

OCEJO, PEREZ & CO., PLAINTIFF AND APPELLEE, VS. ISABEL FLORES, AND JOAQUIN BAS, DEFENDANTS AND APPELLANTS, AND ISABEL FLORES, PLAINTIFF AND APPELLEE, VS. JOAQUIN BAS, DEFENDANT ...

G.R. No. 14630. March 16, 1920

Ponente: TORRES, J.

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TORRES, J.:

On the 27th day of May, 1913, Isabel Flores Viuda de Juarez, and the mercantile firm Ocejo, Perez & Co., represented by J. R. Pomar, executed before Florencio Gonzalez Diez, a notary public of the City of Manila, a document wherein it appears that Isabel Flores, in consideration of the sum of P15,000 which she has received from Ocejo, Perez & Co., cedes, sells, and transfers to the said firm six parcels of land situated in the Province of Tayabas, with the alcohol factory erected on one of said parcels, all of which belong exclusively to her. (Exhibit A, page 112; and Ocejo, Perez & Co's complaint with I. Flores' answer, wherein both parties admit having executed said document Exhibit A.)

On the same date, May 27, 1913, the same parties executed another document wherein it is recited that the mercantile firm above named leased to Isabel Flores the same realty mentioned in the document of sale already mentioned, giving her the right to repurchase said property within the period of repurchase. (Exhibit B, rec., p. 137, and the parties' pleadings admitting the execution of this document.)

On the 23d day of July, 1913, the same Isabel Flores and the above mentioned firm of Ocejo, Perez & Co., executed a private document wherein the said Isabel Flores acknowledges having received from Ocejo, Perez & Co., the documents accrediting her right of ownership over the four parcels of land which she possesses in the municipality of Lucena, of the two parcels in Atimonan, and another in Pagbilao, for the purpose of securing Torrens titles for said lands and afterwards mortgaging them in favor of Ocejo, Perez & Co., to secure the payment of the sum of P15,000, which the said firm "has for the present delivered to her as a loan secured by the three tracts of coconut-land situated in Lucena, first mentioned." (Exhibit 2, p. 119 of the record of the testimony of Jose R. Pomar, admitting having signed this Exhibit 2 as manager of Ocejo, Perez & Co., rec., pp. 4-5.)

On the 18th day of September, 1914, Isabel Flores petitioned the Court of First Instance of Tayabas for the registration of three parcels of land belonging to her and situated in the municipalities of Pagbilao, Atimonan and Lucena, Tayabas Province. (Exhibit 2-Bas, rec., p. 234, and the testimonies of the parties and their attorneys, rec., pp. 10, 38 and 108, wherein this fact is taken for granted.)

On the 7th day of May, 1915, Isabel Flores executed before Isidro Santiago, a notary public of this city, a document in favor of Joaquin Bas whereby she sells to the said Joaquin Bas for the sum of P20,000 four parcels of land situated in Pagbilao, one parcel situated in Atimonan, and eight parcels situated in Lucena together with a house of strong materials and a distillery and several thousand of coconuts bearing fruits, exclusively belonging to her, free from any lien and encumbrances the said Isabel Flores recognizing in said document having received

from the said Joaquin Bas the said sum of P20,000 to her entire satisfaction. (Exhibit 3-Bas, rec., p. 238, which is the Exhibit C on page 22 of bill of exhibit of Isabel Flores; and the parties' pleadings on pp. 8, 33-34, 55 and 58 of same bill of exhibit wherein they admit the authenticity of this document.)

On the 20th day of May, 1915, Isabel Flores presented a petition before the Court of First Instance of Tayabas wherein she alleges under oath that by virtue of the deed of May 7, 1915, ratified before the notary public Isidro Santiago, all of the lands, objects of her original application for registration, have been unconditionally and absolutely conveyed and sold to Joaquin Bas, and prays that she be permitted to amend her said application by inserting, instead of her name, the name of Joaquin Bas. (Exhibit 4-Bas, rec., p. 241, transcribed on p. 45 of B. of E. of I. F. and Isabel Flores declaration on pp. 39-40 of the stenographer's notes, admitting having signed this petition to amend Exhibit "4-Bas.")

On the 25th day of May, 1915, Ocejo, Perez & Co., thru its manager M. Bahamonde, who is the same person acknowledging under oath the truth of the complaint of this firm, addressed a letter to Isabel Flores notifying her that her mortgage debt would be due on the 27th day of the same month of May, and that should that day come without her reimbursing the debt secured by said mortgage, they would institute an action before the courts. (Exhibit 3, rec., p. 186 and testimonies on pp. 7 and 12 of the stenographic notes and p. 4 of the brief of the plaintiff firm, rec., 337, where the parties impliedly admit the authenticity of this Exhibit 3.)

