

**AMALIA RODRIGUEZ, PLAINTIFF-APPELLEE VS. PIO E. VALENCIA,
AND EMILIA H. RODRIGUEZ, DEFENDANTS-APPELLANTS.***G. R. No. L-599. October 26, 1948*

Ponente: PERFECTO, J.

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On August 18, 1945, plaintiff sued defendants for the rescission of a contract of sale relating to lot No. 2151 of the Cebu Cadastre. On November in a second amended complaint was filed wherein plaintiff alleged that in October, 1944, plaintiff sold to defendants lot No. 2151 of the plan of the burnt zone of the city of Cebu at the price of P200,000.00 in Japanese war notes and P5,000.00 in Philippine currency, defendants assuming the obligation of redeeming the property on their own account from a mortgage in favor of the Cebu Mutual Aid Association; that defendants only paid 2,000 Japanese pesos on October 18, 1944, P4,000 Japanese pesos on November 4, 1944, 20,000 Japanese pesos on March 29, 1945, and finally, 20,000 Japanese pesos on March 30, 1945, notwithstanding plaintiff's refusal to accept the last two payments, as the Americans had already arrived in Cebu and no one would accept Japanese war notes; that plaintiff happened to learn that P15,000.00 had been consigned with the court in favor of the Cebu Mutual Aid Association, notwithstanding the fact that the mortgage debt and interest were much less than said amount; that the sum of 5,000 Filipino pesos was not mentioned in any document for fear of the Japanese; that defendants have received from the American army a monthly rent of P99.12 since June; that defendants, notwithstanding repeated entreaties of plaintiff, failed to pay her the amount of 5,000 Filipino pesos, and that the Japanese notes have depreciated and in March, 1945, they had no value at all and they were declared illegal by the President of the Philippines. As a remedy plaintiff prayed for the rescission of the contract of sale and for costs.

Defendants answered, alleging that Pio E. Valencia was not a party to the transaction alleged in the complaint; that On November 1, 1944, plaintiff received from defendant Emilia H. Rodriguez the sum of P30,000.00 as first payment of the total of 200,000 pesos in Japanese military notes as the price agreed upon for the land in question, and out of said amount plaintiff deposited with the clerk of court an amount sufficient to pay her obligation with the Cebu Mutual Aid Association and thereby secured from the court an order releasing lot No. 2151 from the mortgage in favor of Cebu Mutual Aid Association; that once the property was free and unencumbered and upon receipt from defendant Emilia H. Rodriguez of the balance of the agreed price of P200,000.00, plaintiff executed in favor of said defendant on November 18, 1945, a deed of sale which was registered with the register of deeds for the city of Cebu and transfer certificate of title No. 1963 was issued in favor of said defendant that receipt Exhibit 1 signed by plaintiff and deed of sale Exhibit 2, exhibited by plaintiff, both of which are attached to the answer, contain all and the only terms, agreements and conditions between the parties and that defendants had not at any time consented verbally or in writing to pay any additional amount to plaintiff.

On March 13, 1946, the lower court rendered decision wherein, instead of ordering the rescission of the sale, it ordered defendant Emilia H. Rodriguez to pay plaintiff P5,000.00 and another amount of P133.33, and plaintiff to pay defendant the sum of P533.33. Defendant Emilia H. Rodriguez appealed.

The whole controversy in this case hinges on the truth or falsity of plaintiff's allegation that appellant agreed to pay her the amount of 5,000 Filipino pesos in addition to the 200,000 Japanese military notes as agreed in the deed of sale of November 18, 1944, where "the sum of two hundred thousand pesos only (P200,000.00) in legal tender" is stated as consideration.

The question as to the truth or falsity of plaintiff's allegation depends in turn upon plaintiff's credibility, she alone having testified about the alleged additional amount not mentioned in any document.

Plaintiff testified that she is 66, single, resident of Cebu (1), and that she sold to Emilia Rodriguez a lot located at Plaridel street, City of Cebu, at the agreed price of P200,000.00. (7).

"P. Cual era el convenio de ustedes sobre el precio? R. P200,000.00

"Abogado Alonso. En que forma se ha convenido aquel contrato, por escrito o de palabra? "R. Por escrito.

"P. Y cual era el convenio de ustedes por la venta de aquel terreno, que precio? R. P200,000.00 Japones mas P5,000.00 Americanos." (7).

