

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 7992. March 04, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action begun by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, and the Order of the Dominicans to recover the sum of P50,000, the value of a railroad and various sugar mills which, according to the complaint, formed a part of the real estate, consisting of a certain hacienda, sold by the defendants to the plaintiff and which, after such sale, were illegally removed from said hacienda by the defendants and converted to their own use.

The defendants answered the complaint admitting the sale of the hacienda, also substantially admitting the removal of the railroad and sugar mills, but denied that the latter were included in the hacienda, the sale of which is the basis of the action.

As a special defense the defendants alleged "that on the execution of the conveyance to the Insular Government, which is annexed to plaintiff's complaint and marked Exhibit B, it was understood by the parties to the conveyance that such conveyance did not include the said railroad or sugar mills and their accessories, for which suit has been brought, and although such conveyance contains the words and all other improvements and accessories at the present time on said hacienda' as having been included in the sale, it was understood by the parties that the said railroad and sugar mills and accessories were not included in that general description, nor was it the intention of the parties to include them," and for this reason the defendants "impugn the contract annexed to the complaint in so far as it may be construed in a sense contrary to this position, on the ground that it does not express the real intention of the parties."

The plaintiff demurred to the portion of the answer above quoted on the ground that it was not a defense, "as the evidence which would have to be offered in support thereof was incompetent, irrelevant, and immaterial in that such evidence, if offered, would be parol evidence and would vary the terms of a written instrument." The demurrer was overruled and the cause went to trial. The court found in favor of the defendants, dismissing the complaint on the merits. This appeal is from that judgment.

The question before us for decision is whether the conveyance from the defendants to the plaintiff includes, as matter of law, the railroad and the sugar mills, with their accessories, the subject of this dispute, and whether, in case they are included in the conveyance, parol evidence is admissible to exclude them.

On the 22d day of December, 1903, the parties in this action entered into a contract for the sale of certain lands and premises therein described, among others lands known as the Calamba Sugar Estate. In that contract appears the following:

"This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines, and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights of hereditament belonging to the company on every part of the estates hereby agreed to be conveyed, * * *."

In the final conveyance, made in pursuance of this contract and which is the basis of this action, the following clause appears relative to the Calamba hacienda:

"And, furthermore, I declare that there is included in this sale and is hereby ceded and conveyed to the Government of these Islands, all the rights and interests which the company which I represent has or may legally exercise in the buildings, irrigation works, water rights, improved lands, and all other improvements and accessories which exist in the hacienda or lands sold and conveyed by this instrument * * *."

We held in the case of *Fernandez vs. Shearer* (19 Phil. Rep., 75), that sugar mills constitute an improvement of the lands upon which they are built and are subject to taxation as real estate. We also held in the case of *Bischoff vs. Pomar* (12 Phil. Rep., 690), that a mortgage given on real estate includes, and constitutes a lien upon, sugar mills and other improvements affixed to and forming part of the land at the time the mortgage was given.

Under these holdings, the sale of the land would carry with it, without further words, all the improvements existing thereon at the time of the sale and forming part thereof. Certainly such improvements, whether railroads or sugar mills, would be included in the phrase "all other improvements and accessories."

Section 285 of the Code of Civil Procedure is as follows:

"Written agreement presumed to contain all the terms of the agreement.—When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"1. Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"2. Where the validity of the agreement is the fact in dispute; but this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term "agreement" includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

It is contended that parol evidence is admissible in the case at bar to show that it was understood between the parties at the time the sale was made that neither the sale of the real estate itself nor the additional words "all other improvements and accessories" were intended to include the railroad and the sugar mills—indeed, that it was expressly agreed at the time the conveyance was executed that they should be excluded. The authority for this contention is to be found, it is alleged, in that part of paragraph 1 of the section just quoted which makes an exception to the general rule that parol evidence cannot be introduced to contradict or vary the terms of a written instrument, and permits its introduction when the writing "fails to express the true intent and agreement of the parties," which failure "is put in issue by the pleadings." The defendants claim that, if the sale of the real estate, without further words, or if the words "all other improvements and accessories" are held, as matter of law, to include the railroad and sugar mills then on the land and forming part thereof, then the agreement "fails to express the true intent and agreement of the parties," and that, accordingly, authority is found in the section referred to for the introduction of parol evidence showing what the true agreement of the parties was.

