

**JUAN T. BORROMELO, PETITIONER, VS. COURT OF APPEALS,
EMMANUEL B. AZNAR, ALMA AZNAR AND JOSE B. AZNAR,
RESPONDENTS.***G.R. No. L-31342. April 07, 1976*

Ponente: BARREDO, J.

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Cross-petitions for the review of the per curiam resolution of the Court of Appeals in CA-G.R. No. 30092-R. Juan T. Borromeo etc. vs. Emmanuel B. Aznar, et al., dated November 19, 1969 which reversed entirely its previous decision of January 30, 1968 thereby ultimately holding that the transactions in question are equitable mortgages instead of absolute sales of real properties and granting the heirs of the deceased. Simeon Rallos a period of one year from the finality of the resolution within which to effect a redemption of said properties, without prejudice to the right of the opposing party to foreclose the declared mortgages if no such redemption takes place and the amounts stated in the documents are not fully paid, and ordering furthermore the Aznars to pay said heirs P10,000 for and as attorney's fees and the costs. In G.R. No. L-31342, petitioner Juan T. Borromeo, as administrator of the estate of the deceased Simeon Rallos, prays for the modification of the per curiam resolution in order to include an award of moral and exemplary damages of P200,000 and P50,000, respectively, and to increase the award of attorney's fees to not less than P75,000, whereas in G.R. No. L-31740, the Aznars are asking that said resolution be set aside and that the decision of January 30, 1968 be reinstated and affirmed.

There are three preliminary questions We have to resolve. First, Borromeo contends that this Court has no jurisdiction to entertain the petition of the Aznars in G.R. No. L-31740 because the latter failed to file said petition within fifteen days from December 20, 1969, the date they were notified of the resolution now under review. Borromeo's theory is that upon the filing of his own petition in G.R. No. L-31342 on December 22, 1969, by way of appeal from the aforesaid resolution in so far as it failed to grant him the awards referred to in said petition, the Court of Appeals was divested of jurisdiction to entertain the motion for reconsideration which the Aznars filed on the same date, December 22, 1969, in the Court of Appeals praying for the reversal of the same resolution, copy of which had been received by them only on December 20, 1969. According to Borromeo, what the Aznars should have done upon being notified of the filing of the petition in G.R. No. L-31342 should have been to file already their petition for review with this Court instead of filing or continuing with their motion for reconsideration in the Appellate Court, and that since the latter court had lost its jurisdiction over the case by reason of his (Borromeo's appeal), citing in this respect the resolution of this Court of September 3, 1965 in G.R. No. L-24762 (Manila Electric Co. vs. Public Service Commission, et al), the Aznars' motion for reconsideration did not suspend their period for appeal to this Court which they made only on February 27, 1970 (erroneously alleged as March 11, 1970 by Borromeo).

Obviously, Borromeo's contention has absolutely no merit. To start with, when We issued Our resolution of January 13, 1970, granting the Aznars an extension of fifteen (15) days from the time they were to be notified of the resolution of the Court of Appeals of its action on their motion for reconsideration then still pending therein,

We already knew that the petition of Borromeo against the same resolution of the Court of Appeals had already been filed with Us. In other words, in that resolution, the Court already recognized the right of the Aznars to file their own separate appeal from the resolution of the Court of Appeals after the reconsideration thereof was to be denied by the Court of Appeals notwithstanding Borromeo's appeal was already with Us. Besides, to sustain Borromeo's theory would lead to the absurd proposition that one party may be deprived of the right to appeal from the portion of a decision against him just because the other party who had been notified of the decision ahead had already perfected his appeal in so far as the said decision adversely affects him. Indeed, We have already virtually ruled against such pose of Borromeo in *Timoteo Simsim vs. The Hon. Judge Feliciano Belmonte etc., et al.*, 34 SCRA 536 and *People vs. Ursua*, 60 Phil. 252. The Meralco resolution invoked by Borromeo is not in point.

Borromeo secondly tries to make capital of the fact that while it is true that the brief of the Aznars was filed on time, on August 31, 1970, the last day therefor, it did not contain a digest of the arguments nor the text of the resolution sought to be reviewed, which are required by the rules (Sections 1 and 6 of Rule 56 read together with Section 16 of Rule 46) and that these requirements were complied with only on September 19, 1970, for which reason, he prays that their appeal should be dismissed pursuant to Section 1 (b) of Rule 50. We are not impressed. The digest of arguments and the copy of the appealed resolution are not in strict sense parts of the brief as so as to justify the charge that the Aznars filed their brief in two parts. No conceivable prejudice could have been caused to anyone concerned by their late filing nineteen days after the reglementary period had expired, the brief itself, with the assignments of error and the arguments supporting them, having been filed already within said period. Of course, it would be ideal if all the requirements of the rules were complied with on time, but there is nothing in principle or in the precedents relied upon by Borromeo that makes it imperative for Us to dismiss an appeal upon no more ground than such obviously unintentional and harmless technicality as the omission of the requirements herein complained of.

The third preliminary issue raised by Borromeo is that the appeal of the Aznars in G.R. No. L-31342 involves purely questions of fact. It is argued that the reversal by the Court of Appeals of its original conclusion, upholding the trial court, that the transactions in question were absolute sales, by holding in its *per curiam* resolution that they were actually equitable mortgages, does not constitute an error of law but a mere reappraisal or reweighing of the evidence which it has the power to do. Borromeo insists that a ruling as to whether a transaction is a sale or a mortgage involves no more than evaluation of the evidence and is consequently a factual matter beyond the Supreme Court's authority to review except under peculiar circumstances that do not obtain here.

