

LEONARDO LUCIDO, PLAINTIFF AND APPELLEE, VS. GELASIO CALUPITAN ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8200. March 17, 1914*

Ponente: TRENT, J.

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In this case it appears that some chattels and real estate belonging to the plaintiff, Lucido, were regularly sold at an execution sale on February 10, 1903, to one Rosales, who the next day transferred a one-half interest in the property to Zolaivar. On March 30, 1903, a public document was executed and signed by all of the above parties and the defendant, Gelasio Calupitan, wherein it was stated that Rosales and Zolaivar, with the consent of Lucido, sold all their rights and obligations pertaining to the property in question to Calupitan for the amount of the purchase price together with 1 per cent per month interest thereon up to the time of redemption, or 1,687 Mexican dollars, plus 33.74 Mexican dollars, the amount of the interest. It will be observed that the computation of the transfer price is in accordance with section 465 of the Code of Civil Procedure. On the same day Lucido and Calupitan executed the following: document:

"I, Gelasio Calupitan y Agarao, married, certify that I have delivered this instrument to Leonardo Lucido y Vidal to witness that his lands, which appear in the instrument I hold from the deputy sheriff and for which he has accepted money from me, I have ceded to him all the irrigated lands until such time as he may repurchase all said lands from me (not only the irrigated ones), as also the Vienna chairs, the five-lamp chandelier, a lamp stand, two wall tables, and a marble table; no coconut tree on said irrigated land is included. Apart from this, our real agreement is to permit three (3) whole years to elapse, reckoned from the date of this instrument, which has been drawn up in duplicate, before he may redeem or repurchase them from me."

The lower court held that this document constituted a sale with the right to conventional redemption set forth in articles 1507 et seq. of the Civil Code. The present action not having been instituted until February 17, 1910, the further question arose as to whether the redemption period had expired, which the lower court decided in the negative. The lower court further found as a fact that Lucido had prior to the institution of the action offered the redemption price to the defendant, who refused it, and that this offer was a sufficient compliance with article 1518 of the Civil Code. The decision of the lower court was that the property in question should be returned to the plaintiff. From this judgment the defendant appealed, and all three of the above rulings of the court are assigned as errors.

1. Considerable doubt might arise as to the correctness of the ruling of the lower court upon the first question, if the document executed by the execution purchasers and the parties to this action stood alone. In that document it appears that Calupitan acquired the rights and obligations of the execution purchasers pertaining to the property in question. These rights and obligations are denned in the Code of Civil Procedure to be the ownership of the property sold, subject only to the right of redemption on the part of the judgment debtor or a redemptioner, within one year from the date of the sale. (Sees. 463-465, Code Civ. Proc.) Were this the nature of the transaction between the parties, however, the intervention of Lucido in the transfer would be wholly unnecessary. Hence, the

fact that he intervened as an interested party is at least some indication that the parties intended something more or different by the document in question than a simple assignment of the rights and obligations of the execution purchasers to a third person.

Any doubt, however, as to the character of this transaction is removed by the agreement entered into between Lucido and Calupitan on the same day. In this document it is distinctly stipulated that the right to redeem the property is preserved to Lucido, to be exercised after the expiration of three years. The right to repurchase must necessarily imply a former ownership of the property.

Further indication that Calupitan himself considered this transaction as a sale with the right to conventional redemption is to be found in his original answer to the complaint. This original answer was introduced in evidence by the plaintiff over the objection of the defendant. Its admission was proper, especially in view of the fact that it was signed by Calupitan himself, who was at the time acting as his own attorney.

Jones on Evidence (secs. 272, 273), after remarking that the earlier cases were not in harmony on the point, says:

"Many of the cases holding that pleadings were inadmissible admissions were based on the theory that most of the allegations were merely pleader's matter—fiction statedly counsel and sanctioned by the courts; The whole modern tendency is to reject this view and to treat pleadings as statements of the real issues in the cause and hence as admissions of the parties, having weight according to the circumstances of each case. But some of the authorities still hold that if the pleading is not signed by the party there should be some proof that he has authorized it.

"On the same principle where amended pleadings have been filed, allegations in the original pleadings are held admissible, but in such case the original pleadings can have no effect, unless formally offered in evidence."

In this original answer it was expressly stated that the transaction was one of sale with the right to repurchase governed by the provisions of articles 1507 et seq. of the Civil Code.

It further appears from the uncontradicted testimony of the plaintiff that he furnished \$120 Mexican of the amount necessary to redeem the property from the execution purchasers. It therefore appears beyond dispute that the redemption of the property from the execution purchasers was made by the plaintiff himself by means of a loan furnished by the defendant Calupitan, who took possession of the major portion of the land as his security for its redemption. The ruling of the lower court that the transaction between Lucido and Calupitan was one of purchase and sale with the right to redeem was therefore correct.

2. By the terms of his agreement with Calupitan the plaintiff could not exercise his right to redeem the property within three years from March 30, 1903; and the lower court arrived at the date upon which the right to redeem expired by computing four years from March 30, 1906, on the ground that there was no express agreement as to how long the right to repurchase, once available, should continue. Counsel for the appellant admits in his brief that the complaint was filed forty-three days before the expiration of this period. In accordance with our decision in *Rosales vs. Reyes and Ordoveza* (25 Phil. Rep., 495), we hold that this ruling of the court was correct.

