

SEVERINO TOLENTINO AND POTENCIANA MANIO, PLAINTIFFS AND APPELLANTS, VS. BENITO GONZALEZ SY CHIAM, DEFENDANT AND APPELLEE.

G.R. No. 26085. August 12, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

PRINCIPAL QUESTIONS PRESENTED BY THE APPEAL

The principal questions presented by this appeal are:

- (a) Is the contract in question a pacto de retro or a mortgage?
- (b) 'Under a pacto de retro, when the vendor becomes a tenant of the purchaser and agrees to pay a certain amount per month as rent, may such rent render such a contract usurious when the amount paid as rent, computed upon the purchase price, amounts to a higher rate of interest upon said amount than that allowed by law?
- (c) May the contract in the present case be modified by parol evidence?

ANTECEDENT PACTS

Sometime prior to the 28th day of November, 1922, the appellants purchased of the Luzon Rice Mills, Inc., a piece or parcel of land with the camarin located thereon, situated in the municipality of Tarlac of the Province of Tarlac for the price of P25,000, promising to pay therefor in three installments. The first installment of P2,000 was due on or before the 2d day of May, 1921; the second installment of P8,000 was due on or before the 31st day of May, 1921; the balance of P15,000 at 12 per cent interest was due and payable on or about the 30th day of November, 1922. One of the conditions of that contract of purchase was that on failure of the purchasers (plaintiffs and appellants) to pay the balance of said purchase price or any of the installments on the date agreed upon, the property bought would revert to the original owner.

The payments due on the 2d and 31st of May, 1921, amounting to P10,000 were paid so far as the record shows upon the due dates. The balance of P15,000 due on said contract of purchase was paid on or about the 1st day of December, 1922, in the manner which will be explained below. On the date when the balance of P15,000 with interest was paid, the vendor of said property had issued to the purchasers transfer certificate of title to said property, No. 528. Said transfer certificate of title (No. 528) was transfer certificate of title from No. 40, which shows that said land was originally registered in the name of the vendor on the 7th day of November, 1913.

PRESENT FACTS

On the 7th day of November, 1922, the representative of the vendor of the property in question wrote a letter to the appellant Potenciana Manio (Exhibit A, p. 50), notifying the latter that if the balance of said indebtedness was not paid, an action would be brought for the purpose of recovering the property, together with damages for non compliance with the condition of the contract of purchase. The pertinent parts of said letter read as follows:

"Sirvase notar que de no estar liquidada esta cuenta el dia 30 del corriente, procederemos judicialmente contra

Vd. para reclamar la devolucion del camarin y los daños y perjuicios ocasionados a la compañía por su incumplimiento al contrato.

"Somos de Vd. atentos y S. S.

"SMITH, BELL & CO., LTD.

"By (Sgd.) F. I. HIGHAM

"Treasurer.

"General Managers

"LUZON RICE MILLS INC."

According to Exhibits B and D, which represent the account rendered by the vendor, there was due and payable upon said contract of purchase on the 30th day of November, 1922, the sum P16,965.09. Upon receiving the letter of the vendor of said property of November 7, 1922, the purchasers, the appellants herein, realizing that they would be unable to pay the balance due, began to make an effort to borrow money with which to pay the balance of their indebtedness on the purchase price of the property involved. Finally an application was made to the defendant for a loan for the purpose of satisfying their indebtedness to the vendor of said property. After some negotiations the defendant agreed to loan the plaintiffs the sum of P17,500 upon condition that the plaintiffs execute and deliver to him a pacto de retro of said property.

In accordance with that agreement the defendant paid to the plaintiffs by means of a check the sum of P16,965.09. The defendant, in addition to said amount paid by check, delivered to the plaintiffs the sum of P354.91 together with the sum of P180 which the plaintiffs paid to the attorneys for drafting said contract of pacto de retro, making a total paid by the defendant to the plaintiffs and for the plaintiffs of P17,500 upon the execution and delivery of said contract. Said contract was dated the 28th day of November, 1922, and is in the words and figures following:

"Sepan todos por la presente:

"Que nosotros, los conyuges Severino Tolentino y Potenciana Manio, ambos mayores de edad, residentes en el Municipio de Calumpit, Provincia de Bulacan, propietarios y transeuntes en esta Ciudad de Manila, de una parte, y de otra, Benito Gonzalez Sy Chiam, mayor de edad, casado con Maria Santiago, comerciante y vecinos de esta Ciudad de Manila.