To be sure, this is not the first instance that a reversal by the Court of Appeals of its own original decision has been brought to Our attention. And indeed, where the reversal was the result exclusively of a reevaluation or reweighing of the evidence, this Court has refrained from interfering. No doubt, it would be inimical to the interest of justice and would not be conducive to the fair and just resolution of judicial controversies to deprive a court of the power to reconsider possible errors committed by it in any of its actuations. It is in fact one of the inherent powers of courts "to amend and control its process and orders so as to make them conformable to law and justice." (Section 5 (g), Rule 135). And the Court of Appeals is certainly included in the contemplation of such rule. The only limitation to this power is that it cannot be exercised anymore after the action or judgment concerned has already become final and executory by the expiration of the corresponding reglementary period for the purpose, this as a matter of public policy requiring that litigations should from the very nature of things have a definite conclusion at a given time even at the risk of occasional errors or unintended injustice.

We perceive however that the instant case does not fall under the foregoing principles. While the main impugned resolution does relate ultimately to factual conclusions of the Court of Appeals, We see that in reversing its previous findings of fact, which it arrived at after excluding on grounds of legal incompetency the corresponding

evidence presented by Borromeo, the Appellate Court first reversed those rulings on the admissibility of said evidence and declared them competent, and then predicated its new factual conclusions on these subsequently admitted evidence it had rejected in its original decision. And so, it is safe to presume that had not the Appellate Court reversed its legal rulings on the admissibility or competency of the evidence referred to, it would not have reversed its actual conclusion as to the nature of the transactions in controversy. Accordingly, and on the theory that if this Court should hold that the later rulings of the Court of Appeals on the admissibility of evidence are erroneous in law, the inevitable result would be that the factual conclusions of said court in its original decision, which were favorable to the Aznars, would be revived, it is now the position of the Aznars that their attack against said later rulings constitute legal issues over which this Court has jurisdiction. After carefully studying all the points respectively raised by the parties, We are convinced that this contention is well taken and We shall now proceed to resolve the legal issues on admissibility of evidence which are extensively, exhaustively and very well discussed by both counsel in their briefs and other papers filed with the Court and for which they are both worthily deserving of commendation for unusual diligence and expertise in the work of advocacy, thereby lightening considerably the work of the Court. We refer equally to the late Senator Vicente J. Francisco, counsel for Borromeo, and Atty. Ciriaco Lopez, Jr., who is appearing for the Aznars.

As already stated, the main controversy here centers on the true nature of the three documents, Exhibits A, B and C, which on their faces are unquestionably deeds of absolute sale of the real properties therein described executed by the deceased Simeon Rallos on various dates in favor of Emmanuel Aznar, in Exhibits A and C, and his sister, Alma Aznar, in Exhibit B. In his complaint in the court below, Juan T. Borromeo, as administrator of the estate of Simeon Rallos, alleged that these documents were in fact equitable mortgages to secure loans granted to Rallos by Matias Aznar, deceased father of Emmanuel and Alma, and prayed for their reformation. The trial court dismissed the said complaint and on appeal, said dismissal was affirmed by the Court of Appeals in its original decision of January 30, 1968 penned by Justice Ramon Nolasco and concurred in by Presiding Justice Francisco B. Capistrano and Justice Antonio Cañizares. The pertinent portions of said decision read thus:

"We have examined Exhibits A, B and C carefully, and we find them clear, unambiguous and unequivocal. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. (Article 1370, Civil Code.) The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention existed in the minds of the parties, but what intention is expressed by the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. (City of Manila vs. Rizal Park C., 53 Phil. 515; 17 C.J.S. 700.)

According to the testimony of Crispina Rallos Alcantara, who claimed to have been present when the transactions took place, her deceased father merely borrowed money from the late Matias Aznar in the sums of P6,000.00 and P35,000.00 and to secure the repayment thereof mortgaged to the latter the properties described in Exhibits A, B and C. She testified that the transactions were disguised as absolute sales and Rallos was assured by Matias Aznar that he could exercise the right to repurchase the lots and would deliver to him the corresponding options in writing.

We find the testimony of Crispina Rallos Alcantara in this respect unreliable and insufficient to justify the reformation of the instruments in question. While it is true that relationship does not disqualify a witness, it calls for a close scrutiny of his testimony. For obvious reasons, the testimony of close relatives by affinity or consanguinity to corroborate a claim is not given much credence. (People vs. Guzman, 70 Phil. 23.) As correctly observed by the trial court, her testimony cannot be considered as absolutely unbiased or impartial, as she was naturally interested in an outcome of the case favorable to the plaintiff. More than this, however, the record shows

that Rallos was even cautioned by his daughter Crispina and her husband before signing Exhibit A. The fact remains that Exhibits A, B and C were signed by Rallos himself as a party thereto. His successors-in-interest cannot now be heard to complain that the parties to said exhibits intended the same to be loans with mortgages contrary to what are clearly expressed therein. The natural presumption is that one does not sign a document without first informing himself of its contents, and that presumption acquires greater force where, as in the case at bar, not only one but several documents, executed at different times, were signed by Rallos (Javier vs. Javier, 7 Phil. 261.) It is the duty of every contracting party to learn and know the contents of a contract before he signs and delivers it. He owes this duty to the other party to the contract, because the latter may, and probably will pay his money and shape his action in reliance upon the agreement. To permit a party when sued on a written contract, to admit that he signed it but to deny that it expresses the agreement he made, or to allow him to admit that he signed it but did not read it, or know its stipulations, would absolutely destroy the value of all contracts. (Tan Tun Sia vs. Yu Bino Sentua, 56 Phil. 711; Moran, idem, pp. 123-124.)

