

MARCIAL KASILAG, PETITIONER, VS. RAFAELA RODRIGUEZ, URBANO ROQUE, SEVERO MAPILISAN AND IGNACIO DEL ROSARIO, RESPONDENTS.*G.R. No. 46623, December 07, 1939*

Ponente: IMPERIAL, J.

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This is an appeal taken by the defendant-petitioner from the decision of the Court of Appeals which modified that rendered by the Court of First Instance of Bataan in civil case No. 1504 of said court and held: that the contract, Exhibit "1" is entirely null and void and without effect; that the plaintiffs-respondents, then appellants, are the owners of the disputed land, with its improvements, in common ownership with their brother Gavino Rodriguez, hence, they are entitled to the possession thereof; that the defendant-petitioner should yield possession of the land in their favor, with all the improvements thereon and free from any lien; that the plaintiffs-respondents jointly and severally pay to the defendant-petitioner the sum of P1,000 with interest at 6 per cent per annum from the date of the decision; and absolved the plaintiffs-respondents from the cross-complaint' relative to the value of the improvements claimed by the defendant-petitioner. The appealed decision also ordered the registrar of deeds of Bataan to cancel certificate of title No. 325, in the name of the deceased Emiliana Ambrosio and to issue in lieu thereof another certificate of title in favor of the plaintiffs-respondents and their brother Gavino Rodriguez, as undivided owners in equal parts, free of all liens and incumbrances except those expressly provided by law, without special pronouncement as to the costs.

The respondents, children and heirs of the deceased Emiliana Ambrosio, commenced the aforesaid civil case to the end that they recover from the petitioner the possession of the land and its improvements granted by way of homestead to Emiliana Ambrosio under patent No. 16074 issued on January 11, 1931, with certificate of title No. 325 issued by the registrar of deeds of Bataan on June 27, 1931 in her favor, under section 122 of Act. No. 496, which land was surveyed and identified in the cadastre of the municipality of Limay, Province of Bataan, as lot No. 285; that the petitioner pay to them the sum of P650 being the approximate value of the fruits which he received from the land; that the petitioner sign all the necessary documents to transfer the land and its possession to the respondents; that the petitioner be restrained, during the pendency of the case, from conveying or encumbering the land and its improvements; that the registrar of deeds of Bataan cancel certificate of title No. 325 and issue in lieu thereof another in favor of the respondents, and that the petitioner pay the costs of suit.

The petitioner denied in his answer all the material allegations of the complaint and by way of special defense alleged that he was in possession of the land and that he was receiving the fruits thereof by virtue of a mortgage contract, entered into between him and the deceased Emiliana Ambrosio on May 16, 1932, which was duly ratified by a notary public; and in counterclaim asked that the respondents pay him the sum of P1,000 with 12 per cent interest per annum which the deceased owed him and that, should the respondents be declared to have a better right to the possession of the land, that they be sentenced to pay him the sum of P5,000 as value of all the improvements which he introduced upon the land.

On May 16, 1932 Emiliana Ambrosio, in life, and the petitioner executed the following public deed:

"This agreement, made and entered into this 16th day of May, 1932, by and between Emiliana Ambrosio, Filipino, of legal age, widow and resident of Limay, Bataan, P. I., hereinafter called the party of the first part, and Marcial Kasilag, Filipino, of legal age, married to Asuncion Roces, and resident at 312 Perdigon Street, Manila, P. I., hereinafter called party of the second part.

"WITNESSETH : That the parties hereto hereby covenant and agree to and with each other as follows:

"ARTICLE I. That the party of the first part is the absolute registered owner of a parcel of land in the barrio of Alngan, municipality of Limay, Province of Bataan, her title thereto being evidenced by homestead certificate of title No. 325 issued by the bureau of Lands on June 11, 1931, said land being lot No. 285 of the Limay Cadastre, General Land Registration Office Cadastral Record No. 1054, bounded and described as follows:

"Beginning at point marked 1 on plan E-57394, N. 84° 32' W. 614.82 m. from B. B. M. No. 3, thence N. 66° 35' E. 307.15 m. to point "2"; S. 5° 07' W. to point "5"; S. 6° 10' E. 104.26 m. to point "4"; S. 82° 17' W. to point "5"; S. 28° 53' W. 72.26 m. to point "6"; N. 71° 09' W. to point "7"; N. 1° 42' E. 173.72 m. to point 1, point of beginning,

"Containing an area of 6.7540 hectares.

"Points 1, 2, 6 and 7, B. L.; points 3, 4 and 5, stakes; points 4, 5 and 6 on bank of Alangan River.

"Bounded on the North, by property claimed by Maria Ambrocio; on the East, by Road; on the South, by Alangan River and property claimed by Maxima de la Cruz; and on the West, by property claimed by Jose del Rosario.

"Bearing true. Declination 0° 51' E.

"Surveyed under authority of sections 12-22, Act No. 2874 and in accordance with existing regulations of the Bureau of Lands, by Mamerto Jacinto, public land surveyor, on July 8, 1927 and approved on February 25, 1931.

"ARTICLE II. That the improvements on the above described land consist of the following:

"Four (4) mango trees, fruit bearing: one hundred ten (110) hills of bamboo trees; one (1) tamarind and six (6) bonga trees.

"ARTICLE III. That the assessed value of the land is P940 and the assessed value of the improvements is P860, as evidenced by tax declaration No. 3531 of the municipality of Limay, Bataan.

"ARTICLE IV. That for and in consideration of the sum of one thousand pesos (P1,000) Philippine currency, paid by the party of second part to the party of the first part, receipt whereof is hereby acknowledged, the party of the first part hereby encumbers and hypothecates, by way of mortgage, only the improvements described in Articles II and III hereof, of which improvements the party of the first part is the absolute owner.

"ARTICLE V. That the condition of said mortgage is such that if the party of the first part shall well and truly pay, or cause to be paid to the party of the second part, his heirs, assigns, or executors, on or before the 16th day of November, 1936, or four and one-half (4 ½) years after date of the execution of this instrument, the aforesaid sum of one thousand pesos (P1,000) with interest at 12 per cent per annum, then said mortgage shall be and become null and void; otherwise the same shall be and shall remain in full force and effect, and subject to foreclose in the manner and form provided by law for the amount due thereunder, with costs and also attorney's fees in the event of such foreclosure.

"ARTICLE VI. That the party of the first part shall pay all taxes and assessments which are or may become due

on the above described land and improvements during the term of this agreement.

"ARTICLE VII. That within thirty (30) days after date of execution of this agreement, the party of the first part shall file a motion before the Court of First Instance at Balanga, Bataan, P. I., requesting cancellation of Homestead Certificate of Title No. 325 referred to in Article I hereof and the issuance, in lieu thereof, of a certificate of title under the provisions of Land Registration Act No. 496, as amended by Act 3901.

"ARTICLE VIII. It is further agreed that if upon the expiration of the period of time (4 ½) years stipulated in this mortgage, the mortgagor should fail to redeem this mortgage, she would execute a deed of absolute sale of the property herein described for the same amount as this mortgage, including all unpaid interests at the rate of 12 per cent per annum, in favor of the mortgagee.

"ARTICLE IX. That in the event the contemplated motion under Article VII hereof is not approved by the Court, the foregoing contract of sale shall automatically become null and void, and the mortgage stipulated under Article IV and V shall remain in full force and effect.

"In testimony whereof, the parties hereto have hereunto set their hands the day and year first hereinbefore written.

(Sgd.) "MARCIAL KASILAG

(Sgd.) EMILIANA AMBROSIO

"Signed in the presence of:

(Sgd.) "ILLEGIBLE

(Sgd.) GAVINO RODRIGUEZ

Philippine Islands
Balanga, Bataan ss.

"Before me this day personally appeared Emiliana Ambrosio without cedula by reason of her sex, to me known and known to me to be the person who signed the foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed.

"I hereby certify that this instrument consists of three (3) pages including this page of the acknowledgment and that each page thereof is signed by the parties to the instrument and the witnesses in their presence and in the presence of each other, and that the land treated in this instrument consists of only one parcel.

"In witness whereof I have hereunto set my hand and affixed my notarial seal, this 16th day of May, 1932.

(Sgd.) "Nicolas Navarro

Notary Public

My commission expires December 31, 1983

"Doc. No. 178

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One year after the execution of the aforequoted deed, that is, in 1933, it came to pass that Emiliana Ambrosio was unable to pay the stipulated interest as well as the tax on the land and its improvements. For this reason, she and the petitioner entered into another verbal contract whereby she conveyed to the latter the possession of the land on condition that the latter would not collect the interest on the loan, would attend to the payment of the land tax, would benefit by the fruits of the land, and would introduce improvements thereon. By virtue of this verbal

contract, the petitioner entered upon the possession of the land, gathered the products thereof, did not collect the interest on the loan, introduced improvements upon the land valued at P5,000, according to him and on May 22, 1934 the tax declaration was transferred in his name and on March 6, 1936 the assessed value of the land was increased from P1,020 to P2,180.