"MANIFESTAMOS Y HACEMOS CONSTAR:

"Primero. Que nosotros, Severino Tolentino y Potenciana Manio, por y en consideracion a la cantidad de diecisiete mil quinientos pesos (P17,500) moneda filipina, que en este acto hemos recibido a nuestra entera satisfaccion de Don Benito Gonzalez Sy Chiam, cedemos, vendemos y traspasamos a favor de dicho Don Benito Gonzalez Sy Chiam, sus herederos y causahabientes, una finca que, segun el Certificado de Transferencia de Titulo No. 40 expedido por el Registrador de Titulos de la Provincia de Tarlac a favor de 'Luzon Rice Mills Company Limited' que al incorporarse se denomina y se denomina 'Luzon Rice Mills Inc.,' y que esta corporacion nos ha transferido en venta absoluta, se describe como sigue:

"Un terreno (lote No. 1) con las mejoras existentes en el mismo, situado en el Municipio de Tarlac. Linda por el O. y N. con propiedad de Manuel Urquico; por el E. con propiedad de la Manila Railroad Co.; y por el S. con un camino. Partiendo de un punto marcado 1 en el plano, cuyo punto se halla al N. 41 gds. 17' E. 859.42 m. del mojon de localizacion No. 2 de la Oficina de Terrenos en Tarlac; y desde dicho punto 1 N. 81 gds. 31' O., 77 m. al punto 2; desde este punto N. 4 gds. 22' E.; 54.70 m. al punto 3; desde este punto S. 86 gds. 17' E.; 69.25 m. al punto 4; desde este punto S. 2 gds. 42' E., 61.48 m. al punto de partida; midiendo una extension superficial de cuatro mil doscientos diez y seis metros cuadrados (4,216) mas o menos. Todos los puntos nombrados se hallan marcados en el piano y sobre el terreno los puntos 1 y 2 estan determinados por mojones de P. L. S. de 20 x 20 x 70 centimetros y los puntos 3 y 4 por mojones del P. L. S. B. L.; la orientation seguida

es la verdadera, siendo la declinacion magnetica de 0 gds. 45' E. y la fecha de la medicion, 1.º de febrero de 1913.

"Segundo. Que es condicion de esta venta la de que si en el plazo de cinco (5) años contados desde el dia 1.º de diciembre de 1922, devolvemos al expresado Don Benito Gonzalez Sy Chiam el referido precio de diecisiete mil quinientos pesos (P17,500) queda obligado dicho Sr. Benito Gonzalez Sy Chiam a retrovendernos la finca arriba descrita; pero si transcurre dicho plazo de cinco años sin ejercitar el derecho de retracto que nos hemos reservado, entonces quedara esta venta absoluta e irrevocable.

"Tercero. Que durante el expresado termino del retracto tendremos en arrendamiento la finca arriba descrita, sujeto a condiciones siguientes:

"(a) El alquiler que nos obligamos a pagar por mensualidades vencidas a Don Benito Gonzalez Sy Chiam y en su domicilio, sera de trescientos setenta y cinco pesos (P375) moneda filipina, cada mes.

"(b) El amillaramiento de la finca arrendada sera por cuenta de dicho Don Benito Gonzalez Sy Chiam, asi como tambien la prima del seguro contra incendios, si le conviniera al referido Sr. Benito Gonzalez Sy Chiam asegurar dicha finca.

"(c) La falta de pago del alquiler aqui estipulado por dos meses consecutivos dara lugar a la terminacion de este arrendamiento y a la perdida del derecho de retracto que nos hemos reservado, como si naturalmente hubiera expirado el termino para ello, pudiendo en su virtud dicho Sr. Gonzalez Sy Chiam tomar posesion de la finca y desahuciarlos de la misma.

"Cuarto. Que yo, Benito Gonzalez Sy Chiam, a mi vez otorgo que acepto esta escritura en los precisos terminos en que la dejan otorgada los conyuges Severino Tolentino y Potenciana Manio.

"En testimonio de todo lo cual, firmamos la presente de nuestra mano en Manila, por cuadruplicado en Manila, hoy a 28 de noviembre de 1922.

