decision to Luzon Brokerage Company in the LBC/Bataan labor case which is docketed in the Supreme Court as G. R. No. L-17086;

II

That the alleged contingent liability which might arise out of an adverse decision to Luzon Brokerage Company in the LBC/Bataan labor case has nothing to do with the determination of the rights of the parties in this case and, therefore, is immaterial, irrelevant, impertinent and incompetent;

That the sale by F. H. Myers of his shares of stocks of Luzon Brokerage Company (not Luzon Brokerage Company) to E. W. Schedler did not carry with it any guaranty against any contingent liability if and when the LBC/Bataan labor case is decided against Luzon Brokerage Company;

That E. W. Schedler is fully aware of the aforesaid absence of a guaranty so much so that neither F. H. Myers, nor

his heirs, was impleaded in the suit filed against him by L. R. Wentholt in Civil Case No. 43483 of the Court of First Instance of Manila which should have been the proper course of action for E. W. Schedler to take;

That neither did E. W. Schedler file any claim or demand to preserve the alleged guaranty in the estate proceedings of the estate of F. H. Myers in Special Proceedings No. 23063, entitled 'In Re Testate Estate of Forest H. Myers, also known as F. H. Myers,' of the Court of First Instance of Manila;

That, in the light of the failure of E. W. Schedler to take positive and timely steps to protect and preserve his alleged guaranty against contingent liability in case of an adverse decision to Luzon Brokerage Co., in the LBC/Bataan labor case, it is now very obvious that the guaranty being sought in its counterclaim is a belated and surreptitious attempt to revive a lost right, assuming but without conceding that F. H. Myers did guarantee E. W. Schedler against the oft-mentioned contingent liability;

III

That, assuming further for the sake of argument, that F. H. Myers made a guaranty in favor of E. W. Schedler, the right thereby created is available not to cross-defendant Maritime Building Co., Inc., but only to E. W. Schedler, the purchaser of F. H. Myers' Luzon Brokerage Company shares of stock, and enforceable only against F. H. Myers, the seller, or in case of death, against his estate, but not against the herein cross-claimant;

That the testate proceedings of the estate of F. H. Myers had been closed on December 12, 1958, without E. W. Schedler having filed a claim or demand against the said estate to preserve and/or enforce the alleged guaranty."

Since it will appear somehow relevant later, it may be added here that after the above pleadings were filed, no further steps were taken by Maritime to directly provide any security for the payment of the remaining installments, since March, 1961, which could indicate that it is relying on the consignations being made by Luzon of its rentals. In other words, Maritime has not made any consignment or deposit of the installments from March, 1961 independently of the consignations made by Luzon.

SECONDARY ISSUES

There are two secondary issues, from the point of view of importance, which the parties have submitted to the Court. The first is the question of whether or not the interpleader was properly instituted by Luzon. To be sure, there seems to be some plausibility in Maritime's posture that what Luzon should have done upon receipt of Myers' advice of June 8, 1961 that it had cancelled its deed with Maritime was to refer the matter to the latter and invoke its right to be protected and defended in its possession as its lessee, but inasmuch as the motion to dismiss the interpleader was denied without any special remedy being secured from a higher court to enjoin the same and the parties have already gone into a full-drawn trial on the merits of their respective contentions as regards the cancellation of the Deed of Conditional Sale, practical considerations alone, without taking into account the legal ones which point towards the same conclusion, dictate that this issue be made subordinate to the result of the more fundamental issue of whether or not said deed was properly and legally cancelled by Myers. To overrule the interpleader and order at this stage the institution of a separate suit between Myers and Maritime would be sacrificing the substantive for the purely procedural observance of the rules.

The second secondary issue refers to the allegation of Myers and Maritime had leased the premises in question without its consent in violation of the terms of the deed. It appears, however, that Myers has not pressed the issue and need not be passed upon. In any event, there being nothing in the record to indicate otherwise, it may be said that the authority granted to Maritime in Myers' letter of May 14, 1949 (Exhibit 7, Maritime)[5] is broad enough to cover all leases not expressly disauthorized by any subsequent action of Myers.

THE HOLDINGS OF THE COURT ON THE FUNDAMENTAL ISSUE

Upon the facts and circumstances above related, Our decision holds that:

1. In failing to pay the intallments for March, April and May, 1961, and in the light of the circumstances surrounding such non-payment, Maritime committed a breach in bad faith of the term of the Deed of Conditional Sale aforequoted providing that "the balance of the purchase price (P950,000) - 'shall be paid at the rate of Ten Thousand Pesos (P10,000) monthly on or before the 10th day of each month with interest at 5% per annum, this amount to be first applied on the interest, and the balance paid to the principal thereof; and the failure to pay any installment or interest when due shall ipso facto cause the whole unpaid balance of the principal and interest to be and become immediately due and payable.' (Contract, paragraph b; Record on Appeal, page 63)."[5a]

According to Our decision, "Contrary to Maritime's averments, the default was not made in good faith. The text of the letter to Myers (Exhibit "11", Maritime), heretofore quoted, leaves no doubt that the non-payment of the installments was the result of a deliberate course of action on the part of appellant, designed to coerce the appellee Myers Corporation into answering for an alleged promise of the late F. H. Myers to indemnify E. W. Schedler, the controlling stockholder of appellant, for any payments to be made to the members of the Luzon Labor Union. This is apparent also from appellant's letter to his counsel (Exhibit "12", Maritime):

"..... I do not wish to deposit pesos representing the months of March, April and May, since the Myers refusal to honor the indemnity concerning the labor claims has caused me to disburse (sic) roughly \$10,000.00 to date in fees, costs and travel expenses. However, if the Myers people will deposit in trust with Mr. C. Parsons 25,000 pesos to cover my costs to date, I will then deposit with Mr. Parsons, in trust, 15,000 pesos for March, April and May and will also post a monthly deposit of 5,000 pesos until the dispute is settled. The dispute won't be settled in my mind, unless and until:

- a) The Myers people indemnify me fully the labor cases;
- b) The labor cases are terminated favorably to Luzon Brokerage and no liability exists:
- c) The Myers people pay any judgment entered on the labor cases thereby releasing me; or
- d) It is finally determined either in San Francisco or in the Philippines by a court that the Myers heirs must honor the indemnity which Mr. F. H. Myers promised when I purchased Luzon Brokerage Company."

"Yet appellant Maritime (assuming that it had validly acquired the claims of its president and controlling stockholder, E. M. Schedler) could not ignore the fact that whatever obligation F. H. Myers or his estate had assumed in favor of Schedler with respect to the Luzon Brokerage labor case was not, and could not have been, an obligation of appellee corporation (Myers Building Company). No proof exists that the board of directors of the Myers Corporation had agreed to assume responsibility for the debts (if any) that the late Myers or his heirs had incurred in favor of Schedler. Not only this, but it is apparent from the letters quoted heretofore that Schedler had allowed the estate proceedings of the late F. H. Myers to close without providing for any contingent liability in Schedler's favor; so that by offsetting the alleged debt of Myers to him, against the balance of the price due under the "Deed of Conditional Sale", appellant Maritime was in fact attempting to burden the Myers Building Company with an uncollectible debt, since enforcement thereof against the estate of F. H. Myers was already barred.

"Under the circumstances, the action of Maritime in suspending payments to Myers Corporation was a breach of contract tainted with fraud or malice (dolo), as distinguished from mere negligence (culpa), "dolo" being succinctly defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" (Capistrano, Civil Code of the Philippines, Vol. 3, page 38), and therefore incompatible with good faith (Castan,

Derecho Civil, 7th Ed., Vol. 3, page 129; Diaz Pairo, Teoria de Obligaciones, Vol. 1, page 116)."

2. We also held that:

"From another point of view, it is irrelevant whether appellant Maritime's infringement of its contract was casual or serious, for as pointed out by this Court in *Manuel vs. Rodriguez*, 109 Phil. 1, at page 10 -

"The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a "casual breach" is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive condition, which is not the case."

3. We likewise overruled Maritime's contention that even on the assumption that there was breach on its part, Myers had no right to resolve the deed unilaterally without first resorting to the courts. This We did upon the authority of *University of the Philippines vs. Walfrido de los Angeles*, 35 SCRA 107.

4. Further, We held:

"Maritime likewise invokes Article 1592 of the Civil Code of the Philippines as entitling it to pay despite its defaults:

"ART. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

"Assuming arguendo that Article 1592 is applicable, the cross claim filed by Myers against Maritime in the court below constituted a judicial demand for rescission that satisfies the requirements of said article.

"But even if it were not so, appellant overlooks that its contract with appellee Myers is not the ordinary sale envisaged by Article 1592, transferring ownership simultaneously with the delivery of the real property sold, but one in which the vendor retained ownership of the immovable object of the sale, merely undertaking to convey it provided the buyer strictly complied with the terms of the contract (see paragraph [d], ante, p. 101). In suing to recover possession of the building from Maritime, appellee Myers is not after the resolution or setting aside of the contract and the restoration of the parties to the status quo ante, as contemplated by Article 1592, but precisely enforcing the provisions of the agreement that it is no longer obligated to part with the ownership or possession of the property because Maritime failed to comply with the specified condition precedent, which is to pay the installments as they fell due.

"The distinction between contracts of sale and contracts to sell with reserved title has been recognized by this Court in repeated decisions (*Manila Racing Club vs. Manila Jockey Club*, 69 Phil. 55; *Caridad Estates vs. Santero*, 71 Phil. 114; *Miranda vs. Caridad Estates*, L-2077, 3 October 1950; *Jocson vs. Capitol Subdivision* L-6573, 28 February 1955; *Manuel vs. Rodriguez*, 109 Phil. 1. See also *Sing Yee Cuan, Inc. vs. Santos* (C. App.) 47 OG 6372.) upholding the power of promisors under contracts to sell in case of failure of the other party to complete payment, to extrajudicially terminate the operation of the contract, refuse conveyance and retain the sums or installments already received, where such rights are expressly provided for, as in the case at bar."

5. Finally, on the equity aspect, We expressed the view that:

"Maritime's appeal that it would be iniquitous that it should be compelled to forfeit the P973,000 already paid

to Myers, as a result of its failure to make good a balance of only P319,300.65, payable at P5,000 monthly, becomes unimpressive when it is considered that while obligated to pay the price of one million pesos at P5,000 monthly, plus interest, Maritime, on the other hand, had leased the building to Luzon Brokerage, Inc. since 1949; and Luzon paid P13,000 a month rent, from September, 1951 to August 1956, and thereafter until 1961, at P10,000 a month, thus paying a total of around one and a half million pesos in rentals to Maritime. Even adding to Maritime's losses of P973,000 the P10,000 damages and P3,000 attorneys' fees awarded by the trial court, it is undeniable that appellant Maritime has come out of the entire transaction still at a profit to itself."

In the denial resolution, it is being held that Maritime acted in bad faith thus:

"The facts as narrated in the decision and revealed by the proof clearly show that as early as 24 March 1961, Maritime had requested a 'suspension' or 'moratorium' in its monthly payments until the close of 1961, allegedly because 'we are encountering some unusual expenses with the warehouses' (Exhibit "A-Myers"), but this request was turned down on 29 March 1961 by the Myers Corporation advising George Schedler, the son of Edmund Schedler, main stockholder of Maritime, that his request "can not be granted as I have specific instructions from the Board (of Myers Co.) not to agree to any suspension of payments under any condition" (Exhibit "5-Myers"). This refusal is referred to in Edmund Schedler's letter of 7 April 1961 (Exhibit "11-Maritime"). Notwithstanding Myers Corporation's categorical refusal to agree to a suspension or moratorium, and after Myers had called its attention to the violation of the contract (Exhibit "11-A"), Schedler, on behalf of Maritime, insisted on suspending its payments, alleging for the first time that the late F. H. Myers had "agreed to indemnify and hold me harmless from the Luzon Labor Union claims which are in litigation" and giving notice that "my wife and I intend to withhold any further payments to the Myers Building Co. or Estate * * *." This intention was reiterated in the letter Exhibit 12-Maritime, wherein it was added that "if the Myers people will deposit in trust with Mr. C. Parsons 25,000 pesos to cover my costs to date, I will then deposit with Mr. Parsons in trust 15,000 pesos for March, April and May * * *."

"* * * * *"

"a) Maritime intentionally risked the penalty by deliberately refusing to make the monthly payments for March to May 1961, and trying to inject into its contract with Myers corporation the totally unconnected personal promise of F. H. Myers to indemnify it for eventual liability to the Luzon Labor Union, allegedly made on the occasion of the sale of the Luzon Brokerage to E. Schedler by F. H. Myers, and trying to extrajudicially force Myers corporation to assume responsibility for such liability;

"b) Under Article 1234 of the present Civil Code, an obligation must be substantially performed in good faith, for such performance to stand in lieu of payment; Maritime, on the contrary, acted with dolo or bad faith, and is not in a position to invoke the benefits of the article;

"c) Maritime's loss of the forfeited payments was more than balanced by the rentals it received from the Luzon Brokerage as lessee of the building for the corresponding periods, at a rate double the monthly payments required of Maritime under its contract with Myers."

And in holding that there has been no substantial compliance of the Deed, as if to exclude the application of the ruling in *J. M. Tuazon Co. Inc. vs. Javier*, 31 SCRA 829, invoked by Maritime, the denial resolution says:

"c) 'We can not see how it can now be claimed that Maritime's obligation had been substantially performed in good faith. Maritime was obligated to make monthly payments to Myers building Co. under its contract, until the price of the building was paid in full and yet it repeatedly refused to do so, on the pretext that the late F. H. Myers had obligated himself to indemnify Edmund Schedler from the labor claims against the Luzon Stevedoring Co., that Myers had sold to Schedler in a totally separate contract. As noted in the main decision, F. H. Myers was not the vendor Myers Building corporation; moreover, he had already died and his estate had been closed without Schedler or Maritime having filed any contingent claim before closure of the estate

proceedings, as required by Revised Rule 88. The claims of Schedler or Maritime were, therefore, already barred, even assuming that there was any truth to the alleged promise of the late Myers, which is not supported by any reliable evidence. And even then, the claim was at the most payable by the heirs of F. H. Myers, but not by the Myers corporation, which had no duty to assume the guarantee. Plainly, the non-payment for March, April and May, 1961, due to the corporation, was intentional and deliberate non-performance, designed to extrajudicially force Myers corporation to grant the moratorium originally solicited and rejected, thus constituting, as held in the main decision, *dolo* (in the performance, *insolvendo*) and not mere *culpa* or negligence.