After an analysis of the conditions of Exhibit "1" the Court of Appeals came to the conclusion and so held that the contract entered into by and between the parties, set out in the said public deed, was one of absolute purchase and sale of the land and its improvements. And upon this ruling it held null and void and without legal effect the entire Exhibit 1 as well as the subsequent verbal contract entered into between the parties, ordering, however, the respondents to pay to the petitioner, jointly and severally, the loan of P1,000, with legal interest at 6 per cent per annum from the date of the decision. In this first assignment of error the petitioner contends that the Court of Appeals violated the law in holding that Exhibit 1 is an absolute deed of sale of the land and its improvements and that it is void and without any legal effect.

The cardinal rule in the interpretation of contracts is to the effect that the intention of the contracting parties should always prevail because their will has the force of law between them. Article 1281 of the Civil Code consecrates this rule and provides, that 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; and if the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail. The contract set out in Exhibit I should be interpreted in accordance with these rules. As the terms thereof are clear and leave no room for doubt, it should be interpreted according to the literal meaning of its clauses. The words used by the contracting parties in Exhibit 1 clearly show that they intended to enter into the principal contract of loan in the amount of P1,000, with interest at 12 per cent per annum, and into the accessory contract of mortgage of the improvements on the land acquired as homestead, the parties having, moreover, agreed upon the pacts and conditions stated in the deed. In other words, the parties entered into a contract of mortgage of the improvements on the land acquired as homestead, to secure the payment of the indebtedness for P1,000 and the stipulated interest thereon. In clause V the parties stipulated that Emiliana Ambrosio was to pay, within four and a half years, or until November 16, 1936, the debt with interest thereon, in which event the mortgage would not have any effect; in clause VI the parties agreed that the tax on the land and its improvements, during the existence of the mortgage, should be paid by the owner of the land; in clause VII it was covenanted that within thirty days from the date of the contract, the owner of the land would file a motion in the Court of First Instance of Bataan asking that certificate of title No. 325 be cancelled and that in lieu thereof another be issued under the provisions of the Land Registration Act, No. 496, as amended by Act No. 3901; in clause VIII the parties agreed that should Emiliana Ambrosio fail to redeem the mortgage within the stipulated period of four years and a half, she would execute an absolute deed of sale of the land in favor of the mortgagee, the petitioner, for the same amount of the loan of P1,000 including unpaid interest; and in clause IX it was stipulated that in case the motion to be presented under clause VII should be disapproved by the Court of First Instance of Bataan, the contract of sale would automatically become void and the mortgage would subsist in all its force.

Another fundamental rule in the interpretation of contracts, not less important than those indicated, is to the effect that the terms, clauses and conditions contrary to law, morals and public order should be separated from the valid and legal contract when such separation can be made because they are independent of the valid contract which expresses the will of the contracting parties. Manresa, commenting on article 1255 of the Civil Code and stating the rule of separation just mentioned, gives his views as follows:

"On the supposition that the various pacts, clauses or conditions are valid, no difficulty is presented; but should they be void, the question is as to what extent they may produce the nullity of the principal obligation. Under the view that such features of the obligation are added to it and do not go to its essence, a criterion based upon

the stability of juridical relations should tend to consider the nullity as confined to the clause or pact suffering therefrom, except in case where the latter, by an established connection or by manifest intention of the parties, is inseparable from the principal obligation, and is a condition, juridically speaking, of that the nullity of which it would also occasion." (Manresa, Commentaries on the Civil Code, Volume 8, p. 575.)

The same view prevails in the Anglo-American law, as condensed in the following words:

"Where an agreement founded on a legal consideration contains several promises, or a promise to do several things, and a part only of the things to be done are illegal, the promises which can be separated, or the promise, so far as it can be separated, from the illegality, may be valid. The rule is that a lawful promise made for a lawful consideration is not invalid merely because an unlawful promise was made at the same time and for the same consideration, and this rule applies, although the invalidity is due to violation of a statutory provision, unless the statute expressly or by necessary implication declares the entire contract void. * * *" (13 C. J., par. 470, p. 512; New York Cent. etc. R. Co. v. Gray, 239 U. S., 583; 60 Law. ed., 451; U. S. v. Mora, 97 U. S., 413, 24 Law. ed., 1017; U. S. v. Hodson, 10 Wall, 395; 19 Law ed. 937; Gelpcke v. Dubuque, 1 Wall. 175, 17 Law. ed., 520; U. S. v. Bradley, 10 Pet. 343, 9 Law. ed., 448; Borland v. Prindle, 144 Fed. 713; Western Union Tel. Co. v. Kansas Pac. R. Co., 4 Fed., 284; Northern Pac. R. Co. v. U. S., 15 Ct. CL, 428.)

Addressing ourselves now to the contract entered into by the parties, set out in Exhibit 1, we stated that the principal contract is that of loan and the accessory that of mortgage of the improvements upon the land acquired as a homestead. There is no question that the first of these contracts is valid as it is not against the law. The second, or the mortgage of the improvements, is expressly authorized by section 116 of Act No. 2874, as amended by section 23 of Act No. 3517, reading:

"SEC. 116. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations."

It will be recalled that by clause VIII of Exhibit 1 the parties agreed that should Emiliana Ambrosio fail to redeem the mortgage within the stipulated period of four and a half years, by paying the loan together with interest, she would execute in favor of the petitioner an absolute deed of sale of the land for P1,000, including the interest stipulated and owing. This stipulation was verbally modified by the same parties after the expiration of one year, in the sense that the petitioner would take possession of the land and would benefit by the fruits thereof on condition that he would condone the payment of interest upon the loan and he would attend to the payment of the land tax. These pacts made by the parties independently were calculated to alter the mortgage contract clearly entered into, converting the latter into a contract of antichresis. (Article 1881 of the Civil Code.) The contract of antichresis, being a real encumbrance burdening the land, is illegal and void because it is condemned by section 116 of Act No. 2874, as amended, but the clauses regarding the contract of antichresis, being independent of and separable from the contract of mortgage, can be eliminated, thereby leaving the latter in being because it is legal and valid.

The foregoing considerations bring us to the conclusion that the first assignment of error is well-founded and that error was committed in holding that the contract entered into between the parties was one of absolute sale of the land and its improvements and that Exhibit 1 is null and void.

In the second assignment of error the petitioner contends that the Court of Appeals erred in holding that he is guilty of violating the Public Land Act because he entered into the contract, Exhibit 1. The assigned error is vague and not specific. If it attempts to show that the said document is valid in its entirety, it is not well-founded because

we have already said that certain pacts thereof are illegal because they are prohibited by section 116 of Act No. 2874, as amended.

In the third assignment of error the petitioner insists that his testimony, as to the verbal agreement entered into between him and Emiliana Ambrosio, should have been accepted by the Court of Appeals; and in the fourth and last assignment of error the same petitioner contends that the Court of Appeals erred in holding that he acted in bad faith in taking possession of the land and in taking advantage of the fruits thereof, resulting in the denial of his right to be reimbursed for the value of the improvements introduced by him.

We have seen that subsequent to the execution of the contract, Exhibit 1, the parties entered into another verbal contract whereby the petitioner was authorized to take possession of the land, to receive the fruits thereof and to introduce improvements thereon, provided that he would renounce the payment of stipulated interest and he would assume payment of the land tax. The possession by the petitioner and his receipt of the fruits of the land, considered as integral elements of the contract of antichresis, are illegal and void agreements because, as already stated, the contract of antichresis is a lien and as such is expressly prohibited by section 116 of Act No. 2874, as amended. The Court of Appeals held that the petitioner acted in bad faith in taking possession of the land because he knew that the contract he made with Emiliana Ambrosio was an absolute deed of sale and, further, that the latter could not sell the land because it is prohibited by section 116. The Civil Code does not expressly define what is meant by bad faith, but section 433 provides that "Every person who is unaware of any flaw in his title, or in the manner of its acquisition, by which it is invalidated, shall be deemed a possessor in good faith"; and provides, further, that "Possessors aware of such flaw are deemed possessors in bad faith." Article 1950 of the same Code, covered by Chapter II relative to prescription of ownership and other real rights, provides, in turn, that "Good faith on the part of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could transmit the title thereto." We do not have before us a case of prescription of ownership, hence, the last article is not squarely in point. In resume, it may be stated that a person is deemed a possessor in bad faith when he knows that there is a flaw in his title or in the manner of its acquisition, by which it is invalidated.

Borrowing the language of Article 433, the question to be answered is whether the petitioner should be deemed a possessor in good faith because he was unaware of any flaw in his title or in the manner of its acquisition by which it is invalidated. It will be noted that ignorance of the flaw is the keynote of the rule. From the facts found established by the Court of Appeals we can neither deduce nor presume that the petitioner was aware of a flaw in his title or in the manner of its acquisition, aside from the prohibition contained in section 116. This being the case, the question is whether good faith may be premised upon ignorance of the laws. Manresa, commenting on article 434 in connection with the preceding article, sustains the affirmative. He says:

"We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals taken from final judgments and administrative remedies against the qualification of registrars, and the possibility of error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently. However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines.