The appellant urges that Exhibits A-2, A-3, B-3 and C-5, which, according to Crispina Rallos Alcantara, were her notations allegedly representing the deductions made by Matias Aznar for advance interest, attorney's fees and miscellaneous expenses, are corroborative of her testimony that the transactions in controversy were really loans with mortgages. We, likewise, find the said exhibits weak and unsatisfactory as evidence of the facts asserted. They are clearly self-serving, as they were admittedly prepared by the declarant herself (2 Wharton's Criminal Evidence, Sec. 690; 2 Jones on Evidence, 2d., Ed., Sec. 895), who was a daughter of the deceased Rallos and who cannot, therefore, be said to be disinterested witness. With respect to Exhibit J, the option to repurchase Lots Nos. 462 and 7032, also relied upon by the appellant as allegedly corroborative of the testimony of Crispina Rallos Alcantara that all the transactions in question were loans secured by mortgages, it is to be noted that said exhibit has to do with the two lots mentioned therein and none other. Certainly, it is no proof that Rallos was similarly given a written option to redeem any of the lots covered by Exhibits B and C, which, according to Crispina Rallos Alcantara, was taken back by Matias Aznar but never renewed. The evidence shows that the period fixed in Exhibit J expired without the lots involved being redeemed.

To show, too, that Matias Aznar had, agreed to the repurchase of the lots in question by Rallos, the plaintiff presented at the trial of the case Exhibit L, which appears to be a copy of a draft of deed of absolute sale. This exhibit deserves but the scantest consideration, it being undated, unsigned and unsubscribed by any purported party thereto. Besides, even granting *arguendo* that the same was prepared by a lawyer of the Aznars, as alleged by Crispina Rallos Alcantara, we fail to see its materiality to the resolution of the main issue involved in this case of whether or not reformation is proper or justified, as the draft appears to have been drawn in favor of Crispina Rallos Alcantara who was not a party to the instruments sought to be reformed, and there is nothing in said exhibit to indicate that the contested transactions were really loans secured by mortgages.

As to Exhibits Q, Q-1, Q-2, Q-3, R and R-1, which, according to the appellant, were erroneously ignored by the court below, the same invariably refer to an alleged indebtedness of Rallos to Matias Aznar and not to the defendants, Emmanuel and Alma Aznar, to whom the properties in question appear to have been sold (Exhibits A, B and C). The said exhibits fail to show clearly and satisfactorily that the transactions mentioned therein relate to the same transactions and the same parcels of land involved in the case at bar.

The appellant further contends that the considerations paid for the lots in dispute were very inadequate or unusually low which would justify reformation under the provisions of Articles 1602, paragraph 1, and 1604, of the Civil Code. This contention is untenable.

The evidence shows that Lot No. 7032 was sold to the defendant Emmanuel for P6,000.00 (Exhibit A), which was higher than its assessed value of P4,447.25 in 1954 when the transaction took place (Exhibit A-1). The price paid

for Lots Nos. 2713 and 7728 is P5,000.00 in lump sum (Exhibit B), while the price paid for Lots Nos. 519-B, 519-C, 467 and 490 is P40,000.00 also in lump sum (Exhibit C). The total consideration for said six lots is P45,000.00, which was more than one-half, or approximately 60%, of their total assessed value of P74,647.00 at the time of transaction in 1954 (Exhibits B-1, B-2, C-1, C-2, C-3 and C-4). It is to be noted that at the time of the sale, there was a mortgage encumbrance of P5,000.00 on Lots Nos. 2713 and 7728 in favor of the Go Chan & Sons Realty Corporation, while Lots Nos. 519-B, 519-C, 467 and 490 had a mortgage encumbrance of P20,000.00 in favor of the Philippine National Bank, which obligations were assumed by the defendants-vendees (Exhibits 27, 28, 29, 30, 32, 33 and 34). In fact, when Exhibit C was executed, the indebtedness to the bank was already due and demands for the payment thereof had been made upon Rallos (Exhibits H and H-1).

On this question of the valuation of the subject lots, the plaintiff presented Hipolito S. Ricardo, at one time Deputy City Assessor in Cebu City, who testified that the assessment of a real estate property was only about 40% of its fair market value, but the same was not the basis for determining the fair market value of a real estate property; that the factors considered by their office in appraising the fair market value of a real estate property were the transactions of the parties and the prices appearing in the deeds of sale of the adjacent or neighboring lots, but in the absence thereof, the capitalization system was used, based upon the investment in the property, its income, plus 6% interest annually after deductions for taxes paid, insurance premiums, repairs, losses and other miscellaneous expenses; and that in the assessment of real properties their office had a schedule of values to be followed, and a partial revision of the assessments was made yearly. According to him, however, their schedule of values was not applied in the assessment of Lots Nos. 2713 and 7728, covered by tax declarations, Exhibits B-1, and B-2, and subject matter of Exhibit B and of Lots Nos. 519-C, 519-B, 467 and 490, covered by tax declarations, Exhibits C-1, C-2, C-3 and C-4, and subject matter of Exhibit C. As to the assessment of Lot No. 7032, covered by tax declaration, Exhibit A-1, and subject matter of Exhibit A, the said schedule was used. At any rate, taking the assessed values of the seven lots involved in this case as a reasonable basis for determining their actual valuation at the time of the transactions, and considering the encumbrances existing on six of the lots and their purchase by the defendants, Emmanuel and Alma Aznar, at one time and in lump sums, this Court is not prepared to conclude that under the attendant circumstances, the considerations paid for the lots in question were unusually inadequate or shockingly low to warrant the application of the provisions of paragraph No. 1 of Article 1602 of the Civil Code on equitable mortgage. (*Manalo vs. Gueco*, 42 Phil. 925; *Cabigao vs. Lim*, 50 Phil. 844.)

The appellant points out that, according to the bank records, Exhibits T, T-1, U, U-1, V, V-1, W and W-1, the appraised values of the lots mortgaged with the bank were considerably higher than the prices paid for them. The fact remains, however, that the mortgage obligation of Rallos secured by the same six lots was only P20,000.00, which was assumed by the defendants-vendees. Besides, no bank appraiser or representative was presented by the plaintiff at the trial to testify as to how the appraised values appearing in said exhibits were arrived at.

