

**LAUREANO MARQUEZ, IN HIS OWN BEHALF AND IN REPRESENTATION OF THE INTESTATE OF EUSEBIA CAPIRAL, PATROCINO MAKQUEZ AND NORBERTO L. DILAG, PETITIONERS AND APPELLANTS, VS. VICENTE V...***G.R. No. 49240. December 20, 1946*

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-49240/>**PARAS, J.:**

A document (Exhibit B), purporting to be a pacto de retro sale of a fishpond situated in the barrio of Marulaw, municipality of Hagonoy, Bulacan, is assailed by the petitioners on the ground that it does not reflect the true agreement between the parties: antichresis. The respondent invokes the letter of the contract. Petitioners' theory was sustained by the Court of First Instance of Bulacan where in this case was commenced. The Court of Appeals, however, rendered a decision of reversal. Appealing by way of certiorari, the petitioners in the main argue that Exhibit B should be held effective only as an equitable mortgage. The next following six paragraphs, taken verbatim from the decision of the Court of Appeals, contain the basic findings of fact.

(1) On December 4, 1928, the spouses Laureano Marquez and Eusebia Capiral leased to defendant Vicente Valencia, by the document Exhibit A, the herein mentioned fishpond for a period of ten years, expiring December 31, 1938. The stipulated yearly rental was P1,000, payable every month of January. Valencia held the fishpond and paid the rents for the years 1929, 1930 and 1931. According to plaintiffs, Valencia could make a net profit of P2,000 every year.

(2) Before July, 1931, Laureano Marquez had a litigation with Fortunato Santiago, and to settle it, he got that month seven thousand pesos (P7,000) from Vicente Valencia who did not want to give it "unless Laureano Marquez signed the document Exhibit E." Although Marquez actually received the amount of P7,000 only, the document Exhibit B listed the sum of P11,290 as purchase and repurchase price in accordance with the items written by Vicente Valencia in Exhibit C, as follows:

"320

—160 Amillaramiento x 2

8,470

—7,000 at 10%—700 x 2—1470

2,000

2,000—mejora

500

500 por 5 meses no consumados

11,290"

(3) Vicente Valencia admitted having written Exhibit C, and explaining the item of P8,470 said "the amount of P7,000, the capital, corresponds to the amount received by Mr. Marquez, at 10 per cent rate of interest per year compound edly, that sums P700 for the first year and 1,400 for two years. Now the P700 at 10 per cent again, that is 10 per cent of P700 gives P70. That, in all, makes P1,470. Summing up, the total becomes P8,470." (Page 27, t. s. n.) He added that he had paid P1,000 in January, 1931, as rent, and inasmuch as in July, 1931, he ceased being a lessee (he became purchaser), the amount of P500 was due to him for reimbursement—that accounts for the P500 in Exhibit C.

(4) As to the amount of P2,000, he declared that it represented the value of the improvements he had made on the fishpond, as lessee, during the years previous, to 1931, which improvement he would necessarily lose upon repurchase by plaintiffs. Plaintiff Marquez had to agree that the P2,000 represented "mejoras," although he implicitly asserted, without corroboration,, that it represents the "mejoras" which the defendant had agreed to build on the land.

(5) It appears that on the same day when Exhibit B was executed, Laureano Marquez and companion signed Exhibit D, \* \* \*.

(6) Defendant explained that under this exhibit, if plaintiff, upon repurchase, should. execute another lease in his favor, he would allow them, to repay, only P8,790, thereby waiving the indemnities.he would otherwise charge, them (a) for the improvements he had made (P2,000)— which he would again enjoy under the lease—and (b) the P500 for the unexpired five months of his lease.

Limiting our curiosity within the narrow confines of the foregoing narration of facts, we find petitioner Laureano Marquez in urgent need of P7,000 in order to settle a litigation with Fortunato Santiago, and respondent Vicente Valencia unwilling to give that amount unless Laureano Marquez signed the document Exhibit B. What could he do? "The distress for money under which he then was, places him in the same condition as other borrowers, in numerous cases reported in the books, who have submitted to the dictation of the lender under the pressure of their wants; \* \* \*. Necessitous men are not, truly speaking, free men; but, to answer a present emergency, will submit to any terms that the crafty may impose upon them." (Villa vs. Santiago, 38 Phil., 157, 164.)