"But even ignorance of the law may be based upon an error of fact, or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and an error of law is possible in the interpretation of doubtful doctrines."

(Manresa, Commentaries on the Spanish Civil Code, Volume IV, pp. 100, 101 and 102.)

According to this author, gross and inexcusable ignorance of the law may not be the basis of good faith, but possible, excusable ignorance may be such basis. It is a fact that the petitioner is not conversant with the laws because he is not a lawyer. In accepting the mortgage of the improvements he proceeded on the well-grounded belief that he was not violating the prohibition regarding the alienation of the land. In taking possession thereof and in consenting to receive its fruits, he did not know, as clearly as a jurist does, that the possession and enjoyment of the fruits are attributes of the contract of antichresis and that the latter, as a lien, was prohibited by section 116. These considerations again bring us to the conclusion that, as to the petitioner, his ignorance of the provisions of section 116 is excusable and may, therefore, be the basis of his good faith. We do not give much importance to the change of the tax declaration, which consisted in making the petitioner appear as the owner of the land, because such an act may only be considered as a sequel to the change of possession and enjoyment of the fruits by the petitioner, to about which we have stated that the petitioner's ignorance of the law is possible and excusable. We, therefore, hold that the petitioner acted in good faith in taking possession of the land and enjoying its fruits.

The petitioner being a possessor in good faith within the meaning of article 433 of the Civil Code and having introduced the improvements upon the land as such, the provisions of article 361 of the same Code are applicable; wherefore, the respondents are entitled to have the improvements and plants upon indemnifying the petitioner the value thereof which we fix at P3,000, as appraised by the trial court; or the respondents may elect to compel the petitioner to have the land by paying its market value to be fixed by the court of origin.

The respondents also prayed in their complaint that the petitioner be compelled to pay them the sum of F650, being the approximate value of the fruits obtained by the petitioner from the land. The Court of Appeals affirmed the judgment of the trial court denying the claim or indemnity for damages, being of the same opinion as the trial court that the respondents have not established such damages. Under the verbal contract between the petitioner and the deceased Emiliana Ambrosio, during the latter's lifetime, the former would take possession of the land and would receive the fruits of the mortgaged improvements on condition that he would no longer collect the stipulated interest and that he would attend to the payment of the land tax. This agreement, at bottom, is tantamount to the stipulation that the petitioner should apply the value of the fruits of the land to the payment of stipulated interest on the loan of P1,000 which is, in turn, another of the elements characterizing the contract of antichresis under article 1881 of the Civil Code. It was not possible for the parties to stipulate further that the value of the fruits be also applied to the payment of the capital, because the truth was that nothing remained after paying the interest at 12% per This interest, at the rate fixed, amounted to P120 per annum, whereas the market value of the fruits obtainable from the land hardly reached said amount in view of the fact that the assessed value of said improvements was, according to the decision, P860. To this should be added the fact that, under the verbal agreement, from the value of the fruits had to be taken a certain amount to pay the annual land tax. We mention these data here to show that the petitioner is also not bound to render an accounting of the value of the fruits of the mortgaged improvements for the reason stated that said value hardly covers the interest earned by the secured indebtedness.

For all the foregoing considerations, the appealed decision is reversed, and we hereby adjudge: (1) that the contract of mortgage of the improvements, set out in Exhibit 1, is valid and binding; (2) that the contract of antichresis agreed upon verbally by the parties is a real incumbrance which burdens the land and, as such, is null and without effect; (3) that the petitioner is a possessor in good faith; (4) that the respondents may elect to have the improvements introduced by the petitioner by paying the latter the value thereof, P3,000, or to compel the petitioner to buy and have the land where the improvements or plants are found, by paying them its market value

to be fixed by the court of origin, upon hearing the parties; (5) that the respondents have a right to the possession of the land and to enjoy the mortgaged improvements; and (6) that the respondents may redeem the mortgage of the improvements by paying to the petitioner within three months the amount of P1,000, without interest, as that stipulated is set off by the value of the fruits of the mortgaged improvements which the petitioner received; and in default thereof the petitioner may ask for the public sale of said improvements for the purpose of applying the proceeds thereof to the payment of his said credit. Without special pronouncement as to the costs in all instances. So ordered.

Diaz, J., concur.

Avanceña, C.J., concurs in the dissenting opinion of J. Moran.

Laurel, J., concurs in the result.

Villa-Real, J., see concurring and dissenting opinion.

Concepcion and Moran, JJ., see dissenting opinion

CONCURRING AND DISSENTING OPINION

VILLA-REAL, J.:

According to the contract entered into on May 16, 1932, between Emiliana Ambrosio, in life, and the petitioner Marcial Kasilag, the first, in consideration of the sum of P1,000 given to her by the second, constituted a mortgage on the improvements only of the land which she acquired by way of homestead. The improvements which she mortgaged consisted of four fruit-bearing mango trees, one hundred ten hills of bamboo trees, 1 tamarind tree and 6 betelnut trees, the assessed value of which was P660. The conditions of the loan were that if the mortgagor should pay the mortgagee on November 16, 1936, that is, four and a half years after the execution of the deed, said sum of P1,000 with interest thereon at 12% per annum, the aforesaid mortgage would become null and void, otherwise it would remain in full force and effect and would be subject to foreclosure in the manner provided by law; that the mortgagor would pay all the land taxes on the land and its improvements during the duration of the contract; and that if after the expiration of the said period of four and a half years the mortgagor should fail to redeem the mortgage, she would execute in favor of the mortgagee an absolute deed of sale of the property described in the contract for the same sum of P1,000 plus interest due and unpaid at the rate of 12 per cent per annum.

The principal rule in the interpretation of contracts is that "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. If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail" (article 1281, Civil Code). "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." (Article 1282.)

Now, then, what is the true nature of the contract entered into between the parties by virtue of the deed of sale executed by them on May 16, 1932? The Court of Appeals held that it is an absolute deed of sale of a land with a homestead certificate of title, under the guise of a loan secured by a mortgage upon its improvements in order to go around the prohibition contained in section 116 of Act No. 2874, as amended by section 23 of Act No. 3517.

Closely examined, the only clauses of the contract which may lead to the conclusion that it is one of sale are those which state that if at the expiration of the period of four years and a half the mortgagor should fail to pay the amount of the loan plus interest due and unpaid at the rate of 12 per cent per annum, she would execute in favor of the mortgagee a deed of absolute sale of the land whose improvements were mortgaged for the amount of the loan

and the interest owing. It will be seen that the sale would not be made until after the lapse of four and a half years from the execution of the deed, if the mortgagor should fail or should not wish to redeem the mortgaged improvements. Consequently, the obligation contracted by said mortgagor was no more than a conditional promise to sell. Now, then, is this promise to sell valid? Like any other onerous, consensual and mutually binding contract, that of promise to sell requires for its legal existence and validity the concurrence of consent, consideration and subject-matter. The contract before us does not show what is the cause or consideration for such promise to sell. Assuming that it was the economic impotence of the mortgagor to redeem the mortgaged improvements, before she could be compelled to comply with her obligation to sell, there is need to wait until she should fail to exercise the right to redeem either due to lack of funds or to abandonment. The cause will come into being only upon the happening of said event after the four and a half years and only then will the said contract of promise to sell have juridical existence. The P1,000 and its interest, should the mortgagor fail to redeem the improvements upon the maturity of the indebtedness, would be the consideration of the sale; because the promise to sell is a contract different and distinct from that of sale and each requires a consideration for its legal existence and validity.

The terms of the contract are clear and explicit and do not leave room for doubt that the intention of the contracting parties was to constitute a mortgage on the improvements of the land in litigation to secure the payment of the loan for P1,000, with interest thereon at 12 per cent per annum. It cannot be said that this contract is simulated because the assessed value of the improvements is P860 only. It is well known that rural properties are valued for assessment purposes not less than half of their market value. The true value of the said improvements may therefore be P1,720, and the mortgagee may have considered that adequate. Moreover, the petitioner could not have the property whose improvements were mortgaged to him even should the mortgagor default in the payment of interest. He could only have the mortgaged improvements in case of foreclosure should he bid therefor at the sale. Neither could the mortgagor sell the same property to the mortgagee, even after the expiration of five years from the issuance of the homestead certificate of title, for then the sale would be in satisfaction of an obligation contracted during the five years, which is prohibited by the oft-mentioned section 116 of Act No. 2874, as amended by section 23 of Act No. 3517. The fact that after one year the contracting parties had novated the contract of loan secured by a mortgage, converting the same into a contract of antichresis because of the mortgagor's failure to pay the accrued interest, does not show that they intended to enter into a contract of sale, because the conversion in this case of the contract of loan secured by a mortgage into one of antichresis was accidental, due to the mortgagor's default in the payment of unpaid interest for the first year. If the parties' intention from the beginning had been to sell the property, the mortgagee would have immediately entered upon the possession of the land instead of waiting until after the expiration of one year. The transfer of the Torrens certificate of title to the homestead by the original owner to the mortgagee in 1934 was only a consequence of the conversion of the mortgage loan into an antichretic loan, the parties having erroneously believed that it was necessary to make such a transfer. The setting off of the interest on the debt against the fruits of the property given in antichresis finds authority in article 1885 of the Civil Code. There is, therefore, no ambiguity in the terms of the contract warranting the search outside its four corners for the true intention of the contracting parties other than that of entering into a contract of loan secured by the said improvements. If the true intention of the contracting parties, as clearly gathered from the terms of the contract, was to enter into a contract of loan secured by a mortgage upon the improvements, although they should convert it into a contract of antichresis after one year and although after the maturity of the loan with interest they may wish to convert it into one of absolute sale-both conversions being illegal and, hence, void,-the original intention of entering into a contract of loan secured by a mortgage upon the improvements would prevail, the said contract of loan being the only one legal and valid, and the petitioner having acted in good faith in making it.

