

EUTQUIANO CUYUGAN, PLAINTIFF AND APPELLANT, VS. ISIDORO SANTOS, DEFENDANT AND APPELLEE.*G.R. No. 10265. March 03, 1916*

Ponente: CARSON, J.

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The complaint in this case alleges that the plaintiff is the sole heir of his mother, Guillerma Cuyugan y Canda, deceased; that in the year 1895 she borrowed the sum of P3,500 from the defendant and executed, at the same time, the document, Exhibit C, attached to the complaint, which purports on its face to be a deed of sale of the land described therein, with a reservation in favor of the vendor of the right to repurchase for the sum of P3,500; that although the instrument purports on its face to be a deed of sale, it was intended by the parties merely to evidence the loan of the nominal purchase price and to serve as a security for the repayment of the amount of the loan; that under the terms of the instrument plaintiff's mother was left in possession of the land as a nominal tenant of the defendant at an annual rental of P420, an amount equal to the agreed upon annual interest on the loan at the rate of 12 per cent per annum; that in the year 1897 the borrower paid P1,000 on the loan, whereupon the nominal rent on the land was reduced from P420 to P300 per annum, that being the amount of the interest on the unpaid balance of the loan at the rate of 12 per cent per annum; that plaintiff and his mother continued in the peaceable possession of the land until the defendant, in the year prior to the institution of this action, served notice on the plaintiff that an annual payment of P420 would be required of him thereafter, that is to say, the original amount of the annual payments as agreed upon prior to the payment of P1,000 on the debt in the year 1897; that upon plaintiff's refusal to meet this demand, defendant set up a claim of ownership in himself and threatened to eject the plaintiff from the land; that thereupon plaintiff offered to pay, and still stands ready to pay the balance due on the original indebtedness and the unpaid interest thereon for one year, but that defendant declined and continues to decline to accept the amount tendered and to cancel the formal deed of sale to the land.

The prayer of the complaint is that the defendant be required to accept the amount thus tendered, and to cancel the formal deed of conveyance.

A demurrer to the complaint was sustained by the court below on the ground that it does not set forth facts constituting a cause of action—it appearing on the face of the deed of conveyance attached to the complaint that it was a deed of sale of land with a reserved right in the vendor to repurchase; and the allegations of the complaint disclosing that the deed of conveyance was executed by plaintiff's mother, that the stipulated price of repurchase has not been paid in full, and that the time allowed in the deed for repurchase has long since expired.

This is an appeal from the order sustaining the demurrer and dismissing the complaint.

We are of opinion that the demurrer should have been overruled on two separate and distinct grounds, either one of which is sufficient to sustain the ruling.

- Since the demurrer to the complaint admits all the material facts well pleaded therein, it follows that, for the purposes of the demurrer, the defendant admits that the true nature and intent of the transaction mentioned in the

complaint was a mere loan of money secured by a formal conveyance of the land of the vendor; that the written instrument, purporting to be a deed of sale of the land, with a right of repurchase reserved by the vendor, did not set forth the real nature of the agreement between the parties thereto; and that the true intention and understanding of the parties at the time when the deed was executed and delivered was that it should be held by the defendant, not as a deed of sale of the land, but rather as an instrument in the nature of a mortgage, evidencing a loan secured by the lands of the borrower. The demurrer further admits that the borrower's successor in interest had tendered the full amount of the indebtedness, together with the interest due and payable thereon at the time of the tender, and that he stands ready at any time to pay the full amount due on the loan with interest, upon the cancellation by the defendant of the formal deed of conveyance of the land.

But proof of these facts would clearly entitle the plaintiff to the relief prayed for. The demurrer should therefore have been overruled and the plaintiff should have been given an opportunity to submit his evidence in support of the allegations of his complaint.

It is contended, however, that even if all these allegations in the complaint were true in fact, nevertheless, the demurrer should be sustained, because, as it is said, these allegations of fact can not be sustained at the trial by the introduction of competent testimony, since the court will be compelled to exclude any evidence offered by the plaintiff which would tend to alter, vary, or defeat the terms of the written deed of conveyance which is attached to the complaint as an exhibit, and the execution of which by the plaintiff's mother is expressly alleged and admitted in the complaint.