"Castan, Der. Civil, Vol. 3, 7th Ed., page 129, quotes with approval Pairo's Teoria de Obligaciones on this point:

"Aunque nuestro Codigo civil no de la nocion del dolo como causa de incumplimiento de la obligacion, se ajusta en realidad a ese criterio doctrinal, que puede encontrar un apoyo en el texto del art. 1. 107. Como observa Diaz Pairo, 'en dicho precepto se contraponen el deudor de buena fe y el deudor por dolo, resultanto asi que este ultimo es el deudor de mala fe, y para la existencia de esta no hace falta la intencion de perjudicar o de dañar, bastando infringir de modo voluntario el deber juridico que pesa sobre el deudor a sabiendas, es decir, conscientemente. Esa voluntariedad y consciencia tornan doloso el incumplimiento, aunque, como es posible, el deudor no haya tenido intencion de perjudicar o de dañar al acreedor, contando, lo que no es raro, con que sobrevengan hechos que le permitan satisfacer mas tarde su obligacion.' (Teoria, t. 1, pag. 116)." (Italics supplied)

"d) Nor is it admissible, as movant contends, that had been substantial performance by it or that the offer to deposit in trust the missing amounts were equivalent to payment. When Maritime suspended its payments for March-May, 1961, there was a balance of P319,300.65 on the principal of its obligation, plus interest, i.e., nearly 1/3 of the original indebtedness. And as to the offer to deposit the payments due in trust or in escrow, it can not be considered payment since it was a conditional tender, and would have left the creditor (Myers corporation) unable to make use of the money rightfully due to it. This Court, in *Philippine National Bank vs. Relativo et al.*, 92 Phil. 203, has ruled that a tender to be valid must be unconditional; and even then, a tender alone is not a mode of extinguishing obligations, unless followed by consignment.

"Furthermore, for Myers to accept the proposed deposit of the monthly payments in trust or escrow, would be equivalent to an admission on its part of the validity or truthfulness of Maritime's claim and of Myers Corporation's liability for an obligation of an individual stockholder. Nor is there any justification on record to warrant the disregard of the corporate personality of Myers Building Corporation in the present case."

Finally, regarding Maritime's invocation of Article 1191 of the New Civil Code (more appropriately Article 1124 of the Spanish Civil Code), the denial resolution holds as follows:

"Movant Maritime's insistence upon the application to the present case of Art. 1191 of the Civil Code of the Philippines (tacit resolutive condition in reciprocal obligations) studiously ignores the fact that Myers' obligation to convey the property was expressly made subject to a suspensive (precedent) condition of the punctual and full payment of the balance of the purchase price. This is apparent from clauses (d) and (i) of the contract of sale (Record on Appeal, pages 64, 67):

"(d) It is hereby agreed, covenanted and stipulated by and between parties hereto that the Vendor will execute and deliver to the Vendee a definite or absolute deed of sale upon the full payment by the Vendee of the unpaid balance of the purchase price hereinabove stipulated; that should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this deed of Conditional Sale shall automatically and without any further formality, become null and void, and all sums so paid by the Vendee by reason thereof, shall be considered as rentals and the Vendor shall then and there be free to enter into the premises, take possession thereof or sell the properties to any other party.

* * * * *

"(i) Title to the properties subject of this contract remains with the Vendor and shall pass to, and be transferred in the name of the Vendee only upon complete payment of the price above agreed upon." (Italics supplied).

"It is well to emphasize here the express stipulations (paragraph d) that -

"* * * the Vendor (Myers will execute and deliver to the Vendee a definite and absolute deed of sale upon full payment by the Vendee of the unpaid balance of the purchase price * * *"

as well as that (paragraph i of the deed of sale) –

"Title to the properties subject to this contract remains with the Vendor and shall pass to and be transferred in the name of of the Vendee only upon the complete payment of the full price above agreed upon."

make it crystal clear that the full payment of the price (through the punctual performance of of the monthly payments) was a condition precedent to the execution of the final sale and to the transfer of the property from Myers to Maritime; so that there was to be no actual sale until and unless full payment was made. It is uncontroverted that none was here made. The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms. In its suit Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, express or implied (article 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What it sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract,

possession being a mere incident to its right of ownership. It is elementary that, as stated by Castan, –

"b) Si la condicion suspensiva Ilega a faltar, la obligacion se tiene por no existente, y el acreedor pierde todo derecho, incluso el de utilizar las medidas conservativas." (3 Castan, Derecho Civil, 7a Ed., p. 107). (Also Puig Peña, Der. Civ., T. IV (1), p. 113)

"Movant Maritime's failure to take into account the fact that Myer's promise to sell was subject to a suspensive condition (not to a suspensive period) renders all its discussion about bilateral or reciprocal contracts and the application of Articles 1198 and 1592 of the Civil Code of the Philippines (both of which deal with rescission or resolution of contractual obligation), with consequent mutual restitution[6] a pure academic exercise without applicability to the case at bar.

"Similarly, there is no point in discussing whether or not Maritime's breach of contract was casual or serious, since the issue here is whether the suspensive condition (of paying P5,000.00 monthly until full price is paid) was not fulfilled, and it is not open to dispute that the stipulated suspensive condition was left unaccomplished through the deliberate actions of movant Maritime. The stubborn fact is that there can be no rescission or resolution of an obligation as yet non-existent, because the suspensive condition did not happen.

"Resolving identical arguments, as those of Maritime, this Court ruled in Manuel vs. Rodriguez, 9-10, as follows:

* * * * *

Plaintiff-appellant, however, argues (Errors I-IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N. C. C.). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor

or realty wants to rescind, does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the full price (*Caridad Estates vs. Santero*, 71 Phil. 114, 121; *Albea vs. Inquimboy*, 86 Phil. 476; 47 Off. Gaz. Supp. 12, p. 131; *Jocson vs. Capitol Subdivision Inc. et al.*, L-6573, February 28, 1955; *Miranda vs. Caridad Estates*, L-2077 and *Aspurta vs. Caridad Estates*, L-2121, October 3, 1950).

"The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a 'casual breach' is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutive condition, which is not the case."

"The foregoing quotation is the best refutation of Maritime's contention that the ruling is obiter, when in fact it passed on issues tendered on appeal.

"The stipulations of the contract being the law between the parties, Courts have no alternative but to enforce them as they were agreed and written, there being no law or public policy against the stipulated forfeiture of payments already made (*Manila Racing Club vs. Manila Jockey Club*, 69 Phil. 57)."

Reviewing these propositions in or premises of Our judgment and denial resolution, in the light of the arguments advanced in the motion for reconsideration and of my own careful and detailed study of their validity and implications, I am constrained to hold that they are not unassailable and, in fact, there are sufficient grounds in my considered view, for modifying the position of the Court in regard thereto.

A. Maritime's failure to pay the March, April and May, 1961 installments did not constitute default in the absence of a demand in accordance with Article 1100 of the Old Civil Code . (found in modified form in Art. 1169 of the New Civil Code)

At the outset, it must be clarified that inasmuch as the Deed of Conditional Sale in dispute was executed on April 30, 1949 before the New Civil Code took effect, it is obvious that this case must be resolved on the basis of the provisions of the Old Civil Code or the Spanish Civil Code, not all the provisions of which pertinent to this case are identical to the corresponding provisions of the New Civil Code.

According to Article 1100 of the Old Code:

"Art. 1100. Persons obliged to deliver or to do something are in default from the time the creditor demands of them judicially or extrajudicially the fulfillment of their obligation.

"Nevertheless, the demand of the creditor shall not be necessary in order that default may arise -

"1. When the obligation or the law expressly so provides;

"2. When by reason of the nature and circumstances of the obligation it shall appear that the designation of the time at which the thing was to be delivered or the service rendered was the determining motive for the creation of the obligation.

"In reciprocal obligations neither of the obligors shall be in default if the other does not fulfill or does not submit to the fulfillment of that which is incumbent upon him. From the time one of the obligees performs his obligation the default begins for the other.

In *Bayla vs. Silang Traffic*, 73 Phil. 557, Justice Ozaeta ruled for the Court as follows:

"The next question to determine is whether under the contract between the parties the failure of the purchaser to pay any of the quarterly installments on the purchase price automatically gave rise to the forfeiture of the amounts already paid and the reversion of the shares to the corporation. The contract provides for interest at the rate of six per centum per annum on deferred payments. It also provides that if the purchaser fails to pay any of said installments when due, the said shares are to revert to the seller and the payments already made are to be forfeited in favor of said seller. The respondent corporation contends that when the petitioners failed to pay the installment which fell due on or before July 31, 1937, forfeiture automatically took place, that is to say, without the necessity of any demand from the corporation, and that therefore the resolution of August 1, 1937, authorizing the refund of the installments already paid was inapplicable to the petitioners, who had already lost any and all rights under said contract. That contention is, we think, untenable. The provision regarding interest on deferred payments would not have been inserted if it had been the intention of the parties to provide for automatic forfeiture and cancellation of the contract. Moreover, the contract did not expressly provide that the failure of the purchaser to pay any installment would give rise to forfeiture and cancellation without the necessity of any demand from the seller; and under article 1100 of the Civil Code persons obliged to deliver or do something are not in default until the moment the creditor demands of them judicially or extrajudicially the fulfillment of their obligation, unless (1) the obligation or the law expressly provides that demand shall not be necessary in order that default may arise, or (2) by reason of the nature and circumstances of the obligation it shall appear that the designation of the time at which the thing was to be delivered or the service rendered was the principal inducement to the creation of the obligation."

In the case at bar, there is also an automatic forfeiture clause as also an interest on deferred payment clause similar to those in the Bayla case. Accordingly, the question may be raised, was there any demand in this case?

As may be noted in the above relation of facts, the sole and only demand made upon Maritime by Myers for the payment of the March, April and May, 1961 installments was contained in the latter's letter of May 16, 1961, Exhibit 2-A, Myers, and importantly, for reasons which Myers evidently considered irrelevant because it has not shown in the record any that may adversely affect Maritime's position, this communication was not received by Maritime or returned unclaimed. The subsequent letter of Myers to Maritime of June 5, 1961, Exhibit 2, Myers, was no longer a demand; it was already a notification that Myers had unilaterally cancelled the Deed in controversy.

To the possible contention that the agreement in this case provides in its paragraph (d) "that should the Vendee fail to pay any of the monthly installments, when due, * * * then this Deed of Conditional Sale shall automatically and without any further formality, become null and void", which provision, incidentally, is not the one quoted and referred to in Our decision as the basis of default, this case therefore falls within the first exception in Article 1100 regarding instances when the obligation itself provides that demand is not necessary, the ready answer is that such phrase "without any further formality" is not explicit enough to meet the requirements of an express reference to the waiver of demand contemplated in said article and the decision in Bayla. The best proof that the parties themselves particularly Myers, did not understand said phrase in that sense, is the very letter of demand, Exhibit 2-A; Myers, which Myers wrote to Maritime on May 16, 1961 but which unfortunately was not received by Maritime.

B. Assuming there was no need for demand, Maritime's failure to actually pay the installments in question cannot be considered as a breach in bad faith (*dolo*).

A cursory reading of Our decision and denial resolution will readily reveal that in holding that Maritime's non-payment of the installments for March, April and May, 1961 constituted a violation in bad faith of the Deed of Conditional Sale, reliance is made exclusively on the communications which Maritime itself had presented in evidence. In this connection, it is to be noted Myers never alleged in any of its pleadings nor did it try to prove by any evidence any particular act of bad faith of Maritime. The sole and only cause of action alleged in Myers'

cross-claim against Maritime was the non-payment of the March, April and May installments notwithstanding its demand letter of May 16, 1961 and its cancellation letter of June 5, 1961, and it is not alleged that such non-payment, was in bad faith. No reference at all is made to any of the communications on which Our decision is based. Indeed, it is quite ironic that We drew Our conclusion of bad faith from the very documents which Maritime precisely offered to show its good faith. And reading said communications again, I feel that Our conclusion is not only harsh but, what is worse, it can hardly be justified.

In both the decision and the denial resolution, We declare that the non-payment of the installments for March, April and May, 1961 was intentional and deliberate and designed or calculated extrajudicially to either force Myers to grant the moratorium requested by Maritime or coerce it "into answering for an alleged promise of the late F. H. Myers to indemnify E. N. Schedler, the controlling stock-holder of appellant, for any payments to be made to the members of the Luzon Labor Union." I am afraid that in arriving at such conclusion We have unnecessarily viewed the evidence of Maritime in the light most unfavorable to it, which is not fair, considering that even if it can be assumed that Maritime was really trying its best to get concessions from Myers, it cannot be said that in exerting efforts along that direction Maritime had in mind or it intended to completely disregard and ignore its obligations under the Deed of Conditional Sale. On the contrary, it is very evident from Schedler's letters that he was mindful all the time of said obligations and, while he was concerned with the possibility that he might be left holding the bag in regard to the labor judgment being pinned on him by Wentholt, he was trying to make sure that legally Maritime would not be in default insofar as the payment of the installments to Myers was concerned.