3. The court Held that the plaintiff had actually tendered the redemption price to the defendant Calupitan. After an examination of the evidence of record as to this finding of fact, we concur therein. We discussed the legal sufficiency of such a tender in the above-cited case of *Rosales vs. Reyes and Ordoveza*, and held that it was sufficient. This assignment of error must therefore be held to be unfounded.

4. The defendants Oreta and Bueno have no interest in the subject matter of this action. It appears that the defendant Dorado purchased the land from his codefendant Calupitan subsequent to the tender of the redemption price to the latter by the plaintiff. It does not appear that the property was ever registered by any one, nor was the

document of sale with the right to repurchase registered by either Calupitan or Lucido. No evidence of the purchase of the land from Calupitan by Dorado is of record with the exception of the oral testimony although it may be taken as established that such a sale actually took place, since all the parties interested agree on this point. Dorado himself testified that he purchased the property with the knowledge that Calupitan had purchased the property from Lucido subject to the right of redemption, and insists that he purchased with the knowledge and consent of Lucido. Lucido denies that he was aware of the sale to Dorado until after it had taken place. Upon this state of facts, it is clear that the following provisions of article 1510 of the Civil Code are applicable:

"The vendor may bring his action against every possessor whose right arises from that of the vendee, even though in the second contract no mention should have been made of the conventional redemption; without prejudice to the provisions of the Mortgage Law with regard to third persons."

The provisions of the Mortgage Law with regard to third persons are clearly not applicable to Dorado. (Manresa, vol. 10, p. 317.)

5. The lower court ordered the redelivery of the land to the plaintiff upon his payment to Calupitan of P1,600, plus the costs entailed in the execution of the document of repurchase. The amount paid to the purchasers at the execution sale for the redemption of the property was \$1,720.74 Mexican. Of this amount the plaintiff furnished \$120 Mexican, and Calupitan the balance of \$1,600.74 Mexican. No amount is fixed in the document of purchase and sale above set forth, but the amount borrowed from Calupitan to redeem the land from the execution sale being thus clearly established no objection can be or is made to the plaintiff's paying this amount. In ordering the payment of this amount to the defendant the lower court failed to reduce it to Philippine currency. On this appeal plaintiff alleges that this amount in Mexican currency exceeds the amount he actually owes to the defendant by about P100, but that rather than spend the time and incur the expense attendant to a new trial for the purpose of determining the equivalent of this amount in Philippine currency he is agreeable to pay the defendant P1,600.74 Philippine currency, as the redemption price of the property. In view of this offer and in case it is accepted by the defendant it will be unnecessary to go through the formality of a new trial for the purpose of ascertaining the amount of the redemption price in Philippine currency. In view of the fact that it is claimed that Calupitan has sold the land in question to his codefendant, Macario Dorado, and it not clearly appearing to whom the plaintiff should pay the P1,600.74, we think this amount should be turned over to the clerk of the Court of First Instance of the Province of Laguna to be held by him until it is determined in the proper manner who is the owner of this amount, Calupitan or Dorado.

For the foregoing reasons, judgment will be entered directing the defendants Calupitan and Dorado to deliver the possession of the land in question to the plaintiff upon the plaintiff's depositing with the clerk of the court the sum of P1,600.74, to be disposed of in the manner above set forth. In all other respects the judgment appealed from is affirmed with costs against the appellants Calupitan and Dorado.

Arellano, C. J., Carson and Araullo, JJ., concur.

DISSENTING

MORELAND, J.

I am extremely sorry to be obliged to dissent from the opinion of my brethren. Were it not for the fact that I regard the decision in this case so fundamental in character, and its effects on the law relative to sales with the right of repurchase so far-reaching, I would be silent. I cannot permit to pass unchallenged a doctrine which, in my judgment, if followed in the future, as it is to be presumed it will be, renders entirely ineffective the main

provisions of the statute law governing a given subject. This decision, taken together with that of *Rosales vs. Reyes and Ordoveza* (25 Phil. Rep., 495), I regard as an abrogation, a repeal, of article 1508, of the Civil Code, together with these articles which depend upon it I dissented in the case of *Rosales vs. Reyes and Ordoveza*. Only one phase of the question was really raised, presented, or argued in that case. A further study of the questions involved both in that case and the one at bar has brought the strong conviction that the decisions in these cases are not only wrong in a fundamental sense but result in a destruction of the provisions of the Civil Code governing the contract known as a sale with the right of repurchase. The question raised and argued in this case covers the whole field, whereas in *Rosales vs. Reyes and Ordoveza* only one phase was touched by the briefs of the parties. I feel that the decision in *Rosales vs. Reyes and Ordoveza* should be reexamined in view of the fact that the real questions involved were not presented or argued and, therefore, not considered in the opinion in that case.

THE FACTS.

The plaintiff, by a written instrument, sold to the defendant certain lands, expressly reserving to himself the right to repurchase the same at a given price, but without fixing in the instrument the period within which the repurchase must be made. The conveyance contained a provision that the repurchase could not be made "until after three years from this date." This document bears date March 30, 1903. The contract became effective and went into operation on its date; the vendor receiving his money and the purchaser his title and other rights created by the contract on that date.

This action was commenced February 17, 1910, nearly seven years after the date of the contract, to compel the defendant to accept the sum specified in the conveyance as the repurchase price and to deliver to the plaintiff the premises described therein.

