

**JOSE VALES, PLAINTIFF AND APPELLEE, VS. SIMEON A. VILLA,
FELIPA S. SILVESTRE, AND MARIA GUIA GARCIA, DEFENDANTS AND
APPELLANTS.**

G.R. No. 10028, December 16, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action to set aside certain transfers of real estate from the plaintiff to one of the defendants and to require that defendant to reconvey by good and sufficient conveyance the title to such properties; to refund to the plaintiff a certain sum paid by plaintiff for the recovery of certain other real estate; and for an accounting by the defendants of the rents, issues and profits of certain real estate during a certain period; and for P25,000 damages.

Judgment was rendered in favor of the plaintiff and against the defendants as follows:

"Requiring the defendant Maria Guia Garcia to elect within fifteen days from date hereof, whether she will pay the plaintiff the sum of P7,274 with interest on P6,500 thereof at 6 per cent per annum from September 5, 1911, and on P752 thereof at 6 per cent per annum from the 4th day of April, 1913, and retain the property; or deed the property described as follows (description of property) and the property sold to her on the 4th day of April, 1913, to the plaintiff upon plaintiff's paying her the sum of P7,500, with interest thereon at 6 per cent per annum from the 5th day of September, 1911, and of deeding to plaintiff without compensation the parcel of land deeded by plaintiff to her on the 4th day of April, 1913.

"And requiring the defendant, Simeon A. Villa, to elect within 15 days from date hereof whether he will pay the plaintiff the sum of P8,910.41 and retain the property sold to him by the plaintiff, and described as follows (description of property) together with interest thereon at 6 per cent per annum from the 17th day of October, 1911, or deed the property to the plaintiff upon the payment by the plaintiff to him of the sum of P8,089.59, with interest thereon at 6 per cent per annum from October 17, 1911.

"And, upon the failure of either of said defendants to elect, as stated, the right of election as to performance shall be in the plaintiff, who may immediately enforce his election by execution, compelling the defendants to execute the deeds as indicated, upon the payment of the sum required of him, or to pay the amounts required by them to be paid, in case of retention of the property, and in favor of the plaintiff.

"And against the defendant Maria Guia Garcia for the sum of P3,600, together with interest thereon at 6 per cent per annum from the 24th day of October, 1913, and, for the costs of the action."

This appeal was taken from that judgment.

It appears that the defendant Felipa Silvestre is a widow, 70 years of age, and is the aunt of the defendant Maria Guia Garcia, wife of the defendant Simeon A. Villa.

In 1904 plaintiff was the owner of the following properties, to wit:

"(a) Two houses of strong materials, known and designated as Nos. 37 to 47 (now 105-113) Calle Nebraska,

district of Ermita, together with the lots whereon said buildings are erected, said houses and lots having an assessed valuation of P23,644 Philippine currency; (b) one house of strong materials, known and designated as No. 49 (now 303-311) Calle Mercado, district of Ermita, together with the lot whereon the same is erected; (c) one house of strong materials, known and designated as No. 45 (now 221-225) Calle Mercado, district of Ermita, consisting of 11 doors or posesiones, together with the lots whereon the same is erected; (d) two houses of strong materials situated upon the private street known and designated as Callejon Maria Paz, and numbered 47a, 47b, and 11, 13, 15, and 17, respectively, together with the lots whereon the same are erected."

At that time he was in debt to the defendant Felipa Silvestre in the sum of P20,000. In that year he executed to her a conveyance of the properties above described in consideration of the debt, the conveyance containing a clause giving to the vendor the right to repurchase the premises within one year from the date of the conveyance by a payment to the vendee of the consideration stated in the conveyance. Plaintiff did not repurchase, and in March 22, 1909, having become indebted to Felipa Silvestre in an additional sum of P5,000, he, on that day, conveyed the premises to the defendant Maria Guia Garcia, at the request of Felipa Silvestre, she being an elderly woman and Maria Guia Garcia being considered by her the heir to all her property. The consideration for the transfer was the debt of P20,000, the purchase price named in the conveyance of 1904, and P5,000, the additional debt which had been created during the time intervening between the two conveyances. The deed was absolute on its face and, so far as appears, conveys the property in fee simple; but the plaintiff contends that there was a parol agreement between him and the defendants entered into at the time the conveyance was executed and delivered, giving him the right to repurchase the premises so conveyed at any time on paying to the vendee the P25,000 named as the consideration for the transfer. The defendants deny the existence of such a parol agreement and the controversy thus raised is the origin of all the differences between the parties to this action.

Shortly after the conveyance of March 22, 1909, one parcel of the property described in that conveyance was sold to Judge Jocson, and still later a second parcel, the defendant Maria Guia Garcia appearing in both conveyances as the vendor of the properties. Still later another parcel of the property described in said conveyance was sold to one Garchitorena, Maria Guia Garcia being the vendor in that conveyance.