In support of this contention we are cited to various decisions of this court wherein we have held that the intent of the parties executing instruments purporting to evidence sales of lands with the right of repurchase reserved to the vendors was sufficiently and satisfactorily disclosed by the terms of the instruments themselves; and that the intent of the parties as disclosed by the terms of these instruments should be given full force and effect in accordance therewith, despite the contentions of the vendors that the original transactions between the parties were had in contemplation of, and to give effect to contracts or agreements for the loan of money, the repayment of which was to be secured by the lands of the borrower.

It is true that in a number of cases submitted to this court in which such a contention has been advanced, and in which the language of the instrument evidencing the transaction under investigation clearly and without ambiguity set forth a contract of sale with a reserved right to repurchase, we have uniformly declined to maintain such contentions, and have enforced the contract in accord with the terms of the instrument by which it was evidenced. But it does not necessarily follow that such a contention can never be successfully asserted and maintained in the courts in this jurisdiction.

An examination of these cases will disclose that the true ground upon which they are based was the lack of evidence sufficiently clear, satisfactory and convincing to sustain a holding that the true nature of the transaction between the parties was any other than that set forth in written instruments executed by them and purporting to evidence sales of land with a right of repurchase reserved to the vendors. And the fact that, in the cases relied upon, the court examined and weighed the evidence before rejecting it as insufficient affords reasonable ground for an inference that had the court been of the opinion that the parol evidence submitted in any of these cases was clear, satisfactory and convincing, it might, and doubtless would have arrived at a different conclusion.

But however this may be, and without entering upon an extended review of the reported opinions of this court to ascertain whether language has been used in any of them which might be construed as an intimation by this court of its views on the question now under consideration, we are of the opinion that the issues raised on this appeal are such as to impose on us the duty of reexamining the whole question as to the power of the courts in this

jurisdiction to admit extraneous parol evidence in support of allegations that an instrument in writing, purporting on its face to transfer the absolute title to property, or to transfer the title with a mere right of repurchase under specified conditions reserved to the vendor, was in truth and in fact given merely as a security; and upon proof of the truth of such allegations to enforce such an agreement or understanding in accord with the true intent of the parties at the time when it was executed. The question having been brought here on an appeal from a ruling on a demurrer, the issue of law is squarely presented, without being obscured or befogged by the intervention of any doubtful question of fact, or of the relevancy, materiality, competence or probative value of specific questions and answers in a particular case.

We are of opinion, and so hold, that on both principle and authority, this question must be answered in the affirmative.

The Supreme Court of Porto Rico in the case of *Monagas vs. Albertucci* (17 Porto Rico, 684, cited and in effect affirmed as to this ruling by the Supreme Court of the United States, 235 U. S., 81) observed in the course of a discussion of a similar question that—"The American doctrine on this subject does not differ materially from the principles set forth in our Civil Code." a code which is substantially identical with the Civil Code of the Philippines in all its provisions with relation to the question under consideration; and we are satisfied on a full review of the whole question that, under our Codes, both substantive and adjective, the doctrine which must be applied in this jurisdiction "does not differ materially" from the equitable doctrine frequently announced and applied by the Supreme Court of the United States in the numerous cases in which similar questions have come to it from the various states and territories within its jurisdiction.

We shall consider first, whether the provisions of the new Code of Civil Procedure should be so construed as to deny the right to the borrower in such cases, to introduce extraneous and parol evidence to support his allegations as to the existence of a parol agreement, whereby the lender obligated himself to hold the title to the lands merely as security for the repayment of the debt; and further whether there is anything in that Code which would deny the right of the borrower in such cases, upon proof of such allegations, to enforce the agreement in accordance with its terms.

The authors of the new Code of Civil Procedure (Act No. 190 of the Civil Commission) were American lawyers, and the avowed purpose and object of its enactment was to introduce in these Islands a system of procedure in civil cases modelled upon precedents in general use in the United States. Most of its provisions are borrowed directly from the statute books of one or other of the States of the Union, and many of its more important provisions have been construed and applied by both state and federal courts of last resort. We have, therefore, in the Supreme Court Reports of the various States from which these provisions were borrowed, numerous precedents of strong and persuasive, if not conclusive authority; and, except in so far as they are affected by the substantive law in force in this jurisdiction or necessarily modified by local conditions, we have always felt ourselves bound by the rulings of the Supreme Court of the United States in construing and applying statutory enactments modelled upon or borrowed from English or American originals.

