

BUENAVENTURA LOPEZ AND ROSARIO JAVELONA, PLAINTIFFS AND APPELLANTS, VS. EL HOGAR FILIPINO, SOCIEDAD MUTUA DE CONSTRUCCION Y PRESTAMOS, DEFENDANT AND APPELLANT; AND REGISTRAR OF ...*G.R. No. 22678. January 12, 1925*

Ponente: VILLAMOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-22678/>**VILLAMOR, J.:**

This litigation arose out of a loan of P84,000 which the defendant El Hogar Filipino had made to the spouses Buenaventura Lopez and Rosario Javelona on March 17, 1920. Beginning May 31, 1921, the debtors failed to make the monthly payments stipulated in the contract; wherefore, the board of directors of El Hogar Filipino, at the expiration of the three months of delinquency provided for in clause 9 of the document, Exhibit 1, copied hereinafter, declared the loan due and payable.

The mortgaged properties were sold publicly in an extra judicial sale and were purchased by El Hogar Filipino. The debtors filed a complaint, praying: (a) For the annulment of the contract evidenced by Exhibit 1, as being usurious; (b) for the annulment of the extra judicial sale of the mortgaged properties, as well as the cancellation of all registrations, annotations or recordations of the same and of the certificates of title that may have been issued in that connection by the register of deeds; (c) for the return of all the interest and fines paid by them; (d) for reasonable attorney's fees; and (e) for any other equitable remedy and costs.

For answer to this complaint, the defendant El Hogar Filipino set up two cross-complaints, praying for the reasons stated: (a) That the plaintiffs' complaint be dismissed with costs; (b) that El Hogar Filipino be placed in possession of the properties in litigation; (c) as ancillary remedy, that the plaintiffs be ordered to pay into the court within not less than three months the amount of P87,505.53, Philippine currency, plus the agreed interest at 9% per annum from June 29, 1922, and the costs in accordance with section 256 of the Code of Civil Procedure, as amended by Act No. 2640 of the Legislature, failing which, that all the mortgaged properties, with all their improvements, choses in action, and natural and civil fruits pending or accrued at the date of the maturity of the obligation, that is, on June 29, 1922, be sold in order to pay the creditor El Hogar Filipino; and (d) that El Hogar Filipino be granted any other remedy that may be just and equitable.

On account of its importance on the decision of this case, the contract of loan and mortgage, Exhibit 1, is copied verbatim as follows:

"MORTGAGE

"This indenture made and entered into at the City of Manila, P. I., between El Hogar Filipino, Sociedad Mutua de Construcción y Prestamos (The Philippine Mutual Home Building and Loan Association), a corporation domiciled in the City of Manila, P. I. (hereinafter referred to as the 'association'), represented herein by its president, Francisco Ortigas, by virtue of the powers conferred upon him by the by-laws of the association and the resolution of the board of directors, adopted on the 22d day of January and on the 1st day of February,

1920, party of the first part, and the spouses Buenaventura Lopez (husband) and Rosario Javelona (wife), property owners, of age, and residents of Iloilo, Iloilo, P. I. (hereinafter referred to as 'the debtors'), parties of the second part.

"WITNESSETH:

"That the spouses Buenaventura Lopez and Rosario Javelona, availing themselves of the rights conferred upon them by the by-laws as shareholders of the association and being the absolute owners of the real estate hereinafter described, have made application to the board of directors of the association for a loan, which has been granted, subject to the following conditions:

"First. The association hereby grants unto the spouses Buenaventura Lopez and Rosario Javelona a loan of eighty-four thousand pesos (P84,000), Philippine currency, being the face value of the four hundred twenty (420) shares of common Class A stock of the association subscribed for by the debtors.

"Second. The debtors acknowledge having received the said sum of eighty-four thousand pesos (P84,000), which they promise to repay as follows:

"They will pay to the treasurer of the association monthly, on or before the 5th day of every month, the sum of one peso (P1) for each share of Class A stock subscribed for by them until the surrender or cash value of said stock, as determined by the by-laws and regulations of the association now in force, shall equal the said sum of eighty-four thousand pesos (P84,000), the amount of the loan by them received from the association, or such lesser sum as the principal loan shall have been reduced to by reason of payments made by the debtors in reduction thereof in accordance with the conditions of paragraph three hereof; and as soon as the surrender value of said stock shall equal the sum owed by reason of the loan herein granted said stock shall be surrendered and cancelled and the value thereof applied by the association to the payment of the amount owed by the debtors on said loan, and the president of the association shall execute in favor of the debtors the necessary instruments of cancellation of the mortgage hereinafter created, the expenses of said cancellation to be charged against the debtors.

"Third. It is agreed that the debtors may make partial payments in reduction of this loan provided such payments shall not be less than two hundred pesos (P200), or any multiple thereof; all payments made hereunder shall be applied to the reduction of the principal of this loan on the last day of the month in which the same shall be paid and the stipulated interest shall be proportionately reduced from and after said date.

"Fourth. The debtors agree that during the time they shall be indebted to the association, by reason of the aforesaid loan, they will pay interest at the rate of 9 per cent per annum, from the 15th day of March, 1920, said interest being payable monthly in advance at the offices of the association in the City of Manila and at the same time that the installments on the 420 shares of Class A stock by them subscribed for are payable.

"Fifth. In the event of the failure of the debtors to pay the installments when due, as well as the interest stipulated herein, on or before the 5th day of each month, commencing March, 1920, the debtors agree to pay to the association, by way of fine for delinquency, the sum of three centavos for every peso they may fail to pay, and a like sum for each month, or fraction thereof, which shall elapse until the amount of their delinquencies shall have been satisfied.

"Sixth. Notwithstanding the personal responsibility which shall arise from the failure of the debtors to perform their obligations under this agreement, the debtors guarantee the repayment of the loan herein granted, and the payment of the agreed monthly installments on the 420 shares of stock subscribed for by them, as well as the payment of the stipulated interest and fines, and to that end they hereby execute a first mortgage upon their real property which is described as follows:

(Description of property)

"Seventh. As additional security for the performance of the obligations herein contained, the debtors pledge to the association the 420 shares of Class A stock of the association by them subscribed for of the face value of eighty-four thousand pesos (P84,000).

"Eighth. The debtors hereby grant unto the manager of the association, whoever he may be, an irrevocable power of attorney, in case they should fail for three successive months to pay their agreed monthly installments upon the stock subscribed for by them, as well as the agreed interest, to collect and receive the rents and profits of the mortgaged property and to apply them, or such part thereof as may be necessary to the payment of the delinquent monthly installments; it being understood that, should the manager of the association exercise the power here granted, he shall return to the debtors any balance remaining in his hands after the payment of all delinquencies specified in this paragraph.

"Ninth. It is agreed that should the debtors fail, for three consecutive months, to pay the monthly installments on the stock by them subscribed for, together with the stipulated interest on this loan, and to perform any of their other obligations contained in the second, fourth, fifth, eleventh, twelfth, thirteenth, sixteenth, seventeenth, and twenty-first paragraphs of this agreement, they shall lose the benefit of the period granted to them in this agreement within which to repay to the association the loan herein granted them and said loan shall then become due and payable, at the election of the association, and the association may proceed to enforce its rights with respect to all of the securities given by the debtors.

"Tenth. The debtors hereby grant unto the manager of the association, whoever he may be, full and irrevocable power of attorney in order that, in the event that the debt herein created shall remain unpaid because of the failure of the debtors to fulfill any of the obligations required of them in the second, fourth, fifth, eleventh, twelfth, thirteenth, sixteenth, seventeenth, and twenty-first paragraphs * * * of this agreement, the association having, by resolution of its board of directors, previously determined to exercise its right to declare the loan due and payable, and publication of notices for three consecutive weeks in a newspaper of general circulation in this city having been made, he (said manager) may proceed to sell at public auction, without court proceedings, in the presence of any notary public or auctioneer selected by the board of directors, the real property herein mortgaged, he being also authorized, under irrevocable power of attorney, to execute all necessary instruments of sale in favor of the highest bidder at the sale; it being understood, nevertheless, that said instruments of sale shall not issue until 30 days, from the date of sale, shall have expired; it being understood, further, that if within said thirty days, from the date of sale, the debtors shall pay to the association the entire debt owed by them on said date, including interest and costs of sale, less the surrender value of their shares of stock, said sale shall be of no effect and the agent of the association shall execute a cancellation of the mortgage herein created, the expenses of said cancellation to be paid by the debtors.

"Eleventh. The debtors agree not to sell or mortgage the property hereby mortgaged without the consent of the association in writing, signed by the president or other person acting in his stead.

"Twelfth. The debtors shall insure the buildings, now erected on the mortgaged premises, against fire in such company and for such sum as the association may deem proper, the policies to be delivered to the association duly indorsed by the debtors, it being expressly agreed that in case of loss the association, through its manager, whoever he may be, shall be authorized to collect the insurance money from the insurance company to be applied on the debt unless, by agreement with the debtors, it shall be applied to the reconstruction of the building; it being further understood that if the debtors shall fail to insure the property, the association may effect the insurance in whatever company or companies it sees fit, charging the cost thereof to the debtors who agree to reimburse the association immediately for all sums expended by it in insuring the property, together with interest thereon at the rate of 15 per cent per annum from the date of such payment and until the same shall be repaid by the debtors.

"Thirteenth. It is stipulated that the debtors shall not create any incumbrance upon the mortgaged property in favor of third persons or make any lease thereof which might be recordable nor make any agreement in which

rent for more than one month in advance is payable without first having obtained the written consent of the association; it being understood that a breach of this covenant shall cause the debt herein created to become immediately due and payable and the association to be authorized to proceed at once to enforce payment thereof in the manner specified in paragraph ten hereof.

"Fourteenth. In the event that the association shall sell the mortgaged property for any of the causes specified in this agreement and the proceeds of such sale shall exceed the total amount owed by the debtors to the association for any and all causes, after deducting the surrender value of their shares of stock, such excess shall be returned to the debtors within 15 days from the date of the execution of the deed of conveyance in favor of the highest bidder at the sale.

"Fifteenth. It is expressly agreed that the association may bid at any sale of the mortgaged property and in the event the bid of the association shall be higher than that of any other bidder taking part in the sale, the manager of the association, whoever he may be, is authorized to execute in favor of the association, as the agent of the debtors, the necessary instruments of conveyance, in the manner and form prescribed in paragraph ten of this agreement.

"Sixteenth. The debtors shall pay all taxes now due or hereafter to become due upon the premises herein mortgaged or the rents thereof and shall comply with all rules and regulations prescribed by the health and other government authorities.

"Seventeenth. The debtors shall keep the buildings now erected upon the mortgaged premises in good order of repair during the life of this agreement and to the satisfaction of whatever architect the association may employ to inspect the same, and to that end the debtors hereby grant unto the association an irrevocable license to permit the agents of the association to enter upon the mortgaged premises to inspect the same at such times as they may deem necessary; it being understood that if the debtors shall fail to permit inspections of the property or to make the repairs demanded by the association as agreed herein, they shall forfeit the right to the time given them under this agreement within which to repay the loan granted them by this instrument, the loan shall thereby become due and payable and the association may proceed to collect it in the manner prescribed in paragraph ten hereof.

"Eighteenth. It is expressly understood that should the premises herein mortgaged be destroyed by earthquake, typhoon, fire, act of war, or in any other manner, while this contract is in force, or by reason thereof it should suffer any damage or deterioration the repair of which will cost 20 per cent or more of the value of the premises, the loan herein granted shall immediately become due and payable to the association, which, at its election, is authorized to proceed to collect the same unless the debtors shall, within 15 days after demand by the association, give security satisfactory to the association, that the premises shall be rebuilt.

"Nineteenth. It is further agreed that, in the event of the condemnation of the mortgaged premises, any sum to which the debtors may become entitled by reason of said condemnation proceedings shall be paid to the association to be applied to the payment of whatever sum may then be owing to the association from the debtors unless, in the event that only a part of the premises is taken by condemnation proceedings, it shall be agreed by the association and the debtors that the proceeds of such partial condemnation shall be used in the improvement and rebuilding of the premises upon the remaining portion of the land herein mortgaged; and for that purpose an irrevocable power of attorney is hereby granted to the manager of the association, whoever he may be, to collect the indemnity in any such condemnation proceedings from any person or persons who shall be obliged to pay the same.

"Twentieth. It is agreed that all payments required of the debtors under this agreement shall, at the election of the association, be paid in gold coin of the United States at the rate of one gold dollar for each two pesos, Philippine currency, owed by the debtors.

"Twenty-first. It is further agreed that the debtors shall be obliged to show to the manager of the association,

whoever he may be, on or before the last day on which any taxes shall be due and payable on the mortgaged premises, the receipts showing payment of said taxes, and any breach of this agreement by the debtors shall authorize the association to proceed to enforce Its rights as provided in paragraph ten hereof; and in the event that the debtors shall fail to pay said taxes the association may pay them, all sums so paid by the association to be considered as a part of the principal of the loan herein granted and to bear interest at the rate of 15 per cent until paid.