Now, it is easy to understand (a) why the petitioners were required to pay the land taxes; (b) why they were charged compound interest at the rate of ten per cent; (c) why they received only P7,000, when the alleged purchase and repurchase price was P11,290; (d) why the amount actually received by the petitioners coincided with the total rental for the unexpired term of the lease, Exhibit A; (e) why the respondent Vicente Valencia spoke of "the amount of P7,000, the capital;" and (f) why the sum actually received by the petitioners, or even the alleged-purchase and repurchase price of P11,290, was much below the assessed value.

Of course, neither the payment by the vendor of the land tax, interest, or other additional charges, nor any of the circumstances above enumerated, taken singly, will preclude the existence of a pacto de retro sale; and stipulations essentially not germane to a sale may be legally or morally acceptable. In this particular case, however, the collective weight of such considerations, in our opinion, sufficiently reveals the intention of the parties to enter into a loan agreement with security, that is, an equitable mortgage. "While it is true that the contracting parties, may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals, or public order (article 1255, Civil Code), the validity of these agreements is one thing, and the juridical qualification of the contract resulting therefrom is very distinctly another." (Aquino vs.

Deala, 63 Phil., 582.)

In further elaboration, we may state that, in spite of the terms of Exhibit B (in which, according to the Court of Appeals, "there is surely no ambiguity nor uncertainty"), the respondent frankly admitted that the amount of P7,000 was the capital and the sum of P1,470 the total compound interest for two years. Such admission is clearly descriptive of a loan, rather than of a sale.

The fishpond contains an area of more than 29 hectares and, on the date of Exhibit B, was admittedly assessed at P18,260. With this as a basis, and considering that the petitioners were receiving a yearly rental of P1,000, it is believed that the sum of P7,000 actually received by them—the very amount that would have been realized by the petitioners under the unexpired term of the lease Exhibit A—was too inadequate a consideration. While the purchase and repurchase price is alleged to be P11,290, an owner will naturally look only to actual cash values. Indeed, even the respondent concerned himself with the interest on P7,000, and not on P11,290. While it may be a fact, also, that the guardian of one of the petitioners—had admitted in a sworn motion filed in civil case No. 3785 that he "could not secure better conditions," it should be remembered that it was part of a course of action he had to pursue in order to extricate himself from a predicament. It may be argued that, generally, a person sells his property in view of some sort of necessity, but in all such cases the nature of the transaction is always made, clear and unmistakable not only by their terms and incidents but by the subsequent conduct of the parties.

The payment by the petitioners of the land tax, a usual burden attached to ownership, helps in showing that the intended deal was a loan; otherwise, there seems to be no fairness in requiring the vendors, who have ceased to be owners, to still pay the same. At any rate, the arrangement (even if legally permissible) emphasizes the extent to which the petitioners "have submitted to the dictation of the lender under the pressure of their wants;" for, while the petitioners were strict and careful enough to require, in the lease, Exhibit A, the respondent (the lessee) to pay the land tax, they had become so meek and accommodating as to assume that obligation under Exhibit B.

The supposition of the Court of Appeals that the respondent could not have preferred the loan to his more advantageous lease, Exhibit A, is plausible only if the loan is said to be antichretic, and not, as justified by the facts found by the said court, simply an equitable mortgage under which the respondent enjoyed the possession of the fish-pond, in addition to interest and other indemnities to be paid by the petitioners.

There is no merit in the contention that the petitioners have adopted a change of theory on appeal. Although the petitioners' complaint in the Court of First Instance alleges a case of antichresis, there is no fundamental difference between that contract and an equitable mortgage, in so far as the principal subject matter is concerned, namely, a loan.

It is noteworthy that the present decision is predicated solely on facts appearing in the judgment of the Court of Appeals, although the conclusion we have drawn therefrom was reached upon arguments overlooked or otherwise erroneously rejected by said court. " \* \* \* The change of emphasis from one phase of the case as presented by one set of facts to another phase made prominent by another set of facts, all of which facts were received in evidence without objection as clearly pertinent to the issues framed by the parties in their pleadings, does not result in a change of theory, and particularly not where the two sets of facts are so closely related both as to time and nature that they are to all intents and purposes inseparable." (Limpangco Sons vs. Yangco Steamship Co., 34 Phil., 597, 608.)