On the 6th day of June, 1915, Isabel Flores executed a new document before a notary public of this city, Salvador Barrios, wherein she recites the sale made on the 7th day of May, 1915, in favor of Joaquin Bas and her receipt of the sum of P20,000, the consideration of said sale, and the detailed descriptions of the thirteen parcels of land, objects of said sale for a better identification of the same. (Exhibit "5-Bas," rec., p. 243 and Isabel Flores testimony admitting having signed this document.)

After the execution of this document, Isabel Flores and Joaquin Bas were notified or served of a complaint filed by Ocejo, Perez & Co., against them in the Court of First Instance of Manila (pp. 40-44 and 120, stenographic notes). And in view of said complaint, Isabel Flores on June 10, 1915, made a sworn declaration before a notary public of this city, Antonio M. Opisso, wherein she sets forth that the firm Ocejo, Perez & Co., fraudulently secured from her a document of sale in their favor of some lands which she has in Lucena, Tayabas, and that on the 3d day of June, 1915, a gentleman, calling himself by the name of Gutierrez Repfde and accompanied by two of the managers of the Cantabrico, called at her house, telling her that he would render her his professional services if she would sign a document wherein she should say that the sale she has executed in favor of Joaquin Bas was not a real sale but that she only delivered her papers and documents in order to secure a mortgage of said lands, said Joaquin Bas being a real estate broker; but that she refused to accede to said proposition because what they wanted her to say was not true. (Exhibit 6-Bas, rec., p. 248, the authenticity of which is admitted by Isabel Flores on pp. 40-41 of stenographic notes.) But the defendant Flores rectified her statements set out in her declaration sworn to before the notary Antonio Opisso, saying (p. 44) that what appears thereon is false and it was not it what she had told Gutierrez Repide on that occasion.

On the 18th day of June, 1915, Isabel Flores executed another document in favor of Joaquin Bas before the notary public, Felix Valencia, wherein she declares that of the thirteen parcels of land sold by her to Joaquin Bas four, which are described in this document, had been registered in the old Registry of Property, and in order to identify them, she executes this document, thereby ratifying again the sale of May 7, 1915, and the receipt of the consideration thereof. (Exhibit 7-Bas, rec., p. 249, and I. Flores' testimony on p. 45 of the stenographic notes, admitting the authenticity of this document.)

On the 26th day of June, 1915, Joaquin Bas executed in favor of Isabel Flores three promissory notes, Exhibits 4,

5 and 6: the first for P10,000 and the last two for P5,000 each. But the dates appearing on said promissory notes are not the true dates upon which they were executed but the date of the first document of sale executed by Isabel Flores in favor of Joaquin Bas on May 7, 1915. (Exhibits 4, 5 and 6, rec., pp. 187-189 and the testimonies of Joaquin Bas and Isabel Flores on pages 47 and 143 of the stenographic notes, admitting the authenticity of these promissory notes and the fact of their having been executed on the 26th day of June, 1915, and placing thereon May 7, 1915, as their dates.) It should be noted that in these promissory notes Joaquin Bas promises to pay the sums therein mentioned only after having made in his name the Torrens titles to the realties situated in Tayabas which Isabel Flores had sold to him on the said date of May 7, 1915.

On the 30th day of June, 1915, the firm of Ocejo, Perez & Co., brought an action for ejectment in the justice of the peace court of Lucena against Isabel Flores. (Exhibit C, rec., pp. 120-124.)

On the 8th day of July, 1915, Isabel Flores addressed a letter to the municipal treasurer of Lucena telling him that her distillery situated in the barrio of Culang-gulang, Tayabas Province, had been sold by her to Joaquin Bas on May 7, 1915, and that for this reason the corresponding license should be issued in favor of the latter. (Exhibit &-Bas, rec., p. 252 and Isabel Flores' testimony on p. 48 of the stenographic notes, admitting the authenticity and date of this letter.)

On July 15, 1915, Ocejo, Perez & Co., filed a complaint in the Court of First Instance of Tayabas against Isabel Flores and Joaquin Bas. Said complaint gave rise to the case No. 153, alleged the sale executed by Isabel Flores in favor of said plaintiff-firm and the nullity of that sale executed by Isabel Flores in favor of Joaquin Bas, and prayed that said firm be declared the owner of the properties described in the document executed in its favor, that the sale executed by Isabel Flores in favor of Joaquin Bas be declared null and void for the reason that same was fraudulently obtained, and that the defendants Isabel Flores and Joaquin Bas be condemned to pay said firm the sum of P6,000 as indemnity for the damages caused to it by reason of all the fraudulent acts of the said defendants.