The verbal contract of antichresis, entered into by the petitioner Marcial Kasilag and Emiliana Ambrosio, being null and void ab initio and without any legal effect because it is in violation of the express prohibition of section 116 of Act No. 2874, as amended by section 23 of Act No. 3517, (article 4 of the Civil Code), the contracting parties should restore to each other the things which have been the subject-matter of the contract, together with their fruits, and the price paid therefor, together with interest, pursuant to Article 1303 of the same Code. Marcial Kasilag, therefore, should return to Emiliana Ambrosio or to her heirs the possession of the homestead and the improvements thereon with its fruits, and Emiliana Ambrosio or her heirs should pay him the sum of P1,000, being the amount of the loan, plus interest due and unpaid.

As to the improvements introduced upon the land by the petitioner, having done so with the knowledge and consent of its owner Emiliana Ambrosio, the former acted in good faith, and under article 361 of the Civil Code, the owner of the land may have the said improvements upon paying the indemnity provided in articles 453 and 454, or may compel the said Marcial Kasilag, who introduced the said improvements, to pay the price of the land. If the herein respondents, as heirs of Emiliana Ambrosio, do not wish or are unable to pay for said improvements, and Marcial Kasilag does not wish or is unable to pay for the land, said petitioner would lose his right of retention over the same (*Bernardo vs. Batclan*, 37 Off. G., No. 74, p. 1382), provided that he may remove the improvements which he had introduced in good faith.

In view of the foregoing, I concur in the majority opinion except insofar as it holds that the interest is set off against the fruits of the mortgaged improvements, because as a result of the nullity of the contract of antichresis the petitioner should return to the respondents the products of the mortgaged improvements, and the latter should pay to the petitioner the amount of the loan plus interest due and unpaid at the rate of 12 per cent per annum from the date of the contract until fully paid.

CONCURRING OPINION

LAUREL, J.:

On August 27, 1918, Emiliana Ambrosio put in a homestead application for lot No. 285 of the Limay Cadastre, Province of Bataan. After complying with the requisite legal formalities, she obtained therefor homestead patent No. 16074 and homestead certificate of title 325 on June 11, 1931, the same having been recorded in the Registry of Deeds of Bataan on June 26, 1931. On May 16, 1932, she entered with the herein petitioner, Marcial Kasilag, into a contract, Exhibit 1, inserted in the foregoing majority opinion.

Sometime in 1933, or a year after the execution of the aforequoted deed, the patentee failed to pay the stipulated interest and land taxes, whereupon, the mortgagee, Marcial Kasilag, and the mortgagor, Emiliana Ambrosio, verbally agreed that the former would pay the land taxes and waive the unpaid interest, enter into the possession of the property in question, introducing improvements thereon, and thereafter be reimbursed for the value of such improvements. Under this verbal pact, Kasilag went into possession of the property, planted it with fruit trees allegedly valued at P5,000, and, on May 22, 1934, declared the same for taxation purposes. In 1934 the original homesteader, Emiliana Ambrosio, died leaving as heirs her children, Rafaela Rodriguez, Severo Mapilisan, Ignacio del Rosario and Gavino Rodriguez.

On May 16, 1936, the said heirs, with the exception of Gavino Rodriguez who testified for the defendant, sued Marcial Kasilag in the Court of First Instance of Bataan to recover the possession of the aforesaid property belonging to their mother. For answer, the defendant put in as a general denial plea, a special defense that his possession was in good faith with the knowledge and tolerance of the plaintiffs, a counterclaim for P1,000

representing the loan to the deceased homesteader with stipulated interest thereon, and a recoupment for P5,000 allegedly the value of the improvements he had introduced upon the land. On the issues thus joined, the trial court gave judgment for the defendant couched in the following language:

"Resuming all that has been said above, the court finds and declares that the deed of combined mortgage and sale executed by Emiliana Ambrosio in favor of the defendant Marcial Kasilag and dated May 16, 1932, is null and void as a contract for a future conveyance or sale of the homestead, but valid as an equitable mortgage on the improvements for the sum of P1,000; and that the possession of the homestead by the defendant Marcial Kasilag by virtue of said contract or by virtue of any other agreement is null and void, but that the making of the improvements thereon by him, which the court finds to be valued at P3,000, by virtue of the verbal agreement entered into after the executing of the original instrument of mortgage, was in good faith, entitling the said Marcial Kasilag to be reimbursed of their actual value, the above-mentioned amount. Wherefore, let judgment be entered declaring that the plaintiffs are entitled to the possession as owners of the homestead subject of the present suit, lot No. 285 of the Limay cadastral survey, subject to an encumbrance of the improvements for the sum of P1,000 in favor of the defendant, ordering the defendant to deliver unto the plaintiffs the possession of said homestead, and directing the said plaintiffs in turn to pay unto the defendant jointly and severally, as heirs of their deceased mother Rafaela Rodriguez the sum of P3,000, value of improvements introduced on said homestead by defendant. Let there be no pronouncement as to costs." On appeal by the plaintiffs, the Third Division of the Court of Appeals reached a different result and modified the judgment of the trial court as follows:

"Wherefore, the appealed judgment is hereby modified by declaring that the contract, Exhibit '1', is entirely null and void; that the plaintiffs and appellants are the owners of the lot in question together with all the improvements thereon in common with their brother, Gavino Rodriguez, and are, therefore, entitled to the possession thereof; ordering the defendant and appellee to vacate and deliver the possession of the aforesaid lot together with all the improvements thereon to the aforementioned plaintiffs and appellants free from any encumbrance; requiring the latter, however, to pay jointly and severally to the said appellee the sum of P1,000 with interest thereon at the rate of 6 per cent per annum from and including the date this decision becomes final; and absolving the said plaintiffs and appellants from the cross-complaint with respect to the value of the improvements claimed by the appellee.

"It is further ordered that the register of deeds of Bataan cancel the certificate of title No. 325 in the name of the deceased, Emiliana Ambrosio, and issue in lieu thereof a new certificate of title in favor of the herein plaintiffs and appellants and their brother, Gavino Rodriguez, as owners pro indiviso and in equal shares free from any lien or encumbrance except those expressly provided by law.

"Without special pronouncement as to the costs."

The case is before us on petition for certiorari which was given due course, filed by defendant-appellee, Marcial Kasilag, now petitioner, against plaintiffs-appellants, Rafaela Rodriguez and others, now respondents. The burden of petitioner's case is condensed in the following assignments of error:

The Honorable Court of Appeals erred:

"I. In having interpreted that document Exhibit '1' is an absolute sale and declared it entirely null and void, and, in not having interpreted and declared that it is a deed of combined mortgage and future sale which, if void as a contract for the future conveyance of the homestead in question is, however, valid as an equitable mortgage on the improvements thereof for the sum of P1,000 loaned by the petitioner Marcial Kasilag to the homestead owner Emiliana Ambrosio.

"II. In holding that the petitioner was guilty of the violation of the public land law for having entered into said contract Exhibit '1'.

"III. In not giving probative value to the uncontradicted testimony of the petitioner Marcial Kasilag that he was expressly authorized by the homestead owner Emiliana Ambrosio to introduce improvements in said homestead.

"IV. In not declaring that the possession by the petitioner Marcial Kasilag of said homestead and the introduction by him of improvements therein by virtue of the verbal agreement entered into after the execution of the original instrument of mortgage was in good faith, entitling him to be reimbursed of the actual value of improvements he introduced."

Boiled down to the fundamentals, there are only two propositions which stand to be resolved in this appeal: (1) What is the legal nature of the agreement, Exhibit 1, entered into by and between the parties? and (2) Is Marcial Kasilag guilty of bad faith in entering upon the possession of the homestead, paying the land tax and introducing improvements thereon?

The numerous adjudications in controversies of this nature will show that each case must be decided in the light of the attendant circumstances and the situation of the parties which, upon the whole, mark its character. However, for the purpose of ascertaining the manner and extent to which persons have intended to be bound by their written agreements, the safe criterion, the time honored test, is their intention which is intimately woven into the instrument itself. It is true that resort to extrinsic evidence is imperative when the contract is ambiguous and is susceptible of divergent interpretations; nevertheless, the primary obligation of the courts is to discover the intention of the contracting parties, as it is expressed by the language of the document itself. We are not authorized to make a contract for the parties.