In 1911, the plaintiff conveyed to the defendant Maria Guia Garcia for P7,580 certain property, also the subject of this action, but not a part of the property described in the conveyance of the 22d of March 1909, located on Calle Salsipuedes; and in 1913 a parcel of land adjoining the Salsipuedes property for P752. In 1911, plaintiff also conveyed to the defendant Maria Guia Garcia a house and lot located on Padre Faura Street for P8,000. On the 4th day of April, 1913, the defendant Maria Guia Garcia conveyed to plaintiff the properties described in the conveyance of March 22, 1909, remaining unsold, for the consideration of P6,800, plaintiff thereby receiving on payment that which he claims he was entitled to receive for nothing under the alleged verbal agreement, he claiming that he had paid long before the full sum of P25,000 which entitled him to the reconveyance without further consideration.

This action was commenced on the 25th of October, 1915.

It is claimed by the plaintiff that, in spite of the conveyance of the 22d of March, 1909, he continued in possession of the properties described therein as virtual owner thereof, and that all he paid for such possession was the interest on the P25,000, the consideration for the conveyance, at the rate of 9 per cent per annum, or P2,250 a year. He also claims that he rented those portions of the properties described in the conveyance which he himself did not personally occupy and that he had the benefits of such rents, collecting them and using them for his own personal purposes. The defendants, on the other hand, deny that the plaintiff, after the conveyance of the 22d of March, 1909, occupied the premises as owner, but assert that he occupied them as tenant of the defendant Maria Guia Garcia and that he paid rent to her continuously while in the occupancy thereof, the amount of the rent being

reduced as portions of the property were sold; and that in December, 1911, and this plaintiff admits, defendants canceled plaintiff's lease and thereafter collected the rents themselves from all occupants, including the plaintiff. Defendants also say that, while it is admitted that the plaintiff rented portions of the properties to other tenants, he acted in so doing as a tenant of the defendant Maria Guia Garcia and under a permission to sublet.

Plaintiff also claims that the consideration received for the conveyance to Judge Jocson was received by him as the real owner of the property and that P10,000 thereof was paid to the defendant Maria Guia Garcia as a part payment of the P25,000 which formed the consideration for the conveyance of the 22d of March, 1909, and was paid in pursuance of the alleged verbal agreement to reconvey the premises on the payment of the P25,000 in full. He makes the same claim with regard to the purchase price of the property sold to Garchitorea, asserting that he received the whole of that purchase price as the owner of the property and that he paid therefrom to the defendant Maria Guia Garcia the sum of P15,000, said sum, together with the sum of P10,000 paid from the Jocson sale, constituting the full amount due to defendant under the verbal agreement to reconvey attached to the conveyance of the 22d of March, 1909; and he asserts that, upon the payment of that sum, he was entitled to receive a reconveyance from the defendant Maria Guia Garcia of the properties described in the conveyance of the 22d of March, 1909, remaining unsold.

It is admitted that, in the sales to Judge Jocson and to Garchitorea, the plaintiff personally conducted the negotiations. Defendants, however, deny that he acted in such negotiations as owner, but allege that he acted as their agent. They also deny that he received the purchase price of said properties and that he paid them P10,000 and P15,000 or any sum whatever. They assert, on the contrary, that the defendant Maria Guia Garcia received the full purchase price in each case, and that the only sum that plaintiff received was that paid him by the defendant for his services as agent in selling the property.

With regard to the Salsipuedes and Padre Faura properties the plaintiff claims that they were obtained from him, and that he was induced to execute conveyances therefor in favor of the defendant Maria Guia Garcia under the threat that, if he did not do so, the defendants would not reconvey to him the properties described in the conveyance of the 22d of March 1909; that is, that they would repudiate the verbal agreement which plaintiff alleges was attached to that conveyance. He asserts that the consideration paid by the defendant for these properties was grossly inadequate and that, as stated, he was induced to accept such considerations and to make the conveyances by reason of the threat aforesaid. The defendants deny, as we have seen that such verbal agreement existed and also specifically deny that such threat or any threat was made or that the conveyances of the property referred to were obtained by virtue thereof.

The history of the transactions between the plaintiff and the defendant as given by counsel for the parties is not essentially different. While there is, of course, a wide difference in the claims of the parties to the action, that difference consists largely in the reasons which underlie the facts thus stated and the forces and motives which moved the plaintiff to the performance of the acts referred to and from the effects of which he asks to be relieved. Counsel for the plaintiff claim that the conveyance subsequent to that of the 22d of March, 1909, which is the origin of all the controversies between the parties, and his appearance as a witness for the defendants in the various proceedings in the Court of Land Registration concerning certain of the parcels of land in litigation and all other acts against his own interests, were induced either by the fraud of the defendants or by the force and undue influence which they were able to and did exercise over him by virtue of the advantages they possessed by reason of the fact that the conveyance of March 22d, 1909 was absolute in form. Counsel further assert that one of the elements of the alleged fraud and undue influence was that there was no consideration for the transfers to defendants or, if there was a consideration, it was grossly inadequate.