Before answering the foregoing complaint, Isabel Flores in turn filed a complaint against Joaquin Bas, which gave rise to the civil case No. 159 of the Court of First Instance of Tayabas, alleging that the sale of May 7, 1915, in favor of the defendant Joaquin Bas was executed by her upon the false statements and insidious machinations of the defendant, Joaquin Bas, who has not paid her even one centavo for said sale, and praying that said document of sale, the amendatory application filed by her in the court in the registration proceedings of her lands and the document of June 5, 1915, ratifying said sale and reciting a description of the lands, be declared null and void, and that the defendant Joaquin Bas be condemned to pay her P3,000 as damages caused by his deceitful acts and another sum which is one-half of the amount she would be obliged to pay to the firm Ocejo, Perez & Co., on account of the complaint filed by this firm against her, plus the costs of the instance and any other just and equitable remedy.

In her answer to the complaint of Qcejo, Perez & Co., Isabel Flores admits all of the allegations therein mentioned but denies having fraudulently executed the document of sale in favor of Joaquin Bas, having really sold to said Joaquin Bas the property described in said document nor having done any act prejudicial to the plaintiff firm, and as special defense alleges that the plaintiff-firm has agreed with her to convert, as in the fact they did convert, the sale they have executed before into a simple mortgage, and that her signature appearing on the document executed in favor of Joaquin Bas was obtained by means of deceit, trickery and fraud, denying under oath the execution of said document. Wherefore she prays that she be absolved from the complaint of Ocejo, Perez & Co.

To the complaints of this firm and of Isabel Flores, Joaquin Bas answered denying generally all of their material averments and alleging as a defense and a crosscomplaint that he is the absolute owner of the thirteen parcels of

land described in document of sale in May 7 and June 5, 1915; that in or about July or August, 1915, he was deprived of the possession of said properties by Isabel Flores causing him damages amounting to P5,000 yearly; that from the value of the promissory notes given by him to Isabel Flores must be deducted the sum of P3,800 which is the value of a promissory note given by the latter to him; that when he acquired the properties in question he did not know that there was a juridical relation between the plaintiffs concerning the said properties, the document referred to in the complaint of Ocejo, Perez & Co., being fictitious; and that, after all, he has a better right over the properties in question than Ocejo, Perez & Co., not only because the contract of sale alleged by said mercantile firm is in reality no other than a loan or the opening of a credit account with the security, but also because he was the first to take possession in good faith of these properties as he was also the first to annotate and register them in the Registry of Property. Wherefore he prays that he be absolved from the said complaints with costs against the plaintiffs; that he be declared the owner of the thirteen parcels of land in question; that from the value of the promissory notes above referred to there be deducted the sum of P3,800; that Isabel Flores be condemned to pay to him the damages that may be proven; and that an order be issued placing him in the possession of these properties.

Both plaintiffs, Isabel Flores and Ocejo, Perez & Co., replied to the answer of Joaquin Bas, denying generally under oath all of its material averments.

By an agreement of the parties all of these cases were heard together (sten. notes, p. 11) and after hearing the evidence adduced by them, the court, on February 8, 1918, in a very detailed and carefully prepared opinion, declared that the contract between Ocejo, Perez & Co., and Isabel Flores was one of simple loan with security; absolved Isabel Flores and Joaquin Bas from the complaint of Ocejo, Perez & Co., without any special finding as to costs in the case No. 153, but compelling Isabel Flores to pay to the plaintiff firm, previous to the amendment of its complaint, the sum of P15,000 without interest, for the reason that said firm had been in possession and enjoyment of the property in question from July 20, 1916, when said property was delivered to it by the sheriff of Lucena pursuant to the case of ejectment (Exh. C, rec., p. 147) ; held null and void the document of sale of May 7, 1915, executed by Isabel Flores in favor of Joaquin Bas and the Exhibits 5-Bas and 7-Bas as well as the promissory notes Exhibits 4, 5 and 6; and absolved Joaquin Bas from all the rests of the complaint of Isabel Flores, but condemning him to pay the costs of the case No. 159.

Against this judgment Joaquin Bas excepted; moved for a new trial which was denied; excepted to this ruling; and brought this appeal, filing in due time the corresponding bill of exceptions which was approved by the court and forwarded to the clerk of this High Court together with all the evidence adduced at the trial.