"Twenty-second. All sums disbursed by the association on account of insurance premiums, taxes, or other account of the debtors shall not only be considered as a part of this loan, increasing the principal amount thereof, but the repayment thereof to the association shall be secured by the mortgage herein created upon the real estate of the debtors and shall be due and payable in cash to the association immediately after said disbursements shall have been declared payable in the manner prescribed for the payment of the shares of stock subscribed for by the debtors.

"In witness whereof the parties have hereunto set their hands, at the City of Manila, this 13th day of March, 1920, the president of .the association, Francisco Ortigas, signing for and in representation of the association, by virtue of the powers vested in him by the by-laws and regulations of the association in force on this date, and the debtor, (Mrs.) Rosario Javelona, (signing) in Iloilo on the 17th day of March, 1920.

(Sgd.)

"BUENAVENTURA LOPEZ

"ROSARIO JAVELONA

"FRANCISCO ORTIGAS

" Witnesses:

"At Manila. (Sgd.) FERNANDO HERNANDEZ

"S. CHOFRE

"At Iloilo. (Sgd.) MARIANO LOPEZ

"F. C. BUENAFLORES"

The parties submitted to the court an agreed statement of facts as follows:

"STIPULATION

"Now come the parties in the above entitled cause, and stipulate and agree that the following facts are true:

"1. Plaintiffs are husband and wife, of legal age, and residents of the municipality of Silay, Province of Occidental Negros, Philippine Islands.

"2. The defendant El Hogar Filipino is, and at all times herein mentioned was, a building and loan association organized and existing as a domestic corporation under and by virtue of the Philippine Corporation Law.

"3. The defendant, Geronimo Paredes, is, and at all times herein mentioned was, the duly appointed, qualified and acting register of deeds of the Province of Occidental Negros, Philippine Islands.

"4. On or about March 13th, 1920, in the City of Manila, Philippine Islands, plaintiffs executed a mortgage on real estate, a duplicate of which, marked Exhibit 1, is annexed to the original answer of the said defendant, dated September 19, 1922; and at the time of the execution of said mortgage the said defendant received from the Philippine National Bank, a former creditor of plaintiffs, the certificate of title to the property described in said deed of mortgage.

"5. The lands described in said deed of mortgage are all situated in the Province of Occidental Negros, Philippine Islands.

"6. The said mortgage was duly recorded in the office of the register of deeds of said province in accordance with the requirements of existing law concerning the registration of mortgages on real estates registered in accordance with the Land Registration Act.

"7. Exercising the right claimed by it under clause 10 of the said deed of mortgage (Exhibit 1), the defendant El Hogar Filipino on or about the 29th day of June, 1922, after its board of directors had taken advantage of the option to treat the debt as due and demandable, and after the publication of notices in accordance with the provisions of said clause 10, caused each and everyone of the parcels of land described in said deed of mortgage to be sold at public extrajudicial auction by a licensed auctioneer, but without any judicial proceeding whatever.

"8. At said public extrajudicial auction the defendant El Hogar Filipino was the only bidder, and all of said parcels of land, with the improvements thereon, were adjudicated to said defendant by the said licensed auctioneer for the sum of P87,505.53.

"9. Thereupon said auctioneer executed a public document, certifying his proceedings in said sale (offered in evidence as Exhibit 10 of El Hogar Filipino), and thirty days thereafter the manager of El Hogar Filipino executed a deed of sale of said property to said El Hogar Filipino (a true copy of which is in evidence herein as Exhibit 11 of El Hogar Filipino).

"10. Thereafter, the defendant El Hogar Filipino filed for record in the office of the register of deeds of the Province of Occidental Negros the originals of the deeds in evidence as Exhibits 10 and 11, executed in favor of the said defendant, covering all the parcels of land described in the said deed of sale and in the deed of mortgage hereinabove mentioned, which deed of sale was executed, as above set forth, as the result of the said public extra judicial auction sale, and at the same time it presented to the registrar of deeds the owner's duplicate certificate of title to said parcels of land, and demanded that the sale to El Hogar Filipino be registered, the certificate of title standing in the name of plaintiffs cancelled, and the corresponding new certificate of title issued to El Hogar Filipino in accordance with the said deed of sale, Exhibits 10 and 11.

"11. The defendant registrar of deeds refused to record the deed of sale to El Hogar Filipino, to cancel the certificate of title in the name of plaintiffs, and to issue a new certificate of title to El Hogar Filipino, pending the final disposition of this case.

"12. Plaintiffs herein were not shareholders of El Hogar Filipino prior to the execution by them of the deed of mortgage, Exhibit 1.

"13. No loan of its funds is made by El Hogar Filipino, except to shareholders.

"14. Plaintiffs are now in possession of the properties described in the deed of mortgage, Exhibit 1, and refuse to deliver the same to El Hogar Filipino.

"15. As borrowers, plaintiffs undertook, and were required under the contract set forth in said deed of mortgage, to pay each year P7,560, as interest at the rate of nine per centum per annum upon the P84,000 mentioned in said deed, by monthly installments, and to continue making such payments until the value of the said 420 shares, for which, as stated in Exhibit 1, they had subscribed, composed of their monthly payments (including entrance fees) and their share in the profits, shall amount to P200 per share, or the total value of P84,000, and when the said shares shall have reached the said value, they were to be withdrawn, cancelled and appropriated by the corporation and the mortgage cancelled.

"16. The sum of P12,164.25 credited to plaintiffs as the value of their shares for the purpose of determining the balance for the collection of which El Hogar Filipino caused the mortgaged property to be sold at extra judicial

sale for the realization of the mortgage herein mentioned, was composed of the sums paid by the said plaintiffs on account of their subscription to the shares and the dividends earned, received and prorated to said shares.

"17. On or about March 17, 1921, and April 29, 1920, Mr. Jose Reguera, a duly authorized agent of El Hogar Filipino, entered into a supplementary agreement with plaintiffs, incorporated into his letters written on behalf of El Hogar Filipino, as hereinafter set forth, it being understood that the letter of April 29, 1920, although erroneously addressed to Gil Lopez, was really addressed to Buenaventura Lopez, who received the same in an envelope properly addressed to him. Such letters are respectively of the following tenor:

" 'Iloilo, April 29, 1920. Loan No. 917. Mr. Gil Lopez—Dear Sir: Confirming our verbal arrangement concerning the payment of monthly dues and interest upon your loan, we notify you that in accordance with said agreement you will make an annual payment of P12,600 on March 17, 1921, and on the same date of each successive year, it being expressly understood and agreed that the slightest delay or default in payment on such date of the complete annual installment will operate to produce the rescission of this special concession, and the payment will be due and demandable strictly in accordance with the conditions stipulated in the deed of mortgage, and in this case fines or surcharges which may have accrued shall all be payable.

" 'Please sign at the foot your conformity, returning this letter and retaining the duplicate. Yours very truly, El Hogar Filipino (Sgd.) J. Reguera, Agent, ("Accepted, (Sgd.) B. L.").'

" 'Iloilo, March 17, 1921. Mr. Buenaventura Lopez, Silay—Dear Sir: Please be informed that from the first of this month the annual payment on your loan No. 921, as amortization and interest, is due, amounting to the total of P12,600. As the payment should have been, but was not, made at the time indicated, you are reminded of it in accordance with instructions from the head office, to the end that the payment may be made with the least possible delay. Yours very truly, (Sgd.) J. Reguera, Agent.'

"18. It is stipulated that the sum of P12,600 referred to in the letters above transcribed, is made up of P5,040, as partial payments at the rate of P420 a month on account of 420 ordinary shares subscribed for by plaintiffs, and the sum of P7,560, as annual interest upon the P84,000 mentioned in the deed of mortgage at the rate of nine per centum per annum.

"19. Plaintiffs failed to pay the taxes on the land described in the mortgage, Exhibit 1, for the years 1921 and 1922, for reasons not important in this case, but which are the subject-matter of another suit against Miguel J. Ossorio and the Victorias Milling Company, now pending in this court, as a consequence of which the land was declared confiscated; within the time allowed by law El Hogar Filipino deposited in the provincial treasury of Occidental Negros the sum of P1,707.84, which sum was accepted by the treasury upon the understanding that it would remain as a deposit while El Hogar Filipino negotiated for the repurchase of the property.

"20. Subject to the provisions of the law, all borrowing shareholders of El Hogar Filipino are required to pay a premium of 16.67 per centum of the amount of the loan, which is fixed by the board of directors.

"21. Also subject to the provisions of the law, premiums collected from shareholders are considered by El Hogar Filipino as a profit earned in the year in which the loan is made.

"22. Also subject to the provisions of the law, the net profits earned by El Hogar Filipino, including interest upon loans, premiums paid by borrowing shareholders, fines collected from shareholders for delinquency in the payment of dues on shares or of interest, entrance fees, and other sources, are determined at the end of each year prorated to shareholders in proportion to their respective participations in the total paid in capital, such participations consisting of the dues paid on account of the par value of subscribed shares and the accumulated profits earned in preceding years.

"23. As shown by Exhibit 1, plaintiffs subscribed for 420 ordinary shares of El Hogar Filipino, and obligated

themselves in the same manner as other holders of such shares, to pay P1 per month on each share to the corporation until such time as the payments so made, plus the part of the profits of the corporation pertaining to such shares, should equal the par value of P200 per share, the sum of P5,040 being the total annual payment required of them as dues upon their 420 shares.

"24. Plaintiffs, as shareholders, participated proportionately with other shareholders in the benefit derived by El Hogar Filipino from the premium charged against plaintiffs for their loan secured by said mortgage, and the profits derived from similar premiums paid by other borrowing shareholders.

"25. The defendant El Hogar Filipino offers as documentary proof, in addition to that attached to the deposition of the witness, Señor Lopez, the receipt dated March 17, 1920, No. 896, for the sum of P50, as Exhibit 12; Receipt No. 1298, dated March 17, 1920, for the sum of P89.50, as Exhibit 13; Receipt No. 5232, dated March 17, 1920, as Exhibit 14; Receipt No. 1451, dated March 17, 1920, for the sum of P1,554, as Exhibit 15; and Receipt No. 1064, dated March 17, 1920, for the sum of P14,000, as Exhibit 16. It is stipulated that said receipts, Exhibits Nos. 12, 13, 14, 15, and 16 were introduced by plaintiffs, in whose possession they had been. Plaintiffs stated, in connection with the said receipts, Exhibits Nos. 12, 13, 14, 15, and 16, that the sums of money mentioned therein were paid by El Hogar Filipino for their account, said sums having been deducted from the gross amount of the loan.

"26. Plaintiffs reserve their objection to the materiality of the facts set forth in paragraph eighteen of this stipulation, and contend that said facts are immaterial upon the ground that they do not relate to any issue made by the pleadings herein.

"Bacolod, Occidental Negros, January 31, 1923.

"MONTINOLA, MONTINOLA & HONTIVEROS

"FISHER, DEWITT, PERKINS & BRADY

"By (Sgd.) F. C. FISHER

"Attorneys for the defendant El Hogar Filipino

"HILADO & HILADO

"(Sgd.)

EMILIO Y. HILADO

"Attorneys for Plaintiffs

"(Sgd.)

GERONIMO PAREDES

"Register of Deeds of Occidental Negros

"By (Sgd.) SIMEON BITANGA

"Fiscal Delegado"

On the same date the parties entered into an agreement as follows:

"STIPULATION

"It is hereby agreed that the amended complaint dated January 30, 1923, shall be understood as presented nunc pro tunc instead of the amended complaint of December 18, 1922; that the answer and cross-complaint of El Hogar Filipino of January 4, 1923, shall be taken as answer and cross-complaint to the amended complaint of January 30, 1923; and that the replication of the plaintiffs dated January 24, 1923, to the said answer and cross-complaint shall be deemed existing and that the answer of the register of deeds of January 31, 1923, shall be deemed as reproduced with respect to the above mentioned pleadings, as amended, of the parties litigant.

"Bacolod, January 31, 1923.

"MONTINOLA, MONTINOLA & HONTIVEROS

"FISHER, DEWITT, PERKINS & BRADY

"By (Sgd.) F. C. FISHER

"Attorneys for the defendant

"HILADO & HILADO

"By (Sgd.)

EMILIO Y. HILADO

"Attorneys for the plaintiffs

"(Sgd.)

GERONIMO PAREDES

"Register of Deeds of Occidental Negros

"By (Sgd.) SIMEON BITANGA

"Deputy Fiscal"

The defendant register of deeds filed an answer, adopting as his the allegations of the amended complaint, dated January 30, 1923, and of the reply dated January 24, 1923, of the plaintiffs to the cross-complaint of El Hogar Filipino.

The court a quo rendered a decision, (a) declaring the contract of mortgage Exhibit 1 null ab initio and consequently clause 10 thereof also null and void; (b) annulling the extrajudicial sale of the properties in litigation described in paragraph 3 of the amended complaint, and therefore declaring null and void also all the acts and documents made thereafter in accordance with clause 10 of the contract, particularly the documents marked Exhibits 10 and 11 and all recordations and registrations of those documents made by the register of deeds and all certificates of transfer issued by virtue thereof in favor of El Hogar Filipino; (c) ordering El Hogar Filipino to return to the plaintiffs the sum of P12,600 with legal interest from the date of the filing of the original complaint plus the sum of P5,000, as attorney's fees; and (d) dismissing the two cross-complaints of El Hogar Filipino, with costs against the defendant.