It is, therefore, our judgment that the petitioners should be held liable for the payment to the respondent of the sum of P7,000. Under the facts found by the Court of Appeals, we are not justified in concluding that the respondent is guilty of usury or answerable for the products of the fishpond. The most that can be done, on equitable grounds, is to consider the stipulations regarding interest and other indemnities imposed upon the

petitioners, as offset and satisfied by the income obtained by the respondent during the period of his possession.

The decision of the Court of Appeals is hereby reversed and the petitioners sentenced to pay P7,000 to the respondent, who shall be entitled to remain in possession of the fishpond in question until the said amount is fully paid. So ordered, without costs.

Perfecto, Padilla, and Tuason JJ., concur.

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### CONCURRING

HILADO, J.:

Up to the time of voting and even till the present I had been, and still am, of opinion that, considering that the decision sought to be reviewed was rendered by the "Court of Appeals of Central Luzon" of the "Republic of the Philippines" on April 29, 1944, and said decision having been appealed to the Supreme Court of the said "Republic/" which was not this Court, the case has not been appealed to this Court of the genuine Republic of the Philippines. However, at the voting there would have been a deadlock if I had refused to go into the merits. And in order to break that deadlock I have consented to vote on the merits, having also participated in the consideration of the questions involved in the case during the deliberation. In doing so," I voted with my brethren who have signed the majority opinion prepared by Mr. Justice Paras, in which opinion, without abandoning my stand on the legal question above indicated, I concur.

BRIONES, M., conforme:

Es a todas luces evidente que el contrato de que se trata no es venta con pacto de retro, sino prestamo con garantia (equitable mortgage). Y para arribar a esta conclusion no es necesario, como se afirma en la disidencia, revisar las apreciaciones de hecho establecidas en la sentencia del Tribunal de Apelacion, cosa que desde luego no podemos hacer. Sin apavtarse ni en lo mas minimo de dichas apreciaciones, tal conclusion es forzosa. Es mas: me basta con un solo hecho admitido y establecitlo en la sentencia apelada pai'a considerar el contrato como prestamo no venta con pacto de retro. Ese hecho es el pago de intereses sobre el capital, y no como quiera sino hasta intereses compuestos. El pago, de intereses es la característica distintiva por excelencia del prestamo y es absolutamente incompatible en esta jurisdiccion con el concepto de la venta con pacto de retro. Notese que Valencia, el supuesto comprador a retro, al interpretar el Exhibit C en donde se computan los intereses, habla de capital y no de precio. Se dice capital cuando se trata de un prestamo; precio cuando es una venta. Esto tanto en el lenguaje vulgar como en el juridico.

Un comentario de Manresa ha dado lugar a cierta confusion, haciendo creer al Tribunal de Apelacion y a algunos miembros de esta Corte que el cobro de intereses es compatible con la riocion dela venta-con pacto de retro. ' Pero aparte de que el comentario no esta apuntalado por ninguna sentencia del Tribunal Supremo de Espana, mi contestacion al argumento esque en esta Jurisdiction—en Filipinas—tencmos sobre el particular una' jurisprudencia propia, formada al calor e influjo de fenomenos y ciramstancias locales. Esa jurisprudencia se ha ido desenvolviendo poco a poco sobre un fondo economico-social en que la usura, con sus diversas formas de expoliacion, ha en-contrado una aliada eficaz, un instrumento ductil en la modalidad juiridica llamada venta, con pacto de retro. Ya abiertamcnte,ya de un modo encubierto, bajo la formalidail de un contrato accesorio de arrendamiento en que ios intereses exorbitantes se disimulan aguisa de alquileros, la venta con pacto de retro ha sido por mucho tiempo casi el unico instrumento de credito conocido en nuestros pueblos.

Asi que en esta jurisdiccion nunca se ha mirado con favor la venta con pacto de retro. El meollo, el leit-motif de la

doctrina ha sido el siguiente: en el curso de una larga serie de decisiones, siempre que la terminología del contrato ha sido ambigua, o alguna circunstancia hiciese dudosa la intención de las partes, esta Corte ha dictaminado invariablemente en el sentido de optar por el contrato de condiciones menos onerosas, esto es, el préstamo simple, o lo más, el préstamo con garantía (equitable mortgage). Y el cobro de intereses es, en sentir de esta Corte, una de las características más distintivas del préstamo. No se puede citar una sola sentencia de esta Corte en que el cobro de intereses se haya declarado compatible con el concepto de la venta con pacto de retro. Por eso que cualquiera que sea la validez y fuerza del comentario de Manresa en España (repito que no se ha citado en su apoyo ninguna sentencia del Tribunal Supremo de aquel país), es indudable que no puede prevalecer aquí donde una doctrina contraria de firmes lineamientos hace innecesario el acudir a fuentes de derecho extranjeras.