Isabel Flores also excepted against the judgment and moved for a new trial. And after the plaintiff-firm has filed the amended complaint required in the judgment, Isabel Flores also filed an amended answer reciting a cross-complaint and a counterclaim and asked, besides what was prayed for in her original answer, that the plaintiff-firm, Ocejo, Perez & Co., be ordered to return to her the possession of the realty in question and deliver to her the fruits they have collected and are collecting, or pay her the liquidated rent of P6,000 yearly beginning from July 20, 1916, and that it be declared that Isabel Flores is not obliged to pay any interest upon the loan of P15,000. But this amended answer was not allowed by the court; and against this ruling counsel for Isabel Flores duly excepted. After having been notified of the ruling of the court adverse to her motion for a new trial, Isabel Flores also excepted against it and brought this present appeal by filing in due time the corresponding bill of exceptions, which was approved by the court and forwarded to the clerk of this High Court together with the appeal of Joaquin Bas.

The first question presented is whether the contract of sale executed by Isabel Flores in favor of Joaquin Bas is valid or not.

By relying upon the documents executed in his favor by Isabel Flores evidencing the contract of sale, Joaquin Bas insists that there has been a perfect and valid contract of sale of real estate between them and that he paid to her the consideration of P20,000 mentioned in said documents, although later on with the object of freeing herself from a complaint for estafa which Ocejo, Perez & Co., might have filed against her for having sold properties mortgaged to said firm, Isabel Flores returned to him the sum of P16,200 in money and P3,800 in a promissory note signed by her in his favor, in exchange of several promissory notes signed by him in her favor, dated May 7, 1915, amounting to P20,000. With these it may be alleged that if she has truly sold the lands, same have not yet been paid.

Isabel Flores, on the other hand, maintains that there was neither a real sale nor did she receive a centavo from the defendant, as the price of said sale, and that the case was this: About the end of April, 1915, she came to Manila looking for money with which to repurchase the lands which she had sold to Ocejo, Perez & Co. While she was going thru one of the streets of this city, she met Joaquin Bas, whom she already knew previously, and he asked her if she had already mortgaged her lands, to which she answered "no" and that she was precisely looking for money. Joaquin Bas then told her that he could furnish her what she wanted because he had a credit of P100,000 in Manila being a friend of many influential persons, such as Enrique Altavas, a priest called P. Paya, and the vice-president of a bank called Eliseo Sendres, and that for that reason she should deliver to him all of her documents, as Flores did several days after, saying that same were copies of those she had in the court where she filed an application for the Torrens title of said lands. Joaquin Bas received said documents saying that he was going to show them to the bank where he had a credit and that she should return after two days in order to find out whether the bank would accept them or not. On the third day she returned and then Joaquin Bas assured her that the bank would accept them for P25,000 and that she could therefore take the originals from Lucena in order to give them to the bank, which would take care in securing for her the Torrens title. Flores upon her return to Manila in fact delivered to Joaquin Bas the said originals. Joaquin Bas then told her that it was necessary to put those documents in his name in such a way as to appear that said lands have been really and absolutely sold to him because the bank does not know her. To this proposition Isabel Flores objected saying it was not right because she was not selling her lands but simply mortgaging them. But then Joaquin Bas promised that he would give her a receipt wherein it would appear that what they have made was not an absolute sale but a mortgage or a simple agreement to obtain a loan at low interest. To this proposition she agreed and he asked from her his commission of 5% as broker, telling her that he would take charge in the writing of the corresponding document which she should then sign in the office of Attorney Isidro Santiago. They did as per agreement, and once in said office, she read the document, and when she asked Joaquin Bas why it was that only P20,000 were mentioned therein, Bas told her that the bank had only P20,000 left for it had paid out the remaining P80,000 but that she should not worry because he would deliver to her without any difficulty the remaining P5,000. After the document was signed before the notary, Isabel Flores and Joaquin Bas were about to go to the bank, because Bas formerly told her that the check, which will be delivered to her, would be delivered at the bank for he has to sign on the back of said check in order to obtain the money. But when they were about to go, Bas took out his watch and exclaimed "Mine, it's already four, the bank must be closed now!", and then told Isabel Flores that she should not worry because on the following day she would obtain the money. To this Isabel Flores replied that he should do it as soon as possible because she had an obligation with Ocejo, Perez & Co. and with other persons with whom she was indebted. But on the next day Bas again made an excuse, telling her that Mr. Sendres, the vice-president of the bank, had gone to Bagnio but that he would be returning after a week. The week went by and still the money could not be obtained because according to Joaquin Bas the bank would not make out the payment for the documents were defective and certain requisites must first be filled up as the lands have no Torrens title. Then Isabel Flores told him to do it as soon as possible because she had an obligation. Several days after, Bas went to Lucena, promising Isabel Flores that upon her return to Manila she could get the money. But when Isabel