Thus, in the letter of April 7, 1961, Exhibit 11, Maritime, there is in fact an acknowledgement rather than a denial of what is due to Myers under the Deed of Conditional Sale. It is true said letter does say that Schedler and his wife "intend to withhold further payments to the Myers Building Company or Estate, in order that we can preserve those funds and assets to set off against the potential liability to which I am now exposed by the failure of the Myers heirs to honor the indemnity agreement pertaining to the labor claims", but it is equally true that in his letter of April 21, 1961 to Senator Padilla, Exhibit 12, Maritime, Schedler made it clear that "we do not desire to be totally in default by withholding all payments and we are willing to pay the monthly installment into a depository such as Mr. Parsons * * *" and then added, "As a last resort, and if you believe it is the only method to insure success in the law suit which I have mentioned that I feel you ought to commence (declaratory relief based upon the Deed * * * seeking determination by the court that I am entitled to withhold further payments on that installment contract or I am entitled to deposit them in trust to be conserved pending determination by the court of the liability of the Myers Estate to indemnify and hold me harmless from any of the labor claims * * *) I would deposit the installments in court to bring me current and make continuous deposits thereafter." Frankly, I cannot see how these unequivocal acknowledgement of liability and apprehension about being in default, albeit coupled with the desire to seek the ways and means by which to reconcile the obligation of Maritime to Myers with the possible liability of the Estate of Myers to Schedler can be regarded as bad faith. Of course, Myers had the privilege and right to reject Schedler's proposals, but until such rejection was made clear and definite, I do not believe it would be fair to hold Maritime to be in default, much less in bad faith, considering that Myers had not made any demand known to Maritime because its letter of May 16, 1961 did not reach the latter. It must be borne in mind, further, that at the time these developments took place, Maritime had already paid P973,000, which it stood to lose if it violated its contract with Myers by failing to pay any of the stipulated monthly installments. No man in his right senses would deliberately risk such a loss when very little, comparatively speaking, is expected of him to prevent it. For this reason, I am inclined to view Maritime's position, brought about by Schedler's attitude, in the same plane as the ordinary practice of an obligor who would rather deposit in court or in escrow with a disinterested and trusted third person than pay money that would be due to another pending final determination of

some questions he would like to raise in connection therewith and which make it impractical if not risky for him to make the payment directly to the obligee, without prejudice, of course, to his liability for damages in the event he is found ultimately liable. I am not aware that such a procedure has been ever condemned either as malafide or as dolo.

At this juncture, it is pertinent to make clear that Myers' position in regard to the communications between Schedler and Parsons, and consequently, those between Schedler and Senator Padilla, as well as those between the latter and Parsons have no legal bearing. In fact, as already stated, Myers' pleadings and evidence are confined to the Deed of Conditional Sale, the contract of lease between Maritime and Luzon and its letters of May 16, 1961 and June 5, 1961, Exhibits 2-A, Myers and 2, Myers, respectively. In other words, insofar as Myers is concerned, Maritime's non-payment was unexplained, or Maritime just failed to pay, and inasmuch as the contract provides that upon non-payment of any installment, Myers would have the right to cancel the agreement, the letter of June 5, 1961, Exhibit 2, Myers was nothing more than an exercise of its rights under the contract. In this connection, it is to be noted that the said Exhibit 2, Myers makes no mention of or reference to the communications between Schedler and Padilla, on the one hand, and Parsons, on the other, evidently because it is the position of Myers that Schedler is not Maritime as Parsons is not Myers, and applying the principle of *res inter alios acta*, neither Maritime and Myers could be held responsible for whatever is contained in said communications.

With this posture of Myers in mind, it becomes a problem what relevance We are to attach to said communications. To reiterate, from the point of view of Myers, Schedler's and Senator Padilla's letters to Parsons were not addressed to Myers, since it does not appear that Parsons was not authorized to act for and on its behalf. Worse, they referred to matters with which Myers professed not to have anything to do. Consequently, on the other hand, whatever Parsons said in them for Myers should also not have any color of authority. In this sense, it would appear that Myers had no knowledge whatsoever why Maritime did not pay. How could it charge Maritime with bad faith?

Upon the other hand, if We consider the letters addressed to Parsons as offers of Maritime to Myers, in legal contemplation, the consequence would be that until such offers were definitely turned down, Maritime can be hardly held to have acted in bad faith. In this connection, it must be borne in mind that it was not until Parsons wrote the letter of July 6, 1961, Exhibit 14, Maritime, to Senator Padilla or, at the earliest, when he wrote his letter of June 29, 1961, Exhibit 14-A, Maritime, to Schedler, as mentioned in Exhibit 14, Maritime, that Maritime may be deemed to have been advised of the rejection by Myers of its proposed arrangements. To my mind, if the communications between Schedler and Senator Padilla and Parsons are to be considered as relevant, it must be only from this point and not earlier, that Maritime's bad faith, if at all, should be considered as having started, if it still refused to pay as per contract.

Perhaps, it will be asked, why then did not Maritime pay the July, 1961 and subsequent installments? To begin with, it must be remembered that when Schedler wrote Parsons on June 21, 1961, Maritime had not yet been summoned in regard to Luzon's interpleader, for the order requiring the defendants to answer is dated only on that day, hence, it is not far-fetched to say that Schedler was not aware of the interpleader. It will be recalled that the interpleader was filed on June 18, 1961 and Luzon simultaneously deposited with the court the rental for June, 1961 of P10,000, and henceforth all subsequent rentals were likewise deposited monthly in court. Under these circumstances, I feel that to have required Maritime to separately deposit P5,000 each month for the installments would be more than the law and equity demand. In such a situation, the P10,000 monthly deposit of Luzon should be considered as rentals due either to Myers or Maritime depending on who will win in the case, and on the assumption that Maritime will win, P5,000 thereof monthly should be considered as corresponding to the installment due from Maritime, which undoubtedly Maritime could have done had it filed its case separately from

and ahead of Luzon. The difference would thus be a matter of form and should not be placed above substantive considerations.

The denial resolution quotes from Castan to the effect that for bad faith to exist "no hace falta la intencion de perjudicar o de dañar, bastando infringir de modo voluntario el deber juridico que pesa sobre el deudor a sabiendas, es decir, conscientemente. Esa voluntariedad y conciencia tornan doloso el inculplimiento, aunque, como es posible, el deudor no haya tenido intencion de perjudicar o de dañar al acreedor, contando, lo que no es raro, con que sobrevengan hechos que le permitan satisfacer mas tarde su obligacion." Granting for the sake of argument that such obligation is juridically tenable, albeit I feel it sounds more strict than Shylock's demand for his pound of flesh pursuant to the letter of the bond, I believe it is but fair to temper its effect in instances where, as in this case, the non-payment is accompanied by efforts to reconcile the obligee's liability with a claim likely to arise in his favor against the obligor, for which reason the obligor offers to deposit his payment or have them held in escrow by a third party until the possibility or impossibility of a set-off is cleared. What difference is there between this case and one wherein a debtor believes he is no longer obliged to pay, but just the same deposits his payment in court? Can such a debtor be considered as guilty of bad faith even if it should turn out that his position is not legally tenable? If I remember my law and equity correctly, such an act is precisely the evidence of good faith which at the most would entitle the creditor only to the payment of additional interest or damages.

There has been substantial compliance and Article 1234 may be applied.

Viewed from another angle, considering that out of the stipulated price of P1 million, already P973,000 had been actually paid by Maritime, P680,699.35 for the installments for practically twelve years and P342,300.65 as interest, all of which it stands to lose together with the subject property, and only P319,300.65 remained to be paid, may it not be said that the contract as a whole has already been substantial-ly complied with and a delay of three or four months in the payment of the P5,000 monthly installments still due should not be considered as sufficient cause in equity for the cancellation of the whole contract? It is pointed out that no inequity can be claimed by Maritime because after all, it had leased the same property to Luzon for P10,000 or more a month and the rentals it must have collected could be more than what it has paid Myers. To start with, the evidence is not very clear as to the periods of the lease to Luzon. The only contracts of lease I can see in the records are those of September 1, 1951 to August 1, 1956 for P13,047.00 a month or March 1, 1964 (Exhibits 8 and 9, Maritime) and of March 1, 1959 or April 1, 1959 to February 28, 1964 for P10,000 a month, and this second one was precisely overtaken by the interpleader in this case, so much so that subject to the results hereof, another five year similar contract was executed on April 24, 1963. (Exhibit 18, Maritime) There is, therefore, no clear basis in the evidence for comparing how much Maritime had been paid as rentals with how much it had paid as installments as of June, 1961. In any event, for purposes of equity, I do not believe We should disregard the property itself in this comparison, hence We should not overlook that Maritime stands to lose not only the P973,000 it had paid, but also the property itself and the future rentals it is supposed to earn therefrom, which after all, constituted part of its consideration in entering into the contract and acquiring the property in question.

Indeed, under similar circumstances as in this case, in *J. M. Tuazon vs. Javier*, 31 SCRA 829, this Court held, over the pen of Chief Justice Concepcion, that under the authority of Article 1234 of the New Civil Code, which provides thus:

"If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.",

that there had been substantial compliance with the contract and "in the interest of justice and equity," the buyer of a lot in installments who had failed to pay eighteen installments after having paid religiously all previous installments for more than eight years should be allowed to complete the payment, with damages, which she had

offered to do at the pre-trial. I see a compelling parity between that case and the one at bar, and to the observation during the deliberations that the present case involves financial giants who could employ the best legal counsel and might just be trying to outsmart each other, I will simply say that I cannot compartmentalize justice and equity, much less on the basis suggested which has no relevance to the juridical implications of the acts of the parties in this case. Indeed, my deeper interest in this case springs from the concern I feel for the thousands of subdivision lot buyers who have suffered or stand to suffer loss of all their life savings as a result of the heartless treatment they get from subdivision owners who would invoke the fine prints of their contracts in order to terminate the same just because of two or three months default on the part of the buyer, but I certainly would not deny the justice I would render to said subdivision buyers to a party similarly situated only because he happens to be rich.

I realize, of course, that Article 1234 which the Court applied in the Javier case is a new provision of American origin not found in the Old Civil Code, which I have said is the one applicable to the case at bar. I must say, however, that the philosophy and equitable foundation of Article 1234 is not new and may, therefore, be applied as general principles of equity which this Court is not without authority to do.

Assuming otherwise than as above discussed, Article 1504 of the Old Civil Code is applicable to this case.

I just cannot get over the feeling that the breach here in question is so slight, considering the undisputed compliance by Maritime with over two-thirds of its P1 million obligation for over twelve years strictly in accordance with the terms of the contract, and furthermore, what to me were bona-fide efforts on the part of said appellant to reconcile the reasonable safeguarding of its interests with its admitted liability to the appellee, that I would not hesitate to hold in the spirit of Our decision in the Javier case that "in the interest of justice and equity," the judgment of the lower court should be reversed and Maritime should be allowed to pay the balance of the purchase price stipulated in the deed plus interest. But even assuming We can hold that Maritime became in default by failing to pay the installments for March, April and May, 1961, I am of the considered view that inasmuch as at the time Myers cancelled the "Deed" in question on June 5, 1961, it had not yet made either a notarial or a judicial demand for such cancellation and, in fact, it was only after Luzon filed its interpleader on June 8, 1961, or, more specifically only on July 25, 1961, when Myers filed its cross-claim against Maritime in its answer to Luzon's interpleader complaint, that in a sense Myers made a judicial demand, Maritime's offers of payment thru Schedler made to Parsons should be considered as a substantial compliance with its obligation to pay the installments for March, April and May, under Article 1504 of the Old Civil Code; hence it cannot be held to have lost its right to pay subsequent installments, for which reason, the cancellation of the contract by Myers on June 8, 1961 was uncalled for, unjustified and without legal basis.

The "Deed" in question is not a promise to sell – it is a sale.

Our decision and the denial resolution are both premised on the holding that the Deed of Conditional Sale herein involved is merely a promise to sell and not a contract of purchase and sale, hence Article 1504 is not applicable. I am afraid that Our finding that the said "Deed" is a mere promise to sell stands reexamination.

I have quoted above the pertinent portions of the "Deed". From said portions, I find it difficult to view the contract as otherwise than a perfected contract of purchase and sale of immovables. To start with, it is beyond my comprehension why, with all the legal assistance it had at its command, Myers, as the seller who presumably must have taken charge of the preparation of the contract in question or, at least, had the last say as to how it should be avoided, deliberately refrained from using any word in the said contract connoting a mere promise to sell, not to speak of plain and explicit terms to such effect, and instead signed it in the form it now appears. Pertinently, it says, "the Vendee has agreed to purchase the above-described properties and the Vendor has agreed to sell – –"

(Whereas clause), "the Vendor hereby sells, transfers and conveys unto and in favor of the Vendee, its successors, etc." (Therefore clause), "on the properties herein sold conditionally" (Par. g) and "the material and physical possession of the properties herein sold" (Par. h) To my mind, this language is out of place in a promise to sell. Moreover, with reference to the theory, more extensively to be discussed anon, that the parties did not have rescission but mere cancellation in contemplation, I find that whereas Par. (d) does provide that "this Deed of Conditional Sale shall automatically and without any further formality become null and void and the same idea is repeated in Paragraphs (f) and (o), on the other hand, Paragraph (e) very clearly states that "should the Vendor rescind this Deed of Conditional Sale for any of the reasons stipulated in the preceding paragraph, the Vendee etc. -- in case of rescission and a suit should be brought in court by the Vendor in case of rescission etc. -- ." More importantly, at the time of the execution of this "Deed" in April, 1949, the applicable existing jurisprudence was that of *El Banco Nacional Filipino contra Ah Sing*, 69 Phil. 611, in which the contract involved was worded in its pertinent parts as follows:

"PROMESA DE VENTA"

"Notorio sea a todos:

"Que el Banco Nacional Filipino, una corporacion bancaria creada, organizada y existente por y en virtud de la Ley No. 2612, tal como fue reformada, cuya oficina central se halla en la Ciudad de Manila y con una sucursal establecida en el municipio de Davao, Provincia de Davao, I.F., que mas adelante se designara como Primera Parte; y A. Sing, mayor de edad, comerciante y domiciliado en el referido municipio de Davao, Provincia de Davao, I.F., que mas adelante se designara como Segunda Parte, por la presente convienen, estipulan y hacen constar:

"Primero. Que en consideracion de la suma de veinticinco mil pesos (P25,000), que la Segunda Parte se obliga a satisfacer en la forma que mas abajo se expresa, la Primera Parte por la presente se compromete a vender, ceder, y traspasar en absoluto a la Segunda Parte todo su derecho, titulo, interes y participacion en dos parcelas de terreno situadas en el distrito municipal de Samal, Provincia de Davao, que se describen como sigue:

"1. A parcel of land (lot No. 3, plan II-10758) with all buildings and improvements, except those herein expressly noted as belonging to other persons, situated in the barrio of Quinawitnon, barrio of Babac, municipal district of Samal; bounded on the N. by property of Placida Quiñones; on the NE. by public lands; on the SE by public lands; on the SW. by property of Basilides Bustamante; and on the NW. by the Gulf of Davao, property of Bocboc, a road and properties of Mayond-gon, the Municipal Government of Samal, Lelango, Bancao, Angel Mamay-ya and Libudan et al.; containing an area of 3,223,867 square meters, more or less;

"2. A parcel of land (lot No. 4, plan-10758) with all buildings and improvements, except those herein expressly noted and belonging to other persons, situated in the sitio of Quinawitnon, barrio of Babac, municipal district of Samal; bounded on the SE. by a road; on the S. by properties of Logan and Gutom; on the SW. by the Gulf of Davao, and on the NW. by property of Libudan et al.; containing an area of 16,481 square meters, more or less; cuyas propiedades se hallan mas particularmente descritas en el certificado de transferencia de titulo No. 1099 expedido por el registrador de titulos de Davao a nombre del Banco Nacional Filipino.