Plaintiff's position with regard to the various transfers and the other acts of plaintiff is best shown by statements of

counsel in their brief in this court. With respect to the conveyance of March 22, 1909, counsel say:

"On March 22, 1909, under guise of covering the additional P5,000 and to place the property beyond the reach of an impecunious brother-in-law, the plaintiff was induced to execute a writing, in the form of an absolute deed (Exhibit 1) in favor of the defendant Maria Guia Garcia, niece of Felipa Silvestre, and wife of Dr. Simeon A. Villa. This deed was made upon the express understanding (not contained in the instrument) that the plaintiff was to pay interest at the rate of 9 per cent per annum upon his indebtedness of P25,000 and was to have a reconveyance of his property upon the repayment of said indebtedness. The deed expressly recites that by an escritura dated September 23, 1904, the land with the improvements thereon had been conveyed to the defendant Maria Guia Garcia under pacto de retro for P20,000, that since that time the plaintiff had received from time to time an additional P5,000, all of which had been employed in the construction of improvements on the land. This additional P5,000, none of which was retained by the plaintiff, was the so-called consideration upon which the conveyance under pacto de retro was converted into an apparently absolute conveyance.

"After the execution of this deed to Maria Guia Garcia, the plaintiff, Vales, continued in the absolute possession of the properties (test., p. 9) and administered the same for his own use and benefit, free from any control on the part of the defendants. The revenue from the property amounting to the sum of P600 per month was wholly received by the plaintiff, until he sold a part of the property, and until he was later ousted from the remainder as hereinafter stated."

With regard to the transaction with Judge Jocson, counsel say:

"In October, 1909, the plaintiff found a purchaser for one of his houses in the person of Judge Jocson, who paid P14,000 for the premises at No. 49 Calle Mercado. Of this sum P2,000 was employed in building a stable and fences, P10,000 was paid by plaintiff on account of his indebtedness and the remainder of P2,000 was retained by plaintiff for his own uses. In thus reducing his debt from P25,000 to P15,000 the plaintiff was required to increase his interest payments from 9 per cent to 10 per cent, and the monthly payments of P187.50 were thereafter continued at the rate of P125.00.

"The sale to Judge Jocson was the occasion of the first intimation to plaintiff that he had committed a folly in executing a deed to property worth P78,500 to secure a debt of only P25,000 without expressing therein its real object. All of the negotiations with Judge Jocson, extending over several months, were carried on with the plaintiff exclusively, the price for the sale was fixed by the plaintiff after the latter had abandoned his efforts to secure a higher price, and the money was paid to plaintiff by Judge Jocson in the presence of the defendants, who were present, of course, for the purpose of signing the formal deed. This is shown not only by the testimony of plaintiff but also by that of Judge Jocson, who states that he was informed by Vales that although he was the owner of the property he had allowed the title to stand in the name of the defendant Maria Guia Garcia as security for an obligation. The judge testifies that he explained to Vales that although he, Vales, might have absolute confidence in the good faith of the defendants, there would be trouble in the event of the death of said Guia Garcia, and that in view of said explanation Vales requested the judge to prepare a suitable document which would show the real equity of Vales in the property. The judge identified the surviving sheets of the rough draft of the document so prepared by him (deposition, Exhibit B, p. 77-8). When this document was presented to defendant Villa and his wife, Guia Garcia, upon one pretext or another they failed to execute the same. This attitude of theirs aroused the suspicion of plaintiff and he forthwith determined to sacrifice a part of his property in order to obtain the money with which to discharge the remaining balance of his indebtedness. He accordingly engaged the services of brokers to find a buyer for the house and lots at Nos. 105-113 Calle Nebraska, included in the deed to Guia Garcia. The result of this activity was the sale to Garchitorena of these properties for the sum of P20,000, although this was far below their real value, as shown by the testimony of Goyena, a competent and disinterested witness, who appraises the said properties at over P36,000.

"The broker who made the sale testifies positively that the defendant Felipa Silvestre informed him that the property in question belonged to Vales, the plaintiff; that he received all his instructions regarding the sale from the latter; and that from him he received his commission for his services in effecting the sale. The testimony of this witness also corroborates absolutely that of the plaintiff to the effect that when the P20,000 were received from Garchitorena for the sale of the property in question P5,000 of it was turned over to Vales. He also testifies that at that time Vales requested the defendants, all of whom were there present, to reconvey to him the rest of the mortgaged property and that the defendant Villa, in the presence of the other defendants, said that that would be done after Holy Week (sten. notes, page 39). The details of what transpired on this occasion were also given by the plaintiff in his testimony (sten. notes, page 14). This occurred on the night of April 11, 1911.

"The situation, therefore, after April 11, 1911, was that the plaintiff had returned to the defendants the whole amount of his indebtedness to them, but the titles to the remaining properties, which had stood as security for the debt, still stood in the name of the defendant Maria Guia Garcia. The value of these properties, as established by the undisputed testimony of the witness Goyena, was P24,437."