On the other hand, the testimony of Vicente Kyamko, also relied upon by the appellant to prove the alleged fair market values of the subject lots, deserves but scant consideration. The said witness admitted that he was not a licensed appraiser, and that he did not know what the assessed values of the lots in question were in 1954, although, according to him, the assessed value of a real property was the basis for computing or estimating its fair market value. However, even granting *arguendo* that there were differences in value or some inadequacy of consideration here, nevertheless, the same cannot be said to be controlling when viewed in the light of the entire evidence adduced in this case. A difference in value is not always a decisive factor for determining whether the contract is one of sale with right to repurchase or a mere loan with guaranty. (*Ocuma vs. Olandesca* [CL] 47 O.G. 1902.) Mere inadequacy is not a sufficient ground for the rescission or resolution of a contract when both parties, as in the instant case, were in a position to form an independent judgment concerning the transaction. (*Askay vs. Coselan*, 46 Phil. 179.)

In its tenth assignment of error, the appellant assails the trial court's finding that the defendant vendees were in possession of the lots in question after the execution of the deeds of absolute sale, Exhibits A, B, and C. It contends that the defendants never possessed the contested lots. We see no merit in this contention.

The records show that after the execution of the documents in question, the defendants, Emmanuel and Alma Aznar, transferred in their names the tax declarations covering the properties sold to them, paid the taxes thereon and caused the issuance of new certificates of title accordingly (Exhibits 7, 8, 9, 10, 11, 12, 21, 22, 24, 25, 26, 35, 36, 37, 38, 39 and 40). They demanded for the payment to them of the rentals due from the tenants of the lots, and began to collect the rentals from them after the maturity of the promissory note of Rallos for P1,800.00, Exhibit I, which, according to the defendant, Emmanuel, represented the rentals for one year collected in advance by Rallos from the lessees. Thereafter, defendants Emmanuel and Alma Aznar filed detainer suits against those occupants who failed to pay their rents to them (Exhibits D to D-21, inclusive, 41, 41-A, 41-B, 41-C 41-D). Certainly, those facts belie the appellant's claim that the defendant vendees were never in possession of the lots in dispute.

From the evidence adduced, we are satisfied that after the execution of the deeds of absolute sale, Exhibits A, B and C, the defendants vendees took possession of the subject lots, and they were in possession thereof and collected the rentals due until the plaintiff's administrator was authorized by the court a quo to collect the rents and deposit them in a bank, subject to the court's disposition.

The appellant capitalizes, too, on the statement, Exhibit K, which allegedly shows that Matias Aznar charged Rallos with the payment of the taxes due on the contested lots. According to Crispina Rallos Alcantara, the said exhibit was prepared by an employee of Matias Aznar upon the latter's orders, when she went to see him concerning the repurchase of the lots. This, however, was denied by the defendant, Emmanuel Aznar, who claimed that after the sale, neither Rallos nor his daughter Crispina went to see any of the Aznars in their office for the redemption of the lots. The exhibit in question, allegedly a statement of account of Rallos to Matias Aznar involving the disputed transactions is neither dated nor signed, much less by the party sought to be charged. The alleged writer thereof was not presented at the trial of the case, and we have only the biased testimony of Crispina as to its authenticity or preparation. Even if it were true, however, that the writing was made, as alleged by Crispina, we cannot consider the name as proof of what was said or transacted then. The mere making of written memorandum immediately after the interview does not make the memorandum affirmative intrinsic proof of the things said or transacted. (32 C.J.S. 948.) Knowledge on the part of the person who made the memorandum, at the time it was made, that the statements or entries therein were correct must be shown (32 C.J.S. 947), and this the plaintiff failed to do. On the other hand, the record indubitably shows that after the execution of the questioned instruments, the taxes on the lots subject matter thereof were paid by the defendants vendees. Consequently, we hold that Exhibit K has no evidentiary value, and the lower court was correct in disregarding it." (Pp. 82-95, Record of L-31740.)

However, in its per curiam resolution of November 19, 1969, wherein Presiding Justice Capistrano who had by then been elevated to this Court was substituted by his successor Presiding Justice Julio Villamor, this rather strong disposition taken by the appellate court was completely reversed by itself as follows:

"While it is true that in our decision rendered in this case, we held that the notations or memoranda of Crispina Rallos Alcantara marked as Exhibits A-2, A-3, B-3 and C-5 were self-serving and unsatisfactory as evidence of the facts asserted (Decision, p. 24), the same, however, as now correctly contended by the plaintiff-appellant in his motion for reconsideration, may be considered as constituting part of the *res gestae*, and as such, are admissible in evidence to show the nature of the contracts in question and the relation of the parties involved.

'Statements, acts or conduct accompanying or so nearly connected with the main transaction as to form a part of it, and which illustrate, elucidate, qualify, or characterize the act, are admissible as part of the *res gestae*.

Accordingly, the attendant circumstances and the statements then made by the parties are admissible as part of the *res gestae* to show the execution of a contract, and, where relevant, matters said and done which parts of the *res gestae* of the negotiation and execution of a contract are admissible to show the existence and nature of the contract and the relation of the parties. Matters attendant upon a sale or conveyance may also be admissible as part of the *res gestae*. (32 CJS 30-32.)

'Conversations occurring during the negotiation of a loan or other transaction, as well as the instrument given or received, being part of the *res gestae*, are competent evidence to show the nature of the transaction and the parties for whose benefit it was made, where the fact is material.' (National Bank vs. Kennedy, 17 Wall. [U.S.] 19, 21 L. Ed. 554, cited in 20 Am. Jr. 575.)

'* * * The character of the transaction is precisely what the intention of the parties at the time made it. It will therefore be discovered that the testimony of those who were present at the time the instrument was made, and especially of those who participated in the transaction, becomes most important.' (Cuyugan vs. Santos, 34 Phil. 100, 114-115.)

Thus, while the testimony of Crispina Rallos Alcantara may not be free from bias, she being the daughter of the deceased, Simeon Rallos, the same should not, however, be totally rejected on the ground of bias alone (U.S. vs. Mante, 27 Phil. 124; People vs. Pagaduan, 37 Phil. 90), considering that it appears to be clearly and sufficiently supported by her memoranda which, as already stated, are admissible in evidence as part of the *res gestae* (Exhibits A-2, A-3, B-3 and C-5), and by the ledgers of the Philippine National Bank (Exhibits X and Y). Besides, mere relationship of a witness to a party does not discredit his testimony in court. (U.S. vs. Mante, *supra*.)