Además, la equidad gravita fuertemente por el lado de los apelantes. El apelado ha estado poseyendo y disfrutando de la finca hace 18 años, ganando P2,000 al año, según la sentencia apelada. Esta ganancia es mucho más de lo que el apelado hubiese cobrado en intereses, aun a razón de 12 por ciento al año. Habiendo ganado P36,000 hasta ahora, ya ha recobrado cinco veces su capital de P7,000. Mal puede quejarse, pues, cuando en nuestra sentencia todavía se le permite recobrar este capital, y aun quedarse con la finca si los apelantes no tuyesen o no encontrasen P7,000 para el rescate.

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## DISSENTING

MORAN, C. J., with whom concur FERIA, and PABLO, JJ..

In an appeal by certiorari to this Court from a decision of the Court of Appeals, only questions of law may be raised, and this Court has no authority to change, alter or modify the findings of fact made by the Court of Appeals if it implies review of the evidence. (Rule 46, section 2; *Guico vs. Mayuga and Heirs of Mayuga*, 63 Phil., 328; *Mateo vs. Collector of Customs and Court of Appeals*, 63 Phil., 470; *Mamuyac vs. Abena*, 67 Phil., 289; *Meneses vs. Commonwealth of the Philippines*, 69 Phil., 647; *Ong-lengco vs. Ozaeta and Hernandez*, 70 Phil., 43; *Hernandez vs. Manila Electric Co.*, 71 Phil., 88; *Nazareno vs. Sama-hang Magwagi*, 71 Phil., 101; *Gerio vs. Gerio*, 71 Phil., 106; *Garcia de Ramos vs. Yatco*, 71 Phil., 178; *Zubiri vs. Quijano* 74 Phil., 47; *People vs. Benitez*, 73 Phil., 671).

The decision of the Court of Appeals, reversed by this Court, is as follows:

"On July 27, 1931, Laureano Marquez, Eusebia Capiral and Marcelino Marquez, as guardian of Patrocinio Marquez, notarized the 'Venta con Pacto de Retro' (Exhibit B) whereby, for the sum of P11,290, receipt whereof they acknowledged, they sold a fishery in the barrio of Marulaw, municipality of Hagonoy, to defendant Vicente Valencia, reserving, however, the right to repurchase the same within two years, for the same amount. The vendors failed to exercise the covenanted right of redemption.

"However, on May 28, 1936, Laureano Marquez, in behalf of himself and of his co-signers, filed a complaint, alleging that their contract with defendant, Exhibit B, was in effect a usurious loan, and not a pacto-de-retro sale; that defendant had already been repaid with the products of the fishpond, which should now be returned to them after appropriate accounting.'

"Defendant denied complainants' allegation and averred the bargain was a veritable pacto-de-retro sale.

"The Court of First Instance of Bulacan heard the evidence and the parties, and rendered judgment holding that the document Exhibit B represented an antichresis agreement.

Consequently, it ordered, 'al demandado a que pague a los demandantes la suma de P9,000, mas la cantidad de P2,000 cada año desde la fecha del contrato Exhibit B hasta que la pesquería en cuestión es entregada por

demandado a los demandantes; \* \* \* que entregue a los demandantes la pesqueria en cuestion-y a pagar las costas del juicio.'

"Defendant appealed.

"On December 4, 1928, the spouses Laureano Marquez and Eusebia Capiral leased to defendant Vicente Valencia, by the document Exhibit A, the hereinmentioned fishpond for a period of ten years, expiring December 31, 1938. The stipulated yearly rental was P1,000, payable every month of January. Valencia held the fishpond and paid the rents for the years 1929, 1930 and 1931. According to plaintiffs, Valencia could make a net profit of P2,000 every year.