Immediately her attorney asked her whether she was paid the price, suggesting, at the same time, that the agreement was 200,000 Japanese pesos "mas P5,000.00 moneda Filipina," and she answered that the 200,000 Japanese pesos was paid. (8-9). As plaintiff continued to fail to mention the "P5,000.00 moneda Filipina," her attorney made another reminder by asking her about "5,000 Filipinos," reiterating it by saying "5,000 pesos Filipinos convenidos," and asking her if it was mentioned in some document. The agreement was verbal, "por temor a los Japoneses. Habia prohibicion, no podiamos hablar nada." But answering a question of the court, plaintiff alleged as reason for not asking any document the following: "Por mucha confianza, Señor Juez." (10). The agreement was entered into when plaintiff was living in her house in Tinago, corner of Martires and Lopez Jaena streets, before it was burned on September 13. (11). But she made the first agreement on November 1, 1944, and she was living with defendants in Dr. Valencia's house. Defendants "me recogieron en el incendio de Lopez Jaena." (12). Defendant Emilia H. Rodriguez paid her the money.

Dr. Pio E. Valencia has knowledge of the sale but he took no part in the transaction. (At this juncture plaintiff's counsel moved for the dismissal of the complaint against Dr. Pio E. Valencia and the Court granted the motion.) (13). Plaintiff remembers that 20,000 pesos were paid to her on March 28 and another 20,000 on March 29, because they were Wednesday and Thursday of the Holy Week. She learned of the arrival of the Americans in Cebu because she saw them, but "they did not tell me anything, and she did not know anything, I was living in the interior, I did not know anything but in the afternoon." She learned about the entrance of the Americans on the 27th. They arrived in the morning and she saw the Americans in the afternoon. Notwithstanding the fact that the Americans had already arrived and she saw them on the 27th, plaintiff accepted payments on the 28th and 29th, because Emilia told her that the Japanese money was still good and that the Filipino Bank answered for it. (14). What plaintiff sold was only a parcel of land of 472 square meters. She does not know its value before the war, because then nothing has been offered for it.

"When my house was burned, they took me and brought me to Mandawe." (15). She is a close friend of Emilia Rodriguez. She received several payments of 10,000 and 20,000, She did not count the number of payments "I started to get money from Emilia since October 18, 1943." (16). "I started to obtain money from Emilia on October 18, 1943 in small amounts, for food expenses." Prior to September 12, 1944, Emilia Rodriguez has been making payments to her, as she asked her for food expenses. She had the agreement with Emilia Rodriguez about the purchase and sale of the land in question, "I believe in 43; I do not remember anymore; in 43, because in September of 44 was when it (my house) was burned." Reminded of the first payment of 30,000 Japanese military

notes made on November 1, 1944, plaintiff answered: "I did not receive 30,000 pesos; 15,000 pesos, to pay Aboitiz." (17). Reminded by the Court that in the receipt she signed the amount of 30,000 appears, she answered: "I signed 15,000 pesos. Maybe they were the ones who put that 30,000." She admits having written in her own handwriting the receipt for 30,000 pesos in Japanese money Exhibit I-A dated November 1, 1944.

Exhibit I-A stated as follows:

"Yo Amalia Rodriguez mayor de edad y vecina de Cebu Cebu viendo mi terreno en la calle de Plaridel a Da Emilia H. Rodriguez la cantidad de 200,000.00 dos cientos mil pesos Papel de Banco japones por lo cual juro de haber recibido dicha cantidad como primer pago 30,000.00 treinta mil pesos.

"Y por verdad firmo la presente en Mandaue l.o de Noviembre de 1944.

"(Firmado) AMALIA RODRIGUEZ

"(Firmado) FILOMENO ROSAL

Testigo

(Firmado) NATIVIDAD LOCAGBO

Testigo"

Asked by the Court to explain why, while the receipt shows that she received 30,000.00 as part payment of the agreed price of 200,000.00, she stated that she received 15,000.00 only. Plaintiff answered: "Yes, sir, 15,000.00 is what I only received to be paid to Marcelo Flores; he is the one who brought that amount to Aboitiz to pay my debt." Plaintiff admits having written in her own handwriting Exhibit 1-A, but she insisted that "I do not know who put 30,000.00; it was 15,000.00 only." (18). The Court insisted that she explained, and plaintiff said: "At that moment I must have been with unsound mind." Asked again why she was able to write and sign the receipt, she finally said that she was agreeable with the 30,000 appearing in Exhibit 1-A. But same amount was not the first payment. Ten thousand pesos was the first payment made by Emilia in Mandawe on October 18, 1943. "I asked her because she was the owner of the house and she told me that I was eating gratuitously, then I asked Emilia money for expenses." That was on October 18, 1943. (19). Asked by the Court to explain how the first payment was made to her in October, 1943 when the deed of sale was signed by plaintiff on November 18, 1944, plaintiff insisted "on October 18, I have the receipt, but I do not know where it is now in view of many transfers. I have a memorandum." Asked for further explanation, plaintiff said that she does not remember, although she remembers that it was on October 18, when she started to ask money from Emilia. Then she asked information from the Court as to when the fire in Lopez Jaena took place as a result of the first bombs dropped by the Americans. The Court advised her that it was in 1944, and the parties agreed that the first bombs were dropped on September 12, 1944, and after this information, plaintiff said that in said month she has been in Mandawe with defendant and in October she asked money from Emilia. For the previous payments no receipts have been issued. (20). Plaintiff does not remember that bombing of Cebu started on September 12, 1944, and continued up to March 27, 1945. All her transactions with defendant took place in Mandawe and then no one expected to live beyond 24 hours. Plaintiff was not able to ask from Emilia any receipt for the 5,000.00 pesos, Philippine currency, "for fear of the Japanese." Plaintiff has been in Mandawe for evacuation in September and October, 1944, and answered the following question of the court thus:

"The Court: The truth is that there, outside of the City of Cebu, Japanese money was not accepted?