We regard this contention as too broad. We do not believe it to have been the intention of the Legislature to authorize the introduction of parol evidence respecting the terms of a written instrument under the circumstances

set forth in the contention. Such a theory would prevent written instruments, to a considerable extent, from serving the purpose they were designed to serve and would leave them of little more value than parol agreements. If, against the objection of the vendee, properly interposed, one may, in the absence of fraud or mistake, successfully maintain, after he has executed a conveyance of real estate, that he intended, and it was verbally agreed, that certain buildings on the premises, forming part of the freehold, should be excepted or reserved from the operation of the conveyance, or that only half of the premises described in the conveyance was intended to be conveyed, or that certain improvements forming a part of the real estate conveyed were excepted from the terms of the conveyance, and thereby materially modify the meaning and effect of the document, written instruments cease to have substantial value as such. (Jones, Commentaries on Evidence, Horwitz, secs. 485, 486, vol. 3; Yu Tek & Co. vs. Gonzalez, 29 Phil. Rep., 384.)

Under our Code of Civil Procedure parol evidence may be introduced to relieve from an imperfection or to correct a mistake which has prevented any real agreement from being reached, or which has occasioned the expression of that which was not the true agreement; or to attack the validity of the agreement, and for the other purposes named in the second paragraph of section 285. Where there is an imperfection or mistake in an instrument, it either does not express any agreement at all between the parties or it does not express their real agreement. Where there is no mistake or imperfection, it expresses both; and the reference in paragraph 1 of said section to the failure of the instrument "to express the true intent and agreement of the parties," refers to a mistake or imperfection by which that failure is produced.

In many cases mistake, as such, has no legal effect. It neither adds anything to nor takes anything from the legal consequences of an act, either as regards the rights of other persons or the liability of the person performing the act. Nor does mistake of itself necessarily affect the validity of contracts. A mistake, as we have already said, may prevent any real agreement from being reached or may occasion the expression of that which was not the true agreement; but if the minds of the parties actually met on all the essentials of a contract, and the instrument which purports to evidence it is in fact a true exposition of that contract, no amount of mistake in respect to the legal effect of the contract will induce a court, either of law or equity, to interfere. Courts in exercising the powers of rescission and reformation do not operate upon contracts at all but merely upon what erroneously purports to be contracts. Courts will not reform a writing so as to give an agreement a different effect from that which the parties intentionally entered into simply because the contract as executed does not effect the purpose of its execution, nor insert in the instrument a part of an antecedent verbal agreement which was designedly left out of the written contract, either through ignorance of the necessity for its insertion, or because its performance was entrusted to the honor of the defendant. The inquiry is not what contract the parties intended to enter into, but what is the contract they did enter into. Their intention may have been one thing, their agreement quite another. For the same reason a court of equity will not rescind a contract or reform an instrument merely because the parties may have been mistaken as to its legal interpretation and effect, nor will such a mistake be recognized as any defense to a suit upon the contract or instrument. The section under discussion cannot be construed to mean that a party may contradict or modify the terms of a written agreement which he voluntarily signed with full knowledge of its provisions.

As we have intimated, however, there are mistakes as to which courts will give relief. Those are the mistakes that are referred to in section 285—a mistake or imperfection. Such a mistake is one which prevents any contract at all from being formed or which prevents a contract actually entered into from being properly expressed. Where the instrument contains what the parties intended it should and understood that it did, it is presumed to express their true intention. At least parol evidence will not be admitted to contradict or vary the terms of the instrument under such circumstances.

The only uses to which parol evidence may be put with respect to a written instrument, aside from the cases referred to, are those mentioned in the second paragraph of section 285. In the case before us it is not alleged that there was a mistake of the parties in the formulation of the conveyance or that the conveyance is imperfect, invalid, or ambiguous. It is claimed, simply, that the vendors did not understand that the conveyance itself and the words used therein meant what in law they do mean and, therefore, ask that they be permitted to contradict or vary their plain meaning and effect by showing, by parol evidence, that they did not include the particular improvements which are the subject matter of this guilt. We do not believe that parol evidence is admissible under such circumstances.

We do not discuss the general rule relative to the admissibility of parol evidence in connection with written instruments, or the varied exceptions to that rule, as laid down by the courts of the United States. It is unnecessary here. The statute, with reasonable clearness, states the rule and gives the exceptions. It is not our province to do more than apply it.

In the case of *Pastor vs. Gaspar* (2 Phil. Rep., 592), the court said, page 599:

"(2) The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there had been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them. The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid \$500 for so doing; that \$20,000 was borrowed from the Banco Español-Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. When a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not by showing by parol what the prior agreement in fact was."