Counsel have this to say with regard to the transaction involving the house on Calle Salsipuedes:

"On April 14, 1911, plaintiff requested defendants to reconvey to him the rest of his property, but was informed that this would not be done until he had sold them for P7,500 a house and lot of his on Calle Salsipuedes, the value of which, as fixed by the witness Goyena, was over P5,000. The details of the discussion which this outrageous demand provoked are found on page 17, stenographic notes of plaintiff's testimony. The final upshot was that the defendants told plaintiff that if he would finish the house as they wanted it and sell it to them for P7,500, that they would then reconvey to him the rest of his property, but that if he did not do so, they would keep it, availing themselves of the fact that the record title was in the name of the defendant Maria Guia Garcia. Fearing that he would be deprived of his property, and yielding to the threat of the defendants, the plaintiff completed the house and conveyed it to the defendant Maria Guia Garcia for P7,500.

"This house was completed about August 1, 1911, and on September 5, was deeded by plaintiff to defendant Maria Guia Garcia. He then again preferred his request for the restoration of his Ermita properties, but the rapacity of the defendants was not satisfied. The plaintiff had purchased a building lot on Calle Padre Faura, and had planned and commenced a building thereon to cost about P17,000. This property had apparently excited the avarice and cupidity of defendants, and under the guise of punishing him for his ingratitude in telling the true history of his woes to Judge Ostrand of the Land Court and thus delaying the title to the Salsipuedes house, they demanded of plaintiff the Padre Faura house, finished and completed to the taste and requirements of Dr. Villa for the meager sum of P8,000. The mere fact that the plaintiff had meekly been haled before Judge Ostrand by Dr. Villa and frightened into retracting his statements and consenting to the issue of title unto Maria Guia Garcia, after a two days' delay, seemed to make no difference. The temerity of plaintiff in even mentioning his rights was deemed worthy of chastisement, especially such as would redound to the profit and gain of defendants. And so the Padre Faura property went the way of the house on Calle Salsipuedes and settled into the maw of the defendants. Its actual cost of building (some P14,800) was advanced by Dr. Villa, and so, when finished the poor plaintiff was owing to defendants the sum of P6,800 or the excess of cost over the purchase price of P8,000.

"Finally in December, 1911, the defendants having discovered that plaintiff was the owner of a strip of land adjoining the house and lot already wrested from him and having made unsuccessful demands upon him for the transfer of that strip to them, put the screws upon his thumbs a little tighter. In addition to informing him that they would indefinitely retain his Ermita properties, they ousted him from the administration thereof, collected the rentals thereof and even compelled the plaintiff to pay them rental for that part occupied by himself and family. Succumbing to this pressure, and piling Pelion on Ossa, the plaintiff made conveyance of this additional tribute.

"With the demand of P6,800 above stated the plaintiff was unable to comply for some time. Finally, in April, 1913, he succeeded in borrowing this sum from one Rafael Alonso, and with this sum (P6,800) as a nominal consideration, he succeeded in securing the refund of the balance of his Ermita possessions (worth about P24,500). Why the defendants did not complete their undertaking, but left the plaintiff with an equity of about P18,000 is surprising. Doubtless the delay in procuring for their demands the ultimate P6,800, or the threatened fulfillment of the adage that even a worm will turn, advised them that they were at the end of their rope."

It is thus clear that the real difference between the parties in their relation of the facts in the main lies in the coloring given them by the disclosure by the plaintiff of what he alleges to have been the motives and forces which drove him to the transactions which he now wishes to have annulled.

There appears to be some confusion as to the precise nature of this action. Counsel for appellants say in their brief in this case:

"This is an action to annul a series of real estate transactions between plaintiff and defendants on the ground of duress."

This statement is sharply challenged by counsel for appellee in their brief. They say:

"The action has been erroneously described in appellant's brief as. one to annul a series of real estate transactions on the ground of duress. More correctly this is an action to compel the defendants to account unto the plaintiff for the proceeds of a series of frauds practiced upon said plaintiff."

Later in their brief, however, and constituting the very first sentence of that portion marked "Argument," counsel for plaintiff have this to say respecting the real issue in the action:

"With no dispute or denial of the shameful charges laid at the door of Villa and his wife by this plaintiff, counsel for appellant seeks strenuously to avoid the issue of duress"

Counsel then continue:

"From this premise he (speaking of counsel for appellant) argues that as there was no legal obligation to reconvey, manifestly their refusal to do so could not have coerced plaintiff's volition. Our law would be indeed a travesty on justice if, upon the facts disclosed by this record, no relief could be afforded to the plaintiff."

Still later counsel say with respect to the sale of the properties in question for P25,000 when the undisputed evidence shows they were worth P78,515:

"It is repugnant to common sense to think for one moment that any sane man would be willing to sell property of this value for less than a third of its actual worth."

Moreover, the brief of counsel for plaintiff is divided into four parts, each part headed by a word or phrase in bold face type descriptive of its contents. They are "Argument," "Duress," "Ratification," and "Res judicata." There is no division of the brief which is devoted to fraud or deceit and no direct discussion of either element. Under the heading "Argument" there is a discussion of the claim that the conveyance of March 22, 1909, was for security and not an absolute conveyance. This is followed by the part marked "Duress" where counsel say:

"The evidence also shows, however, that instead of performing this duty, the defendants, conspiring together, and taking advantage of the fact that the conveyance by way of mortgage was in the form of an absolute deed, played upon the fears of plaintiff and extorted from him the money and property described in the complaint. It is our contention that the consent thus wrung from the plaintiff was vitiated by the duress to which he was subjected by the defendants, and that they are bound to make restitution to him of every dollar which they have extorted from him by their threats and intimidation."