The various provisions of the new Code of Civil Procedure which have any bearing on the question now under consideration, or statutory provisions of like tenor and effect, have been construed and applied by all or nearly all the courts of last resorts in England and the United States; and while these courts are not wholly in accord as to the reasoning upon which their conclusions are based, it may safely be asserted that with substantial, if not absolute unanimity, they have arrived at substantially similar results.

But we shall not stop at this time to review all the questions which have been raised in connection with the subject now under consideration. It will be sufficient for our purposes to examine the objections which have been

advanced against the admission of parol evidence to sustain allegations similar in effect to those set forth in the case at bar, based either on the ground that such evidence should be excluded under the "Statute of Frauds," the alleged agreement not having been reduced to writing, or on the ground that its admission would violate the rule that parol evidence will not be admitted to vary or contradict the terms of a written instrument.

For this purpose we can do no better than to insert here a few citations from the books, which set forth quite fully the doctrine in this regard that has been announced by the great weight of authority, and which in our opinion should prevail in this jurisdiction in applying and construing the pertinent provisions of the new Code of Civil Procedure. But, before doing so, it may be well to indicate that we do not adopt every proposition advanced in these somewhat extended citations from text-book and judicial authority, and that, at this time, we make the doctrine our own only to the extent of declaring that the provisions of the new Code of Civil Procedure do not have the effect of excluding parol evidence in support of allegations such as those set forth in the complaint in the case at bar, or of denying the right of the borrower in cases of this kind to enforce the alleged agreement in accordance with its terms. Supported by numerous citations the doctrine summarily stated in 27 Cyclopaedia, page 1023, is as follows:

"Effect of statute of frauds.—The statute of frauds does not stand in the way of treating an absolute deed as a mortgage, when such was the intention of the parties, although the agreement for redemption or defeasance rests wholly in parol, or is proved by parol evidence. The courts will not permit the statute to be used as a shield for fraud, or as a means for perpetrating fraud.

"Rule prohibiting contradiction of written documents.— The admission of parol testimony to prove that a deed absolute in form was in fact given and accepted as a mortgage does not violate the rule against the admission of oral evidence to vary or contradict the terms of a written instrument."

In the case of *Russel vs. Southard* (53 U. S., 139, 147), the Supreme Court of the United States dealt with these objections in part as follows:

"The first question is, whether this transaction was a mortgage, or a sale.

"It is insisted, on behalf of the defendants, that this question is to be determined by inspection of the written papers alone, oral evidence not being admissible to contradict, vary, or add to, their contents. But we have no doubt extraneous evidence is admissible to inform the court of every material fact known to the parties when the deed and memorandum were executed. This is clear, both upon principle and authority. To insist on what was really a mortgage, as a sale, is in equity a fraud, which cannot be successfully practiced, under the shelter of any written papers, however precise and complete they may appear to be. In *Conway vs. Alexander* (7 Cranch, 238), Ch. J. Marshall says: 'Having made these observations on the deed itself, the court will proceed to examine those extrinsic circumstances, which are to determine whether it was a sale or a mortgage;' and in *Morris vs. Nixon* (1 How., 126), it is stated: 'The charge against Nixon is, substantially, a fraudulent attempt to convert that into an absolute sale, which was originally meant to be a security for a loan. It is in this view of the case that the evidence is admitted to ascertain the truth of the transaction, though the deed be absolute on its face.

"These views are supported by many authorities. (*Maxwell vs. Montacute*, Pr. in Ch., 526; *Dixon vs. Parker*, 2 Ves., Sen., 225; *Prince vs. Bearden*, 1 A. K. Marsh. [Ky.], 170; *Oldham vs. Halley*, 2 J. J. Marsh. [Ky.], 114; *Whittick vs. Kane*, 1 Paige [N. Y.], 202; *Taylor vs. Luther*, 2 Sumn., 232; *Flagg vs. Mann*, Id., 538; *Overton vs. Bigelow*, 3 Yerg. [Tenn.], 513; *Brainerd vs. Brainerd*, 15 Conn., 575; *Wright vs. Bates*, 13 Vt, 341; *McIntyre vs. Humphries*, 1 Hoffm. [N. Y.] Ch., 331; 4 Kent, 143, note A., and 2 Green. Cruise, 86, n.)