Defendant's counsel moved for a new trial on the ground that the evidence was not sufficient to justify the decision and that the decision was contrary to law. With the objection of the plaintiffs, the court by an order dated April 10, 1924, reconsidered its original decision, and summarizing the points raised by the parties in their briefs, to wit: (a) Whether or not the contract contained in Exhibit 1 in question was usurious; (b) whether or not the provision of clause 10 of Exhibit 1 was valid; and (c) whether or not El Hogar Filipino, a corporation organized under the laws of these Islands, had the right to recover the amount actually lent by virtue of Exhibit 1, rendered a decision declaring that the contract contained in Exhibit 1 was usurious, that clause 10 of the said contract was null and void, but set aside so much of its decision of August 14, 1923, as held that El Hogar Filipino had no right to recover from the plaintiffs the amount of the loan; and by thus amending its decision, the court ordered the plaintiffs, Buenaventura Lopez and Rosario Javelona, to return to the defendant El Hogar Filipino the amount of P66,682 with legal interest from March 17, 1920, until fully paid.

Plaintiffs and defendant excepted to the amended decision. Plaintiffs prayed furthermore, for a new trial on the ground that the judgment was not supported by the evidence and that it was against the law, which motion was denied by the court, and both parties perfected bills of exceptions and took the case to this court.

Plaintiffs urge that the trial court erred: (a) In not holding that the mortgage transaction was void as to both principal and interest; (b) in holding that plaintiffs must return to the defendant corporation the sum of P66,682; (c) in allowing legal interest on the aforesaid sum from the date of the execution of the mortgage; and (d) in overruling plaintiffs' motion for new trial.

The questions raised by the plaintiffs-appellants are not new in this jurisdiction. In the case of Delgado vs. Alonso Duque Valgona (44 Phil., 739), this court cited with approval the decision in the case of Moncrief vs. Palmer (114 Atl., 181; 17 A. L. R., 119), in which it was held that the debtor seeking equity must do equity by returning to the creditor the capital that he may have received. In discussing the law applicable to the case, this court, among other things, said the following:

" The provisions of the Rhode Island statute with reference to usury are drastic. Chapter 434, Public Laws 1909, amended by chapter 838, Public Laws 1912. The violation of the act is punishable as a misdemeanor, every contract made in violation of it is void, and the borrower may recover in an action at law, not only the interest, but any portion of the principal paid by him upon such usurious contract. The complainant's solicitor has presented to us a very comprehensive and able argument in support of his contention that equity should recognize the view of public policy emphatically expressed in the legislative act, and should cancel the usurious and void contract. This argument would have more persuasive force if the question were a new one. The settled and nearly universal practice of courts of equity is opposed to the complainant's contention. The statutes of different states have various provisions directed towards the prevention of the extortion and oppression of usury. Whatever may be the method adopted by the legislature, however, although the legislative provision may go to the limit of our statute and declare the contract void and unenforceable, nevertheless courts of equity, in the absence of statute specifically constraining them to act differently, have insisted upon the equitable principle that he "who seeks equity must do equity," and have required the borrower, before he can be given the relief of cancellation of the contract, to perform the moral obligation resting upon him, and pay or offer to pay the principal of the loan with legal interest.' "

Commenting upon the foregoing decision, Mr. Justice Street, who penned the decision of this court in the Delgado vs. Alonso Duque Valgona case, *supra*, said:

"The doctrine of that case we consider applicable here; and without expressing any opinion upon the broader question whether capital lent upon a usurious contract can be recovered in an aggressive action by the creditor, we are content to hold that when the debtor in a usurious contract sees fit, or finds it necessary to apply to the court for equitable relief, he will, as a condition to the granting of such relief, be required to restore what he

received from the other party. In the present case both parties are before the court in the attitude of suppliants, each asking for relief from the contract in question; and in order to avoid the possibility of further litigation, as well as to secure complete justice, an order will be entered requiring the plaintiff, as a condition of the satisfaction of the judgment in his favor, to reconvey to the defendant the same twelve parcels acquired by the plaintiff from the defendants.

In the case of *Go Chioco vs. Martinez* (45 Phil., 256), this court held the following:

"Under Act No. 2655, all usurious loan is void, but this does not mean that the debtor may keep the principal received by him as loan, thus unjustly enriching himself to the damage of the creditor, but that the creditor has no right of action for the recovery of the stipulated interest, although he may sue for the recovery of the principal loaned."

In the course of the decision and after examining the several provisions of the Usury Law, we held that: " * * * The law, in declaring usurious loans to be void, determines its effects and makes them to consist in the reimbursement of the interest paid during the two years preceding the making of the claim, the payment of attorney's fees and provides further for the institution of criminal action for the imposition of the penalty fixed by the law. * * * "

This doctrine was applied in the case of *Gui Jong & Co., vs. Rivera and Avellar* (45 Phil., 778) recently decided by this court with the concurrence of all the justices who took part in its decision. In that case, the defendant maintained that, inasmuch as the transaction was usurious and was therefore void, he was relieved from all responsibility and that the plaintiff had no right to recover anything of him. The court held: "Where a mortgagor admits that he got the money and owes it to the plaintiff, he is not released from the payment of the debt because the transaction was usurious," and "Although the interest was usurious, it did not operate as a payment or satisfaction of the original loan, and this is specially true where no interest was ever paid."

In the course of the decision, the court aptly makes these remarks: "Upon what theory can the defendant breach his own contract and rely upon its enforcement? Upon what legal principle can he deny liability upon a contract which he repudiated and failed to perform? How and in what manner has the defendant paid the amount of the original loan, which he admits having received? Upon what legal or equitable principle can he defeat the payment of the amount of the original loan for the reason that he failed and neglected to perform his own contract? By no fiction or rule of law would the fact that the interest was usurious and was never paid by the defendant operate as a payment or satisfaction of the original loan.

"In any event, he should pay the plaintiff the amount which he justly owes him. That question was squarely met and decided in the case of *Aguilar vs. Rubiato and Gonzalez Vila* (40 Phil., 570), which upon legal principle was followed in *Delgado vs. Alonso Duque Valgona* (44 Phil., 739), and which was cited and approved in *Go Chioco vs. Martinez* (45 Phil., 256)."

It was held in the case of *Hodges vs. Gelbolinga* (R. G. No. 21760, decided August 8, 1924),^[1] that the trial court erred in holding the entire contract void and in dismissing the complaint, because the interest was in excess of 24 per cent per annum. The court said: " * * * In the opinion in the case of *Go Chioco vs. Martinez* (45 Phil., 256), the majority of this court held that, in an action upon a usurious loan, the lender can recover the capital actually lent, together with interest thereon from the time of the institution of his action. According to this doctrine, the contract is unenforceable only to the extent of the stipulated usurious interest."

Thus it will be seen that the jurisprudence of this court on the question raised by plaintiffs' appeal is decidedly to the effect that the Usury Law (Act No. 2655), by its letter and spirit, does not deprive the lender of his right to recover of the borrower the money actually loaned—this only in the case that the interest collected is usurious. The

law, as it is now, does not provide for the forfeiture of the capital in favor of the debtor in usurious contracts and while we may believe it to be more convenient to forfeit the capital, as a drastic measure to eradicate the evil of usury, we should not, however, resolve a legal question by abiding by our opinion regarding its convenience, but should be guided by what we understand is the intent of the law. There was a law (Act No. 2073), enacted by the Philippine Commission in 1911, establishing the rate of legal interest and fixing the effect of usury in the Moro Province, in the Mountain Province, and in the Provinces of Agusan and Nueva Vizcaya, of which section 6 provides that "whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of, debt has been taken or received in violation of the provisions of this Act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be cancelled and given up." But the present law (Act No. 2655, as amended by Act No. 2992) does not contain the same prohibitory provision as the former law, and the silence of Act No. 2655 upon this point, in conjunction with the express prohibition contained in Act No. 2073, shows that that prohibition was intentionally omitted from the present law and that the Legislature, in so omitting such provision from the new law, expressly intended to open the door of the courts to the creditor and allow him to claim the return of his capital.

The fact must specially be borne in mind that Commission Bill No. 217, introduced in 1914 by Commissioner Martin, in its section 1, contained a provision to the effect that "any contract which directly or indirectly called for the payment of interest in excess of 12 per cent per annum shall be null and void, not only as to the interest, but also as to the capital invested." But such provision was eliminated from the Usury Law, as finally passed by the Legislature on February 24, 1916. Not only this, but in the explanatory statement of the same Act No. 2655, which repealed all other Acts incompatible with its provisions, it was expressly said that in cases of violation of the Usury Law, a fine equivalent to four times the excess of the interest collected, or a corresponding subsidiary imprisonment in case of insolvency, would be better than, and preferable to, the forfeiture of the capital. Is this not a conclusive proof that, in the enactment of the Usury Law, the Legislature did not contemplate the forfeiture of the capital in usurious contracts?

Plaintiffs' attorney, however, argue vigorously upon the significance of the word "void" as used in section 7 of the Usury Law, contending that usurious contracts, because expressly banned by the law as absolutely null and void, should not be given any effect by the courts.

It must be observed, first of all, that the intention of the legislator must be ascertained, not from the consideration of a single word or a particular phrase of the law, but from the context of the whole law or from a portion thereof as compared with the whole. (25 R. C. L., p. 1007 and cases cited.) As was said by Chief Justice Marshall in *Pennington vs. Coxe* (2 Cranch, 33; 2 Law. ed., 199), "that a law is the best expositor of itself; that every part of an act is to be taken into view for the purpose of discovering the mind of the legislature; and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act, are among those plain rules laid down by common sense for the exposition of statutes which have been uniformly acknowledged. * * *"

We are in accord with plaintiffs' counsel that if the Legislature had used a clear and unambiguous language, the law must be enforced according to its clear and evident intent. However, this is not so with the case at bar. The Legislature contented itself with employing the word "void" a word very frequently used with little precision to mean whatever is voidable or void, so that when it is used in a law, the context of the law must be resorted to, before giving it its exact meaning.

The words "void", and "voidable" are not often used with exact discrimination; indeed in some books there is great want of precision in the use of them and much confusion has resulted from the looseness in the use of these words. The terms have frequently been used indiscriminately and what is merely voidable is frequently called

void. So often has the word "void" been used in the sense of voidable that it may be said to have almost lost its primary meaning; so that when it is found in a statute or judicial opinion, it is ordinarily necessary to resort to the context in order to determine precisely what meaning is to be given to it. Indeed it is said that the term "void" is oftener used to point out what may be avoided than to indicate a nullity. (40 Cyc., 214, 215.)

In the present case, what is the meaning of the word "void" as used in sections 7 and 8 of the Usury Law? It will be noted that section 7 avoids all usurious contracts, but immediately after this provision, it recognizes the validity of usurious negotiable instruments whenever acquired in good faith by a third person; so that the usurious contract which is void is not absolutely void, but perfectly valid under certain circumstances.

Again, section 8 makes void and of no effect whatever loans are payable in agricultural products and seeds, unless the price of the products is fixed by referring to the current price thereof at the time of the performance of the obligation; and according to section 10, the lender violating this law should be compelled to return to the borrower an amount equivalent only to what he may have received as interest. It results from the very context of the law, therefore, that the lawmaker in using the word "void" did not intend that the transaction should be a complete nullity, but merely a nullity in respect to the agreed interest.

This conclusion has been upheld by the majority of this court in the case of *Go Chioco vs. Martinez*, supra. We then held that:

"The other questions raised in this appeal refer to whether a debtor, who has paid usurious interest, can recover the amount paid by him on account of the principal and whether the usurious creditor has a right to recover the principal loaned, and not paid by the debtor. The resolution on these two questions depends upon the interpretation of section 7 of Act No. 2655 which provides:

" 'All conveyances, mortgages, bonds, bills, notes, and other contracts or evidences of debt, and all deposits of goods or other things, whereupon or whereby there shall be reserved, secured, taken, or received, directly or indirectly, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits than is hereinbefore allowed, shall be void: Provided, however, That no merely clerical error in the computation of interest, made without intent to evade any of the provisions of this Act, shall render a contract void: And provided further, That nothing herein contained shall be construed to prevent the purchase by an innocent purchaser of negotiable mercantile paper, usurious or otherwise, for valuable consideration before maturity, when there has been no intent on the part of said purchaser to evade the provisions of this Act and said purchase was not a part of the original usurious transaction. In any case, however, the maker of said note shall have the right to recover from said original holder the whole interest paid by him thereon and, in case of litigation, also the costs and such attorney's fees as may be allowed by the court.'

"As may be seen, notwithstanding the provision as to the nullity of the usurious note, in case the same is indorsed to an innocent third person, the innocent purchaser is entitled to Collect the amount, with interest, from the maker and the maker is entitled to recover from the original holder thereof only the interest paid by him, and, in case of litigation, the costs and attorney's fees as may be allowed by the court. Therefore, the only effect of the nullity of the note is the recovery of the interest paid by the debtor, not the value of the note.