Flores was in Manila; Bas made again an excuse saying that because it was Saturday this date could not be placed on the receipt, promising her the coming Tuesday, and when this day arrived the excuse was that he was sick on account of his trip. Once having been restored to his health, still she could not get the money because the bank wanted some more requisities, and for that reason she should go to the office of Attorney Salvador Barrios to sign a document. This she did, but the money would not also come. And when Bas was asked upon this particular he answered her that she had to go to Felix Valencia's office to sign a document which is the last requisite needed by the bank. But after having signed said document, still she could not get the money. Then she asked Bas to return to her all of her documents because the period for the payment of her debts had already expired, but Bas refused to deliver them to her. Finally, Bas told her that the bank would not give her money because her lands did not have Torrens title, and then she insisted upon him to return to her documents, but Bas wanted to return them only in exchange of P3,000, and notwithstanding her acceptance of this proposition of Bas, the latter insisted upon retaining the documents. For this reason she brought the case to Attorney Modesto Reyes, but the latter would not bring an action because he had no evidence that Bas had not paid her. Then she called upon Attorney Sanz, because Joaquin Bas had not paid her even a cent, urging him to employ all his efforts to secure from Joaquin Bas a document or a promissory note, which will serve as her evidence that Joaquin Bas has not paid her yet. And as a result of said efforts, Joaquin Bas executed in her favor the promissory notes above mentioned. As it can be seen the statement of facts of both parties are absolutely irreconcilable and, therefore, the question to be decided is reduced to: Which of them must be given credit?

The judge, who saw Joaquin Bas testify, gave more credit to Isabel Flores after giving due consideration to the several documents which Isabel Flores has subscribed, taking into account their merits relative to the point to be decided. And we believed that the preponderance of evidence supports the conclusion of the trial judge.

In effect, it is a true and an undeniable fact that towards the end of April, 1915, Isabel Flores was looking for money and wanted to obtain it by borrowing and not by selling her lands. Such was her testimony corroborated by her witness Maria Torres (p. 77, sten. notes), and Joaquin Bas himself who says that before the execution of the document of May 7, 1915, Isabel Flores was borrowing from him some money, but that he answered her that he only had money with which to buy lands but not to give as a loan (p. 108, sten. notes). Therefore, upon said interview, Isabel Flores had no intention to defraud Ocejo, Perez & Co., by selling her lands which were encumbered by the debts she had with said company and afterwards refusing to pay same by pretending that she had no money. But when Joaquin Bas refused to loan her money, Isabel Flores changed her idea and decided to sell her property to the prejudice of Ocejo, Perez & Co., but without the least intention of not paying the latter, because the mere fact that one month before the maturity of her debt Isabel Flores had already begun looking for money with which to pay the company is an evidence that this women is, or was, a person who was aware of her obligations even before their maturity. And a person of this character is not changed into a great criminal in moment without the most powerful motive. Non-professional criminals do not commit crimes simply for the sake of committing them, if they ever come to execute criminal acts it is because circumstance has forced them to do it. Now then, what circumstances would have induced Isabel Flores to commit the crime of defrauding Ocejo, Perez & Co., of the sum of P15,000? Absolutely none. What was then more convenient for her to do was to remove the mortgage upon her property, and she could have done this easily without alienating them and without her committing any crime. The circumstances of the instant case show that on that occasion Isabel Flores had the noble purpose of paying her debts and the laudable idea of not parting with her lands for which she had petitioned Torrens title, a copy of which petition she delivered to Joaquin Bas in order to secure the loan as shown by Bas' own admission. No accident or event intervened in order that she would have abandoned said purposes and would have converted herself into a common embezzler.

Moreover, he who is bent upon committing an embezzlement tries with remarkable ingenuity to hide all damaging

evidence and never executes any voluntary act which may serve as an evidence of his guilt. In the instant case if Isabel Flores really wanted to defraud Ocejó, Perez & Co., what she would have done would be to hide the fact of her having sold the lands in question. However, she did not act in this manner but precisely the opposite. For she not only signed the document of sale before a notary, but executed several documents all of which are public or official in nature whereby she ratified even under oath that she had really sold her lands to Joaquin Bas and received from the latter the entire purchase price of P20,000, thereby committing a rare impudence consisting, according to the testimony of Joaquin Bas, in having deceived him in the beginning by telling him that the said lands were not mortgaged to any person and afterwards admitting that same were mortgaged to Ocejó, Perez & Co., for P15,000 (p. 118, sten. notes). And the improbability of the case does not stop here. Isabel Flores has suffered with extraordinary forbearance the troubles incident to appearing before several notaries and signing and affirming, sometimes under oath, the fact of having sold to Joaquin Bas the lands in litigation, without any reward than to accumulate therefor evidence of her guilt.