These facts are admitted.

THE LAW APPLICABLE TO THE CASE.

As the facts are admitted so, also, is the law governing the case. It is admitted by all that the first paragraph of article 150S of the Civil Code must rule in the decision of this case. I quote that article as well as those preceding and succeeding, to which it refers or which are material:

"Art. 1506. The sale shall be rescinded for the same causes as all other obligations, and furthermore for those mentioned in the preceding chapters and by conventional or legal redemption.

"Art. 1507. Conventional redemption shall exist when the vendor reserves to himself the right to recover the thing sold, binding himself to fulfill that which is stated in article 1518, and whatever more may have been stipulated.

"Art. 1508. The right stated in the preceding article, in default of an express stipulation, shall last four years to be counted from the date of the contract.

"When a stipulation exists, the term shall not exceed ten years.

"Art. 1509. When the vendor does not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold.

"Art. 1518. A vendor can not exercise the right of redemption without returning to the vendee the price of the sale, and furthermore:

"1. The expenses of the contract and any other legitimate payment made on account of the sale.

"2. The useful and necessary expenses incurred by the thing sold."

The court expressly holds that the period of limitation is four years and not ten, "on the ground that there was no express agreement as to how long the right to repurchase * * * should continue." (See opinion.)

The complaint I make against the decision is that, while it expressly holds that article 1508 is applicable, it does not apply it, and bases the refusal to apply on a principle which destroys the article altogether. It declares that the four year limitation applies, but, instead of counting it "from the date of the contract" as expressly required by the article referred to, begins to count it three years from the date of the contract, thus holding the life of the redemption period to be seven years instead of four.

I regard the findings and conclusions of the court not only fundamentally erroneous but preeminently destructive in their results. This is so evident to me that I enter upon the further exposition of the case with the embarrassment which one always feels when he attempts to demonstrate a proposition which he regards as self-evident. The mere statement of a correct proposition is its own greatest support and the bare statement of a proposition inherently bad is its most perfect refutation. The bald statement that a party is entitled to seven years in which to redeem when the code expressly says he shall have but four is about all that need be said to demonstrate the unsoundness of the statement. But in order that all the questions involved in the case as well as the results of the doctrine laid down may be fully developed, I proceed.

I shall first inquire what the purpose of article 1508 is. After finishing that inquiry I shall proceed to determine how the article affects the contracts with which it deals.

AS TO THE PURPOSE.

Concerning this there can be no question. That is already very largely settled. We held in the case of Yadao vs. Yadao (20 Phil. Rep., 260):

"A pacto de retro is, in a certain aspect, the suspension of the title to the land involved. We are of the opinion that it was the intention of the legislature to limit the continuance of such a condition, with the purpose that the title to the real estate in question should be definitely placed, it being, in the opinion of the legislature, against public policy to permit such an uncertain condition relative to the title to real estate to continue for more than ten years."

Manresa, commenting on the article under consideration (vol. 10, p. 302), says in this connection:

"Above all we should note that the question of the period within which the repurchase may be made is unanimously considered as a question of public interest. Portalis has already observed that it is not a good thing that the title to property should be left for any long period of time subject to indefinite conditions of this nature. For this reason, the intention of the code is restrictive and limitative, and in our opinion all doubts should be resolved having this intention in mind, as such intention is, without doubt, in better accord with the spirit of the law."

Scaevola (vol. 23, p, 759) refers to the period of redemption created by article 1508 as the "period within which the party must repurchase so as not to leave longer in an uncertain condition the -title to the premises." He also says:

"Yet, with a keen desire for the public good, for the better interests of society and for the greater order and development of property, every solicitous legislator can not but perceive the danger that would lurk in redemption by leaving to the unrestricted will of the contracting parties a remedy which might in the course of time become the means of maintaining the ownership of things in a pernicious incertitude, perhaps indefinitely, and might possibly seriously affect the orderly conveyance of property.

"The illustrious Jovellanos said in his superb report on the Agrarian Law, that the appreciation of property is

always the measure of its care . * * *; hence it is that the laws which protect its exclusive utilization strengthen, while those that threaten this, lessen and weaken the affection for it; the former stimulate individual interest and the latter discourage it; the first are favorable, the second unjust and disastrous, to the development of agriculture." (Scaevola, Civil Code, vol. 28, p. 749.)

"A long term for redemption renders the tenure of property uncertain and redounds to its detriment, for neither does the precarious holder cultivate the ground with the same interest as the owner, nor does he properly attend to the preservation of the building, and owing to the fact that his enjoyment of the property is temporary, he endeavors above all to derive the greatest benefit therefrom, economizing to that end even the most essential expenses." (Scaevola, Civil Code, vol. 23, p. 767.)

Moreover, there can be no doubt that one of the aims of those who framed the law relative to the retroventa was to protect, as far as possible, the borrower from the machinations of usurers. The purpose in limiting the duration of a sale of this nature was not only to preserve the stability and certainty of ownership but, also to prevent the usurer from fixing his own time for the repayment of the purchase price. While it may be true that a short term is the joy of the money-lender, as contended by some, that is so only in a limited sense and in an especially limited sense when related to a sale with right of repurchase. The purchaser having the absolute right of possession up to the moment of repurchase, very serious results would follow not only to the vendor but to society as well if he were permitted to fix, without limitation, the date when the repurchase could be made.