"It is suggested that a different rule is held by the highest court of equity in Kentucky. If it were, with great respect for that learned court, this court would not feel bound thereby. This being a suit in equity, and oral evidence being admitted, or rejected, not by the mere force of any state statute, but upon the principles of

general equity jurisprudence, this court must be governed by its own views of those principles. (Robinson vs. Campbell, 3 Wheat., 212; United States vs. Howland, 4 Id., 108; Boyle vs. Zacharie et al., 6 Pet., 658; Swift vs. Tyson, 16 Id., 1; Foxcroft vs. Mallett, 4 How., 379.) But we do not perceive that the rule held in Kentucky differs from that above laid down. That rule, as stated in Thomas vs. McCormack (9 Dana [Ky.], 109), is that oral evidence is not admissible in opposition to the legal import of the deed, and the positive denial in the answer, unless a foundation for such evidence had been first laid by an allegation, and some proof of fraud or mistake in the execution of the conveyance, or some vice in the consideration.

"But the inquiry still remains, what amounts to an allegation of fraud, or of some vice in the consideration—and it is the doctrine of this court, that when it is alleged and proved that a loan on security was really intended, and the defendant sets up the loan as a payment of purchase money, and the conveyance as a sale, both fraud and a vice in the consideration are sufficiently averred and proved to require a court of equity to hold the transaction to be a mortgage; and we know of no court which has stated this doctrine with more distinctness, than the Court of Appeals of the State of Kentucky. In Edrington vs. Harper (3 J. J. Marsh. [Ky.], 355), that court declared: The fact that the real transaction between the parties was a borrowing and lending, will, whenever, or however it may appear, show that a deed absolute on its face was intended as a security for money; and whenever it can be ascertained to be a security for money, it is only a mortgage, however artfully it may be disguised.'

* * * * *

"In respect to the written memorandum, it was clearly intended to manifest a conditional sale. Very uncommon pains are taken to do this. Indeed, so much anxiety is manifested on this point, as to make it apparent that the draftsman considered he had a somewhat difficult task to perform. But it is not to be forgotten, that the same language which truly describes a real sale, may also be employed to cut off the right of redemption, in case of a loan on security; that it is the duty of the court to watch vigilantly these exercises of skill, lest they should be effectual to accomplish what equity forbids; and that, in doubtful cases, the court leans to the conclusion that the reality was a mortgage, and not a sale. (Conway vs. Alexander, 7 Cranch, 218; Flagg vs. Mann, 2 Sumn., 533; Secrest vs. Turner, 2 J. J. Marsh. [Ky.], 471; Edrington vs. Harper, 3 Id., 354; Crane vs. Bonnell, 1 Green [N. J.] Ch., 264; Robertson vs. Campbell, 2 Call. [Va.], 421; Poindexter vs. McCannon, 1 Dev. [N. C.] Eq., 373.)

"It is true Russell must have given his assent to this form of the memorandum; but the distress for money under which he then was, places him in the same condition as other borrowers, in numerous cases reported in the books, who have submitted to the dictation of the lender under the pressure of their wants; and a court of equity does not consider a consent, thus obtained, to be sufficient to fix the rights of the parties. 'Necessitous men,' says the Lord Chancellor, in Vernon vs. Bethell (2 Eden, 113), 'are not, truly speaking, free men; but, to answer a present emergency, will submit to any terms that the crafty may impose upon them.'

"The memorandum does not contain any promise by Russell to repay the money, and no personal security was taken; but it is settled that this circumstance does not make the conveyance less effectual as a mortgage. (Floyer vs. Lavington, 1 P. Wms., 268; Lawly vs. Hooper, 3 Atk., 278; Scott vs. Fields, 7 Watts. [Pa.], 360; Flagg vs. Mann, 2 Sumn., 533; Ancaster vs. Mayer, 1 Bro. C. C., 464.) And consequently it is not only entirely consistent with the conclusion that a mortgage was intended, but in a case where it was the design of one of the parties to clothe the transaction with the forms of a sale, in order to cut off the right of redemption, it is not to be expected that the party would, by taking personal security, effectually defeat his own attempt to avoid the appearance of a loan."