(Fdo.) "SEVERINO TOLENTINO

(Fda.) "POTENCIANA MANIO

(Fdo.) "BENITO GONZALEZ SY CHIAM

"Firmado en presencia de:

(Fdos.) "MOISES M. BUHAIN

"B. S. BANAAG"

An examination of said contract of sale with reference to the first question above, shows clearly that it is a pacto de retro and not a mortgage. There is no pretension on the part of the appellant that said contract, standing alone, is a mortgage. The pertinent language of the contract is:

"Segundo, Que es condicion de esta venta la de que si en el plazo de cinco (5) años contados desde el dia 1.º de diciembre de 1922, devolvemos al expresado Don Benito Gonzalez Sy Chiam el referido precio de diecisiete mil quinientos pesos (P17,500) queda obligado dicho Sr. Benito Gonzalez Sy Chiam a retrovendernos la finca arriba descrita; pero si transcurre dicho plazo de cinco (5) años sin ejercitar el derecho de retracto que nos hemos reservado, entonces quedara esta venta absoluta e irrevocable."

Language cannot be clearer. The purpose of the contract is expressed clearly in said quotation that there can certainly be no doubt as to the purpose of the plaintiff to sell the property in question, reserving the right only to repurchase the same. The intention to sell with the right to repurchase cannot be more clearly expressed.

It will be noted from a reading of said sale of pacto de retro, that the vendor, recognizing the absolute sale of the

property, entered into a contract with the purchaser by virtue of which she became the "tenant" of the purchaser. That contract of rent appears in said quoted document above as follows:

"Tercero. Que durante el expresado termino del retracto tendremos en arrendamiento la finca arriba descrita, sujeto a condiciones siguientes:

"(a) El alquiler que nos obligamos a pagar por mensualidades vencidas a Don Benito Gonzalez Sy Chiam y en su domicilio, sera de trescientos setenta y cinco pesos (P375) moneda filipina, cada mes.

(b) El amillaramiento de la finca arrendada sera por cuenta de dicho Don Benito Gonzalez Sy Chiam, asi como tambien la prima del seguro contra incendios, si le conviniera al referido Sr. Benito Gonzalez Sy Chiam asegurar dicha finca."

From the foregoing, we are driven to the following conclusions: First, that the contract of pacto de retro is an absolute sale of the property with the right to repurchase and not a mortgage; and, second, that by virtue of the said contract the vendor became the tenant of the purchaser, under the conditions mentioned in paragraph 3 of said contract quoted above.

It has been the uniform theory of this court, due to the severity of a contract of pacto de retro, to declare the same to be a mortgage and not a sale whenever the interpretation of such a contract justifies that conclusion. There must be something, however, in the language of the contract or in the conduct of the parties which shows clearly and beyond doubt that they intended the contract to be a "mortgage" and not a pacto de retro. (International Banking Corporation vs. Martinez, 10 Phil., 252; Padilla vs. Linsangan, 19 Phil., 65; Cumagun vs. Allingay, 19 Phil., 415; Olino vs. Medina, 13 Phil., 379; Manalo vs. Gueco, 42 Phil., 925; Velazquez vs. Teodoro, 46 Phil., 757; Villa vs. Santiago, 38 Phil. 157.)

We are not unmindful of the fact that sales with pacto de retro are not favored, and that the court will not construe an instrument to be one of sale with pacto de retro, with the stringent and onerous effect which follows, unless the terms of the document and the surrounding circumstances require it. (Manalo vs. Gueco, supra.)

While it is a general rule that parol evidence is not admissible for the purpose of varying the terms of a contract, but when an issue is squarely presented that a contract does not express the intention of the parties, courts will, when a proper foundation is laid therefor, hear evidence for the purpose of ascertaining the true intention of the parties. (Manalo vs. Gueco, supra.)

In the present case the plaintiffs allege in their complaint that the contract in question is a pacto de retro. They admit that they signed it. They admit that they sold the property in question with the right to repurchase it. The terms of the contract quoted above clearly show that the transfer of the land in question by the plaintiffs to the defendant was a "sale" with pacto de retro, and the plaintiffs have shown no circumstance whatever which would justify us in construing said contract to be a mere "loan" with guaranty. In every case in which this court has construed a contract to be a mortgage or a loan instead of a sale with pacto de retro, it has done so, either because the terms of such contract are ambiguous or because the circumstances surrounding the execution or the performance of the contract were incompatible or inconsistent with the theory that said contract was one of purchase and sale. (Olino vs. Medina, supra; Padilla vs. Linsangan, supra; Manlagnit vs. Dy Puico, 34 Phil., 325; Rodriguez vs. Pamintuan and De Jesus, 37 Phil., 876.)