"If, on account of the nullity of a usurious note, the original holder thereof, or the payee, has no right to recover any amount upon said note, there is no reason why, in case the same is transferred to a third person who acquires it in good faith and for a consideration, the payee Should be benefited by the amount collected by him from the transferee as payment of the note endorsed and not repay the maker the value of the same. Likewise, if by virtue of such a nullity, nothing can be collected by the holder of the note, there is no reason why the reimbursement of the interest should be limited to the amount collected during the two years immediately preceding the date on which the action for the recovery thereof was instituted, and should not include all the interest collected prior to

said period. And it is because the law limits the effect of the nullity to the reimbursement of the interest paid during the period of two years preceding the filing of the complaint, which provision being of a penal nature must be strictly construed so that it should not include the reimbursement of the principal paid and the unpaid principal which is not provided in the law.

"That the legislator did not have in mind that the usurious creditor should lose the capital loaned by him is further made apparent by the provisions of section 8 of Act No. 2655 as amended by Act No. 2992. Said section reads thus:

" 'All loans under which payment is to be made in agricultural products or seed or in any other kind of commodities shall also be null and void unless they provide that such products or seed or other commodities shall be appraised at the time when the obligation falls due at the current local market price: Provided, That unless otherwise stated in a document written in a language or dialect intelligible to the debtor and subscribed in the presence of not less than two witnesses, any contract advancing money to be repaid later in agricultural products or seed or any other kind of commodities shall be understood to be a loan, and any person or corporation having paid otherwise shall be entitled in case action is brought within two years after such payment or delivery to recover all the products or seed delivered as interest, or the value thereof, together with the costs and attorney's fees in such sum as may be allowed by the court. Nothing contained in this section shall be construed to prevent the lender from taking interest for the money lent, provided such interest be not in excess of the rates herein fixed.'

"Under this legal provision, in case of a usurious contract, by virtue of which payments are to be made in agricultural products, seeds or other fruits, the debtor may recover from the usurious creditor only what he might deliver as interest, which shows, in our opinion, that what he might have paid as principal is not recoverable. Now, if it is held that in another kind of a usurious contract, the debtor may recover not only the interest paid but also the principal, how can it be explained that lay the mere fact of the debt being payable in fruits, the debtor is not entitled to recover the principal which he might have paid? The conclusion is inevitable that the nullity of a usurious loan provided in the law means only that the lender cannot demand payment of the stipulated usurious interest.

"Moreover, section 10 of Act No. 2655 as amended by Act No. 2992 provides:

" 'Without prejudice to the proper civil action, violations of this Act shall be subject to criminal prosecution and the guilty person shall, upon conviction, be sentenced to a fine of not less than fifty pesos nor more than two hundred pesos or to imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court, and to return the entire sum received as interest from the party aggrieved, and in case of nonpayment, to suffer subsidiary imprisonment at the rate of one day for every two pesos: Provided, That in case of corporations, associations, societies or companies the manager, administrator or gerente or the person who has charge of the management or administration of the business shall be criminally responsible for any violation of this Act.'

"As may be seen, this legal provision requires the restitution only of what might have been received by the convicted usurer as interest. If the intention of the legislator was to confiscate the principal loaned, he would not have limited himself to the statement that the interest collected must be refunded.

"In interpreting Act No. 2655, the fact must not be lost sight of that in August, 1911, the Philippine Commission enacted Act No. 2073, which fixes and defines the legal rate of interest, declares the effect of usury on contracts, and provides for other purposes in the Moro Province, Mountain Province, and in the Provinces of Agusan and Nueva Vizcaya. Section 3 of this Act provides:

" 'Sec. 3. All bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and

securities whatsoever, and all deposits of goods, or anything whatever, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action, than is above prescribed, shall be void, except as to bona fide purchasers of negotiable paper, as hereinafter provided, in good faith, for a valuable consideration, before maturity: Provided, That no merely clerical error in the computation of interest, made with no intent to avoid the provisions of this Act, shall render the contract usurious: And provided further, That the payment of interest in advance for one year at a rate not to exceed fifteen per centum per annum shall not be construed to constitute usury: And provided further, That nothing herein shall be construed to prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, free from all equities, at any price, before the maturity of the same, when there has been no intent to evade the provisions of this Act, or where said purchase has not been a part of the original usurious transaction. In any case, however, where the original holder of a usurious note sells the same to an innocent purchaser, the maker of said note or his representative shall have the right to recover back from the said original holder the amount of principal and interest paid by him on said note.'

"The phraseology of section 7 of Act No. 2655 is so similar to the language of section 3 of Act No. 2073 that it may well be said that Act No. 2655 was drafted after Act No. 2073 for the whole Philippines, which Act (No. 2655) fixes the rate of interest on loans, declares the effect of receiving or collecting usurious interest and provides for other purposes. A comparison of the terms of the laws above quoted shows only one essential difference, and that is, that while section 3 of the former Act No. 2073 gives the debtor the right to recover not only the usurious interest but also the principal, section 7 of the later Act, that is, Act No. 2655, authorizes the debtor to recover only what he might have paid. In view of this fact, there is no room for doubt that the Philippine Legislature, in enacting Act No. 2655, deemed the provision of section 3 of Act No. 2073 to be unjust as to the confiscation of the principal and so it provided in Act No. 2655 that the debtor may recover only the interest paid, attorney's fees and costs.

* * * * *

"And, if we turn our attention on the Acts above cited, Nos. 2073 and 2655, it will be seen that section 6 of the former Act provides:

" 'Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of debt has been taken or received in violation of the provisions of this Act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be cancelled and given up.'

"This provision shows that under that law, it was expressly prohibited to maintain any action on usurious contracts. Then there is no doubt that the creditor cannot institute any action for the recovery of the capital or part of the capital loaned. Undoubtedly, the legislator, in enacting Act No. 2073, deemed it reasonable that the creditor should lose the capital, because, aside from the fact that in that Act no penalty was provided for against usury other than the loss of all the interest paid by the debtor in case the usurious instrument was negotiated (sec. 3), and of the interest paid in the two years preceding the filing of the complaint in all other cases (sec. 2); in said Act only one rate of interest quite liberal was fixed, namely, 15 per cent per annum according to section 1 and building and loan associations as well as pawn shops were exempted from every limitation according to section 7.

"But the Act now in force, No. 2655, as amended by Act No. 2992, contains no such prohibitive provision as that of the former Act No. 2073 and the silence of Act No. 2655 in this respect, in contra-distinction with the express prohibition of Act No. 2073, shows that said prohibition was intentionally omitted from the law now in force, and that the Legislature, in omitting such rule from the new law, did not intend to bar the creditor from coming into court for the recovery of his capital. And the reason for such an omission is clear if it is taken into account that

Act No. 2655 made the situation of the creditor quite difficult in these respects: (a) No creditor is exempt from the law (section 2); (b) the maximum rates were fixed, which were to be applicable to building and loan associations and pawn shops (section 4); (c) the general rate of interest was reduced to 12 per cent on loans with securities of real properties and 14 per cent if there are no such securities (sections 2 and 3); (d) in case of litigation, the judge shall sentence the creditor to pay attorney's fees to the debtor (sections 6 and 8); (e) usury was made a crime and is punishable by a fine equal to the interest stipulated, or subsidiary imprisonment in case of insolvency (section 10). We believe that these new penalties and restrictions were inserted by the Legislature in lieu of the loss of the capital provided by Act No. 2073.

"And the foregoing conclusion is fully sustained not only by the history of the Usury Law, but also by the preamble of the law itself. By the history, because the bill of the Commission No. 217 prepared by Commissioner Martin in 1914 in its section 1 contained a provision to the effect that 'any contract which directly or indirectly provides for the payment of any interest in excess of 12 per cent per annum shall be null and void not only as to the interest but as to the principal invested,' which provision was eliminated from the Usury Law as it was finally passed by the Legislature. By the preamble, because speaking of the necessity of the intervention of the prosecuting attorney in actions resulting from the violation of the Usury Law, as well as of the penal sanction", said preamble gives the following reasoning: 'We believe it to be a sound proposition that the fiscal should intervene in the actions arising from the violation of the proposed provisions set out in the original bill, because, among other reasons, those poor persons unable to employ an attorney will be represented and thus the law would not be a dead letter. But without the penal clause, it seems that such intervention is not proper. But, why not insert such clause? We would not be the first and only nation which would do such a thing. We are of the opinion that a fine equivalent to four times the amount in excess of the interest charged or subsidiary imprisonment in case of insolvency, would be sufficient and better than the forfeiture of the principal.' Therefore, there can be no room for doubt that it was not the intention of the Philippine Legislature to forfeit the principal in condemning usury by means of a law."

In support of this opinion, we may also cite the decision of the United States Supreme Court in the case of *McBroom vs. Scottish Mortgage & Land Investment Co. of New Mexico* (153 U. S., 318; 38 Law. ed., 729), referring to the interpretation of the Usury Law of New Mexico, where it says that:

"Was the contract between the parties void as to the amount loaned with legal interest thereon, because it provided for, or in its execution involved, the payment of usurious interest? The plaintiff insists that it was, and, consequently, that a cause of action accrued immediately cultural purposes, industrial, or commercial, or for the construction or acquisition of urban properties cannot earn more than 12 per cent per annum interest, in accordance with the general rule established in section 2 of the said law; but loan and building associations may charge up to 18 per cent per annum interest in accordance with the exception contained in the same section.

Although not stated in so many words, we perceive from plaintiffs' brief that building and loan associations cannot make loans except for the construction and acquisition of homes.

Aside from the fact that there is nothing in Exhibit 1 showing (nor did the plaintiffs show) that the loan made was for agricultural purposes, the law, in describing building and loan associations, says:

"All corporations whose capital stock is required or is permitted to be paid in by the stockholders in regular, equal, periodical payments and whose purpose is to accumulate the savings of its stockholders, to repay to said stockholders their accumulated savings and profits upon surrender of their stock, to encourage industry, frugality, and home building among its stockholders, and to loan its funds and funds borrowed for the purpose to stockholders on the security of unencumbered real estate and the pledge of shares of capital stock owned by the stockholders as collateral security, shall be known as building and loan corporations, and the words 'mutual

building and loan association' shall form part of the name of every such corporation." (Sec. 171, Act No. 1459.)

It will thus be seen that one of the principal purposes for which this kind of corporation is organized is to lend its funds and funds borrowed for the purpose to stockholders on the security of unencumbered real estate and the pledge of shares of capital stock owned by the stockholders as additional security. What is the purpose mentioned by the law? According to the same section, the purpose is (a) to accumulate the savings of its stockholders; (b) to repay to said stockholders their accumulated savings and profits upon surrender of their stock; (c) to encourage industry, frugality and home building among its stockholders.

In the case of *El Hogar Filipino vs. Rafferty* (37 Phil., 995), this court said:

"A building and loan association is an organization created for the purpose of accumulating a fund by the weekly, monthly or yearly subscriptions or savings of its members, to assist them in building or purchasing for themselves dwellings or real estate, by loaning to them the requisite money from the funds of the society. To all particular intent it may be said to be to enable a number of associates to have and invest their savings to mutual advantage, so that, from time to time, any individual among them may receive, out of the accumulation of the pittances which each contributes periodically, a sum, by way of loan, wherewith to build or pay for a home, and ultimately making it absolutely his own by the payment of such small amounts from time to time. Building and loan associations are institutions in modern society and are now recognized as important factors in the social and economic development of the country. The controlling idea is the massing of the separate earnings of wage-workers and the savings of persons of small means, in such a manner as to aid them in procuring homes for themselves. It is the organization of thrift and self-help, a practical application of the maxim that in 'union there is strength.' "

It must be noted, however, that although the controlling idea in building and loan associations is that of accumulating the separate earnings of wage-workers and the savings of persons of small means in such a manner as to aid them in building up homes for themselves, this idea, nevertheless, is not exclusive, because the law itself determines the various purposes which such associations may pursue in their operations. The characteristic of these associations is the mutual benefit for its members, as defined in the *Rafferty* case, *supra*.

Upon this point Sundheim in his work on *Law of Building and Loan Associations*, sections 5 and 7, has the following to say:

"All these names are misleading and convey no exact idea of what an association is. The name has no legal or practical significance, except that, by usage, it has become descriptive of a peculiar class of corporations with especial rights and powers defined by statute. Many associations today do not use the word 'building' in their corporate title, but style themselves 'Savings and Loan Associations,' which is more descriptive and less misleading. The term 'building and loan associations' would seem to imply that they were engaged in the business of building. This was or is seldom true, although in some jurisdictions they seem to have that power. The borrower may, if he so desires, build a house with the money advanced, or he may use it in any trade or business. The association merely loans or advances the money and the use to which it is put is none of its concern.