Under the heading "Res judicata" we find this:

"But plaintiff does contend that the defendants must undo their fraud, and must elect to make up the deficiencies, etc."

It would seem from the foregoing, taken in conjunction with the allegations of the complaint, that the theory of the action is duress. We might say, however, inasmuch as fraud and deceit are so prominently mentioned, that we find no fraud in this case. Most if not all of the elements of fraud are absent. In none of the transactions was there a misrepresentation of an existing or past fact; and plaintiff went into each one of them knowing all of the facts as well as the defendants. There was no deception. This is a necessary deduction not only from the fact that there was no misrepresentation but also from the fact that plaintiff knew precisely what he was doing—was fully acquainted with the facts; and, knowing them, again and again accepted the verbal promises of the defendants to reconvey. Under his own statement and according to his own theory the defendants did no more than break their verbal contract with him with respect to all subsequent transactions as they had with respect to the first. That was not fraud, although it was done again and again, unless the mere failure to fulfill the various verbal contracts can be said to constitute fraud or deceit. It is well recognized, however, that a mere failure to live up to a contract is not fraudulent or deceitful. The furthest the authorities have gone along this line, and not all have gone that far, is to declare that if, at the time a contract is made, one of the parties has present in his mind the purpose and intent to break it, after getting all he can out of the other party, and that purpose and intent enter into the contract as the main element or consideration thereof on his part, there is fraud and deceit, the authorities holding that the state of mind of the party is a fact entering into the consideration of the contract without which it would not have been made; and that, by virtue of that state of mind, the other party was deprived of his property. That fact however must be alleged and proved and relied upon before it can be utilized by the person asserting its existence. It was not alleged or proved in this case and plaintiff does not rely upon it in his brief in this court. His consent was not obtained by deceit in any of the transactions. There did not exist in any one of the transactions complained of a condition where "by words and insidious machinations on the part of one of the contracting parties the other is (was) induced to execute a contract which, without them, he would not have made."

Reduced to the lowest terms this action constitutes an attempt on the part of the plaintiff to extricate himself from a series of foolish transactions, if we may accept his allegations respecting them. As we have said, the sales were all made by the plaintiff with full knowledge of the facts and there appears nothing in the record which warrants a rescission of them from the standpoint of fraud. The ultimate purpose of the action is the recovery of the properties described in the deed of March 22, 1909, remaining unsold. But, as appears from the evidence, the plaintiff has already recovered those properties, having purchased them from the defendants on April 4, 1913, for P6,800. Before this action was begun, therefore, plaintiff had obtained the very thing which he had been seeking to recover all through his dealings with defendants and to obtain which he claims he had suffered so much. Having secured before this action was begun precisely what defendants had promised him and the very thing he sought, there remains nothing further to be said or done in that connection. Certainly the repurchase of the properties which he so much desired was not procured by fraud or deceit; and it was a complete termination of the relations existing between the parties arising out of the properties which he claimed were sold with a right to repurchase. After having obtained the very thing he desired and having done so in a manner which he deemed best and most suitable under the circumstances, did he not thereby terminate all relations between himself and defendants with respect to, or growing out of those properties, and can he now repudiate not only the transactions by which he recovered them but also every other transaction which he claims related thereto? It is incomprehensible, from a legal point of view, that plaintiff, having been deprived of property by fraud and deceit, may recover that property through a voluntary agreement between him and those who deceived and defrauded him, and then repudiate not only the transaction in which he was defrauded of that property but also the very

transaction by which he recovered it.

Dealing with the case from the standpoint of intimidation, it should be noted that the plaintiff does not claim that the conveyance of March 22, 1909, was obtained in that form by force or threats. The validity of that conveyance is admitted; as is also the fact that the verbal agreement to reconvey was omitted from the conveyance knowingly. The claim is simply that there was a verbal agreement to reconvey on the repayment of the consideration named in the instrument and that defendants made use of the fact that the agreement was verbal and, therefore, difficult to prove, as a lever by which they forced him to convey to them additional properties before they would comply with the verbal agreement. According to plaintiff's contention, then, each one of the conveyances between him and defendants subsequent to the original conveyance was an extortion, using that word in its popular and not in its legal sense, the defendants, in order to intimidate him and thereby obtain the conveyance, threatening him with a refusal to comply with the verbal agreement to reconvey and the consequent loss of his properties. At each conveyance the defendants agreed, always verbally, as a consideration therefor, to reconvey to him the properties remaining, but each time refused to do so and proceeded, after each such conveyance, to a fresh extortion. It is contended that plaintiff, by not incorporating the verbal agreement to reconvey in the instrument itself, placed himself in a disadvantageous position; and that he executed and delivered the subsequent conveyances for the purpose of extricating himself from the unfortunate situation so produced. The ultimate extortion, the payment of P6,800 to recover the remaining properties, was the last penalty which he paid for his mistake in not incorporating the verbal agreement in the conveyance itself.