"Segundo. Que la Segunda Parte pagara el precio arriba estipulado en la forma siguiente;

"Dos mil-pesos (P2,000) al contado, en el acto del otorgamiento de este contrato; y

"El saldo de veintitres mil pesos (P23,000), con sus intereses al 8 por ciento al año, en veinte amortizaciones anuales iguales de P2,342.55 cada una, debiendo pagarse la primera amortizacion el dia 3 de abril de 1936.

"Tercero. Que la Segunda Parte pagara igualmente las contribuciones e impuestos, tanto vencidos como por vencer, que afectan a las referidas propiedades, asi como cualquier otro gravamen que pese sobre los mismos,

y los gastos de otorgamiento de este contrato y de la escritura de venta definitiva en su caso, los sellos documentarios y los derechos de registro en relacion con esta transaction.

"Cuarto. Que la posesion de las susodichas propiedades queda cedida a la Segunda Parte en la fecha del otorgamiento de este contrato.

"Quinto. Que la Primera Parte no respondera a la Segunda Parte del saneamiento en caso de eviccion ni por los defectores o gravámenes ocultos de las citadas propiedades.

"Sexto. Que una vez pagada por completo por la Segunda Parte el precio arriba estipulado, la Primera Parte otorgara la correspondiente escritura de venta definitiva de todo su derecho, titulo, interes y participacion sobre las repetidas propiedades a favor de la Segunda Parte.

"Septimo. Que si la Segunda Parte faltare al pago, a su vencimiento, de cualquiera amortizacion tal como se estipula en el segundo parrafo de la presente, o dejare complir cualquiera de las condiciones arriba especificadas, este contrato quedara automaticamente rescindido y cancelado, y, en tal caso, todas las cantidades pagadas por la Segunda Parte seran consideradas como alquileres pagados por el uso y ocupacion de las mencionadas propiedades durante el tiempo transcurrido desde el otorgamiento de este contrato hasta dicha rescision y cancelacion, pudiendo entonces la Primera Parte posesionarse inmediatamente de las mismas y venderlas a otra persona.

"En fe de lo cual, firman las partes la presente en Davao, Davao, I.F., hoy 4 de abril de 1934."

It will be noted that the above-quoted contract was entitled precisely as a "Promesa de Venta" and the stipulation expressly says merely that "la Primera Parte por la presente se compromete a vender, ceder, y traspasar etc." Otherwise, all its provisions are substantially if not literally identical to the "Deed" here in question. Besides, the buyer there was a Chinese and for this reason, the issue raised was of utmost importance in the application of the constitutional provision prohibiting the transfer of private agricultural lands to persons other than Filipinos, and still this Court held in favor of the Chinese by considering the contract as one of sale and not a mere promise to sell thus:

"El demandante arguye que los terminos del contrato demuestran claramente que el mismo es de promesa de venta porque se estipulo expresamente que despues del pago del ultimo plazo es cuando se otorgaria la escritura de venta definitiva, y cita en su apoyo el articulo 1451 delCodigo Civil que dispone, en parte, que la promesa de vender o comprar, habiendo conformidad en la cosa y en el precio, dara derecho a los contratantes para reclamar reciprocamente el cumplimiento del contrato. En nuestra opinion el contrato celebrado por las partes es el de venta real de los inmuebles que fueron objeto de la contratacion. Segun sus terminos las partes convinieron tanto en los terrenos que eran el objeto del contrato como en el precio y en la forma en que este ultimo se debia pagar. No solo esto, sino que las partes convinieron en que los terrenos se entregarian al demandado y este, en realidad, tomo posesion de los terrenos, introdujo mejoras en los mismos y se beneficio de sus frutos, pagando, ademas, los plazos convenidos a medida que vencian. Es de estricta aplicacion al caso el articulo 1450 delCodigo Civil que provee que la venta se perfecciona entre comprador y vendedor y es obligatoria para ambos, desde que hayan convenido en la cosa objeto del contrato y en el precio, aunque ni la una ni el otro se hayan entregado. Mas aun, la venta quedo tambien consumada desde el momento en que los terrenos fueron entregados al demandado y este entro en posesion y disfrute de los mismos (articulo 1462 delCodigo Civil).

Se insinua que el contrato no paso de ser mera promesa unilateral aceptada que en derecho no confiere accion alguna al que trata de comprar. Opinamos que el contrato era una promesa bilateral aceptada que en derecho viene a ser el mismo contrato de compra y venta que define el articulo 1445 delCodigo Civil Sobre este punto es digno de mencion el comentario del tratadista Manresa que dice:

"(b) Promesa bilateral. - Esta promesa es la reciproca, es de compra y venta. Cuando por ambas partes es

aceptada, tiene el mismo valor que lo que hemos venido llamando contrato de compra y venta. Para convencernos de ello basta con tener presente que todos los requisitos esenciales de dicho contrato se dan en esta situacion juridica.

"ElCodigo asi lo reconoce en el articulo que comentaremos, al afirmar que, habiendo conformidad en la cosa y en el precio, dara derecho a los contratantes para reclamar reciprocamente el cumplimiento del contrato." (10 Manresa, 2. edicion, pag. 70.)

In my humble opinion, Myers cannot seek shelter in the ruling laid by this Court in Manuel vs. Rodriguez, 109 Phil. 9 to the effect that:

" * * *. Plaintiff-appellant, however, argues (Errors I-IV; VI; VIII) that the Payatas Subdivision had no right to cancel the contract, as there was no demand by suit or notarial act, as provided by Article 1504 of the Old Code (Art. 1592, N.C.C.). This is without merit, because Article 1504 requiring demand by suit or notarial act in case the vendor of realty wants to rescind, does not apply to a contract to sell or promise to sell, where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price (Caridad Estates vs. Santero, 71 Phil., 114, 121; Albea vs. Inquimboy, 86 Phil., 476; 47 Off. Gaz. Supp. 12, p. 131; Jocson vs. Capitol Subdivision Inc. et al., L-6573, February 28, 1955; Miranda vs. Caridad Estates, L-2077 and Aspuria vs. Caridad Estates, L-2121, October 3, 1950).

The contention of plaintiff-appellant that Payatas Subdivision Inc. had no right to cancel the contract as there was only a "casual breach" is likewise untenable. In contracts to sell, where ownership is retained by the seller and is not to pass until the full payment of the price, such payment, as we said, is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force, in accordance with Article 1117 of the Old Civil Code. To argue that there was only a casual breach is to proceed from the assumption that the contract is one of absolute sale, where non-payment is a resolutory condition, which is not the case."

To start with, in the same manner that in said case, We held that there being actually no formal deed of conveyance to speak of as involved but mere letters and for said reason, the ruling in the case of Ah Sing above discussed was not applicable, We should now hold that the Rodriguez case cannot be cited in the present case for the same reason the other way around.

Caridad Estates vs. Santero, 71 Phil. 114 and the cases following the same made no reference to a promise to sell; what is worse, the ruling made therein runs counter to the correct construction of Article 1504.

The above quoted portion of the Manuel decision holds that " – Article 1504 requiring demand by suit or notarial act in case the vendor of realty wants to rescind, does not apply to a contract to sell or promise to sell, where the title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price," and the cases of Caridad Estate vs. Santero, 71 Phil., 114, Albea vs. Inquimboy, 86 Phil. 476 and others of like import are cited in support of the ruling.

I have carefully read the decisions cited, and, frankly, I regret to say that I cannot consider them as imparting such a ruling. In the case of Caridad Estates vs. Santero, decided by Justice Laurel, no mention at all appears of a promise to sell. The pertinent portion of the decision reads thus:

"The first question to be decided is raised in the first and second assignments of errors. The attack of nullity is centered around paragraphs 3 and 4 of the contract of sale which, as appellant contends, ordain a procedure or mode of action basically and fundamentally pactum commissorium.

The pertinent portion of paragraph 4 provides as follows:

"— — But if the said party of the second part should fail to make the payments above specified within sixty days of the date or dates stipulated in this agreement or neglect to repair any damage caused to the above described property within sixty days of formal notification of such damages by the party of the first part, then the total remaining purchase price shall become due and payable and recoverable by action at law, or the party of the first part, may, at its option, recover possession of the above described property in which case any and all sums paid by the party of the second part under the provisions of this contract shall be considered as rental for the use and occupancy of the property."

Paragraph 3 recites:

"The party of the second part acknowledges that he has received the above described property and all the improvements thereon in good condition and engages during the period of this contract to repair at his own expense any damage that may be caused to the said property or improvements through storm, fire or deterioration and in the event of failure to fulfill the terms of payment as above stated to faithfully comply with the penal clause here appended and in the event that the party of the first part should demand the return of the property on account of non-compliance with the terms of payment, to deliver possession of the said property and improvements there in good condition and repair."

"As may be seen, paragraph 4 gives the vendor, if the vendee fails to make the specified payments, the option of (1) considering the total remaining purchase price due and payable and recoverable by an action at law or (2) recovering the possession of the property in which case any and all sums paid by the vendee shall be regarded as rental for the use and occupancy of the property. On the other hand, paragraph 3 obligates the vendee to deliver the possession of the property and improvements thereon in good condition and repair in the event that the vendor should demand the return of the same on account of noncompliance with the terms and conditions of payment. It is quite plain, therefore, that the course followed by the vendor in cancelling the contract and demanding the repossession of the property was well supported by, and employed in consonance with, the covenants embodied in their agreement. As the stipulations in question do not violate the prohibitive provisions of the land or defeat morals and public order, they constitute the law between the parties, binding and effectual upon them. (Arts. 1255 and 1278, Civil Code; *Jimeno vs. Gacilago*, 12 Phil., 16.)

"Appellant, however, gives full reliance on article 1504 of the Civil Code, and vigorously argues that whatever be the provision of the contract, resolution may not be declared in the absence of a demand upon the vendee "either judicially or by a notarial act." A cursory reading of the provision would be the best refutation of the appellant's argument, as it leaves no doubt as to its inapplicability in the present instance. The contract (Exhibit A) is a sale in installment, in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. There is consequently, no occasion for the application of the requirements of article 1504.

"Taking up the argument that the stipulations outlined in paragraphs 3 and 4 of the contract have resulted in a pactum commissorium, we are of the opinion that the objection is without legal basis. Historically and in point of strict law, pactum commissorium, referred to in Law 41, title 5, and Law 12, title 12 of the Fifth Partida, and included in articles 1859 and 1884 of the Civil Code, presupposes the existence of mortgage or pledge or that of antichresis. (*Alcantara vs. Alinea et al.*, 8 Phil., 111). Upon this account, it becomes hardly conceivable, although the argument has been employed here rather extravagantly, that the idea of pactum commissorium should occur in the present contract of sale, considering that, it is admitted, the person to whom the property is forfeited is the real and equitable owner of the same because title would not pass until the payment of the last installment. At most, the provisions in point, as the parties themselves have indicated in the contract, is a penal clause which carries the express waiver of the vendee to any and all sums he had paid when the vendor, upon his inability to comply with his duty, seeks to recover possession of the property, a conclusive recognition of the right of the vendor to said sums, and avoids unnecessary litigation designed to enforce fulfillment of the terms and conditions agreed upon. Said provisions are not unjust or inequitable and does not, as appellant contends, make the vendor unduly rich at his cost and expense. The charge that the amount forfeited greatly

exceeded that which should be paid had the contract been one of lease loses its weight when we consider that during the years 1935 and 1936, when the agreement was in full force and effect, the price of salt rose high to bring big profits and returns.

"The factual background of this case is not lacking in point of authority. In *The Manila Racing Club, Inc. vs. The Manila Jockey Club, et al.*, G. R. No. 46533, promulgated October 28, 1939, the condition of the contract was that "si el comprador no paga en su debido tiempo la cantidad correspondiente a cualquiera de los plazos, la vendedora podria, declarar resuelto el contrato y confiscadas en su favor las cantidades pagadas." In deciding the main question raised on appeal, similar in all respects to the one which now confronts us, the court said: "Esta clausula de confiscacion de lo pagado parcialmente es valida. Tiene el caracter de clausula penal, que puede ser establecida legalmente por las partes (arts. 1152 y 1255 delCodigo Civil). En su doble objeto de asegurar el cumplimiento, no es contraria a la ley, ni a la moral, ni al orden publico, habiendo sido pactada voluntaria y conscientemente por las partes."

"For all the foregoing reasons, we find no merit in the first, second, and third assignment of errors."

Anyone can see that in referring to the nature of the agreement or contract, the Court said it "is a sale in installments, in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation" and ruled, "There is, consequently, no occasion for the application of the requirements of Article 1504."

In other words, according to Justice Laurel, inasmuch as the parties in such sale on installment of real property or immovable had provided in their agreement for an option in favor of the vendor that in case the vendee should fail to pay any installment, the former may either recover in an action at law the whole balance unpaid which shall be considered immediately due and demandable or recover possession of the subject property and considering all installments already paid as rentals, these stipulations may legally be enforced according to their terms, considering that such stipulations are not contrary to law, morals or public policy. Stated differently, the Court held that such stipulations are comprehended within the freedom of contract.

At the same time, it will also be noted that Justice Laurel considered it as rather extravagant for the stipulations regarding automatic cancellation of the agreement, recovery of possession of the subject property and conversion of all installments paid into rentals as a pactum commissorium, and following the lead in *Manila Racing Club vs. Manila Jockey Club*, 69 Phil. 55, opined that "at most, the provisions in point, * * *, is a penal clause which carries the express waiver of the vendee to any and all sums he had paid when the vendor, upon his inability to comply with his duty, seeks to recover possession of the property * * * and avoids unnecessary litigation designed to enforce fulfillment of the terms and conditions agreed upon." [7]

Justice Laurel's opinion is at variance with Spanish authorities who appear to be more logical.