Having seen what the purpose of the Civil Code was in fixing periods beyond which the right to repurchase cannot extend, whether the parties agree upon the time or not, I next proceed to ascertain how the law impresses itself upon the contract of the parties.

Let us make the law personal and permit it to speak for itself. It says to persons entering into a contract of sale with the right to repurchase: "You yourselves may fix the time within which the repurchase may be made; but while you may fix that period and write it in your contract, I, the law, will myself become a third party to the contract and write therein a provision which neither of you can evade or escape, which is that the period cannot exceed ten years and that the ten years shall be counted from the date of the contract. You may also, if you wish, refrain from fixing in your contract a period within which the repurchase must be made; but do not think that, by refusing or failing to fix the period, you may thereby let the contract run as it pleases you and permit the period to drag along indefinitely. If you do not fix the period, I, the law, will myself become a third party to that contract and will write therein a provision which neither of you can, by any sort of legerdemain, evade or escape, which is that the repurchase must be made within four years, and that the said four years shall be counted from the date of the contract."

This is what the law says, in effect, to the parties to the contract which I am discussing. Into every contract of sale with right of repurchase the law itself writes a term. The parties themselves are not free to contract as they will. They may make only a part of the contract. The law makes the remainder. The parties may contract as they will in relation to those matters within their powers and may create, destroy, alter and suspend rights and obligations as they please; but may they do the same with regard to the terms which the law writes into their contract or the rights and obligations which it creates? It would seem not; and yet the decision of the court in this case permits precisely that. The decision lays down the proposition and applies it to the case under discussion that, while the contract between the parties is in full force and effect from its date, the vendor having received the purchase price and the purchaser his title and his possession or income on and from that date, nevertheless, the parties may, at will, suspend the force and operation of the term which the law wrote into the contract. In other words, although a contract is in full force and effect and in complete operation, the parties may suspend the law applicable thereto. The contention that, although a contract may be perfected and in operation, the parties enjoying their respective rights thereunder, they may permit the application to such contract of only such law or laws as pleases them and

when it pleases them needs only to be stated to provoke its immediate rejection. Yet this is in effect what the parties to the contract before us have done. They have made a contract to which the four-year limitation is concededly (the court so finds expressly) applicable. The contract goes into instant operation, the parties exercising their respective rights and assuming their respective obligation's there-under. In spite, however, of all this, they are permitted to suspend for three years the law applicable to the contract and to say that it shall not apply for that period; that is, they are allowed to say, with full effect, that the four years shall not begin to run from the date of the contract, as provided by law, but from some other date which they themselves fix.

In order to arrive at this, to me, extraordinary result, the date of a contract of sale with right of repurchase is held, in effect, without significance in applying article 1508 of the Civil Code to such contract. This holding is very serious in its results for, next to the period itself, the most important factor in such a contract is, for the purpose before us, the date thereof. This is too evident to require words when we note that article 1508, as we have so often seen, expressly requires that the four-year period shall be "counted from the date of the contract." Nevertheless, no importance seems to have been attached to the date of the contract in the application of said article. Is the date of the contract mentioned or even remotely referred to in the decision in this case? Yes, the date is expressly found; but not for the purpose of fixing the time from which the four years mentioned in the law should be counted; but, rather, for the purpose of fixing the time from which it should not be counted. Is the date of the contract the subject of consideration in the case of *Rosales vs. Reyes and Ordoveza*, referred to in the decision of this case? Yes; it was expressly found therein; but, as I understand it, no consideration was given to that date with the object of fixing the precise time from which the four years should run. On the contrary, whatever attention was given to the date, was given for the purpose, and the sole purpose, of fixing the point from which the three years' suspension of the right to repurchase should be counted. Nowhere, in either case, has the court, so far as I can see, given the slightest consideration to the date of the contract as an element in applying article 1508. This seems clearly so, for, after finding and fixing the dates of the contracts in both cases, as the court expressly did in *Rosales vs. Reyes and Ordoveza* and expressly and specifically does in the case at bar, the court refuses to count the four years from that date, as article 1508 absolutely requires, but, instead, counts the four years from a point placed three years after the date of the contract. It would seem that where the law requires a thing to be done within four years from a date, the whole problem is solved when the date is found and fixed. Absolutely nothing remains but plain addition. No question arises, and none has been even hinted at by the parties of the court, as to the suspension, or the setting forward, of the date of the contract three years, or any other time. The court has found the date and set it out and fixed it in this case as in the other. It has expressly found in this case over and over again that the date of the contract is that which it bears, namely, March 30, 1903, and not March 30, 1906. The decision says: "On March 30, 1903, a public document was executed," referring to the contract before us. The decision quotes the contract, which contains these words: "The lands cannot be redeemed until after three years from this date." "This date" is March 30, 1903. The court again expressly refers to the date of the contract in the paragraph of the decision numbered two. There is absolutely no question therefore, of suspending or setting forward the date of the contract three years, as the court has found that the parties did not do it or attempt to do it but, instead, fixed the date which it bears as the date of the contract. Why, then, is the four years not counted from that date instead of March 30, 1906? I find it impossible to explain this satisfactorily to myself. The court itself seems to give no explanation either in this case or in *Rosales vs. Reyes and Ordoveza*. The only thing we find in this connection is in the latter case where the court says: "In all such cases it would seem that the vendor should be allowed four years from the expiration of the time within which the right to redeem could not be exercised * * *." This is not an explanation of the action of the court, as I understand it. It refers to no law, cites no article of the Civil Code, but simply states that this is what "should be allowed." The point, it seems to me, is what does the law say? Does article 1508 provide that the four years shall be counted "from the expiration of the time within which the right to redeem could not be exercised?" Or does it say that the