"Before July, 1931, Laureano Marquez had a litigation with Fortunato Santiago, and to settle it, he got that month seven thousand pesos (P7,000) from Vicente Valencia, who did not want to give it unless Laureano Marquez signed the document Exhibit B. Although Marquez actually received the amount of P7,000 only, the document Exhibit B listed the sum of P11,290 as purchase and repurchase price in accordance with the items written by Vicente Valencia in Exhibit C, as follows:

"320

—160 Amillaramiento x 2

8,470

—7,000 at 10%—700 x 2—8470

2,000

2,000—mejora

500

\_\_\_\_\_

500 por 5 meses no consumados

11,290"

"Laureano Marquez, declaring: in this case, avers that Exhibit B was not the true contract he had made with Vicente Valencia, who promised by a gentleman's agreement not to carry it out; and without actually using the word 'loan' or 'antichresis,' he spoke of P7,000 as the 'capital' earning more than 10 per cent interest.

"The trial court, seeing that interest was charged for two years,' that vendors had to pay real estate taxes and that the price was inadequate, concluded that the transaction was a usurious antichresis loan and made the order appealed from.

"Vicente Valencia admitted having written Exhibit B, and explaining the item of P8,470 said 'the amount of P7,000, the capital corresponds to the amount received by Mr. Marquez at 10 per cent rate of interest per year compoundedly, that sum P700 gives P70 at 10 per cent again, that is 10 per cent of P700 gives P70. That, in all makes. P1,470. Summing up, the total becomes P8,470. (P. 27, t. s. n.) He added that he had paid P1,000 in January, 1931, as rent, and inasmuch as in July, 1931, he ceased being a lessee (he became purchaser), the amount of P500 was due to him for reimbursement— that accounts for the P500 in Exhibit C.

"As to the amount of P2,000, he declared that it represented the value of the improvements he had made on the fishpond, as lessee, during the years, previous to 1931, which improvement he would necessarily lose upon repurchase by plaintiffs. Plaintiff Marquez had to agree that the P2,000 represented 'mejoras,' although he implicitly asserted, without corroboration, that it represents the mejoras which the defendant had agreed to build on the land.

"It appears that on the same day when Exhibit B was executed, Laureano Marquez and companion signed. Exhibit D, the pertinent provisions of which read as follows:

"Por cuanto en esta misma fecha se ha otorgado una escritura de venta con pacto de retro por Laureano Marquez, Eusebia Capiral \* \* \* a favor del Dr. Vicente Valencia, con relacion a la siguiente Parcela de terreno: (same fishpond)

\* \* \* \* \*

" Por tanto para el caso de que ejercitaremos el derecho de re-tracto reservado en la escritura arriba mencionada dentro del plazo estipulado y otorgaremos simultaneamente otra escritura de arrendamiento a favor del Dr. Vicente Valencia con las siguientes condiciones a saber: en dicho caso el precio del retracto sera solamente la suma de OCHO MIL SIETE CIENTOS NOVENTA (P8,790) PESOS en vez de la cantidad de ONCE MIL DOSCIENTOS NOVENTA PESOS (P11,290) mencionada en dicho contrato de venta con pacto de retro; \* \* \* Entendiendose, ademas, que si nosotros optaramos para no otorgar el contrato de arrendamiento arriba mencionado en dicho caso el precio de la recompra sera la suma de ONCE MIL DOSCIENTOS NOVENTA PESOS (P11,290) tal como se dispone en la escritura de venta con pacto de retro arriba mencionada.'

"Defendant explained that under this exhibit, if plaintiff, upon repurchase, should execute another lease in his favor, he would allow them to repay only P8,790, thereby waiving the indemnities he would otherwise charge them (a) for the improvements he had made (P2,000)—which he would again enjoy under the lease—and (b) the P500 for the unexpired five months of his lease.

"It has long been established in this jurisdiction that a written document of pacto-de-retro sale may be shown to be a mortgage by oral evidence (Rodriguez vs. Pamintuan and De Jesus, 37 Phil., 876; Villa vs. Santiago, 32 Phil., 157). But in every case where courts uphold such showing they have done so either because the terms of the document were ambiguous, or because the circumstances surrounding its execution or performance were incompatible or inconsistent with the theory that a conventional redemption was intended by the parties. (Tolentino and Manio vs. Gonzalez Sy Chiam, 50 Phil., 558.) And the oral evidence must be 'clear and convincing,' if it is to overcome the presumption of validity and genuineness which attaches to a public document. (Aside, vs. Guzman, 37 Phil., 652; Masong-song vs. Kalaw, 55 Phil., 787.)