In this connection, the appellant has pointed out in his motion under consideration that on page 34 of this Court's decision, there was an erroneous citation of C.J.S., i.e., Vol. 32 pp. 947-948 thereof. The said citation, however, appears and may be found in the 1964 edition of the Corpus Juris Secundum, Vol. 32, pages 947-948.

In the case at bar, there is another factor why the transactions in question should be considered as equitable mortgages. This factor consists of the unusual inadequacy of the prices of the sale of the properties involved. For purposes of comparison, the prices paid for the properties mentioned in Exhibits A, B and C and the assessed values thereof are hereunder tabulated:

Lot No.

Purchase Price

Assessment as per Tax Declaration

7032

P 6,000.00 (Exh. A)

P 4,447.25 (Exh. A-1)

2713)

4,679.00 (Exh. B-1)

7728)

5,000.00 (Exh. B)

9,308.00 (Exh. B-2)

519-C)
150.00 (Exh. C-1)
519-B)
31,300.00 (Exh. C-2)
467)
17,760.00 (Exh. C-3)
490)
40,000.000 Exh. C)
11,440.00 (Exh. C-4)
P51,000.00
P 79,084.25

From the foregoing tabulation, it can be seen that the total amount paid to Simeon Rallos for all the properties involved is only P51,000.00 as against the total assessed values thereof which amounted to P79,084.25, or a difference of P28,084.25. In short, the total sum paid as purchase price for the subject lots represents only 64% of their total assessed valuation. To our mind, this constitutes a strong indication that the transactions in question were really loans with mortgages and not absolute sale.

Moreover, it appears that Lots Nos. 519-C, 519-B, 467 and 490 covered by the deed of absolute sale (Exhibit C) were previously mortgaged with the Philippine National Bank, which obligation was assumed by the supposed vendee in the transaction under consideration. As appraised by the Philippine National Bank and as shown in its inspection and appraisal report, marked as Exhibits T, U and V in this case, the market values, respectively, of said properties are as follows:

TCT No. 1096 Lot No. 490
Market value land
572 sq. m. at P25/sq. m. P14,300.00

TCT No. 10915 Lot No. 467
Market value land
888 sq. m. at P25/sq. m. P22,200.00

TCT No. 10832 Lots Nos. 519-B and
519-C
Market value land
14,242 sq. m. at P10/sq. m. P142,420.00

Total P178,920.00.'

There is, therefore, a difference of P138,920.00 between the purchase price of the same properties stated at P40,000.00 in the deed of absolute sale (Exhibit C) and the total market value as appraised by the Philippine National Bank amounting to P178,920.00.

Under Republic Act 357, otherwise known as the General Banking Act, a bank may grant loans against a real estate security and improvements thereon on the basis of the appraised value of the real estate made by the bank itself. Section 78 of said Act provides that loans against real estate security shall not exceed 70% of the appraised value of the improvement.' Inasmuch as the appraisal of the mortgage values of the lots in question were made by competent officers of the Philippine National Bank in the performance of their assigned duties and who are presumed to have regularly performed such duties, the same are not only admissible in evidence but are prima facie evidence of the facts therein stated.

'Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.' (Section 38, Rule 130, Rules of Court.)

If a prima facie case exists, it sustains the quantum of evidence on the point which it covers, shifting the burden of proof to the other party. It relieves a party of the burden of proving the fact presumed. The same result is effected by any substitute for evidence, such as statutory regulations prescribing prima facie evidence of specified facts. (1 Jones on Evidence 2 Ed., Sec. 369.)

It results, therefore, as previously stated, that the appraisal of the lots in question made by the officials of the Philippine National Bank in the performance of a duty specially enjoined by law is not only admissible in evidence, but is a prima facie evidence of the specified facts stated therein. The defendants, however, presented no evidence to rebut the same. We have here, therefore, a case where four of the seven lots involved appear to have been sold for the total sum of P40,000.00 (Exhibit C), which is equivalent to only 22% of their market value as appraised by the Philippine National Bank. Certainly, this fact clearly bolsters the plaintiff's claim that the transactions in controversy were really loans secured by mortgages and not absolute sales, as there is gross unusual inadequacy of the prices paid for the same. The fact that the properties were mortgaged and a notice of lis pendens was annotated on the corresponding certificate of title at the time of the sale does not lessen nor affect the values of the lands.

'It has been held that in determining the amount of compensation, or the market value of the property taken, no account should be given * * * to the fact that the property is mortgaged.' (City of Detroit vs. Fidelity Realty Co., 182 N.W. 140, 213 Mich., cited in 29 C.J.S. 972-973.)

As regards the lis pendens annotation on the certificates of title of the subject lots, the facts show that the same arose from the action for support filed by Lourdes Rallos against her husband, Simeon Rallos. Such annotation appears to be improper as an action for support is one in personam and a notice of lis pendens is available only in real actions, that is, actions affecting the title to or the right of possession of real property and not in any other action. (Saavedra vs. Martinez, 58 Phil. 767; Garchitorena vs. Register of Deeds, G.R. No. L-9731, May 11, 1957; Somes vs. Government of the Phil., 62 Phil. 432; and Geronimo vs. Nava, G.R. No. L-12111, January 31, 1969.)

On the question of possession of the properties in litigation, however, which was likewise raised by the appellant in his motion under consideration, we are not disposed to disturb our findings on this point. At least, the records show that after the execution of the documents in question (Exhibits A, B and C), the defendants exercised over

the litigated properties acts constitutive of dominion and possession for sometime prior to the appointment of the plaintiff-appellant as the administrator thereof in 1957. They transferred in their names the tax declarations of the properties described therein, caused the issuance of new certificates of title thereto accordingly in July, August and November, 1954, and paid the corresponding taxes thereon (Exhibits 7 to 12, 21 to 26, and 36 to 40). Prior to the institution of the present action, the defendants, too, appeared to have demanded for the payment to them of the rentals due from the lands in dispute, and in 1956, they filed detainer suits against the occupants thereof who failed or refused to pay the rents to them (Exhibits D to D-21, inclusive, and 41, 41-A to 41-D, inclusive).