Citing and relying upon this case Mr. Justice Field speaking for the Supreme Court of the United States (Brick vs. Brick, 98 U. S., 514) announced the doctrine with relation to transactions in personal property, which is summarized as follows in the head notes:

"Parol evidence is admissible in equity to show that a certificate of stock issued to a party as owner was delivered to him as security for a loan of money. A court of equity will look beyond the terms of an instrument to the real transaction, and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties.

"The rule which excludes such evidence to contradict or vary a written instrument does not forbid an inquiry into the object of the parties in executing and receiving it."

In the case of *Monagas vs. Albertucci* (235 U. S., 81, 83) the Supreme Court of the United States inserts the following excerpt from the opinion of the Supreme Court of Porto Rico (17 Porto Rico, 684, 686):

"The whole case really turns on the question of whether the written instrument in controversy was a mortgage or a conditional sale. If it is the latter, it must be complied with according to its terms; if the former, the plaintiff must be allowed to repay the money received and take a reconveyance of the land. The real intention of the parties at the time the written instrument was made must govern in the interpretation given to it by the courts. This must be ascertained from the circumstances surrounding the transaction and from the language of the document itself. The correct test, where it can be applied, is the continued existence of a debt or liability between the parties. If such exists, the conveyance may be held to be merely a security for the debt or an indemnity against the liability. On the contrary, if no debt or liability is found to exist, then the transaction is not a mortgage, but merely a sale with a contract of repurchase within a fixed time. While every case depends on its own special facts, certain circumstances are considered as important, and the courts regard them as throwing much light upon the real intent of the parties and upon the nature of such transactions: such are the existence of a collateral agreement made by the grantor for the payment of money to the grantee, his liability to pay interest, inadequacy of price paid for the conveyance, the grantor still remaining in possession of the land conveyed, and any negotiation or application for a loan made preceding or during the transaction resulting in the conveyance. The American doctrine on this subject does not differ materially from the principles set forth in our Civil Code."

We insert here an extract of some length from the discussion of the subject (supported by numerous citations of authority) found in *Jones' Commentaries on Evidence*, (1913) volume 3, paragraphs 446, 447:

"446. To show that instruments apparently absolute are only securities.—It has long been the settled rule that in courts exercising equitable jurisdiction it is admissible to prove by parol that instruments in writing apparently transferring the absolute title are in fact only given as security. The doctrine is thus stated by Mr. Field: 'It is an established doctrine that a court of equity will treat a deed, absolute in form, as a mortgage, when it is executed as security for loan of money. That court looks beyond the terms of the instrument to the real transaction; and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties. As the equity, upon which the court acts in such cases, arises from the real character of the transaction, any evidence, written or oral, tending to show this is admissible. The rule which excludes parol testimony to contradict or vary a written instrument has reference to the language used by the parties. That cannot be qualified or varied from its natural import, but must speak for itself. The rule does not forbid an inquiry into the object of the parties in executing and receiving the instrument.' Although in some of the earlier cases this evidence was received only on the grounds of fraud or mistake, yet in later cases it was deemed sufficient evidence of fraud for the grantee to treat the conveyance as absolute, when in fact it was not, and the tendency of the modern decisions is that such evidence may be received to show the real nature and object of the transaction, although no fraud or mistake of any kind is alleged or proved. It is held that 'the agreement for the defeasance, whether written or unwritten, is no more than one of the conditions upon which the deed was given, and therefore constitutes a part of the consideration for the conveyance * * *. Where the deed does not contain the defeasance, the presumption arises that the conveyance is absolute, and, in making proof that a defeasance was intended by the parties, and was in fact a part of the consideration upon which the conveyance was made, this presumption must be removed by testimony before the debtor can use the evidence showing his right to defeat the absolute character of the conveyance * * *. It comes finally to a question of what was the

understanding and the intention of the parties at the time the instrument was made; and this, like any other fact, depends for its support upon what was said and done by the parties at the time, together with all the other circumstances bearing upon the question.'