All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves—upon their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he is inferior, any more than it protects the strong because he is strong. The law furnishes protection to both alike—to one no more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them—indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it.

Furthermore, even if an actionable wrong be committed in such manner as to authorize the courts to intervene, the person injured may renounce his right to take the matter to the courts and may compromise with the wrong-doer. Or, having been placed in a very disadvantageous position by the wrong committed against him, he may be offered by his adversary one or more avenues of escape. He may be required to lose more property to his enemy or go to the courts for redress. In such case the payment of an additional sum as a means of escape is not necessarily a payment voidable for duress. The act was preceded by an exercise of judgment. This much was plain to him: he had either to let the matter stand as it was with the loss already sustained, or go to the courts to be

relieved. His judgment, operating upon this condition, told him to pay the additional sum rather than to suffer the inconvenience and expense of an action in court. A payment made under such conditions is not voidable. It is the voluntary act of a sane and mature man performed upon reflection. Not only this; it is a compromise of the original wrong and a ratification of the relation which the wrongful act was intended to establish between the parties.

The same may be said with greater force of a case where a person's own voluntary act, uninfluenced by another, has put him in a disadvantageous position—a position which another may unjustly make use of to his injury. The failure to reduce a contract to writing, or to have witnesses present when a verbal agreement is made, or to record an instrument, or to exclude from the operation of its terms things verbally agreed to be excluded, etc., may place a person in a disadvantageous position with respect to another; and the demand that he pay to secure his extrication is not illegal, and a payment made pursuant to such demand is not necessarily voidable. He pays for his lack of foresight. While the demand may be reprehensible morally, it is not illegal; and of itself is not ground for relief.

There must, then, be a distinction to be made between a case where a person gives his consent reluctantly and even against his good sense and judgment, and where he, in reality, gives no consent at all, as where he executes a contract or performs an act against his will under a pressure which he cannot resist. It is clear that one acts as voluntarily and independently in the eye of the law when he acts reluctantly and with hesitation as when he acts spontaneously and joyously. Legally speaking he acts as voluntarily and freely when he acts wholly against his better sense and judgment as when he acts in conformity with them. Between the two acts there is no difference in law. But when his sense, judgment, and his will rebel and he refuses absolutely to act as requested, but is nevertheless overcome by force or intimidation to such an extent that he becomes a mere automaton and acts mechanically only, a new element enters, namely, a disappearance of the personality of the actor. He ceases to exist as an independent entity with faculties and judgment, and in his place is substituted another—the one exercising the force or making use of the intimidation. While his hand signs, the will which moves it is another's. While a contract is made, it has, in reality and in law, only one party to it; and, there being only one party, the one using the force or the intimidation, it is unenforceable for lack of a second party.

From these considerations it is clear that every case of alleged intimidation must be examined to determine within which class it falls. If it is within the first class it is not duress in law, if it falls in the second, it is.

But into whichever class it falls the party coerced may, as we have seen, waive his right to annul the contract and to recover damages. He may do this expressly or impliedly. He may expressly accept the agreement as it stands, or in a modified form, and live up to it as thus accepted. Or, he may compromise by paying something to be relieved from its effects or to have its terms changed. Or, he may accept benefits under the contract. In any one of which cases, and there are others not now necessary to mention, he renounces and waives his defense of intimidation and thereby eliminates that element as one having any influence on the case thereafter.

Article 1265 of the Civil Code tells us when duress exists: "Consent given by error, under violence, by intimidation, or deceit shall be void." Article 1267 provides that "violence exists when, in order to exact consent, irresistible force is used;" and that "intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property * * *." Article 1268 declares the effect of violence and intimidation on the contract It provides:

"Violence or intimidation shall annul the obligation, even if it should have been employed by a third person who did not take part in the contract."

There is no question of error or violence in this case; and we have already disposed of that of deceit. Intimidation

resulting from the fear of losing his property, if he did not comply with defendants' demands, is the element relied on.

First, then, applying the principles already enunciated: Was there intimidation in this case under the facts as related by plaintiff himself, leaving out of account the conclusions drawn and stated in the brief of counsel? Summing up the whole case under these facts, it is clear that all that defendants did was to refuse to live up to their verbal agreement with the plaintiff unless he gave them an additional consideration therefor. Plaintiff had his choice. He could refuse to pay again for the right which he had paid for once, and go into court for relief, or he could pay the price asked. His judgment operated upon the situation thus presented and he concluded that, from his point of view, his interests would be best subserved by paying the additional consideration. But having paid it, he found himself in precisely the situation he was before. The verbal agreement to reconvey, which he claims he had twice paid for, was still verbal, and he was no better off than before. He took no receipt showing the purpose of the payment; he required no writing to protect himself from the very trap into which he had once fallen; but, instead, with the very persons who had refused to live up to their original agreement because it was verbal, he not only made another verbal agreement but also paid them, without a scrap of paper to show for it or specify its object, the sum of P10,000 on that agreement. Not only this, but he did the same thing a second time. The defendants having refused to fulfill the second verbal agreement and having refused to give him credit for the P10,000 paid, he entered into a third agreement under which he paid them P15,000. But still the agreement was verbal. Still there was no receipt, no writing, nothing but the naked word that had twice before been repudiated. Again, for the third time, there was a refusal to fulfill and the plaintiff, to obtain the very thing which had been the subjectmatter of these prior verbal contracts, paid a fourth consideration of P6,800. This time he succeeded. On the payment of the fourth consideration he secured in black and white the title to the property which had so eluded him.