It appears, too, that after the death of Simeon Rallos in 1956, the plaintiff who was appointed special administrator of the decedent's estate was authorized by the court a quo to collect the rentals due from the subject premises in an order issued on August 8, 1957 and had since then been in possession of the lots in question up to the present (printed Record on Appeal, pp. 34-38). Thus, paragraph 2 of Article 1602 of the Civil Code is not applicable in the present case." (Pp. 117-124, Id.)

Thus, as may be seen, in overturning its own previous conclusion that the deeds in question are really absolute sales by subsequently finding that they are equitable mortgages, the Court of Appeals did not do it by just committing a turnabout in its appreciation or evaluation of the evidence. Rather, it reversed first its rulings on the admissibility of the relevant evidence by admitting those it had rejected in its original decision and then premised the reversal of its conclusions therein on these newly admitted evidence. Indeed, it appears to Us from the above ratiocination of the Court of Appeals in its per curiam resolution considered together with the arguments adduced by it relative to the same matters in its original decision, that had that court found no reason to admit and take into account said evidence, it would not have reversed its previous finding that the subject deeds are absolute sales. In the final analysis, therefore, the specific question of law raised by the Aznars in this appeal is whether or not the Court of Appeals committed a legal error in admitting the evidence it had originally held to be incompetent. To reiterate, it is evidently their position that in the affirmative, no alternative is left to Us except to grant the prayer of their petition.

The thrust of the per curiam resolution is that the plaintiff Borromeo was able to prove that the defendants Aznars "retained part of the purchase price" stipulated in the deeds in question and that there was unusual inadequacy of said purchase price thereby justifying the use in this case of the presumption created by Article 1602 of the Civil Code whenever said circumstances are shown (Paragraphs 1 and 4 of said article). According to the Court of Appeals, these circumstances were proven through, among other evidence, the testimony of plaintiff Crispina Rallos Alcantara, the daughter of the deceased Simeon Rallos, who declared that she was present on all occasions when the three transactions in dispute took place between her father and Matias Aznar and that while thus listening to their conversations she took down notes of the various amounts mentioned by them and the respective purposes thereof such as interest, attorney's fees, other obligations to be paid out of the money being borrowed by her father etc., which notes were identified at the trial as Exhibits A-2, A-3, B-3 and C-5. More specifically, the Court of Appeals held that because the testimony of the witness Alcantara was corroborated by these notes, it should be believed, from which it can be gathered that it was only because said notes were considered by it as inadmissible that in its original decision, said testimony and notes were deemed to be without evidentiary value for being self-serving. "While it is true," says the appealed resolution, "that in our decision rendered in this case, we held that the notations or memoranda of Crispina Rallos Alcantara marked as Exhibits A-2, A-3, B-3 and C-5 were self-serving and unsatisfactory as evidence of the facts asserted (Decision, p. 24), the same, however, as now correctly contended by plaintiff-appellant in his motion for reconsideration, may be considered as constituting part of the *res gestae*, and as such, are admissible in evidence to show the nature of the contracts in question and the relation of the parties involved." (p. 18, Annex C of the petition.) It is this ruling upholding the admissibility of said notes and memoranda as parts of the *res gestae* that the Aznars contend to be a legal error committed by

the Court of Appeals.

We cannot see how the disputed notes and memoranda can be considered in any sense as part of the *res gestae* as this matter is known in the law of evidence. It must be borne in mind, in this connection, that Crispina was not a party to the transaction in question. Only Simeon Rallos, on the one hand, and Matias Aznar, if she is to be believed, or Emmanuel and Alma Aznar, as the documents show, on the other, were the parties thereto. The record does not reveal why Crispina was with her father at the time, hence, there can be no basis for holding that she actually took part in the transaction. That she allegedly took notes thereof while there present made her at best only a witness not a party. It cannot be said, therefore, that her taking down of her alleged notes, absent any showing that she was requested or directed by the parties to do so or that the parties, more particularly the Aznars, who are being sought to be bind by them, knew what she was doing, constitute part of the transaction, the *res gestae* itself. If such alleged taking of notes by Crispina has to be given any legal significance at all, the most that it can be is that it is one circumstance relevant to the main fact in dispute. In other words it could be at the most be only circumstantial evidence.

The trouble however is that the admission of said notes and memoranda suffers from a fatal defect. No witness other than Crispina has testified as to the veracity of her testimony relative to her alleged notes and memoranda. Not even her husband who, according to her, was present on one of the occasions in issue, was called to testify. It cannot be denied that Crispina is interested in the outcome of this case. In the words of the Court of Appeals itself in its original decision, "her testimony cannot be considered as absolutely unbiased or impartial", hence "unreliable and insufficient to justify the reformation of the instruments in question." Such being the case, how can the notes and memoranda in dispute and any weight to her testimony, when she herself created them? Surely, they cannot have anymore credibility than her own declarations given under oath in open court.

The extensive and repeated arguments of the parties relative to the issue of whether or not self-serving are very interesting and illuminating, but We feel they are rather off tangent. The notes supposedly prepared by witness Alcantara during the transaction between her father and the Aznars do not partake at all of the nature of hearsay evidence. If anything, they constitute memoranda contemplated in Section 10 of Rule 132 which provides:

"SEC. 10. When witness may refer to memorandum. — A witness may be allowed to refresh his memory respecting a fact, by anything written by himself or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing; but in such case the writing must be produced and may be inspected by the adverse party, who may, if he chooses, cross-examine the witness upon it, and may read it in evidence. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts, if he is able to swear that the writing correctly stated the transaction when made; but such evidence must be received with caution."