"There is surely no ambiguity nor uncertainty in the writing Exhibit B, and the supplementary agreement Exhibit D. The first contains all the essential stipulations of conventional redemption which the conduct of the parties tend to corroborate; the purchaser took the property into his possession; for five years after the contract, plaintiff made no move to reform the deed; upon the expiration of the redemption period, Vicente Valencia consolidated his ownership and inscribed the property in the tax record in his own name; Laureano Marquez and Marcelino Marquez in a motion which they filed in civil case No. 3785, declared under oath that this transaction was a venta con pacto de retro, and that Valencia's terms were the most advantageous.

"In weighing the oral evidence of both sides, we notice firstly that only Laureano Marquez testified for the plaintiffs and only Vicente Valencia declared in opposition. Marquez was imprecise in his statements, and inconsistent with his theory. The complaint which he knew and ratified, said that P1,970 was the amount of 'interest'; at the trial he swore it was 10 per cent over the capital (P1,400). Then instead, of the loan of P7,000 which he impliedly said he obtained from Valencia, he admitted in answer to subsequent questions that the amount was 'advanced rentals' under the lease contract. His memory does not seem to be very good. He could not well account for the P500 item—for which Valencia had given a truly logical explanation. His cross-examination was significant:

"Q. And why did you have to return the P500 appearing in Exhibit D if it did not correspond to interest?—A. That is always the case of a usurer, that they always had the interest on the unexpired time.

"Q. Do you mean to say that P500 mentioned in Exhibit C correspond also to interest which you had to pay for the P7,000?—A. That could be possible to be in that way, but what I know is that I have not received that amount.

"Q: Are you- not positive- to what that P500 correspond to?—A. My previous declaration in regards to P500, I stand by it.

"Q. And what is your previous declaration?—A. T. ani -afraid might change my previous declaration. (Page 19, t. s. n.)

"On the other hand, the data in Exhibit C, and the documents of lease (Exhibit A), pacto de retro (Exhibit B) and compromise 'de dar en arrendamiento' (Exhibit D), all consistent with each other, reasonably bear out the "assertions of "Vicente Valencia that the parties had really agreed to the stipulations attested, to by (Exhibit B), namely, a contract whereby, for having received P7,000, plaintiffs Sold the fishpond to him, reserving, however, the right to reacquire it, for the total sum of P11,290, with the qualification that if they should release it to him, the redemption money could be reduced. to P8,790. The fact that the vendor a retro promised to pay upon repurchase, not only the sale price but also certain other additional charges, such as taxes (Lichauco vs. Berenguer, 20 Phil., 12), and even interest does not convert a. plain unambiguous document of pacto de retro sale into one of loan—unless, of course, such form of agreement is resorted to for the purpose of distinguishing truly, usurious loans. (Cf. Manila Trading & Supply Co. us. Tamaraw Plantation Co. 47 Phil., 513.) Manresa, interpreting article 1518 of the Civil Code, says:

" 'No vemos, por lo tanto, inconveniente en que se pacte que el' precio o mejor dicho, que la cantidad que se restituya sea mayor o menor que el precio de la venta (1 ultimo sera muy raro); pues tal convencion implica im pacto Hcito, de cuya eficacia no se nos alcanza motivo para dudav. No tendremos quiza entonces el pacto de retro quo. ramenta el Codigo, pero tendremos evidenfcemente un derecho de retraer de caracter convencional y que producira efectos juridicos.

" 'Analogia consideracion se nos ocurre sobre la pregunta que mu-chos formulan referente a si el vendedor tendra que pagar los inte-reses del precio por el tiempo que lo haya tenido en su poder. El C6digo no habla de tales intereses, los cuales, por lo tanto, no se deben naturahntenc. Puede, sin embargo, pactarse su abono y en cste caso, tratandose, a nuestro juicio de un pacto de Hcito, es visto que el vendedor tendra que satisfacerles.1 (10 Manresa 4.a ed., pag. 810.)