"Answer: Yes, sir." (21).

When she made the contract, plaintiff believed that the Japanese money was good. (22). She asked 5,000.00 pesos, Philippine money, because it had better price than the Japanese money, which she accepted because

defendant told her that there was no objection in adding 5,000.00 pesos. (23). Plaintiff said: "No hemos avenido nada, sino que le pedi nada mas esos P5,000 como añadidura." Asked where and when the agreement about the P5,000.00 was entered into between her and Emilia, plaintiff answered. "The first agreement was in my house, before the fire, when they came to talk about the purchase; after that, the second, was in Mandawe." When plaintiff agreed with Emilia about the sale, it was before September, 1944, and plaintiff was still living in her house which has not yet been burned. (23). Then Emilia came to the house to propose the purchase. Plaintiff did not yet agree. She agreed when the house was already burned and when plaintiff was already living with Emilia in Mandawe. Plaintiff decided then to sell the land because there was no more house in the land. (24). Several strong reasons militate against plaintiff's credibility.

1. Plaintiff admitted categorically that there was no agreement ("No hemos avenido," she said), but she made only her request for the additional 5,000.00 Philippine pesos. At the beginning of her testimony she mentioned P200,000.00 only as the agreed price.
2. Plaintiff testified that some one else had placed the amount of 30,000.00 Pesos in receipt Exhibit 1-A, notwithstanding the fact that the figure and the words appear to be in the same handwriting of the receipt.
3. Plaintiff testified that she was not in her sound mind when she wrote receipt Exhibit 1-A.
4. Plaintiff gave two different reasons, one in each instance for not stating in any document the alleged additional 5,000.00 Philippine pesos.
5. Notwithstanding that she herself wrote in her own handwriting receipt Exhibit 1-A and she stated therein that she swears having received 30,000.00 pesos as first payment, she testified that she received only 15,000.00 pesos, and had to admit her conformity to the 30,000.00 pesos only after she could not explain her contradiction.
6. Plaintiff testified that she received the first payment from Emilia on October 18, 1943, in the amount of P10,000.00, while Exhibit 1-A shows that the first payment was in fact made on November 1, 1944, in the amount of P30,000.00, although she also testified having received then only P15,000.00.
7. Plaintiff testified that the agreement about the additional 5,000 was entered into twice, first, when she was still living in her house in Lopez Jaena before the same was burned, and the second, in Mandawe when she was living with defendant, while in another part of her testimony, plaintiff declared that when defendant went to her house before the same was burned, plaintiff had not yet agreed to sell her land.
8. Plaintiff testified that she has been receiving payments from Emilia before the fire that turned her house in Lopez Jaena on September 13, 1944, while testifying also that the agreement of sale was only covenanted at Mandawe in October, 1944.
9. Considering that the hearing of this case in which plaintiff testified took place in November, 1945, plaintiff's inability to determine whether it was in 1943 or in 1944 when she agreed with the defendant about the sale of her land is a thing that makes her testimony unreliable.
10. The fact that plaintiff does not remember the year when her house was burned and needed the help of the Court and of the attorneys of both parties to testify that the American bombings that caused the burning of her house started only on September 12, 1944, is an evidence of the fickleness of plaintiff's memory.
11. If there was such an agreement to pay her 5,000 Filipino pesos as an additional consideration, her alleged fear of the Japanese is not enough reason why plaintiff could not have obtained some kind of note from defendant Emilia H. Rodriguez that could be easily hidden and which Emilia could have issued considering that, according to plaintiff herself, they were close friends.

12. If said 5,000 Filipino pesos were the main consideration of the sale as plaintiff asks us to believe, no explanation whatsoever has been given why in the deed of sale or in any other document it could have not been stated that the 5,000 pesos should be paid when the war is over, a stipulation resorted to by all those who wanted to have payments in Filipino pesos.

13. Regarding the 5,000 Filipino pesos in question, plaintiff needed the help of leading questions propounded to her by her counsel, to remind her that they were Filipino pesos or Philippine money, as before said help was given she mentioned them as 5,000 American pesos, that is dollars, a thing that cannot be attributed to a mere tongue-slip, considering that plaintiff appears to talk good Spanish and to be intelligent. That plaintiff might have mistaken Filipino money with American money may only show that she did not learn her lesson at heart.