As may be observed, this provision applies only when it is shown beforehand that there is need to refresh the memory of the witness, which is not the case here. Nowhere in the record is there any indication that Alcantara needed during her testimony the aid of any memorandum in respect to the matters contained in the notes in dispute. Besides, under the above provision, the memorandum used to refresh the memory of the witness does not constitute evidence, and may not be admitted as such, for the simple reason that the witness has just the same to testify on the basis of refreshed memory. In other words, where the witness has testified independently of or after his testimony has been refreshed by a memorandum of the events in dispute, such memorandum is not admissible as corroborative evidence. It is self-evident that a witness may not be corroborated by any written statement prepared wholly by him. He cannot be more credible just because he supports his open-court declaration with written statements of the same facts even if he did prepare them during the occasion in dispute, unless the proper predicate of his failing memory is priorly laid down. What is more, even where this requirement has been

satisfied, the express injunction of the rule itself is that such evidence must be received with caution, if only because it is not very difficult to conceive and fabricate evidence of this nature. This is doubly true when the witness stands to gain materially or otherwise from the admission of such evidence, which is exactly the case of Crispina Alcantara.

The other pieces of evidence rejected by the trial court as well as the Court of Appeals in its original decision but which it subsequently admitted upon motion for reconsideration of Borromeo, thereby causing the appellate court to reverse its own affirmatory conclusion as to the nature of the transactions in dispute as absolute sales, are the following:

1. Exhibit J, the document giving Simeon Rallos the option to "repurchase" the lots sold under Exhibit A, which however expired without Rallos exercising the same.
2. Exhibits X and Y, alleged ledgers of the Philippine National Bank apparently showing the items in the current account of Southwestern Colleges, Inc. purportedly corresponding to the checks allegedly issued by Matias Aznar to Simeon Rallos in the course of the controversial transactions herein invoked and which, it is contended, proves that the amounts actually received by Rallos were less than the stipulated prices, because corresponding interests for the alleged loan had already been deducted.
3. Exhibit K, supposedly a statement of the account of Rallos with Matias Aznar alleged by Crispina Alcantara to have been prepared by an employee of Aznar who, however, was not called to testify.
4. Exhibits T, U and V, purported inspection and appraisal reports allegedly submitted by investigators of the Philippine National Bank to whom the property described in Exhibit C covering four lots, Nos. 467, 490, 519-B and 519-C, had been mortgaged indicating therein the market value thereof as appraised by said investigators and on the basis of which Borromeo now maintains that there was inadequacy of the purchase price in said deed of sale Exhibit C for the purposes of the presumption in Article 1602 of the Civil Code that the disputed transactions are equitable mortgages.

As regards Exhibit J, the contention of the Aznars is that in its per curiam resolution, the Court of Appeals reversed itself as to the evidentiary value of this exhibit without giving any reason at all. What is worse, whereas in its original decision, the Appellate Court pointedly held that since Exhibit J was an option to repurchase that had expired without being exercised, it could not alter the true nature of Exhibit A, the deed of absolute sale of the properties to which said option refers, in its resolution, this exhibit was used as basis for the further inference that there were also similar options relative to the other two sales in question, Exhibits B and C, merely because Crispina Alcantara testified that the latter options actually existed but were withdrawn by Matias Aznar, hence the same could not be produced.

Again, We find the position of the Aznars to be well taken. True it is that the 'Court of Appeals is the final arbiter of questions of fact and as such has the inherent power to reverse its findings. For it, however, to alter its factual findings without any adequate basis borders on being whimsical and capricious. At the very least, to do so is such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of the Supreme Court's power of supervision. (Section 4 (b), Rule 45.) In this case of Exhibit J here, nowhere in the appealed resolution is there any explanation for the Court's turnabout. The casual reference in the said resolution to Exhibit J as being corroborative of the testimony of Crispina Alcantara together with her notes, Exhibits A-2, A-3, B-3 and C-5, is certainly an unwarranted conclusion, considering specially that We have already ruled above that there was no legal basis for the Appellate Court's reversal of its original position as to said notes themselves. In this connection, it should be borne in mind that under the resolution, the same notes constitute the main support of Crispina's testimony, hence the corroborative force of Exhibit J must necessarily dissipate without them. Indeed, under the circumstances, with the notes of Crispina being inadmissible, and absent any other pertinent document

to back up her words, the inference drawn by the Court of Appeals regarding options to repurchase the properties covered by Exhibits B and C appear hollow and baseless.

The appealed resolution also reversed the Appellate Court's original pose anent the admissibility of Exhibits X and Y by attributing to it corroborative evidentiary value of the testimony of Crispina, although it did not even mention said exhibits in its earlier decision. As in the case of exhibits previously discussed, We are of the considered opinion that it was legal error for the Court of Appeals to have thus ruled in favor of the admission of these exhibits, X and Y merely be implication. It is true that their contents were discussed in the resolution, but no reason is given therein why they have suddenly become admissible.

These exhibits purport to be ledgers of the Philippine National Bank corresponding to the current account of the Southwestern Colleges owned by the Aznars. Now, it is undisputed that these exhibits were offered only in rebuttal and that no witness testified on them, not even for purposes of identification. How the Appellate Court came to take them into account is surprising, considering that the appealed resolution does not contain the slightest discussion relative to these exhibits. Obviously, such a procedure cannot deserve Our sanction. We reject it as unjudicial.

The same observation may be made with respect to Exhibits T, U and V. No one testified as to their controversial contents. Nobody even identified them. They were just marked and shoved in as part of the documentary evidence of Borromeo in rebuttal. In an effort to give them a semblance of admissibility, counsel now contends that they are public documents appearing to have been prepared by employees of the Philippine National Bank. But although this bank is a government bank, it is not wholly owned by the government, there being private persons owning shares thereof. This is a matter of judicial notice. Officials and employees of the Philippine National Bank are not, therefore, public officers within the contemplation of Section 38 of Rule 130. Moreover, assuming otherwise or that these exhibits could have any standing as public or official records, under Section 35 of Rule 132, they do not prove themselves, as certain requisites must be complied with before they can be admitted, none of which appears to have been established in connection with the exhibits in question. Worse, it is clear in the record that these exhibits relate to only one of the three transactions herein involved. Accordingly, We do not see any justification at all for their admission as evidence to prove the true nature of the said transactions.