"In fact, Vicente Valencia could not have voluntarily consented to the termination of his lease, to enter upon a loan of P7.000 at interest of 10 per cent, as appellees' theory seems to be. Why? Because under a loan, he would be earning only 1\*700 a year, whereas by holding the property as lessee, he could make P2,000 a year, according to plaintiffs; however, in a pacto-de-retro deal, in addition to the 10 per cent he was to receive upon repurchase, he had the attractive chance of owning the fishery, should Marquez and his companions neglect or fail to redeem.

"With regard to the price, there is evidence that before concluding the bargain with Valencia, Marquez approached several people; but could not secure better conditions. Indeed that is what he informed the court in the civil case No. 3785, in the sworn motion hereinbefore mentioned.

"In view of the preceding considerations, we are, at least not persuaded that the document Exhibit B did not represent the true intent and agreement of the parties. The Supreme Court's words may here be recalled:

"As obnoxious as contracts of pacto dc retro are, yet nevertheless, the courts have no right to make contracts for parties. They made their own contract in the present case. There is not a word, a phrase, a sentence or paragraph, which in the slightest way indicates that the parties to the contract in question did not intend to sell the property in question absolutely, simply with the right to repurchase. People who make their own beds must lie thereon." (Tolentino and Manio vs. Gonzalez Sy Chiam, 50 Phil., 558, 577, 578.)

"Wherefore, the appealed decision will be revoked and the complaint dismissed. Cost in both instances against the plaintiffs. So ordered."

Upon motion for reconsideration filed by petitioners, the Court of Appeals issued the following resolution:

"The Court has given careful attention to the appellees' motion for reconsideration, but is unable to reach a different conclusion.

"The argument that Exhibit B should be regarded as an equitable mortgage, because P7,000 is inadequate price for the fishpond assessed at P22,040, is unmeritorious; firstly, the price for which Vicente Valencia acquired the land was not P7,000, but P11,290, and the land was assessed at P18,260 (Exhibit F); secondly, the Ux assessment appears to be unreliable as a test of the land's actual value, because Laureano Marquez himself agreed to the sworn statement in Exhibit A, that Valencia's offer was the best obtainable in the market; and thirdly, even supposing that the assessment was a correct indication of value, the resulting disproportion is not so marked as to be incompatible with a real pacto de retro covenant. (See Feliciano vs. Limjoco and Calacalzado, 41 Phil., 147 [price P500, assessed value P1,000] and Villarosa vs. Villamor, 43 Phil., 350 [price P3,000, assessed value around P5,850].)

"Attempting to refute our reasoning that Valencia could not have voluntarily consented to the termination of his lease to enter upon a loan of P7,000 with interest at 10 per cent, the appellees express the belief that this Court has utterly failed to consider the fact that the fishpond mentioned in Exhibit B, during the period of redemption was to remain, as it did remain, in the possession of appellant. As this Honorable Court has stated, without qualifications, that the fishpond in question produces an income to appellant of P2,000 a year, it becomes clear that for the P7,000 given by appellant to appellees, the former was to profit a total of P2,700 for the first year, and P2,770 for the second year. For besides getting the produce from the fishpond, in the amount of P2,000 a year, he would still secure from appellees an interest of 10 per cent on P7,000 compounded annually."

"There was no such oversight. Under appellees' theory of "antichretic loan—which we rejected on the assumption that Valencia would not have voluntarily accepted a less favored position—the products of the fishpond (P2,000) were to pay the 10 per cent interest and the capital. Consequently, there is no warrant for the assertion that under the alleged loan arrangement, Valencia would get 10 per cent interest plus the products (P2,000).

"The motion to reopen is denied."

It may thus be seen from the decision of the Court of Appeals that, on the issue of whether the true agreement between the parties is a pacto de retro sale or merely an equitable mortgage, both direct and circumstantial evidence have been adduced by the parties. The direct evidence consists of Exhibits A, B, C, D and 2 together with the testimony of petitioner Laureano Marquez and respondent Vicente Valencia. The circumstantial evidence consists of the alleged payment of taxes and interests together with the alleged disproportion between the sale price and the assessed value of the property in litigation. The conclusion of the Court of Appeals that the true agreement between the parties is a pacto de retro sale, is based

In cases like this, the utterances of the parties at the time of their negotiation leading to their written agreement, are the best evidenced. And the testimony of witnesses directly on such utterances is of great importance and may be decisive. If, as in the instant case, the testimonial evidence, corroborated by public documents, is such as to persuade the Court of Appeals that the true agreement between the parties is a pacto de retro sale, circumstances such as the payment of taxes or interests in case of repurchase, cannot convert the true contract into a mere equitable mortgage. There is nothing illegal or immoral in a vendor agreeing to reimburse upon repurchase the taxes paid by the vendee, and to pay the interests which the vendee's money would have earned prior to the repurchase. (Lichauco vs. Berenguer, 20 Phil., 12; 10 Manresa, 4th ed., p. 310.)