* * * * *

"They are the most economically conducted financial institutions in the world, and have, despite this, suffered the least financial loss. They have grown to such an extent to recent years that they no longer restrict their money to the home buyer, but loan their money to the mere investor or dealer in real estate. They are the holders of large mortgages secured upon farms, factories and other business properties and rows of stores and dwellings. This is not an abuse of their powers or a departure from their main purposes, but only a natural and proper expansion along healthy and legitimate lines. All legislation in recent years has been to enlarge and

broaden their powers, not to confine and restrict them. The courts have been liberal in the construction of these specially delegated powers, and, as a result, they have grown and changed as conditions required. Judge Endlich, no doubt the greatest authority on these institutions, well says: 'It is indeed, to be noted that the legislature has attempted no definition of what constitutes a building association. It has assumed that certain features and methods are essential to it, and there is no room for doubt that without them no corporation, whatever its label, can claim to be a building association. But it has not excluded the possibility that, consistently with these essential features, the legitimate development of the business of these associations may add others which, at the date of enactment, were not foreseen and against which, therefore, it is not to be taken as implying any prohibition.' "

On the hypothesis that the loan in question is usurious, and leaving for later discussion the determination of the amount of the loan which is also the subject of the appeal of the defendant, it is our opinion, in view of the foregoing, and so hold, that the errors assigned by the plaintiffs are groundless and should be overruled.

Let us now consider the appeal of the defendant El Hogar Filipino from the judgment of the trial court pronouncing the contract Exhibit 1 usurious and therefore void, as well as the power to sell contained in clause 10 of the said contract.

Defendant assigns as errors committed by the court the following: (a) Its holding that the contract Exhibit 1 is usurious and void; (b) its holding that the power to sell given in said contract Exhibit 1 is void; (c) the computation of the principal of the loan evidenced by said contract Exhibit 1 at P66,682; (d) the holding that the plaintiffs are entitled to recover P12,600 heretofore paid and P5,000, attorney's fees, or any sum whatever, of the defendant El Hogar Filipino; (e) its failure to award possession of the property in question to El Hogar Filipino under the allegations of its first cross-complaint herein; and (f) the overruling of the motion for a new trial on the question of usury and the validity of paragraph 10 of the contract Exhibit 1.

It is proper to examine the manner of operation of loan and building associations, as prescribed by the Corporation Law, for the purpose of determining whether the contract in question is really usurious.

Section 182 of the Corporation Law, Act No. 1459, provides:

"Every loan made by the corporation must be properly evidenced by note or other instrument in writing and must be secured by a first mortgage * * * on * * * real estate and also by the pledge to the corporation of shares of stock of the corporation the matured value of which shall at least equal the amount loaned: * * *"

As this section of the law is of a mandatory character and has not been either tacitly or expressly repealed by Act No. 2655 or by any other Act, El Hogar Filipino was under the obligation to comply with its provisions in making the loan now in question, and for this purpose, paragraph 7 Was inserted in Exhibit 1, to wit:

"As additional security for the performance of the obligations herein contained, the debtors, pledge to the association the 420 shares of Class A stock of the association by them subscribed for of the nominal face value of eighty-four thousand pesos (P84,000)."

As to the manner and time of paying the loan of P84,000, paragraph 2 of the said Exhibit 1 provides that:

"The debtors acknowledge having received the said sum of eighty-four thousand pesos (P84,000), which they promise to repay as follows:

"They will pay to the treasurer of the association monthly, on or before the 5th day of every month, the sum of one peso (P1) for each share of Class A stock subscribed for by them until the surrender or cash value of said stock, as determined by the by-laws and regulations of the association now in force, shall equal the said sum of eighty-four thousand pesos (P84,000), the amount of the loan by them received from the association, or such lesser sum as the principal loan shall have been reduced to by reason of payments made by the debtors in

reduction thereof in accordance with the conditions of paragraph three hereof; and as soon as the surrender value of said stock shall equal the sum owed by reason of the loan herein granted said stock shall be surrendered and cancelled and the value thereof applied by the association to the payment of the amount owed by the debtors on said loan, and the president of the association shall execute in favor of the debtors the necessary instruments of cancellation of the mortgage hereinafter created, the expenses of said cancellation to be charged against the debtors."

This paragraph or clause of the contract is likewise in accordance with section 174 of the Corporation Law which reads as follows:

"* * * The dues on each share of stock subscribed for by a stockholder shall continue to be paid by the stockholder to the corporation until the share has been duly withdrawn, cancelled, or forfeited, or until the share has reached its matured value; that is to say, when the dues paid on each share and the net earnings thereof, in accordance with the by-laws, shall amount to the par value of the share * * *."

The par value of each share of stock is two hundred pesos, according to section 175 and, until the same is fully paid, the dues cannot, according to the same section, be applied to any other account, except to the completion of the payment of the shares of shares of stock.

If the shares of stock were encumbered, this fact would not authorize the association to apply the dues towards the reduction of the amount loaned because section 174 does not make any discrimination about shares of stock of any kind, but on the contrary includes all shares that have not reached their matured value.

Furthermore, section 180 further supports clearly this criterion when it provides that:

"* * * Provided, however, That if shares pledged to the corporation as security for loans shall mature before the loan is repaid the matured value may be paid to the holder in cash as in this section provided or may be credited to the loan at the option of the board of directors."

If the dues on the shares pledged should be applied to the reduction of the capital loaned, then the last quoted section would never have any application, for there would never be a case where the "shares pledged * * * shall mature before the loan is repaid."

Contrariwise, it might happen that the loan might be paid before the shares should have reached their maturity value, if the borrower avails himself of the right granted him in paragraph 3 of Exhibit 1, to wit:

"It is agreed that the debtors may make partial payments in reduction of their loan, provided such payments shall not be less than two hundred pesos (P200), or any multiple thereof."

All this simply shows that El Hogar Filipino has adopted this system of operating, not for the purpose of evading the Usury Law, as held by the trial court, but because the Corporation Law, which came into effect long before the enactment of the Usury Law, does not permit it to accept securities of real estate, but must demand the pledge of shares of capital stock as additional security.

In the case of *Martinez vs. Grano* (42 Phil., 35) this court said:

"It is a matter of common knowledge that a building and loan association, such as El Hogar Filipino, upon making a loan, requires the borrower to become subscriber to a sufficient number of shares of the stock of the association to amortize the loan upon maturity of the shares; and the borrower is further required to make certain payments upon these shares contemporaneously with the payments of the interest upon the loan, * * *"

With these premises before us, which reveal the nerve of the case, let us now consider the most important argument, affecting the peculiar way of operation of mutual building and loan associations.

The trial court and the plaintiffs maintain that the monthly payment of P420 as dues, at P1 per share, is a partial payment of the capital loaned; but, as paragraph 4 provides that while the borrowers are indebted to the association they shall pay interest at the rate of ft per cent per annum on the amount of P84,000, it might happen that the debt might be reduced to an insignificant amount, but nevertheless the debtors would still have to continue paying P7,560 as annual interest.

If the P420 of monthly dues had been applied from the beginning to the reduction of the amount of the capital loaned, (a) it would have been violative of section 177 of the Corporation Law which provides: "Payment of dues on shares of stock shall commence from the time that such shares were issued;" (b) it would also violate the provisions of section 174 which reads: " * * * The dues on each share of stock subscribed for by a stockholder shall continue to be paid by the stockholder to the corporation until the share has been duly withdrawn, cancelled, or forfeited, * * *;" (c) it would violate section 182 of the same law because the loan would have been secured by real estate only, as there cannot be additional security on shares of stock upon which no dues are paid; (d) the subscription to the capital stock would have been nominal only, and thereby section 181 of the law would have been infringed, which prohibits these associations from lending money except to shareholders; (e) it would openly violate paragraph 2 of the contract Exhibit 1 which categorically provides that such payments shall be for the shares of stock until the surrender or cash value of said stock shall equal the sum of P84,000 and, as soon as the surrender value of said stock shall equal the amount due, said stock shall be surrendered and cancelled and the value thereof shall be applied to the payment of the amount owed by the debtors, etc.

If in accordance with the law and the contract Exhibit 1, the dues shall be applied to the payment of the shares until they shall reach the amount of P84,000, all arguments predicated upon the proposition that such dues must be applied to the reduction of the debt (before reaching the amount of P84,000) are inadmissible in sound logic.

The criterion of the court below upon this point is expressed in the following paragraphs:

"In such a way although the payments made by the debtors in accordance with paragraph 2 and other conditions of the contract were really and actually applied to the original principal of the debt, the latter would be reduced to such an extent that the maximum rate of interest allowed by law of 18 per cent per annum would be less than the fixed annual interest of P7,560, and still the debtors would be bound to pay said interest of P7,560, etc." (Page 11, trial court's decision.)

"Under clause 4 of the contract Exhibit 1, and clause 15 of the stipulation of facts, so long as there remains any part, however insignificant, of the P84,000 which has been made to appear as the amount of the loan, the borrowers are to pay interest at nine per centum per annum on the whole P84,000. So that, for example, even though the value of the shares should reach P42,001, which is applied to the loan, it would reduce the debt to P41,999, in any given year, but the borrowers would have to pay interest at nine per centum per annum on P84,000, just the same, or P7,560." (Page 45, appellees' brief.)

We are unable to accept the theory maintained in the above quoted paragraphs. Supposing for a while that the shares of stock had attained a value of P42,001, this amount could not be applied to the reduction of the loan without the consent of El Hogar Filipino, as it would allow one of the parties to violate the contract without the consent of the other. But if El Hogar Filipino had consented to this, we cannot see why it should follow that under the contract El Hogar Filipino could still collect interest upon P84,000, because paragraph 3 of Exhibit 1 provides that:

"It is agreed that the debtors may make partial payments in reduction of this loan provided such payments shall not be less than two hundred pesos (P200), or any multiple thereof; all payments made hereunder shall be applied in reduction of the principal of this loan on the last day of the month in which the same shall be paid and the stipulated interest shall be proportionately reduced from and after said date."

In such a case we presume that El Hogar Filipino, in order to be within the law, would require the debtors to subscribe for shares of stock whose value will be equivalent to P41,990, the balance of the debt, if the debtors were not willing to pay the said balance then and there.

On the other hand, the judgment appealed from makes the following findings of fact: That the annual profits of El Hogar Filipino from all sources of revenue are liquidated at the end of every year and are prorated to its shareholders in proportion to their respective participations, said participations being the amounts of their dues paid upon the subscribed shares of stock and of the accumulated profits of previous years (par. 19), and that the sum of P12,164.25 credited to the plaintiffs as the value of their shares in order to determine the balance unpaid for which El Hogar Filipino, in foreclosing the mortgage, caused the extra judicial sale of the property mortgaged herein, included the amount of dues paid by the plaintiffs upon their shares of stock, as well as the dividends corresponding to said shares of stock.

If the dues upon the shares of stock earn dividends, as found by the trial court and as agreed upon by the parties, this runs counter to the proposition that interest must be reduced proportionately every month. To state it more clearly, one and the same amount cannot be applied to the payment of shares and at the same time to the reduction of the loan, neither can it earn dividends and at the same time cause a reduction of interest. When the payment is applied to the value of the shares, it has the effect of increasing the participation in the capital of the association of him who pays, and naturally the compensation is the increase of his participation in the profits of the association; but when it is applied to the reduction of the debt, its only effect is to reduce the amount of the obligation and, consequently, it works a reduction of the interest.

All of this confusion could have been avoided if at the outset the debtors had been recognized as being debtors and stockholders at the same time of the association. As such stockholders, they are vested with all the rights and obligations of every stockholder with the only difference that they cannot dispose of their shares because they are pledged to the association.

In the case of *Freemansburg Building & Loan Assn. vs. Watts* (199 Pa., 221; 48 Atl., 1075), it was held that:

" * * * In carrying out the plan on which building associations are organized and conducted, it is not intended that a stockholder, who borrows of the association, will discharge the debt he incurs by direct payments on account of it. He pays at stated periods the dues on his stock, the interest on the money borrowed, and, when the premium bid for the loan has not been deducted, the installments on it. When by the receipt of dues, interest, premiums and fines for nonpayment of dues, all of the stock of the association or of the series to which the borrower's stock belongs, becomes full paid or matured, the value of his stock equals the amount of his debt, and the transaction is then ended by the surrender of the stock by him and the cancellation of his obligation by the association.

"Frequently, the obligations taken by building associations from borrowing members very imperfectly express the true relation of the parties to each other, as determined by the object in view and the rules for the government of the association, but they should never be considered as establishing a new relation at variance with the fundamental principles on which such associations are organized and conducted, unless the language used will admit of no other construction. * * *"

In *Corpus Juris* (volume 9, page 957), it is said that:

"* * * * He occupies the dual relation of borrower and stockholder, each of which is distinct from the other. * * *"

On page 978 it adds that:

"Generally, a building and loan association loan is unpaid until final settlement or maturity of the borrower's

shares, * * *."

And on page 979 we find that:

"In the majority of jurisdictions, * * * payments on stock are not ipso facto payments on the loan and do not operate of themselves to extinguish it pro tanto, even though the stock has been assigned as collateral. In a few jurisdictions, especially those which allow and require all payments to the association to be applied on the loan, the rule is otherwise as to stock payments * * *."