In the case of Padilla vs. Linsangan the term employed in the contract to indicate the nature of the conveyance of the land was "pledged" instead of "sold." In the case of Manlagnit vs. Dy Puico, while the vendor used the terms "sale and transfer with the right to repurchase," yet in said contract he described himself as a "debtor," the purchaser as a "creditor" and the contract as a "mortgage." In the case of Rodriguez vs. Pamintuan and De Jesus

the person who executed the instrument, purporting on its face to be a deed of sale of certain parcels of land, had merely acted under a power of attorney from the owner of said land, "authorizing him to 'borrow' money in such amount and upon such terms and conditions as he might deem proper, and to secure payment of the loan by a mortgage." In the case of *Villa vs. Santiago* (38 Phil., 157), although a contract purporting to be a deed of sale was executed, the supposed vendor remained in possession of the land and invested the money he had obtained from the supposed vendee in making improvements thereon, which fact justified the court in holding that the transaction was a mere loan and not a sale. In the case of *Cuyugan vs. Santos* (39 Phil., 970), the purchaser accepted partial payments from the vendor, and such acceptance of partial payments "is absolutely incompatible with the idea of irrevocability of the title of ownership of the purchaser at the expiration of the term stipulated in the original contract for the exercise of the right of repurchase."

Referring again to the right of the parties to vary the terms of a written contract, we quote from the dissenting opinion of Chief Justice Cayetano S. Arellano in the case of *Government of the Philippine Islands vs. Philippine Sugar Estates Development Co.* (30 Phil., 27, 38), which case was appealed to the Supreme Court of the United States and the contention of the Chief Justice in his dissenting opinion was affirmed and the decision of the Supreme Court of the Philippine Islands was reversed. (See decision of the Supreme Court of the United States, June 3, 1918.)[1] The Chief Justice said in discussing that question:

"According to article 1282 of the Civil Code, in order to judge of the intention of the contracting parties, consideration must chiefly be paid to those acts executed by said parties which are contemporary with and subsequent to the contract. And according to article 1283, however general the terms of a contract may be, they must not be held to include things and cases different from those with regard to which the interested parties agreed to contract." The Supreme Court of the Philippine Islands held that parol evidence was admissible in that case to vary the terms of the contract between the Government of the Philippine Islands and the Philippine Sugar Estates Development Co. In the course of the opinion of the Supreme Court of the United States Mr. Justice Brandeis, speaking for the court, said:

"It is well settled that courts of equity will reform a written contract where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law and that, therefore, the mistake was one of law is not a bar to granting relief. * * * This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. But that disposition may not be yielded to where the lower court has clearly erred. Here the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. * * * The burden of proof resting upon the appellant cannot be satisfied by mere preponderance of the evidence. It is settled that relief by way of reformation will not be granted unless the proof of mutual mistake be of the clearest and most satisfactory character.' "

The evidence introduced by the appellant in the present case does not meet with that stringent requirement. There is not a word, a phrase, a sentence or a paragraph in the entire record, which justifies this court in holding that the said contract of *pacto de retro* is a mortgage and not a sale with the right to repurchase. Article 1281 of the Civil Code provides: "If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its stipulations shall be followed." Article 1282 provides: "In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto."

We cannot conclude this branch of our discussion of the question involved, without quoting from that very well reasoned decision of the late Chief Justice Arellano, one of the greatest jurists of his time. He said, in discussing the question whether or not the contract, in the case of *Lichauco vs. Berenguer* (20 Phil., 12), was a *pacto de retro* or a mortgage:

"The public instrument, Exhibit C, in part reads as follows: 'Don Macario Berenguer declares and states that he is the proprietor in fee simple of two parcels of fallow unappropriated crown land situated within the district of his pueblo. The first has an area of 73 quiñones, 8 balitas, and 8 loanes, located in the sitio of Batasan, and its boundaries are, etc., etc. The second is in the sitio of Panantaglay, barrio of Calumpang, has an area of 73 hectares, 22 ares, and 6 centares, and is bounded on the north, etc., etc'

"In the executory part of the said instrument, it is stated:

" 'That under condition of right to repurchase (pacto de retro) he sells the said properties to the aforementioned Doña Cornelia Laochangco for P4,000 and upon the following conditions: First, the sale stipulated shall be for the period of two years, counting from this date, within which time the deponent shall be entitled to repurchase the land sold upon payment of its price; second, the lands sold shall, during the term of the present contract, be held in lease by the undersigned who shall pay, as rental therefor, the sum of 400 pesos per annum, or the equivalent in sugar at the option of the vendor; third, all the fruits of the said lands shall be deposited in the sugar depository of the vendee, situated in the district of Quiapo of this city, and the value of which shall be applied on account of the price of this sale; fourth, the deponent acknowledges that he has received from the vendor the purchase price of P4,000 already paid, and in legal tender currency of this country * * *; fifth, all the taxes which may be assessed against the lands surveyed by competent authority, shall be payable by and constitute a charge against the vendor; sixth, if, through any unusual event, such as flood, tempest, etc., the properties hereinbefore enumerated should be destroyed, wholly or in part, it shall be incumbent upon the vendor to repair the damage thereto at his own expense and to put them into a good state of cultivation, and should he fail to do so he binds himself to give to the vendee other lands of the same area, quality and value.'

* * * * *

"The opponent maintained, and his theory was accepted by the trial court, that Berenguer's contract with Laochangco was not one of sale with right of repurchase, but merely one of loan secured by those properties, and, consequently, that the ownership of the lands in question could not have been conveyed to Laochangco, inasmuch as it continued to be held by Berenguer, as well as their possession, which he had not ceased to enjoy.

"Such a theory is, as argued by the appellants, erroneous. The instrument executed by Macario Berenguer, the text of which has been transcribed in this decision, is very clear. Berenguer's heirs may not go counter to the literal tenor of the obligation, the exact expression of the consent of the contracting parties contained in the instrument, Exhibit C. Not because the lands may have continued in possession of the vendor, not because the latter may have assumed the payment of the taxes on such properties, nor yet because the same party may have bound himself to substitute by another any one of the properties which might be destroyed, does the contract cease to be what it is, as set forth in detail in the public instrument. The vendor continued in the possession of the lands, not as the owner thereof as before their sale, but as the lessee which he became after its consummation, by virtue of a contract executed in his favor by the vendee in the deed itself, Exhibit C. Right of ownership is not implied by the circumstance of the lessee's assuming the responsibility of the payment of the taxes on the property leased, for their payment is not peculiarly incumbent upon the owner, nor is such right implied by the obligation to substitute the thing sold for another while in his possession under lease, since that obligation came from him and he continues under another character in its possession—a reason why he guarantees its integrity and obligates himself to return the thing even in a case of force majeure. Such liability, as a general rule, is foreign to contracts of lease and, if required, is exorbitant, but possible and lawful, if voluntarily agreed to, and such agreement does not on this account involve any sign of ownership, nor other meaning than the will to impose upon oneself scrupulous diligence in the care of a thing belonging to another.

"The purchase and sale, once consummated, is a contract which by its nature transfers the ownership and other rights in the thing sold. A pacto de retro, or sale with right to repurchase, is nothing but a personal right stipulated

between the vendee and the vendor, to the end that the latter may again acquire the ownership of the thing alienated.

" 'It is true, very true indeed, that the sale with right of repurchase is employed as a method of loan; it is like wise true that in practice many cases occur where the consummation of a pacto de retro sale means the financial ruin of a person; it is also, unquestionable that in pacto de retro sales very important interests often intervene, in the form of the price of the lease of the thing sold, which is stipulated as an additional covenant.' (Manresa, Civil Code, p. 274.)

"But in the present case, unlike others heard by this court, there is no proof that the sale with right of repurchase, made by Berenguer in favor of Laochangco is rather a mortgage to secure a loan."

We come now to a discussion of the second question presented above, and that is, stating the same in another form: May a tenant charge his landlord with a violation of the Usury Law upon the ground that the amount of rent he pays, based upon the real value of the property, amounts to a usurious rate of interest? When the vendor of property under a pacto de retro rents the property and agrees to pay a rental value for the property during the period of his right to repurchase, he thereby becomes a "tenant" and in all respects stands in the same relation with the purchaser as a tenant under any other contract of lease.