four years "shall be counted from the date of the contract?" Whence comes the authority to count the four years "from the expiration of the time within which the right to redeem could not be exercised," as something that "should be allowed?" Does article 1508 convey any such authority? If so, where? Is there anything which "should be allowed" except what the law allows? It seems to have the same fundamental misapprehension as appears in the question propounded in the same decision: "In such case the question arises, Upon what basis must the duration of the right to repurchase be calculated?" What other basis can there be to calculate the "duration of the right to repurchase" except the basis fixed by the law? Why look a field for a "basis" when the law puts it under the very nose? The law says it is "the date of the contract," as plainly as words can speak. The "time within which the right to redeem could not be exercised" has, as I view it, nothing to do with the application of the four-year period under article 1508. It does not recognize any time or period during which the redemption can not be made; but the precise contrary; it recognizes only a period in which it can be made. I cannot see how one can be substituted for the other when they are exact opposites. If the four years must be counted from the date of the contract, and the parties to the contract have fixed the date, and the court by solemn declaration has also fixed the date, how, can it be conceived that the four years can be counted from a different date?

What I regard as the fallacy of the reasoning employed is demonstrated by the following syllogism, both premises of which are actual findings of the court, and the conclusion precisely its conclusion;

First premise: Article 1508 provides that the four years shall be "counted from the date of the contract."

Second premise: The "date of the contract" is March 30, 1903.

The conclusion: Therefore, the four years must be counted from March 30, 1906.

As I have said before, no explanation is given for this. The mere declaration that the four years shall be counted "from the expiration of the time within which the right to redeem could not be exercised" is, it seems to me, no explanation. It merely accentuates the irremediable quality of the syllogism.

From these remarks it is clear, to my mind, that in this decision the court holds that the date of the contract is without significance in applying article 1508 to a sale with a right to repurchase. Although in both of the cases under discussion, the one at bar and *Rosales vs. Reyes and Ordoveza*, the court found and fixed the date of the contract, it apparently held that date to be of no importance in connection with the express wording of article 1508, disregarded it, and proceeded to count the four years from a different date.

Nor can it be urged in palliation or explanation of the apparent failure to apply the law, after having expressly found all the grounds necessary for its application, that it must be presumed that it was intended to hold that the date of the contract was fixed by the parties, impliedly at least, as of the time when the three-year suspension terminated; and that, the true date of the contract being March 30, 1906, instead of 1903, the four years should be counted from that date. Such a suggestion cannot be accepted. The date of a contract is fixed by law in certain cases and for certain purposes and the parties cannot alter or change it. *Manresa* (vol. 10, p. 303) says that "the phrase 'date of the contract' must not always be taken literally. The date of the contract is the date from which that contract begins to produce its natural effects." That is, "the date which fixes the moment of the consummation of the purchase, the moment when the vendor is divested of his rights and receives the price that was in such event stipulated." *Scaevola* (vol.23, pp. 769, 770) says:

"(A) Computation of the periods.—In the solution of problems of computation, the essential datum is the starting point, and this the code furnishes us with unsurpassable clearness. The right to recover the thing sold, with the resultant obligations to restore and indemnify, lasts four years, or the time agreed upon, provided it does not exceed ten years, counted from the date of the contract. This definiteness with which the legislator has fixed the

commencement of the period implicitly carries in itself the determination of a point discussed by jurists but which is no longer of moment. May the condition of repurchase be stipulated through a consideration distinct from that of purchase and sale? We find the answer in article 1508: If, in computing the time, its commencement must necessarily run from the date of the contract, and it is understood that that of sale is alluded to, then the covenant of repurchase must be consubstantial with the contract, implying a condition of the same, and both the conveyance and the condition subsequent are governed by one single consent. The subsequent agreement might be a new contract equivalent to a promise of sale, but it produces a personal, not a real, action; it does, not convert the original indefeasible contract into one revocable by its nature. Legal redemption is connascent with the contract of purchase and sale; they both came into juridical life in the same birth."

While, as Manresa says, the contract may not be of the precise date which the instrument actually bears, the real date can not be later than the time when the contract actually takes effect, that is, the time when the parties obtain their rights and assume their obligations under it. Parties who, on a particular day, accepted the mutual benefits and assumed the mutual obligations of a contract between them, in other words, put the contract into operation, cannot be heard to say that that date was not the real date of the contract and that the true date was three years thence. This is especially so in respect of contracts which, from the nature of the subject matter and form of the covenants, take on a public aspect and as to which laws have been specially passed for the protection of the public interests.