14. The glaring contradictions between the allegations of her complaint and plaintiff's testimony, such as those regarding the payments made to her by defendant Emilia H. Rodriguez and the inclusion of Dr. Pio E. Valencia as party defendant as one of those who bought the parcel of land in question. Although the complaint was drafted not by plaintiff but by her attorney, no one would suppose that the latter would have alleged in the complaint facts other than those given to him by plaintiff herself.

The agreement in question regarding the payment of additional 5,000 Filipino pesos is an affirmative averment the onus probandi on which falls on plaintiff's shoulders. The duty of showing to our satisfaction that such an agreement actually took place, notwithstanding plaintiff's own commitments in receipt Exhibit 1-A dated November 1, 1944, and in the deed of sale Exhibit 2 which she executed on November 18, 1944, devolves upon her. As we have shown, plaintiff's uncorroborated testimony, even with the help of leading questions from her own attorney and of information given to her by the lower court, is unsatisfactory and unconvincing, and rather leaves the impression that plaintiff had intended to have unskilfully woven a yarn coming from her imagination.

Even from the point of view of equity, plaintiff's claim appears to be untenable. Under the circumstances, plaintiff cannot claim that the price paid to her as agreed upon in Exhibits 1-A and 2 was unfair. With a small part of said price, plaintiff was able to pay a debt of about P15,000.00, to guarantee which she had mortgaged the parcel of land in question plus the building erected thereon. Even in the lower court's assumption that the parcel of land may command a price of P11,133.34 in Philippine currency, plaintiff would appear as having profited from the transaction as, without it, she would have to pay now to the Cebu Mutual Building and Loan Association about P15,000.00, with the result that applying to it the price that, according to the lower court, the land may command, plaintiff will still be indebted in the amount of about P3,000.00.

The appealed decision is reversed in so far as it orders appellant Emilia H. Rodriguez to pay plaintiff the sum of P5,000.00, with costs of this appeal in favor of said appellant.

Moran, C. J., Paras, Pablo, Bengzon, and Tuason, JJ., concur.

DISSENTING

FERIA, J.,

The plaintiff in the present case filed against the defendant a suit to rescind the contract of sale of a residential lot in the City of Cebu executed by the former in favor of the latter, on the ground that the defendant has failed to pay the plaintiff the sum of 5,000 pesos in Philippine currency, part of the purchase price agreed upon by the parties, besides the 200,000 pesos in Japanese war notes stated in the deed of sale; that the value of the said notes at the time of payment of 160,000 on account was very much depreciated, and when the balance of 40,000 was paid in

March, 1945, the Japanese war notes were no longer acceptable as legal tender.

After trial, the lower court rendered a judgment ordering the defendant Emilia Rodriguez to pay the plaintiff Amalia Rodriguez the sum of 5,000 pesos Philippine currency, plus P133.33, the equivalence in Philippine pesos of 40,000 pesos in Japanese war notes paid by the defendant to the plaintiff on March 28, 29, 1945, and that if she fails to do so the contract of sale be considered cancelled, and the plaintiff shall return to the defendant the sum of 533.33 pesos in Philippine currency, which is the equivalent of the sum of 160,000 pesos in Japanese war notes received by the former from the latter. The court also ordered the return of the said 40,000 pesos in Japanese war notes received by the plaintiff from the defendant and presented by the former as Exhibits A to G in this case if the defendant so desires, with costs against the defendant.

The defendant appealed from the judgment of the lower court to this Supreme Court.

The questions involved in this appeal are: (1) whether or not the lower court erred in admitting, over the objection of the appellant, the testimony of the appellee relating to the alleged agreement that the appellee should pay the appellant P5,000 in Philippine currency, besides the sum of 200,000 pesos in Japanese war notes stated in the deed of sale as the purchase price of the land sold; and (2) whether or not the evidence presented by the plaintiff, if admissible, as well as that produced by the defendant show that there was really such an agreement.

(1) As to the first question, we are of the opinion and so hold that the trial court did not err in admitting the testimony of the plaintiff and appellee. The rule set forth in section 22, Rule 123, that when the terms of an agreement have been reduced to writing, no evidence of the terms of the agreement other than the contents of the writing is admissible, is subject to several exceptions. One of the exceptions is that such evidence is admissible "when the failure of the document to express the true intent and agreement of the parties is put in issue by the pleading." The present case falls under the exception, because the failure of the deed of sale to express the true intent and agreement of the parties was put in issue by the plaintiff in paragraph 5 of her complaint which alleges "that the five thousand pesos Philippine currency agreed upon was not reduced to writing because they were afraid of the Japanese," and by the defendant who avers in paragraph (d), third defense, of her answer, that "the document Exh. 2 contains all and the only terms, agreements and conditions between the parties thereto, the defendant's denying having agreed and consented at any time either before, during or after the execution of said document, verbally or in writing, to pay the plaintiff an additional amount in consideration of or by reason of said sale."