Thus, it can be seen that in at least two important points Justice Laurel's views in *Santero* deviate from what I believe to be well accepted opinions of Spanish authorities regarding the same matters. Anent Justice Laurel's reluctance to characterize the provisions referred to as being in the nature of a pactum commissorium, it can be admitted that "Historically and in point of strict law, pactum commissorium, referred to in Law 1, title 3, and Law 12, title 12 of the Fifth Partida; and included in articles 1589 and 1884 of the Civil Code, presupposes the existence of mortgage or pledge or that of antichresis" but, on the other hand, it cannot be denied that the Spanish authorities have always considered stipulations in a contract of sale of real property wherein part of the price is to be paid subsequently to the effect that upon failure to pay such balance or any part of it on due date, the sale shall be considered cancelled or resolved as having the character of a pactum commissorium. Even this Court had occasion to hold that the provisions of Article 1504 of the Spanish Civil Code referred to a pactum commissorium, for in fact said provision in effect tries to temper the rigor of such pactum by law. Justice

Romualdez said in the case of *Villareal vs. Tan King*, 43 Phil. 251:

"The fundamental point here presented is whether the purchase and sale in question is subject to the condition known as pacto comisorio.

"At the outset it must be said that since the subject-matter of the sale in question is real property, it does not come strictly within the provisions of article 1124 of the Civil Code, but is rather subjected to the stipulations agreed upon by the contracting parties and to the provisions of article 1504 of the Civil Code.

"The 'pacto comisorio' or 'ley comisorio' is nothing more than a condition subsequent of the contract of purchase and sale. Considered carefully, it is the very condition subsequent that is always attached to all bilateral obligations according to article 1124; except that when applied to real property it is not within the scope of said article 1124, and it is subordinate to the stipulations made by the contracting parties and to the provisions of the article on which we are now commenting' (article 1504). (Manresa, Civil Code, volume 10, page 286, second edition.)

"Now, in the contract of purchase and sale before us, the parties stipulated that the payment of the balance of one thousand pesos (P1,000) was guaranteed by the mortgage of the house that was sold. This agreement has the two-fold effect of acknowledging indisputably that the sale had been consummated, so much so that the vendee was disposing of it by mortgaging it to the vendor, and of waiving the pacto comisorio, that is, the resolution of the sale in the event of failure to pay the one thousand pesos (P1,000) such waiver being proved by the execution of the mortgage to guarantee the payment, and in accord therewith the vendor's adequate remedy, in case of nonpayment, is the foreclosure of such mortgage.

"However, even supposing that the mortgage does not imply a waiver of the pacto comisorio, the fact is that in the instant case the plaintiff, before commencing this action in view of defendant's failure to pay, did not serve judicial or notarial notice upon the defendant that he (the vendor) was willing to resolve the contract. Indeed, it does not appear that any such step had been taken by him. On the other hand, it appears that the defendant, before the complaint in the above-entitled case was filed, deposited with the court the sum of one thousand pesos P1,000 (less the amount of a certain account), which the plaintiff refused to accept. In view of these facts the resolution of the sale is improper, even if the pacto comisorio had been expressly stipulated in the contract.

"In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place ipso facto, the vendee may pay even after the expiration of the period, at any time before demand for payment has been made either by suit or by notarial act. (After such demand has been made the judge cannot grant him further time.' (Italics ours.) (Art. 1504, Civil Code.)" (At pages 255-256)

Commenting on the same Article 1504, Manresa very definitely says, "Es el pacto de la ley Comisoria en las rentas de inmuebles el que se reglamenta en el artículo 1504." (10 Manresa 260, 1931 ed.)

What is more important, however, is Justice Laurel's ruling that a stipulation like the one in the *Santero* case providing for automatic cancellation or resolution upon default as to any payment of the balance of the purchase is a licit one embraced within the freedom of contract. I am not prepared to accept this view. I believe that as Manresa states, Article 1504 precisely regulates the pactum commissorium by requiring either a notarial or judicial demand before it can be operative. This is a matter of public policy that cannot be altered, much less waived by agreement of the parties. Manresa's commentary on this point is as follows:

"Se ha discutido si el comprador puede renunciar al requerimiento, esto es, si seria licito el pacto que estableciese la resolucion de la venta de pleno derecho una vez vencido el plazo en que el precio deba ser entregado y sin necesidad de acto alguno por parte del vendedor. En otros terminos, la cuestion planteada implica esta otra: el precepto del art. 1.504, es de derecho necesario o de derecho voluntario? Su materia, pertenece a la esfera propia de la actividad juridica de los contratantes? Puede ser derogado por estos?

"Si consultamos el espíritu del art. 1.504, a poco veremos que su finalidad no es otra que procurar la firmeza y seguridad de los contratos y suministrar medios para que lleguen a efectuarse en los términos convenidos, para lo cual el Código, sin duda, se funda en pederosa razones de orden público; si atendemos a su letra, y muy especialmente a la frase 'aun cuando se hubiera estipulado, etc.', llegaremos a la misma conclusión. Es por lo tanto para nosotros indudable que el requerimiento de que tratamos no puede renunciarse ni en el momento de perfeccionarse el contrato ni por acto posterior." (10 Manresa 263, id.)

I maintain that this is the better rule, Santero and Manila Racing Club notwithstanding. We all know that automatic cancellation of a contract of sale resulting in the forfeiture of all moneys already paid just because of one default in the payment of the balance is a harsh and oppressive condition, precisely because it is tantamount to the obnoxious pactum commissorium. For this reason, the law explicitly gives the buyer in Article 1504 an opportunity to pay even after default so long as the seller has not made a formal demand for cancellation thru a notary public or in court. The very wording of the provision negates the freedom of the parties to stipulate otherwise, since it already clearly says, "even though it may have been stipulated that default of the payment of the price within the time agreed upon etc." It is to me absurd to contend that notwithstanding this express mandate of the law, the parties are still free to stipulate otherwise. Indeed, from this point of view, and independent of my discussion above of the applicability to this case of the Bayla ruling by Justice Ozaeta, it is my position that the intended waiver of formal demand, if any such intention can be inferred, in the provision of Paragraph (d) of the "Deed" in question that "this deed * * * shall automatically and without any further formality, become null and void," is contrary to the letter and intent of Article 1504 as well as public policy. It being obvious as already shown above that no demand of whatever kind for resolution had been made upon Maritime before the letter of cancellation of June 5, 1961, Exhibit 2, Myers, it follows necessarily that said cancellation was unwarranted and contrary to rather than an implementation of the terms of the "Deed" in controversy.

The stipulation providing for transfer of title only after full payment did not stamp the transaction with the character of a mere promise to sell – full payment was a suspensive condition for the execution of the final deed as the form of tradition of title while non-payment was a resolutory condition with confiscation as a penalty clause.

I must state at this juncture that what makes the case at bar difficult and seemingly complicated is the long line of decisions We have to reexamine if We must straighten out once and for all the juridical conceptualization We have attached to the nature of the agreement embodied in the "Deed" in question. At least inferentially, if not directly, We refer to it as "a promise to sell immovable property, where title remains with the vendor until fulfillment to a positive suspensive condition, such as the full payment of the price," citing apparently in support of such conceptualization the cases of Santero and Inquimboy, supra, and Jocson vs. Capitol, G. R. No. L-6573, February 28, 1955; Miranda vs. Caridad, G. R. No. L-2077 and Aspuria vs. Caridad, G. R. No. L-2721, both of October 3, 1950.

As I have said, I have read and studied all these decisions, for no other reason than that I have always been intrigued by what is meant by a promise to sell an immovable with reservation of title and I naturally checked if the cited decisions have indeed formulated such a rather vague juridical concept which to my mind implies a juridically inconceivable notion. What I mean is simply that when one talks of a promise to sell with reservation of title, it is as if it were possible to have a promise to sell with delivery of title. Unless I am gravely mistaken, I am afraid that juridically it is quite absurd to think of a promise to sell with the title of the property promised to be sold being delivered immediately. It is very common to come across promises to sell where possession is transferred simultaneously upon the perfection or execution of the agreement, but I have yet to know of a case where title itself is so transferred.

What renders the idea of a promise to sell with reservation more perplexing to me is that in the Spanish law on sales, as contradistinguished from the concept of sales in American law, a contract of sale is purely consensual and does not necessarily involve the transfer of title except when it is so stipulated or when the sale is made in a public instrument, since the latter is in itself a form of delivery or tradition of title over immovable property. Very explicit in this respect are the provisions of Article 1450 of the Old Civil Code which says: "The sale shall be perfected between vendor and vendee and shall be binding on both of them if they have agreed upon the thing which is the subject matter of the contract and upon the price, even if neither has been delivered." Perhaps, the Spanish text is even more emphatic as to non-delivery of the thing and the non-payment of the price, as it provides: "La venta se perfeccionara entre comprador y vendedor, y sera obligatoria para ambos, si hubieren convenido en la cosa objeto del contrato, y en el precio, aunque ni una ni el otro se hayan entregado." And to bring out the point in bolder relief, I would add the pertinent comment of Manresa to the following effect:

"Expresamente dice el articulo que comentamos, que no es menester que se hayan entregado ni la cosa ni el precio para que el contrato de compra y venta se tenga por perfecto. Si alguno de esos requisitos fuese preciso, la compra y venta seria un contrato real en vez de consensual.

"Desde que se consiente, y sin necesidad de ninguna otra circunstancia, el contrato, repetimos, esta perfecto y nacen las obligaciones; pero la transmision de la propiedad no existe hasta que la cosa no ha sido entregada. La entrega de la cosa se refiere al periodo de consumacion; en el articulo que estudiamos se trata tan solo de fijar el momento de la perfection." (10 Manresa 56, id.)

And with particular reference to whether or not the parties can validly stipulate reservation of title, Manresa adds pointedly for the present case:

Se opone este art. 1.450 a que los contratantes establezcan el pacto de reserva de dominio, o lo que es igual, de que la propiedad de la cosa no se transmita al comprador mientras este no satisfaga la totalidad del precio? Entendemos que no, pues dicho pacto esta protegido por el principio de libertad en la contratacion proclamado por el art. 1.255 delCodigo. Luego veremos lo que sobre este punto ha declarado la jurisprudencia, y ya hemos anticipado algo acerca de ella en el comentario a los articulos 1.445 y 1.446." (Manresa 57, id.)

More extendedly, Manresa discusses the point thus:

"Para que nazcan las obligaciones en el contrato de compra y venta, basta que haya mediado el consentimiento, o es menester la previa entrega de alguno de los objetos sobre que recaen las prestaciones?

"El mismo art. 1.445 que comentamos nos da contestacion a esta pregunta. Dice que por el contrato de compra y venta, uno de los contratantes, se obliga a entregar una cosa determinada, y el otro a pagar, etc. Pues bien; desde el momento en que por el contrato se obliga a entregar y pagar, respectivamente, y no pagan ni entregan nada de momento las partes contratantes, es evidente que elCodigo, siguiendo en esto una no interrumpida tradicion juridica, ha considerado la compra y venta como un contrato consensual.

"No desvirtua esta afirmacion el que el art. 1.466 diga que el vendedor no estara obligado a entregar la cosa vendida si el comprador no le ha pagado el precio o no se ha señalado en el contrato un plazo para el pago, porque este precepto, lo mas que podria indicar es el orden de sucesion (por mas que, segun veremos mas adelante, ni aun ese alcance tiene) en que las obligaciones deben ser cumplidas; pero no puede llevar su trascendencia hasta el punto de negar el caracter consensual de la compra y venta. Notese, ademas, que la obligacion del comprador de pagar el precio nace desde que existe el consentimiento, y desde entonces es exigible, salvo el caso del plazo pactado, aplazamiento que se concibe en los contratos verdaderamente reales.

"De que las palabras se obliga a entregar han sido puestas deliberada y reflexivamente en el art. 1.445, convence, desde luego, la comparacion de este articulo con otros, en los que el mismoCodigo consigna la definicion legal de contratos que son evidentemente de naturaleza real, tales como el prestamo y el deposito. El

art. 1.740 define el prestamo diciendo: 'Por el contrato de prestamo una de las partes entrega a la otra, o alguna cosa no fungible para que use de esta por cierto tiempo y se la devuelva, en cuyo caso se llama comodato, o dinero u otra cosa fungible, con condicion de volver otro tanto de la misma especie y calidad, en cuyo caso conserva simplemente el nombre de prestamo'. El art. 1.758 define el deposito diciendo: 'Se constituye el deposito desde que uno recibe la cosa ajena con obligacion de guardarla y restituirla.'

"De manera que, segun elCodigo, para que queden constituidos los contratos de prestamo y deposito, es menester que medie la entrega de presente, porque, si no existe tal entrega, no hay contrato; habran nacido, si, vinculos juridicos, relaciones obligatorias entre las partes, pero esos vinculos y esas relaciones no seran las que constituyen el contenido propio de los contratos de prestamo y deposito, porque en la tecnologia admitida se ha convenido en afirmar que tales contratos no tienen realidad juridica sino cuando se da el supuesto de hecho de la entrega de la cosa; por esto se han llamado reales, y por esto se puede decir que continuan siendo de naturaleza real despues delCodigo.

"Comparando las definiciones legales que acabamos de citar, y observando las diferencias de expresion que elCodigo emplea, no es licito, en buenos principios de interpretacion, establecer sinonimias que no existen, sino, por el contrario, pensar que cuando elCodigo, en la compra y venta, ha dicho se obliga a entregar, y en el prestamo y en el deposito entrega y recibe, ha consignado de un modo indudable la naturaleza consensual del primer contrato y la naturaleza real de los dos ultimos.