In the trial court as in the Court of Appeals, the discussion centered on the nature and validity of the document, Exhibit 1. This is the correct approach. The Court of Appeals, however, rejected the conclusion of the trial court that it is a deed of combined mortgage and sale, and ruled that it is an absolute deed of sale which is null and void in its entirety because it is banned by section 116, as amended of the Public Land Act. The ruling is now assailed by the petitioner. I share petitioner's view that the deed is not what it was construed to be by the Court of Appeals.

From Article I to III thereof is a description of the homestead and the improvements existing thereon. By its Article IV the homesteader, Emiliana Ambrosio, "encumbers and hipothecates, by way of mortgage, only the improvements described in Articles II and III" under the conditions set out in Articles V, VI and VII. Its closing Articles VIII and IX, particularly relied upon by the Court of Appeals, speak, not of a present deed of absolute sale, but of one to be executed "upon the expiration of the period of, time (4 ½ years) stipulated in the mortgage" if "the mortgagor should fail to redeem this mortgage". In other words, the redemption of the mortgage by the payment of the loan may bring about the frustration of the contemplated sale, hence, to hold unqualifiedly that the whole of Exhibit 1, or even a part thereof, is an absolute deed of sale would be to do violence to the terms of the document itself.

Still other tokens drive home the same conviction. The intimation by the Court of Appeals that the petitioner "know, therefore, that the land subject of the patent could not be alienated by express prohibition of law," is an argument that the petitioner could not have brazenly disregarded the law by intending Exhibit 1 to be an absolute deed of sale. Its further observation that "the stipulation under article VIII of the contract, Exhibit '1' * * * clearly indicates that there was nothing left to be done except the execution of the deed of absolute sale," is a concession that no such sale has yet been executed. Finally, it will be recalled that under Article VII of Exhibit 1, "within thirty (30) days after date of execution of this agreement the party of the first part shall file a motion before the Court of First Instance of Balanga, Bataan, P. I., requesting cancellation of homestead certificate of title No. 325 referred to in Article 1 hereof and the issuance, in lieu thereof, of a certificate of title under the provisions of Land Registration Act 496, as amended by Act 3901." And by its Article IX it provides "That in the event the

contemplated motion under Article VII hereof is not approved by the Court, the foregoing contract of sale shall automatically become null and void." (Underlining is mine.) We have nothing in the record to show that the required motion was filed within thirty days or thereafter, by Emiliana Ambroso in life, or by her successors-in-interest after her death. Indeed, Homestead Certificate of Title No. 325, sought to be substituted by another through the said motion, still stands. It is, evident, therefore, that the projected sale has and may never come into being, because under Article IX of Exhibit 1, it became automatically null and void. This view, incidentally, precludes further consideration of the validity or invalidity of the sale clause of Exhibit 1, as it will be purely academic to dwell upon the nature and effect of a contract that has passed out of existence in the contemplation of the parties.

Having reached the conclusion, upon its plain language and unequivocal import, that Exhibit 1 is essentially and fundamentally a mortgage upon the improvements found on the questioned homestead, with a conditional clause for the future sale of said homestead and improvements which has become a "dead twig" still attached to a living tree because the condition has never been performed, I would, under Articles 1281 and 1283 of the Civil Code, be otherwise content in resting our decision of this aspect of the case on this interpretation. But I do not propose to so limit my inquiry in view of the fact that the Court of Appeals points to contemporaneous and subsequent circumstances, beyond the four corners of the document, Exhibit 1, allegedly revelatory of petitioner's concealed but evident intention to circumvent the law. I may state, at the outset, that these circumstances are fairly susceptible of legitimate explanations. The appealed decision could not conceive of a man, of petitioner's intelligence, who "would accept improvements valued at only P860 as security for the payment of a larger amount of P1,000." But we are concerned with an assessed valuation which is not always nor even frequently the value that it can command in the market. To ignore this is to live in monastic seclusion. The appealed decision would imply from the fact that petitioner subsequently paid the land taxes and from the further fact that Emiliana never paid stipulated interest on the one thousand-peso loan, that Exhibit 1 was meant to vest absolute title irretrievably in the petitioner. It could hardly be supposed at the time of the execution of Exhibit 1 that the homesteader would fail to make these payments, nor does it seem just to draw from these circumstances, induced by Emiliana's own neglect, deductions unfavorable to the petitioner. That the petitioner went upon the possession of the questioned property is not proof that he was even then already the would-be owner thereof, for as elsewhere stated, the said possession came practically at the suggestion of or at least with the consent of Emiliana Ambrosio as a result of her failure to live up to her part of the bargain. Finally, the Court of Appeals asked: "If the real purpose was to mortgage the improvements only as specified in article IV of the contract, why is it that in article VIII thereof it was provided that in case of failure to redeem the alleged mortgage the grantor would be required to execute a deed of absolute sale of the property described therein for the same amount of the mortgage in favor of the grantee, and not of 'the improvements only'?" The precaution which the petitioner took to have the sale clause of Exhibit I so phrased that the said sale would not be effected until after the expiration of the five-year period prohibited by law, at which time the alienation of the homestead would then have been perfectly legitimate, may not be without significance to show petitioner's respect for and intention to be on the side of the law. The very mention of the word "sale" in the document in question argues against any attempt at concealment, for if the said document was intended as a cover and cloak of an illegal alienation, then the reference to the contract of sale therein was illtimed and foolhardy.

The question next at hand is whether or not the mortgage constituted upon the improvements of the homestead is valid. It is, under express provisions of section 116 of the Public Land Act, before and after its amendment, reading pertinently that "the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations." I find no occasion to dispute this legislative policy however mistaken it may be. It is sufficient to observe that what the law permits may be done. Upon the other hand, I find no occasion

to test the legality of the sale provisions of Exhibit 1 for, as I have heretofore said, this question is, in my opinion, moot. Moreover, the petitioner, technically, is barred from raising this question, as he did not appeal from and, therefore, abided by the decision of the trial court which outlawed this sale clause as violative of the provisions of section 116 of the Public Land Act. This part of the decision of the trial court was affirmed by the Court of Appeals when the latter struck down Exhibit 1 in its entirety and, even now, petitioner does not complain against the destruction of Exhibit 1 with respect to its sale clause. In other words, counsel for petitioner concedes all along that the said sale clause may be properly legislated out. As the mortgage provisions of Exhibit 1 are independent of and severable from the rest thereof, the same are perfectly enforceable. Where a part of the contract is perfectly valid and separable from the rest, the valid portion should not be avoided. (*Ollendorf vs. Abrahamson*, 38 Phil., 585.)

The question yet to be answered is whether the petitioner's possession of the questioned homestead was in good faith so as to entitle him to reimbursement for improvements introduced upon the land. The basis of petitioner's possession was a verbal agreement with the original homesteader whereby, for failure of the latter to comply with her obligations to pay land taxes and stipulated interest on the loan, the former assumed the said obligations for the privilege of going into possession of the property, introducing improvements thereon, and thereafter being reimbursed for the value of such improvements. The petitioner did enter upon such possession, planted the land to fruit trees valued at P5,000, according to him, and P3,000, according to the trial judge. It should be stated, in passing, that the Court of Appeals was unable to belie this verbal agreement, although it was of the opinion "that the trial court erred in giving probative value to the testimony of the appellee with reference to the alleged verbal agreement". Its reason for the opinion is not because the testimony is untrue, but because even if it were true, "it only tends to corroborate the allegation that he acted in bad faith when he took possession of the property and made improvements thereon, because then he knew full well that the homestead owner could not enter into an agreement involving the future final and absolute alienation of the homestead in his favor." As the said opinion and the reason back of it does not involve a question of strict fact, it is in our power to inquire into its soundness. The weakness of the argument lies, first, in its (a) inconsistency and (b) in the misconception of the legal principle involved: inconsistency, because it considers entry of possession, payment of land tax as facts tending to show the real character of the transaction and as evidencing bad faith on the part of the petitioner, but at the same time it improperly rejects the verbal agreement by which such facts are established. It is clear that we cannot directly reject the verbal agreement between the parties in so far as it is favorable to Ambrosio and indirectly reject it in so far as it is favorable to the petitioner. The misconception proceeds from the erroneous legal conclusion that, upon the facts, the good faith is attributable to the petitioner alone and that Ambrosio was not to be blamed for the prohibited alienation of the homestead, as I shall presently proceed to discuss.