The appellant contends that the rental price paid during the period of the existence of the right to repurchase, or the sum of P375 per month, based upon the value of the property, amounted to usury. Usury, generally speaking, may be defined as contracting for or receiving something in excess of the amount allowed by law for the loan or forbearance of money—the taking of more interest for the use of money than the law allows. It seems that the taking of interest for the loan of money, at least the taking of excessive interest has been regarded with abhorrence from the earliest times. (Dunham vs. Gould, 16 Johnson [N. Y.], 367.) During the middle ages the people of England, and especially the English Church, entertained the opinion, then current in Europe, that the taking of any interest for the loan of money was a detestable vice, hateful to man and contrary to the laws of God. (3 Coke's Institute, 150; Tayler on Usury, 44.)

Chancellor Kent, in the case of Dunham vs. Gould, supra, said: "If we look back upon history, we shall find that there is scarcely any people, ancient or modern, that have not had usury laws. * * * The Romans, through the greater part of their history, had the deepest abhorrence of usury. * * * It will be deemed a little singular, that the same voice against usury should have been raised in the laws of China, in the Hindu institutes of Menu, in the Koran of Mahomet, and perhaps, we may say, in the laws of all nations that we know of, whether Greek or Barbarian."

The collection of a rate of interest higher than that allowed by law is condemned by the Philippine Legislature (Acts Nos. 2655, 2662 and 2992). But is it unlawful for the owner of a property to enter into a contract with the tenant for the payment of a specific amount of rent for the use and occupation of said property, even though the amount paid as "rent," based upon the value of the property, might exceed the rate of interest allowed by law? That question has never been decided in this jurisdiction. It is one of first impression. No cases have been found in this jurisdiction answering that question. Act No. 2655 is "An Act fixing rates of interest upon 'loans' and declaring the effect of receiving or taking usurious rates."

It will be noted that said statute imposes a penalty upon a "loan" or forbearance of any money, goods, chattels or credits, etc. The central idea of said statute is to prohibit a rate of interest on "loans." A contract of "loan" is a very different contract from that of "rent". A "loan," as that term is used in the statute, signifies the, giving of a sum of money, goods or credits to another, with a promise to repay, but not a promise to return the same thing. To "loan," in general parlance, is to deliver to another for temporary use, on condition that the thing or its equivalent be

returned; or to deliver for temporary use on condition that an equivalent in kind shall be returned with a compensation for its use. The word "loan," however, as used in the statute, has a technical meaning. It never means the return of the same thing. It means the return of an equivalent only, but never the same thing loaned. A "loan" has been properly defined as an advancement of money, goods or credits upon a contract or stipulation to repay, not to return, the thing loaned at some future day in accordance with the terms of the contract. Under the contract of "loan," as used in said statute, the moment the contract is completed the money, goods or chattels given cease to be the property of the former owner and becomes the property of the obligor to be used according to his own will, unless the contract itself expressly provides for a special or specific use of the same. At all events, the money, goods or chattels, the moment the contract is executed, cease to be the property of the former owner and becomes the absolute property of the obligor.

A contract of "loan" differs materially from a contract of "rent." In a contract of "rent" the owner of the property does not lose his ownership. He simply loses his control over the property rented during the period of the contract. In a contract of "loan" the thing loaned becomes the property of the obligor. In a contract of "rent" the thing still remains the property of the lessor. He simply loses control of the same in a limited way during the period of the contract of "rent" or lease. In a contract of "rent" the relation between the contractors¹ is that of landlord and tenant. In a contract of "loan" of money, goods, chattels or credits, the relation between the parties is that of obligor and obligee. "Rent" may be defined as the compensation either in money, provisions, chattels, or labor, received by the owner of the soil from the occupant thereof. It is defined as the return or compensation for the possession of some corporeal inheritance, and is a profit issuing out of lands or tenements, in return for their use. It is that, which is to be paid for the use of land, whether in money, labor or other thing agreed upon. A contract of "rent" is a contract by which one of the parties delivers to the other some nonconsumable thing, in order that the latter may use it during a certain period and return it to the former; whereas a contract of "loan," as that word is used in the statute, signifies the delivery of money or other consumable things upon condition of returning an equivalent amount of the same kind or quantity, in which cases it is called merely a "loan." In the case of a contract of "rent," under the civil law, it is called a "commodatum."

From the foregoing it will be seen that there is a wide distinction between a contract of "loan," as that word is used in the statute, and a contract of "rent" even though those words are used in ordinary parlance as interchangeable terms.