Joaquin Bas testified that when he first met Isabel Flores the latter wanted to borrow some money from him, and as he told her that he was not lending money but buying lands, she went away, and two days afterwards she returned to talk over to him bringing with her a file of papers consisting of titles to land, saying that same were the titles of the lands she intended to sell (p. 108, sten. notes).

Joaquin Bas testified that after the document of sale was signed before the notary Isidoro Santiago, the latter asked Isabel Flores where she wanted to have the payment made; and that Isabel answered that they have it already arranged, because she did not want her nephew, who was an employee in that office of Attorney Santiago, to know about it for he was borrowing from her the sum of P5,000; and that after signing the document Isabel Flores went down the office a little bit later than he (Bas), but that he (Bas) followed her up to Panama Hotel whence they went to Bas' house in a carromata, and there Bas delivered to her the purchase price of P20,000 in the presence of one Moreno who was then a visitor in the house.

The notary public Isidoro Santiago, who ratified the document of sale, testified that after this document was signed he asked Isabel Flores if she had already received the money, the P20,000, but she said nothing and then Joaquin Bas answered by saying that matter was already settled between them, and afterwards they took the document and its duplicate and went down together.

As it is seen, besides the fact that Joaquin Bas had produced no witness to corroborate the alleged payment, the notary before whom the document of sale was executed and who was his legal adviser according to his own testimony (pp. 110-111, sten. notes), contradicts him in such a way that little is omitted from his testimony in order to demonstrate that the alleged payment only exists in the imagination of Joaquin Bas. For what does the silence of Isabel Flores indicate when she was asked about the said payment and what can be inferred from the timely answer of Joaquin Bas that the payment was already arranged if not that everything was a fiction? Moreover, Bas being very intelligent, as he is, why did he want to have the document executed before a notary and the payment privately made in the hidden inclosures of his house? That Isabel Flores did not want an employee of the office of Attorney Santiago to know of the payment, but, are there not other notaries in Manila, like Barrios and Valencia, who had ratified other documents executed in his favor?

Concerning the details of this curious payment, Joaquin Bas, despite his extraordinary ingenuity, has offered an explanation which places himself in ridicule. He said that on the day this payment was made he had more than P37,000 in his house, but in another place he testified that part of the amount paid to Isabel Flores came from several banks the names of which he could not remember because he was not the one who used to collect the money from said banks, although later on he affirmed having collected a check for P2,400 from a bank near the Banco Español Filipino. He added that in the Bank of the Philippine Islands he had on that date a current personal

account and that he only used to deposite there small amounts, keeping in his house a greater amount such as P37,000 (pp. 159, 160 and 163, sten. notes). He also said that when Isabel Flores talked to him about the lands in question, he had already more than P37,000 in his house locked up in a safe, but in another place he stated that when he loaned P475 to the companion of Isabel Flores the day following their first meeting, he had only P100 in his house, so that he had to give said person a check. And in the face of this contradiction which ridicules him, he made an explanation saying: "That was a loan which my wife had, a separate amount from that which I had."

On answering the questions propounded to him, Joaquin Bas said that when he was dealing with Isabel Flores he had already in his house the P37,000 and that on the very date, May 7, 1915, of making the payment he had in his house the sum of P37,000 and more than that amount, hence it is not true that when he gave a check to the companion of Isabel Flores he only had in his house the sum of P100, and if the latter is true, then it is false that he had in his house the considerable amount of P37,000.

In view of the contradictions committed by him in his testimony, the inevitable conclusion is that, respecting the matter of the payment of P20,000, Joaquin Bas has failed to tell the truth, and so the judge who heard him testify could not help but express himself upon this point in these terms: "The existence of the sum of P20,000 on that date in the safe of Bas is a myth."

Concerning the execution of the promissory notes in question, the witnesses Antonio Sanz, Modesto Reyes, Isabel Flores and Joaquin Bas have agreed that same were executed when Joaquin Bas and Isabel Flores had already been sued by Ocejó, Perez & Co., and with the purpose of enabling them to defend said suit. But Joaquin Bas pretends that he signed the said promissory notes in favor of Isabel Flores in exchange of the return of the sum of P20,000 which Isabel Flores was unable to return in full as she had only delivered to him P16,200 and signed a promissory note for the remaining P3,800. This is flatly denied by Isabel Flores. Joaquin Bas pretends that the return of the sum of P16,200 was made by Isabel Flores in his house after she had talked over that matter with Attorney Sanz in his office and after said attorney had prepared a rough draft of said promissory notes.

The theory of Isabel Flores is that these promissory notes were made in order that she might have an evidence of the fact that she did not receive any amount from Joaquin Bas as the purchase price of her lands and with such evidence establish the fact that the sale was not true but simulated, while Joaquin Bas pretends that these promissory notes were executed for the same purpose but that Isabel Flores had for this end to return to him the amount which he had given to her or a part thereof.