"La jurisprudencia, por lo demas, ha confirmado reiteradamente el caracter consensual de la compraventa. La sentencia de 8 de Marzo de 1901 dice que este contrato, como consensual que es, se perfecciona por el consentimiento en el precio y en la cosa y se consuma por la entrega reciproca de uno y otra, transfiriendose al comprador el pleno dominio de la cosa vendida, desde cuyo momento cabe ejercitar las acciones que de este derecho se derivan; y la de 22 de Diciembre de 1908 afirma que basta para que exista el contrato de compraventa que reciprocamente se obliguen el vendedor a entregar una cosa determinada y el comprador a pagar por ella un precio cierto, quedando con esto perfecto el contrato, aun no habiendose hecho entrega de la cosa y el precio; sin que el acuerdo posterior subordinando la entrega del precio a la inscripcion de la finca en el Registro a nombre del comprador, pueda interpretarse en el sentido de que no se perfeccione el contrato, pues no es mas que una circunstancia accessoria que integra su consumacion." (10 Manresa 11-13, id.)

To fully comprehend the point under discussion, from a point of view which is not Manresa's, We only have to read the pertinent portion of the Report of the Code Commission on the Proposed Civil Code of the Philippines:

"The name of Title VI has been simplified by calling it 'sales', and the name of the contract has been changed, for the same reason, to 'contract of sale.'

"It is required in the proposed Code that the seller transfer the ownership of the thing sold (arts. 1478, 1479, 1515, 1567). In the present Code (art. 1445), his obligation is merely to deliver the thing, so that even if the seller is not the owner, he may validly sell, subject to the warranty (art. 1474) to maintain the buyer in the legal and peaceful possession of the thing sold. The Commission considers the theory of the present law unsatisfactory from the moral point of view." (At p. 141)

and consider that Article 1478, a new provision of the New Civil Code, specifically authorizes the parties to stipulate "that the ownership in the thing shall not pass to the purchaser until he has fully paid the price", which makes the sale what Laurent calls a "venta a la romana", and which precisely is the nature of the contract We have before us in this case. Thus, it is my humble view that, contrary to what seems to be implied from the portion of Manuel quoted in Our decision and resolution of denial in this case, the reservation of the title does not strip or divest the agreement of its character as a sale and much less does it make it a promise to sell. I reiterate, the reservation of title is irrelevant in a promise to sell for the simple reason that it is in its very nature that transfer of title is not involved and cannot even be contemplated.

The opinions in *Jocson vs. Capitol*, *Miranda vs. Caridad* and *Aspuria vs. Caridad*, supra, are of no assistance in this discussion of juridical concepts because in all of these three cases, the decisions themselves state that what were involved were an agreement "promising to convey" (in *Jocson*) and contracts "whereby (Caridad Estates) undertook to sell to the plaintiffs" real estate, or undisputedly contracts to sell. I have no quarrel with the proposition that Article 1504 does not apply to contracts to sell as held by the Supreme Court of Spain in its decision of October 7, 1896, which is the only one cited by Manresa in his comments under Article 1451 and which refers to a contract which is expressly a mere promise to sell.

It is the opinion of Justice Ozaeta in *Albea vs. Inquimboy*, supra, that calls for a little elucidation. After stating the facts of the Santero case in the following manner:

"In the Caridad Estates case the plaintiff sold certain lots to the defendant for P30,000 payable as follows: P1,500 on the execution of the agreement; P4,000 in or before December, 1935; P4,500 in or before March 1936, and the remaining balance of P20,000 in ten years, each annual installment to be paid on or before the end of August of each year beginning 1937, with the stipulation that should the vendee fail to make the payments agreed upon within 60 days of the date they fell due, the total balance shall become due and payable and recoverable by an action at law, or the vendor may, at its option, recover possession of the property sold, in which case any and all sums paid by the vendee under the provisions of the contract shall be considered as rental for the use and occupancy of the property. After paying various sums aggregating P7,590, the vendee defaulted in the payment of the subsequent installments, and the vendor rescinded the contract of sale by so notifying the vendee and by selling the property to another party, thereafter instituting an action of unlawful detainer against the vendee to eject him from the property. This Court sustained the action of the vendor. Notwithstanding that the vendee tendered payment to the vendor of the installment in arrears and deposited it in court before the vendor made a demand either judicially or by a notarial act, this Court refused to apply article 1504 of the Civil Code, on the ground that it was not applicable because the contract involved was 'a sale in installment in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. There is, consequently, no occasion for the application of the requirements of article 1504.'" (at pp. 480-481)

the opinion goes on to say that:

"The contract Exhibit A involved in the present case, was one of absolute sale whereby the vendor Inquimboy transferred and conveyed his title to the land in question to the vendee Albea to enable the latter to mortgage it together with his other properties to the Agricultural and Industrial Bank and thereby secure the necessary amount with which to pay the purchase price to the vendor. In a separate document (Exhibit B) he agreed to pay that price as follows: P2,500 on or about November 15, 1941, and P500 in May, 1942, with the proviso that should he fail to pay the said sum of P2,500 on or before November 15, 1941, the deed of absolute sale Exhibit A 'shall ipso facto be deemed cancelled and rescinded and that I shall execute and give the corresponding deed of cancellation and rescission.' In other words, the vendee agreed to retransfer or reconvey the property to the vendor should the former fail to pay the first sum of P2,500 on the date stipulated.

"That contract is different from the one involved in the Caridad Estates case, in that the latter was not an absolute deed of sale but a mere contract to sell whereby the vendee agreed to pay the purchase price in various installments with the stipulation that, upon failure to pay any installment within 60 days after due date, the vendor may, at his option, recover possession of the property and consider any and all amounts already paid as rental for the use and occupancy of the property. In that case there was no need for the vendee to execute any deed of reconveyance to the vendor because by the said contract to sell the title had not passed to him." (At pp. 482-483).

I cannot find any warrant for the observation that in the Santero case what was involved was "mere contract to sell," hence there was "no need for the vendee to execute any deed of reconveyance to the vendor because by the

said contract to sell the title had not passed to him." Plainly, Justice Laurel referred to the transaction in Santero thus: "About three months prior to the expiration of the contract of lease, or on August 24, 1935, the lessor sold the same lots to the lessee" (At pp. 115-116) and with particular reference to the contract itself, he said that "The contract (Exhibit A) is a sale in installments in which the parties laid down the procedure to be followed in the event the vendee failed to fulfill his obligation" (at pp. 120-121). I reiterate that as I see it, the Santero case was not decided on the basis of the contract therein involved being a promise to sell; rather, what Justice Laurel held was that there was no pactum commissorium in said contract, that under the law, it was within the freedom of the parties to stipulate that upon failure of the vendee to pay any installment of the purchase price, the vendor may declare the contract cancelled, forfeit all payments already made and recover possession of the property sold. I reiterate also that Justice Laurel could not have referred to a promise to sell with reservation of title, for the simple reason that as I have already explained, juridically speaking, it is not proper – at least, it is not usual – to conceptualize any transaction as such, it being obvious that title is always reserved in any promise to sell.

It was only in *Manuel vs. Rodriguez*, 109 Phil. 1, that this Court "created" the concept of "a contract to sell or promise to sell", where title remains with the vendor until fulfillment to a positive suspensive condition, such as full payment of the price.

I have taken pains to analyze all the decisions cited in *Manuel*, to verify whether or not there is really in the earlier jurisprudence such a concept of a promise to sell wherein title is reserved by the vendor. The result of the foregoing discussion, as can be seen, is that it was only in *Manuel* that this Court spoke first of such a concept, which it is suggested We should apply in the case at bar. I regret I cannot accede to the suggestion. The concept proposed does not conform with my studies of the juridical nature of a promise to sell as distinguished from a contract of sale. I insist that the so-called suspensive condition affecting the transfer of title only after full payment of the price, an admittedly licit one, does not detract from the character of the contract here in question as a perfected contract of sale – indeed, partially consummated by the delivery of possession of "the thing" (per *Maresa*), if We may borrow the characterization made by Justice Imperial of the contract in the *Ah Sing* case, *supra*. For that matter, neither does the condition that upon failure of Maritime to pay any installment, the contract would be cancelled, all past payments forfeited and Myers would be entitled to recover possession – vary a bit the real nature of the contract. In fact, it is my considered view that it is this condition as to breach that is determinative of the rights of the parties in this case, since what is in issue here, as I see it, is not the right of Maritime to compel delivery of title, but only whether or not the whole contract should be held to have been properly and legally cancelled by Myers, thus depriving Maritime of further opportunity to continue paying the balance of the stipulated purchase price.

My understanding of the contract of sale, known before the New Civil Code as "Purchase and Sale", is that it is a bilateral contract which is a composite of various obligations, depending on the terms agreed upon by the parties regarding the payment of the price, on the one hand, and the delivery of the thing sold and the title thereto, all of which are reciprocal, as distinguished from correlative ones. Thus, once the parties have agreed upon the thing and the price, the contract of sale comes juridically into being as fully as any other perfected contract, without prejudice to the parties laying down as they may agree the terms of payment, on the one hand, and the delivery of the thing and the title thereof, on the other. Of course, these conditions are reciprocally obligatory or binding; the sale is consummated upon fulfillment by both parties of their respective obligations; but, pending such consummation, in the event of breach by anyone of them, the corresponding rules established by law come into play, among them, Article 1234 (new), as applied in *Javier*, *supra*, and Article 1124, as applied to sales of movables, and, of course, Article 1504 which is the variant of Article 1124 applicable to sales of immovables (per Justice J.B.L. Reyes in *Gabuya vs. Cui*, 38 SCRA 85, at p. 97).

I believe Manresa's opinion on the matter which is expressed thus:

"Afirmamos entonces que, en la manera en que la ley podia hacerlo, elCodigo admitia de un modo expreso o tacito la distincion de los contratos en unilaterales y bilaterales, conmutativos y aleatorios, onerosos y a titulo gratuito, nominados e innominados, consensuales y reales, con forma especial y sin forma determinada, principales y accesorios. Veamos ahora en que extremos de estas clasificaciones esta comprendido el contrato de compra y venta, lo cual contribuira a fijar su naturaleza con precision mayor que la que puede exigirse a una definicion legal.

"Se nos fijamos, en primer lugar, en la indole de las obligaciones que del contrato de compra y venta se derivan y en la especial connexion que entre ellas existe, observaremos la nota de reciprocidad (que no es lo mismo que correlatividad) que es la característica de las obligaciones bilaterales; pues como no hemos de entender, como muchos han entendido, que contratos bilaterales son aquellos que desde el momento de su perfeccion producen obligaciones para las dos partes contratantes, cualquiera que sea la relacion que entre ellas exista, sino que damos el nombre de contratos bilaterales a los que son generadores de obligaciones de esta clase, es decir, de obligaciones de tal naturaleza que entre ellas se da la mas perfecta reciprocidad, siendo la una condicion de la otra, hasta el punto de que no se conciben aisladamente; a poco que nos fijemos en el vinculo juridico que la compra y venta crea y en los fines utiles que con ella se logran, veremos que entre las obligaciones principales de comprador y vendedor (entregar el precio y la cosa respectivamente), se da esa relacion de reciprocidad, tan intima y sustancial, que no se comprende la entrega del precio sin la de la cosa, ni viceversa. Se debe pagar el precio porque nos deben dar la cosa comprada, y nos debe ser entregada esta porque hemos de satisfacer el precio.

"Este caracter de reciprocidad, o, lo que es lo mismo, la naturaleza bilateral del contrato de compra y venta, ha sido afirmada por el Codigo, de modo que no deja lugar a duda, desde el momento en que el articulo 1.503 alude a posible aplicacion del articulo 1.124, que es el que trata de las obligaciones reciprocas. Es, por lo tanto, el de compra y venta un contrato bilateral." (10 Manresa 9-10, id. –

I would therefore, separate the so-called suspensive condition regarding the delivery of title as affecting solely the obligation to deliver title which is not of immediate juridical essence in a perfected contract of sale from the breach, allegedly committed by Maritime, of the terms of payment, which is the one that would justify the cancellation made by Myers, if such breach did occur in legal contemplation. In a sense, all this discussion is my answer to the portion of the denial resolution which says:

"* * * The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms. In its suit Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, express or implied (article 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What it sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract, possession being a mere incident to its right of ownership. It is elementary that, as stated by Castan, –

'b) Si la condition suspensiva llega a faltar, la obligacion se tiene por no existente, y el acreedor pierde todo derecho, incluso el de utilizar las medidas conservativas.' (3 Castan, Derecho Civil, 7a Ed., p. 107).

"Movant Maritime's failure to take into account the fact that Myers' promise to sell was subject to a suspensive condition (not to a suspensive period) renders all its discussion about bilateral or reciprocal contracts and the application of Articles 1198 and 1592 of the Civil Code of the Philippines (both of which deal with rescission or resolution of contractual obligation) with consequent mutual restitution, a pure academic exercise without applicability to the case at bar."

The promise to sell has a distinct connotation in Spanish law which I feel cannot square with the contract here in controversy.

At the risk of stating the obvious, the concept of a sale or purchase and sale in Spanish law is defined in Article 1445 and the moment of the perfection of such a contract is fixed in Article 1450. On the other hand, precisely to avoid confusion of concepts, since commercial usages resort to varied forms of transactions revolving around the juridical idea of exchanging things for money, and it is not unusual for merchants to enter into preparatory agreements for business and other reasons before finalizing their deals, Article 1451 lays down specific rules regarding promises in regard to sales. Thus it provides:

"ART. 1445. By the contract of purchase and sale one of the contracting parties binds himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same." (Old Civil Code)

It is plain to see that this provision contemplates three kinds to promises, namely, (1) the promise to sell, (2) the promise to buy, and (3) the promise to buy or purchase and sell, the last being naturally mutual or bilateral.[8] For a fuller comprehension of the three types of promises as the same are understood in Spanish law, I quote from Manresa again:

"El primer parrafo del art. 1.451 emplea la frase de 'promesa de vender o comprar'; el parrafo segundo del mismo articulo dice 'promesa de compra y venta'. Son estos modos de decir equivalentes?

"Para hacernos cargo del sentido del articulo veamos las deferentes formal que puede revestir la promesa relacionada con la compra y venta, para examinar en seguida los efectos que de cada una de ellas se derivan.

"Desde luego se observa que la promesa puede ser unilateral o bilateral. La unilateral a su vez se distingue en dos: promesa de venta y promesa de compra. La bilateral, es claro que es reciproca, esto es, de compra y de venta.

"a) Promesa unilateral. — Esta promesa puede ser aceptada o no aceptada.