See also *De Icaza vs. Perez* (5 Phil. Rep., 166); *Sanz vs. Lavin Brothers* (6 Phil. Rep., 299) ; *Testagorda vs. Commanding General* (6 Phil. Rep., 573); *Muguruza vs. International Bank* (10 Phil. Rep., 346); *De Guzman vs. Balarag* (11 Phil. Rep., 503); *U. S. vs. Macaspac* (12 Phil. Rep., 26); *Jose vs. Damian* (14 Phil. Rep., 104) ; *Sy Joe Lieng vs. Sy Quia* (16 Phil. Rep., 137); *Lozano vs. Tan Suico* (23 Phil. Rep., 16).

The evidence offered on the trial to sustain the special defense should have been excluded under the objection of the plaintiff.

Evidence was introduced by the parties showing the value of the property removed by the defendant from the premises after the sale to the plaintiff. That evidence fully supports the contention of the appellant that the value was that alleged in the complaint, viz., P50,000. In the case of *Hicks vs. Manila Hotel Co.* (28 Phil. Rep., 325), we said:

"It is the practice of this court, in case of reversal of a judgment dismissing the complaint on the merits, to examine the evidence and render, or order rendered, the judgment which the inferior court should have rendered; and, where the action is for a sum of money or damages, to find from the evidence the amount due or the damages suffered and to render, or order the trial court to render, judgment for that amount."

The question of damages and the amount thereof were fully ventilated in the trial court and here. We are, therefore, of the opinion that the case should be finally determined in this court.

The judgment is reversed and the cause remanded to the Court of First Instance with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of P50,000, with interest from the commencement of the action. So ordered.

Torres and Johnson, JJ., concur.

CONCURRING

CARSON, J.,

I concur with the result.

Having some doubt as to whether the provisions of section 285, based as they are on similar provisions in the statute of frauds, should be applied so as to exclude the evidence relied upon by the defendants in this case, I have carefully examined that evidence and I am satisfied that it does not support their contentions as to the "true intent and agreement of the parties." On the contrary, I think it clearly discloses that these very contentions as to the meaning of the language used in the contract were raised before it was finally executed, and that the proposition of the defendants to change the language used in the final draft of the contract then about to be executed, in order to give it the meaning now claimed for it, was deliberately rejected by those charged with the execution of the contract on behalf of the Government, and that notwithstanding this refusal to modify the language of the final draft of the contract so as to give it the meaning and effect now claimed for it, the defendants there and then went forward with the proceedings, and with full knowledge of its terms solemnly executed it.

Under the circumstances I do not think defendants can be heard now to claim that the true meaning and intent of the contract as executed by them is any other than that which was given to it (as their own evidence clearly discloses), by both parties at the time when it was finally executed.

This opinion is filed without prejudice to the preparation of an extended opinion hereafter, if that be deemed advisable, for the purpose of discussing at length the evidence of record upon which defendants rely in support of their contentions.

DISSENTING

ARELLANO, C. J.,

The Philippine Government, desiring to purchase the lands of the Philippine Sugar Estates Development Company, Limited, entered into negotiations with the representative of this company, Don Francisco Gutierrez Repide; and after long discussions of the terms, the Insular Government drew a draft of the contract, the original of which appears in this record as Exhibit No. 2 (folio 118). Don Francisco Gutierrez Repide made some corrections therein, in the form of additions and suppressions, and this draft, later on, became a notarial document dated December 22, 1903, which also appears in the record as Exhibit A in English and B in Spanish (folios 7 and 14). Both the proposed draft Exhibit No. 2, as well as the final instrument Exhibit A-B, are a preliminary agreement in which the Philippine Sugar Estates Development Company, Limited, binds itself to sell, and it did sell, to the Insular Government the eight haciendas belonging to said company. Among these eight haciendas is to be found the Calamba estate, the particular sale of which, as it was executed and consummated by the public deed of sale finally executed on October 19, 1905, (Exhibit C, folios 22 and 111 to 117), is the real matter in issue in this case.

On October 13, 1906, the Insular Government filed a complaint against the Philippine Sugar Estates Development Company, Limited, and the Dominican Order of the Philippines, asking the court to sentence the defendant company and its codefendant, the Dominican Order, jointly and severally, to pay the sum of P50,000, together

with the legal interest thereon from the date of the filing of the complaint. The complaint is based on the fact that on several dates, from that of the preliminary agreement, December 22, 1903, up to that of the final deed of sale of October 19, 1905, and even some time thereafter, the defendant proceeded to raise, take apart, and remove from the places wherein they were located, the six mills mentioned in the deed of sale and called "Mapagon," "Calamias," "Mayapa," "Siranglupa," "Real," and "Punta," together with the machinery, apparatus, implements, and accessories of said mills, all of which were in good condition, as well as the tramway composed of rails, ties, and other accessories which was also raised, taken apart and removed without permission or notice of the Insular Government.