In holding that the petitioner was a possessor in bad faith, the decision sought to be reviewed first laid down the premise that such possession is banned by law at least for five years from the issuance of patent (section 116, Public Land Act), assumed that the petitioner had knowledge of such law, and then drew the conclusion that petitioner was aware of the illegality of his possession. We think that the assumption and conclusion are precipitate. As observed in the foregoing majority opinion-citing *Manresa*-knowledge of a legal provision does not necessarily mean knowledge of its true meaning and scope, or of the interpretation which the courts may place upon it. In this particular case, what section 116 of the Public Land Act prohibits is the "incumbrance or alienation" of land acquired thereunder within the period prescribed therein. We may concede, as assumed by the appealed decision, that the petitioner was cognizant of said section 116, but this is not saying that petitioner knew that his possession came under the phrase "incumbrance or alienation" prohibited by law, and that the petitioner, therefore, knew that his possession was illegal. The import of the phrase "incumbrance or alienation" is a subject upon which "men of reason may reasonably differ," in the same way that we ourselves have differed in the

deliberation of this case. It is not correct to assume that the petitioner had knowledge of the illegality of his possession. The contrary assumption, namely, that petitioner had no idea of such illegality, would have been more in accord with the experience of everyday, for petitioner would not have invested money and labor in the land and assumed obligations incumbent upon the homesteader if he had even the least suspicion that all his efforts would count for nothing and would in the end entangle him in a mild scandal. As possession in bad faith does not necessarily mean possession illegal under the law, is being necessary that the possessor be aware of such illegality, it follows that the petitioner's possession of the homestead of the respondents was in good faith. (Art. 433, Civil Code.) "Good faith is always presumed, and the burden of proving bad faith on the part of the possessor rests upon the person alleging it" (article 434, Civil Code.) As a bona fide possessor, and it being unquestioned that the improvements introduced by him upon the land redounded to its benefit, the petitioner is by law entitled to be paid for the value of such improvements in the amount of P3,000, as found by the trial judge. "Useful expenditures shall be paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of such expenditures or paying him the increase in value which the thing has acquired by reason thereof." (Article 453, 2nd par., Civil Code). The reimbursement in this particular case is the more in order in view of the express undertaking of respondents' predecessor-in-interest to pay therefor.

Even the equities of the case militate against the respondents and in favor of the petitioner. There is a concession that the petitioner's possession was neither imposed upon nor wrested from the homesteader; on the contrary, it came about by virtue of a mutual agreement whereby the said homesteader; and the herein respondents were spared the burden of paying for land taxes and stipulated interest and extended the benefit of having their land improved on condition that they pay the value of such improvements upon redeeming the land. We also have uncontradicted fact that P400 of the one thousand-peso loan were given to the herein respondents and the balance kept by their mother. They may not reap and retain these benefits and at the same time repudiate and go back upon contractual obligations solemnly entered into.

But let me grant that the contract, Exhibit 1, is one of absolute sale, as found by the Court of Appeals, what then? As the land could not be alienated for five years from the date of the issuance of the patent, the sale was illegal and void because it was entered into in violation of section 116 of the Public Land Act, as amended. By whom was the law violated? Certainly, not by Kasilag alone but by Ambrosio as well. Both are presumed to know the law, and we cannot justly charge Kasilag alone with that knowledge on the alleged reason that Kasilag is rich and Ambrosio is poor. Neither can we proceed on the bare assumption that because Exhibit 1 was written in English it was prepared by Kasilag as if he were the only English-speaking person in the Province of Bataan where the document was executed. Are we already living in the midst of a communistic society that we shall have to incline invariably the balance in favor of a litigant because he happens to be poor and against the litigant who happens to be well-to-do, regardless of the merits of the case? And to this end, shall we, by a series of assumptions and deductions, impute to a party malice aforethought dishonesty and bad faith, in entering into a transaction made in the open sun, publicly recorded and whose effectiveness was even conditioned by the approval of a court of justice? If so, then I dare say that we have not profited by the admonition of Aristotle in his *Metaphysics* centuries ago that "justice is a virtue of the soul which discards party, friendship and sentiment and is therefore always represented as blind." There is a charm in rhetoric but its value in cool judicial reasoning is nil.

And if—as we are confidently told—we should relax the legal principle with reference to Ambrosio, because she was "poor and ignorant," I am reluctant to believe that she was ignorant of the condition against the alienation inserted in all homestead patents, and my knowledge of the Public Land Law, of the activities of the Department and bureau charged with the administration of public lands, gives me just the contrary impression. Every homestead patent contains that condition. Circulars and instructions and general information have been issued in

pursuance with law. (Sec. 5, Act No. 2874; see also sec. 5, Commonwealth Act No. 141.) I must presume that the Government and its officials charged with the administration of public lands have complied with the law and their duties in this connection, and I cannot believe that Ambrosio, when she alienated the property, was unaware of the legal prohibition. Under the circumstances, then, it is reasonable to conclude that on the hypothesis that the document, Exhibit 1, was a contract of absolute sale between Kasilag and Ambrosio, both of them were guilty of infraction of the law. If this is correct, what is the legal situation of the parties?

Justinian who, by his *Corpus Juris Civiles*, still speaks through practically all the civil codes of Continental Europe, considers both as having acted in good faith, "Realmente," bluntly observes Manresa, "si los dos que se encuentran en lucha sobre la propiedad han provocado el conflicto por su iroluntad; a ciencia y paciencia del dueno del suelo, ante cuya vista las obras se han ejecutado, y con conciencia, por parte del que edifica o planta, de que el terreno no es suyo, no hay razon alguna que abone derecho preferente en favor de ninguno de los dos; deben, por tanto, tratarse como si los dos hubiesen obrado de buena fe; la mala fe del uno extingue y neutraliza, en justa reciprocidad, la del otro" (Manresa, *Codigo Civil*, segunda edicion Tomo III pag. 203.) Article 364 of our Civil Code then comes into play. "When there has been bad faith, not only on the part of the person who built, sewed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith. Bad faith on the part of the owner is deemed to exist whenever the act has been done in his presence, with his knowledge and tolerance, and without opposition on his part." (Article 364, Civil Code; see also arts. 1303, 1306 *ibid.*) The codal section is evidently based upon the venerable maxim of equity that one who comes into equity must come with clean hands. A court which seeks to enforce on the part of the defendant uprightness, fairness, and conscientiousness also insists that, if relief is to be granted, it must be to a plaintiff whose conduct is not inconsistent with the standards he seeks to have applied to his adversary.

Fundamenta justitiae sunt, ut ne cui noceatur, delude ut communi serviatur. I therefore concur in the result.

DISSENTING OPINION

CONCEPCION, J.:

In view of the findings of fact of the Court of Appeals, which are final according to law, I dissent from the majority opinion as to the legal denomination of the contract really entered into by the petitioner and the now deceased Emiliana Ambrosio.

The facts according to the decision of the Court of Appeals are as follows:

"On August 27, 1918, the deceased, Emiliana Ambrosio applied for the land in question as a homestead, now known as lot No. 285 of the Limay cadastral survey of Bataan, and the application was approved on September 10, 1919. A final proof was submitted on November 10, 1927 which was approved on October 17, 1929. The homestead patent No. 16074 and homestead certificate of title No. 325 were issued in favor of the applicant on June 11, 1931 which were recorded on June 26, 1931 in the office of the register of deeds in accordance with the provisions of section 122 of Act 496.

"On or about May 16, 1932, the homestead owner, Emiliana Ambrosio offered to sell the property to the defendant and appellee, Marcial Kasilag. The latter, upon examining her title found that it was a homestead patent and knew, therefore, that the land subject of the patent could not be alienated by express prohibition of law, so he devised a means by which the proposed sale might not appear in any document and had the patentee, Emiliana Ambrosio, execute a public instrument, Exhibit '1', purporting to be a mere mortgage of the improvements thereon consisting of four mango trees, fruit bearing; 110 hills of bamboo trees, 1 tamarind, and 6 bonga trees, with the assessed value of P860, in consideration of the sum of P1,000 alleged to have been

loaned by the said Kasilag to the said patentee, Emiliana Ambrosio. It was expressly stipulated in that document that the aforementioned amount should be paid within four and a half years from the date of the instrument (May 16, 1932), the condition being that if she would fail to redeem the alleged mortgage at the expiration of the stipulated period, she would execute a deed of absolute sale of the property therein described for the same amount of the alleged mortgage (P1,000) including all unpaid interest at the rate of 12 per cent per annum in favor of the alleged mortgagee. It was further stipulated therein that the said Emiliana should pay all the taxes and assessment which might become due on the land and improvements during the term of the agreement and that within thirty days after the date of the execution thereof she should file a motion before the Court of First Instance of Bataan requesting the cancellation of the homestead certificate No. 325 above referred to and the issuance in lieu thereof a certificate of title under the provisions of the Land Registration Act 496, as amended by Act 3901.

"The lot in question was originally declared for land tax purposes in the name of the homestead (owner) Emiliana Ambrosio, and assessed at P1,020 in 1933; but on May 22, 1934, the tax declaration was transferred in the name of the appellee, Marcial Kasilag, and on March 6, 1936 the assessed value was raised to P2,180.

"Emiliana, however, never paid any interest on the alleged loan of P1,000 or paid taxes on the land since the execution of the contract.

"The evidence further discloses that the appellant entered upon the actual possession of the land and had been holding the same up to the present time, having planted various kinds of fruit trees valued according to him at P5,000, and collected the products thereof for his own exclusive benefit."