The Court of Appeals said: "In weighing the oral evidence of both sides, we notice firstly that only Laureano Marquez testified for the plaintiffs and only Vicente Valencia declared in opposition. Marquez was uncertain in his statements, and inconsistent with his theory." And the Court proceeded to show the uncertainty and inconsistency of Marquez' testimony and at the same time the veracity of Valencia's testimony which was found to be in perfect harmony with the documentary evidence Exhibits A, B, C and D as well as with the subsequent conduct of both parties.

According to Exhibit A, on December 4, 1928, the spouses Laureano Marquez and Euscbia Capiral leased to respondent Vicente Valencia the property in litigation for ten years expiring on December 31, 1938. The stipulated annual rent was P1,000 payable in advance. All improvements' made by the lessee on the property during the lease were to belong to the lessor upon the expiration of the lease-In July, 1931, Laureano Marquez had a litigation with Fortunato Santiago involving the same property. To settle this, litigation, Laureano Marquez needed the amount of P7,000 and he approached several persons to sell the property in order that, with the proceeds of the sale, he could pay said amount to Fortunato Santiago. Due to the uncertainty of the title to the property occasioned by the pending litigation with Fortunato Santiago, and, also, due to the lease contract in favor of respondent which, had still seven and a half years to run, the prospective buyers were unwilling to purchase the property under the terms desired by Laureano Marquez. Thus, the latter, offered to sell the fishpond with a right to repurchase to herein respondent. The offer was accepted and Exhibit B was executed. This document is not uncertain or ambiguous.

On the same date and in another document, Exhibit D, the parties agreed that, upon, repurchase, the vendors could again lease the same property to Vicente Valencia, in which case the price for repurchase would be P8,790 instead of P11,290; but in case they chose not to lease the property again to Valencia, then the price for repurchase would remain the same, namely, P11,290. This agreement, Exhibit D, confirms the pacto de retro sale, Exhibit B. It clearly cancelled lease Exhibit A, which would not have been done had the contract in issue been merely an antichresis or equitable mortgage. In other words, if the contract, Exhibit B, is merely an antichresis or equitable mortgage, then the agreement contained in Exhibit D would have no effect or purpose. It must be noted that Exhibit D is not assailed as not expressing the true intention of the parties.

On November 4, 1931, according to Exhibit A, a motion, under oath, was filed in special proceedings No. 3785 of the Court of First Instance of Bulacan, entitled "In re Guardianship of Minor Patrocinio Marquez," wherein Laureano Marquez and Marcelino Marquez prayed for the approval of the contract, Exhibit B, referred to specifically in said motion as 'venta con pacto de retro' and as "la mas ventajosa tanto para la menor como para sus padres." This motion was granted and the contract approved by the Court as a pacto de retro sale which was duly registered in the registry of deeds of Bulacan.

And now the majority says that this sworn motion deserves no credit because "it was a part of a course of action he (the movant.) had to pursue in order to extricate himself from a predicament." That such, was the reason for the motion is a mere assumption contrary to the findings of the Court of Appeals. After weighing all the evidence, including the testimony of witnesses, the Court of Appeals held the sworn motion to be a deliberate expression of truth taken by the probate court of Bulacan as ground for approving the contract in an order that has already become final at least as regards the movants themselves. The majority decision, however, in effect considers the sworn motion as a perjury, and, what is worse, the perjury is made one of the grounds for deciding in favor of the perjurers.

The mere fact that petitioners were very badly in need of money does not argue against the pacto de retro sale. Sales are often made by needy people. The trouble in the instant case is that petitioners do not know what their true agreement is. In the Court of First Instance they said it was antichresis; but in the Court of Appeals they said

it was an equitable mortgage.

Other considerations of minor importance appearing in the majority decision are fully answered by the Court of Appeals' decision which I believe to be in conformity with law.

For all the foregoing, I vote for the affirmance of the judgment rendered by the Court of Appeals.

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