(2) With respect to the second question, the trial court did not also err in declaring that the agreement to pay the additional sum of P5,000 in Philippine currency has been established by the evidence. The plaintiff-appellee testified that when she agreed to sell the property to the defendant in October, 1944 (t. s. n., page 20), and the price of the property agreed upon was 200,000 pesos in Japanese war or military notes and P5,000 in Philippine currency; that the five thousand pesos was not mentioned in the deed of sale for fear of the Japanese; and that she did not ask any note or paper evidencing it because she had confidence in the defendant who was her very intimate friend; and that when she agreed to sell the property to the defendant-appellant she was living with the latter in the house of Dr. Pio Valencia, for her house built on the lot sold was destroyed by the American bombs in October, 1944 (t. s. n., pp. 20, 24.) The defendant and appellant who was the best witness to deny the appellee's testimony if not true did not testify to contradict it.

The only witness for the defense, Marcelo Flores, testified that he acted as broker in the transaction and there was no such agreement about the additional P5,000, and that when the deed of sale Exhibit 2 was signed by the plaintiff and the notary public ratified it after reading the contents thereof to the plaintiff and asking her about the genuineness of the signature appearing thereon, plaintiff did not say anything about any other agreement with the

defendant not contained in the deed. This testimony of the witness Flores does not belie the plaintiff's. The agreement about the five thousand pesos having been made by the plaintiff with the defendant personally in the house in which both of them were living, and not inserted in the document Exh. 2 because they were afraid of the Japanese, it was but natural for the plaintiff not to inform the notary and Marcelo Flores of said agreement. Besides as the lower court well said "It is not credible the supposed intervention of Flores in the transaction between the plaintiff and the defendant, because when it took place the former was living in the latter's house. Clearly there was no necessity for third person to intervene in it."

As to the probatory force of the uncontradicted testimony of the appellee, Moore on Facts says:

"Dr. Lushington laid it down as the 'strict line of all judicial proceeding, namely, to credit the evidence of respectable persons unless they are contradicted, or unless there is something in their testimony to excite a suspicion of the fidelity with which they have deposed.'

" 'The rights of the people would have no safeguard, and the courts of justice would afford no forum for the redress of wrongs, if the unimpeached and uncontradicted testimony of a witness can be overthrown without reason,' said Judge Gildersleeve of the New York Supreme Court, and he was speaking of the testimony of one who was an interested party to the suit.

"It is a 'well-settled principle of law, which is absolutely essential to the security of individual rights, that a witness who is unimpeached and uncontradicted must be believed,' said Judge Barculo of the New York Supreme Court.

" 'The jury might as well, in their arbitrary and sovereign pleasure, render a verdict without evidence as against evidence,' said Orton of the Wisconsin Supreme Court.

" 'That, when nothing appears to the contrary, the presumption is to be fairly indulged that an unimpeached witness has testified truly may be laid down as a principle derived from the experience and knowledge of mankind,' said Judge Boggs of the Illinois Supreme Court.

" 'Where the weight of credible testimony proves the existence of a fact, it must be accepted as a fact, * * * nor can conjectures be allowed to displace proofs,' said Judge Brawley of the federal District Court." (Moore on Facts, Vol. I, pp. 111-112.)

Failure of appellant to testify and contradict appellee's testimony about their agreement relating to P5,000 Philippine currency as additional purchase price, she being the only one who could have denied it if not true, gives rise to presumption or inference against her.

"SEC. 289. Same: (d) Party himself failing to Testify, (d) At common law the party opponent in a civil case was ordinarily privileged from taking the stand (post. sec. 2217); but he was also disqualified; and hence the question could rarely arise whether his failure to testify could justify any inference against him. But since the general abolition both of the privilege and the disqualification (post, sections 2218, 577), the party has become both competent and compellable like other witnesses; and the question plainly arises whether his conduct is to be judged by the same standards of inference. This question should naturally be answered in the affirmative:" (Wigmore on Evidence, Vol. II, p. 171, third edition.)

The finding of fact to the effect that there was really such an agreement, made by the lower court who saw the plaintiff testify, her demeanor and manner of testifying and was in a better position than this Court to weigh her testimony, should not be disturbed by this Court according to a long line of decisions of this Court:

"It is a well-known doctrine that in this jurisdiction the findings of fact made in the judgment appealed from are not disturbed by this court, unless it be shown that the court below has overlooked or misconstrued certain facts, which would otherwise change the result of the decision.