"447. Same—Real intention of the parties to be ascertained.—In applying the exception under discussion, the extrinsic evidence will not be received because of any particular form of language which the parties may have adopted. As we have shown in the preceding section, the intention of the parties must govern; and it matters not what peculiar form the transaction may have taken. The inquiry always is, Was a security for the loan of money or other property intended? But where the deed and accompanying papers on their face constitute a mortgage, parol evidence is not competent to show the contrary. In solving the question upon the facts, a few things are absolutely necessary to be found to exist before the deed can be construed a mortgage. A debt owing to the mortgagee, or a liability incurred for the grantor, either preexisting or created at the time the deed is made, is essential to give the deed the character of a mortgage. The relation of debtor and creditor must appear. The existence of the debt is one of the tests. The amount of the debt, as well as its continuance, should also be made to appear where a foreclosure is asked in the same suit wherein it is sought to establish the character of the instrument. It is also of importance to know precisely when the character claimed for the instrument was fixed. In construing the deed to be a mortgage, its character as such must have existed from its very inception,—created at the time the conveyance was made. The character of the transaction is precisely what the intention of the parties at the time made it. It will therefore be discovered that the testimony of those who were present at the time the instrument was made, and especially of those who participated in the transaction, becomes most important. In arriving at the real intent of the parties, their statements and acts at the time of the transaction, the inadequacy of the consideration named in the deed, the prior existence of a debt, and the recognition of its continuance, as by the payment of interest or other acts, are all facts to be considered, and are relevant to the issue. But although parol evidence is received in such cases to show the real nature of the transaction, the presumption is that the instrument is what it purports to be; and before a deed absolute in form can be shown to be a mortgage, the proof should be clear and convincing. The burden rests upon the moving party of overcoming the strong presumption arising from the terms of a written instrument. If the proofs are doubtful and unsatisfactory, if there is a failure to overcome this presumption by testimony entirely plain and convincing beyond reasonable controversy, the writing will be held to express correctly the intention of the parties. A judgment of the court, a deliberate deed or writing, are of too much solemnity to be brushed away by loose and inconclusive evidence. Proof tending to show that no transfer of title was contemplated does not fall within the condemnation of the rule prohibiting oral evidence to vary the terms of a written instrument. As the rule has often been stated, 'to convert a deed absolute into a mortgage, the evidence should be so clear as to leave no substantial doubt that the real intention of the parties was to execute a mortgage.'"

Having disposed of the contention that the provisions of the new Code of Civil Procedure, enacted under American sovereignty, forbid the introduction of parol evidence to establish the true nature of transactions such as that under consideration in the case at bar, we come now to consider whether there is anything in the Spanish Codes which denies the power of the courts to enforce the equitable doctrine announced by the Supreme Court of the United States with reference to agreements and understandings of this nature.

But first, it may be well at this time to emphasize the fact that the courts of these Islands are not organized with reference to the old English and American classification into courts of law and equity; and that our Codes recognize no distinction between actions at law and suits in equity, as these terms are understood in English and American jurisdictions, wherein a distinction is made between law and equity in the enforcement of private rights and the redress of private wrongs.

Deeply embedded among the fundamental principles on which the authors of the Civil Code of Spain erected that monument to their genius as codifiers, is the broad equitable rule that "No man may wrongfully (tortiously) enrich himself at the expense of (to the injury of) another." ("E aun dixeron, que ninguno non deue enriqueszer

tortizeraamente con daño de otro"). (Regla 17, Title 34, Setena Partida, sentencias Tribunal de Espana, May 1, 1875; December 16, 1880; May 24, 1882, April 24, 1896.)

As deeply embedded at the very foundation of all the provisions of the Spanish Code touching the nature and effect of all contractual obligations is the maxim that the will of the contracting parties is the law of their contract— a maxim which is amplified in the elementary propositions that "contracts are perfected by mere consent" (article 1258); that "the contracting parties may make any agreement and establish any clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order" (article 1255); that "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties" (article 1256); and that "contracts shall be binding, whatever be the form in which they may have been executed, provided the essential conditions required for their validity exist" (article 1278).