Relying upon the foregoing facts, the majority contends that the contract executed by the parties was one of mortgage, as per Exhibit 1, with a promise to sell the land in question. I cannot hold to these rulings of the majority, because the nature of the contract of mortgage is inconsistent with the idea that the creditor should immediately enter upon the possession of the mortgaged land; that he should pay the land tax; that he should introduce improvements thereon, and that he should accept as security something whose values does not cover the amount of the loan sought to be secured, for in this case the supposed loan was P1,000, and what were mortgaged were only the improvements consisting of 4 mango trees, 110 hills of bamboo trees, 1 tamarind tree and 6 betelnut trees, assessed at P860.

I believe that the contract which the parties intended to execute is a promise to sell the land, for which reason Ambrosio retained the right of ownership of the land and its improvements while the deed of the promised sale had not been executed. Under the terms of the deed Exhibit 1, Kasilag could not be considered the owner of the land, nor could he execute any act premised upon the assumption of ownership, nor could he alienate the same as he had no title to it. But the parties, in consideration of the fact that Kasilag paid in advance the price of the land and assumed the obligation to pay the tax thereon, which Ambrosio could not pay, agreed that Kasilag may enter upon the enjoyment of the land until the promise to sell is converted in fact into an absolute sale by the execution of the corresponding deed by Ambrosio. It was stipulated, however, that if the sale is not approved by the Court, Kasilag would collect the amount of P1,000 paid by him as a mortgage credit, with all the interest due and payable.

Under these circumstances, the conclusion of law that Kasilag acted in bad faith is not supported by the established facts.

Wherefore, the plaintiffs are bound to comply with the contract as heirs of Ambrosio, by executing in favor of Kasilag the deed of sale of the land, but should the sale, for any reason, be not approved, Kasilag may collect the amount of P1,000 with all the interests thereon, and may execute the judgment obtained by him upon the land and all its improvements, deducting, however, in his favor the value of the improvements which he introduced upon

the land in good faith.

In view of the foregoing, I am of the opinion that the decision of the Court of Appeals should be reversed and that another should be entered against the respondents, requiring them to execute the deed of sale of the land in favor of the petitioner, provided that if the sale, for any reason, be not approved by the court, the petitioner may execute his credit upon the land and all its improvements, after deducting the value of the improvements introduced by him upon the land.

DISSENTING OPINION

MORAN, J.:

According to section 116 of Act No. 2874, as amended by section 23 of Act No. 3517, "lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period."

About June 11, 1931, homestead patent No. 16074 was issued to Emiliana Ambrosio, now deceased. On May 16, 1932 Emiliana Ambrosio offered the sale of the said homestead to the herein petitioner, Marcial Kasilag, and in view of the above-quoted legal prohibition, the parties executed the document Exhibit 1, copied in the majority decision. The heirs of Emiliana Ambrosio filed a complaint for the annulment of the contract in the Court of First Instance of Bataan, and from the judgment rendered by said court an appeal was taken to the Court of Appeals, which held that the true contract between the parties is one of absolute sale, wherefore, it is null and void under the already cited legal prohibition. Marcial Kasilag comes to this court on certiorari, and this Court reverses the decision of the Court of Appeals.

The only question is as to the true contract between the parties at the time of the execution of the deed Exhibit 1: Kasilag contends that the contract is that set out in the document Exhibit 1, that is, a mortgage of the improvements of the homestead to secure a loan of one thousand pesos given to Emiliana Ambrosio; and the latter's heirs, in turn, contend that the contract is one of absolute sale of the homestead, wherefore, it is null and void. The findings of the Court of Appeals are as follows:

"The pertinent facts as disclosed by the evidence of record are as follows:

"On August 27, 1918 the deceased, Emiliana Ambrosio, applied for the land in question as a homestead, now known as lot No. 285 of the Limay cadastral survey of Bataan, and the application was approved on September 10, 1919. A final proof was submitted on November 10, 1927 which was approved on October 17, 1929. The homestead patent No. 16074 and homestead certificate of title No. 325 were issued in favor of the applicant on June 11, 1931 which were recorded on June 26, 1931 in the office of the register of deeds in accordance with the provisions of Section 122 of Act No. 496.

"On or about May 16, 1932, the homestead owner Emiliana Ambrosio offered to sell the property to the defendant and appellee, Marcial Kasilag. The latter, upon examining her title found that it was a homestead patent and knew, therefore, that the land subject of the patent could not be alienated by express prohibition of law, so here devised means by which the proposed sale might not appear in any document and had the patentee, Emiliana Ambrosio, execute mortgage of the improvements thereon consisting of four mango trees, fruit bearing; one hundred ten hills of bamboo trees, one thousand and six boña trees, with the assessed value of P860, in consideration of the sum of P1,000 alleged to have been loaned by the said Kasilag to the said patentee Emiliana Ambrosio. It was expressly stipulated in that document that the aforementioned amount should be paid within four and a half years from the date of the instrument (May 16, 1932), the condition being

that if she failed to redeem the alleged mortgage at the expiration of the stipulated period, she would execute a deed of absolute sale of the property therein described for the same amount of the alleged mortgage (P1,000) including all unpaid interest at the rate of 12 per cent per annum in favor of the alleged mortgagee. It was further stipulated therein that the said Emiliana should pay all the taxes and assessment which might become due on the land and improvements during the term of the agreement and that within thirty days after the date of the execution thereof she should file a motion before the Court of First Instance of Bataan requesting the cancellation of the homestead certificate No. 325 above referred to and the issuance in lieu thereof of a certificate of title under the provisions of the Land Registration Act No. 496, as amended by Act No. 3901.

"The lot in question was originally declared for land tax purposes in the name of the homestead owner, Emiliana Ambrosio, and assessed at P1,020 in 1933; but on May 22, 1934, the tax declaration was transferred in the name of the appellee, Marcial Kasilag, and on March 6, 1936 the assessed value was raised to P2,180.

"Emiliana, however, never paid any interest on the alleged loan of P1,000 or paid taxes on the land since the execution of the contract.

"The evidence further discloses that the appellee entered upon the actual possession of the land and had been holding the same up to the present time, having planted various kinds of fruit trees valued according to him at P5,000, and collected the products thereof for his own exclusive benefit.

"Construing the contract, Exhibit 1, in the light of all the foregoing facts and circumstances under which it was executed in relation to the subsequent acts of the contracting parties, we are led to the inescapable conclusion that their real intention was to execute an agreement of absolute sale of the "homestead together with the improvements thereon. The stipulation concerning an alleged mortgage in the instrument is a mere devise to circumvent the law which expressly prohibits the alienation or encumbrance of the homestead during the period of five years from the date of the issuance of the homestead patent. (Sec. 116 of Act No. 2874 as amended by Act No. 3517.)

"It is inconceivable, and, therefore, we refuse to believe that the appellee, Marcial Kasilag, being an intelligent man far above the average, would accept improvements valued at only P860 as security for the payment of a larger amount of P1,000, the alleged loan. We entertain no doubt that at the time the execution of the contract, Exhibit 1, the appellee knew that the homestead owner, Emiliana Ambrosio, a poor ignorant woman, was badly in need of money and that she was determined to dispose of and alienate definitely her homestead, as evidenced by the fact testified to by Gavino Rodriguez as witness for the said appellee that she actually offered to sell the land to the latter. He also knew that she would not be able to pay back to him such a large amount with interest of 12 per cent per annum because she had no other income except what she would derive from the homestead. Under such circumstances, there is reason to believe that she was no longer concerned with the form in which the contract would be drawn, as long as she could obtain the amount of P1,000 which was agreeable to her as the price of the homestead she offered to sell to the appellee. This conclusion is supported in part by the subsequent action of Emiliana in not paying any interest on the alleged loan of P1,000 or the land taxes thereon since the execution of the contract and by the action of the appellee in declaring the land for tax purposes in his own name as owner thereof, notwithstanding that he had no interest in the land, as he alleged, except in the improvements only.

"The contract of absolute sale was consummated, because the grantor, Emiliana, received full payment of the purchase price disguised as a loan of P1,000 and placed the grantee, Marcial Kasilag, in absolute possession and control of the land conveyed to him with all the improvements thereon. The stipulation under article VIII of the contract, Exhibit 1, to the effect that the grantor 'would execute a deed of absolute sale of the property herein described for the said amount of this mortgage including all unpaid interest at the rate of 12 per cent per annum in favor of the mortgagee,' clearly indicates that there was nothing left to be done except the execution of the deed of absolute sale, which is merely a matter of form in contracts of this nature, which was postponed until after the expiration of four and a half years because by that time the period of five years within which the

property could not be alienated nor encumbered in any way, as provided by section 116 of Act No. 2874 as amended by Act No. 3517, supra, would have already expired. If the real purpose was to mortgage the improvements only as specified in article IV of the contract, why is it that in article VIII thereof it was provided that in case of failure to redeem the alleged mortgage the grantor would be required to execute a deed of absolute sale of the property described therein for the same amount of the mortgage in favor of the grantee and not of 'the improvements only'? It is clear, therefore, that the real contract under Exhibit 1, was one of absolute sale and not a mortgage with future sale."