Therefore, the purpose of article 1508 being, as we have already shown, to prevent the contract dealt with therein from unsettling the title to the real estate which is the subject matter thereof for periods beyond those provided for in that section, no person will be permitted, on any sort of pretense, to produce the result by said section sought to be avoided; and especially not by a method so wholly without foundation or merits as that of claiming that the true date of a contract is not that on which the contract goes into full operation but such date as the parties may be pleased to fix. When contracts operate, the law applicable to them operates. The proposition that persons may make and enjoy the benefits of contracts and still prevent the law from operating upon them is one that would, if adhered to, result disastrously. Notwithstanding, I fear that the result of the decision in this case is to lay down precisely this proposition. The court says that, while the contract took effect and went into full operation on the 30th of March, 1903, article 1508 of the Civil Code did not begin to operate upon it till the 30th of March, 1906; and why? Simply because, the court seems to say, the parties agreed to suspend the law until that time. This would seem to be erroneous when confronted with the proposition that the law held to be suspended was one in the interests of the public as well as the parties. May parties to contracts suspend laws of this nature?

Moreover, the contention that the parties suspended the contract, or its date, fails, in my judgment, to perceive the distinction between the suspension of the operation of a contract and the suspension of the law which governs the contract. As I have already noted, parties to contracts, after they are executed, may suspend their operation until such time as they please. In such case they take no present benefits and incur no present obligations under the contract. No present rights or interests are transmitted. It is executed and laid away and nothing is done under it till the

date to which its operation was suspended. This is a suspension of the operation of the contract, of the date, if you please. Such a procedure is recognized as legal. But nothing of this was done in the case before us. The contract took effect at once. It is the law applicable thereto which was suspended.

As I have already intimated, the doctrine that the parties may, at will, suspend the operation of the statute and thereby destroy the force and effect of the four-year limitation, is fatal to the efficacy of the law governing sales with right to repurchase. In effect, it repeals it. It is clear that, if the parties may suspend the law for three years, they may suspend it for ten years, or twenty years, or fifty years, or for any period that pleases them. This, of

course, makes the law a farce and destroys its value completely.

It appears that the court in the decisions under discussion foresaw, to some extent at least, the fatal results which would follow such a doctrine and apparently sought to avoid, in part, the evil results thereof. To accomplish this it brought into requisition the ten-year limitation found in the same article of the code, and declared that, although the four-year period was applicable to the contract at its origin, the ten-year period also was applicable thereto; so that, although persons may suspend the operation of the four-year limitation, they may not do so to such an extent that the period of suspension added to the four years will exceed ten years. The germ of this strange theory is found in this expression of the court:

"In such a case the question arises: Upon what basis must the duration of the right to repurchase be calculated? Any such contract must necessarily be terminated ten years from the date of its execution, but should the vendor have the privilege to exercise this right for the balance of the ten years, or should he be allowed only four years on the ground that there was no express agreement of the parties upon this point? In all such cases it would seem that the vendor should be allowed four years from the expiration of the time within which the right to redeem could not be exercised, or in the event that four years would extend the life of the contract beyond ten years, the balance of the ten year period, on the ground that vendors, where the right to redeem is not thus suspended and no express agreement as to the length of time during which it may be exercised is made, are also allowed four years."

The error into which the court appears to me to have fallen in making this suggestion is plain. It is held by virtue of this suggestion, that the four-year period and the ten year period apply to the same contract. This appears to me to be an impossibility on its face, impossible by virtue of language itself. When it made the suggestion referred to the court was engaged in interpreting a contract which, by its express holding, was such a contract in form and nature that the four-year period and not the ten-year period applied to it. That the four-year period was applicable the court expressly holds. This holding was arrived at by selecting between the four and the ten-year periods. The very first thing the court had to do in interpreting the contract was to determine which period was applicable, the four or the ten. It held that the four-year period was applicable. That necessarily held that ten-year period was not. Where it is necessary to make a choice between two periods of limitation, the selection of the one is necessarily the rejection of the other. Therefore, when the court made the suggestion that the ten-year period was also applicable, it had already held that it was not. This, in itself, it seems to me, is a complete refutation of the suggestion; or, perhaps better said, the suggestion is in complete contradiction of the previous action of the court when it held that the four and not the ten-year period was applicable.

If anything further were needed to show the fallacy of the proposition involved in this suggestion that both periods are applicable to the same contract, the question might be put: What is the reason that the court decided that the four year period was applicable instead of the ten-year period?

The answer to that question completely destroys the theory now under discussion and shows how impossible it is to sustain it. Whether the four-year period or the ten-year period applies to a given contract depends upon the nature of that contract. The four-year period applies to a contract, not by virtue of the time which it is to run, but by virtue of the nature thereof. The test as to whether the four-year period applies is: Did the parties expressly stipulate in their contract a period within which the repurchase might be made? If they did not, the four-year period is applicable. That is the decisive feature which determines whether the four-year or the ten-year period is applicable. If the parties did expressly stipulate the time within which the repurchase might be made, then the ten-year period applies. It is thus clear that the conditions which determine in favor of the application of the four-year period are precisely the opposite of those which determine in favor of the ten-year period. In other words, if the conditions are such that the four-year period is applicable, then they are such as to render it impossible that the ten-year period be applicable; and we behold a condition in which it is utterly impossible,

legally or logically, that both periods of limitation be applicable to the same contract. In spite of this, however, it is contended by the decision that, although it is conceded that the parties did not expressly stipulate the time within which the repurchase might be made and that, therefore, the four-year period was applicable, nevertheless, the ten-year period was also applicable. This is impossible in the face of the fact that the court at the threshold of the inquiry expressly held that the ten-year limitation had no application; and the reasons given why the ten-year period had no application were the very reasons why the four-year limitation did apply. The only reason given, so far as I can gather, for applying both periods to the same contract is to prevent the first error, namely, permitting the parties to suspend the operation of the four-year limitation, from destroying the efficacy of the law altogether. For, if the parties may suspend the operation of the law at will, then not only is the four-year restriction rendered worthless but the ten-year limitation also. To avoid this result, the decision committed the other error of applying both limitations to the same sale. But the error committed in saying that 2 and 2 make 5 cannot be corrected by holding thereafter that 2 and 3 make 4.