Very little needs be said of Exhibit K. In its original decision, the Appellate Court rejected this exhibit holding: "The exhibit in question, allegedly a statement of account of Rallos to Matias Aznar involving the disputed transaction is neither dated nor signed, much less by the party sought to be charged. The alleged writer thereof was not presented at the trial of the case, and we have only the biased testimony of Crispina as to its authenticity or preparation. Even if it were true, however, that the writing was made, as alleged by Crispina, we cannot consider the same as proof of what was said or transacted then. The mere making of written memorandum immediately after the interview does not make the memorandum affirmative intrinsic proof of the things said or transacted. (32 C.J.S. 948.) Knowledge on the part of the person who made the memorandum, at the time it was made, that the statements or entries therein were correct must be shown (32 C.J.S. 947), and this the plaintiff failed to do. On the other hand, the record indubitably shows that after the execution of the questioned instruments, the taxes on the lots subject matter thereof were paid by the defendants vendees. Consequently, we hold that Exhibit K has no evidentiary value, and the lower court was correct in disregarding it." (Pages 94-95, Record of L-31740.) On the other hand, in the impugned resolution, the only mention made of Exhibit K is but casual thus: "Crispina Rallos Alcantara went to Matias Aznar to know the total indebtedness of her father, which, according to Aznar had accumulated to P55,428.00 (Exhibit K)."

We are not prepared to give Our assent to such a mode of treating a factual issue. If anything, the subsequent treatment thus given to the document in question reflects lack of serious consideration of the material points in

dispute. That is not the way to decide judicial controversies. While courts do not have to so rationalize their decisions as to meet all the arguments of counsel to the satisfaction of the latter, it is imperative for the credibility of the judiciary and the maintenance of the people's faith therein that pivotal contentions be not treated in cavalier fashion that leaves the motive or grounds for the court's ruling to pure speculation and imagination. The attempt of counsel to classify this exhibit as some kind of admission by Matias Aznar is without merit, if only because it was not to Crispina, the witness, to whom the alleged admission was made and it is not explained why the supposed employee of Aznar, a certain Baltazar, who imputedly prepared it was not called to testify and be cross-examined.

In the final analysis, therefore, it is evident that the Court of Appeals has sought to support its reversing per curiam resolution with props that are legally untenable. True it is that the reversal involves factual findings, but as already explained earlier, a careful review of the appealed resolution reveals unmistakably that the reversal was induced by the reconsideration by the Court of its previous rulings on the admissibility of the relevant evidence, such that its original conclusions of fact would not have been altered had the Court not been convinced by the motion for reconsideration of Borromeo that the exhibits it had rejected or refused to consider are admissible under the law. In these premises, and it being Our considered view that the rulings in the appealed resolution as to the admissibility of the exhibits concerned are legally erroneous, the irresistible conclusion is that the original decision of the Court of Appeals affirming that of the trial court must stand. Indeed, We have gone over both decisions and We are satisfied that they were well studied and are in accord with law and justice.

We are not overlooking the point raised by counsel that some of the exhibits in question (Exhibits X and Y and T, U and V) were not specifically objected to on the grounds We have discussed above. The truth is that counsel's proposition is not entirely accurate. These exhibits are supposed to be records of the Philippine National Bank, but nobody testified to even identify them as genuine. And they were introduced only in rebuttal. True it is that the technical objections mentioned by Aznar's counsel when they were offered were general — for being immaterial, irrelevant and impertinent, but the explanation accompanying these general grounds included the point that defendants were being deprived of the right to cross-examine the ones who prepared the exhibits. In fact, the objecting counsel is quoted to have expressly argued that "It appears that these exhibits are hearsay." (referring to Exhibits T, U and V.) (Page 241, Brief for Respondents.) Furthermore, inasmuch as the Court of Appeals failed to give any reason for overturning its previous conclusions, without explaining why it considered these evidence admissible, after ruling against them in the original decision, We deem it superfluous to rule squarely on counsel's contention.

That somehow the Court of Appeals has been overly swayed by the masterly presentation of Borromeo's case by his notably brilliant counsel is, of course, understandable in the course of the administration of human justice but it is the ever existing responsibility of judges to guard themselves against being awed by the professional proficiency and fame of the lawyers appearing before them and to be doubly careful in studying and resolving the issues they raise. And in this respect, there is no substitute for well grounded preparation, up-to-dateness in the development of the law and legal principles and an adequate sense of logic and proportion inspired solely by probity of the highest order. The assertion made in some quarters about alleged inherent inequality before the courts resulting from the disparity of the abilities of respective counsels of the parties cannot have real ground for being, if only the judges remain conscious of the inevitable fact that they are supposed to possess the levelling factor — their own knowledge pitted against those of the most learned advocates, to augment the possible inadequacy of the opposing attorney, who in most cases are of the poor who cannot afford the fees of better barristers.

IN VIEW OF ALL THE FOREGOING, the per curiam resolution of the Court of Appeals appealed in G.R. No.

L-31740 is hereby reversed and the original decision of that court dated January 30, 1968 in CA-G.R. No. 30092-R is affirmed. In consequence, obviously, the prayer of the petition in G.R. No. L-31342 being to augment the reliefs granted by the appealed resolution to Borromeo cannot be granted, hence said' petition is hereby ordered dismissed. Costs against Borromeo, as administrator of the estate of Simeon Rallos.

Antonio, Concepcion Jr., and Martin, JJ., concur.

Aquino, J., concurs in the result.

Fernando, J., is on official leave.

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