If in other jurisdictions there can be any doubt about this point, that is not the case, however, in this jurisdiction because Act No. 1459 is very clear upon this matter, and clearer yet are the provisions of the contract Exhibit 1, to the effect that the monthly payments of P1 per share shall be applied exclusively to the maturity value of the shares and that the amount of the loan would not be totally paid (except by voluntary partial payments as provided by paragraph 3) until the surrender or cash value of the shares shall be equal to, and shall cancel, the amount loaned.

Lastly, Exhibit 3 shows that on the very day that the loan was made the following amount was deducted:

"Dues for three months upon shares subscribed for, P1,260."

This shows that with the consent of the plaintiffs the amount of the first three monthly payments were applied to the payment of the shares and not to the reduction of the loan. Furthermore, plaintiffs should have known that the following monthly payments would be applied to the same account, as was covenanted in Exhibit 1 and, knowing it, they never made any protest.

If the solution of the case should hinge upon the provisions regulating the application of payments, we would find article 1172 of the Civil Code providing that:

"A person owing several debts of the same kind to a single creditor may declare, at the time of making a payment, to which of them it is to be applied.

"If the debtor should accept from the creditor a receipt which recites the application to be given the payment, he cannot contest it, unless there should be ground for treating the contract as void."

From whatever point of view the case of the plaintiffs is considered, we find that it is neither supported by the law, nor by the contract, nor by the subsequent acts of the plaintiffs; on the contrary we believe that the application of the dues to the payment of the subscribed shares of stock is in accordance with Act No. 1459 and with the contract Exhibit 1, and is not in violation of Act No. 2655.

Another ground of the judgment of the lower court for holding the contract Exhibit 1 usurious, is that in accordance with paragraph 5, any default in the payment of the dues, or of the interest, has the effect of imposing a fine upon the debtors of three centavos per month for each peso in arrears, and the further penalty of 3 per cent per month thereon, equivalent to 36 per cent per annum, that is double the maximum rate of 18 per cent permitted by section 2 of Act No. 2655.

The 18 per cent fixed in section 2 of Act No. 2655 as the maximum rate of interest that may be collected by building and loan associations must be understood to refer only to the amount loaned, as otherwise it might be construed to authorize the collection of 18 per cent per year upon premiums, 18 per cent upon fines, and 18 per cent upon interest. It is unimportant that the rate of monthly fines should exceed 18 per cent per annum because what should not exceed 18 per cent per annum is the sum total of the three items, "fines," "interest," and "premiums." If this is so, it is evident that the 18 per cent does not refer to the monthly dues, but to the amount of the loan.

To what does the 36 per cent mentioned in the judgment refer? The judgment appealed from is silent, but it undoubtedly refers to the interest that the debtors have been compelled to pay for their delinquency, consisting of a fine of three centavos per month for each peso that they failed to pay, and not to the dues because the fines thus imposed for delinquency are applicable alike to all shareholders whether debtors of the association or not. The interest that plaintiffs must pay was fixed at 9 per cent per annum upon the sum loaned; and supposing that the debtors are delinquent for one full year, it would result that they would pay 36 per cent of 9 per cent of the principal which, mathematically speaking, represents 3.24 per cent of the loan. In other words, supposing that the debtor should pay the monthly interest, but with 12 fines, as each month's interest is only one-twelfth part of 9 per cent per annum, that is, seventy-five hundredths of 1 per cent, it would result that the 12 fines would aggregate twenty-seven hundredths of 1 per cent per month, equivalent to 3.24 per cent per annum. It will, thus, be seen that 36 per cent of the annual interest (P7,560) would be but 3.24 per cent of the whole loan (P84,000).

The argument relative to the premium is expounded by the court as follows:

"Furthermore, it appears that the rate of premium charged by El Hogar Filipino to the herein plaintiffs was 16.67 per cent of the amount of the loan. This premium plus the 9 per cent interest of the first year amounts to 25.67 per cent of the amount of the loan, which is in excess of the 18 per cent per annum allowed by the Usury Law for premiums, interest, and fines."

If the contract had been entered into to last one year only, there would undoubtedly be a flagrant violation of section 2 of Act No. 2655. But, as the contract did not have a fixed date of maturity, but provided that it would become extinguished when the shares should reach their maturity value of P84,000 and the experience of the years of existence of the defendant corporation justifies the assumption that the term of the loan would be ten years approximately, the question that remains for determination is whether or not the contract of loan for two or more years is usurious, when in accordance therewith, the creditor may, in one year, collect more than the legal rate of interest.

Act No. 2655 limits the amount that may be charged for the use of money in proportion to the amount of the loan and the length of the time of its use. In accordance with the present day practice, the first element is based upon 100 units and is termed per centum, while the second is based upon one year and is denoted by the phrase per annum. The prohibition is against collecting in excess of the rate of many units per centum per annum, but there is nothing in the law fixing the proportional part that may be collected each year. Twenty pesos paid for the use of one hundred pesos in two years is equivalent to 10 per cent per annum, as evident as ten pesos is the payment for the use of the same amount for one year.

In the case of *Fowler vs. Equitable Trust Company* (141 U. S., 384; 35 Law. ed., 786), where the maximum legal rate of interest was 10 per cent, and the loan was for five years, with interest at the maximum rate, and where 3 per cent per annum, that is, 15 per cent of the total, was deducted at the time of making the loan, the balance of 7 per cent to be paid annually, the court held that the collection of the said discount did not make the transaction usurious.

In the case of *Pierce, Wright & Co. vs. Davey* (43 Neb., 45; 61 N. W., 92), a promissory note for \$1,750 was executed to cover a loan at 10 per cent per annum, the maximum rate of interest allowed, it being agreed that the note would earn 7 per cent interest per annum, and the amount of \$208.50 was deducted at the time of making the loan. It was held that the transaction was not usurious even though the amount collected in the first year of the loan was far in excess of the maximum allowed by law, for the reason that the rate for the whole time of the loan did not exceed the limit. The analogy between the interest deducted in that case and the premium deducted in the case at bar is very evident. If the intention of the lawmaker had been to prohibit the collection of greater interest than that allowed in any one year, he would undoubtedly have made his intention clearer by inserting in the law

these or similar phrases: "6, 12, 14, or 18 per cent in any one year of the contract" instead of the "6 per cent per year, 12 per cent per year, 14 per cent per year, or 18 per cent per year, etc." that appear in sections 1, 2, and 3 of the said law.

In the absence of a contrary provision, where the same interest is not paid each year, it would seem that justice requires that the average interest be taken by dividing the sum total of the interest of all the years by the number of years so as to obtain a right figure for comparison. Otherwise, the courts will be forced to declare usurious a loan made for ten years, with real estate security, where it is stipulated that the debtor shall pay 1 per cent interest during the first nine years and 12½ per cent during the last year—which would be clearly unjust because the one-half of 1 per cent excess in the last year is more than compensated by the 11 per cent less that he paid during the first nine years.

In the instant case, where the date of maturity was the date when the shares of stock should reach their maturity value, assuming that the term of the contract would be ten years, it would result that in the first year the amount collected would be 16.67 per cent premium plus 9 per cent interest, making a total of 25.67 per cent, which is 7.67 per cent interest in excess of that allowed by law; but, as in each of the nine succeeding years there would be collected only 9 per cent, the debtor would at the end have paid in all 9 per cent less than the maximum allowed by law.

Regarding the return of the interest paid in advance, the final provision of section 6 of Act No. 2655 is as follows

"Provided, however, That the creditor shall not be obliged to return the interest collected by him in advance when the debtor shall have paid the obligation before it is due, * * *."

Act No. 2073, enacted by the Philippine Commission for the Moro Province, Mountain Province, and the Provinces of Agusan and Nueva Vizcaya, and which undoubtedly was considered in the preparation of Act No. 2655, provides in section 3 as follows:

"* * * And provided further, That the payment of interest in advance for one year at a rate not to exceed fifteen per centum per annum shall not be construed to constitute usury."

It must be noted that this provision was reenacted in Act No. 2655, but omitting therefrom the one-year limit which clearly would make us think that interest may be collected in advance without that limitation.

"In the case of loans running several years the exaction of a part of the interest in advance for the full period of the loan has been held not to render the loan usurious; but where a loan is to run for several years, it has been held that to deduct in advance the highest rate of interest for the entire period of the loan would constitute usury.

"* * * It would certainly seem that the exaction of the interest in advance for the entire period of a loan which was to run for a long time would render the transaction usurious where such exaction would absorb so much of the principal as to leave to the borrower very little of the amount agreed on to be loaned." (29 Am. & Eng. Encyc. of Law, 492.)

Summarizing the foregoing, it may be said that the interest agreed upon in the contract Exhibit 1 is 9 per cent per annum plus one-tenth of the premium, that is, 1.667 per cent, making a total of 10.667 per cent per annum. Adding to this the 3.24 per cent fines already discussed, there is a maximum total of 13.907 per cent per annum, which is far below the maximum rate of interest fixed by law.

It may happen, however, that the debtor in a contract of loan like the one before us, availing himself of the right granted him in paragraph 3 of Exhibit 1 of making partial payments upon the loan, may, because beneficial to his interests, pay the whole amount of the debt within the first year of the loan; could it then be maintained that the

lender has committed usury?

It is a fact that by virtue of paragraph 9, the violation by the debtor of his obligation might result in the debt becoming at once due and payable—in this case also the rate of annual interest and premium would exceed 18 per cent on account of the shortening of the time. In both cases, however, the fact must be borne in mind that the resulting excessive interest is not the result of the obligation of the contract but of acts and omissions wholly independent of the will of the lender.

Discounting promissory notes is very usual at the local banks. If in discounting a 90-day promissory note the bank collects 2½ per cent interest in advance and on the following day the debtor, to suit his convenience, insists on withdrawing the note from the bank, and the latter accepts its full payment, could the debtor accuse the bank of violating the Usury Law, for having collected from him 2½ per cent for a single day that he used the money, that is, 900 per cent interest per annum?

If this were sound logic, it would follow that the legal acts performed by the creditor could be made illegal at the will of the debtor; that the interest collected, and which was not usurious at the time of making the loan, could be turned usurious at the pleasure of the debtor, thus giving the latter an easy and convenient way of ruining his creditors.

The amount of the premium is determined and based upon the faithful compliance with the obligation and of the consequent running of the entire time of the loan and the reason for the absence of a provision for the adjustment in case of the premature maturity of the obligation by default of the debtor or on account of the convenience of cancelling the entire obligation before it falls due is to give substantial inducement to the compliance of the contract and at the same time establish an effective penalty for its violation. If the normal time of the loan were 10 years and the maturity, for non-compliance of the provisions of the contract, takes place at the end of five years, it would result that the one-half of the earned premiums would have been granted by the contract of loan and the other half would have constituted a penalty for the violation of the contract.

"The test of usury in a contract is whether it would, if performed, result in securing a greater rate of profit on the subject-matter than is allowed by law. * * * " (Webb, Usury, sec. 29.)

" * * * It is on the assumption that contracts will be performed according to their stipulations by the parties to them, and not upon the supposition that they will be violated, their legality should be determined. It would be an anomaly to make the violation of a contract the test of its legality * * * ." (Crider vs. San Antonio Real Estate Building & Loan Assn., 13 Tex. Civ. App., 399; 37 S. W., 237.)

"When an excessive rate of interest is made payable only in case of default in payment of the principal, the higher rate is not for the use of money, but imposed as a penalty for nonperformance of the contract. By his own act the debtor may relieve himself of the excessive payment. Whether such penalty for the nonperformance of the contract is held enforceable or not, all authorities are agreed that the contract is not usurious, but remains a valid and enforceable obligation against the debtor." (39 Cyc., 953.)

"Where a borrower has agreed to pay a rate of interest not forbidden by law, but has stipulated that, in the event of his not making payment at the time specified, the obligation shall bear a higher rate of interest, either from default or from the date of its execution, or that some specific sum shall be paid in addition to the principal and interest contracted for, the increased rate is generally regarded as a penalty and not within the usury laws. * * * " (27 R. C. L., 232.)

It will be observed that the American cases, while holding that the penalties for violations are not against the usury laws, the courts generally incline towards finding a way to relieve the debtor of such a heavy burden. This tendency is based upon the repugnance of the common law towards the imposition of fines. In the laws of this

jurisdiction, however, there is no such policy and nowhere in Act No. 2655 is there a provision preventing the stipulation and enforcement of a penalty in case of violation of the contract. Indeed, section 6 clearly provides for such a penalty, permitting the lender to retain the interest for the whole period of the contract, as advance payment, because it does not distinguish between voluntary and compulsory payment.