If we accept these as facts, and we do for the purposes of the present discussion, we see that there was no intimidation in law. There was a lack of sense and judgment; but there was no imminent and serious injury threatened to his person or property. There was simply a refusal to comply with the terms of a contract unless plaintiff did certain things; but there was no threat of imminent and serious injury to his person or property. If a threat to refuse to live up to a contract is equivalent to a threat of imminent and serious injury to the person or property of the other contracting party, words have lost their meaning and language its significance. It may be admitted that plaintiff was in an unfavorable position. That does not mean, however, that the efforts he made to extricate himself therefrom entailed no consequences; nor does it mean that he was not dealing at arm's length with the defendants. There was no relation of trust or confidence. They owed him nothing but the naked legal duty to comply with their promise—to reconvey the premises on the payment of the debt he owed them. He was free to resort to the courts at the first refusal of the defendants, as he ultimately did; and his chances for obtaining the relief sought would have been far better than they are now. By his delay and his subsequent dealings with the defendants he has not only given them the opportunity to charge that his conduct casts grave doubts on the truthfulness of his allegations, but he also laid himself open to the accusation of having compromised with his enemies, with having ratified and confirmed all that was done, and with having waived and renounced his right of action based on intimidation, if one he ever had. Every person who makes a contract assumes the risk of a refusal to comply. Breaches of contract are the commonest cause of litigation; and settlements and readjustments between the parties after a breach of contract whereby the person injured by the breach pays an additional consideration to the person breaking it in order to obtain a fulfillment, are also common. We never have understood that such arrangements were voidable for intimidation. A threat to refuse to comply with the terms of a contract without an additional consideration is not, of itself, intimidation. It is an offer to make a new contract, to establish new relations, with a statement from the one making the offer that he will no longer abide by the old contract. Such an

act does not put the other party in the power or under the control of the one making the threat. He is still free to act as he pleases. He can still exercise judgment and will; he has still a refuge from the evil threatened; he still remains free to secure the same redress which every other person can obtain who is injured by a breach of contract. There is nothing in this which can produce intimidation. There is nothing which can engender a well-grounded fear of imminent and serious injury to person or property—which destroys volition and chains the will.

But, even though it should be found that the execution of the conveyance of the Salsipuedes and Padre Faura properties and the payment of the consideration of P6,800 for the recovery of the properties described in the original conveyance remaining unsold, together with all the other acts of the plaintiff which militate against his interest, were obtained and procured by means of intimidation, still we believe that the plaintiff would not be entitled to recover on the record. His acts in general not only contradicted the most material portions of his testimony, but he must be held to have ratified the conveyances, payments, and acts referred to and to have renounced the right to interpose the defense which intimidation originally offered him.

Before entering upon this branch of the case it is necessary to correct certain errors into which counsel for the plaintiff appears to have fallen in their brief. Under the heading "Statement of facts" counsel say:

"The facts upon which this action is based, astounding as they are, stand absolutely uncontroverted and undisputed. The recital of woeful abuse which constituted the plaintiff's complaint might stagger the credence were it the mere version of a litigant, disputed or contradicted by his opponents, or by a single witness or document offered in their behalf. Instead, it stands corroborated and undented in spite of unusual opportunities afforded to the defendants of correcting it in any particular in which it may have been distorted, overdrawn or misrepresented by the plaintiff."

Under the head of "Argument" counsel again say:

"With no dispute or denial of the shameful charges laid at the door of Villa and his wife by this plaintiff, counsel for appellant seeks strenuously to avoid the issues of duress."

There are several other statements in the brief of similar character. We find in the record, however, the testimony of Felipa Silvestre, Maria Guia Garcia, and Simeon A. Villa, the three defendants. These witnesses, or some of them, deny the material allegations and testimony of the plaintiff, and some of them testified to facts demonstrating, if true, the unreliability of the testimony of the plaintiff. They deny the existence of the verbal agreement upon which plaintiff bases this case. They declare that the sale of the 22d of March, 1909, was an absolute sale and was intended as such by the parties thereto. They assert that plaintiff occupied the premises after such sale as a tenant, paying them a monthly rental therefor. They testify that the conveyance of the Salsipuedes and Padre Faura properties was voluntary on the part of the plaintiff and for a consideration regarded at the time as adequate in each case. They deny that they threatened plaintiff in any way; or that they intimidated him; or that they influenced him one way or the other in any of the transactions of which he complains. They deny that he sold the properties to Judge Jocson and to Garchitorena as owner, but allege that he acted as their agent in doing so. They deny that he paid interest and assert that he paid rent, and, to support this denial, evidence the fact, admitted by the plaintiff, that they finally ousted him from the possession of the property and collected the rents themselves. As further corroboration, they point to the fact that the only receipt introduced in evidence by plaintiff to substantiate his claim that he was paying interest and not rent shows upon its face that it was a receipt for rent. They point to the record showing that, again and again, by word or by letter, they refused plaintiff's request to reconvey to him and denied that there was any agreement to reconvey. They deny that plaintiff received any of the purchase price of the properties sold to Judge Jocson and to Garchitorena, but declare that the purchase price was paid to them with the exception of certain sums paid to the plaintiff on their behalf.