In the light of these elementary and basic principles of the Code there can be no question, in the absence of express statutory prohibition, as to the validity of an agreement or understanding whereby the lender of money, who as security for the repayment of the loan has taken a deed to land, absolute on its face or in the form of a deed reserving a mere right of repurchase to the vendor, obligates himself to hold such deed, not as evidence of a contract of sale but by way of security for the repayment of the debt; and that unless the rights of innocent third persons have intervened the lender of the money may be compelled to comply specifically with the terms of such an agreement, whether it be oral or written; and further, that he will not be permitted, in violation of its terms, to set up title in himself or to assert a claim of absolute ownership.

If the parties actually enter into such an agreement, the lender of the money is legally and morally bound to fulfill it. Of course such an oral contract does not give the borrower a real right in the lands unless it is executed in compliance with the formalities prescribed by law. If entered into orally, it creates a mere personal obligation which in no wise affects the lands, and if the lender conveys the lands to innocent third persons, the borrower must content himself with a mere right of action for damages against the lender, for failure to comply with his agreement. But so long as the land remains in the hands of the lender, the borrower may demand the fulfillment of the agreement, and a mere lack of any of the formalities prescribed under the Spanish Code for the execution of contracts affecting real estate will not defeat his right to have the contract fulfilled, as the lender may be compelled in appropriate proceedings to execute the contract with the necessary prescribed formalities.

We have frequently held that under the Spanish Codes an oral contract affecting lands, even an oral contract for the sale of lands, was valid and enforceable, provided none of the essential requisites of all valid contracts is lacking, that is to say, (1) consent, (2) definite object, and (3) causa or consideration. The lack of the formal requisites prescribed by the Code in order that such contracts may become effective to bind or convey the property, such as their execution in public instruments and the like, does not invalidate them as personal obligations, as "either party may compel the other to comply with such formalities" from the moment the valid personal obligation has been entered into. (Article 1279 of the Civil Code.)

In like manner an agreement such as we have just described, entered into by a lender of money, who has taken lands and security for its repayment, is a valid contract, and we know of no provision in the Codes which denies the right of the borrower to demand its fulfillment. On the contrary, provided the rights of innocent purchasers for valuable consideration have not intervened, and provided of course that the borrower can establish satisfactorily the fact that such a contract was actually entered into, the principle that no man may wrongfully enrich himself at the expense of another imposes an imperative obligation on the lender to carry out his contract, and secures the right to the borrower to have it enforced by the courts. And on the other hand, the same principle secures to the lender the right to enforce the contract upon the failure of the borrower to comply with its terms, that is to say, to have the lands held as security sold and the proceeds applied to the payment of the debt

But this conclusion is in substance and in effect identical with that arrived at by the courts in England and the United States, when they declare that the transaction in such cases will be treated as in the nature of an equitable mortgage and enforced as such. That is merely to say that the parties will be compelled to comply with the terms of the agreement that the lands should be held as security for the debt, provided of course the agreement can be established by competent evidence and the rights of innocent third parties have not intervened.

Under neither system will the contract be given the effect of a duly recorded or a valid mortgage, so as to bind the lands in the hands of innocent third persons; but the result under both systems is substantially identical in that as long as the property remains in the hands of the lender he cannot deny the right of the borrower to recover the lands by the payment of the debt, nor can he set up a claim of absolute ownership on the lands which will defeat the right of the borrower in this regard until and unless the borrower's right of action has prescribed.

The real difficulty which has confronted the borrowers in attempting to enforce alleged contracts of this nature has not lain in the failure of the law to recognize their rights in the premises, but rather in the inherent difficulties confronting them in their attempts to prove the existence of such a contract.

In the very nature of things the disqualification of those directly interested in an action to testify as witnesses, prescribed in article 1247 of the Spanish Code, must have enormously increased the difficulties confronting a borrower in an attempt to establish the existence of such an oral contract, prior to the enactment of the new Code of Civil Procedure prescribing new rules in this regard. This because, as a rule, the existence of such contracts is made known to few persons other than the contracting parties themselves.