The main issue herein is whether the said mills and railway were or were not included in the sale of the Calamba estate.

Plaintiff affirms and sustains that they were. Defendants deny it and sustain that they were not and never could have been.

The question turns upon the wording of the deed of sale of October 19, 1905. Plaintiff insists that the terms of the contract are clear, and by demurrer tried to prevent the defendant from bringing to the trial other evidence to show the facts alleged in the special defense in its answer, to wit, "the real intention and agreement of the parties," a thing which is expressly allowed by section 285 of Act No. 190, paragraph 1. The issue, therefore, was a legitimate case of interpretation of a contract, and it is not lawful to deprive the defendant of its right by simply taking for granted, as is done by the sole affirmation of the plaintiff that the terms of the contract are clear. They cannot be considered so clear when, in spite of the fact that the plaintiff has so insistently maintained that the mills were specified in the deed of sale, the decision of the majority, so thoughtfully and discreetly written, does not rest on this ground, which would be an extremely solid one if the terms of the contract were clear, but restricts itself to the construction that they are included because the sale of the estate was made with all its improvements, and that such sugar mills are improvements.

According to article 1282 of the Civil Code, in order to judge of the intention of the contracting parties, consideration must chiefly be paid to those acts executed by said parties which are contemporary with and subsequent to the contract. And according to article 1283, however general the terms of a contract may be, they must not be held to include things and cases different from those with regard to which the interested parties agreed to contract. In the draft of the preliminary contract (Exhibit No. 2 at folio 119) which appears to have been drawn up on December 18 or 20, 1903, we read: "This sale and conveyance shall include all the buildings, sugar and rice mills and machinery, irrigation work, dams, tunnels, ditches, and all other improvements thereon, etc." In the formal preliminary agreement of December 22, 1903, (Exhibit A), appears: "This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines and other buildings, irrigation work, dams, tunnels, ditches, and all other improvements, etc." In this formal instrument the words: "sugar and rice mills and machinery," which appear stricken out in the original draft have been suppressed. This contemporary fact is extremely important. It cannot be disregarded, being, as it is, one of the facts proved, the basis of the deed of sale of the Calamba Estate, dated October 19, 1905. It is the most conclusive and decisive proof that can exist as to how the parties thought and how they finally acted in regard to the sugar and rice mills and machinery which, in the beginning, one of them intended to include in said draft, but which, later on, by the objection of the other, they both expressed at last in the formal preliminary agreement their common intention not to include. If they did not expressly include them in the preliminary agreement, then it cannot even be presumed, without a subsequent proved reason, that they changed their minds when they executed the final deed of sale of the Calamba estate on October 19, 1905, nearly two years later.

From the division of archives of the general Government a copy was brought into this record of a deed of sale

which the Dominican Order made of its lands to another person on November 18, 1898, which deed had been registered in the registry of property. The description of the Calamba estate therein contained this item: "In the barrio of Majada it (the order) possesses the casa-hacienda, a new building of strong material, with a large stone wall around it and several coffee plants; and in various places—and this is the cause of the error—the sugar mills, with all their camarines and accessories, called "Mapagon," which is hydraulic; "Mayapa," a steam mill; "Calamias," which is hydraulic; "Siranglupa," which is a steam one; "Real," a steam one; and "Punta," which is also a steam mill; although it is believed that these mills have been destroyed, at least partially, by the insurgents" (folios 161 to 187). This was in November, 1898.

On September 24, 1904, there took place an "interview of the Civil Governor of the Philippine Islands with Don Francisco Gutierrez Repide, manager of the Philippine Sugar Estates Development Company, Limited. There were present: The Solicitor-General and Mr. Rafael Del Pan, of the firm of Del Pan, Ortigas & Fisher, in charge of the examinations of the titles of the so-called friar lands," folio 126 (Exhibit No. 4). The Civil Governor asked Mr. Gutierrez if he had read the forms of the contracts which it was desired that his company should execute, and Mr. Gutierrez answered that there were some few things which he desired to discuss:

(a) "The word 'ingenio' or sugar mill is used;" he said. "There are no sugar mills on those estates; therefore this word must be omitted. You will remember that on the 16th, when Governor Taft and the Commissioners held a session, the word 'sugar mill,' 'ingenio,' was inserted and I said that the company had no sugar mills. Then Commissioner Smith again asked if the company had any sugar mills and I answered him, no."