"La promesa unilateral no aceptada, ya sea de compra, ya de venta, no produce efectos juridicos apreciables de ninguna especie: este es el caso de la llamada policitacion. No es a el, ciertamente, al que se refiere el art. 1.451 delCodigo.

"En la promesa unilateral aceptada, sea de compra o sea de venta, es donde nacen ya efectos juridicos. Un individuo A. promete vender a otro B. Una finca por tal precio; B. acepta la promesa. Este es el caso de la promesa de venta aceptada. Quienes quedan, obligados y a que, desde el momento en que la promesa se acepta? No ha faltado quien diga que por el mero hecho de la aceptacion congruente con la promesa quedan obligadas las dos partes, la una a vender y la otra a comprar. Pero si atentamente examinamos el caracter de la relacion juridica creada, veremos que esa opinion no puede mantenerse en absoluto.

Que es, en efecto, lo que ha aceptado B. en el ejemplo propuesto? La contestacion es clara: B. ha aceptado la promesa, no el hecho de la venta con todas sus consecuencias. A. se ha constituido voluntariamente en la obligacion de vender a B., si este compra; B. ha aceptado esta obligacion; A. era dueño de prometer o de no prometer, pero prometio y su promesa transcendio a otra persona determinada, la cual acepto. La relacion juridica obligatoria queda establecida, siendo B. el sujeto pretensor y A. el sujeto obligado. B. no queda obligado a nada; le incumbe, por el contrario, la eleccion de llevar a cabo la compra o de dejar sin efecto la promesa de A.; si, haciendo uso de su eleccion, se decidiera por comprar, entonces nacerian sus obligaciones, que no serian otras que las de todo comprador.

"Este y no otro es, a nuestro juicio, el verdadero contenido de la promesa unilateral de venta simplemente

aceptada.

"A primera vista puede tal vez parecer anómalo el que la efectividad de la compra y venta, a que se refiere la promesa, quede al arbitrio de una sola de las partes; pero, observando el proceso generador de esta situación jurídica, nada hay en el que contradiga los principios fundamentales de la contratación, por haberse desenvuelto dentro del ambiente de la más amplia libertad, individual. Cuando el acto pase de la categoría de promesa a la de verdadera compra y venta por haberse decidido por comprar aquel a quien la promesa se hizo, entonces en modo alguno podrá decirse que la efectividad del contrato queda al arbitrio de una de las partes, y claro está que a ese momento es al que hay que referirse para ver si existe o no el vicio que algunos pretenden encontrar en el criterio que mantenemos.

"Por otra parte, si a los hechos de la vida real volvemos la vista, veremos que las cosas ocurren tal y como las hemos presentado, teniendo esta interpretación un firme apoyo en la conciencia de las gentes. El ejemplo que a diario se nos ofrece de la contratación sobre minas viene a las mientes desde luego.

"Cuando se trata de minas que aun no han sido objeto de explotación y en las que, por consiguiente, no se puede precisar si la cantidad de mineral existente respondera o no a los cálculos que se hayan podido hacer, llevan a cabo los mineros un contrato que entre sí denominan de opción, y que en el fondo no es más que una promesa de venta aceptada por la otra parte. La forma suele ser en sustancia la siguiente: X. se compromete a vender a Z. sus minas en tal precio, si este las compra en un plazo de cuatro meses. Es claro que X. no puede entrar en negociaciones con nadie mientras no transcurra los cuatro meses, pasados los cuales recobra su libertad. Z. no queda obligado a nada; únicamente tendrá que manifestar su voluntad de comprar o de no comprar dentro de los expresados cuatro meses; si deja pasar el plazo sin manifestar nada, pierde su derecho a la compra. Esos cuatro meses se emplean en investigaciones y

reconocimientos que verifica el que acepto la promesa y que le permitiran formar su juicio definitivo sobre el negocio. Si los trabajos hechos no dan resultado, es claro que no comprara; el promitente se habra abstenido de negociar durante el plazo marcado, y el que acepto la promesa habra perdido el dinero que empleo en las investigaciones. Esta forma de contratar se emplea lo mismo para la compra y venta de minas que para su arrendamiento, y es relativamente frecuente el que la opción se refiera a las dos cosas.

"Que calificación jurídica merece el acto relacionado sino el de promesa unilateral de venta aceptada? (1). Pues bien; en ese acto se ve bien claro que el que acepta la promesa no queda obligado a nada, porque, notese bien, ha aceptado la promesa y no la compra y venta. No es posible descubrir más obligación que aquella en que voluntariamente se ha constituido el que prometió.

"Para ver la duración de esta obligación hay que tener en cuenta si al prometer señaló el promitente plazo a la otra parte, o no, para que manifestase su decisión, o si la misma promesa estaba afectada por alguna condición.

"Si medio señalamiento de plazo (ya lo hemos indicado antes incidentalmente), la obligación del promitente, cuya promesa fue aceptada, dura todo el plazo marcado, Si no hubo tal señalamiento, entendemos que los Tribunales deben señalarlo, pues no parece lícito que el aceptante de la promesa se pueda tomar toda la vida del promitente para manifestar si compra o no, ni que este pueda rechazar la acción del aceptante que se decidió por comprar y que exige la efectividad de la compra y venta, alegando que no se fijó el momento oportuno para celebrar el contrato.

"Si la promesa estaba afectada por alguna condición, como, por ejemplo, si se dejese 'prometo venderte esta casa por tal precio si ocurre tal hecho', y esta promesa fuese aceptada, la obligación del promitente durara hasta que ocurra ese hecho o hasta que sea evidente que ya no puede ocurrir por haber transcurrido el plazo dentro del cual tenía que suceder, en el caso de que se hubiese este marcada, o por otras causas; criterio conforme con el que el Código mantiene en la sección primera, capítulo 3.º tit. 1.º del libro 4.º al hablar de las obligaciones condicionales.

"No hay para que decir que el promitente, antes de que su promesa sea aceptada, puede retirarla en todo momento, puesto que, siendo la aceptacion lo que produce el vinculo juridico, es claro que, no existiendo este, no hay perjuicio posible para nadie. A este efecto, conviene tener en cuenta el criterio que el parrafo segundo del art. 1.262 sostiene hablando del consentimiento en los contratos.

"La aceptacion hecha por carta, dice, no obliga al que hizo la oferta sino desde que llevo a su conocimiento. De suerte que, segun este criterio, el promitente puede retirar su promesa, por excepcion, aun despues de ser esta aceptada, siempre que en el momento de retirarla no haya llegado aun a su conocimiento dicha aceptacion. Esto, en la practica, implica una serie de problemas de mera prueba de hechos, que habra de resolver con arreglo a los principios generales.

"En todo lo que llevamos dicho venimos refiriendonos a la promesa de compra o de venta en que media precio, es decir, en la que el promitente consigna de un modo expreso un precio cierto o de certeza determinable, a tenor de los articulos 1.447 y 1.448 delCodigo; pues si se dijese solamente: prometo vender a Juan tal cosa, o prometo comprar a Pedro tal otra, no habria lugar al nacimiento de la relacion juridica, cuyo contenido acabamos de exponer. La razon es muy clara: una manifestacion de voluntad hecha en esa forma tiene tales caracteres de vaguedad, que carece de aptitud para engendrar relaciones juridicas eficaces dentro del derecho del Estado, cualquiera que sea la opinion que sobre ella se forme en la esfera del derecho puramente individual, cuya sancion radica en la conciencia. Al Estado importa, para la mayor firmeza de su derecho y por la naturaliza de sus funciones, que las posiciones de la voluntad individual que dan origen a los actos juridicos, sean suficientemente apreciables, mediante las formas de expresion, a fin de evitar posibles alegaciones de propositos o de motivos que la falta de concrecion en la forma pueda mantener encubiertos, con perjuicio de la buena fe que debe imperar en los contratos. Por otra parte, como se fijaria el precio si el que acepto la promesa quisiese llevar a efecto la compra y venta? No habria, en realidad, terminos habiles para fijarlo, puesto que no se puede imponer una estimacion pericial que no ha sido pactada. Es decir, en esa compra y venta no habria legalmente precio.

"Se ha discutido si el derecho que se deriva de una promesa unilateral aceptada puede ser cedido Realmente, el punto nos parece de dificil solucion.

"El art. 1.112 delCodigo dice que todos los derechos adquiridos en virtud de una obligacion son transmisibles con sujecion a las leyes, si no se hubiese pactado lo contrario; pero, a pesar de este principio general, parecenos que habra no pocos casos en que la promesa se lleve a efecto en atencion a las circunstancias personales de aquel a quien se hace, por cuyo motivo muestrase, en nuestra opinion, como justa la aplicacion en dichos casos del criterio que inspira la excepcion consignada en el art. 1.257, que el afirmar que los contratos solo producen efecto entre las partes y sus herederos, salva, en cuanto a estos, el caso de que los derechos y obligaciones que procedan del contrato no sean transmisibles por su naturaleza, por pacto o por disposicion de la ley.

"No se trata ciertamente en la cuestion propuesta de herederos, sino de terceros, por cuyo motivo aparece mas clara la aplicacion del indicado criterio.

"Creemos que los Tribunales, para resolver en cada caso concreto si puede ser o no objeto de cesion el derecho adquirido por una promesa unilateral aceptada, deben examinar cuidadosamente si las circunstancias personales de aquel a quien se hizo fueron motivo determinante en el animo del prominente para llevarla a cabo.

"Es claro que dentro delCodigo la prueba de la existencia de esa causa correspondera al que la alegue, y que no demostrandose, habra que estar por la posibilidad legal de la cesion, lo cual tal vez de lugar en la practica a soluciones poco equitativas; pero esa es la consecuencia indeclinable del articulo 1.112.

"La doctrina que hasta aqui hemos expuesto, es igualmente aplicable a la promesa unilateral aceptada de venta que a la de compra.

b) Promesa bilateral. – Esta promesa es la reciproca, es de compra y venta. Cuando por ambas partes es aceptada, tiene el mismo valor que lo que hemos venido llamado contrato de compra y venta. Para convencernos de ello basta con tener presente que todos los requisitos esenciales de dicho contrato se dan en esta situacion juridica.

"El Codigo asi lo reconoce en el articulo que comentamos al afirmar que, habiendo conformidad en la cosa y en el preco, dara derecho a los contratantes para reclamar reciprocamente el cumplimiento del contrato." (10 Manresa 61-66, id.)

In the light of the foregoing comments of Manresa, I find it impossible to attach to the contract before Us the concept of a unilateral promise to sell. I emphasize again, if Myers did intend it to be so, why did it use language more suggestive of bilaterality; why must it hold tenaciously now, as an afterthought, I must say, to no more than the clause on reservation of title and the pactum commissorium as indicative of such an intent? What is worse, as I have already shown, the reservation of title is immaterial, and the pactum commissorium, far from being proof of a mere promise to sell, is more suggestive of a conditional sale – and I add, very importantly, it cannot be said that Article 1504 is applicable only to an absolute sale because the very fact that breach in payment is conceded therein to be valid ground for cancellation implies that the sale is conditional, except that the law grants automatically to the vendee the right to continue paying even after breach or default as long as the vendor has not made any notarial or judicial demand for cancellation or resolution. A promise to sell is generally conditional or with a term, but a conditional sale is not a promise to sell only because it is not absolute.

Incidentally, I need not discuss the issue discussed by appellant in its motion for reconsideration, with profuse citation of authorities, that a contract to sell is tantamount to a contract of sale, for as I have discussed above, I cannot find any room for agreeing to the far-fetched view that the contract here in question is a mere promise to sell.

For the purposes of Article 1504, and under the circumstances of this case, may the cross-claim interposed by Myers in its answer to the interpleader complaint of Luzon be deemed as the judicial demand that should foreclose any right on the part of Maritime to continue paying under the "Deed in question? My answer is no.

Upon the foregoing premises, the question that arises is in respect to the following holding in Our decision in this case:

"Assuming arguendo that Article 1592 (1504) of the Civil Code is applicable, the cross-claim filed by Myers against Maritime in the court below constituted a judicial demand for rescission that satisfies the requirements of said article." (At p. 104)

I cannot help suspecting that somehow there is in this statement in the opinion of the ponente a grudging concession, if not a subconscious admission, that, after all, the characterization of the contract in question as a mere promise to sell is at least open to opposing views, not altogether to be disregarded or ignored. In any event, I beg to disagree with the view that under the circumstances portrayed in the earlier portion of these observations, the cross-claim filed by Myers against Maritime under date of July 25, 1961 in its answer to Luzon's complaint in interpleader satisfies the requirement of Article 1504 and precludes Maritime's right to insist on the enforcement in its favor of the Deed in question.

It bears noting, in this connection, that after its undelivered letter to Maritime of May 16, 1961, Myers actually made its demand for rescission pursuant to the contract in its letter of June 5, 1961. Why this demand was not made in a notarial form has not been explained. Instead, without further ado, Myers notified Luzon of its cancellation letter on the same day by furnishing Luzon copy thereof. (See Exhibit 2, Myers and also Exhibit 3, Myers). This notification was followed three days later, or, on June 8, 1961, with a demand upon Luzon to pay all due rentals to Myers instead of to Maritime, in view of which Luzon instituted the present interpleader case on

June 17, 1961.

Maritime was unaware of these developments except of the letter of June 5, 1961. The order of interpleading was issued only on June 21, 1961 (pp. 15-16, Rec. on Appeal) and judging from the fact that Maritime's motion to dismiss was filed only on July 18, 1961 (p. 16, id.), it is reasonable to presume that Maritime must have been served with summons not earlier than July 3, 1961. At that time, Myers considered the contract as already cancelled and any payment by Maritime would have been refused. But even putting that point aside, it is noteworthy that soon after Myers filed its cross-claim on July 25, 1961, on July 28, 1961, Maritime already asked for its dismissal, as it asked for the dismissal of Luzon's interpleader complaint, but Myers sort of abided by the interpleader and made no objection to the deposit of P10,000 for June, and, of course, the deposit for July of another P10,000 made before July 10, 1961. (See p. 15, Rec. on Appeal). Consequently, when Myers filed its cross-claim on July 25, 1961, there were already P20,000 deposited with the court for the benefit of either Myers or Maritime, as the final outcome of the case may dictate. I submit that in law and in equity, these P20,000 should be considered as a substantial compliance by Maritime of the requirement of payment under Article 1504, because the principle in equity is that when there is substantial compliance with an obligation, as I feel a deposit in court should be such substantial compliance, what ought to be done is deemed done. (Cf. Art. 1234, New Civil Code, J.M. Tuason vs. Javier, supra). So that together with the P5,000 draft 9 drawn by Schedler against the National City Bank of New York, the five installments for March, April, May, June and July, 1961 must be deemed to have been paid by July 10, 1961 before the cross-claim of Myers was filed. In any event, the deposit of August, 1961 made before August 10, 1961 (there being no showing to the contrary) was more than enough to cover even the undelivered draft of P5,000. My conclusion, therefore, is that Maritime paid before the judicial demand made by Myers on July 25, 1961 or, at least, that there was substantial compliance with the obligation on the part of Maritime from the point of view of Article 1504 of the Old Civil Code.