Besides the error of applying to the same contract two periods of limitation which depend upon precisely opposite conditions, the court, in my humble opinion, has also committed the further error of confounding the nature of the two limitations. The four-year limitation is really a limitation. Where the parties say nothing about the time for redemption, then the law imposes a limitation as to the time. On the other hand, the provision which contains the ten-year limitation does not create a limitation on the contract, as does the first. It simply places a limitation upon the power of the parties as to their stipulations. It provides that they may not contract for a longer period of redemption than ten years. It is not, therefore, a statute of limitations, nor does it have the significance, force or effect thereof. The ten-year limitation prohibits an act. The four-year period limits the life of the contract. The ten-year limitation applies to the acts of the parties. The four-year limitation applies to the contract after it is executed. The one is a limitation. The other is a prohibition. This distinction is not made in the decision; and, taken together with the fact that the two periods of limitation depend for their existence and limitation upon exactly opposite conditions, we see clearly the error committed in applying both limitations to the same contract. The statute had in mind the covering of two radically different conditions, one with a limitation and the other with a prohibition. The court, by its decision, destroyed the limitation and made the prohibition cover both conditions.

That the decision has destroyed one limitation and made the other applicable to both conditions specified in the code is clear, for, if the parties may suspend the operation of the four-year period for six years and then, in accordance with the holding of the court, may add the four-year period to that, they have taken advantage of a ten-year period without fulfilling the conditions which the law requires before they have a right to do so. It has already been held by this court that the limitations specified in article 1508 cannot be enlarged, as they refer to matters of public concern; and any method which extends these limitations, or either of them, beyond the periods named in the law trenches on the public welfare and destroys to that extent the value of the provisions designed to preserve and protect it. Therefore, it is a matter of public concern that the parties who refused to put in their contract the period during which they desired the right of repurchase to continue, should be restricted in such right to the period which the law names, namely, four years; whereas, if the parties are willing to state the period during which the right of repurchase shall run, the law gives them the right to stipulate a more generous period, namely, ten years. In other words, the law, if we may so speak, places a premium upon the open and clear expression of the time by giving the parties a ten-year privilege as against the grant of only four years where the parties refuse to be clear and definite. It is the policy of the law to destroy uncertainties in contracts of this character, and where the uncertainty is the greatest the law restricts the period most. Where the uncertainty is least, the law restricts the period less. The decision puts parties who do not expressly stipulate the period of redemption in exactly the same position as those who do stipulate, and gives them exactly the same privileges. In other words, under the holding of the court, the parties, although they have not expressly stipulated the term of redemption in their contract, may,

nevertheless, by the legerdemain of suspending the operation of the statutory period for repurchase, obtain exactly the same period for their contract as the parties to another contract who have expressly stipulated the period. This wipes out the division or classification made in the law, destroys the difference between the parties who act openly and those who do not, and gives the same privileges to both.

There is another and fundamental reason why the decision of the court is erroneous; and that is that the suspension of the application of the four-year limitation destroys the essential element and changes the distinctive character of the sale with a right to repurchase, as it is known to the Spanish law, and converts the contract into one of mere loan on security. One of the essential requisites of the contract of sale with pacto de retro is the right of the vendor to repurchase when he will. The code itself speaks in no other way of the period of repurchase than to declare that the repurchase may be made within the period specified. It is not like a promissory note or mortgage, under which the indebtedness therein mentioned or secured must be paid on the date named. The contract under discussion provides always, and no other description of it is given by any statute or other, that the repurchase may be made within a given time. This means, of course, that the time when the repurchase is made is left to the will of the vendor. He can repurchase on any one of the days which constitute the period agreed upon or fixed by the statute.

This theory corresponds perfectly with the history of the contract. It originated, so far as its Spanish history is concerned, in the Province of Catalonia and was devised to assist landholders in cultivating their land. A landholder, not having sufficient funds with which to properly cultivate his various parcels, would obtain a loan, selling, as security for the loan, one of the parcels, reserving the right to repurchase the same. The time within which the borrower could make the repurchase was generally not known. It depended either upon the time when he could sell the crop which he, perhaps at the time, had in the warehouse, or upon the time when he could harvest and market the crops for the cultivation and harvesting of which the money was borrowed. This being so, the precise time for repurchase could not, as a general rule, be fixed. The borrower could not say that he would repay it six months, or nine months, or a year from date, or at any other specific time. It depended on when the crop was ripened and ready for harvest and when it could be marketed thereafter. These things were, in turn, dependent upon so many uncertainties that it became the custom to leave the time during which the repurchase could be made entirely to the will of the vendor. So thoroughly was this understood that the contract in Catalonia was called a *venta a carta de gracias*. This special and distinctive feature was carried into the Civil Code and, as we have seen, it is provided that the right to repurchase shall continue (*durara*) for four years, during any one of the days constituting which the repurchase can be made. Every author who treats the subject uses, with reference to the period of redemption, the word "*dentro*," within, indicating that the right may be exercised at any time within the period named. The fact is that the right to repurchase at any moment is such an essential part of a sale with a right to repurchase that its existence is taken for granted by all the authors dealing with the subject. I have found none who directly discuss the question; but all of them go upon assumptions which sustain the proposition I am presenting.