In other words, although the document Exhibit 1 states that it is a mortgage of the improvements, with a stipulation regarding a future sale of the land in case of failure to comply with the mortgage obligations, in reality the true contract between the parties is one of absolute sale in the light of the circumstances of the case, among them the following:

First. Emiliana Ambrosio offered the sale, not the mortgage, of her homestead to Marcial Kasilag, and it is a fact found established by the Court of Appeals that she was agreeable to the sum of one thousand pesos as the price of the sale offered by her. If this is so, it is unlikely that Kasilag would refuse the offer of sale of the homestead and would accept in lieu thereof a simple mortgage of the improvements, for the same sum of one thousand pesos;

Second. In the deed it is stipulated that, if at the expiration of the period of four and a half years, the debtor should fail to redeem the mortgage, she would execute in favor of the creditor, Marcial Kasilag, a deed of absolute sale not only of the mortgaged improvements but also of the land for the same amount of the loan of one thousand pesos. This magic conversion of the mortgage of the improvements into an absolute sale of the land at the expiration of four and a half years and without any additional consideration can only mean that the two contracts are one and the same thing, and that the first has been availed of to go around the legal prohibition. The scheme is very obvious, and to make any attempt to reconcile it with good faith is simply to fall into it.

The mortgage of the improvements could not have been intended because the supposed loan which it guaranteed was the same price of the stipulated sale to be later executed, and further because Kasilag knew, according to the findings of fact of the Court of Appeals, that Emiliana Ambrosio was a poor and ignorant woman who was not in a position to return the one thousand pesos;

Third. Kasilag had always considered the contract as one of sale of the land and not as a mortgage of the improvements, because he put the tax declaration of the land in his name, paid the corresponding land tax, took possession of the land, received the fruits thereof for his exclusive use, and introduced thereon permanent improvements, one of them being a summer house, all of which were valued at about five thousand pesos. It is not an attribute of a contract of mortgage that the creditor should take possession of the mortgaged property, or that he should pay the taxes thereon. Kasilag would not spend five thousand pesos for permanent improvements if he knew that his possession was precarious.

Fourth. In the document it is stipulated that the debtor would pay interest, but she did not pay any, and the alleged mortgage was not foreclosed thereby, which shows that the stipulation was nothing but a ruse.

Fifth. The deed Exhibit 1 was drawn by Kasilag, because it is in English, and the other party is a poor and ignorant woman, wherefore, all doubts and uncertainties arising therefrom should be resolved against Kasilag. It is to be noted that in this document are phrases indicative of the real contract between the parties. For instance: in clause IV the word paid and not loaned is used in referring to the loan of one thousand pesos; and clause IX of the document states "the foregoing contract of sale".

Under all these circumstances, the irresistible conclusion is that the real contract between the parties is an absolute sale, and that the contract of mortgage was made to appear in the document Exhibit 1 for the sole purpose of

defeating the legal prohibition. Nevertheless, the majority of this Court, brushing aside the findings of fact made by the Court of Appeals without stating its reasons therefor, holds as to the document Exhibit 1, that "as the terms thereof are clear and leave no room for doubt, it should be interpreted according to the literal meaning of its clauses." I have already shown in speaking of the second circumstance, that the context itself of the document Exhibit 1 discloses strong tokens that the contract between the parties was one of sale and not of mortgage. Moreover, the rule relied upon by the majority is only applicable in the absence of any allegation that the document does not express the real contract between the parties. Under section 285, No. 1, of Act No. 190, a document, however clear its conditions may be, may and should be rejected when it is alleged and shown by evidence aliunde that it does not express the true intent of the parties. We have often considered a document, by its terms a contract of absolute sale, as one of mortgage because it has been so alleged and established by convincing oral evidence. (Cuyugan vs. Santos, 34 Phil., 100; Villa vs. Santiago, 38 Phil., 157; Laureano vs. Kilayco, 34 Phil., 148; Cuyugan vs. Santos, 39 Phil., 970; Rodriguez vs. Pamintuan, 37 Phil., 876; see also Manalo vs. Gueco, 42 Phil., 925; Gatmaitan vs. Nepomuceno, 42 Phil., 295.)

The majority decision does not only pass over the findings of fact made by the Court of Appeals, but, further, gives weight to certain facts which said court finds not to have been established. For instance, we have the following passages from the majority decision:

"One year after the execution of the aforequoted deed, that is, in 1933, it came to pass that Emiliana Ambrosio was unable to pay the stipulated interest as well as the tax on the land and its improvements. For this reason, she and the petitioner entered into another verbal contract whereby she conveyed to the latter the possession of the land on condition that the latter would not collect the interest on the loan, would attend to the payment of the land tax, would benefit by the fruits of the land, and would introduce improvements thereon. * * *.

"* * * This stipulation was verbally modified by the same parties after the expiration of one year, in the sense that the petitioner would take possession of the land and would benefit by the fruits thereof on condition that he would condone the payment of interest upon the loan and he would attend to the payment of the land tax. * * *."

These two paragraphs state as an established fact the supposed verbal contract between the parties which Kasilag tried to prove by his testimony. However, the Court of Appeals expressly held: "We believe, however, that the trial court erred in giving probative value to the testimony of the appellee (Marcial Kasilag) with reference to the alleged verbal agreement with the deceased, Emiliana Ambrosio, and based thereon the conclusion that the appellee acted in good faith." (Words in parenthesis are mine.)

Rule 47, paragraph (b), of our Rules, provides expressly that in appeals to this court on certiorari, "only questions of law may be raised and must be distinctly set forth." And we have held in various decisions that in passing upon the legal conclusions of the Court of Appeals, we shall abide by the findings of fact of said court.

I, moreover, find certain ambiguities in the majority decision, for while it states on the one hand that the verbal contract had for its purpose the "alteration of the mortgage contract clearly entered into, converting the latter into a contract of antichresis," (underscoring mine) thereby implying that the mortgage contract was abandoned by the parties and ceased to exist, in the dispositive part of its decision, the majority holds that the mortgage of the improvements is valid and binding, and gives to the respondents the right to "redeem the mortgage of the improvements by paying to the petitioner within three months the amount of P1,000 * * *." It, therefore, requires compliance with a contract that has ceased to exist.

While on the one hand the majority states that the aforesaid verbal contract is one of antichresis and that it is void, on the other hand, it gives force thereto by holding that the interest on the loan of one thousand pesos is sufficiently "set off by the value of the fruits of the mortgaged improvements which the petitioner received." And,

furthermore, why should the interest be set off against the fruits of the improvements only and not against those of the entire land? And if the verbal contract of antichresis is void, why is Kasilag not required to render an accounting of the fruits of the land received by him which may exceed the total amount of interest, taxes and even the principal itself?

The majority states that Kasilag, in taking possession of the homestead, receiving its fruits and introducing improvements thereon, did so under the void contract of antichresis, and did so in good faith as he was excusably unaware of the legal provision which prohibits the incumbrance of the homestead within the period of five years. Whether Kasilag was aware or unaware of the legal prohibition is again a factual question resolved by the Court of Appeals as follows: "the appellee (Marcial Kasilag) was also aware of these provisions which were incorporated in the homestead patent shown to him at the beginning of the transaction" (Words in parenthesis are mine). I do not understand how we can disturb this factual finding.

I found, moreover, that in the majority decision it is ordered that, if the heirs of Emiliana Ambrosio cannot pay the value of the permanent improvements introduced by Marcial Kasilag, the latter may have the homestead by paying to them its price in the market. The improvements were appraised by the trial court at three thousand pesos, and as the heirs of Emiliana Ambrosio probably inherited nothing from the latter but poverty, they will eventually be unable to pay the said amount and, in the last analysis, will lose the homestead of their mother. The practical effect, therefore, of the majority decision is that the heirs of Emiliana Ambrosio will be deprived of the homestead by virtue of a void antichretic obligation contracted by her within the period of five years from the granting of the homestead. And this, at least, is in violation of the spirit of section 116 of the Homestead Act.

I have other reasons which I need not set out to bring this dissent to a close. But before I conclude, I should like to state that the Homestead Act has been enacted for the welfare and protection of the poor. The law gives a needy citizen a piece of land where he may build a modest house for himself and family and plant what is necessary for subsistence and for the satisfaction of life's other needs. The right of the citizens to their homes and to the things necessary for their subsistence is as vital as the right to life itself. They have a right to live with a certain degree of comfort as become human beings, and the State which looks after the welfare of the people's happiness is under a duty to safeguard the satisfaction of this vital right. Moreover, a man with a home and a means of subsistence is a lover of peace and order and will profess affection for his country, whereas one without a home and in penury is not only a social parasite but also a dangerous element in the social order. The Homestead Act at once aims at the promotion of wholesome and happy citizenship and the wiping out of the germs of social discontent found everywhere.

Considering the social and economic ends of the Homestead Act, the courts should exercise supreme care and strict vigilance towards faithful compliance with all its benign provisions and against the defeat, directly or indirectly, of its highly commendable purposes. And it is my firm conviction that where, as in the present case, a rich and clever man attempts to wrest a homestead granted to a poor and ignorant woman, the slightest tokens of illegality should be enough to move the courts to apply the strong arm of the law.

I dissent from the majority decision and vote for the affirmance of the decision of the Court of Appeals.

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