The validity of such a penalty was expressly upheld by this court in the case of *Go Chioco vs. Martinez*, supra, wherein it was held that "the parties to a contract of loan may validly agree upon a penalty in case the obligation is not fulfilled, besides the interest not prohibited by the Usury Law, is a proposition generally admitted. * * *"

In the case of *Cissna Loan Co. vs. Gawley* (87 Wash., 438; 151 Pac, 792; L. R. A. [1916 B], 807), the defendants had taken a loan of a sum of money and executed a series of 96 promissory notes falling due in successive months, the nominal value of each promissory note including interest at the legal rate until their maturity. Each note contained a provision to the effect that default upon any of them will result in the whole series becoming immediately due and payable. Defendants paid the first 21 notes, but failed to pay the others. Plaintiff filed an action for the recovery of the unpaid promissory notes and for the foreclosure of the security, against which a defense of usury was pleaded. The Supreme Court of the United States said:

"Since, therefore, the interest reserved does not exceed the maximum statutory rate if paid according to the terms of the contract of loan, it remains to inquire whether the accelerating clauses of the contract render it usurious. The usual test for the existence of usury is, will the contract, if performed, result in producing to the lender a rate of interest greater than the maximum rate permitted by the statute, and was such result intended? And the courts generally hold that stipulations in the contract to the effect that default in the payment of interest, or of an installment of the principal, shall accelerate the maturity of the entire debt are not usurious, even though the contract, if enforced according to the terms of the default, will result in giving the lender a rate of interest greater than the maximum statutory rate. They regard the excessive rate after maturity as in the nature of liquidated damages or penalties, to be enforced only to the extent that they are not unconscionable (citing cases and other authorities).

* * * * *

"Tested by these rules, the notes are not usurious for the reason assigned by the respondents (defendants). The lender cannot, by the terms of the notes, exact from the borrowers, of his own volition, a greater rate of interest than the maximum rate permitted by the statute. This right, if it accrues to it at all, accrues by reason of the default of the borrowers, and this we hold, as we believe with the weight of authority, cannot make a contract illegal which would otherwise be legal if performed by the borrowers (quoting from *Crider vs. San Antonio Real Estate Building & Loan Assn.*, supra).

"But the trial court seems to have rested its decision in part on the fact that the notes were payable before maturity at the option of the borrowers, at an advanced rate of interest which would render them usurious if so paid. But we cannot think this fact justifies the conclusion that the notes are usurious. Such a payment would be voluntary on the part of the borrowers. They were in no way obligated to pay the loan before maturity. The agreement was thus in the nature of a penalty which the lender exacted for the privilege of paying before maturity. Not being capable of enforcement by him, it was not usurious. * * *"

Other cases that are applicable may be found in the annotations on page 812, L. R. A., 1916 B, following the case of *Cissna Loan Co. vs. Gawley*, supra, and in the annotations to *Smithwick vs. Whitley* (28 L. R. A. [N. S.], 113).

The trial court, in deciding the motion for new trial presented by *El Hogar Filipino*, in connection with the premium says: "In the first place, the court believes that a mutual building and loan association has no right to charge interest for the amount of the premium that it collects upon granting a loan; secondly, a transaction is evidently usurious where the defendant cannot in any way use the money for which he paid interest, and interest is

generally nothing more than the payment for the use of money or a compensation for the forbearance of the creditor in the collection of his credit."

If interest paid by a debtor upon a sum of money that he has not received is usurious, the borrowers in the present case could allege that they were not obliged to pay interest on the amount of money that was deducted from the loan in accordance with Exhibit 3, which was used for the payment of the deed and its registration, of the internal revenue stamps and interest pertaining to two months and fourteen days, etc., and similarly, as El Hogar Filipino retained P38,047 plus P11.50 from the amount of the loan in order to cancel a lien in favor of the National Bank upon the real estate mortgaged to the former, the debtors likewise were not obliged to pay interest upon these amounts, because they were sums of money which they did not use. It was forgotten that if the plaintiffs desired to obtain a loan from El Hogar Filipino they had to pay first those same amounts of money that were deducted from the loan. They could have paid them with their own money, in which case they would have received the full amount of the loan, but they elected to have the lender pay said amounts by deducting the same from the loan that they were negotiating. It cannot be said, therefore, that said amounts were not used by the debtors.

Referring to the amounts appearing in Exhibit 3, that were deducted by El Hogar Filipino, we do not believe that it can be said that the said amounts were not used by the plaintiffs, specially if we bear in mind that the latter agreed to apply them to the payments that they had to make before they could obtain the loan.

The stamps on the mortgage deed and on the shares of stock subscribed for by the plaintiffs amounting to P14 and P84, respectively, were necessary expenses that did not benefit in the least the defendant entity, as also the fees of P50.50 charged by the registrar of deeds, because these three amounts went into the public treasury.

The expenses of appraisal and execution of the document amounting to P50 and P25, respectively, are reasonable expenses incurred for the survey of the mortgaged lands and in proportion to the amount of the loan.

The entrance fees charged by the association for the issuance of shares of stock, amounting to P420 at the rate of P1 per share, are permitted by section 176 of the Corporation Law and have absolutely nothing to do with the loan, for such fees are paid by all shareholders, whether debtors of the association or not. If the plaintiffs had taken out their shares of stock without borrowing money, or had negotiated the loan five months afterwards, they would have had to pay just the same amount of entrance fees.

With regard to the interest collected in advance, amounting to P294 for the fourteen days of the month of March and P1,260 for the months of April and May, we have already said that Act No. 2655 expressly allows such collections in advance.

The dues, for the subscribed shares of stock amounting to P420 for the month of March and P840 for the months of April and May were paid by the plaintiffs as shareholders and not as debtors.

As to the premium of P14,000,—we have already dealt with it,—its collection is authorized by the Corporation Law and this was recognized in paragraph 20 of the stipulation of facts.

Lastly, with regard to the amount retained by El Hogar Filipino for paying plaintiffs' debt to the National Bank, amounting to P38,047.99, plus P11.50 for interest, plaintiffs not only did not deny it, but on the contrary have expressly admitted same.

Now, section 184 of Act No. 1459 says:

"The rate of interest on all loans may be fixed in the by-laws or may be prescribed from time to time by the board of directors."

Let it be noted that the law does not say "net loans," that is, after deducting the premium, but merely loans in

general. And as section 181 of the same Corporation Law provides that: "* * * The premium may be deducted from the amount of the loan or such proportion may be so deducted as may be prescribed in the by-laws, * * *" and El Hogar Filipino, exercising this right, deducted at once the whole amount of the premium from the amount of the loan, it would seem clear that, in accordance with the existing laws, building and loan associations may charge interest upon the gross amount of the loan, that is, including premium, and, in harmony with these laws, this contract of loan was entered into and the intent of the parties is evident that a nine per cent per annum interest shall be paid upon P84,000, the total amount of the loan, and not upon P66,682, as erroneously found by the trial court. (Fitzgerald vs. Hennepin County Catholic Building & Loan Assn., 56 Minn., 424; 57 W. W., 1066; Montgomery Mutual Building & Loan Assn. vs. Robinson, 69 Ala., 413; Citizen's Mutual, etc., Assn. vs. Webster, 25 Barb., 263; Vermont L. and T. Co. vs. Whithed, 2 N. D., 83; 49 W. W., 318.)

If El Hogar Filipino could for a moment deviate from the system of operation imposed upon it by the Corporation Law, and had given a loan of P70,000 to the plaintiffs, charging therefor an annual interest of 18 per cent only, the plaintiffs would pay for interest alone the sum of P12,600 per annum and nobody would mark the transaction usurious. In that case, plaintiffs would have to pay the very same P12,600 per year as agreed in the contract, Exhibit 1, until they can reduce the amount of the loan and if they should not pay any part thereof during twenty-five years, after the lapse of so long a period of time, they would still be owing the same P70,000.

The contract that is now attacked as usurious by the plaintiffs binds Lopez to pay P12,600 annually for his loan, but gives him the benefit of applying P5,040 out of the P12,600 towards the payment of 420 shares of stock, so that when these attain their maturity value, the same would be applied to the payment of the P84,000 debt. Computing the dividend of these shares at 10 per cent per annum, which is the dividend declared for the last two years (sworn statement of Lutgardo Lopez, page 118, B. E.), they would attain their maturity value at the end of 120 months, or if this were not exact, then after 130 or 140 months. In other words, we might have to wait 10, 11, or 12 years, but at the end of these periods, the debt would be extinguished.

If by charging the whole P12,600 as interest, El Hogar Filipino does not commit usury, we do not think it can be reasonably maintained that, by giving the debtor the right to apply a part of that amount of interest to, the payment of the shares of stock, and thus enable him to extinguish his debt after 10 or 12 years, the lender commits usury.

As to the assignment of error with reference to the return to the plaintiffs of P12,600 paid by them as interest and the recovery of P5,000 as attorneys' fees, we deem it necessary to make the matter clear.

The right to recover interest and attorneys' fees, given by section 6 of Act No. 2655, is not a natural consequence following the stipulation of excessive interest, but springs from the actual and real payment of said interest.

If a person makes a note, promising to return the principal plus 20 per cent interest, but actually pays 10 per cent only, the note may be void under section 7, but the debtor cannot recover in whole or in part the 10 per cent by him paid, because the right to recover interest, according to section 6, is granted only to "any person or corporation who * * * shall have paid or delivered a high rate or greater sum or value than is hereinbefore allowed to be taken or received, * * *."

In the present case, the record does not show that the plaintiffs had paid or delivered excessive interest; so that, even if the loan were usurious, the adjudication is improper

The defendant, lastly, assigns as errors of the court below the declaration of nullity of paragraph 10 of the contract, Exhibit 1, and its failure to award to El Hogar Filipino the possession of the property sold extra judicially to it. In the case of El Hogar Filipino vs. Paredes (45 Phil., 178), it was held that:

"A stipulation in a mortgage of real property authorizing the mortgagee, upon default of the mortgagor in the

payment of the mortgage debt and after publication for three successive weeks in a paper of general circulation, to expose the property to public sale and allowing the mortgagee to become a bidder at such sale, is valid."

This doctrine was applied in the case of Descals vs. Handelsman (R. G. No. 22422, decided September 30, 1924).[1] In view thereof, we are of the opinion that the court a quo erred in holding paragraph 10 of the contract, Exhibit 1, void, and in refusing to award possession to the defendant of the mortgaged properties, which were sold to it.

The defendant, but principally the plaintiffs, have attached to their briefs numerous computation tables of interest, which we believe it is unnecessary to examine exhaustively as in the resolution of this court, the decisive point for determination is whether the facts herein proven show that the defendant in the instant case has charged the plaintiffs usurious interest.

At the time of the execution of the contract, Exhibit 1, the following charges were deducted:

Premium (see Exhibit 16)

P14,000.00

Interest, 14 days of March, 1920, at 9 per cent per annum (Exhibit 3)

294.00

Id. for April and May, 1920, charged in advance (Exhibit 3)

1,260.00

Total

15,554.00

Payments made by debtors or debited to their account during life of loan:

Interest, June 1, 1920, to May 31, 1921

P7,560.00

Exhibits 8 and 9, testimony of Lutgardo Lopez (page 8) and paragraphs 17 and 18 of agreement of facts show that on March 21, 1921, Buenaventura Lopez and Miguel Ossorio executed a promissory note in favor of the company for the amount of P12,600, equivalent to the annual payment for the period of from June 1, 1920, to May 31, 1921, that is, P7,560, interest at 9 per cent plus P5,040 as dues on the shares.

Interest at 9 per cent from June 1, 1921, to May 31, 1922 (Exhibit 2)

P7,560.00

Id., 29 days of June, 1922 (Exhibit 2)

609.00

Fines for interest of 12 months (Exhibit 2)

1,474.20

Collections and charges made after signing the deed

17,283.20

The sum of amounts collected at the time of signing the deed and the payments made by debtors or amounts debited to their account during the life of the loan until the date when the properties were sold on June 29, 1922 (Exhibit 10)

32,757.20

As the loan lasted 821 days and was P84,000, it is clear that defendant collected for premiums, interest and fines the amount of P14,363.69 per annum, equivalent to 17.09 per cent, 18 per cent per year upon P84,000 would be P15,120 or P756.31 more than what the defendant collected.

In the account we excluded fines charged for delay in the payment of dues upon the shares of stock, since those fines were collected irrespective of the loan, but on account of the subscription to the stock and delinquent shareholders, whether debtors of the company or not, are bound to pay same. But even adding the amounts charged as dues by El Hogar Filipino (Exhibit 2)

831.60

to the

32,757.20

the result would be a total of

33,588.80

which, divided by 821 days, length of time of the loan, would give P14,728.34 per year, equivalent to 17.53 per cent on the P84,000 and 391.66 less than the maximum of P15,120 allowed by law.

In view of the foregoing, the judgment appealed from should be, as is hereby, reversed, hereby declaring that the contract of loan and mortgage here in question is not usurious; that the value of the loan is P84,000; that paragraph 10 of the contract of loan is valid and that the defendant has the right to the possession of the properties sold to it in the extrajudicial sale; and that the plaintiffs have no right to recover of the defendant the amount of P12,600 paid as interest, nor the amount of P5,000, as attorneys' fees.

Without special pronouncement as to costs. So ordered.

Johnson, Street, and Romualdez, JJ., concur.

Avanceña, J., concurs in the result.

[1] Not reported.

[1] Not reported.