And while the new rules of evidence have removed this difficulty from the path of the lender seeking to establish the existence of such an agreement, they by no means relieve him of the necessity of establishing his allegations by clear, convincing and satisfactory evidence. The principle on which the codifiers rested the rule laid down in article 1248 of the Civil Code is not less imperative under the new rules of evidence than under those found in the Spanish Code. That article is as follows:

"The probative force of the testimony of the witnesses shall be valued by the courts in accordance with the provisions of the Law of Civil Procedure, taking care to avoid that by the simple coincidence of some testimony, unless its truthfulness be evident, the affairs may be finally decided in which are usually employed public deeds, private documents, or any commencement of written evidence."

In this jurisdiction, as in the United States, the existence of an oral agreement or understanding such as that alleged in the complaint in the case at bar cannot be maintained on vague, uncertain and indefinite testimony, against the reasonable presumption that prudent men who enter into such contracts will execute them in writing, and comply with the formalities prescribed by law for the creation of a valid mortgage. But where the evidence as to the existence of such an understanding or agreement is clear, convincing and satisfactory, the same broad principles of equity operate in this jurisdiction as in the United States to compel the parties to live up to the terms of their contract.

- The second ground upon which the demurrer should have been overruled is that it admits the truth of the allegation of the complaint that in the year 1897, two years after the date of the execution of the instrument purporting to be a deed of sale, the nominal vendor paid the nominal purchaser P1,000, whereupon the nominal rent of the land was reduced from P420 to P300 per annum, the real purpose and object of this arrangement being to reduce the amount of the annual interest on the original loan made to the nominal vendor of the land, proportionately to the reduction of the amount of the loan itself by the payment of P1,000.

If it be true that two years after the transaction evidenced by the instrument attached to the complaint, the defendant accepted from the plaintiff's mother the sum of P1,000, and thereafter reduced the amount of the annual

payments to be made by her, it cannot be doubted that the plaintiff has a good cause of action against the defendant.

The acceptance by the defendant of this large sum of money, under the circumstances as they appear from the complaint, can only be accounted for on one of two hypotheses. Either the original transaction was in truth and in fact an arrangement or agreement by virtue of which a loan of money was made and secured by a formal deed of sale of land with a reserved right of repurchase; or, if the original transaction was in truth and in fact one of purchase and sale of real estate, with a reserved right of repurchase in the vendor, then the purchaser, by the acceptance from the vendor of the sum of P1,000, waived and surrendered his rights under the original contract, and entered into a new contract with the vendor, under which he obligated himself to cancel the deed, or resell the land to the original vendor on the payment of the balance of the original purchase price, and bound himself not to exercise his right, under the original deed of sale, to refuse to allow the original vendor to repurchase after the expiration of the period stipulated in the original contract for that purpose.

Upon either hypothesis, plaintiff would clearly be entitled to the relief prayed for in his complaint. Of course the defendant is not entitled to keep both the land and the payment of a thousand pesos. The acceptance and retention of such a payment is wholly inconsistent with a claim of a right of absolute ownership in the land, without any obligation to resell it to the original vendor. Defendant can not eat his cake and have it too.

In the case of *Lichauco vs. Berenguer* (20 Phil. Rep., 12), we found the fact that various partial payments had been made by the vendor, and accepted by the purchaser, for the purpose of repaying the original purchase price, absolutely incompatible "with the idea of the irrevocability of the title of ownership of the purchaser" at the expiration of the term stipulated in the original contract for the exercise of the right of repurchase. Speaking through the Chief Justice, we said in that case:

"The vendee, who has been reimbursed by the vendor for a part of the repurchase price, is bound to fulfill the obligation to sell back, derived from the sale with right to repurchase, or must show reason why he may keep this part of the price and, notwithstanding his so doing, be considered released from effecting the resale. He may be entitled to require the completion of the price, or that he be paid other expenses before he returns the thing which he had purchased under such a condition subsequent; but the exercise of the right of redemption having been begun and admitted, the irrevocability of the ownership in such manner acquired is in all respects incompatible with these acts so performed."

The order entered in the court below, sustaining the demurrer to the complaint must be reversed, and the record remanded for further proceedings, without costs in this instance.

Let judgment be entered in accordance herewith. So ordered.

Arellano, C. J., Torres, Trent, and Araullo, JJ., concur.

Johnson and Moreland, JJ., did not take part.

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