If my contention be sustainable, then the purchaser, if he intends to create a sale with right of repurchase, has no right to, prohibit the vendor from repurchasing. Such a prohibition takes from the vendor a privilege which the law confers upon him and makes use of it for the enrichment of the purchaser. It is generally stated by Spanish authors dealing with this subject that the purchaser cannot, by stipulation in the contract, compel the vendor to repurchase; and that if such a stipulation is placed in the contract, it changes its essential nature and transforms it into a mere contract of loan on security, something in the nature of a pledge of real estate. Scaevola (vol. 23, p. 764) says:

"If the stipulation were such as to oblige the vendor to avail himself of his right of repurchase, the juridical institution or organism thus created would be a different thing from a sale with a right of repurchase, the nature of which does not allow that a covenant introduced for the benefit of the vendor may be converted into an

instrument against him of which the purchaser may make exclusive use."

If this is true, and I regard the proposition stated by Scaevola as universally accepted, then why should not the same result follow where the purchaser prohibits the vendor from repurchasing for a given time? Certainly the prohibition against the repurchase is far more injurious to the vendor and beneficial to the purchaser than the requirement that he must repurchase. The obligation to repurchase is not necessarily a severe one, whereas the prohibition against repurchase for six years, for example, may be a very severe blow to the vendor's interests. Not only that, but it enables the lender to obtain by means of this contract, which the law designed primarily for the benefit of the vendor, not only all of the privileges which inure to him by virtue thereof, but also the additional advantage which inheres in a mortgage, or, a long period during which he may draw interest or have complete possession and control of the property purchased.

In this connection it must not be forgotten that, on the execution of a sale with a right of repurchase, the purchaser has the right of immediate possession. Now, if he be permitted, by a stipulation in the contract, to prohibit the vendor from repurchasing for six years, then he not only obtains, the title to the property itself as security for repayment, but he also deprives the vendor of the possession of his property for an extremely long period. This is one of the precise things that the Civil Code sought to prevent. As a necessary consequence, the decision of the court, that a sale with

a right of repurchase is permissible which prohibits the vendor from repurchasing for six years, appears to me to be in direct violation of the spirit which animated the code, and results in delivering the borrower into the power of the lender, from whose hands it was the intention and purpose of the Civil Code to rescue him. It is no reply to my argument to urge that the code permits the parties to stipulate a ten-year period, for, under such stipulation, the vendor may repurchase at any time he pleases during the ten years.

The decision says: "But if it were held that, regardless of such a provision, the redemption right expires within four years from the date of the contract unless there is a special provision as to how long this right, once effective, shall continue, many other perfectly valid contracts can be conceived in which the redemption privilege would be unenforceable. For instance, if the stipulation in question had provided that the right to redeem should not be exercised within five years from the date of the contract, it is quite apparent that, according to the argument adduced by the defendants, the vendor could not have redeemed the property at all, for the right to do so would have expired one year previously."

This portion of the decision merely assumes that a stipulation suspending the application of the four-year period for five years is valid. This is unquestionably true; but it misses the whole question at issue when viewed from the standpoint from which I am now discussing it. The point is, does such a stipulation destroy the nature of the relation between the parties; that is, does it destroy the contract as a sale with a right of repurchase, and transform it into another and entirely different contract? No one contends that such a stipulation is invalid; the sole contention is that it is not a valid, proper, or permissible stipulation in a sale with a right to repurchase and that it destroys the essential nature of the contract and transforms it into something entirely different. The proposition I am presenting is that such a stipulation converts the sale with right of repurchase, as the Code knows it, into a mere relation of borrower and lender, thereby destroying completely the relation of vendor and vendee; and that none of the provisions of the Civil Code relating to such a sale are applicable. Such a stipulation may be valid and its presence may not render the agreement void in the general sense; but it does render the contract void as a sale with right of repurchase. This is the point. The decision assumes that the parties, in a contract of sale with a right of repurchase, may do whatever they please and the contract still remains a sale with a right of repurchase. The contention that I am making is that such a contract is of a highly special nature, in many of its aspects strictly statutory, and that, when certain of its elements are destroyed, it ceases to be such a contract and becomes

something different; that when such a contract provides that the vendor must repurchase, that stipulation changes the nature of the contract and transforms it into something different, and that where it stipulates that the vendor shall not repurchase, that stipulation also changes the nature of the contract and converts it into a different species of relation. To repeat, then: A stipulation in a contract of sale with a right to repurchase that the vendor shall not repurchase during a period of years is a stipulation in violation of the essential nature of the contract, which deprives the vendor of the protection which the statute gives him, which places him in the power of the lender from which it was the intention of the law to rescue him, and transforms and converts it into one of loan on security which is governed by principles wholly different from those that govern the sale with pacto de retro.

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