This pretension of Bas is indefensible from all angles. In the first place, if on that occasion Isabel Flores had in her hands the amount which, according to Joaquin Bas, was returned to him by Isabel Flores, it is not explained why they, especially Isabel Flores, being willing to end or settle at once that suit—Isabel Flores did not pay Ocejó, Perez & Co. the sum of P15,000 which she owed if after all she had to return to Joaquin Bas the sum of P16,200, as the latter pretends, in order to secure some promissory notes which could not stop the annoyances which were entailing upon her on account of that trouble nor could assure her a favorable result in said case. And even granting that these results would have been obtained by her, same would always make her the loser for, if Joaquin Bas would not pay her the amount of the promissory notes, she would lose the money and her lands which were already sold to Joaquin Bas according to the document of sale, and if she would be paid she would also come out as the loser because Joaquin Bas would have the right to take her lands and Ocejó, Perez & Co., whose credit she did not attempt to impugn as anybody could not impugn it, could ask for the attachment of any of Isabel Flores' property upon which said credit may be satisfied.

Moreover, the alleged return of the sum of P16,200 appears rather strange in that transaction, because the rough draft of the promissory notes having been prepared in the office of Attorney Sanz, it is incomprehensible why

they still, went to the house of Joaquin Bas in order to make the alleged return or delivery of the money in the presence of one Ocampo (pp. 168-169, sten. notes), according to Joaquin Bas, said Ocampo as well as the other man who witnessed the supposed payment of the purchase price were not produced as witnesses to testify upon this very important fact.

Finally, they have not even presented that alleged promissory note which, according to Bas, was signed by Isabel Flores payable to him, in order to corroborate in part his less probable testimonies. And in order to explain this anomalous fact, Bas says that after Isabel Flores has signed this promissory note in his house, he put it in a box in his writing desk where it disappeared precisely when it was three days already that Isabel Flores was living in his house and in which she did not continue living after the disappearance of said promissory note, because her mother-in-law asked her about that disappearance and she became uneasy and the two quarrelled. But his said mother-in-law, Soledad Hernandez, contradicts him, saying that she did not know why Isabel Flores left the house and that she did not have any bad feeling toward said Flores.

Isabel Flores admits having been living in the house of Joaquin Bas when the promissory notes in question were delivered to her, but denies having left it on account of the alleged disappearance of a promissory note and that she did not sign said note payable to Bas, but that she was sent away by the family because she refused to sign a bond in favor of the Philippine Engineering Co. which was conducting against him an investigation concerning the disappearance of certain amount of money. From the foregoing, the falsity of the testimonies of Joaquin Bas is clearly seen.

On the other hand, Isabel Flores gave a testimony which carries with it the seal of truth, aside from the fact that it is corroborated by her witness Maria Torres as far as the loan agreed upon by Isabel Flores and Joaquin Bas in order to pay Ocejó, Perez & Co., is concerned (pp. 77-80 and 81, aten. notes). And the only thing alleged to impugn her said testimony is the fact she has signed several documents, took oaths before several notaries and made extrajudicial statements to the effect that the sale made in favor of Joaquin Bas was a real one and that she has received its purchase price in money. But considering all the circumstances under which said acts took place, acts which greatly support the cause of Joaquin Bas, the conclusion that there was no such sale is irresistible. Isabel Flores had the live intention of paying her debt to Ocejó, Perez & Co. and for this reason she submitted herself to all that Joaquin Bas would suggest to her in order to secure the money which she wanted. She imposed upon her everything that was necessary to secure said money even to the point of admitting before several persons that she had really sold the lands and received the price thereof, for otherwise she would fail in her purpose pursued under those acts or means which Joaquin Bas was telling her were necessary in order to secure the money she wanted.

Attorney Sanz says that Isabel Flores went to his house several times to tell him that she had not received the money, and that when he once asked her in the presence of Joaquin Bas if she had received the money, Isabel Flores did not answer him. If she had really received the alleged purchase price and had voluntarily executed a real and not a fictitious sale, said silence would not have been the salient character of the conduct of Isabel Flores. The fact that when she is alone with Attorney Sanz she says that she has not received the money and in the presence of Joaquin Bas says the opposite, proves in an unmistakable manner that she had not really received any amount of money from Joaquin Bas. And if in the latter's presence, i. e., when she is going to sign a document showing the payment which, according to Bas, would have to be shown to the bank in order that said bank would give out the money, she would admit having made a real sale and received the price thereof, it was because such was what the fictitious plan required. Isabel Flores kept the same mysterious, but very significant, silence in the presence of the notary, Isidro Santiago (pp. 163-164; depositions), because there was no real but only fictitious contract. This fact is corroborated by the fact that Joaquin Bas answered Isidro Santiago that they have already