Having gone thru considerable length in trying to separate the chaff from the grain found in this case and to point out reasons for a second hard look at the doctrinal dicta contained in the majority resolution, it is already a source of genuine satisfaction for me – and it is with gratitude that I acknowledge – that one or two of my colleagues in the majority have expressed in the deliberations and after reading the draft of this opinion, agreement with my view that the contract herein is not a promise to sell and, according to them, if they feel that Article 1504 is not applicable to the facts hereof, it is only because they are not convinced that the deposits made by Luzon in connection with its interpleader can be considered as the payment that should be made before the judicial demand referred to in said article, on the assumption, of course, that the cross-claim of Myers of July 25, 1961 as the judicial demand therein contemplated. In connection with this view of my colleagues, I find the same to be premised more on a literal interpretation than on a substantial construction consonant with the spirit and underlying principle of the provision under discussion. I reiterate that the proviso of Article 1504 (1592) allowing payment by the vendee even after he has undisputably defaulted in his obligation stipulated in the terms of the agreement is a legislative remedy intended to temper a la Portia the harshness of the enforcement of the condition of the parties amounting to a pactum commissorium which is generally frowned upon. Accordingly, it is my understanding that in the application of this proviso, We should not be restricted to a literal interpretation thereof. I feel very strongly that in applying the same, We need not close our eyes to the environmental circumstances of each particular case and refuse to see whether or not, on the one hand, the contract as a whole would be in grave danger of being disregarded by the defaulting party, and, on the other, whether or not substantial injury would be caused to the other party if the default were to be virtually condoned. To my mind, this is the attitude that the law enjoins We should take when confronted with cases of the nature of the one at bar. In the same sense, I would add that in the event of doubt, We should lean towards liberality in favor of the vendee who, after all, has already parted with money which the vendor has already made use of in the way or ways he must have had in mind when

he decided to sell, rather than in favor of the vendor who, if he had wished it, could, under the law, have peremptorily cut-off any further opportunity of the vendee by simply making a notarial demand.

Moreover, I submit that my colleagues are overlooking that under the law on payments, the concept of payments is not limited exclusively to the actual delivery of pesos and centavos at the appointed time. The law cannot ignore that circumstances can and are bound to arise in which to confine the meaning of payment to that sense would be violative of substantial justice and equity and even revolting to the conscience. It is this spirit that animates Article 1234 found in the New Civil Code and makes it the articulation of a sound principle of fairness in the legal field of obligations.

Article 1234, to reiterate, reads thus:

"Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

As I have already mentioned earlier, none could have expounded more accurately and eloquently by actual application the meaning and intent of this article as Our Chief Justice did in *J. M. Tuason vs. Javier*, supra. That he now sees the situation in this case differently because the parties herein are commercial giants having the best lawyers at their beck and call to take care of the protection of their respective interests and, therefore, do not deserve the exercise of the equity jurisdiction of our courts and the benign spirit of the said provision may not be altogether groundless, but I dare say that one would feel better the evenness of justice and its disdain for any instance of possible unequal protection of the laws if no such distinction were drawn.

Furthermore, I maintain that it is not difficult to conceive of situations wherein despite the debtor's willingness and readiness to pay, the compulsion of circumstances arising from causes either natural or legal would justify failure to make payments strictly according to the terms of a contract. It is part of the inherent mutuality of contracts that the fulfillment by the obligor of the obligations arising therefrom be completely unimpeded by any act of the obligee. In the same spirit that Article 1119 (now 1186) considers a condition fulfilled in instances when the obligor prevents its occurrence, Article 1100 (now 1169) in its last paragraph enjoins: "In reciprocal obligations (such as those in a sale), neither of the obligors shall be in default if the other does not fulfill or does not submit to the fulfillment of that which is incumbent upon him." In essence, this provision requires, in my opinion, that in reciprocal obligations a party who is himself in default or is guilty of breach of the contract, particularly when such infringement materially affects the capability of the other party to comply with his corresponding obligation, cannot in law, in equity and in justice charge the latter with default. Stated in terms of the facts before Us, since, as I have demonstrated, Myers prematurely cancelled the deed in question before Maritime was in default, and in consequence of such cancellation, Luzon, at the instance of Myers, stopped paying to Maritime the rentals which was the latter's wherewithal for the payment of the installments to Myers, and instead the rentals were deposited in court, it stands to reason that in law, in equity and in justice, such deposits must be deemed as the payment of the rentals required by Article 1504 before the judicial demand allegedly made by Myers in its cross-claim of July 25, 1961. To the contention that the deposit of Luzon in court cannot be considered as payment to Myers because Myers has not been free to use the money so deposited or that the said deposit deprived Myers of the use of the money due it, my simple answer is that the same situation obtains as to the rentals that would have been due Maritime had Myers not prematurely compelled Luzon to file this present interpleader and make said deposits. In the last analysis, the question should boil down to who committed a legal wrong or injury first, and in this respect, I have already shown that on the basis of the provisions of Article 1100 as applied in *Bayla*, supra, and as correlated with Manresa's view that demand cannot be waived under Article 1504, there can be no doubt that it was Myers who violated the deed in question first by cancelling the same without any prior demand upon Maritime.

This pose is further reinforced by the consideration that the long and short of the purpose of the letters of Schedler to Parsons, if they be of any legal relevance, is that Schedler did not wish Maritime to be in default, even as he hoped he could make some kind of arrangement regarding his claim against F. H. Myers and/or his estate and/or his heirs, which he assumed Myers could be liable for or would somehow assume. Frankly, I cannot see how the majority has been able to infer from the evidence that there was a deliberate intent on the part of Maritime to compel or coerce Myers to set-off Schedler's claim against F. H. Myers with the rentals due from Maritime to Myers. Admittedly, Maritime did make such a proposal, but its attitude was not as intransigent as the majority portrays it, for apart from the expressions of good faith and concern about possible default manifest in the letters of Schedler to Parsons, in its answer to Myers' cross-claim, Maritime very pointedly alleged:

"4. That cross-claim did not and never refused to make installment payments to cross-claimant, but the former merely suspended the said installment payments because of pending negotiations between cross-claimant, cross-defendant, plaintiff in this interpleader case, and L. R. Wentholt concerning contingent liability for any adverse decision against the Luzon Brokerage Company in the so-called LBC/Bataan labor case pending in the Supreme Court and docketed as G. R. No. L-17086;

'10. That pending the negotiations earlier mentioned, and in order to preserve money being paid to cross-claimant by cross-defendant under the Deed of Conditional Sale, E. W. Schedler as president of the latter suspended payment of the monthly installment of P5,000.00 in the meanwhile, with no intention, however, of violating the terms of the Deed of Conditional Sale;

'11. That to show the good faith of cross-defendant and that it did not intend to violate its obligation to pay the monthly installments of P5,000.00, its president, E. W. Schedler, sent a letter on June 21, 1961, apparently before any knowledge of the filing of this interpleader case by plaintiff, to the representative of cross-claimant, Charles Parsons, proposing to deliver installment payments to Charles Parsons to be held in escrow 'until the responsibility of any, of the various parties be determined,' and pursuant to the request of E. W. Schedler the undersigned counsel on June 29, 1961 also sent a letter to the Charles Parsons informing the latter that the president of Maritime Building Co., Inc. had instructed the undersigned counsel to pay installments due Myers Building Co., Inc., to Charles Parsons to be held in trust or escrow;

'12. That on July 6, 1961, Charles Parsons replied and informed the undersigned counsel that he was not in a position to accept installment payments by Maritime Building Co., Inc., in view of this interpleader case filed by plaintiff;

'13. That to further show the good faith of cross-defendant and that it has no intention whatsoever to violate the terms of the Deed of Conditional Sale E. W. Schedler on July 18, 1961 delivered to the undersigned counsel a Manager's Check drawn against the First National City Bank of New York dated July 25, 1961, in the amount of P5,000.00, with instructions to pay over this check together with the P20,000.00 already deposited in court by plaintiff as installment payments then due cross-claimant, but in view of the pendency of the Motion to Dismiss the Complaint and Motion to Dismiss the Cross-Claim, the undersigned counsel held compliance with this instruction of E. W. Schedler in abeyance;

'14. That to show the good faith of cross-defendant also, and that it never had the intention of violating the terms of the Deed of Conditional Sale, the undersigned counsel has been directed by E. W. Schedler to manifest in this Answer the willingness of cross-defendant to pay installments due cross-claimant from the amounts already deposited by plaintiff with this Honorable Court." (Rec. on Appeal, pp. 138-141).

All in all, it is my considered conviction that the equities in the case at bar preponderate abundantly in favor of appellee Maritime. The Court's decision and the denial resolution partake more of a legal solution which I have tried to show may not even be beyond dispute. To belittle Maritime's plea along the equity angle, the decision cites the rentals Maritime had earned from the subject property since 1949. I must say the evidence on this point is

inconclusive, but even if it were assumed as a fact that Maritime had leased the property since May, 1949 and continuously thereafter for a rental more than P5,000 a month, it is my feeling that the equity due Maritime is not to be limited to the recovery of the installments it has paid, for if juridically there are grounds to believe that the integrity of the contract in question has not been substantially impaired and that in the premises, Maritime has at worst acted in good faith, it stands to reason that what Maritime is bound to lose by Our sanctioning the cancellation of said contract includes the very property itself and the future rentals to be derived therefrom by Maritime, all of which formed part of its consideration for the P973,000 it had already paid Myers and the balance of the P1 M it was ready and willing to pay under terms which could not have materially deprived Myers of its own consideration in entering into the agreement. Contracts are solemn covenants not to be lightly overthrown at the slightest deviation from its terms by any of the parties thereto, for law and equity look more to the implementation and consummation of the agreement as a whole whenever any such departure is alleged and almost invariably favor the preservation of its integrity when substantial rights have not been considerably impaired. This to me is the wise, fair and just teaching of the jurisprudence all over the world in cases involving the construction and enforcement of contractual obligations. No less is embodied in the provisions of the Philippine Civil Code and the decisions of this Court I have made reference to in the lengthy discussion I have made above.

Considering that Our decision in this case is a unanimous one penned by no less than Justice J.B.L. Reyes whose views on the legal issues We have resolved are admittedly authoritative, ordinarily, my concurrence in a denial resolution should be practically a matter of course. After going over the motion for reconsideration, however, my curiosity was aroused by it principally on two points, namely, (1) the unhappy and helpless plight of thousands upon thousands of subdivision buyers who under the ruling We laid down are bound to suffer the loss of their life earnings only because of an oversight or difficulty in paying one or two installments, unless We firmed up the doctrine laid down by the Chief Justice in *Javier* or We made clearer their right to avail of Article 1592 of the New Civil Code under so-called contracts or promises to sell which are in vogue in subdivision sales; and (2) the clarification once and for all of the juridical concept We have been adopting in Our decisions concerning promises or contracts to sell with reservation of title, lest We perpetuate a posture in doctrinal law which may be questioned later.

IN VIEW OF ALL THE FOREGOING, I vote to grant the motion for reconsideration and to reverse the judgment of the lower court in accordance with the tenor of the above opinion.

[3] While it does appear that Maritime had secured from Myers a general consent or authority to lease the premises in question, the only leases extant in the record are those from April 1, 1959 to March 31, 1964 which was renewed for another five years from April 1, 1965 to March 31, 1969. There is no clear showing in the evidence of any earlier lease.

[4] As already stated in footnote (3), the last lease on record ended March 31, 1969.

[5] Exhibit 7, Maritime reads as follows:

May 14, 1959

Mr. Robert L. Bary, President
Bary Building Company, Inc.
Derham Bldg., Port Area
Manila

Dear Mr. Bary:

This will confirm verbal agreement arrived at in our conference and we hereby authorize you to sublease any part or all portions of the Bodegas in the Cristobal Compound, Paco, Manila, which are covered in the Deed of Conditional Sale made and executed by and between Myers Building Company, Vendor, and Bary Building Company, Inc., Vendee, on April 30, 1949.

It is understood and agreed that any sub-lease made of the said Bodegas is subject to the conditions of the abovementioned Deed of Conditional Sale and the sub-lessee shall be bound by all the terms and conditions of the said Deed of Conditional Sale as if the same were set forth.

It is further understood and agreed that the sub-lessee shall not assign or transfer its rights without the previous consent in writing of both the Myers Building Company, Vendor, and the Bary Building Company, as sub-lessor.

Yours very truly,

MYERS BUILDING COMPANY
F. H. MYERS
President

[5a] As already noted, the rental had in the meantime been reduced to P5,000 a month with interest at 5-1/2%.

[6] V. Articles 1190 and 1385, Civil Code of the Philippines.

[7] The Manila Racing Club case did not involve enforcement of the contract of sale between the parties, but merely the recovery of the installments already paid which the vendor had declared forfeited in its favor. Moreover, the contract therein was a purchase, not a promise to sell.

[8] It must be noted that the counterpart of this provision in the New Civil Code which is Article 1479 retains intact only the concept of the bilateral promise to buy and sell. With respect to the promise to sell and the promise to buy, the New Code has injected the requirement of a consideration different from the price as a condition sine qua non to the emergence of any rights on the part of the promisee to hold the promisor to his promise before the former exercises such right.

[9] Apparently, this draft remained in the hands of Senator Padilla as counsel for Maritime and Schedler awaiting the final decision of Parsons (Exhibits 13 and 14, Maritime).

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