DISSENTING IN PART

MALCOLM AND OSTRAND, JJ.:

A heavily burdened case may be considerably lightened if all excess ballast is thrown overboard. Attempted argumentation which runs counter to statutory provisions, plain and clear, is futile. Previous decisions of this court on such subjects as contracts made void on account of usury and extrajudicial sales, with those of us who entertain different views still unconverted but quiescent, are controlling.

Building and loan associations are the favored children of legislation. El Hogar Filipino is typical. It was organized so as to take full advantage of the special privileges granted to building and loan corporations by the Corporation Law. But like all pampered children, these associations occasionally overreach themselves to their own detriment and the detriment of others. El Hogar Filipino, for example, has now to accommodate its operations to the Usury Law.

Section 2 of the Usury Law, Act No. 2655, should be before us for observation. It reads: "No person or corporation shall directly or indirectly take or receive in money or other property, real or personal, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits, where such loan or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or an interest therein, than twelve per centum per annum. Mutual building and loan societies incorporated under the Corporation Act may, however, charge eighteen per centum per annum but not more, directly or indirectly, including premiums, interest and fines."

Without permitting ourselves to become unduly enmeshed in complicated computations or nice legal distinctions,

let us now look at the law as it is and at the facts as they are.

The premium is the conventional difference between the par value of the share advanced and the amount actually received by the borrower. Fixed premiums are occasionally permitted. In the Philippines, by reason of section 181 of the Corporation Law, " * * * moneys may be loaned at such premium as may be fixed from time to time by the board of directors (of the building and loan corporation) . The premium may be deducted from the amount of the loan or such proportion may be so deducted as may be prescribed in the by-laws. * * *"

While the reported cases in the United States seem to condemn fixed premiums, it is only for us to enforce the legislative provision. Nevertheless, the premium cannot be permitted to become a device to circumvent and avoid the law relating to usury. For under any and every aspect of the case, the premium grows out of and is created by the loan. Without the loan there would be no premium. Without the premium there would be no loan. And the charge "including premiums, interest and fines" may not be more than eighteen per cent annually.

The cash actually received by the plaintiffs was P66,592.50. Legitimate expenses and charges in connection with the loan brought this amount up to P70,000. The plaintiffs paid to El Hogar Filipino P12,600. The sum of all the payments made by the debtors or debited against them during the life of the loan was P33,588.80. On default of payment, the property was sold to El Hogar Filipino for P87,505.53, representing the liquidated loan as figured by El Hogar Filipino.

As to these amounts, El Hogar Filipino had the right to charge the plaintiffs for the expenses involved in accomplishing the loan. El Hogar Filipino had the right to fix the amount of the premium. El Hogar Filipino had the right to deduct the premium from the amount of the loan. El Hogar Filipino had the right to impose fines. But El Hogar Filipino had no right to charge interest on the premium as our statutes do not allow it and as the premium is not a part of the loan. El Hogar Filipino had no right to exact an excessive premium. And El Hogar Filipino had no right to charge more than 18 per cent per annum "including premium, interest and fines."

The plaintiffs in reality received only P70,000. The P14,000 charged for premium was never placed at their disposal, but was withheld by the defendant and continued to be a part of its liquid assets. In section 2 of the Usury Law the premium is not classified as capital, but is evidently regarded as an indirect taking of interest. It could hardly have been the idea of the Legislature that the premium should be regarded both as capital and as interest at the same time.

The interpretation put upon the Usury Law by the court leaves the way open for gross evasions of at least the spirit of the law. By the simple expedient of increasing the premium a building and loan association may, under the ruling of the court, increase its own rate of interest on the money actually loaned almost indefinitely. It seems clear that such cannot have been the intention of the Legislature.

In resume, we desire to reemphasize four points of paramount importance:

- (1) A fixed premium of 16.67 per cent or 20 per cent is exorbitant and should not be sustained by the courts.
- (2) The fixed premium should not be made to bear interest.
- (3) A plan which, whenever the debt is enforced, gives the lender more than 18 per cent annually including premiums, interest and fines, computed on the amount of the loan not including the deducted premium, is illegal.
- (4) Notwithstanding the vague provisions of the law, building and loan associations should confine their operations to the customary purposes of such associations.

It is within the province of El Hogar Filipino to readjust its present and future business to meet every requirement of the law, and still be a profit making concern and a power for good in the community.

For these reasons, we dissent in part.

DISSENTING

JOHNS, J.:

It may be, as pointed out in the dissenting opinion of Mr. Justice Malcolm, that the interest charges on the transaction in question amount to more than 18 per cent, and for such reasons are usurious. Be that as it may, we prefer to place our dissent on other and different grounds.

Section 2 of Act No. 2655, known as the Usury Law, provides:

"No person or corporation shall directly or indirectly take or receive in money or other property, real or personal, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits, where such loan or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or an interest therein, than twelve per centum per annum. Mutual building and loan societies incorporated under the Corporation Act may, however, charge eighteen per centum per annum but not more, directly or indirectly, including premiums, interest and fines."

It will be noted that it makes an exception in favor of "mutual building and loan societies," and provides that they may "charge 18 per centum per annum, etc."

The question here involved is whether in the making of the loan in question, the El Hogar Filipino made it as a building and loan association. If the transaction was not a building and loan association loan within the meaning of the law, then the rate of interest could not exceed 12 per cent per annum. Under that section, if the loan was made by a person, firm or corporation, which was not a building and loan association within the meaning of the law, a contract to pay interest in excess of 12 per cent per annum would be usurious and void.

It appears from the record and is a fact that the loan in question was made on a sugar plantation, and that it was not made for the purpose of buying real estate on which to build a home or to build a home on real estate, which is owned by the borrower. In other words, the loan was an agricultural loan as distinguished from a loan made to purchase real estate for the purpose of building a home or to build a home upon the real estate which was owned at the time of the loan.

There must be and is a valid reason for the exception made in the statute which permits building and loan associations to charge and receive 18 per cent per annum as interest, and which limits all other loans made by any other person, firm or corporation to interest at 12 per cent per annum.

All building and loan associations are founded, and exceptions made in their favor as to the rate of interest, upon the theory that they will enable a person with small means or small income who has a family to support, to build a home in which to live and to improve his property and develop the country. When the exception was made by the Legislature, it was never intended that the El Hogar Filipino or any other corporation under the guise of a building and loan association, should make a loan upon a sugar plantation of the nature of the one in question.

If the loan shall be deemed and treated as one made by a building and loan association as such, and the rate of interest is valid to the amount of 18 per cent per annum, then there is no reason why an exception should be made in favor of loans made by building and loan associations. If building and loan associations are authorized and permitted to make any kind of a loan on any kind of property and for all kinds of purposes, and to collect 18 per

cent per annum as interest, why should an exception be made in their favor and why should they be favored under the law?

Under such a construction, any money lender could organize a building and loan association and loan his money for any and all purposes and charge 18 per cent interest, and as thus construed, in legal effect, section 2 of the Usury Act would sanction and approve his right to collect that amount of interest. That was never the purpose and intent of the law. So long as the El Hogar Filipino confines and limits its loans to the spirit and intent with which building and loan associations are organized and favored, it is entitled to receive and collect 18 per cent interest on its money. But when it goes outside and beyond the reason why the exception was made in its favor and makes a straight loan on a sugar plantation or of any similar nature, it should then be confined and limited to 12 per cent per annum for the use of its money.

It is well known that pawn brokers make loans for an exorbitant rate of interest and that their business is licensed and their transactions are more or less legalized because they are pawn brokers. Yet, if a pawn broker doing business as such would make an ordinary loan on real estate with a rate of interest of more than 12 per cent, no person would claim or assert that it was not an usurious transaction. On legal principles, what is the difference between a pawn broker loaning money on real estate with interest at 18 per cent per annum and the El Hogar Filipino under the guise of a building and loan association making an agricultural loan with a like rate of interest?

The law does not intend that the El Hogar Filipino should take advantage of the fact that it is a building and loan association, and as such make all kinds of loans upon all kinds of property and charge 18 per cent interest in violation of the spirit and intent of the Act. Such is the legal effect of the decision of this court in the case of *El Hogar Filipino vs. Rafferty* (37 Phil., 995, 1006), in which this court said:

"A building and loan association is an organization created for the purpose of accumulating a fund by the monthly subscription, or savings of its members, to assist them in building or purchasing for themselves dwellings or real estate, by loaning to them the requisite money from the funds of the society. To all particular intent it may be said to be to enable a number of associates to have and invest their savings to mutual advantage, so that, from time to time, any individual among them may receive, out of the accumulation of the pittances which each contributes periodically, a sum, by way of loan, wherewith to build or pay for a home, and ultimately making it absolutely his own by the payment of such small amounts from time to time. (*Rhodes vs. Missouri Savings & Loan Co.*, 173 111., 621, 629; 42 L. R. A., 93.)"

Page 1003, section 7, Endlich on Building and Loan Associations, says:

"The idea which first gave rise to the institution of building associations, which furnished their ostensible and legitimate *raison d'être*, and which secured to them their popularity and their, in many respects, exceptionally favored position before the law, is that of enabling persons belonging to a class whose earnings are small, and with whom the slowness of the accumulation discourages the effort, to become, by a process of gradual and compulsory savings, either at the end of a certain period, or by anticipation of it, the owners of homesteads. * *

*"

Thornton and Blackledge, on Building and Loan Associations, on page 6, says:

"* * * It is the organization of thrift and self-help; a practical application of the maxim that in 'union there is strength.' The effect of such a movement is to dignify the home; to foster morality, and to make thoughtful, wise, and responsible citizens. It is for such reasons that the law and the courts, where such associations have been properly conducted, have looked upon them with favor. Whether they shall retain the favorable estimation of legislatures and courts will depend in large measure upon the wise forecast and determined purpose of those who control such institutions. Those departures from the original idea, intended to enhance the profits of investors, without in any degree aiding those who are endeavoring to build homes, have been,

and in the future probably will be, severely censured by the courts."

Fletcher, Cyc. of Corps., vol. 1, p. 136, says:

"An incorporated building and loan association is a corporation for the purpose of raising, by periodical subscriptions of members, a stock or fund to assist members by advances or loans, generally on mortgage security, in building or purchasing homes. Such corporations are different from corporations formed for pecuniary profit.

"The term (building and loan association) does not generally include corporations unless their purpose is to accumulate funds and lend the same to members to assist them in purchasing or building homes * * *. (Cases cited.) It does not include a corporation * * * for the purpose of purchasing and improving real estate and advancing money on mortgages * * * or a corporation merely for the purpose of loaning money." (Id. and cases cited.)

In defining the object and purpose of building and loan associations, Corpus Juris, vol. 9, page 920, says:

"B. Object and purpose.—As it is sometimes stated in the statutes relating to, and in the charters and constitutions of, building and loan associations, the principal object of a building and loan association is to create a loan fund for the benefit of its borrowing members, the underlying idea being that, by means of the system of small periodical payments provided, people of limited means will be enabled to become the owners of homes, and thrift, economy, and good citizenship will thereby be promoted. By reason of the favorable results attending the operation of these associations, and their beneficent purposes, they have, especially before they attained their present tremendous growth, been favored and granted special privileges by the various legislatures, such as permission to charge high rates of interest and exemption from taxation. * * * "

Words & Phrases, volume 1, page 899, says:

"A building and loan association is an organization created for the purpose of accumulating a fund by the monthly subscriptions and savings of its members to assist them in building or purchasing for themselves dwellings or real estate by loan to them of the requisite money from the funds of the society upon good security."

It will be noted that the exception made in the statute above quoted is for "mutual building and loan societies incorporated under the Corporation Act." The use of the word "mutual" is significant and important. Under the statute, it is not sufficient that the corporation should be a building and loan association. It must be a mutual building and loan association. In the present case, it clearly appears that the El Hogar Filipino is owned, operated and controlled by the stockholders who have subscribed and paid for their stock in full, and who are lenders of money, as distinguished from borrowers. In other words, as the owners of the paid up stock, they own and control the corporation and lend its money, as in the instant case, to persons who become subscribers to the capital stock, for the purpose of borrowing money, and who do not become actual stockholders until their loans are fully paid. The net result is that the funds of the corporation evidenced by the stock of the paid up stockholders are loaned to persons who are borrowers and the owners of unpaid capital stock. In actual practice, the owner of paid up capital stock is thus allowed and permitted to loan the money evidenced by his stock for interest at the rate of 18 per cent per annum. That was never the purpose and intent of the law, and it was to defeat that very thing that the Legislature inserted the word "mutual" in the Usury Law.

Applying the law to the facts, we have this situation. In legal effect, we have a paid up stockholder in the corporation loaning his money to an unpaid stockholder for interest at a shade less than 18 per cent per annum, and under the guise and pretense that it was making the loan for mutual building and loan purposes, the El Hogar Filipino made a straight agricultural loan on a sugar plantation at a rate of interest a shade less than 18 per cent per annum. In legal effect, that is the transaction which is sustained by the majority. The net result will be that every

money lender, including a bank, can organize a building and loan association and make any kind of a loan to any person for any kind of a purpose and charge interest at the rate of 18 per cent per annum, and that the limitations placed upon such loans by section 2 of the Usury Act will be a nullity.

I vigorously dissent.

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