(b) There is another change to be made: "May have," instead of "May have had."

(c) He speaks here of the delivery of certain title deeds; he says that for certain reasons, he cannot deliver them.

(d) New survey of several estates.

(e) The deduction of the 800 hectares from the Calamba estate.

Mr. Del Pan: "Mr. Gutierrez differs as to five points. Two of these are insignificant, and, it seems to us, it is very easy to solve them, but the others are of considerable importance."

The Civil Governor: "Yes, I thought that the first two or three were small, probably mere changes in words." (Folios 127 and 128.)

As regards the other points, a long discussion followed, which can be seen in the pages preceding folio 134; but not a word, however, about the sugar mills.

What Mr. Gutierrez says on September 24, 1904, seems to be justified, inasmuch as on October 8, 1903, according to a letter copied from the letter copybook of the company, at page 143 of the record, it appears that the steam engines which were in Calamba and which belonged to Messrs. Barranquero, Ibarra, Alvarez, and Amatriain had already been sold for eight thousand pesos to Mr. Enrique Rueda, together with two other small ones which were deposited in the casa-hacienda, with their corresponding boilers, in the condition in which they were found, as well as Mr. Ibarra's tramway. In the condition in which they were found, of complete destruction, as has been shown in great detail at the trial of this case by the very witnesses of the Government, Inocencio Hernandez and Maximiliano Villanueva (folios 2 to 12 and 34 to 38). These are proven facts, to refute which no evidence has been offered or even attempted to be offered. Because in order to decide according to justice, it is important to take into consideration that, it being the duty of the plaintiff to prove the allegations in his complaint, no evidence has been offered by him with respect thereto. It has not been proven that the mills were removed between December 1903 and October 1905, and that they were in perfect order and good repair; on the contrary, it appeared from the testimony of its own witnesses, the above-named Inocencio Hernandez and Maximiliano

Villanueva, that they were all destroyed, unfit for use, and that they themselves began to remove them from the places in which they were found, since the month of May, 1903, a long time before the preliminary deed of sale of December of that same year was executed.

All these facts which now appear and were proved at the trial, show clearly what the state of things was when on October 19, 1905, the deed of sale of the Calamba estate was executed. This instrument commences by reciting the title deeds of the estate, copied literally from the registered instrument of May 18, 1898, with the same description which in regard to this matter has been cited above. The representative of the Philippine Sugar Estates Development Company, Limited, sells to the Governor-General of the Philippine Islands the Calamba Estate, the description of which, its extension and boundaries, as they appear in the title deeds of the same property, are as follows: "And the description appearing in the instrument of November 18, 1898, is copied with that part which says * * * and in various places the sugar mills and all the camarines and accessories, called 'Mapagon' which is a hydraulic one; 'Mayapa,' a steam mill, etc." This description is what, notwithstanding the precedent of the negotiations as already explained, has prompted the plaintiff to claim one single thing, and that is not the proper one to be claimed in the action brought. If the mills were plaintiff's because it had acquired them by purchase, plaintiff should have sued for the delivery of the mills, or, in default thereof, that which it now asks, that is to say, their price or value. But it does not ask for the delivery of the property, but only one thing, to be paid fifty thousand pesos (P50,000). As far back as 1898, those mills, with the exception of that called "Real," had already been partially destroyed by the revolutionists, according to the old description which was made of the Calamba estate in the deed of November 18, 1898.

Plaintiff has asked for that price of fifty thousand pesos (P60,000), including therein that of the mill "Real," whereas this mill is intact and is in the place in which it has always been—on certain lands excluded from the sale of the Calamba estate, as so uniformly stated by Chas. N. Walt, Government land agent, the two witnesses of the Government, Hernandez and Villanueva, and Don Francisco Gutierrez. This latter, confirming what was said by the three former witnesses, said that the mill is not a steam mill, but a hydraulic one (Walt says the same), located in the place called "Real," forming part of the parcel of land which the company reserved to itself, and was situated within the property which belongs to the company (folio 51 T. T.). The testimony of Walt, Hernandez, and Villanueva can be seen at pages 102 and 107 of report "A" of Walt.