"And it has been repeatedly held that the Supreme Court would not disturb the findings of fact made by the trial court as to the credibility of witnesses, in view of their opportunity to observe the conduct and demeanor of the witnesses while testifying, and that their findings will generally be accepted and acted upon. *People vs. De Asis*, 61 Phil., 384; *People vs. Garcia*, 63 Phil., 296; *People vs. Masin*, 64 Phil., 757. In the instant case, there is absolutely no cause or reason appearing in the record to warrant a departure from such findings, and they must therefore be fully accepted. *People vs. Istoris*, 53 Phil., 91. (*People vs. Borbano* [1946], 43 Off. Gaz., No. 2, p. 478, 482.) *Yambao vs. Tolentino*; *Melliza vs. Towle and Mueller*, 34 Phil., 345; *Baltazar vs. Alberto*, 33 Phil., 336, 338; *People vs. Istoris*, 53 Phil., 91; *People vs. De Asis*, 61 Phil., 384; *People vs. Garcia*, 63 Phil., 296; *People vs. Masin*, 64 Phil., 757;" (*People vs. Macalindong* [1946], 43 Off. Gaz., No. 2, pp. 490, 493.)

The appellee's testimony pointed out in the decision as showing its incredibility is not borne out by the record.

(a) It is not true what is stated in paragraph 1 of the decision that the "plaintiff admitted categorically that there was no agreement ('no menos avenido,' she said), but she made only her request for the additional P5,000 Philippine pesos. At the beginning of her testimony she mentioned P200,000 only as the agreed price."

That the plaintiff did not admit that there was no agreement about the said P5,000 is shown by her testimony in the following questions and answers on which the decision is mistakenly based:

"JUZGADO. Y por que acepto usted los otros?—E. Porque ella me dijo que si, que no hay inconveniente anadir P5,000.

"JUZGADO. Cual de los dos ha creido usted, que es bueno el dinero japones?—R. No hemos avenido nada, s:'no que le pedl nada mas esos P5,000 como anadidura." (Pp. 22, 23.)

From the foregoing it is obvious that there was such an agreement, because she asked the defendant to add to the P200,000 in Japanese war notes P5,000, and the defendant agreed to it, or said "Si, que no hay inconveniente anadir P5,000." The words "no hemos avenido" cannot therefore refer to said P5,000, but to the question propounded or the plaintiff did not understand the meaning thereof.

That since the beginning of her testimony she mentioned P200.000 and the P5.000 as the agreed price, is evident. In the first page (7) of her testimony, she was asked the following first question about the purchase price: "Y cual era el convenio de ustedes por la venta de aquel terreno, que precio?" And she answered "P200,000 japoneses, mas P5,000 americanos."

(b) With respect to the averment in paragraph 4 of the decision that the "plaintiff, gave two different reasons, one in each instance for not stating in any document the alleged additional P5,000 Philippine pesos" not stated in the deed, that is, the fear of the Japanese and her having much confidence in the defendant because she is her intimate friend and had her live in defendant's house. There is nothing in the reasons she gave derogatory to her credibility. Attorney for the plaintiffstated the following: "Propongo a la demandada que se admite el hecho de que durante el gobierno japonés estaba prohibido el cambio." And the court ruled: "Se sabe eso, el juzgado puede tener conocimiento judicial."

(c) The remark in the decision (paragraph 7) that "the plaintiff testified that the agreement about the additional 5,000 pesos was entered into twice, first, when she was still living in her house in Lopez Jaena before the same was burned, and the second, in Mandawe when she was living with defendant," is not borne out by the record. Plaintiff's testimony is as follows:

"P. La propuesta venta?—R. Ellos fueron en casa, Emilia Rodriguez fue en casa para proponer esa compra.

"P. Y usted acepto o no?—R. Todavía no.

"P. Cuando aceptó usted, ya se había quemado la casa de usted cuando convino en vender?—R. Si, señor.

"P. Entonces donde vivia usted?—R. En Mandawe.

"P. Con quien?—R. Con Emilia Rodriguez.

"ABOGADO ALONSO. ES todo."

It is against common sense that the defendant would propose to buy the land only while the plaintiff was still living in her house built on said land before the house was burned.

(d) There is no basis for the conclusion on paragraph 13 of the decision that the "plaintiff needed the help of leading questions propounded to her by her counsel, to remind her that they were Filipino pesos or Philippine money, as before said help was given she mentioned them as 5,000 American pesos, that is dollars, a thing that cannot be attributed to a mere tongue-slip, considering that plaintiff appears to talk good Spanish and to be intelligent. That plaintiff might have mistaken Filipino money with American money may only show that she did not learn her lesson at heart."

A cursory reading of the plaintiff's testimony clearly shows that she is not intelligent and does not speak good not even mediocre Spanish.