The value of money, goods or credits is easily ascertained while the amount of rent to be paid for the use and occupation of the property may depend upon a thousand different conditions; as for example, farm lands of exactly equal productive capacity and of the same physical value may have a different rental value, depending upon location, prices of commodities, proximity to the market, etc. Houses may have a different rental value due to location, conditions of business, general prosperity or depression, adaptability to particular purposes, even though they have exactly the same original cost. A store on the Escolta, in the center of business, constructed exactly like a store located outside of the business center, will have a much higher rental value than the other. Two places of business located in different sections of the city may be constructed exactly on the same architectural plan and yet one, due to particular location or adaptability to a particular business which the lessor desires to conduct, may have a very much higher rental value than one not so located and not so well adapted to the particular business. A very cheap building on the carnival ground may rent for more money, due to the particular circumstances and surroundings, than a much more valuable property located elsewhere. It will thus be seen that the rent to be paid for the use and occupation of property is not necessarily fixed upon the value of the property. The amount of rent is fixed, based upon a thousand different conditions and may or may not have any direct reference to the value of the property rented. To hold that "usury" can be based upon the comparative actual rental value and the actual value of the property, is to subject every landlord to an annoyance not contemplated by

the law, and would create a very great disturbance in every business or rural community. We cannot bring ourselves to believe that the Legislature contemplated any such disturbance in the equilibrium of the business of the country.

In the present case the property in question was sold. It was an absolute sale with the right only to repurchase. During the period of redemption the purchaser was the absolute owner of the property. During the period of redemption the vendor was not the owner of the property. During the period of redemption the vendor was a tenant of the purchaser. During the period of redemption the relation which existed between the vendor and the vendee was that of landlord and tenant. That relation can only be terminated by a repurchase of the property by the vendor in accordance with the terms of the said contract. The contract was one of rent. The contract was not a loan, as that word is used in Act No. 2655.

As obnoxious as contracts of pacto de retro are, yet nevertheless, the courts have no right to make contracts for parties. They made their own contract in the present case. There is not a word, a phrase, a sentence or paragraph, which in the slightest way indicates that the parties to the contract in question did not intend to sell the property in question absolutely, simply with the right to repurchase. People who make their own beds must lie thereon.

What has been said above with reference to the right to modify contracts by parol evidence, sufficiently answers the third question presented above. The language of the contract is explicit, clear, unambiguous and beyond question. It expresses the exact intention of the parties at the time it was made. There is not a word a phrase, a sentence or paragraph found in said contract which needs explanation. The parties thereto entered into said contract with the full understanding of its terms and should not now be permitted to change or modify it by parol evidence.

With reference to the improvements made upon said property by the plaintiffs during the life of the contract, Exhibit C, there is hereby reserved to the plaintiffs the right to exercise in a separate action the right guaranteed to them under article 361 of the Civil Code.

For all of the foregoing reasons, we are fully persuaded from the facts of the record, in relation with the law applicable thereto, that the judgment appealed from should be and is hereby affirmed, with costs. So ordered.

Avanceña, C. J., Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

[1] 62 Law. ed., 1177.

DISSENTING OPINION

MALCOLM, J.:

I regret to have to dissent from the comprehensive majority decision. I stand squarely on the proposition that the contract executed by the parties was merely a clever device to cover up the payment of usurious interest. The fact that the document purports to be a true sale with right of repurchase means nothing. The fact that the instrument includes a contract of lease on the property whereby the lessees as vendors apparently bind themselves to pay rent at the rate of P375 per month and whereby "Default in the payment of the rent agreed for two consecutive months will terminate this lease and will forfeit our right of repurchase, as though the term had expired naturally" does mean something, and taken together with the oral testimony is indicative of a subterfuge hiding a usurious loan. (Usury Law, Act No. 2655, sec. 7, as amended; Padilla vs. Linsangan [1911], 19 Phil., 65; U. S. vs. Tan Quingco Chua [1919], 39 Phil, 552; Russel vs. Southard [1851], 53 U. S., 139; Monagas vs. Albertucci y Alvarez [1914], 235 U. S., 81; 10 Manresa, *Codigo Civil Español*, 3d ed., p. 318.) The transaction should be considered as in the

nature of an equitable mortgage. My vote is for a modification of the judgment of the trial court.

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