This part of the description of the old Calamba estate, made in November, 1898, is the main foundation of the complaint. Let us read paragraph 5 of the same:

"In the description of the Calamba estate contained in the deed of sale * * * it is expressly stated that, in various places thereof, there are the hydraulic sugar mills called Mapagon and Calamias and the steam mills known as Mayapa, Siranglupa, Real, and Punta; fear being expressed, however, that they may have been destroyed by the revolutionists; * * *"

A doubt which, having been expressed in November, 1898, became an absolute certainty in October, 1905, on which date it truly appeared that they were destroyed, and surely, it was for this reason and another indicated, that they were not included in the deed of sale executed on this date. It was, furthermore, so clear and convincing that said description was not the substantial act of the execution of the sale, nor the enumeration of the things which were sold, that in the conscientious opinion of the majority, such foundation is not considered at all; the only thing that was taken into consideration was the other foundation alleged in the same paragraph 5 of the complaint, to wit: that there is included in this sale and is hereby ceded and conveyed to the Government of these Islands, all rights and interests which the vendor company has or may legally exercise in the buildings, irrigation works, water rights, improved lands, and all other improvements and accessories which exist in the hacienda sold and conveyed by this instrument.

If an estate is sold with all "the improvements existing on the estate," the sugar mills on said estate shall also be considered sold, not as improvements, but as real property, by reason of the purpose they are intended for or their attachment to the soil. "Real property consists of: Fifth. Machinery, vessels, instruments, or utensils, destined by the owner of the estate to the industry or work he may carry on in a building or estate and which are directly required to satisfy the necessities of the said work." (Civil Code, art. 334.) It would have been enough for plaintiff to prove at the trial that those mills, partially destroyed by the insurgents in 1898, were still on and formed part of the estate in the month of October, 1905, or at least in October, 1903. The reason for this dissenting opinion would then be entirely lacking and the undersigned would have concurred in the foregoing decision. But plaintiff, far from adducing evidence to this effect, has, by the testimony of his own witnesses, proved just the opposite. And, furthermore, it had been established that both parties had assumed that the mills were not included in the sale because there were no mills on the estate in December, 1903, when the preliminary agreement was signed; not in September, 1904, when that conference took place with the Civil Governor and the attorneys for the Government, in which these gentlemen said, when the other contracting party called attention to the fact that the Calamba estate had no sugar mills, that it did not matter and was of no importance, and that the mention of the sugar mills in the wording of the deed of sale of the Calamba Estate could be corrected. But, however it may be, what the undersigned cannot possibly concur in, is in ordering the defendant to pay any amount whatever as indemnity for the nondelivery of the mill "Real," inasmuch as it has been fully shown and proved that it is located on land which is not included in the sale of the Calamba Estate. Such a judgment would be utterly unjust; it would be taking for granted something which did not exist.

In view of these facts, so clearly established, and which, having been proved, perfectly explain the real intention and agreement of the parties, how could it be legal or rational to smother by means of a demurrer the answer in which such facts were set forth as a defense and as the real history of the matter? It is very dangerous to argue with generalities. No one questions that when a piece of real property is sold, the improvements and accessories thereon are also considered sold. No one questions that the machinery attached to or intended for the development of the land is just as much real property as the land itself and forms a whole with it; but as has been very properly said, "However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract." (Civil Code, art. 1283.)

One of the many decisions of the supreme court of Spain on the interpretation of the law in regard to contracts, is that of March 20, 1902, according to which, in order to determine the rights and obligations arising out of written contracts, attention must be paid not only to the strict grammatical meaning of the words used, but to the spirit informing them and the object which the contracting parties desired to attain, the intention prevailing over the words used when such intention may be inferred rationally and logically from the acts executed by the parties. The judgment of November 21, 1908, is also important, since it decides that, when the interpretation of a contract is in issue, that given by the lower court must have preference if the appellant, in attacking said interpretation, does not rely upon a manifest error incurred by such court. The trial court interpreted the contract in the following terms: After the suggestion which the Governor-General made to the Solicitor-General to the effect that he and Mr. Del Pan should hold a conference with Mr. Gutierrez to find out what changes and reforms the latter proposed in order to see if there was any real point of disagreement between them, the conference or interview was again resumed in which neither Governor-General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows without the slightest doubt that the parties, on striking out said words from the document, agreed not to include them in the sale as demanded by the

representative of the vendor, because they were not legally part of the hacienda. As the conclusion to be drawn from the conferences held between the Civil Governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1903, is that they had no intention to include therein the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained. (B. of E., 16 and 17.)

Not a word is to be found in appellant's brief alleging error in this interpretation of the lower court.

The judgment appealed from should be affirmed, with costs.

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