If plaintiff were intelligent she would not have accepted the payment of the balance of 40,000 pesos in Japanese war notes after the Americans had already landed in Cebu, "porque no sabia yo que no recibian porque Emilia me dijo que si, que todavia era servible, que respondia el Banco Filipino; ella me dijo la Sra. Emilia." And the plaintiff did not know how to explain the reason why, having received only 15,000 pesos on Nov. 1, 1944, to pay Aboitis in order to redeem the mortgage in favor of the Cebu Mutual Building and Loan Association (page 17), it appears in Exhibit 1-A of the same date that she received P30,000 as payment on account of the land sold; when she herself testified without contradiction that the first payment she received from the defendant P10,000 on October 18, after the destruction of her house by the American bombs in September 12, 1944 (pp. 19, 20), and afterward defendant had been giving plaintiff money for her expenses (pages 17, 19). And these previous payments, for which no receipts were given (page 20), must have been added to the P15,000 received on Nov. 1, 1944, to make a total of P30,000 appearing in Exhibit 1-A as first payment on account. From a reading of plaintiff's testimony, one will be convinced that she is a very candid and credulous woman who had relied on all she was told by the defendant, with whom and in whose house she had then been living and in whom she had much confidence according to her testimony (page 10).

With respect to plaintiff speaking good Spanish a cursory examination of her testimony shows the contrary. Upon being asked by the defendant's attorney whether she knew how to speak and write Spanish well, she answered "Puedo", and asked again "whether she knew how to read Spanish without aid," she replied "puedo." And being unable to explain in the stated preceding paragraph why it appears in Exhibit 1-A that she received on Nov. 1, 1944, P30,000, when she had only received then P15,000, she said, "no estare en aquel momento en sano juicio," instead of "no estaria en mi" or something like it.

And going back to the point, the plaintiff, in answering to the first question about the agreement on the price of sale of land: "P200,000 japoneses, mas P5.000 Americanos," (page 7) was confusing Filipino pesos with American pesos (not dollars) or calling Americanos the Philippine pesos, as shown by her answer to the Judge's question: "No es verdad que en Mandawe se usaban entre la gente el dinero nuestro, filipino? "No he visto por alia, no he visto dinero americano." (Page 21.)

(e) It is to be borne in mind, and this shows the ingenuity of plaintiff's testimony and that she was not instructed about what she had to testify, as hinted when writer of the decision says that "she did not learn her lesson at heart" (paragraph 11), that she was not sure or did not remember the year when her house erected on the land in question was burned, whether in September, 1943 or 1944, but she was positive that it was burned the first time Cebu was

bombed by American planes. Upon being asked when did she begin to live with the defendant in the latter's house in Mandawe, she answered "Cuando se quemo mi casa el 13 de septiembre del 43, creo, cuando se quemo, o 44; ese mismo afio, me sacaron ellos por conducto del hijo, porque yo iba a Danao y me recogieron en Mandawe." (Page 17.) And when plaintiff was asked by the judge about the year she received the first payment of P10,000, she answered "No recuerdo ya. Recuerdo muy bien, Sr. Juez, que el 18 de octubre es cuando empeze a pedir dinero de Emilia." (Page 20.) But when the parties agreed that the first bombs fell in Cebu on September 12, 1944, then it was made of record by the judge that the plaintiff received the first ten thousand pesos on October 18, 1944 (page 20).

Almost immediately after the plaintiff has testified that she began to get money from the defendant from October 18, 1944 (instead of 1943) little by little for her living expenses, the following catching question in English was propounded to her by the attorney for the defendant: "Do you mean to say that prior to September 12, 1944, Emilia Rodriguez was making payment to you on sale of your land?" and she answered "Si seguia dandome segun lo que pedia yo, daba para gastos de comida." (Page 17). Undoubtedly when the plaintiff gave her answer she did not understand or was caught off guard by the catching question "Do you mean to say that prior to September 13," because what she said immediately before the question was "Cuando se quemo mi casa el 13 de septiembre me sacaron ellos," referring to defendants. Specially taking into consideration that it was made in English or an interpreter was used; that she subsequently reiterated on page 19 that "el primer pago que me dio Emilia en Mandawe era 10,000 pesos para compras de comida. Eso fue el 18 de octubre," and that it was impossible for the plaintiff to sell her land alone prior to the burning of the house on September 12, 1944. The decision makes a capital of said answer to discredit the testimony of the plaintiff and says "When plaintiff agreed with Emilia about the sale, it was before September, 1944, and plaintiff was still living in her house which was not yet burned." (Page 9, and paragraph 8, page 10.)