arranged the payment, when Isabel did not know what to answer Isidro Santiago concerning that particular. All of these circumstances establish in an incontrovertible manner the theory of Isabel Flores that there was no real sale or receipt of the purchase price, but only a mere fiction to secure the money she needed in order to pay her debts to her creditors, the maturity of which was about to expire then. And having given the first step in said fictitious journey by the execution of the document of sale of May 7, 1915, with which she exposed herself in danger of losing her lands and their price or value, it is evident that she could not have offered any opposition to Bas' suggestions in order to avoid the latter from turning against her by relying upon the literal sense of said document or in order to obtain the money which, according to Bas, would be delivered to her by virtue of those fictitious papers—extremes which constitute a true dilemma for her, driving her, commonly speaking, to the wall. In the face of these circumstances, can it be sincerely affirmed that the poor widow, Isabel Flores, has really sold her lands? It is argued that from the fact that Isabel Flores wrote a letter to the municipal treasurer of Lucena telling him that her still situated in the barrio of Gulang-gulang has already been transferred to Joaquin Bas, it can be inferred that she has really parted with her property in favor of Joaquin Bas, because, as she admits, said letter was sent by her to said officer after obtaining the promissory notes in question and when she had already no confidence in Bas (pp. 47-48, sten. notes). But taking into consideration the fact that she had to pay for the license of that still, it is not strange that she should have done so in order that the agent of the internal revenue would not collect from her the license fees, or that, as she has said, she signed said letter because according to Bas it was the last requisite required by the bank, although she has testified that she sent it after Bas has signed the promissory notes payable to her, because she might have been mistaken as to the date of mailing said letter.

It is then evident that the contract of sale mentioned in the notarial document of May 7, 1915, lacks cause or consideration and is therefore null and void and without any effect whatsoever according to article 1275 of the Civil Code, for it has been satisfactorily and conclusively proven that the purchaser Joaquin Bas has not paid Isabel Flores for the price of the lands that the latter has sold to him, and after being contented with having for a long time given several promises showing that he had no intention to comply with his contract, he concluded by executing four promissory notes payable to the vendor, which recite the aforementioned purchase price and which were not also paid. there appearing in the record facts from which it can be inferred that fraud has been committed.

In her complaint Isabel Flores prays against Joaquin Bas for damages which she has suffered for the loss of the possession of her lands and for the maintenance of this suit.

In reality Joaquin Bas is responsible for the expenses incurred by Isabel Flores on account of this suit, but it does not seem that he should be responsible for the loss of the possession of the lands in question because the latter is not the necessary consequence of the acts of Joaquin Bas, for if her possession passed to Ocejo, Perez & Co., it was not due to the fault of Joaquin Bas but due to the error of the justice of the peace of Lucena who ordered the delivery of said lands to said firm which did not have any right to said possession because as mortgage-creditor it could only compel Isabel Flores to constitute a mortgage upon said lands, an error due perhaps to the fact that Isabel Flores did not show before said court the documents nullifying the effect of the contract of lease signed in favor of Ocejo, Perez & Co. This firm seems to be the one that should be responsible for the damages suffered by Isabel Flores, consisting in not being able to gather the fruits of the lands which passed into the hands of said firm. But as the possession was given by order of the justice of the peace court which had jurisdiction over the case, the firm must be considered as a possessor in good faith—questions which were not raised by the pleadings and for which no evidence has been produced.

It is possible that this firm may have a good defense for exempting itself from the payment of the fruits claimed by Isabel Flores either because said lands produce very little or not much of them, as Isabel Flores pretends, or

because one circumstance or another has compelled said firm to incur the necessary expenditures for the preservation of said lands, or because of other reasons which could not have been exposed in this case as they were not brought up by the pleadings submitted in the case and the evidence adduced at the hearing thereof.

Counsel for Isabel Flores prays that Ocejo, Perez & Co., be required to return the lands to her. But as it is not possible to arbitrarily take into consideration whether this firm has no right at all to retain said lands in case it would not be able to collect its credit, this point not having been discussed on the hearing, it is necessary that Isabel Flores file another action for this purpose wherein the question whether Ocejo, Perez & Co. should or should not deduct from Isabel Flores¹ debt of P15,000 the value of the fruits which said firm might have gathered from the lands, can be further elucidated.

From the foregoing considerations whereby the errors assigned to the appealed judgment have been refuted, said judgment must be affirmed as we do hereby affirmed it, with the costs of this instance against Joaquin Bas. So ordered.

Arellano, C. J., Johnson, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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