Not only this, but defendants point to the absolute nature of the conveyance of the 22d of March 1909; to the fact that they obtained Torrens title thereto with the assistance of the plaintiff who testified to the absolute character of their title; to the conveyances of the Salsipuedes and Padre Faura properties for considerations expressed; to the fact that the plaintiff assisted them in obtaining Torrens title to those properties and that he did so after the defendants had repudiated his contention of the existence of a verbal agreement to reconvey; to his failure to act when he was ejected from the premises as a tenant; to his repurchase of the properties described in the original conveyance remaining unsold and his payment of the consideration of P6,800 therefor; to his acquiescence for a period of six months after such repurchase before the present action was commenced. They call attention to the inherent improbability of plaintiff's story; to his acts which contradict his words; to his acquiescence for a long period of time; to his acts in assisting defendants to procure the registration of their titles not only to the lands described in the original conveyance but also to those which plaintiff claims they obtained from him by threats and intimidation; and in this connection they again invite consideration of the fact that, after all of the alleged wrongful acts of the defendants, the plaintiff repurchased the remaining properties, paying a consideration of P6,800 therefor.

Counsel for defendants on this appeal challenge the truthfulness of plaintiff's testimony when confronted by the denial of the defendants and a history of his own acts; and in doing so our attention is drawn to the admission of counsel for the plaintiff in their brief where they say: "The recital of woeful abuse which constitutes the plaintiff's complaint might stagger the credence were it the mere version of a litigant, disputed or contradicted by his opponents, or by a single witness or document offered in their behalf;" and we necessarily recur to the fact that the defendants did contradict plaintiff not only in their oral testimony but by the documents and documentary evidence introduced by them. Not only do they in their oral declarations contradict the plaintiff's testimony but there is a grave question whether or not the plaintiff is not bound by their testimony. They were his witnesses, called by him by virtue of section 355 of the Code of Civil Procedure; and while their testimony was not introduced by the plaintiff, it was offered by the defendants and accepted as evidence by the court with the consent and agreement of counsel for the plaintiff. We do not find it necessary to decide this question at this time, but refer to it simply to call attention to the possibility that section 355 may have its penalties as well as its rewards.

Returning to the question of ratification and renunciation, the Civil Code provides, article 1309, that "the action of nullity is extinguished from the moment the contract may have been validly confirmed;" and article 1311 declares that "the confirmation can be made either expressly or in an implied manner. It shall be understood that there is an implied confirmation when, being aware of the cause of the nullity and such cause having ceased to exist, the person who may have a right to invoke it should execute an act which necessarily implies his wish to renounce such a right;" while article 1313 provides that "confirmation purges the contract of all defects which it may have contained from the moment of its execution."

The first rejection of plaintiff's claim of the existence of the parol agreement in connection with the conveyance of March 22, 1909, occurred in June or the last part of July of 1909, when the defendants refused to sign an instrument presented to them by the plaintiff putting in written form the alleged verbal agreement. That claim was again rejected in the same year when the Salsipuedes property was conveyed, and this time in writing. In spite of these rejections, however, plaintiff continued his dealings with the defendants, selling them the Salsipuedes and Padre Faura properties, apparently assenting to their right to eject him as tenant from the Ermita properties, and by paying them P6,800 for a conveyance of the properties described in the conveyance of March 22, 1909, remaining unsold. Not only this, but after such rejections, or at least one of them, the plaintiff assisted the defendants in obtaining Torrens title to the very properties which he claimed to own and which he now claims he had been deprived of by the intimidation practiced by the defendants. It is impossible, as we view the law, for plaintiff,

after having been deprived of property by intimidation, to recover that property through a voluntary agreement between him and those who intimidated him, and then repudiate not only the transactions in which he was deprived of that property, but also the very transaction by which he recovered it. By his repurchase of the remaining properties in April, 1913, he accepted everything as it stood at that time and elected to take from the defendants a conveyance of the remaining properties as a final termination of all their relations in connection therewith.

Taking the case as a whole, we are therefore of the opinion that there was no intimidation and that, if there was, the plaintiff has placed himself in a position where he was not entitled to urge it as a defense.

The judgment appealed from is reversed and the complaint dismissed, without costs in this instance. So ordered.

Arellano, C. J., concurs.

Johnson and Trent, JJ., concur in the result.

Carson, J., dissents.

Torres, and Araullo, JJ., did not take part.

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