(f) "With regard to the decision's reasoning that "fear of the Japanese is not enough reason why plaintiff could not have obtained some kind of note from defendant Emilia H. Rodriguez that could be easily hidden and which Emilia could have issued considering that, according to the plaintiff herself, they were close friends;" and that "if the said 5,000 Filipino pesos were the main consideration of the sale as plaintiff asks us to believe, no explanation whatsoever has been given why in the deed of sale or in any other document it could not have been stated that the 5,000 pesos should be paid when the war is over, as stipulation resorted to by all those who wanted to have payments in Filipino pesos" (paragraphs 11 and 12) ; it is sufficient to say that, according to the plaintiff, she did not ask for any receipt (meaning note) because of her fear of the Japanese (page 21), and that the plaintiff had much confidence in the defendant, who was her very intimate friend (page 16), and the defendant made her live in her house in Mandawe (st. n., p. 10). Which is confirmed by the fact that she had signed the document Exhibit 2 acknowledging receipt of P200,000 on November 18, 1944, when as a matter of fact admitted by the appellant, the balance of P40,000 was paid to her on March 28 and 29, 1945, when the Americans had landed already in Cebu, and the defendant made her believe that Japanese war notes could still be used and deposited in the bank. An ignorant and credulous woman as the plaintiff, who had much confidence in the defendant, her very close friend, cannot be expected to devise such means as the decision suggests in order to insure the protection of her interests.

Having already shown that each and every point set forth in the decision to attack the credibility of the appellee's testimony are without any foundation, let us add the following about the shocking inadequacy of the price paid by appellant for the land, without the additional P5,000 Philippine pesos, which support the lower court's decision.

The difference between the market value of the property sold and the price in Japanese war notes paid for it, corroborates the uncontradicted testimony of the appellee. The lower court has in this connection the following to

say:

"* * * This is on the one hand. On the other, on the date on which the plaintiff effected the sale of her lot, the Japanese occupation currency was worth 300 for one of the Philippine currency. Wherefore, 200,000 pesos in Japanese occupation money were not more than P666.66 in Philippine money. The lot conveyed is in the center of the commercial zone of this city, where, according to public knowledge, a square meter was quoted before the war at not less than P25.00, and said lot, which has an area of 472 square meters, was therefore worth P11,800. This amount, compared to 200,000 pesos in Japanese occupation money, gives a difference of P11,333.34 in Philippine money, which, reduced to Japanese occupation money, are equivalent to 3,340,002 pesos. It is also of common knowledge that on or about the date on which the contract referred to was executed, holders of Japanese occupation money were anxious to dispose of it at the rate not only of 800 to 1 but of 1 to 400. It can be conceived, therefore, that Amalia Rodriguez would effect the sale of her property without expecting to receive 5,000 pesos in Philippine currency, preparatory to the days which, she saw, were rapidly and inevitably announced by the American bombs that were constantly falling over the city." (Record on Appeal, pp. 12-13.)

The attorney for appellant contends that the rate of exchange prevailing in Cebu at the time the 160,000 pesos in Japanese military notes were paid was not 300 to 1 as found by the court below but between 70 and 100 to 1. Even assuming that the appellant's contention is correct, or that it was 100 pesos in Japanese war notes to P1.00 in Philippine currency the defendant-appellant had at most paid P1,600 in Philippine currency, the equivalence of 160,000 pesos in Japanese war notes, plus P133.33 which is the equivalence of P40,000 paid in March 1945, or a total sum of P1,733.33 Philippine pesos paid for the lot sold which was worth P 11,800 in Philippine currency according to the finding of the lower court not assigned or attacked as erroneous by the appellant in her brief. The money in Japanese war notes deposited with the court to effect the redemption of the property sold, mortgaged then to the Cebu Loan Association, was taken or discounted from the purchase price paid in Japanese war notes by the defendant-appellant to the plaintiff-appellee according to appellant's own admission or allegation in her answer (paragraph [b] of third defense).

It is true that the plaintiff has paid or deposited with the court, out of the purchase price, the payment of her obligation of P12,000 with interests secured by the mortgage of the land and the building erected thereon which was destroyed by fire, but whether the payment was actually effected or not, the result is the same. If the payment was accepted and the land relieved of the mortgage lien, the plaintiff would have acquired for P1,733.33 Philippine pesos a land which was valued then at P11,800, and now about P47,200, for this court may take judicial notice of the increase in value of lots now, especially of commercial lots like the one in question, which are worth at least four times they were worth before. And if the payment has not yet been effected up to date or the courts declare the payment not valid, because of the value of Japanese war notes at the time of deposit, and the defendant wants to pay now P15,000, she would still get a benefit of over P30,000 out of the transaction, which is the difference between P15,000 she has to pay to the creditor plus P1,733 she had paid to the plaintiff or a total of P 16,733, and the present market value of about P47,000.

In view of all the foregoing, it is therefore not only right and legal, but just and equitable to hold, as the lower court did, that the evidence shows that there was such an agreement of P5,000 Philippine currency as additional purchase price, which is very much less than the benefit to be derived by the defendant from the transaction, and to affirm the appealed judgment.

The judgment appealed from being in accordance with law and facts, is affirmed with costs against the appellant. So ordered.

Padilla, J., concurs.

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